

Appeal No. VA10/5/008

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

Sean Duignan

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2194063, Warehouse at Unit B3, Airside Enterprise Centre, Airside Retail Park, Swords, County Dublin.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Damian Wallace - QFA, MIPAV, Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF DECEMBER, 2010

By Notice of Appeal dated the 28th day of June, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €46,700 on the above described relevant property.

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

"Property cannot be let with these rates in this market. Property has been to let for 2 years from new. Rents have collapsed but rates have not."

The appeal proceeded by way of an oral hearing, which took place in the Offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 9th day of September, 2010. The appellant, Mr. Sean Duignan represented himself, and Ms. Olwen Jones, BSc (Hons) Real Estate Management, MIAVI, a Valuer in the Valuation Office represented the respondent, the Commissioner of Valuation.

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, the parties took the oath, the appellant referred directly to a letting brochure prepared by his agent, Shane Redmond Commercial, and the respondent adopted her précis as her evidence-in-chief. This evidence was also 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.

At issue

Quantum.

The Property

The subject property is a modern, mid-terrace enterprise/light industrial unit with two-storey offices to the front, the latter having suspended ceilings, recessed fluorescent lighting, perimeter trunking and gas-fired central heating. The warehouse has an eaves height of 7 metres, sealed concrete floor and is fitted with a roller shutter door. The subject is one of twenty-two office/warehouse units built at the Airside Enterprise Centre in 2007, of which some were reconfigured resulting in twenty-six properties in all considered rateable. Sixteen valuations relate to properties or units similar to the subject and the remaining nine relate to two original units being subdivided into eight properties and one totally converted into office accommodation.

Location

The property is located within Airside Enterprise Centre approximately 1 km south of Swords and approximately 2.4 km north of Dublin Airport, 1 km from the R132/Swords Road and 1.9 km from the M1.

Services

All usual required services are available and connected to the unit.

Tenure

Freehold

Valuation History

- June 2009: A proposed Valuation Certificate issued with a valuation of €46,700.
- July 2009: Representations were lodged by Eamonn Halpin & Co, agents for the appellant. The valuation issued unchanged at €46,700.
- December 2009: An appeal was lodged by the appellant to the Commissioner of Valuation. The valuation issued unchanged after First Appeal.
- June 2010: Notice of Appeal received by the Tribunal on 30th June, 2010.

Agreed Floor Areas

The parties agreed prior to the commencement of the hearing that the gross external area of the subject premises measures 354 sq. metres. Accordingly, Ms. Jones advised that the net annual value based on this adjusted area should calculate to a sum of €46,020, rounded to €46,000.

Appellant's Case

Proceedings commenced when Mr. Séan Duignan took the oath and provided the Tribunal with his views and opinions with respect to the proposed adjusted valuation figure of €46,000.

He opened his case by remarking that the subject property was bought by him new, when built, in 2007, and since that time he and his agent, Shane Redmond Commercial, had failed to identify a tenant willing to pay a commercial rent. He stated that when he bought the premises he paid the equivalent of €1 million or approximately €250 per sq. foot plus VAT. He indicated that when he purchased the premises he had, at the time, expected to achieve an economic rent and a return on his investment which might produce a net rental figure to him as landlord of a sum equivalent to the proposed Revaluation figure now being sought by the Commissioner of Valuation.

Mr. Duignan explained that at the relevant valuation date of 30th September 2005, Airside Enterprise Centre did not exist and the area was nothing more than undeveloped green fields. He also assured the Tribunal that nothing of the size or scale of Airside Enterprise Centre existed in 2005 within the Swords area.

Mr. Duignan confirmed that the building, in common with all of the other units in Airside, was constructed to the highest specification of design, materials and finishes and that the unit is well served with good access and generous parking facilities. He explained that his decision to purchase the subject property in 2007 was predicated on anticipation of an early start and development completion of the proposed Metro North rail service and general economic improvement of the area.

Mr. Duignan stated that, in his opinion, the Commissioner had erred by selecting and quoting comparison rental sums detailed in Ms. Jones' précis, which referred exclusively to other units within the Airside Enterprise Centre. He argued that the rental values quoted therein were wholly unreliable and unhelpful to the exercise, insofar as he contended that the rents were neither arms-length, sustained, sustainable, continuing or in any way representative of general market conditions at this time, or even in 2009.

Mr. Duignan also argued that a valuation of €46,000 on his property is totally at odds with what he described as market reality, citing his efforts and those of his agent to secure a letting agreement at a reduced rental level of approximately €30,000 per annum. He went on further to state that, to mitigate his carrying costs, he would now accept a tenant willing to pay as little as €20,000 per annum. The appellant confirmed that he was familiar with the provisions of the Valuation Act, 2001, the relevance of the Valuation Date established as of September 2005 for the Fingal County Council Revaluation exercise, and also advised that he had an understanding, albeit somewhat limited, of Section 48 of the Act.

Mr. Duignan acknowledged that the market in the Fingal area accepts the principle in practice of applying a uniform rate per sq. metre when offering units similar to the subject for rent, without distinguishing rental rates for the office and/or industrial/commercial areas within. Mr. Duignan confirmed that the Notice of Appeal filed by him to the Tribunal contained a requested valuation of €30,000.

The appellant repeated on a number of occasions that the valuation determined by the Commissioner on his property is totally at odds with current market conditions and could not be analysed and de-valued in the circumstances, as Airside Enterprise Centre was not constructed until two years following the valuation date, and he contended that the market does not offer sufficient rental evidence to support valuations assessed as at the said valuation date.

Appellant's Comparisons

The appellant did not offer a schedule of rental comparisons on properties similar to the subject within the same Rating Authority area. He did not submit any formal written précis of evidence for consideration by the Tribunal. He referred during the course of the hearing to rents he believed were actually being paid, and to various other units where rents are allegedly not being paid and to the burden of rates on owners seeking to let their investment properties and/or the consequent high costs imposed on tenants, most particularly at the Airside Enterprise Centre.

Cross-examination by the Respondent

In reply to questions asked by Ms. Jones, Mr. Duignan confirmed that he understood the provisions of the Valuation Act, 2001, and confirmed that a rental value of €46,700 may have been achievable back in 2005 if the subject property were built and available to let at that time.

Respondent's Case

Ms. Jones then took the oath, adopted her précis as her evidence-in-chief and reviewed her submission. Referring to her written précis of evidence, she summarised the description, location and nature of the property, together with the basis of valuation employed by the Commissioner on foot of the Valuation Order for Fingal County Council which specified the valuation date for Revaluation as at 30th September 2005. She indicated that the valuation levels were derived from an analysis of open market rental information available for comparable properties, and such was applied to the subject. Ms. Jones also advised the Tribunal that the valuation, on First 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. She outlined the valuation history as noted above and confirmed

acceptance of the proposed adjustment, also as noted above, to the valuation resulting in a proposed net annual value of €46,000.

Respondent's Comparisons

Ms. Jones provided the Tribunal with reference material to five comparison properties, all within the Airside Enterprise Centre and all bearing similar broad descriptions as warehouse/office units, identified as Units D3, A3, D5, A5 and B4, all of which are set out in greater detail in her précis of evidence and attached herewith together with an analysis of the subject valuation and comparables as Appendix 1 hereto.

Ms. Jones advised that representations were made on the first four comparisons, one of which advanced to First Appeal stage. She stated that no representations or appeals were submitted on Unit B4, which was her comparison property No. 5, which was described as being identical to the subject in area and layout, being mid-terrace, and located directly adjacent to the subject. Ms. Jones confirmed that the comparison properties and the subject were assessed at a rental level of €30 per sq. metre as at the valuation date of 30th September, 2005. The comparison units varied in area from 276.49 sq. metres to 359.4 sq. metres. She acknowledged, that having regard to the difference in areas claimed by the appellant and the respondent of only 5.4 sq. metres and though she had measured the unit herself and calculated it to be at the higher level, she agreed to the adjustment sought by the appellant, for the purpose of the exercise.

In response to various questions asked by the Tribunal, Ms. Jones advised that she relied upon two passing rents at the time the assessment was being carried out on the subject. The first rent available to her at Airside Enterprise Centre was established in September 2008 on a 25 x 5 year lease, on an FRI basis, equivalent to a rate of €108 per sq. metre, which devalued to €102.74 per sq. metre, by applying the Lisney property index of 6%.

The second rental was in the amount of €155 per sq. metre, on similar lease terms to the above, on a term which commenced in February 2008 and which devalued, again using the Lisney Index applicable at the time of 8%, to a sum equivalent to €143.35 per sq. metre.

To support her analysis further, Ms. Jones also looked to the M1 Business Park where, she indicated, there were nine units, all similar to the subject in specification, design and size, eight of which had passing rents. Ms. Jones cited evidence as follows:

Unit 1: Lease commencement August 2005, producing a rent of €158 per sq. metre with tenant responsible for the payment of tenant improvements, repairs, insurance, but not rates.

Unit 3: FRI Lease commenced October 2005, at a rent of €110 per sq. metre.

Unit 4: FRI Lease commenced December 2005, at a rent of €121 per sq. metre.

Unit 5: FRI Lease commenced December 2005, at a rent of €171 per sq. metre.

Unit 6: FRI Lease commenced December 2007 at a rent of €147 per sq. metre.

Units 7, 8 and 9 (combined and occupied by one occupier): FRI Lease commenced December 2007 at a rent of €183 per sq. metre.

Ms. Jones contended that with the support of the foregoing evidence and all matters considered, the rate per sq. metre applied to the subject of €130 produced a fair and equitable valuation of €46,000.

Cross-examination by Mr. Séan Duignan

Replying to questions asked by Mr. Duignan, Ms. Jones confirmed that the 22 original units constructed at the subject location had since been reconfigured as described above, resulting in 26 rateable properties when the Revaluation exercise was carried out in 2009. Mr. Duignan quizzed Ms. Jones on her level of understanding and the true market nature (as he understood it) of the lettings of the two units referred by Ms. Jones in her direct evidence, namely the two with passing rents upon which she relied and which the appellant described as unit D3 and the combined units of C2 and C3. Under further cross-examination, Ms. Jones acknowledged that the current rent passing on Unit D3 may be considerably lower now under a new tenant agreement, than that level which passed from the former tenant in 2009. She

also acknowledged that the combined rent passing on C2 and C3 at the time may not have been based on open market values, as it was owner-occupied.

In response to further questions, Ms. Jones would not agree with the argument made by the appellant that the M1 Business Park does not serve the present task as a useful or helpful comparator.

Findings & Conclusions

The Tribunal has carefully considered all the evidence and arguments submitted and adduced by the parties and finds as follows:

1. The appellant did not submit written evidence supporting his case or details of any comparison properties on which he may have wished to base his case.
2. The Tribunal, as a creature of statute whose functions are prescribed by, set out and limited by the 2001 Valuation Act may only consider evidence submitted and adduced at hearing.
3. The respondent, during the course of the hearing and in reply to various questions raised, stated that the rental rate determined in the valuation assessment of €130 per sq. metre on the subject property was fair and reasonable having regard not only to the comparative evidence outlined in her précis, but also to the levels of passing rents cited in the two sample properties at Airside Enterprise Centre together with the eight passing rents on similar properties at the nearby M1 Business Park, also in the Swords area, details of which she outlined for the Tribunal.
4. In considering all of the foregoing, the Tribunal has given weight in this case to evidence supported with passing rents.
5. The Tribunal notes the wide disparity in the two only passing rents of 2008, declared by the respondent at Airside Enterprise Centre i.e. €108 and €155 per sq. metre and adjusted by the Lisney property index to €102.74 and €143.22 per sq. metre respectively to make them relative to the valuation date of September 2005. The Tribunal feels obliged in this circumstance to consider their simple average or blended rental rate, of €122 per sq. metre.
6. The rental evidence and details provided on the eight warehouse/office units at the M1 Business Park was also of assistance, and particularly the details pertaining to FRI Leases

7. As the Tribunal was not provided with a passing rent figure computed on a FRI basis for unit 1 at the M1 Business Park and/or similarly for units 6, or 7, 8 & 9, adjusted to 2005 values, it relies in the instant case on the information provided at hearing from the respondent on units 3, 4 and 5 and their 2005 market value rents quoted at €110, €121, and €71 per sq. metre respectively.
8. The average or blended rate per sq. metre of those rents noted and relied upon in 8 above is €34 per sq. metre.
9. The Tribunal is satisfied that the Commissioner in this case has complied with the various applicable provisions of the 2001 Valuation Act and in particular section 48 thereof.

Determination

Accordingly, the Tribunal affirms the respondent's adjusted valuation of €46,000.

And the Tribunal so determines.