

Appeal No. VA14/5/399

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Muriel O'Connor

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the property No. 732394, Hospitality (Hostel) at 46-48 Gardiner Street, County Borough of Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF MARCH, 2017

BEFORE:

Sasha Gayer – Senior Counsel

Chairperson

Aiden McNulty - Solicitor

Member

Carol O'Farrell - BL

Member

1. THE NOTICE OF APPEAL:

- 1.1 By Notice of Appeal received on the 6th October day of 2014, the Appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €148,700 on the above described relevant property on the grounds as set out in the Notice of Appeal, a copy of which is attached to this judgment at Appendix 1.

2. THE HEARING:

- 2.1 The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, on the 3rd Floor of Holbrook House, Holles Street, Dublin 2, on the 13th day of July 2015 at 10 a.m. The Appellant was represented by Mr Maurice O'Connor, and Mr. David Dodd BL, instructed by the Chief State Solicitor, appeared for the Respondent. Mr Martin O'Halloran, MSc Town and Country Planning, BSc Property Studies MRICS MSCSI, a valuer at the Valuation Office, was in attendance and gave evidence on behalf of the Respondent.
- 2.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to the Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

3. THE PROPERTY:

- 3.1 The property is located at Nos. 46-48 Gardiner Street Lower, Dublin 1. The property comprises three interconnected three storey Georgian buildings over basement with a modern extension to the rear. The property is in use as a guesthouse trading as The Townhouse B & B and Globetrotters Tourist Hostel. The agreed floor area of the property measures 3,828.16 sq. metres as follows:

Basement	320.78 sq. metres
Ground Floor	886.24 sq. metres
First Floor	885.41 sq. metres
Second Floor	885.41 sq. metres
Third Floor	850.32 sq. metres

4. VALUATION HISTORY:

4.1 Following publication of the valuation list on the 31st December 2013, the rating authority, Dublin City Council, appealed to the Commissioner of Valuation by notice of appeal dated the 5th February 2014 pursuant to section 30(1) of the Valuation Act 2001 on the basis that the property ought to have been included in the valuation list. A copy of the notice of appeal and the notice referred to in section 32(2) of the 2001 Act was served on the Appellant advising that observations or submissions could be made in writing to the Commissioner of Valuation in relation to the appeal within 28 of service of that notice. No observations or submissions were made on the appeal. The Commissioner of Valuation determined that the property is relevant property under Schedule 3 of the 2001 Act and issued a valuation certificate of €148,700.00.

5. THE RELEVANT STATUTORY PROVISIONS:

5.1 The only issue for determination by the Tribunal on this appeal is whether in accordance with section 15 of the 2001 Act, the appeal property constitutes relevant property that is not rateable.

5.2 Section 15 of the 2001 Act provides:-

“(1) Subject to the following subsections and Sections 16 and 59, Relevant Property shall not be rateable.

(2) Subject to Sections 16 and 59, Relevant Property referred to in Schedule 4 shall not be rateable. ...”

5.3 Subsection (3) goes on to provide that a building, or part of a building, land, or a waterway or harbour directly occupied by the State shall not be rateable. Subsection (4) provides that a fishery in respect of which a rate has been struck in accordance with particular legislation, shall not be rateable.

- 5.4 Section 16, as referred to above, is concerned with the time from which Relevant Properties shall or shall not be rateable.
- 5.5 Section 59 deals with the rateability of certain mines, rights to drill and the circumstances under which an apartment might be rateable.
- 5.6 Schedule 3 sets out many categories of property which come within the meaning of “relevant property” for the purposes of the Act, and Schedule 4 of the Act sets out a number of categories of property which are exempt from being rated, including, for example, farm buildings, domestic premises, an art gallery, museum, library, park or national monument.
- 5.7 The 2001 Act provides that relevant property is not rateable if it is a domestic premises. The relevant sections to this issue are set out below:

Section 3(1):

“Domestic premises” means any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel;

“lodgings” shall not be construed as including accommodation provided in premises registered under the Tourist Traffic Acts, 1939 to 1998, or in an apart-hotel;

“mixed premises” means a property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent;”

Section 3(4):

“For the purposes of this Act a property shall not be regarded as being other than a domestic premises by reason only of the fact that—

(a) the property is used to provide lodgings,

...”

Section 15

“(1) Subject to the following subsections and sections 16 and 59, relevant property shall be rateable.

(2) *“Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable.”*

Schedule 4

“Relevant Property Not Rateable

6. – Any domestic premises (but subject to section 59(4) (which provides that apartments are rateable in certain limited circumstances).”

6. THE APPELLANT’S CASE:

6.1 While, Ms. Muriel O’Connor was the Appellant, her brother, Mr. Maurice O’Connor, was the sole shareholder of the company which owned and occupied the subject property. The Respondent did not object to his dealing with the Appeal and he took the oath and adopted the Appellant’s précis as his evidence-in-chief. He made a number of points which include the following:

- (a) The property is owned and occupied by Absolute Accommodation Providers Ltd and the property was acquired in 2007.
- (b) Prior to purchase, the Appellant was informed by the vendor that rates were not payable in respect of the property. In that respect, the vendor produced a letter dated the 2nd July 2007 written on behalf of Dublin City Council by Mr P. Lalor which states *inter alia* “[A]s the above premises was not registered under the Tourist Traffic Acts on the date that the rate was made for 2007, it is proposed to make the premises non-rateable from 1st January 2007. This non-rateable status will remain in effect for as long as the premises is not registered and/or until there is a change in Rating Law or Rates Case Law.”
- (c) The property is not registered under the Tourist Traffic Acts 1939 to 1998 and does good business in competition with rival B & B and hostel establishments operating in the same area of Dublin City.
- (d) In consequence of the economic downturn profits decreased significantly following loan repayments and the payment of wages and overheads. The demand received from Dublin City Council for rates came as a shock.

- (e) Mr O'Connor expressed the view that if rates are payable in respect of the appeal property, all other properties on the same street and carrying on the same business as the Appellant should be assessed for rates in the interest of fairness.

6.2 Under cross examination Mr O'Connor accepted that the appeal property is not a domestic property.

7. THE RESPONDENT'S CASE:

7.1 Mr O'Halloran took the oath and adopted his précis as his evidence-in-chief. He stated that the Commissioner of Valuation is satisfied that the Appellant is in occupation of the appeal property. He stated that the appeal property is not in use as domestic premises but is wholly used as a hostel and guesthouse with 104 hostel beds and 81 guest bedrooms. He referred to the significant purpose built extension to the rear and to the property's turnover in 2013. He stated that the property is liable to be rated, even though not registered under the Tourist Traffic Acts 1939 to 1998. He referred to the fact that Mr O'Connor is not disputing the net annual value as determined by the Commissioner of Valuation.

8. RESPONDENT'S LEGAL SUBMISSIONS:

8.1 Mr Dodd submitted that the appeal property cannot be classified as domestic premises within the meaning of section 3(4) of the Valuation Act 2001 because it is used on a commercial basis for the business of a guesthouse and hostel for which there is no exemption under section 15 of the 2001 Act. Counsel further submitted that the fact that a property is not registered under the Tourist Traffic Acts 1939 to 1998 is not determinative of the question whether or not the property is a 'domestic premises'. He referred the Tribunal to the relevant provisions of the Act to support his submission.

8.2 On the question, of whether the letter of the 2nd July 2007 could create an estoppel, Mr Dodd submitted that the letter could not oust the jurisdiction of the Commissioner of Valuation or the Valuation Tribunal as it did not bind either the

Commissioner or Tribunal. He stated that the contents of the letter contained an incorrect statement on the law and that the phrase “non-rateable” in the letter is meaningless and does not appear in the Act.

9. FINDINGS:

The Tribunal, having examined the particulars of the appeal property, its valuation history and having considered the evidence adduced and the submissions made by the parties makes the following findings:

- (i) The appeal property comprises three interlinked Georgian townhouses over basement used for the provision of bed and breakfast and hostel accommodation.

The only question to be determined is whether the appeal property is relevant property that is not rateable. Under section 15 of the 2001 Act, subject to sections 16 and 59 (which are not relevant to this appeal), relevant property referred to in Schedule 4 is not rateable.

- (ii) It is clear that the appeal property is relevant property under the terms of Schedule 3 of the 2001 Act.
- (iii) The Appellant did not point to any of the headings of the list of properties designated as “relevant properties not rateable” in Schedule 4 of the 2001 Act. The Tribunal is satisfied that the appeal property is not a domestic premises and this fact is so acknowledged by Mr O’Connor. The Tribunal is further satisfied that the appeal property is not entitled to be treated as exempt from rates under any of the other headings of Schedule 4.
- (iv) The Tribunal accepts that the Appellant purchased the appeal property believing it to be exempt from the payment of rates. The Tribunal is satisfied that the letter of the 2nd July 2007 was written on a legally incorrect basis and agrees with counsel for the Respondent that the letter has no binding effect on the Commissioner of Valuation or this Tribunal. Whilst the Tribunal has sympathy with the Appellant’s grievance that properties

operating similar businesses as the Appellant's have not been included in the valuation list, the Tribunal's jurisdiction is limited by the Act to hearing appeals from the decisions of the Commissioner of Valuation to allow or disallow appeals made under section 30 of the 2001 Act and on this appeal the sole issue arising for determination concerned whether the appeal property is exempt from rates.

10. DETERMINATION

The Tribunal disallows the appeal and accordingly confirms the decision of the Commissioner of Valuation.

And the Tribunal so determines.