

Appeal No. VA06/1/005

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

**Peevers Slye Cotter, Certified Public Accountants**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Office(s) at Lot No. 1BCD/2, Castle Demesne, Tralee Urban, Tralee UD, County Kerry

**B E F O R E**

**John Kerr - BBS. ASCS. MRICS. FIAVI**

**Deputy Chairperson**

**Michael McWey - Valuer**

**Member**

**Frank O'Donnell - B.Agr.Sc. FIAVI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 30TH DAY OF JUNE, 2006**

By Notice of Appeal dated the 10th day of February, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €160.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal a copy of which is at Appendix 1 to this Judgment.

The appeal proceeded by way of an oral hearing, which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 11<sup>th</sup> April, 2006. The Appellant was represented by Mr. Thomas Mannix, FRICS, FSCS, ACI Arb, Representing Valuer with DNG WH Giles & Co., of Castleisland, and the Respondent by Mr. David Molony, B.Sc, MRICS, a District Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, prior to the hearing the parties had exchanged their respective submissions to the Tribunal. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

### **The Property**

The property is located on the periphery of the town of Tralee on Dan Spring Road which is on the South Circular Road and east of the Aquadome Sports Centre. The subject property is described as the second floor of a recently developed three storey office building known as Riverside House, within a development identified as Fels Point, near the River Lee and south of the main commercial core of Tralee. The structure is described as a purpose built, three storey, modern, detached, commercial building with 40 on-site open car parking spaces provided for use free of charge to the occupiers of the building. Kerry Education Services (formerly Kerry VEC) occupy the ground and first floors and the second floor is entirely occupied by the Appellant.

The property is accessed by means of an eight person lift and by a staircase from a ground floor lobby, used in common with others. The total floor area of the building was agreed between the parties at 1,160 sq. metres and the floor area of the relevant property was also agreed at 395 sq. metres. The accommodation is described as third generation, with raised access floors, suspended ceilings, double glazed windows with all internal space finished to a high commercial specification. The building in which the relevant property is located is one of two similar office buildings developed in recent years at Fels Point.

### **Tenure**

Freehold

### **Valuation History**

The property was revised as offices and a Valuation Certificate issued with a Rateable

Valuation (RV) of €160.00 on 26<sup>th</sup> April, 2005. The Appellant filed an appeal to the Commissioner of Valuation on 30<sup>th</sup> August, 2005. The Commissioner of Valuation re-issued the RV unchanged at €160.00 on 19<sup>th</sup> January, 2006. The Appellant filed an appeal to the Valuation Tribunal on 10<sup>th</sup> February, 2006.

### **Appellant's Case**

Having taken the oath, Mr. Mannix formally adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission.

He indicated from the outset that he felt that the Commissioner had erred by not applying a reduction of 14.29% on the RV between the First and Second Floors of the building containing the relevant property though it appeared that he had done so between the Ground and First Floors of that building and of the adjoining building. He also argued that the kitchen area comprising of 16.6 sq. metres within the subject relevant property should have been valued at a lower level than that adopted by the Commissioner. He then read through his précis of evidence in its entirety and stressed the relevant points, in summary.

The relevant property, he said, is located approximately one mile south of the town of Tralee, is purpose built, occupied by his clients, and the remaining office space below is occupied by the Kerry Education Service. The subject property is served from a shared lobby by a stairs and by an eight passenger lift.

He said the Respondent relied on one property only to give three NAV comparisons taken from the adjoining building, located at 1, Fels Point, a building similar to the subject though approximately 45% smaller in total floor area.

He stated that the second floor offices of the adjoining premises, comprising of circa 173 sq. metres, had an assessed NAV of €88.84 per sq. metre but that the occupiers at the time of revision, i.e. the former Kerry VEC, had since vacated the premises and moved into the building containing the subject relevant property.

He queried why, in the adjoining building, the first floor offices were assessed by the Respondent at NAV €2 per sq. metre while the second floor offices were assessed at NAV €88.84 per sq. metre and suggested that the reason may have been that the NAV on the first

floor was fixed following appeal representations and negotiations. He argued that the Commissioner erred by not adopting a true tone of the list and failed further by not carrying forward the discounts above noted on the floors within the subject building, which would, if applied, result in an assessed NAV, he contended, of €70.28 per sq. metre.

In support of his arguments Mr. Mannix cited a previous judgment of the Tribunal - **VA05/2/017 – Shaffrey & Co. Solicitors** – where, in the circumstances of that case, the Tribunal decided that offices at second floor level warranted a discount. He said similar matters were also considered by the Tribunal in **VA05/1/011 – Biospheric Engineering Ltd.**, **VA96/2/039 – Dublin Legal Agency** and **VA94/3/028 – Temple Bar Properties Ltd.**

Mr. Mannix argued further that the Commissioner failed to apply a quantum allowance, as the subject property is substantially larger at 395.01 sq. metres than any of the Respondent's three comparisons which range in area from 92 sq. metres to 173 sq. metres and he suggested that the Tribunal judgment in **VA96/3/038 - New Era Packaging Ltd.** gave relevant guidance in the matter. He stated that by adopting a reduction factor to reflect quantum, the foregoing assessed NAV of €70.28 should be reduced by a further amount of €1.40 to a new level of €68.88 per sq. metre.

Stating that the kitchen/staff canteen area in the subject was 16.6 sq. metres, he argued that the NAV on same should have been assessed on a different basis and reduced to a level of €41.32 per sq. metre and he cited RVs applying to comparison properties located at The Horan Centre, Day Place and Denny Street, Tralee to underpin his argument. Adopting the foregoing approaches, Mr. Mannix concluded that the offices should carry a NAV of €26,064.88 and the kitchen/canteen a NAV of €85.91 which together would amount to a total NAV of €26,750.79 or a RV of €134.00.

Mr. Mannix concluded by summarising his précis of evidence, again asserting that the relevant property was located in a new development area south of the commercial core of Tralee town, describing it as a new furrow for Tralee, and saying that Fels Point was unique and without true comparisons in the pool of properties within its local authority rating area.

**Cross-examination**

Mr. Molony commenced by asserting that the subject property was not one mile from the town centre, as declared by Mr. Mannix, but less than a half mile distant when calculated from St. John's Church. Mr. Molony asked Mr. Mannix for his opinion on whether the subject property was more accessible than other buildings in the town centre and Mr. Mannix replied that the development was one targeted to specific users who would not be relying upon location convenience as a criterion, but rather directional considerations to satisfy the needs of targeted potential users such as the Kerry Education Service or accountancy practices, and added that Dan Spring Road represented an impediment to both access to and egress from the development.

Asked for further clarification on earlier appeal Judgments cited by him, Mr. Mannix confirmed that he was referring to the Tribunal Judgment in Appeal ref. **VA05/2/017 – Shaffrey & Co. Solicitors**, specifically to paragraphs No. 5, Page 2, No. 6, Page 3, No. 2 Page 7 and No. 2 Page 8. Mr. Molony then quoted from that Tribunal determination, to the effect that that property had no lift whereas the subject had an eight-person lift. Mr. Molony also quoted similar extracts to the same effect from the Tribunal determinations in **VA05/1/011 – Biospheric Engineering Ltd.**, and **VA96/2/039 – Dublin Legal Agency**.

Mr. Molony, seeking information on where Mr. Mannix could identify decisions which resulted in kitchens being treated differently for RV assessment, asserted in relation to the Horan Centre, Tralee, mentioned by Mr. Mannix, that the kitchen was not differentiated unless within older buildings where it would normally stand alone. Mr. Mannix contended that the Horan Centre was a new concrete built structure occupied by Kiely's Electrical.

**Respondent's Case**

Mr. Molony, having taken the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. He confirmed that the subject property is a second floor penthouse unit of a three storey commercial building, as earlier described and as reflected in the Appendix 3 photo images, attached to his précis of evidence (see Appendix 2 hereto). He stated that the development was near Tralee Aquadome and the two Fels Point modern office buildings should not bear a differentiation in rent per se, but that the subject upper floor penthouse should possibly qualify for a higher rent within the building. However, he stated that based on earlier understandings reached with the Agents HOK, pages 4 and 5 of his

précis of evidence summarised and confirmed that there should be no differentiation in rental values between floors, or within floors. He cited his comparisons within section 5 on page 7 of his précis, a copy of which is attached at Appendix 2 hereto, to provide rental evidence to support the NAV established for the relevant property. He referred to Judgement of the Tribunal in **VA05/01/013 – Pauline & Stacey Hannon** and specifically, item No. 9, Page 7, which he contended indicated that the Valuation Tribunal, on balance, prefers to look to rental evidence or Passing Rent to assess appropriate NAV. He challenged the value of the references made by Mr. Mannix to the aforementioned earlier Judgments of the Tribunal, as listed above, and concluded the extracts referred to by Mr. Mannix did not actually support the Appeal filed.

Mr. Molony did not consider offering a quantum allowance based on floor area and drew attention to his comparison property no. 4 on page 7 in his précis, which comprised circa 20 sq. metres only, but did not command a proportionately higher rate per sq. metre to reflect reduced quantum in that situation.

### **Cross-examination**

Mr. Mannix commenced cross-examination of Mr. Molony by asking why there had been a difference in values assessed between the ground floor and first floor occupied by FBD in Fels Point building No.1, as established by the Valuation Office. Mr. Molony replied that he had not valued that property. He had used it as a comparison and he acknowledged that a difference did exist. On the issue of quantum allowance raised by Mr. Mannix, Mr. Molony stated that he was relying upon his own comparative evidence and in particular comparison property No. 4 on page 7 of his précis which, he added, was a short term letting arrangement. Mr. Mannix concluded his cross-examination by drawing attention to Schedule 4 of the Valuation Act 2001 and noting that the Kerry Education Service, formerly Kerry VEC, being the occupants of the floors below his clients in the subject building, would be exempt from payment of rates, a situation which might accordingly have influenced the manner in which rates were assessed on the relevant property occupied by his clients.

### **Findings and Determination**

The Tribunal has carefully considered all of the evidence, both oral and written, submitted by the parties and the arguments adduced, and make the following findings:

1. It would appear that the primary comparison properties are common in both submissions, namely the ground floor and first floor under the subject relevant property in the subject building, and the ground, first and second floors of the adjoining building occupied, at revision, by Kerry VEC, FBD Insurance, Thomas Dineen and Company, and the IFA respectively.
2. There was a difference of one year and three months between the “lease” commencement dates on the second floor of the adjoining premises and the ground floor and first floor of the subject building. The rate per sq. metre on the second floor of the former building, being the earlier letting, suggests a premium may be applied to the second floor location when compared to the rate adopted on the first floor. However, as the letting to Kerry VEC was limited to a period of less than five years in the adjoining premises, it may be argued that such an apparent premium was linked to the short term letting, and not to the floor level.
3. There was insufficient evidence provided to confirm and support the basis of a reduction in value or to adopt a segregation approach for the canteen/kitchen area within the subject, as same is ancillary to the beneficial occupation of the relevant property.
4. The Tribunal was not convinced of the merits of the quantum argument made by the Mr. Mannix between the subject and the floor areas rated on the second and first floors in the adjoining building.
5. There was no actual evidence submitted to suggest that the revision and established RV was at variance with the tone of the list by virtue of qualification linked to its occupancy pursuant to Schedule 4 of the Valuation Act 2001.

### **Determination**

In view of the foregoing and based on the submissions made and the arguments adduced at hearing, including the information proffered by both expert witnesses under cross-examination, and in response to queries raised at Hearing by members of the Tribunal, the Tribunal hereby affirms the determination of the Respondent.

And the Tribunal so determines.