

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

Francis Wilson

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 292419, Store at The Leas, Naul Road, Swords, County Dublin

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF DECEMBER, 2010

By Notice of Appeal dated the 2nd day of June, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €10,040 on the above described relevant property.

The grounds of appeal are on a separate sheet attached to the Notice of Appeal, a copy of which is attached at the Appendix to this judgment.

This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 7th day of September 2010. At the appeal the appellant appeared in person. The respondent was represented by Mr. Karl Gibbons BSc. (Property Valuation and Management), a Valuer in the Valuation Office.

Location

The subject property is situated in a rural location on the R108, about 6km west of Swords Town Centre and 20km north of Dublin City Centre. It is situated on a bend on the road, just north of Leas Cross.

The Property Concerned

The subject property is a former agricultural building with a hardcore yard. The building was constructed in the 1950s and consists of iron post frames with a single skin iron hay barn type roof and sides. There is an eaves height of 5.3m to the front and 3.4m to the rear. The building is currently in use as a store for vintage cars. It is in poor repair with rust and leaks and there are no sanitary services. The property is walled with electronic gates and single phase electricity serves the building. The premises is zoned for agricultural use but has established non-conforming use for storage and parking.

The agreed accommodation is as follows:

Block 1, with eaves height of 5.3m	116.16 sq. metres
Block 2, with eaves height of 3.4m	103.84 sq. metres
Hardcore Yard	689 sq. metres

Tenure

The property is held on a freehold basis and is currently let.

Rating History

The property was valued under the Revaluation Order for Fingal County Council signed on 7th November 2005 at a Net Annual Value (NAV) of €18,930. Representations were received on 13th July 2009 and the NAV was reduced to €15,080. This was appealed to the Commissioner of Valuation on 8th February 2010 and following consideration of the appeal, the valuation was reduced to €10,040. The appellant appealed that decision to the Tribunal by Notice of Appeal dated 2nd June 2010.

The Issue

Quantum.

The Appellant's Evidence

Mr. Francis X. Wilson, having taken the oath, adopted his written précis, which had previously been received by the Tribunal and the appellant, as his evidence-in-chief. Mr. Wilson stated that the premises had been rented for about 10 years up to 2004 for the parking of trucks. The tenant who leased the premises from 2000 until 2004 did so under an arm's length lease with a rent of €6,000 per annum. After this tenant departed, Mr. Wilson stated that he advertised the premises for rent, but was unable to find a suitable tenant and so took the premises off the market, using it for private purposes. In June 2008 Mr. Wilson let the building for the parking of vintage cars at a rent of €2,400 per annum.

The subject property is zoned for agricultural use but has an established non-conforming use for storage and parking. Mr. Wilson claimed that there would be objections by the planning authority to the use of the premises for commercial activity. He further stated that there were no sanitary services on site and that the provision of same would require planning permission, which he claimed the planning authority would not approve, as it would facilitate a new non-conforming use.

Mr. Wilson stated that it was difficult to find exact comparisons to the subject property. He provided two comparisons, which are not on the Valuation List. The first, Farmyard at Saucerstown, Swords, Co. Dublin was in Mr. Wilson's view similar to the subject property, as it is a farmyard which is no longer used as such. Mr. Wilson stated that the property consists of a farm building of approximately 180 sq. metres with sanitation services, which is let out to a tenant who uses it for light industrial activities, at a gross rent of €475 per month/€5,700 per annum. However, he stated that the landlord is responsible for rates, repairs and insurance and therefore the gross rental figure must be discounted to take account of this by €2,000 (€1,000 for insurance, €500 for rates and €500 for repairs).

Comparison 2, Farmyard at Forrest Great, Cloghran, Swords, Co. Dublin is the premises to which Mr. Wilson's former tenant moved in 2004 and in Mr. Wilson's view is a very exact and close comparison to the subject property. He stated that this premises was of a similar type and size to the subject with a hayshed type building and yard, but it had more circulation

space in the yard and easier access than the subject. Mr. Wilson stated that the gross rent was €6,000 per annum, which was more or less the same as the rent the tenant had been paying to Mr. Wilson. However, Mr. Wilson stated that the landlord was paying for insurance, rates and maintenance and accordingly this figure had to be discounted.

Comparing the subject property to the comparisons, Mr. Wilson stated that when Comparison 1 was discounted on the basis of the landlord paying for insurance, rates and repairs and to take account of the planning restrictions and lack of sanitary services at the subject property, this would give a figure of €10 per sq. metre. When looking at Comparison 2, Mr. Wilson valued the yard at €3,445 (the same figure as the respondent valued the yard in the subject property). Based on a gross rent of €6,000 per annum, this leaves a gross figure of €2,555 for the store, which when discounted for rates, repairs and insurance gives a net rent of €1,000, which breaks down at €5 per sq. metre.

Mr. Wilson contended for a NAV on the subject property of €5,645 per annum, broken down as follows:

Store	220 sq. metres @ €10 per sq. metre	=	€2,200
Yard	689 sq. metres @ €5 per sq. metre	=	<u>€3,445</u>
Total NAV		=	€5,645

In Mr. Wilson's opinion the respondent failed to give sufficient weight to the difficulties affecting the subject property when valuing it. It is zoned for agricultural use but has established non-conforming use for parking or storage. However, the zoning prevents more intensive use and therefore the only uses that can be considered are passive ones. The only service available on the premises is electric lighting and there are no sanitary services. Access to the premises is poor as it is located at a dangerous bend. Furthermore, the building is in poor condition with many leaks and rust patches. Mr. Wilson also claimed that the type of tenants the subject would attract were poorer or less established and that a discount should be made to the headline rent to account for periods of vacancy or non-payment of rent.

Mr. Wilson commented on the respondent's comparisons, stating that none of them were comparable to the subject. He stated that Comparison 1, John Daly, was located in an active commercial centre, unlike the subject, and was used to manufacture kitchens, an activity which could never be carried out in the subject. Further, Mr. Wilson claimed that the rent

agreed in 2005 was unsustainable as the property was now 50% empty and no rent had been paid for some time. Mr. Wilson also stated that it was unfair to compare Comparison 2, Harry Murtagh, to the subject property as it has toilet facilities and in 2005 it was used for manufacturing activity as a carpenter's workshop. Furthermore, Mr. Wilson stated that the property had been vacant since 2008 and that no rates have been paid since then. Mr. Wilson stated that Comparison 3, Conaty Wholesale Ltd., which had been used as a kitchen supplies business, had been abandoned for a number of years and the owners were getting vacancy relief on the property. He claimed that the NAV fixed on this property was notional only as there was no hope of this property attracting a tenant given its current state. Finally, Mr. Wilson distinguished Comparison 4, Kinsealy Motor Centre, on the basis that it was used as a panelbeater's workshop, it had toilets and was located in a high profile location on the Malahide Road. In Mr. Wilson's opinion the only property that was closely comparable to the subject property was his Comparison 2, Farmyard at Forrest Great, Cloghran.

In response to questions by the Tribunal, Mr. Wilson confirmed that the subject property adjoined his private residence but that there was separate access thereto from the public road. He further confirmed that there is no formal lease with his current tenant, but rather a month to month tenancy and that he is responsible for insurance, maintenance and rates. Mr. Wilson stated that although he accepted the value placed on the yard by the respondent, he would also be drawing on the rent paid by his former tenant in order to arrive at an appropriate NAV. He stated that he had two legs to his appeal, firstly leaving the yard at the rate it was valued by the respondent and contending for a reduction in the value of the shed and secondly looking at the overall value of the premises and comparing it with the lease he had with his previous tenant, who moved to a similar premises with a similar rent, to arrive at a fair NAV.

Cross-Examination

Under cross-examination Mr. Wilson confirmed that the rent agreed with his previous tenant in 2000 was not revised prior to the tenant vacating the premises in 2004, other than to convert the rent to Euro currency. He further confirmed that the current rent he is receiving for the property is solely for the store and not for the yard. Mr. Wilson stated that the cost of insuring the shed was approximately €500 per annum.

Mr. Wilson acknowledged that the deductions that he had made for repairs, rates and insurance in respect of his two comparisons were estimated and that he was unaware as to

whether either comparison was paying rates. It was put to him that the figure of €1,000 per annum he had allowed for insurance costs on his first comparison was excessive, given that he had stated that the insurance on his own property cost €500 per annum. In response, Mr. Wilson stated that the cost of insurance might be more if an activity was being carried on in the premises.

Mr. Wilson was asked to explain how he had arrived at a 50% discount to be applied to the subject property for planning and sanitary restrictions as against his first comparison. He replied that it was difficult to compare a property where light industrial activity is being carried on against a property used for parking or storage and that this was his estimate. He did however agree that his Comparison 1 was comparable to the respondent's Comparisons 1 and 2, where there is a workshop and activity on the premises.

The Respondent's Evidence

Mr. Karl Gibbons, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as being his evidence-in-chief. Mr. Gibbons made one change to his précis, amending the area of the yard at p. 6 from 669 sq. metres to 689 sq. metres. Mr. Gibbons stated that in the revaluation of the Fingal Rating Authority area, valuation levels were derived from an analysis of available market information of comparable properties and applied to the subject property. He further stated that the valuation of this property, on appeal to the Commissioner of Valuation, was determined by reference to the values of comparable properties stated in the Valuation List in which the property appears.

Mr. Gibbons contended for a Net Annual Value of €10,040, calculated as follows:

Store	220 sq. metres @ €30 per sq. metre =	€6,600
Yard	689 sq. metres @ €5 per sq. metre =	<u>€3,445</u>
Total NAV		€10,040

In support of his contention of NAV, Mr. Gibbons provided details of four comparisons, all of which are former farm buildings located in North Dublin. Comparison 1, John Daly, Westpalstown, Oldtown, Co. Dublin is used as a carpenter's workshop and is served by sanitary services. The property has a total area of 340.38 sq. metres and is valued at a rate of €50 per sq. metre. The passing rent of €17,400 per annum was fixed in October 2006. This

breaks down at a rate of €1 per sq. metre. Comparison 2, Harry Murtagh, Rolestown, Swords, Co. Dublin is also used as a carpenter's workshop and has the benefit of sanitary services. It is in a rural location on the Swords to Ashbourne Road, 4km northeast of the subject property. The workshop is valued at a rate of €5 per sq. metre and the mezzanine store at €1 per sq. metre. The passing rent of €10,399 per annum was fixed in February 2007 and this breaks down at an overall rate of €7 per sq. metres.

Comparison 3, Conaty Wholesale Ltd., Coolquay, The Ward, Co. Dublin was used as a store but is currently vacant. It has no sanitary services and is in poor condition, with the roof leaking. There is no rental evidence on this property as it was used as part of a family business. The property has a total area of 513.2 sq. metres and is valued at a rate of €30 per sq. metre. Finally, Comparison 4, Kinsealy Motor Centre, Harp Farm, St. Doolagh's, Balgriffin, Dublin 17, is used as a workshop for repairing cars and there is a small hardcore yard. It is situated to the rear of a domestic dwelling with no visibility from the road. The passing rent of €12,000 per annum was fixed in April 2007. The workshop is valued at €50 per sq. metre, the portacabin store at €2 per sq. metre and the hardcore yard at € per sq. metre.

Mr. Gibbons stated that all his comparisons were located in rural areas and were comparable in terms of use and location to the subject property and also because none of the buildings complied with the zoning objectives of the area. He accepted that the subject property was in poor condition and lacked services. Accordingly, he discounted from a rate of €50 per sq. metre to €30 per sq. metre, which he stated was in line with rural workshops in the rating authority area. Mr. Gibbons stated that he had never come across another property in the Fingal area valued at a rate of €10 per sq. metre as contended for by the appellant.

In response to questions from the Tribunal, Mr. Gibbons confirmed that Comparison 3 was his primary comparison. He stated that this property was appealed to first appeal stage. It had not been in active use but was used as a store. However, it was now vacant for a number of years. He agreed that this comparison was the only store he had presented to the Tribunal. He stated that the tone of the list in the Fingal area was €5-€10 per sq. metre for yards, €20 per sq. metre for portacabins and €30-€50 per sq. metre for buildings. Mr. Gibbons stated that in valuing the subject property he had taken into account the poor condition of the subject property and the fact that the landlord was paying for rates, insurance and repairs and

discounted back from a rate of €50 per sq. metre to €30 per sq. metre. All his comparisons, other than Comparison 3, were Full Repairing and Insuring leases. Mr. Gibbons stated that the appellant's comparisons were not on the Valuation List and contended that the appellant had discounted too much on those comparisons to allow for the landlord bearing the cost of rates, repairs and insurance, particularly when considering that Mr. Wilson himself paid €500 per annum for insurance. He did accept however, that one had to apply a discount figure where the landlord is responsible for rates, repairs and insurance to bring the valuation back to the NAV figure.

Cross-Examination

Under cross-examination, it was put to Mr. Gibbons that the rent agreed on his Comparison 1 in October 2006 stopped being paid in October 2008 and accordingly it was unsustainable. Mr. Gibbons stated that it was paid for two years, which is a significant period and one had to take into account the economic downturn. He also acknowledged that the rent paid on his Comparison 2 had only been paid for one year.

Mr. Gibbons agreed that the owner of Comparison 3 had used it for his family business and stated that he had handed it over to his sons, who were using it for the storage of cardboard and low value produce. Mr. Gibbons stated that he had used Comparison 3 as it had the same physical characteristics as the subject and he had valued it at the same rate as the subject. He denied that there could be a level of activity carried out at Comparison 3 over and above storage, as the roof was leaking, there were no sanitary services and it was built in the 1950s. It was put to Mr. Gibbons that the NAV on Comparison 3 was a totally notional figure in that rates had never been paid, as the property was never occupied. Mr. Gibbons contended that he believed the property was similar in location and physical characteristics to the subject and he understood that the owner was looking for an occupant.

Summary

Mr. Gibbons stated that he had not seen any rental evidence to suggest a rate of €10 per sq. metre to be applied to the subject property, as contended for by the appellant. He stated that he had taken into account the planning restrictions, the condition of the building and the fact that the appellant was responsible for rates, repairs and insurance and had applied the appropriate discount and his contention for NAV was fair.

Mr. Wilson argued that the actual rent on the subject property up to 2004 and the subsequent rent paid by the same tenant for a similar premises, (his Comparison 2) should carry much greater weight in arriving at an NAV than the estimates of discounts the respondent argued should apply.

Findings

1. In accordance with the Valuation Act, 2001 the value of each and every relevant property in a rating area in a revaluation is to be determined by estimating its Net Annual Value, which is defined at Section 48(3) as being, *“the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant.”*
2. Mr. Gibbons stated that in the revaluation of the Fingal Rating Authority area, valuation levels were derived from the analysis of available market information of comparable properties and applied to the subject property. He further stated that the valuation of this property, on appeal to the Commissioner of Valuation, was determined by reference to the values of comparable properties stated in the Valuation List in which the property appears. This latter statement would appear to be a reiteration of the method of valuation set down in Section 49 of the Valuation Act, 2001 in respect of revisions.
3. In considering the appropriate valuation process to be followed with regard to appeals in a revaluation situation, the Tribunal notes its previous decision in appeal **VA08/5/125 - Marks & Spencer (Ireland) Ltd. v Commissioner of Valuation** In particular, the Tribunal notes the following paragraphs:
“In the circumstances of a revaluation under section 19, the valuation of “every relevant property” is to be individually assessed in accordance with section 48 as at the date specified in the valuation order. At the time of assessment in respect of each and every relevant property there is no Valuation List in existence nor will there be until all relevant properties in the rating authority area concerned have been valued. Consequently at the time of assessment there are no “other properties comparable” in the list. Section 49 which is based upon the concept of net annual value being determined by reference to comparables or more commonly referred to as the “tone

of the list” cannot have any role to play in the revaluation process and only comes into effect when a revision of valuation is carried out in accordance with sections 27 and 28.

On the day a new Valuation List is published a preliminary “tone of the list” is originated, but little weight, if any, can, for comparison purposes, be attached to any of the assessments contained therein as they are as yet unchallenged. After the 40 day appeal period, as provided for under section 30, the situation changes somewhat, in that there is then in the list a substantial number of entries whose assessments have been accepted (or perhaps in some instances agreed at the representation stage under section 29) or otherwise unchallenged.

At the time of an appeal to the Tribunal under section 34 the situation will have moved on significantly, in that by far the greater percentage of entries in the list would have been accepted, agreed or determined at section 30 appeal stage and hence representative of an as yet emerging tone of the list. When an individual appeal comes before this Tribunal for determination the Tribunal must consider and evaluate the evidence then put before it, be it the actual rent of the property concerned, the rents of other properties of a size, use and location similar to the property concerned and last, but by no means least, the assessment of properties which are truly comparable in all respects to the property concerned and which are currently in the Valuation List and attach such weight to this evidence as is considered appropriate....”

4. It was Mr. Gibbons’ evidence that based on an analysis of available market information, it was decided by the respondent that an appropriate level for valuing former farm type buildings in rural locations within the Fingal County Council Rating Area was €30 per sq. metre - €50 per sq. metre, for portacabins it was €20 per sq. metre and for yards the level was €5-10 per sq. metre.
5. In support of his contention of Net Annual Value, Mr. Gibbons provided details of four comparisons, all of which are former farm buildings valued at rates of €30-€55 per sq. metre. He provided rental information in respect of three of these properties, which rents were fixed between October 2006 and April 2007, some 13 to 19 months after the valuation date of 30th September 2005. There was no rental information available in respect of his Comparison 3, which was used as part of a family business,

despite this being Mr. Gibbons primary comparison. This property is currently vacant and the Tribunal accepts the appellant's evidence that it is unlikely to be let in the foreseeable future due to its poor condition.

6. The Tribunal attaches little weight to Mr. Wilson's two comparisons, which have not been valued by the respondent and which do not appear on the Valuation List.
7. The Tribunal is of the view that Mr. Gibbons' comparisons, other than Comparison 3, are not truly comparable to the subject property, which is a much inferior property subject to various limitations arising out of its relatively poor condition, its lack of sanitary facilities, difficulties with access and restrictions in terms of use.
8. Given the lack of rental evidence in respect of the subject at the valuation date and the best comparison, Mr. Gibbons' Comparison 3, the Tribunal has had regard to the rental evidence in respect of Mr. Gibbons other comparisons and is of the opinion that the appropriate rate to apply to the subject property to take account of the limitations mentioned above and also to take account of the fact the subject is not let on a Full Repairing and Insuring basis, unlike the comparisons, is €25 per sq. metre.
9. The Tribunal is satisfied that the rate of € per sq. metre, applied by the respondent to the yard is fair and reasonable in all the circumstances and indeed the appellant acknowledged that he was not disputing this valuation, although he reserved the right to contend for an overall valuation, rather than splitting the valuation between the shed and the yard.

Determination

Having regard to all the evidence adduced and to the foregoing findings, the Tribunal determines the Net Annual Value of the subject property to be €8,945 calculated as follows:

Store	220 sq. metres @ €25 per sq. metres =	€5,500
Yard	689 sq. metres @ € per sq. metres =	<u>€3,445</u>
Total NAV =		€8,945

And the Tribunal so determines.