

Appeal No. VA06/2/077

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

Martin J. Neilan, Solicitors

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot 11(B)/Unit 6, Golf Links Road, Ballypheasan, Roscommon Urban,
County Roscommon

B E F O R E

John Kerr - BBS. ASCS. MRICS. FIAVI

Deputy Chairperson

Patrick Riney - FSCS FRICS FIAVI

Member

Maurice Ahern - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF NOVEMBER, 2006

By Notice of Appeal dated the 2nd day of June, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €88.00 on the above described relevant property.

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

"The Valuation is excessive on the grounds that the property was constructed as a warehouse or for use as retail units and not as offices. The property is not located near other Business/Professional Offices in Roscommon Town. The Offices are not located on the ground floor. The Offices are located on the first floor of a building which was constructed for use mainly as a warehouse/retail/commercial/storage units. The part of the building occupied by the Appellants are the only Professional Offices located within the building or the overall development. The rest of the building and development is used for storage/showrooms/retail and commercial use. Heavy Duty and commercial Vehicles are constantly present throughout the entire development engaged in deliveries to or collection from the various retail/commercial units and storage facilities. The Valuation placed on the Offices might be appropriate to Offices located in a purpose built office block comprising Professional Offices only."

At issue**Quantum**

The appeal proceeded by way of an oral hearing held at the Tribunal Offices, Ormond House, Ormond Quay Upper, Dublin 7 on the 8th day of September, 2006. At the hearing the appellant was represented by Mr. Patrick J. Nerney, BE Chtd. Eng, MIEI, MIAVI, Valuation Consultant. The respondent was represented by Mr. Frank O'Connor, ASCS, MIAVI, a District Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence in chief.

Before the hearing commenced, it was noted that the Valuation Tribunal had been provided with a note by Mr. O'Connor, the District Valuer representing the Commissioner, dated 28th August and received on 30th August, 2006, correcting details set out in his précis of evidence relating to comparison property No. 1, namely Budget Rent-a-car. The correction provided read as follows:-

Ground Floor and First Floor

“314 m² (nia) x €80.89/m² = NAV €25,399 x 0.5% = RV €126.97.”

Mr. Nerney acknowledged receipt of same.

This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

The Property

The property consists of part of the first floor of a new detached building in a Retail/Business Park development. There are two detached buildings in the Business Park at present, and apparently more are planned. The remainder of the subject building is occupied by various parties for industrial/commercial purposes.

The property is located in the townland of Ballypheasan, off the east side of a link road known as the Golf Links Road. This link road connects Roscommon with the R362 Athleague to Athlone Road. The subject property is situated at the rear of other separate premises, which front onto the link road.

The area occupied by the appellant has been divided into individual offices, a reception area, a kitchen, toilet, etc. The structure is primarily built of concrete block walls, concrete floors, and has a flat roof. Access to the first floor is provided by means of a stairs and lift. Accommodation comprises as follows:-

- Ground Floor - access way, stairs, toilet and lift area;
- First Floor - two conference rooms, boardroom, offices, open plan office and filing area and a kitchen.

The gross internal floor area agreed by the respondent and the appellant is 371 sq. metres (circa 3,992 sq. feet).

Tenure

It is understood that the property is held on an Occupational Lease which commenced on 1st January 2005 at a rent of €45,000 per annum plus VAT, with a Review in year five increasing the rent to €52,500. The tenant is responsible for rates, insurance and repairs.

Valuation History

The property was first revised on 6th December 2005, at an R.V. of €88.00. Following an Appeal, the Commissioner again set the RV at €88.00 on the 10th May 2006. It is against this decision of the Commissioner that the appeal to this Tribunal lies.

Appellant's Case

Proceedings commenced when Mr. Nerney assumed his position in the stand, took the oath, formally adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission.

He introduced 2 comparisons, details of which are at Appendix 1 to this Judgment. He confirmed that he considered his first Comparison property, namely T. Connolly and Sons, located to the rear of Budget Rent-a-car on the N61 near Casey's Centra Shop and Filling Station to be his primary Comparison. Mr. Nerney informed the Tribunal that his client's

premises are near a third class link road which he considered to be secondary in locational terms when compared to that of Connolly's location, the latter which he also noted was a ground floor occupancy. He further pointed out that Connolly's owned the entire warehouse in which it was located and was enclosed in its own site which was not shared with other parties. Bearing these criteria in mind, he considered it fair to seek a 25% reduction in the rate per square metre applicable to his client's premises.

Mr. Nerney went on to say that comparisons in Roscommon were not reliable or were suspect because of a circumstance in 1991/1992 when the Valuation Office had applied a reducing factor of 0.63% rather than 0.5% to net annual values to arrive at RVs.

He made reference to his other comparison property, namely Fleming's SuperValu on the Main Street, with 122 sq. metres of first floor offices, apparently assessed at €35 per sq. metre, which he indicated are superior to the subject, devoid of an open plan, enjoying better natural lighting, served by dedicated lift and located at the Main Street adjacent to a public Car Park.

He also noted a difference in the rate per sq. metre applied to the storage areas of this Comparison property and the subject, reminding the Tribunal that the filing / storage space in the subject occupies part of the open plan office, and in his view, incorrectly assessed as office floor area rather than storage, which he contended should be a lower rate per sq. metre.

Mr. Nerney then noted that the rate per sq. metre earlier applied in Mr. O'Connor's précis on Budget Rent-a-car at circa €88.00 per sq. metre had been subsequently reduced by him, by about 10%, to €80.89 per sq. metre, and contended that this relative reduction should be borne in mind by the Commissioner, as it apparently was his primary Comparison property to support the RV established and now the subject of the appeal.

Cross-examination

Mr. O'Connor then commenced cross-examination of Mr. Nerney. However he first questioned what he considered to be the introduction of new evidence by Mr. Nerney, who had introduced a challenge to the validity of previous valuations used to establish the RV in Roscommon. Mr. O'Connor then proceeded to query Mr. Nerney on his understanding of the "tone of the list" and the nature of the occupiers in the other units currently within the Business Park, which he noted presently include not merely traditional industrial occupiers

but a retail kitchen supplier unit, a curtains outlet, bath & tile sales outlet, a bistro, restaurant, furniture store, toy shop, supermarket, discount outlet, none of which represent industrial activity, and there being just one office in the complex, namely the subject.

Mr. O'Connor noted that the subject property, approximately 150 metres from his own Comparisons No's 1 and 4 as contained with others in Appendix 2 hereto, lies opposite those two premises, which are located within the Roscommon West Business Park and positioned further out of town than the subject.

Reminded by Mr. O'Connor that they had jointly dealt with Connolly's at Representations stage, Mr. Nerney agreed that it was not a standalone property and that the site was also occupied by Spring Grove Laundries Depot. He also agreed that Connolly's was an industrial unit and said it had been valued on a gross external area basis because it was an industrial unit. However, he insisted it was a valid comparison for the subject saying he had been in Connolly's offices and they were as good as the subject. He said that although the subject and Connolly's had been measured gross internally and gross externally, respectively, the only difference was in appearance. He also argued that although the subject had a lift, its offices at first floor were worth less than Connolly's at ground floor because a lift would have maintenance costs.

Mr. O'Connor then asked Mr. Nerney why it appeared that he had not introduced other office spaces as Comparisons in his précis of evidence, to which the latter replied that he had in his two Comparisons, namely Connolly's and Flemings. Under further cross-examination, Mr. Nerney responded to Mr. O'Connor that the storage area in the subject was not fully cordoned off. Mr. O'Connor then asked Mr. Nerney if he would concur that the approximately 60% reduction or difference in the rate per sq. metre applied between his Comparison No. 1, being Budget Rent-a-car, and the subject, being €80.89 per sq. metre -vs- €47.82 per sq. metre was a generous and satisfactory parameter, to which Mr. Nerney responded in the negative.

Respondent's Case

Mr. O'Connor then assumed his position in the stand, took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. He declared that he had valued up to two hundred properties in the area in the past year and also confirmed that the floor areas had been agreed with the Appellant.

He introduced 4 comparisons, details of which are at Appendix 2 to this Judgment. He noted then that all of his four Comparisons in his précis related to office occupancies only, though there were many others he might have used if he wished, in Roscommon town. He declared that his Comparison No. 4 was possibly the most similar to the subject relevant property, being Paula Donnellan's premises on the first floor in Unit No. 2 of the Roscommon West Business Park. He argued that the rate applied there of €54.67 per sq. metre was fair, based on a 2004 Revision, and which was not appealed, and reminded the Tribunal that that property is located about 150 metres away from the subject, and also physically closest to the subject of all of his Comparison properties. He summarised his précis of evidence, which demonstrated rates per sq. metre over the four Comparison properties ranging from €80.89 per sq. metre down to €54.67 per sq. metre, and contended that the RV calculated on the subject relevant property was referenced to the "tone of the list" and considered fair and reasonable.

Cross-examination

Mr. Nerney commenced by asking Mr. O'Connor if he would agree that the Athlone Road is the main road out of Roscommon, and accordingly, the Golf Links Road, not so, to which Mr. O'Connor replied in the affirmative. Then, again questioned by Mr. Nerney on the Comparison No. 2, Flemings in the Appellant's précis, Mr. O'Connor replied by stating that those offices within the first floor of that premises were back offices and considered ancillary to the supermarket. Mr. O'Connor repeated that the Comparisons chosen by Mr. Nerney in his précis were not suitable for the purpose as they are not offices, or even primarily office premises, and concluded his response by reminding Mr. Nerney that the other units now occupied in the development housing Martin J. Neilan, Solicitors, are not industrial or office, but in fact essentially retailing outlets. Mr. Nerney then queried Mr. O'Connor on his knowledge of property Comparison No. 2, being Gerry Nolan located on Main Street, and in particular, if he was aware that it is effectively a recently refurbished older building, and as such, very different to the subject, in reply to which Mr. O'Connor confirmed same.

Mr. O'Connor would not confirm Mr. Nerney's assertion that the offices on the first floor level over Fleming's SuperValu, might be considered a suitable comparison, contending the alternative that they were ancillary to the supermarket. However, Mr. O'Connor did acknowledge that the FBD offices, Comparison property No. 3, on the Main Street, were quite different to the subject, and finally Mr. O'Connor also acknowledged that he was not

aware that the apparent reason for Paula Donnellan to move her Menswear store to the Roscommon West Business Park, was not to seek a higher profile position, but a temporary move relating to other factors nor was he aware that the property was now vacant.

Findings

The Tribunal has carefully considered all the arguments advanced and evidence submitted to and adduced at the hearing, and determines as follows:-

1. The Tribunal is not privy to the alleged application of an incorrect factor to net annual values in Roscommon in 1991/1992 and will not therefore comment further on it.
2. The Tribunal finds that the filing/storage space, said by Mr. Nerney to occupy part of the open plan office space, does not merit a lower rate of NAV per square metre than the remainder of that open plan office space.
3. The Tribunal finds that the most suitable Comparison property cited is Comparison No. 4, i.e. Paula Donnellan, in Mr. O'Connor's précis, being a newly constructed first floor unit of similar construction to the subject, albeit on the other side of the Golf Links Road. However, the Tribunal is of the view that the Paula Donnellan premises, based on the evidence submitted, is in a more prominent and pivotal location.
4. The Tribunal considers that the two Comparison properties outlined in the Mr. Nerney's report, though useful, could not be considered as evidential of the "tone of the list" in this case or fully suitable for consideration under Sections 48 and 49 of the Valuation Act 2001.
5. The Tribunal considers that Comparisons No's 2 and 3, as submitted by the Respondent, though again useful, are nevertheless different to the subject by reason of the fact that they are older buildings, albeit refurbished in recent times.
6. The Tribunal considers the Respondent's Comparison property No. 1, Budget Rent-a-car, superior in many aspects to the subject, being a "modern stand-alone office block" as described in the Respondent's précis, and as evidenced by the photo image provided therein.

7. The Tribunal is obliged to consider only the evidence submitted and adduced at hearing and accordingly having regard to same and the various cogent arguments made by both parties at the hearing, concludes that the most appropriate Comparison or benchmark to serve the purpose is that of first floor Unit No. 2, in the Roscommon West Business Park, namely Paula Donnellan.

Determination

Having regard to all of the foregoing and in particular the Menswear outlet just referred to above, the Tribunal determines the NAV and RV of the subject property as follows:-

371 sq. metres @	€42.37 per sq. metre
NAV	€15,719.27
RV @ 0.5%	€79

And the Tribunal so determines.