

Appeal No. VA05/3/074

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

Descon Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. 5C/Unit 3A (1st Fl.), Monahan's Road, Ballintemple, Knockrea B, City Hall, County Borough of Cork.

B E F O R E

John Kerr - BBS. ASCS. MRICS. FIAVI

Deputy Chairperson

Patrick Riney - FSCS FRICS FIAVI

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF FEBRUARY, 2006

By Notice of Appeal dated the 15th day of August, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €64.00 on the above described relevant property.

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

"(1) Valuation excessive and inequitable

(2) Part of premises incapable of beneficial occupation"

The appeal proceeded by way of an oral hearing which took place in the Tribunal Offices, Ormond House, Ormond Quay Upper, Dublin 7, on the 22nd day of November, 2005. Mr. Alan McMillan ASCS, MRICS, director of GVA Donal O Buachalla represented the appellant and Mr. Francis Twomey, Staff Valuer in the Valuation Office, represented the respondent. Also in attendance were Mr. Des Murphy of Descon Ltd. and Mr. Des Feehan, consultant to GVA Donal O Buachalla. Both parties exchanged précis of evidence and submitted copies of same to the Tribunal. At the oral hearing, each party, having taken the oath, adopted their précis as their evidence-in-chief.

Description

The subject property is the centre of a terrace of six two-storey office units. It consists of the upper floor only of the unit. There is separate 'own door' access to the unit from the front of the building. This is the only entrance and the entire upper floor is occupied as one rating unit. The front section of the unit is set out in two offices with a standard finish of suspended ceiling and carpeted floor. The rear section is substantially in a shell state with suspended ceiling partially installed. It is partitioned into two sections.

Valuation History

The property was first valued in January 2005 as a new rating unit. A proposed Valuation Certificate was issued on the 14th February, 2005 proposing a rateable valuation of €78. No representations were received and a Valuation Certificate was issued on the 18th March 2005. This valuation was appealed to the Commissioner. Following consideration of the appeal the Commissioner amended the valuation to RV €64. The decision of the Commissioner has now been appealed to the Valuation Tribunal.

Location:

The property is located to the east of Cork city centre, off Monahan's Road. It is within a small business park development known as Cleeve Hill Business Park.

| | |
|------------------------|-------------------------|
| The agreed floor area: | First Floor |
| | Office: 65.7 sq. metres |
| | Store 119.6 sq. metres |

Tenure

The property is understood to be held freehold.

Appellant's case

Mr. Alan McMillan, having taken the oath, adopted his written précis as being his evidence-in-chief. Mr. McMillan stated that he had not seen the subject property, but his colleague Mr. Feehan had inspected it and would assist the Tribunal in any way possible. He (Mr. McMillan) stated that the property was new, was first valued in 2005 with an RV of €78 and was described as "Offices." The formal valuation certificate was issued on the 18th March, 2005 with the property still being described as "Offices". An appeal was then lodged. In the "Consideration of Appeal" document, the Revision Officer who had now internally inspected the property found the rear section to be "more akin to storage space" and calculated the RV as follows:

| | |
|---|--------------|
| Offices 65.7 sq. metres @ €1.97 per sq. metre | = €5,385 |
| Stores 119.6 sq. metres @ €1.00 per sq. metre | = €4,904 |
| Total | = €10,289.02 |
| @ 0.63% = €64.8 | Say €64 |

Mr. McMillan expressed surprise that when 65% of the accommodation was now deemed as "Store" the description of the property remained as "Offices." He also stated that while he retained reservations about the level of valuation applied to the office section, the appeal before the Tribunal was concerned principally with the valuation of accommodation which he submitted was incapable of beneficial occupation as "store" or otherwise. He referred to a letter in his précis from a Mr. Colum P. Murphy, Chartered Surveyor & Corporate Building Engineer, which stated that the rear section of the first floor of the subject premises was unoccupied, that neither the electrical or heating systems had been commissioned and therefore that particular part of the building deemed "stores" was not suitable for occupation. He also stated that the unfinished section of the property remained in the hands of Descon Ltd. as the building contractors, pending its completion, and not in its occupation as tenant or owner. Mr. McMillan submitted that the unfinished accommodation could not be valued and should be excluded from what was admittedly relevant property and rateable being the completed and occupied front office section. Having regard to all the facts, Mr. McMillan submitted that which he felt was a fair net annual value as follows:

| | | |
|---------|--|------------------|
| Offices | 65.7 sq. metres @ €1.97 per sq. metres | = €5,385 |
| RV | @ 0.63% | = Say €33 |

In reply to the Tribunal Mr. McMillan stated that there was no Fire Safety Certificate (FSC) available and he felt that Mr. Des Murphy, the builder, would elaborate on the reason why it was not available.

Mr. Des Murphy, having taken the oath, stated that the FSC was not available for the part of the building they were seeking relief on because it was unfinished and not suitable for occupation. However, an FSC was issued originally for the building but because a number of changes had been made to the original drawings submitted, it would be necessary for the owner to file an application for a new FSC. In reply to a query from the Tribunal, Mr. Murphy confirmed the contents of a letter attached to Mr. McMillan's précis from Colum P. Murphy & Co, Consulting Engineers, which stated that the electrical and heating systems in the rear section of the first floor would have to be commissioned before the premises could be occupied.

Mr. Twomey, Revision Officer, questioned this evidence which he said was hearsay because Mr. Colum Murphy was not available to the Tribunal for cross examination. Mr. Des Murphy, in reply, stated that the subject property had only clear light sheeting in the roof but he felt that without electric lighting one could not work in that section of the building. He also stated that he allowed that section of the building to be used by the Special Olympics for a few weeks as storage free of charge. Mr. McMillan agreed with Mr. Twomey that access was available to the unfinished section of the building by the owner but he felt that the unfinished section should not have been valued in its present condition.

Mr. Twomey referred Mr. McMillan to the Tribunal determination in Appeal Ref. **VA88/0/106 - Craig Gardner & Company** in which it was decided that the appellants were in beneficial occupation of unfinished offices. Mr. McMillan stated that in the **Craig Gardner** case a passing rent was reported and accordingly beneficial occupation was deemed and so the property was capable of being brought into full use. In the case of the subject property there was no passing rent and in his opinion the unfinished part of the property should not be valued because it was incapable of occupation.

Mr. Feehan, having taken the oath, told the Tribunal that he had visited the premises and he concurred with the description given by Mr. McMillan. The front section of the property was

complete and should be rated. The rear section was unfinished and, in his opinion based on his forty years experience as a valuer, was incapable of occupation and should not be valued.

Respondent's case

Mr. Twomey stated that the net issue to be decided was whether the rear section of the subject property should be valued or not. He stated that when he inspected the property it consisted of a first floor own door unit with the access from the front of the building which was the only entrance to the entire upper floor. At inspection he formed the opinion that the subject was one relevant property. The front section was set out in two standard finished offices and the rear section was unfinished. He valued the offices at €81.97 per square metre and the store area at €40.99 per square metre. This store area valuation represented a discount of 50% for the unfinished section and was similar to that granted in the **Craig Gardner** judgment which he felt was reasonable. In reply to the Tribunal he stated that there was physical occupation as the owner was using the entire property. In reply to Mr. McMillan, Mr. Twomey accepted that the unfinished section of the property was not suitable for office use as it was not fitted out for same. However, Mr. Twomey would not agree that Descon Ltd were in occupation as contractors because this was never put to him at first appeal stage and therefore he felt it could not be pleaded at the Tribunal.

Findings and Determination

The Tribunal, having considered all the evidence both in the written submissions and given orally at the hearing, makes the following findings:

1. The Tribunal was not provided with written evidence relating to the apparent unresolved issues regarding the Fire Safety Certificate.
2. The Tribunal was not provided with written evidence to support the claim that that part of the building deemed "stores" had not been handed over by the contractor to the owner.
3. The subject property consists of the upper floor only of the unit.
4. There is only one entrance to this upper floor which is to the front of the building.
5. The front section of the unit is set out in offices with standard finish.
6. The rear section is in a partially unfinished shell state but is capable of beneficial occupation.

Accordingly the Tribunal determines that the rate equivalent to 50% of that which applied to the front section is a fair and reasonable valuation on the unfinished rear section and that, therefore, the respondent's valuation should stand with an RV of €64.00. The Tribunal therefore affirms the determination of the respondent.