

Appeal No. VA08/3/026

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

Seamus O'Brien

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2191611, Office(s) at Lot No. 7e/1, Nenagh South, Nenagh East Urban, Nenagh UD, North Tipperary, County Tipperary.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Damian Wallace - QFA, MIPAV, Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF JANUARY, 2009

By Notice of Appeal dated the 31st day of July, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €28.00 on the above described relevant property.

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

"That the RV as assessed is excessive and inequitable and not in keeping with the tone for comparable property. That the NAV is also excessive in view of the actual location and the relative worth of the premises".

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 17th day of October, 2008. The appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI, of Eamonn Halpin & Co. Ltd. The respondent was represented by Mr. Christopher Hicks, 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. 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 subject property is described as a modern, ground floor, purpose built office unit in a new two-storey building, known as Clareen House. The upper floor of the building provides separately accessed residential accommodation and the remainder of the ground floor has also been designed and constructed for office use, similar in character to the subject. The property is located off the Thurles Road, on the outskirts of the town of Nenagh, about 400 metres from the town centre.

Areas

The parties agreed that the total floor area measures 56.46 square metres, though Mr. Halpin split the area into offices of 48.66 square metres and rear kitchen of 7.8 square metres.

Valuation History & Relevant Dates

August, 2007:	Revision Officer appointed on foot of request from Nenagh Town Council to value as necessary.
2007:	Property inspected by Revision Officer.
October, 2007:	Proposed Valuation Certificate issued at an RV of €28.
October, 2007:	Representations made to the Revision Officer.
November 2007:	Valuation Certificate issued confirming RV of €28.
January, 2008:	Appellant appeals the valuation to the Commissioner of Valuation.

- July, 2008: Commissioner issues result of the First Appeal with the valuation unchanged at RV€28.
- July, 2008: Appellant appeals the Commissioner's decision to the Valuation Tribunal through Eamonn Halpin & Co. Ltd., by Notice of Appeal dated 31st July, 2008.

Appellant's Case

Mr. Halpin took the oath, adopted his précis as his evidence-in-chief, and provided the Tribunal with a review of his submission. He drew attention to his Comparison Property No. 1, the new FBD Headquarters on the first floor of 3, Kenyon Street, and two ground floor offices identified as 1 and 2, Kenyon Street. He stated that the FBD office accommodation, which was assessed at €54.68 per square metre, following First Appeal, in his view, was much superior in terms of profile and location to the subject, as it is close to the town core, specifically noting that the subject property is located well beyond, in the outskirts of Nenagh. Mr. Halpin then raised five points in support of his client's case, as follows:-

- a) The bungalow neighbouring the subject, the respondent's Comparison No. 1, is used as an engineer's office.
- b) All other nearby units within the subject neighbourhood are used for residential purposes.
- c) The subject property is considered well beyond the town centre.
- d) The level of the "tone-of-the-list" was established in the 1990's.
- e) The respondent's Comparison No. 4 (a common comparison), the offices of Slattery, Flynn & Co., suggests that the level of the "tone-of-the-list" appears to have increased recently.

Mr. Halpin sought to rely on rateable valuations which had been established following an appeal process, which appeared to him to be based on an old "tone". Again referring to his Comparison No. 1, and specifically the property located at 2, Kenyon Street, comprising of 19.5 square metres, Mr. Halpin contended that a rate of €82 per square metre established following First Appeal in 1993, indicated that there are no grounds supporting the Commissioner's RV now assessed on the subject.

He stated that his Comparison Property No. 2 at Ormond Court, near the Infantry Barracks, with a first floor office assessment of €54.68 per square metre, located north of the town centre, is served with own parking.

He also stated that, as Comparison No. 3 on Friar Street is not on the Valuation List, it may be ignored for comparison purposes by the Tribunal.

Concluding his direct evidence, Mr. Halpin advised the Tribunal that all his remaining three comparison properties are modern buildings and acknowledged that his submission, at page 8, headed “Valuation, Estm Nav on 1988 Basis” should, in order to remain consistent with the Notice of Appeal document submitted by him to the Valuation Tribunal, dated 31st July, 2008, have produced an RV calculation in the amount of €18, and not the €15 appearing in the précis.

Mr. Halpin’s comparisons are at Appendix 1 hereto.

Cross-examination by Mr. Christopher Hicks

During examination by Mr. Hicks, Mr. Halpin confirmed the following:

1. Mr. O’Brien, the appellant, has now secured a tenant for the remainder of ground floor office space at Clareen House.
2. He was not able to quote current asking or passing rents for the properties referred to in or about Nenagh town centre, but was relying upon his knowledge of some historic rents.
3. He would not agree that a tenant may find the location of the subject more favourable than that within the town centre.
4. He equated the value of ground floor office space on the outskirts of town to first floor in the commercial core, though he acknowledged that he was not in a position to quote passing rents to support same.
5. He did not have the level of asking rent sought by his client on the remainder ground floor of the subject premises.
6. He acknowledged that he had considered the NAV derived from the rents, but considered same no longer relevant, in the context of his evidence.
7. He agreed that he may have erred by suggesting that the FBD premises on Kenyon Street is located in the commercial core of Nenagh, and confirmed his view that ground floor spaces within the town centre area are typically let for retail rather than office purposes.

8. He accepted that the comparison properties listed in the Valuation Office's submission represent properties on the Valuation List, but suggested that, as the occupiers did not appeal their assessments, their RV's should be treated "with caution".

Mr. Halpin confirmed that his primary comparison was his Comparison No. 1, the ground floor office premises comprising 19.5 square metres assessed at €82 per square metre, No. 2 Kenyon Street. Mr. Halpin considered that the FBD offices are located at a "measurably better location" than the subject property.

Replying to further cross-examination by Mr. Hicks and in particular on how judgment **VA04/2/049 – Tridelta Development Ltd.**, a copy of which was attached to the appellant's appeal submission, might assist his case, Mr. Halpin referred to page 4 thereof. He said his views were paraphrased and focused on the primacy of actual passing rents in determining the rateable valuation in that case. His views were also noted on page 8 of the judgment, wherein he expressed the belief that NAV should be established by reference to the "tone-of-the-list" and not to two comparison units which were assessed and agreed without challenge in the **Tridelta Development Ltd.** case. Mr. Hicks queried Mr. Halpin on why it appeared that, in this circumstance, he endeavoured to settle a tone by reference to one building, in his submission to which, in reply, Mr. Halpin noted that most ground floor properties in Nenagh town core are retail, the Ormond Court is an out of town centre location, but that from his perspective, the FBD offices are generally within the precinct of the town core. He then repeated that the FBD offices are considerably better in terms of accommodation than the common comparison property, Slattery, O'Flynn & Company.

Respondent's Case

Mr. Hicks took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. He advised the Tribunal that the subject property is located within a semi-residential area, as may be determined in part from the photographic image on the left of Comparison No. 1, on page 3 of his précis, which also indicates the location of front and rear parking for office staff, guests and residents of the building. He stated that the nub of the Commissioner's case was to consider similar properties within similar areas on the outskirts of Nenagh town where possible, indicating like access and parking facilities. Referring to his Comparison No. 1, P.J. Brett offices, he noted that they are located immediately adjoining the subject, in older premises, considered less attractive with a parking layout not as well suited

as that provided for at the subject. His Comparison Property No. 2, John Joe Lewis, Architect, he stated again is located on the outskirts and with some overhead first floor office space included, and Comparison No. 3, offices over two floors, is located within an older building converted from a former residence.

He stated that the common comparison property, Slattery, O'Flynn & Company, is located adjoining a lane within the centre of town, featuring two ground floor shops and two offices overhead, with poor entrance to the latter and devoid of parking facilities, as could be seen on the lower two images set out on page 4 of his précis.

Referring to the evidence indicating Nenagh office rates levied within the range at 2nd floor of €55 to a combination of ground and 1st from €82 to €101.60 per square metre and specifically to the ground floor offices immediately adjoining the subject in the respondent's Comparison No. 1, assessed at €100 per square metre, Mr. Hicks considered a similar rate levied on the subject as reasonable.

He explained that he did not include the FBD office premises, the appellant's Comparison Property No. 1, in his written submission, stating that his decision was predicated on an earlier decision by Mr. Halpin to exclude same during the First Appeal process. He stated that he considered the subject property to be better in terms of quality, finish and facility than any of the comparisons cited in his submission, and also noted that Mr. Halpin's submission did not provide support for a rate distinction to be applied to the rear kitchen area and accordingly, in his opinion, the lower level sought by Mr. Halpin was unwarranted.

Mr. Hicks' comparisons are at Appendix 2 hereto.

Cross-examination by Mr. Halpin

Mr. Hicks declined consent to Mr. Halpin's request to present new and previously unseen photographic evidence of a property in the town core to the Tribunal. Mr. Halpin then asked Mr. Hicks which matters were considered by him during the course of the First Appeal, as he believed that the Commissioner's assessment appeared excessive, and specifically asked when revisions had taken place on the Comparisons No's 1, 2, and 3 outlined in the respondent's précis of evidence. Mr. Hicks replied that he could not be sure when Comparisons 1, 2 and 3 had been revised, but he believed that Comparison No. 1 may have been the most recent, most probably dating back about two years ago and the other two

possibly some years earlier. In reply to further queries, citing exceptions of the three comparison properties offered by the Commissioner and Comparison No. 2 in the appellant's submission, he would not agree with Mr. Halpin that there was a settled 'tone-of-the-list' for out-of-town offices in Nenagh. He also informed Mr. Halpin that he had reviewed and considered all the comparisons submitted by him for consideration by the Commissioner from Representation stage, through First Appeal and finally to the Appeal filed with Valuation Tribunal.

Establishing that none of the Commissioner's Comparisons 1, 2 and 3 were tested by the rigours of the appeal process, Mr. Halpin, furthering his cross-examination, received confirmation from Mr. Hicks that the FBD premises on Kenyon Street had its RV reduced on appeal in 1993. Mr. Hicks also expressed his belief that all appeals on the rateable valuation of offices in Nenagh, were linked to town centre locations. Concluding his replies, Mr. Hicks stated that as the access and parking to the overhead residential area of the subject premises in Clareen House was not shared with others, he did not consider it necessary to provide an allowance in his NAV calculations attributable to the ground floor subject premises.

Findings & Conclusions

1. As there was no evidence submitted or adduced at hearing supporting a separate level applicable to the rear kitchen area noted in the appellant's précis, the subject property may be considered for rating purposes as one single unit comprising an area of 56.46 square metres.
2. The premises is considered to be located in the outskirts of Nenagh town, is purpose designed, built and completed with the benefit of off-street dedicated private parking for staff and guests working in and visiting the subject office, within a modern, efficient floor plan layout, sharing a common entrance lobby which provides access to all of those floor spaces identified as 1 through 7 on the plan appended to the appellant's written submission.
3. The Commissioner of Valuation has made allowance for the toilet areas located adjacent to floor areas 6 and 7 and the entrance lobby of the aforementioned plan by excluding the floor areas dedicated to same from his area calculations.

4. The Tribunal is mindful of the weight of support and assistance offered to it by reason of rateable valuations determined previously on foot of the appeals process on similar properties within a rating area, when submitted in evidence.
5. It would have been helpful if the Tribunal had been provided with asking and passing rental levels on the subject premises, and/or on Comparison properties cited by the respondent and the appellant.
6. The Commissioner's Comparisons No's 1, 2 and 3 refer to properties located outside the town commercial core, within the outskirts of Nenagh, whereas those submitted by the Appellant appear to be in greater propinquity to the town core, most notably his Comparison properties 1, 2 and 4.
7. The respondent's Comparison properties No. 1 and No. 3, as indicated by evidence, provide for off-street private parking, include kitchen areas, and reflect conversions of former residential units.
8. The above noted properties known as P.J. Brett and John M. Spencer, offer office accommodation on the ground, and ground and second floors, with the NAV calculated at applied rates of €100 and €5.66 per square metre respectively.
9. There appears to be sufficient evidence available to be relied upon from comparison properties of similar use and purpose in the suburbs or outskirts of Nenagh needed to satisfy the rating exercise.
10. While the Comparisons 1, 2 and 4 submitted by the appellant are useful it is nevertheless the view of the Tribunal that the comparisons generally did not bear as much relevance or similar characteristics as those proffered by the Commissioner for the purpose of fulfilling the task prescribed in the Valuation Act, 2001.
11. The FBD property may be considered on the periphery of the central commercial core of Nenagh town near the intersection of Kenyon and O'Growney Streets.
12. Comparison No. 2, being Ormond Court, in the appellant's submission, is somewhat further from the town centre, in the north-west precinct near the Infantry Barracks, off Pearse McCann Street.

13. A review of the copy town map provided by the respondent in his written submission indicates that the locations of Comparison No's 1, 2 and 3, are broadly similar in terms of radial distance from the core of the town as those mentioned in (11) and (12) above.
14. The common Comparison, Slattery, Flynn & Co., without the benefit of parking, with limited access from a "back street", with the offices overhead bearing a rate of €82 and €55 per square metre on the 1st and 2nd floors, and albeit considered good modern office accommodations when revised almost new in 1997, the Tribunal does not consider this as a useful guide to assist with the determination herein.
15. The Tribunal is satisfied that the comparisons and the remainder of the submissions made and adduced at hearing by Mr. Hicks on behalf of the Commissioner, meet the requirements to reach a fair and equitable rateable valuation on the subject property, and accordingly, the calculations set out in the respondent's précis-of-evidence resulting in an RV of €28, are affirmed.

And the Tribunal so determines.