Appeal No. VA10/5/044

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Greencore Group plc **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2201480, Office at 2 Northwood Avenue, Santry, 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 23RD DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 24th day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €268,000 on the above described relevant property.

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

"The valuation is excessive and inequitable. It is not based on open market rental values for similar properties in Fingal around the valuation date, nor is it even in line with rateable valuations applied to other office properties in Fingal under the recent Revaluation."

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin, on the 23rd day of November, 2010. The appellant was represented by Mr. Fergal Burke, BSC (Surv), MSCS, MRICS, Associate Director of GVA Donal O Buachalla. Mr. Maurice Fitzgerald, a Senior Executive of Greencore Group Plc, attended as an observer. The respondent was represented by Mr. Christopher Hicks, Valuer with the Valuation Office. Ms. Linda Edwards of the Valuation Office was also in attendance as an observer.

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 comprises first and second floors of a three-storey detached office building identified as No. 2, Northwood Avenue, Swords, Co. Dublin. The structure is constructed of a steel frame with pre-cast concrete floors, masonry architectural external panels and finished in a mix of Portland stone and glazing. The offices are fitted to a high modern specification, classed as " third generation", with plastered and painted walls, raised access floors, utility floor boxes, carpets, suspended ceilings, recessed modular ceiling mounted lighting and air-conditioning. Cores and wcs are also finished to a high standard. The internal fit-out and air-conditioning system, together with the cellular offices, meeting rooms, board room and kitchen/canteen facilities, all supporting an open plan office layout were provided at the expense of the tenant with an allowance provided by the landlord.

No. 2 Northwood Avenue is served by a central reception area on the ground floor which features a double-height glazed atrium, all of which is treated as common of the building. The subject relevant property is also serviced with both stairs and lift to the upper two floors. Surface car parking is provided to the rear of the building with 27 spaces allocated to the subject relevant property.

Location

The subject property is located north of Santry village within the former Santry Demesne, approximately 9 km north of Dublin city centre. Northwood is located off the western side of the Swords Road between the R132 and the Ballymun Road R108, about 3 km from Dublin Airport, a similar distance from the Port Tunnel and just west of the junction of the M1 and the M50. The Swords Road area is characterised by a number of office schemes including Swift Square and Northwood Court as well as other facilities developed in recent years including the Crown Plaza Hotel, Holiday Inn Express, Northwood Sports Surgery Clinic and Gulliver's Retail Park, most of which were built post the Valuation Date of September 2005.

Services

All usual required services are available and connected to the subject relevant property.

Tenure

Leasehold interest held by the occupier for a term of 20 years which commenced on 1st May, 2009, with 5 yearly rent reviews on an "upwards-only" basis, with break options at the end of year five and year ten. The demised area of the lease includes the 27 car spaces. The first break option includes a penalty provision, if exercised by the tenant. The annual rent during the initial term amounts to €294,100.

Valuation History

	The property was valued under the Valuation Act, 2001, Section 19 Valuation Order September 2009 for Fingal County Council, referring to a relevant valuation date of September 2005 and a proposed Valuation Certificate followed at €246,000.
December, 2009:	Following Representations, the Valuation Certificate issued with an increased valuation of €268,000.
July, 2010:	Following an Appeal to the Commissioner of Valuation, the valuation remained unchanged at €268,000.

Floor Areas

The agreed net internal floor area (NIA) is as follows:-

First Floor Offices:	520 sq. metres
Second Floor Offices:	485 sq. metres
Total:	1,005 sq. metres
Car Spaces:	27 No. surfaced spaces

Appellant's Case

Proceedings commenced when Mr. Fergal Burke took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. He confirmed the foregoing details on the lease, advised that the tenant is held responsible for internal repairs, maintenance and rates, together with his building share of the service charges and block insurance. He stated that the building was completed by the developer in 2007 and remained vacant and available to let until the appellant, as first tenant, executed the foregoing lease commencing May 2009, followed shortly thereafter by a lease executed by the ground floor tenant, namely Beazley Management Ltd.

Mr. Burke noted that, notwithstanding the headline rent noted on the lease, the tenant secured a rent- free period of two years from the commencement date and explained that such an allowance reflected open market rental conditions for office space in the area of the M50 and M1 in recent years.

Comparisons

Mr. Burke cited 6 comparison properties; 3 in Santry and 3 in Swords, details of which are attached hereto as Appendix 1. His first comparison was the neighbouring property located at No. 1, Northwood, occupied by Aer Arann, wherein he analysed the passing rent to produce an "effective rent" for both the office space and the car spaces from €205 per sq. metre and €450 per space to €143.50 per sq. metre and €315 per space per annum. His second comparison property, located in Swords Business Park, but acknowledged as more akin to an industrial/commercial estate, produced an "effective rent" by his calculations of €112.45 per sq. metre including parking. His third comparison, being offices at Lakeview House, Airside Business Park, Swords, indicated an "effective rent" of €137.25 per sq. metre with parking at €600 each. His fourth and fifth comparisons were both part first floor offices at the Woodford Business Park, also in Santry, wherein again he analysed rents to produce "effective rents" at €178.43 per sq. metre and €170.73 per sq. metre and €500 per car space per annum. His final comparison property, within the Swords Business Campus, had corresponding figures of €150.16 per sq. metre and €635 per space. Mr Burke acknowledged that comparisons 1, 2, 3 and 6 reflected leases on FRI terms, whereas comparisons No.s 4 and 5 were both on IRI terms and most, if not all, areas of his comparison properties were calculated on a gross internal (GIA) basis. Mr. Burke also explained that his "effective rent" analysis calculations represented passing rents adjusted to allow for negotiated and agreed rent-free periods with the respective landlords. He also stated that in this case, the IRI leases could be adjusted to a FRI basis by adding an equivalent charge of €0.50 per sq. ft. or €5.38 per sq. metre. A difference of views arose between the parties with respect to the actual lease rental amount passing on his comparison no. 1 premises, Mr. Burke believing and submitting that the correct computation was €205 per sq. metre on the office areas and €450 per car space p.a.

Mr. Burke further advanced his case arguing that the subject Santry area is a secondary office location in the context of the Dublin office market, though convenient to Dublin Airport, the M1 and the M50. He declared that the area is characterised by a mix of developments including older industrial and modern industrial units, various showrooms, retail outlets, car parks, residential accommodations, and is considered a busy and congested area, though he also acknowledged that No. 2 Northwood is not of itself in a congested area. He maintained that, on the relevant valuation date, office landlords in the Santry Demesne area would have offered generous incentives to tenants to occupy space such as the subject, referring again to the Aer Arann premises within the adjoining property at No. 1 Northwood. He explained that the subject property is larger than many offices in the area where demand has traditionally been for much smaller units. He also indicated that there was very little demand for corporate office headquarters facilities such as the subject in the area, particularly as during the relevant period, areas such as Sandyford in Dublin 18 were gaining in popularity for such purposes with prospective new tenants aided in no small part by the promise of Luas line services. He also suggested that the subject property was competing with various other office schemes within the Fingal rating authority area which had already been completed and better established, such as the Woodford and Airside developments, and suggested that in order to address such competitive forces, landlords in the immediate area of the subject would have had to incentivise their headline rents during the past 5 or more years by offering rent-free periods of up to 18 months, as evidenced by the lease to Aer Arann in No. 1 Northwood.

Mr Burke argued that the Commissioner had excessively erred by applying a valuation of €250 per sq. metre on the office areas of the subject property and €650 on each of the parking spaces, particularly when compared with market evidence. He stated that, in his extensive experience, he had never identified a market letting at such a level per sq. metre for office space during 1995 in the Fingal County area. Referring to Section 48 of the Valuation Act 2001, he argued that the values as defined were not adopted or employed by the

Commissioner in this case and that the valuation applied is inflated and not supported by comparable evidence, whereas conversely, he argued his valuation was. Extrapolating from his schedule of "effective rents" from his 6 comparison properties, Mr. Burke concluded that the appropriate levels to determine the correct and fair valuation were €145 per sq. metre on the first and second floor office areas of the subject property and €450 per annum on each of the 27 car parking spaces, all taken together resulting in a total valuation calculated by him in the amount of €157,875.

Cross-examination

In response to queries raised by Mr. Hicks with respect to earlier requests of the Valuation Office to the appellant for information pertaining to the lease, Mr. Burke, with the consent of the respondent, introduced and handed in copy correspondence addressed to Mr. Hicks c/o the Valuation Office dated 26th November, 2009, providing confirmation of lease details on the rent free period of two years granted by the landlord to the appellant on the subject property.

Mr. Burke confirmed that the "effective rents" outlined in the above referenced schedule of comparisons in his précis were determined by reference to area measurements calculated on a GIA basis. Mr. Hicks indicated that the accepted norm for the calculation of office areas in rating practice requires the NIA basis. As noted earlier, Mr. Hicks and Mr. Burke had different views on the actual rent passing on the appellant's comparison No. 1 property. Mr. Burke would not agree with the respondent's contention that the Swords Business Park comparison No. 2 property is not a corporate office park but rather an office within an industrial area. Mr. Hicks reminded Mr. Burke that in a previous exercise, Mr. Burke had acknowledged such a view and that his comparison No. 2 property was located in a less attractive situation and was much more difficult to locate than the subject, though both parties acknowledged that neither had actually visited same. Mr. Burke again disagreed with Mr. Hicks' view on the floor area of the third comparison property at Lakeview House. The respondent insisted that the NIA of same was approximately 500 sq. metres smaller than submitted (at 4,895 sq. metres) and was served by 167 parking spaces and not 198 as outlined in the précis. Mr. Burke did not see merit to a notional application of a quantum allowance which might apply to this property, having regard to the fact that it is approximately five times larger than the subject relevant property. Referring to the appellant's comparison No. 4, Mr. Hicks again challenged Mr. Burke's floor area figure, adding that the NIA of this property was 256 sq. metres or 100 sq. metres smaller than that outlined in his précis. Mr. Burke would not accept Mr. Hicks' opinion that both his comparisons 4 and 5 were located within an industrial estate.

Mr. Burke would not agree that comparison property No. 6 in the Swords Business campus was, as Mr. Hicks described, "an industrial development in an industrial location" with the property being a converted factory building originally constructed about 40 years ago. Mr. Hicks asserted that the subject, circa 300 sq. metres' office space, was a recent extension to an existing complex.

Mr Hicks contended that if a quantum allowance were to be considered appropriate for the benefit of the appellant's comparison No. 3 property with an NIA of circa 4,900 sq. metres, when compared with the subject property, then, he claimed, it might be conversely argued that the rates per sq. metre applied on comparisons 4, 5, and 6 might reflect a reverse quantum burden when assessing an appropriate rate per sq. metre for the subject.

Respondent's Case

Mr. Christopher Hicks took the oath, adopted his précis as his evidence-in-chief and reviewed his submission. Mr. Hicks confirmed that the broad description of the premises' location, features and finishes were as described by Mr. Burke earlier. He clarified that the area of the subject premises was calculated at 1,005 sq. metres on a NIA basis but that its gross letting area amounted to a total of 1,336 sq. metres. He noted that the passing rent as set out in the lease was €294,100 which he analysed as the equivalent of €277 per sq. metre on the office area and €600 each p.a. on the 27 car spaces. He then referred to the Lisney/DIT research publication dated September 2009 headed "Rental Indices" which contained various analyses and graphs, summary economic conditions statements, overall market summaries, retail, office, industrial sector performance statistics and various rental values recorded in each of those sectors over approximately a four-year time span commencing June 2005, and further broken down by reference to areas or subsectors in the Dublin region.

The respondent's position was that, having regard to the foregoing indices and in particular the rental performance statistics of office rentals within the northern suburbs of Dublin indicating that rental levels had fallen from a base level of 100 in September 2005 to a level of 85.83 in June 2009, or a reduction factor of about 15%, the passing rent in 2009 on the subject relevant property should devalue to an equivalent figure of €342,654 to make relative the rental value to the valuation date of September 2005.

By so doing, Mr. Hicks concluded that an analysis of the foregoing would lead to an equivalent rate per sq. metre on the office space as of September 2005, determined on an NIA basis of €325 per sq. metre and €600 each p.a. on each of the car spaces.

Comparisons

The respondent provided details of two comparison properties in his précis (attached hereto as Appendix 2), as follows:-

Comparison No. 1

Referring to the Aer Arann office premises on three floors, together with the associated 39 car spaces, located at the adjoining 1 Northwood Avenue, Santry, Mr. Hicks advised that there is a 20-year lease term which commenced in May 2007, with reviews on each fifth anniversary.

Mr Hicks stated that the 2007 passing rent of €395,298 p.a. on that office equated to an amount of €383,152 as at September 2005, applying the Lisney/DIT reasearch analysis. He added that:-

a) the passing rent analysed at the equivalent of €216 per sq. metre and
b) the car spaces at €600 each p.a.,
c) the total Aer Arann office area was much larger than the subject and
d) the ground floor area would be ranked by valuers at a lower euro rate per sq. metre when compared with the upper floors.

By applying the Lisney/DIT index to the rental levels on the office and adjusting the GIA to NIA equivalent, the resultant rate per sq. metre to calculate the RV of €406,000 in his calculations amounted to €230 per sq. metre on the three floors of office space and €600 each p.a. on the surface car parking spaces. This RV figure he added was 3% less than the passing rent when backdated to 2005.

Comparison No. 2

This was the ground floor office demise of Beazley Group Ltd., located within the subject building at No. 2 Northwood Avenue. Mr. Hicks again engaged in the exercise of analysing the passing rent, which commenced on a lease term of 9 years and 11 months on 1st June, 2009, with break options available at the end of years 3 and 5. The GIA of the office floor was 555 sq. metres producing a rent of €118,167 p.a. and 10 car spaces were also provided for at a rent of €600 each p.a. The respondent calculated the equivalent NIA of 466 sq. metres at a rent of €241 per sq. metre which he then made relative to September 2005 by again employing the Lisney/DIT research, which produced a resultant rate per sq. metre on the office area of €283. He noted, however, that the RV on that property was set by reference to the NIA of 466 sq. metres at a level of €250 per sq. metre plus 10 car spaces at €650 each, producing an RV of €123,000, or 11% less than the passing rent backdated to September 2005.

Mr. Hicks concluded his direct evidence by asserting that based on all of the foregoing material as set out in his précis and adduced at the hearing, a fair and reasonable rateable valuation on the subject would result by applying a rate per sq. metre on an NIA basis of €250 on the subject office area and €650 each on the 27 car spaces, which would result in a total RV of €268,800 rounded to €268,000. He explained that valuation sum is 22% less than the passing rent, if backdated to 2005 levels p the Lisney/DIT research statistics. To support his position further, he added that the foregoing RV was approximately 9% greater than that applied on the Aer Arann offices, which included the ground floor in its demise, and stated that the rent on the subject back-dated per the aforementioned statistics would result in a rate per sq. metre of more than 50% of the backdated rent on the Aer Arann premises.

Cross-examination

In response to questions from the Mr. Burke and the Tribunal, Mr. Hicks replied as follows:-

a) He did not know the mix or basket of properties or the scale and scope of the sample used to develop and publish the above mentioned Lisney/DIT rental indices in September 2009.
b) He was not aware of any other similar data produced for the same areas at or about the same time.

c) He could not confirm if the area described as "North Suburbs" of Dublin in the referenced material included or excluded some or all of the Fingal Co. Council and/or other Rating Authority areas in the Lisney/DIT Report.
d) He was not aware until advised by Mr. Burke at the hearing that an agreement for lease was reached on the Aer Arann premises at 1 Northwood Avenue in the second quarter of 2006, though the lease commenced from May 2007. Mr. Hicks confirmed that the valuation was not appealed and that the airline operator is the sole occupant of that building.
e) He advised that the reduction factor to adjust the GIA of his second comparison property, occupied by Beasley Management, to the NIA equivalent was 16%.

Findings & Conclusion

The Tribunal thanks the parties for the quality of their submissions and arguments in the instant case and in particular the manner in which they answered questions and clarified issues addressed during the course of the hearing.

The Tribunal finds in the subject case that:-

1. The appropriate basis of measurement to calculate the floor area of the subject relevant property for rating purposes is as set out in the IAVI/SCS Measuring Practice Guidance Notes of December 2006, i.e., Net Internal Area (NIA).

2. The parties agreed that the subject office area was 1,005 sq. metres (NIA) and had 27 car parking spaces.

3. Having regard to comparisons No.s 4 and 5 in the appellant's précis, the Tribunal would have considered the data provided by the appellant on those properties more useful if the rental analyses were carried out by reference to and adjusted to an FRI basis to remain consistent with practice and to evaluate and compare the data submitted on his other comparisons properties 1, 2, 3 and 6.

4. It would also have been very helpful if the parties had reconciled and agreed common floor area measurements in advance of the hearing on their respective submissions and had adjusted, where necessary, to NIA.

5. The Tribunal was not sufficiently convinced that so-called rent-free periods as means of inducement to encourage prospective tenants to commit to execution of office leases are

6. It is noted that details in relation to rent-free allowances, the scope and timing and other details pertaining to same provided by the appellant on the comparison properties 3, 4 and 5, were very limited and vague, which in turn rendered any consideration of the analysis of “effective rent” in the appellant’s submission potentially exposed to the risk of misinterpretation.

7. The premises occupied by Aer Arann in the neighbouring building No. 1, Northwood Avenue, was a common comparison to both parties and considered the primary comparator by each.

8. The Lisney/DIT rental research data appended to the respondent’s précis, while both useful and informative was nevertheless limited in value and the Tribunal considered it necessary to exercise considerable caution in applying any weighted value to support the respondent’s case due to the lack of confirmation available from the respondent on the scale, scope, nature, range and sample data relied upon by the researchers and reported in their published findings.

9. In the instant case, though useful as a guide, reliance on the application of statistical data from one, albeit credible, joint initiative, source, might be dangerous and potentially capable of challenge on the basis that such a position may be predicated on anecdotal rather than on empirical evidence and having the potential to be selectively interpreted by a reader by extracting universal data and seeking to apply a targeted specific objective for rating practice purposes only. A great deal of information on the passing rents, nature, location, age, occupancies and mix of the properties selected and how they were chosen by the researchers in their sample, would, in this Tribunal's view, be a prerequisite imperative to relying upon such published findings.

10. The Tribunal empathises with the challenges faced by both parties to this appeal to collate and analyse values applicable to office properties in the Fingal rating authority area as their task requires, particularly as the subject relevant property did not exist at the valuation date of September 2005, some four years prior to the conduct of the present exercise.

Determination

All of the foregoing considered, the Tribunal is of the view that a fair and reasonable valuation on the subject relevant property may be calculated as follows:-

1,005 sq. metres @ €225 per sq. metre	=	€226,125
27 car spaces @ €550 per space	=	€ 14,850
Total Valuation	=	€240,975
RV Say €241,000		

And the Tribunal so determines.