

Appeal No. VA01/2/033

AN BINSE LUACHALA
VALUATION TRIBUNAL
AN tACHT LUACHALA,1988
VALUATION ACT,1988

Busy Bee Child Care Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE : Creche and Montessori School at Map Reference 205, Kilmacud Road Lower, Townland :
Mount Anville, RD / UD : Stillorgan, ED / Ward : Stillorgan Deerpark, County : Dun Laoghaire
– Rathdown County Council.

BEFORE

Frank Malone – Solicitor

Deputy Chairman

Fred Devlin – FSCS,FRICS

Deputy Chairman

Michael F. Lyng – Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30 TH DAY OF APRIL, 2002

By Notice of Appeal dated the 30th July 2001 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €97.77 (£77) on the above described hereditament.

The grounds of Appeal as set out in the Notice of Appeal are that :-

“That this valuation is excessive inequitable and bad in law.”

1. The Appeal proceeded by way of an oral hearing which took place on the 5th December 2001 at the offices of the Valuation Tribunal, Dublin. Mr Eamon Halpin B.Sc. (Surveying), A.S.C.S., M.R.I.C.S., M.I.A.V.I. of Eamonn Halpin & Co appeared on behalf of the Appellant whilst Mr Damien Curran M.R.I.C.S., A.S.C.S., B.Sc (Surv) a District Valuer with 21 years experience in the Valuation Office was the Appeal Valuer. In accordance with the Rules of the Tribunal the parties had prior to the commencement of the hearing exchanged their précis of evidence and submitted the same to this Tribunal. At the oral hearing both valuers having taken the oath adopted their said précis as being and as constituting their evidence in chief. This evidence was supplemented by additional evidence obtained either directly or via the cross-examination process. Mr Halpin made a closing submission. From the evidence so tendered the following relevant facts either agreed or so found emerged as being material to this appeal.

2. LOCATION AND DESCRIPTION OF PROPERTY

The subject property comprises a detached former residential property located on the northern side of Lower Kilmacud Road about 1.5 miles from Stillorgan almost directly opposite the junction with Sweet Briar Lane. This is a predominantly residential area. The main block is 2 storey with a small attic without windows and additionally there are two small single storey areas to the front and rear of the building. The property is currently used as a crèche and Montessori school. All main services are connected. There is good access and parking in the vicinity.

3. TENURE

Freehold.

4. ACCOMMODATION

Ground Floor

3 rooms and kitchen

1st Floor

3 rooms and bathroom

Attic

1 room

5. PURCHASE AND SUBSEQUENT

The house was purchased c 1990 for €107,927.74 (£85,000). There was a small single storey addition to the rear in or about 1998 the cost of this addition was approximately €12,697.38 (£10,000).

6. AGREED AREAS

Main House

Gross External 201.78 sq.m.

Attic Gross 23.31 sq.m.

7. VALUATION HISTORY

The subject property was listed for revision of valuation in November 1997. This result of this revision was published in November 2000 when the increased valuation of RV €97.77 (£77) was issued. (Valuation Date : 00/4 Revision). An appeal was then lodged against this valuation to the Commissioner of Valuation following which the valuation of RV €97.77 (£77) issued unchanged in July 2001 and it is against this decision of the Commissioner that this appeal lies to the Tribunal.

8. PRELIMINARY ISSUES

At the start of this hearing Mr Curran made a preliminary application to the Tribunal asking it to decide that the only issue before it in this appeal was quantum based primarily on the contents of his letter to the Tribunal of 30th November 2001 a copy of which is set out in Appendix 1 to this Judgment.

Mr Curran referred to Section 3(5)(b) of the Valuation Act, 1988 which states the Notice of Appeal to the Tribunal shall contain “*a statement of the specific grounds for the appeal.*”. Mr Curran submitted that the grounds of appeal set out in the Notice of Appeal to the Tribunal were not specific enough to cover issues other than quantum, that the said grounds were too vague to cover issues other than quantum and that the grounds of appeal specified in the notice related only to the quantum issue.

It was common case that at First Appeal besides quantum there were two other issues. At First Appeal the Appellant relied on Section 3(3) of the Valuation Act, 1988 which states that the Commissioner of Valuation shall cause every application for revision “*to be*

determined within six months after receiving the application or as soon as may be thereafter". At First Appeal the Appellant argued that there was a three-year delay in making the determination by the Commissioner, that this delay was too long and that accordingly the revision was invalid. The Appellant further argued at First Appeal that the necessary pre revision notice was not served on it pursuant to Section 3(4)(a) of the Valuation Act, 1988.

Mr Curran stated that he discussed the grounds of appeal under Sections 3(3) and 3(4)(a) of the Valuation Act, 1988 with Mr Halpin in detail. He said that he took instructions within the Valuation Office on these grounds of appeal and in a conversation with Mr Halpin communicated to him the Valuation Office opinion that there was no case to be answered under these grounds and Mr Halpin replied "Fair enough". Mr Curran said that as far as he was concerned that was the end of the matter and that the conclusion of his discussions with Mr Halpin on these two grounds of appeal at First Appeal was in his opinion that Mr Halpin accepted that there was no case to be answered in relation to the said grounds. Mr Curran said the only indication after that that Sections 3(3) and 3(4)(a) of the Act of 1988 were being relied on was when he looked at Mr Halpin's précis for this appeal before the Tribunal.

Mr Halpin's letter of 3rd December 2001 to the Tribunal was before us and a copy of this is set out at Appendix 2 to this Judgment. Mr Halpin stated that Mr Curran had summarised the situation with regard to Sections 3(3) and 3(4)(a) fairly. He said the only real difference of opinion he had with Mr Curran was that he may have used the words "Fair enough" but in the context he used them it was to say fair enough he understood the Commissioner's position but did not accept it. Mr Halpin stated that he discussed a number of cases with Mr Curran in the last few weeks before the Tribunal hearing and in relation to this appeal he told Mr Curran there was no point in discussing the matter as the appeal was exactly as it had been to the Commissioner at First Appeal. Mr Halpin further said that if he was doing it over again he would not like to see Mr Curran at any disadvantage and he felt that Mr Curran felt that he Mr Curran was at a disadvantage in that Mr Curran felt that he Mr Curran had disposed of the matter at First Appeal.

The Tribunal notes that the date of the decision of the Commissioner of Valuation is stated in the Notice of Appeal to the Tribunal as July 2001. Both Valuers were asked by the

Tribunal when the conversation involving the use of the words “Fair enough” took place. Mr Halpin stated that would have taken place possibly in May or June 2001 and Mr Curran stated the date as being at the conclusion of the First Appeal outcome. Mr Curran said he probably spoke a number of times to Mr Halpin and the last occasion was when Mr Halpin said “Fair enough”. In reply to a further question from the Tribunal as to whether he referred to this conversation in his report to the Commissioner, Mr Curran stated that he did not and that his report to the Commissioner basically just dealt with the quantum issue.

In reply to questions from the Tribunal Mr Halpin stated that the necessary pre- revision notice had been served on the Appellant pursuant to Section 3(4)(a) of the Valuation Act, 1988.

The Tribunal retired to consider Mr Curran’s preliminary application. The Tribunal decided as follows:-

- (a.) The conversation described by Mr Curran between himself and Mr Halpin involving the use of the words “fair enough” took place as described by Mr Curran on or about the time of the decision of the Commissioner of Valuation on the First Appeal.
- (b.) It was reasonable for Mr Curran to believe as result of this conversation that the ground of appeal under Section 3(3) of the Valuation Act, 1988 had been resolved and disposed of between the parties.
- (c.) Mr Halpin in the said conversation did not make it clear that he was not accepting the Commissioner’s position and his use of the words “fair enough” led Mr Curran to believe that the ground of appeal under Section 3(3) of the Valuation Act, 1988 had been resolved and disposed of.
- (d.) The ground of appeal under Section 3(3) of the Valuation Act, 1988 had accordingly been resolved and disposed of between the parties by virtue of this conversation.
- (e.) It was not in the circumstances necessary to make any decision as to whether or not the Notice of Appeal submitted by the Appellant in this case was wide enough to include a ground of appeal under Section 3(3) of the Valuation Act, 1988.
- (f.) The only issue before the Tribunal in this case was quantum.

9. APPELLANT'S CASE

A photograph of the subject property was handed in by Mr Halpin. He said that over the last two or three years the level per sq.ft. applied to crèches particularly in the Dun Laoghaire area appeared to be quite different to many other areas. There appeared to him to be what he would regard as a number of very high valuations put on crèches in the Dun Laoghaire – Rathdown area.

He stated that at some time the occupiers sought and were granted planning permission for the crèche. Mr Halpin's comparisons are set out at Appendix 3 to this Judgment.

Mr Halpin placed greatest reliance on his Comparison No 1., the Mulberry Creche & Montessori. He stated it was situated within the Dun Laoghaire–Rathdown area. Mr Halpin stated that it had been agreed within the last few weeks @ £3/sq.ft. gross external and that the property consisted of a bungalow.

Mr Halpin said his comparison No 2., namely Lot 19 20 Rathfarnham was an older style property and was valued on Revision in 1994 @ £3/sq.ft. gross external.

In answer to a question from the Tribunal Mr Halpin produced two photographs of his comparison A namely Orlagh Park, Montessori to which Mr Curran had no objection. This comparison consisted of the first floor of a parade of shops.

Mr Halpin submitted that a figure in or around £3 a sq.ft. gross external was appropriate for the subject property.

In his précis Mr Halpin set out his Valuation as follows :-

“VALUATION

Estimated. NAV (1988 Tone)

Main Building

Creche & Montessori 201.78 sq.m. @ £32.29/sq.m.

(2172 sq.ft. @ £3/sq.ft.)	=	£6,516
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Attic 23.3 @ £16.41/sq.m.(251sq.ft.@£1.50/sq.ft.)	=	£ 377
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£6,893

@0.63% = £43.42 Say £43”

In reply to cross-examination by Mr Curran, Mr Halpin agreed that his comparisons Numbers 2 and 7 were larger than the subject property. In relation to comparison Number 2 Mr Halpin stated he would accept generally that there was some quantum reduction for size there and when asked to quantify this by Mr Curran, Mr Halpin stated it would be close to maybe 10% or 15%.

In answer to a question from the Tribunal as to where he got the figure in his Valuation of £16.41 per sq. m. for the attic, Mr Halpin stated this was a proportion of whatever the rate per sq. m. was on the rest of the property.

In answer to a question from the Tribunal Mr Halpin stated that a number of crèche owners had been forced into commercial locations because it was becoming increasingly difficult to get planning permission in residential areas mainly because of the traffic created. The Tribunal asked Mr Halpin if there was a premium for crèche use in 1994 in a residential area and if there would be a larger premium now due to the difficulty of obtaining planning permission and Mr Halpin replied that there could be.

10. RESPONDENT'S CASE

Mr Curran's comparisons are set out at Appendix 4 to this Judgment. He said he had confined himself in his comparisons exclusively to comparisons which were similar to the subject property in that they were exclusively in residential areas and they were converted residences or portions of converted residences. Mr Curran said his three comparisons were in very close proximity physically to the subject property. He said he was using comparisons which were as close as possible to the subject property. Mr Curran stated that the change in the planning situation with regard to crèches in residential areas had made existing crèches in residential areas of more value in recent years.

In his précis Mr Curran set out his Valuation as follows :-

“Valuation

Creche. 201.78 sq.m. gross @ £60.00 per sq.m.

Attic : 23.32 sq.m. gross included.

Creche. 136.84 sq.m. (nett) @ £81.80 per sq.m.

Attic : 21.36 sq.m. (nett) @ £40.90 per sq.m.

Valuation Office Valuation £77”

In cross-examination Mr Halpin asked Mr Curran if properties within hundreds of yards of the subject property situate in Dublin City and South Dublin would not be comparable to the subject property because they were in a different administrative area. Mr Curran in reply stated you would have to look at the other administrative area in general. He had not done a detailed examination of crèches within the South Dublin administrative area and that it might well be that Mr Halpin picked one or two in South Dublin but he could not agree with them without actually looking at all of the evidence in that area. Mr Curran further stated in reply that he thought it appropriate to confine himself primarily, if there were sufficient evidence available, to the local authority area of the subject property.

11. FINDINGS

(a) Appellant’s Comparisons.

The eleven Comparisons set out in Mr Halpin’s précis are considered by the Tribunal to be of limited assistance for the purposes of determining the valuation of the subject premises for the following reasons:-

(i.) General.

Less than half of the comparisons are situated in the same administrative area as the subject property. Further many of the comparisons are situated too far away from the subject property to be of any great assistance.

(ii) Particular.

Comparisons 2 and 7 are considerably larger areas than the subject.

Comparisons 4 and 5 are purpose built private schools for older pupils. The subject property is a crèche and Montessori School situated in a former residence converted to crèche and Montessori School.

In relation to Comparison 4 the 1991 First Appeal dealt with an application for exemption only which was not granted. When the property was listed for revision in 1991 the valuation remained the same as was struck in the 1963 Revision so that the comparison is unsafe.

Comparisons 8 and 9 were under appeal to the Tribunal at the hearing date.

Comparisons A and B are situated in commercial environments whereas the subject property is located in a predominantly residential area.

(b) Respondent's Comparisons.

The Tribunal has also considered the three comparisons contained in Mr Curran's précis. Each is situate in close proximity to the subject property and all are within the administrative area of Dun Laoghaire-Rathdown County Council. We find that Mr Curran's Comparison No 1 namely the Circle of Friends is the most appropriate. This property is smaller than the subject property and accordingly there should be a quantum allowance and a further allowance by virtue of the fact that the Circle of Friends is a bungalow whereas the subject property is two storey.

12. DETERMINATION

In view of the foregoing and having taken all the evidence in to consideration the Tribunal determines the Net Annual Value and the R.V. of the subject property as follows :-

Creche & Montessori 201.78 sq. m. gross @ £52.50 per sq. m. = £10,593.45

Attic 23.31 sq. m. gross @ £26.25 per sq. m. = £611.89

NAV = £11,205.34

£11,205.34 x 0.63% = RV £70.59

Convert £70.59 to Euro = €89.63

Say €90 R.V.

