

Appeal No. VA10/3/011,  
VA10/3/014, VA10/3/015 &  
VA10/3/017

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

**John Bolger (3F/1(1)(VA10/3/011) & 3F/1(4)(VA10/3/014) & 3F/1(6)(VA10/3/015)  
& 3F/1(8)(VA10/3/017) APPELLANT**

**and**

**Commissioner of Valuation RESPONDENT**

RE: Property No. 2007973, Warehouse/Warerooms at Lot No. (3F/1(1)(VA10/3/011),  
Property No. 2201898, Warehouse/Warerooms at Lot No. 3F/1(4)(VA10/3/014), Property  
No. 2201899, Store at Lot No. 3F/1(6)(VA10/3/015), Property No. 2201901, Office(s) at Lot  
No. 3F/1(8)(VA10/3/017) Moyne Lower, Enniscorthy Rural, Enniscorthy, County Wexford.

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

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

**Member**

**Michael F. Lyng - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 21ST DAY OF JANUARY, 2011**

By Notices of Appeal dated the 22nd day of July, 2010 the appellant appealed against the determinations of the Commissioner of Valuation in fixing rateable valuations of €127(VA10/3/011), €131(VA10/3/014), €68(VA10/3/015), & €9(VA10/3/017) respectively on the above described relevant properties.

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

"Quantum of rates excessive" and "comparable evidence"

1. These four appeals were heard contemporaneously on the 7<sup>th</sup> January, 2011 in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. At the hearing the appellant was represented by Mr. Terry O’Leary, MA, BSc (Hons), H Dip, MRICS, MSCS, MRTPI, MCIQB, ACI Arb, of Golden Estates Ltd. Mr. David Dodd, BL, instructed by the Chief State Solicitor’s office, appeared on behalf of the respondent, the Commissioner of Valuation. Expert valuation evidence on behalf of the respondent was given by Ms. Orla Lambe, BSc (Surveying), MIAVI, a valuer in the Valuation Office.
2. Prior to the commencement of the hearing and in accordance with the rules of the Tribunal each expert valuer submitted and exchanged the précis of evidence they proposed to adduce at the oral hearing and which was subsequently received into evidence under oath.
3. From the evidence so tendered and from additional oral evidence given under oath at the hearing, the following material facts emerged or are so found.

### **Background**

4. Industrial premises formerly occupied by Wexal International Ltd., were vacated by the company and in due course the owner of the property, Mr. John Bolger, sub-divided the premises so as to provide 9 separate units of occupation. At the request of Mr. Bolger, a revision of valuation under Section 28 of the Valuation Act, 2001 was carried out and draft certificates of valuation in respect of 9 separate relevant properties were issued on the 14<sup>th</sup> August, 2009. On the 23<sup>rd</sup> November, 2009, following representations, certificates in final form were issued in respect of all 9 relevant properties and the valuations so determined were entered on the relevant valuation list.
5. In due course appeals were lodged in respect of 8 properties under Section 30 of the Act and the Commissioner of Valuation, having considered the appeals, affirmed the valuations appearing on the valuation list. The appellant being dissatisfied with the decision of the Commissioner of Valuation lodged appeals to the Valuation Tribunal under Section 34 of the Act, in respect of each of the 8 relevant properties.
6. For convenience, the parties mutually agreed that 4 of the appeals only would go to a full oral hearing of the Tribunal, by way of test cases and that the determination of the

- A. VA10/3/011 – Property reference No. 2007973 test case for:  
VA10/3/012 – Property reference No. 2201896
- B. VA10/3/014 – Property reference No. 2201898 test case for:  
VA10/3/013 – Property reference No. 2201897 and  
VA10/3/016 – Property reference No. 2201900
- C. VA10/3/015 – Property reference No. 2201899
- D. VA10/3/017 – Property reference No. 2201901 test case for:  
VA10/3/018 – Property reference No. 2201902

### **The Property Concerned**

7. The original Wexal premises consisted of a large industrial complex and associated office and storage accommodation, located in an established industrial area on the Old Dublin Road about 2 miles north of Enniscorthy. The property which occupies a site area of some 3.65 hectares (circa 9 acres) has a substantial frontage to the Old Dublin Road and has access from a link road between the Dublin Road and the newly realigned N11.
8. The former manufacturing space was built in two phases. The older portion of the building is a concrete block wall construction, with a pitched asbestos covered roof and an eaves height of 5.4 metres. The new section is of steel portal frame construction, with infill walls of insulated wall panelling and roof of a similar construction, with an eaves height of some 8.6 metres. The office and storage accommodation are of similar construction.
9. The surrounding site area is laid out so as to provide off-street car parking and circulation space sufficient to meet the requirements of all 9 units of occupation. The entire property, which is slightly below the level of the Old Dublin Road, has, nonetheless, a good profile and a high level of visibility.

10. The agreed details of each of the properties which are the subject of these 4 appeals are as follows:

A. VA10/3/011 - Lot No. 3F/1(1)

- Modern Warehouse Building with an eaves height of 8.6 metres
- Agreed Area: 819 sq. metres, measured on a gross external area basis

B. VA10/3/014 - Lot No. 3F/1(4)

- Older Warehouse Building with an eaves height of 5.4 metres
- Agreed area: 972 sq. metres, measured on a gross external area basis

C. VA10/3/015 - Lot No. 3F/1(6)

- Store with an eaves height of 5.4 metres and an adjoining Loading Bay
- Agreed area: Stores - 645 sq. metres; Loading Bay - 24.49 sq. metres, both measured on a gross external area basis

D. VA10/3/017 - Lot No. 3F/1(8)

- Modern Office Accommodation
- Agreed area: 287.92 sq. metres, measured on a gross external area basis

### **The Appellant's Evidence**

11. Mr. O'Leary, having taken the oath, adopted his written précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief. In his evidence Mr. O'Leary contended for the following valuations:

A. VA10/3/011

Warehouse 819 sq. metres @ €7.33 per sq. metre = NAV Say €2,383.27

Rateable Valuation @ 0.5% = €11.92

In support of his opinion of net annual value, Mr. O'Leary introduced 2 comparisons, details of which are set out in Appendix 1 attached to this judgment. When it was pointed out to him that his second comparison (Eurprice) was not on the valuation list at the date

of the revision, Mr. O'Leary agreed that, in such circumstances, it could not be considered as being a valid comparison in compliance with Section 49(1) of the Act.

B. VA10/3/014

Warehouse 972 sq. metres @ €23.91 per sq. metre = NAV €23,240.52

Rateable Valuation @ 0.5% = €116.20

RV say €17

In support of his opinion of net annual value, Mr. O'Leary introduced 1 comparison, ie. the stores at premises occupied by Wexford County Council, located close to the subject property. The stores Mr. O'Leary referred to form part of a much larger premises and have an area of 275.1 sq. metres and are valued at €23.91 per sq. metre. Other warehouse and stores at this property are valued at €7.33 per sq. metre.

C. VA10/3/015

Store 645 sq. metres @ €18.04 per sq. metre = €11,635.80

Loading Bay 24.48 sq. metres @ €13.67 per sq. metre = €334.83

Net annual value, say €1,970.63

Rateable Valuation @ 0.5% = €9.85

No specific comparisons were introduced to support the valuation contended for by Mr. O'Leary in this instance.

D. VA10/3/017

Offices 287.92 sq. metres @ €34.16 = NAV €9,835.35

Rateable Valuation @ 0.5% = €49.17

In support of his opinion of net annual value in this instance, Mr. O'Leary relied upon the valuation of the offices attached to the premises occupied by New Line Oil Ltd., located close to the subject property. The offices so referred to were valued at €34.16 per sq. metre.

12. In his evidence Mr. O'Leary acknowledged that the valuation of each of the 8 properties under appeal were to be determined in accordance with Section 49(1) of the Act,

commonly referred to as “the tone of the list”. Mr. O’Leary also referred to current economic circumstances which were having an adverse effect on the demand for accommodation provided in the properties concerned. As a consequence of the low level of demand it was unlikely that the vacant units at the former Wexal premises would be let in the foreseeable future.

13. Under examination, Mr. O’Leary agreed that the premises were, generally speaking, in a good location and in reasonably good repair and condition. Mr. O’Leary also agreed that in carrying out a revision of valuation under the Act, the valuation of each of the properties concerned had to be determined strictly in accordance with Section 49(1) and that little reliance could be placed upon asking rents. When questioned about his comparisons, Mr. O’Leary agreed that he was not personally involved in any negotiations or discussions in relation thereto and was relying solely upon information contained in the Valuation Office records. He accepted that in some instances he had not made any allowances for the differences in eaves height between the properties being valued and the comparisons being put forward by him in support of his opinions of net annual value.
14. In response to questions from the Tribunal, Mr. O’Leary agreed that in circumstances where a large industrial/warehouse building was redeveloped in order to provide a number of smaller individual units of occupation, the most likely outcome would be that the total rental income derived therefrom would exceed the rental income of the property when rented as a single unit of occupation.

### **The Respondent’s Evidence**

15. Ms. Lambe, having taken the oath, adopted her written précis and valuation which had previously been received by the Tribunal, as being her evidence-in-chief. In her evidence Ms. Lambe contended for the following valuations:

A. VA10/3/011

Warehouse 819 sq. metres @ €31.00 per sq. metre = NAV say €25,389

Rateable Valuation @ 0.5% = €127

This building has an eaves height of 8.6 metres.

## B. VA10/3/014

Warehouse 972 sq. metres @ €7.00 per sq. metre = NAV €6,244

Rateable Valuation @ 0.5% = €31

This warehouse has an eaves height of 5.4 metres.

## C. VA10/3/015

Store 645 sq. metres @ €20.50 per sq. metre = €13,222.50

Loading Bay 24.49 sq. metres @ €13.67 per sq. metre = €334.83

Net annual value, say €13,557.33

Rateable Valuation @ 0.5% = €68

The store in this instance has an eaves height varying from 5.3 to 4.2 metres.

## D. VA10/3/017

Ground floor office 287.92 sq. metres @ €41.00 = NAV €11,804

Rateable Valuation @ 0.5% = say €59

16. In support of each of her 4 valuations as set out above, Ms. Lambe introduced a number of comparisons, details of which are set out in Appendix 2 attached to this judgment. Ms. Lambe also introduced details of the valuation of the Wexal premises, as they were before they were sub-divided. All of these comparisons, Ms. Lambe said, indicated that the valuations determined by her were more than reasonable having regard to the location of the subject premises, their size and quality of accommodation.
17. When examined by Mr. O'Leary, Ms. Lambe agreed that the older section of the main manufacturing space was built in the mid-70's with a specific purpose in mind. She also agreed that the eaves height of this building was lower than modern warehouse buildings, but went on to say that she had taken the eaves height into account when preparing her valuations. The buildings which have a lower eaves height (5.4 metres) were valued at €27 per sq. metre, while the other buildings with an eaves height of 8.6 metres were valued at €31 per sq. metre.
18. When asked about her comparisons generally, Ms. Lambe conceded that there were differences in age, size, location, specification, etc., in some instances, but that she had fully reflected these differences referred to in her valuation. Ms. Lambe again reiterated

that in her opinion the comparisons introduced by her represented the existing tone of the list for buildings of the size and type of the properties concerned and she had full regard to these comparisons in arriving at her valuation of each of the properties concerned.

## **Findings**

1. The basis of valuing property listed for revision under Section 28 of the Act is set down in Section 49(1) which states as follows:

*“If the value of a relevant property (in subsection (2) referred to as the ‘first-mentioned property’) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”*

2. In accordance with rating law and practice the onus of proving that a valuation of a property appearing on the valuation list is incorrect lies with the appellant.
3. The Tribunal commends both valuers for the level of agreement they achieved in relation to the basic facts in regard to the properties under appeal such as area, nature of construction and other pertinent matters. Furthermore, they are to be commended for their decision in selecting some appeals as being in the nature of test cases and that the determination of the Tribunal in each appeal be applied to the other four properties under appeal as appropriate. In short, both valuers acted in a highly professional manner and at the oral hearing presented their evidence and submissions in clear and precise terms.
4. The Tribunal has carefully considered all the evidence of value and supporting comparison evidence put forward by the valuers. In this regard the Tribunal notes Ms. Lambe’s decision to value each of the properties under appeal, at the same rates per sq. metre as those used when the original premises were last valued as a single unit of occupation. The rates per sq. metre thus applied are supported by her comparison evidence, which, when taken together, are representative of the tone of the list in accordance with Section 49(1) of the Valuation Act.
5. The Tribunal has, of course, considered Mr. O’Leary’s valuations and the comparisons put forward by him and has come to the conclusion that his evidence is not of sufficient

strength to show that the valuations of the various properties as appearing on the valuation list are incorrect and not determined in accordance with Section 49(1) of the Valuation Act. In arriving at this conclusion, the Tribunal had regard to Mr. O'Leary's acceptance of the proposition that the likely outcome of a scheme of development whereby an existing building is sub-divided so as to provide a number of smaller units would be an up-lift in overall rental value.

### **Determination**

Having regard to the findings above the Tribunal determines as follows:

1. That the rateable valuation of Lot No. 3F/1(1), Property No. 2007973 be affirmed at €27 and  
That Property No. 2201896 be valued at €31 per sq. metre.
2. That the rateable valuation of Lot No. 3F/1(4), Property No. 2201898, be affirmed at €31 and  
that Properties Nos. 2201897 and 2201900 be valued at €27 per sq. metre.
3. That the rateable valuation of Lot No. 3F/1(6), Property No. 2201899, be affirmed at €68.
4. That the rateable valuation of Lot No. 3F/1(8), Property No. 2201901 be affirmed at €59 and  
That Property No. 2201902 be valued at €41 per sq. metre.

And the Tribunal so determines.