

Appeal No. VA02/2/065

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

Bord Gais Eireann

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office Building at Lot No. 44-45 Buckingham Street Lower (incl. 40-42 Foley Street)
Dublin, 1. County Borough of Dublin

B E F O R E

Tim Cotter - Valuer

Deputy Chairperson

Michael McWey - Valuer

Member

Maurice Ahern - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 16TH DAY OF JANUARY, 2004

By Notice of Appeal dated 25th April 2002 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €2,413 on the relevant property above described.

The Grounds of Appeal as set out in the Notice of Appeal are:

"(1) The valuation is excessive and inequitable.

(2) The valuation is bad in law."

The appeal proceeded by way of an oral hearing which was held on 7 October 2002 in Arbitration Room 1, Distillery Building, Church Street, Dublin 7. The appellant was represented by Mr Owen Hickey, BL, instructed by O'Flynn Exham & Partners. The respondent was represented by Mr. Niall Beirne, BL, instructed by the Chief State Solicitor's Office. Ms Sheelagh O Buachalla and Mr. Jack Devlin, both Directors of GVA Donal O Buachalla, gave evidence on behalf of the appellant. Mr Bernard Stewart, District Valuer, gave evidence on behalf of the respondent. Mr. William Tuite, Valuer, Jones Lang LaSalle, also gave evidence as an expert witness on behalf of the appellant. In accordance with the Rules of the Tribunal the parties had, prior to the commencement of the hearing, exchanged their précis of evidence and, having taken the oath, adopted them as their evidence-in-chief.

The Property

The property is a new, five-storey over basement, office building, well-finished with predominantly glass frontage. To front and side it is also finished with granite effect marble slabs. The offices are finished to a high standard with air-conditioning throughout and suspended ceilings and raised floors. The building is of irregular shape with a narrow frontage onto Buckingham Street. The largest floor is at ground level. The upper floors are significantly narrower with a frontage of 9.6m to Foley Street as against the standard depth of 13.4m. There are two retail units to the rear of the building at ground floor level fronting on to Beaver Street. The upper floors are in apartments. The total net internal floor area has been agreed at 2,950sq.m.

Location

The property is located on a corner site fronting Buckingham Street Lower and Foley Street. When this development was originally proposed there was direct access to Connolly Dart Station almost opposite the junction of Amiens Street and Buckingham Street Lower. This was a major selling point for the development as Bord Gais Eireann were previously located close to Tara Street Dart Station. However, for security reasons this access was closed. The property is located in a tax incentive area but Bord Gais Eireann are unable to benefit from these incentives.

Accommodation

The ground floor houses the reception area. There is also a conference room, five office/meeting rooms, a restaurant area, a kitchen and toilets. The first to fourth floors consist of predominantly open-plan office areas with some areas at the front and rear of the building sectioned off into rooms. The block is also served by two lifts and a stairwell which are located to the front of the building.

Tenure

The property, as per evidence presented to the Tribunal, is held freehold under a 500- year lease from the 1st January 2001 subject to yearly rent of £1 (€1.27). The property was purchased for €13.83 million (£10.9 million) in August 2001.

Valuation History

The subject premises was first assessed in November 2001 and the RV was fixed at €2,793.42. At first appeal the RV was reduced to €2,413.

The Appellant's Evidence

Mr. William Tuite, Valuer, Jones Lang LaSalle gave evidence as to the status of comparisons given by the Valuation Office. Mr. Tuite stated that he had been involved in the Valuation Office Comparison No. 2, namely the CERT office building. He had acted for CERT in a case for exemption with quantum being a secondary issue. Exemption was granted but the valuation of the premises was not agreed as the RV proposed by the Valuation Office was considered too high. The RV was not appealed as exemption had been granted and there was no benefit to be gained by appeal.

Mr. Jack Devlin, Director, GVA Donal O Buachalla, then gave evidence. Responding to Mr. Owen Hickey, BL, Counsel for the appellant, Mr Devlin stated that he was involved in all types of acquisition of commercial property in many areas. He said that the subject property was not in an office location. The area was known for deprivation, vandalism and dereliction. Due to the high level of crime and drug dealing in the area he would be concerned for any visitors there. He went on to state that Bord Gais divested itself of a lot of property around this time and they

needed approximately 30,000 square feet in a very short time. They were searching around in 1998/99 for a suitable site and a major issue was convenience for staff as well as availability of a Dart Station to this location. There was access to a Dart Station directly across the road in Amiens Street. However this access is now closed and the nearest Dart service is 200 metres away and, in view of the high degree of crime in the area, there is a general concern for the security of staff who have to travel this route.

Mr. Devlin said that Dublin Corporation wanted some flagship user to locate in this area and Bord Gais was the ideal company. Following proposals from the Corporation's Development Department Bord Gais decided to move to this site. He said that Bord Gais probably took a long-term view of it in that they would hope that the area would improve rather than disimprove. He felt it was a pity they lost out on an area like Smithfield which will have the benefit of a Luas Service in a couple of years' time. Bord Gais bought this site and had the office block built. In normal circumstances, Mr. Devlin said, no commercial developer would build on this site because it is an area in which it is very difficult to rent property. At the moment there is another property on Foley Street which is finished and to date the agent has not been able to get a suitable client to rent it.

Mr. Devlin was cross-examined by Mr. Beirne, BL, Counsel for the respondent. Mr. Beirne questioned Mr. Devlin as to why there should be a problem with the Bord Gais office. There were other office buildings in the area such as Bank of Ireland, CERT and the Eircom office on Amiens Street. Mr. Devlin repeated his arguments and his concerns for the staff working in the Bord Gais building, again based on the crime and drug situation and general security in the area. He said that, generally, in an area where there are a lot of offices there are also coffee bars and restaurants but there are no such bars or restaurants in this area because of the crime and security situation.

Ms. Sheelagh O Buachalla, Director, GVA Donal O'Buachalla then gave evidence for the appellant. She said the issue here was one of quantum and that in commercial terms this location is regarded as tertiary as it is a mainly residential area interspersed with vacant derelict property. She stated that while the subject property is located in a tax-incentive area Bord Gais are unable

to benefit from these incentives. She said the office block is surrounded by corporation flats, scrap yards and a lot of undeveloped sites and that the area is well-known for its drug abuse, car theft, robbery, vandalism, unemployment and poverty. She supplied photographs to support her statement that the majority of the buildings in the vicinity are derelict.

Ms O’Buachalla stated that there are a number of large City Council blocks of flats in the immediate vicinity. She said Dublin City council is trying to encourage development through the North Inner City Development Plan which offers tax incentives, but because of the negative aspects of the area, uptake of the incentives has been slow. Bord Gais, being a semi-state body, was encouraged to relocate their headquarters to this site to give some initiative to the redevelopment of the area. However, almost a year later there have been no signs of any further development. This development, she said, would not have occurred if there had not been a pre-build arrangement. At the time of the development a major selling point was that the Dart Station was very accessible with an entrance just across the road, but this entrance had to be closed for security reasons. While there was provision for car parking at the time of the revision the car park was not complete. Consequently, the offices must be valued without car parking. This seriously affects the lettable of the property. There is provision for 13 car spaces, she said, which is considerably less than the norm. The long narrow shape of the building is far from ideal. Furthermore, the apartments to the rear, which were a condition of planning, create security problems. Ms. O Buachalla stated that she had cited her comparisons to give some evidence of value but that the location and description of the subject property are such that significant adjustments from the levels of comparisons are appropriate.

Ms. O Buachalla presented to the Tribunal a letter which she received from Mr. William Tuite who had earlier given evidence. The letter concerned the valuation of CERT House and covered the matters already described by Mr Tuite in his evidence earlier.

Ms. O Buachalla then presented her comparisons which are attached as Appendix 1 to this judgment. It is Ms. O Buachalla’s view that a 20% reduction in the RV should be given for location of the subject property, 5% for the irregular design of the building and 5% for quantum. Ms. O Buachalla’s opinion of the value of the subject property was:

2,950sq. m. @ €2psqm = NAV €241,906

She stated that, as there is no car parking, a further allowance must be made and she submitted that a fair RV would be €1,270. This figure was derived:

Office 2950sq.m. @ €8.34 = NAV €201,603
 @ 0.63% = RV €1,270

The Respondent's Case

Mr. Bernard Stewart, District Valuer, stated that the property was a new office block built on a cleared site. It was purchased by Bord Gais in 2001 and approximately €3 million was spent on fit out of office building. This was the corporate headquarters for Bord Gais, and was an individualistic building with a profile onto Amiens Street. It was across the road and 180 metres from the entrance to Connolly Station with its main line and Dart train services. He said that, at the first appeal, the appellant argued that the property was in Buckingham Street / Foley Street area which they maintained is an area with social problems and a negative perception and not an office area. He stated that the building is located on the periphery of the area referred to and is effectively fronting onto Amiens Street and, therefore, is more akin to an Amiens Street property. He stated that the left side of Foley Street has been substantially developed. Having presented a number of comparisons Mr. Stewart went on to mention that there would shortly be car park spaces available within the basement of the subject property and that parking is also available on the street outside. He claimed that any prospective client looking at this building would certainly be interested on the basis that there were car park spaces in the basement. He said that the property was convenient for staff, it was 180 metres' walk to Connolly Station and they had access to the Dart. In cross-examination by Mr. Hickey, Mr. Stewart stated that he had valued the building as it stands and on the basis of other offices in the area. He stated that he did not agree with the security reasons given by Ms. O' Buachalla in her evidence. He said that the access to the car spaces in the subject property, when they are available, will be at Beaver Street. There was discussion between Mr. Hickey and Mr. Stewart as to whether properties can vary in value a short distance apart. Mr. Stewart also agreed with Mr. Hickey that this area was probably not the best of areas for parking your car.

Findings and Determination

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and makes the following findings:

1. The Tribunal is obliged to make a decision on the evidence before it and in this instance we must again repeat rebus sic stantibus. A lot of discussion took place before the Tribunal in relation to the car parking spaces but at the date of this appeal these spaces had not been completed so therefore they were not relevant.
2. The witness for the respondent and Counsel for the respondent placed great emphasis on the location of this property and its frontage on to Amiens Street and it is clear from the Valuation Certificate presented by the Valuation Office that this property is located in Buckingham Street Lower.
3. The subject premises is clearly disadvantaged by scale, layout and location when compared to some of the comparisons adopted by both parties.
4. Comparisons presented to the Tribunal which are exempt and are rated by the Valuation Office but not agreed by the various clients are of no benefit to the Tribunal when trying to determine the valuation of any individual property. Equally, comparisons that are some distance from the subject property are of no great assistance to the Tribunal in coming to a decision. Some of the comparisons presented were of assistance to the Tribunal but as no other office block exists in this particular area those comparisons served as a guide only.
5. The evidence before the Tribunal indicated that it is very difficult to let property in this particular area. This is due to petty crime, the drugs issue and particularly the security and safety of staff at night. There is also the fact that in a normal office area you would have coffee shops and restaurants of which none apparently are located in this area.

In view of all of the above the Tribunal therefore grants this appeal as follows

Office 2950sq.m.	@	€8.34	=	NAV €201,603
	@	0.63%	=	RV €1,270