

Appeal No. VA10/3/007

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

Carlow Warehousing Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 1208018, Warehouse/Warerooms at Lot No. 2K, Kilcarrig, Muinebeag Rural, Carlow, County Carlow.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Niall O'Hanlon - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF JANUARY, 2011

By Notice of Appeal dated the 15th day of July, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €2,380 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:

"The valuation is considered to be excessive and inequitable."

1. This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 15th day of December, 2010.
2. At the hearing Mr. Edward Nolan, the Managing Director of Carlow Warehousing Limited appeared and gave evidence on behalf of the appellant. Ms. Rosemary Healy-Rae, BL, instructed by the Chief State Solicitor's Office appeared on behalf of the respondent, the Commissioner of Valuation. Ms. Orla Lambe, BSc (Surveying), MIAVI, a valuer in the Valuation Office gave expert evidence in relation to the valuation of the property concerned.
3. Prior to the commencement of the oral hearing each party provided the Tribunal and the other party a précis of the evidence they proposed to adduce at the hearing, which included their estimate of the net annual value of the property concerned. From the evidence so tendered and additional evidence given under oath the following material facts emerged or are so found.

The Property Concerned

4. The property concerned is an extensive warehouse/logistics complex occupying a site area of approximately 9 acres (3.64 hectares) located on the east side of Bagnelstown on the Bagnelstown to Fennagh Road at a point close to Kilcarrig bridge across the Dublin – Kilkenny – Waterford railway line. There are no commercial properties of a similar size or use in the vicinity of the subject property.
5. The original buildings on the site, which have an eaves height of c. 7.6 metres, were built some thirty years ago and are for manufacturing purposes. In more recent times the premises have been used for warehousing/logistics purposes and over the years several new warehouse buildings have been added. In 2006 the warehouse accommodation was almost trebled in area which gave rise to a revision of valuation which in due course became the subject of an appeal to this Tribunal (**VA07/3/030 – Carlow Warehousing Ltd.**) As a result of this appeal the rateable valuation of the property concerned was determined to be €1,790.

6. Following an application for a revision of valuation made by the Local Rating Authority under Section 27 of the Valuation Act, 2001, Ms. Lambe was appointed as the Revision Officer to carry out the said revision. Following an inspection of the property, Ms. Lambe reported that a new warehouse building had been added (Block 9). This building, Ms. Lambe noted, had an eaves height of 14 metres, 4 dock levellers and loading doors. She also noted that within the new building there were offices which, at the date of her inspection, were incomplete. Initially Ms. Lambe assessed the rateable valuation of the property concerned to take account of the new warehouse building to be €2,400 in accordance with Section 49(1) of the Act of 2001. Following consideration of representations made by the appellant it was accepted by her that a small office building and canteen had been demolished in order to facilitate the construction of Block 9. Accordingly a certificate of valuation in final form was issued to the effect that the rateable valuation of the property concerned had been increased from €1,790 to €2,380. The details of Ms. Lambe's valuation are as set out below:

Block

No	Use	Area (Sqm)	NAV psm	Total NAV
3	Warehouse	1,449	€16.50	€23,908.50
4	Warehouse	4,704	€16.50	€77,616.00
5	Warehouse	4,746	€11.75	€55,720.50
6	Warehouse	3,968	€11.75	€46,584.00
7	Warehouse	2,825	€11.75	€33,143.75
* New Building	Warehouse	<u>4,024</u>	€30.75	<u>€124,291.50</u>
Total		21,734		€476,789.25

476,789.25 x 0.5%

RV, say €2,380

Note: the rates per sq. metre applied to Blocks 3 to 7 are those used by the Valuation Tribunal in 2006 appeal.

7. Following an appeal to the Commissioner of Valuation under Section 30 of the Act, Ms. Olivia Bellamy was appointed as the appeal officer. Having considered the grounds of appeal put forward by the appellant and having sought any views Ms. Lambe might have on the appellant's grounds of appeal, Ms. Bellamy took the decision that the valuation of

€2,380 be affirmed. In due course the appellant was notified that the Commissioner of Valuation had disallowed the appeal.

8. The appellant being dissatisfied with the Commissioner's decision, lodged an appeal to this Tribunal under Section 34 of the Act, by way of a "Notice of Appeal" received on 15th July, 2009.
9. When the Commissioner of Valuation was advised of the appellant's appeal Ms. Lambe was appointed as the valuer to appear and give evidence of value on behalf of the Commissioner at the oral hearing, set down to commence on 24th September, 2010. When preparing her précis of evidence, Ms. Lambe became aware that a warehouse building (now known as Block 8), which had been in existence at the time of the 2006 revision appeal to this Tribunal, had been omitted from the valuation at that time. Furthermore, the omission had not been detected by her during her inspection of the property concerned, nor indeed by the Appeal Officer, Ms. Bellamy. In the circumstances, Ms. Lambe alerted the appellant to the omission and proceeded to prepare her précis of evidence which was received by the Tribunal and the appellant on 15th September, 2010. In her précis Ms. Lambe contended for a rateable valuation of €2,470, calculated as set out below:

Property	Eaves Ht.	Area Sqm	Rate	NAV
Block 3 & 4	7.6 metres	6,226.08	€16.50	€102,730.32
Block 5, 6 & 7	7.6 metres	11,589.20	€21.75	€252,065.10
Additions to valuation				
Block 8	7.6 metres	1,573	€21.75	€ 34,212.75
Block 9	14 metres	<u>4,042</u>	€6.00	<u>€105,092.00</u>
Total		23,430.28		€494,100.17
Rateable valuation @ 0.5% = €2,470				

10. In the event the oral hearing scheduled to commence on 24th September was postponed and was listed to be heard on 11th November, 2010. On 28th October a revised précis of evidence was received from Ms. Lambe which included a recast valuation of the property concerned, calculated as set out below:

Property	Eaves Ht.	Area Sqm	Rate	NAV
Block 3 & 4	7.6 metres	6,226.08	€16.50	€102,730.32
Block 5, 6 & 7	7.6 metres	11,589.20	€1.75	€52,065.10
Additions to valuation				
Block 8	7.6 metres	1,500	€1.75	€ 32,625.00
Block 9	14 metres	<u>4,042</u>	€6.00	<u>€105,092.00</u>
Total		23,357.28		€492,512.42
Rateable valuation				€2,463
But rounded down to				€2,443

11. On 15th September, 2010 a written submission prepared by Mr. Nolan was received by the Tribunal. On 28th October, 2010 a second submission was received from Mr. Nolan wherein he contended that Ms. Lambe was “*not entitled to increase the RV €2,380 in the manner proposed.*” In short, Mr. Nolan contended that the Commissioner of Valuation could not repudiate his decision; that the proper rateable valuation of the property concerned following the revision was €2,380 as currently appearing on the valuation list. Furthermore, Mr. Nolan contended that the valuation of €2,380 was accorded a special status under Section 63 of the Valuation Act.

12. In support of his contentions Mr. Nolan referred to two earlier decisions of the Tribunal namely: **VA09/4/008 – Meadows & Byrne** and **VA04/2/018 – Trabolgan Holiday Centre** and requested that the Tribunal either

- Dismiss any consideration of any matter seeking to increase the rateable valuation of €2,380
- or
- Dismiss the entire process as being fatally undermined by the actions of the Revision Officer in seeking to increase the rateable valuation of €2,380.

The Oral Hearing

13. At the commencement of the oral hearing Ms. Healy-Rae said she wished to raise as a preliminary issue the contentions made by Mr. Nolan in his submission dated 28th October, 2010 to the effect that it was not open to the respondent at this stage in the

appeal process to increase the valuation of €2,380 currently appearing in the valuation list.

The Preliminary Issue

The Appellant's Arguments in relation to the Preliminary Issue

14. The appellant contended that the Revision Officer was not entitled to increase the rateable valuation of €2,380 in the manner proposed and that the rateable valuation enjoyed the status afforded it under Section 63 of the Valuation Act, 2001 (hereafter "the Act"). The appellant further argued that the Revision Officer could not repudiate the decision of the Commissioner/Appeal Officer.
15. In advancing these arguments the appellant sought to rely on the decisions of the Valuation Tribunal in **VA09/4/008 - Meadows & Byrne** and **VA04/2/018 - Trabolgan Holiday Centre**.
16. The appellant further argued that the Revision Officer could not, at this stage, repudiate her decision under section 28 of the Act and her identical opinion of value as expressed at first appeal.

The Respondent's Arguments in relation to the Preliminary Issue

17. The respondent argued that what had occurred was an administrative error which constituted an error of fact that the Tribunal could take into consideration in the process of dealing with the appeal before it. The nature of the administrative error was the omission of one of the blocks (Block 8) of the property from the valuation figure.
18. It was the respondent's contention that this block was clearly rateable and that the appellant would not suffer any prejudice by virtue of the inclusion of Block 8 in the valuation. In particular the respondent contended that Block 8 had been valued at the same level as Blocks 5 to 7 and the appellant would be permitted to raise before the Tribunal precisely the same objections to the valuation of Block 8 as it had raised in relation to Blocks 5 to 7. The respondent pointed out that the valuation attributed to Blocks 5 to 7 by the respondent was in turn based on the valuation attributed to those blocks by the Tribunal in its determination in Appeal **VA07/3/030 - Carlow Warehousing Ltd**.

19. The respondent further argued that this was not a case in which it was seeking to change its views in relation to the valuation of the property at Tribunal appeal stage, that it was not disowning or disavowing its valuation, rather it was drawing attention to an error that had occurred which affected the overall valuation of the property concerned.
20. The respondent contended that, from a practical point of view, situations often arose where, either before or during the Tribunal hearing a Revision Officer revised a valuation downwards to take account of, for example, amendments to the measurements of areas following discussions between valuers. The respondent pointed out that the Tribunal was itself always anxious to ensure that any factual errors were reconciled and corrected prior to the Tribunal reaching its determination and that it had in the past taken steps to ensure that it was given information that was accurate in all respects. The respondent relied upon Section 37 of the Act to support its position and contended that the appeal before the Tribunal was a *de novo* hearing.
21. The respondent further contended in its written submissions that if the Tribunal refused to allow the error to be rectified, that it would be obliged to re-list the property for revision again in the immediate future. However, in the course of oral submissions, Counsel for the respondent, when asked by the Tribunal what position they would obtain had the appellant not appealed to the Tribunal, conceded that, in the absence of the present appeal, no course would be available to the respondent to correct the error that it maintained had occurred in this case. In particular, it was acknowledged on behalf of the respondent that the circumstances arising in the present proceedings did not constitute a material change of circumstances within the meaning of the Act.
22. In the course of its written submissions the respondent referred to **VA95/1/108 - Dunnes Stores (Cornelscourt Shopping Centre); VA09/3/030 - William Murphy & Sean Bissett; VA01/3/082 - Mrs. Veronica McKiernan; VA05/2/032 - Bernard Fox; VA95/5/015 - John Pettitt & Son Ltd.; and VA02/2/009 – Reprocentre Ltd.**

The Valuation History of the Subject Property

23. The subject property comprises 9 blocks. Blocks 1 to 7 were listed for revision in 2006 and their rateable valuation was assessed at €2,100. This was reduced to €2,090 on first

appeal. It was the subject of Valuation Tribunal Appeal No. **VA07/3/030 – Carlow Warehousing Ltd**, where the valuation was determined by the Tribunal at €1,790.

24. As previously noted, in 2009 the subject property was again listed for revision and a draft certificate issued with a rateable valuation of €2,400. Representations were received and following consideration of these a final certificate issued with a valuation of €2,380. An appeal was submitted to the Commissioner of Valuation on 22nd December, 2009. However, on 21st June, 2009, the Commissioner of Valuation left the valuation unchanged at €2,380. The appellant being dissatisfied with the outcome lodged an appeal against this decision to the Tribunal in accordance with Section 34 of the Act.

The Evidence of the Revision Officer concerning the Error

25. It was the evidence of the Revision Officer that it was only at this point that the omission of Block 8 was discovered. The Revision Officer stated that the error was discovered by her when she discussed the present appeal to the Valuation Tribunal with the Revision Officer who had dealt with the previous appeal to the Valuation Tribunal in respect of the subject property. The Revision Officer claimed that it became apparent from consideration of the previous appeal that Block 8 had not formed part of that appeal. When questioned by the Tribunal, the Revision Officer acknowledged that she had not physically measured Block 8 at any stage prior to giving her evidence to the Tribunal.

The Relevant Statutory Provisions

26. Section 34 of the Act provides that a person referred to in subsection (1) of Section 30 may appeal in writing to the Tribunal against a decision of the Commissioner of Valuation. Section 37 provides that the Tribunal shall consider an appeal made to it under Section 34.

27. Section 35 of the Act requires that the grounds of an appeal under Section 34 shall be stated. The Valuation Act, 2001 (Appeals) Rules, 2008, provide, at Rule 10 that *“The Notice of Appeal shall set out exhaustively the Grounds of Appeal upon which the appellant intends to rely.”* Rule 10 goes on to state that *“These Grounds of Appeal may not be changed or extended (and liberty to amend will not be granted) save in exceptional circumstances. The Tribunal shall not entertain any amendments to the grounds of appeal at hearing and in particular the adducing of new grounds of appeal other than in*

exceptional circumstances. The Tribunal will adjudicate on such matters having regard to the Rules of the Superior Courts.”

The Decision of the Tribunal on the Preliminary Issue

28. The Tribunal notes that Section 34 provides for a right of appeal against the decision of the Commissioner. For a right of appeal to be exercised pursuant to Section 34, the Commissioner must have made a decision against which the appellant seeks to appeal. The Tribunal is obliged, pursuant to Section 37, to consider any such appeal.
29. The respondent asserts, and the appellant does not dispute, that Block 8 was not included in the valuation arrived at by the respondent prior to the present appeal to the Tribunal. It follows that the valuation of Block 8, was not, (and indeed could not have been) the subject of a decision of the Commissioner.
30. As the respondent made no decision in respect of Block 8 it follows that a right of appeal against that decision, pursuant to Section 34, cannot arise. In the circumstances thus arising, the Tribunal is not satisfied that it has any jurisdiction to deal with the valuation of Block 8 and it so determines.

The Appellant's Evidence

31. Mr. Nolan, having taken the oath, adopted the submissions received by the Tribunal on 15th September and 28th October as being his evidence-in-chief.
32. In his evidence Mr. Nolan emphasised that the location of the property concerned and the difficulties associated with the access thereto were major drawbacks to the efficient operation of a large scale warehousing/logistics business. In particular Mr. Nolan drew the Tribunal's attention to the fact that 90% of truck movements to and from the warehouse complex had to pass through the congested streets of Bagnalstown and ultimately across Kilcarrig Bridge.
33. In relation to the property concerned Mr. Nolan said that the use of warehouse buildings with an eaves height of 7.6 metres was no longer a viable proposition and that the only building suitable for modern warehousing/logistics purposes was Block 9, which had an eaves height of 14 metres. Mr. Nolan said he fundamentally disagreed with the practice of

the Valuation Office whereby the valuation of warehouse buildings was determined by reference to their area. Such a method of assessment did not reflect the fact that logistics operations were more concerned about the pallet storage capacity of a building than its area. This premise, he said, was well illustrated by an exercise he had carried out in relation to the property concerned, which showed that while the area of Block 9 represented circa 18% of the total area of all the buildings (excluding Block 8) on the site, it provided circa 35% of pallet capacity. On this basis Mr. Nolan submitted that the valuation of the property concerned should be €1,500 calculated as follows:

Rateable valuation of Block 9 as proposed in Ms. Lambe's précis dated 15th September = €25 (ie. €105,092.00 x 0.5%)

RV €25 = 35% of total pallet capacity

Hence valuation of all buildings = $\frac{€25 \times 100}{35} = €1,500$

35

34. Under cross-examination Mr. Nolan said he would not dispute the valuation of €25 attributed to Block 9 by Ms. Lambe in her valuation contained in her précis of evidence. Mr. Nolan, however, said that he did not accept the valuation attributed to the other warehouse buildings which were in line with those used by the Tribunal in its determination dated 3rd December, 2007.
35. When asked about the valuation put forward by Mr. Alan McMillan of GVA Donal O Buachalla at representation stage, i.e. €2,000, Mr. Nolan said he had not acquiesced to this figure being put forward and that in any event, Mr. McMillan was no longer acting for his company.
36. When it was put to him that the Tribunal, in arriving at its determination that the rateable valuation of the property concerned at the 2006 revision should be €1,790, took into account all the locational and access difficulties and other drawbacks in relation to scale, etc., mentioned by him, Mr. Nolan agreed this to be the case but stressed that the addition of Block 9 had exacerbated all the matters referred to in a disproportionate manner.

The Respondent's Evidence

37. Ms. Lambe having taken the oath adopted her précis of evidence and valuation which was received by the Tribunal on 28th October, 2010 as being her evidence-in-chief.
38. In her evidence Ms. Lambe contended for a rateable valuation of €2,443 and the basis of how her valuation was arrived at are set out earlier in this judgment. In support of her valuation Ms. Lambe introduced three comparisons, details of which are set out in Appendix 1 attached to this judgment.
39. Under cross-examination Ms. Lambe confirmed that the only building she had measured in her inspection was Block 9. It was, she said, her assumption that all the other buildings had been valued at the 2006 revision. When it came to her attention that Block 8 had been omitted, she took the view that she was fully entitled to value this building at this late stage in the appeal process, notwithstanding the fact that the resultant valuation of the property concerned was in excess of that appearing on the valuation list.
40. Under examination Ms. Lambe agreed that the construction of Block 9 exacerbated the difficulties associated with the scale, access and operational inefficiencies referred to in the Tribunal's judgment dated 3rd December, 2007. She also agreed that the circulation space around the buildings was reduced by this addition of Block 9. When asked if she thought it appropriate to apply a quantum allowance, Ms. Lambe said that the rates per sq. metre applied to the individual buildings within the overall complex represented all the matters previously referred to such as location, scale, access and their physical attributes.

Findings

The Tribunal has carefully considered all the submissions advanced and evidence adduced and finds as follows:

1. As found earlier in this judgment the Tribunal is not satisfied that it has any jurisdiction to deal with the valuation of Block 8.
2. In relation to quantum, the only material change of circumstance that has occurred since the property concerned was the subject of appeal in **VA07/03/030 – Carlow Warehousing Limited** is the addition of Block 9.

3. The Tribunal accepts, as it did in the previous appeal, Mr. Nolan's evidence that the layout of the buildings, the access to the site and the restricted circulation space are factors which adversely affect the efficient use of the space for warehousing/logistics purposes. The Tribunal also accepts that these drawbacks have to some degree been exacerbated by the addition of Block 9.
4. The Tribunal accepts as a self-evident fact that pallet capacity is sensitive to the eaves height of a warehouse building. The Tribunal does not, however, accept that this fact cannot be recognised when assessing the net annual value of a warehouse by reference to its footprint area. The difference in storage capacity can easily be taken into account by applying differential rates per sq. metre and, indeed, it is policy of the Valuation Office to value high bay warehouses at a significantly higher rate per sq. metre than that applied to warehouses which have an eaves height of 7 to 8 metres.
5. The Tribunal notes that Mr. Nolan accepted the rateable valuation of €25 on Block 9, as assessed by Ms. Lambe. It also notes his dissatisfaction with the outcome of the previous appeal to this Tribunal arising out of the 2006 revision.

Determination

Having regard to the findings as set out above the Tribunal proposes to take as its starting point the rateable valuation of the property concerned as determined at the 2006 revision and to bolt on to this figure the valuation of Block 9 as assessed by Ms. Lambe and which was accepted by Mr. Nolan. The Tribunal will of course make an appropriate allowance for the demolition of the office block and canteen in order to facilitate the construction of Block 9. Having regard to its finding at 3 above the Tribunal proposes to make an end allowance to reflect the drawbacks referred to therein and which have become more acute due to the addition of Block 9 and the resultant uplift in vehicle movements to and from the property concerned.

Valuation

Blocks 3 to 7: Net Annual Value (per VA07/3/030)	€358,000
Block 9: Net Annual Value (per Ms. Lambe)	<u>€105,092</u>
	€463,092

Deduction for demolition of office and canteen (as per Ms. Lambe)	4,000 <hr/>
	€459,092
Allow for End Allowance of 5% for inherent drawbacks as per finding 3	€436,137
Net Annual Value, say	€436,000
Rateable Valuation @ 0.5% =	€2,180

And the Tribunal so determines.