

Appeal No. VA93/2/054

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

John Dunne

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Store at Map Ref: On 2A, Townland of Callaghstown Lower, E.D. Rathcoole, R.D. Dublin
- Belgard, Co. Dublin

Agricultural exemption - farm building not complying with planning law

B E F O R E

Henry Abbott

S.C. Chairman

Paul Butler

S.C.

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 31ST DAY OF JANUARY, 1994

By Notice of Appeal dated the 17th of May, 1993 the appellant appealed against the determination of the Commissioner of Valuation in fixing a Rateable Valuation of £14.00 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that the building was built as a hay shed and was used as one. The property is not a workshop or store but a farm building, for which planning permission was granted. It should not be valued as a rateable property. Over the years it was only used for storing hay, and in the last few months appellant had put a few of his bits and pieces in it. It is permanently locked up since it was built in 1988.

The Property

The property is located on a side road off the main Rathcoole/Blessington road approximately 3 miles south of Rathcoole. The respondent claims that the property comprises a Workshop/Store with concrete block walls up to 6 feet with corrugated iron sides and roof. There is an eaves height of approximately 15 feet with metal sliding doors to the front and metal door to the side. The workshop/store has electric power and a hoist. The area of the premises is 1,496 square feet with a frontage of 9.1 metres [30 feet] and a depth of 15.3 metres [50 feet]. The property is connected to mains electricity.

Valuation History

The property was first valued in 1988 at £21.00 and was described as a workshop. In 1991 following a request from the appellant, the property was relisted to revise as necessary. This revision request resulted in a reduction to £16.00 in the valuation and an amendment in the description to workshop and yard.

This reduction was appealed by the appellant and resulted in a further reduction to £14.00 and a change in the description to store. It is against this valuation that the appeal now lies to the Tribunal.

Written Submission

The appellant delivered a précis of evidence to the Tribunal on the 2nd September, 1993 and the respondent delivered a précis of evidence on the 6th September, 1993.

Oral Hearing

The oral hearing took place in Dublin on the 17th day of September, 1993. The appellant, Mr. John Dunne appeared for himself and was accompanied by his wife Mrs. Dunne. Mr. Colman Forkin a Chartered Valuation Surveyor with 12 years experience in the Valuation Office appeared for the respondent.

It emerged in the course of the debate that while there were certain indications that there was a hoped for commercial use involved in the subject the property was essentially unused and vacant and that there was no business being carried on there. There was no commercial permission for the business which might have been suggested by the telephone and electricity connections and also the hoist.

The hearing was adjourned to the 10th of January, 1994 to enable the parties to look for authorities indicating what the position might be in relation to such a premises where there

was no planning permission for a particular use and where the use although intended did not commence.

At the resumed hearing Francis Griffin, Barrister-at-Law, instructed by Sean Grennan & Company, Solicitors appeared for the appellant. He submitted that the building was entitled to the agricultural exemption under Section 14 of the 1852 Act. He also submitted that there was no occupation for rateable purposes, by the appellant.

Mr. Forkin assisted the Tribunal by adverting to the Irish Life case heard in the Circuit Court in Dublin in 1981. In that case Judge Ryan indicated a preliminary view that where no fitting out had occurred Irish Life, the owners of the shopping complex building, were not in occupation of same for rating purposes. Judge Ryan seems to have invited an appeal by Case Stated but the Commissioner of Valuation did not appeal same and Mr. Forkin was relying on notes of Counsel's opinion on the file from that date.

In evidence the appellant said that he originally acquired a quarter acre from his father and applied for planning permission for a bungalow and hayshed, anticipating that he would be in a position to buy land nearby. He had built the haybarn on the site in 1988. His father was a farmer and used this shed for storage of hay. He explained that the block and tackle hoist in the shed were there to unload a roller and that the flat ceiling was there to prevent condensation falling back on hay stored in the shed. While the Tribunal finds that there were many indications of the commercial use and design of the property, the Tribunal must consider that, notwithstanding the fact that the property may have been an exempt development as a farm building, the appellant has planning permission on record for same as a hayshed.

Planning permission for a particular use is not necessarily a decisive factor in relation to whether a person is in rateable occupation for a particular use. In a case such as that of the subject, where the planning permission is on record, and a dispute exists in relation to the actual user, then in the absence of any clear evidence of continuous use or preponderance of use, the Tribunal would be reluctant to decide that there is an occupation running contrary to the actual planning permission on record, unless further evidence was available arising from observation of activities at the site over a period of time.

It would appear to the Tribunal that the planning process now affords the planning authority, which is the rating authority in this instance, the right to invoke the Planning Code

Enforcement procedure to clarify just what use is being claimed or intended for a particular building.

While this case is essentially one of non occupation, the Tribunal considers that the appropriate treatment is to allow the agricultural exemption in respect of the property, and so determines.