

Appeal No. VA11/5/010

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

Nutgrove Enterprise Park

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2165578, Office at Unit 2b, Nutgrove Enterprise Park, Nutgrove Way, Rathfarnham, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Aidan McNulty - Solicitor

Member

James Browne - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF DECEMBER, 2011

By Notice of Appeal dated the 13th day of June, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €36,600 on the above described relevant property.

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

"Valuation is excessive in comparison to the passing rents."

This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 6th day of October, 2011.

At the hearing the appellant was represented by Mr. John Algar, of rating consultants Bardon & Co. Ms. Triona McPartlan, BSc (Hons) Estate Management, a Valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation.

Prior to the commencement of the oral hearing and in accordance with the rules of the Tribunal, the valuers provided to the Tribunal and exchanged a copy of the written précis and valuation they proposed to adduce at the oral hearing. From the evidence so tendered and additional evidence introduced at the hearing, the following facts material to this appeal, emerged or are so found.

Nutgrove Enterprise Centre

Nutgrove Enterprise Park is a detached two storey building located adjacent to the Nutgrove Shopping Centre and close to the junction of Nutgrove Way and Barton Road. The building is of concrete frame construction with concrete block infill walls incorporating metal framed windows and a curved and insulated metal cladded roof. Internally the walls and ceilings have a smooth plastered and painted finish. The floors are of concrete construction at ground floor level and of timber construction at first floor level with a carpet top covering.

The Nutgrove building is sub-divided so as to provide 26 separate units of occupation with a common car park area for use by the various occupiers and their visitors. Eight of the units (3 of which are used as workshops) are at ground floor level, are self contained, with their own toilet facilities and have the benefit of direct access from the car parking area. The property concerned which is occupied by the County Enterprise Board, consists of three offices at ground floor level, together with a canteen and meeting room at first floor which is available to use of occupiers of the first floor units on request. Access to the accommodation at first floor level and the first floor units is via a common entrance lobby, lift and a staircase. Male and female toilet facilities are also provided at first floor level for use by the occupiers of the various units at first floor level and the occupier of the property concerned. Individual units at first floor level are located at either side of a shared corridor.

All of the units in the Enterprise Centre are occupied under separate four year licence arrangements which include the proviso that the annual licence fee be subject to review at the end of each year. Each licensee is responsible for rates and other usual outgoings, including the payment of an annual service charge to cover the costs incurred by the licensor in providing a range of common services, including the occasional use of the canteen and meeting room at first floor level. The annual service charge for the year 2005 equated to €3.28 per sq. metre. As part of his précis, Mr. Algar included a schedule of the licence fees (excluding service charge) payable for the year 2005 together with other relevant information. A copy of this schedule is set out below:

Unit Number	Valuation Office Area	Rate psm applied by the Valuation Office	Valuation following Appeal at 17 May 2011	2005 licence fee psm Less service charge	Description
1A	58.55	€25.00	€13,170.00	€149.92	FAS – Not rateable
1B	59.00	€25.00	€13,270.00	€149.92	Fas – Not rateable
2A	58.55	€175.00	€10,240.00	€173.42	Workshop
2B	162.90	€25.00	€6,600.00	€197.75	Subject Unit
3A	58.55	€175.00	€10,240.00	€173.42	Workshop
4A	58.55	€175.00	€10,240.00	€173.42	Workshop
7A	23.87	€25.00	€,370.00	€12.44	Office
8A	23.87	€25.00	€,370.00	€12.44	Office
9A	23.87	€25.00	€,370.00	€12.44	Office
10A	23.87	€25.00	€,370.00	€12.44	Office
12A	23.87	€25.00	€,370.00	€12.44	Office
14A	11.07	€25.00	€,009.00	€19.51	Office
16A	23.87	€25.00	vacant		Office
19A	23.87	€25.00	€,370.00	€12.44	Office
20A	23.87	€25.00	€,370.00	€12.44	Office

21A	18.81	€225.00	€4,230.00	€12.44	Office
BO -1	29.36	€225.00	€6,600.00	€209.75	Office
BO -2	30.84	€225.00	€6,930.00	€10.91	Office
BO -3	33.91	€225.00	€7,620.00	€10.87	Office
BO -4	31.59	€225.00	€7,100.00	€10.85	Office
BO -5	30.84	€225.00	€6,930.00	€10.91	Office
BO -6	33.91	€225.00	€7,620.00	€10.87	Office
BO -7	73.02	€225.00	€16,420.00	€43.17	Own Door Office
BO - 8	42.00	€225.00	€9,450.00	€43.11	Own Door Office
BO -9 (Gr)	73.02	€225.00	€16,420.00	€43.17	Own Door Office

Accommodation

The agreed accommodation of the property concerned, measured on a net internal area basis is as set out below:

Ground floor office –	103.36 sq. metres
First floor canteen & meeting room –	<u>59.54</u> sq. metres
Total net area	162.90 sq. metres

Licence Fee Payment

Mr. Algar in his evidence said the licence fee payable for the year 2005 was €197.75 per sq. metre exclusive of service charge, i.e. €32,213. The occupier of the subject property is also the manager of the entire Enterprise Centre.

Rating History

The property concerned was valued as part of the revaluation of all relevant property in the Dun Laoghaire Rathdown rating authority area pursuant to an order made by the Commissioner of Valuation under Section 19 of the Valuation Act, 2001. The relevant date

by reference to which every property in the rating authority area is to be valued under the provisions of Section 48 of the Act is 30th September, 2005.

In the first instance a valuation certificate was issued to the effect that it was proposed to enter the value of the property concerned on the valuation list in the sum of €45,600. Following representations the valuation was entered on the list at €36,600. Being dissatisfied the appellant lodged an appeal against this valuation to the Commissioner under Section 30 of the Valuation Act, 2001. The Commissioner affirmed the valuation of €36,600 and it is against this decision of the Commissioner that the appeal to this Tribunal lies.

The Appellant's Evidence

Mr. Algar, having taken the oath, adopted his written précis and valuation which had previously been received by the Tribunal and the respondent as being his evidence-in-chief.

In his evidence Mr. Algar contended that the proper net annual value of the property concerned was €34,200 calculated as set out below:

Overall – 1462.90 sq. metres @ €210 per sq. metre =	€34,209
Net annual value, say	€34,200

In support of his opinion of net annual value, Mr. Algar introduced one comparison details of which are contained in Appendix 1 attached to this judgment.

Mr. Algar, in his evidence drew attention to the fact that the Valuation Office had valued all the office units, including the property concerned, at a uniform level of €25 per sq. metre. Such an approach, he said, was not supported by the evidence of the actual licence fee being paid in 2005. An analysis of the licence fees in 2005, as set out in his schedule, showed that the overall levels for the offices at first floor level varied from €209.75 and €12.44 per sq. metre, whereas the three “own-door” units at ground floor level (BO-7, BO-8 & BO-9) were let at €43.11 or €43.17 per sq. metre. All of the above figures are exclusive of the service charge. Mr. Algar said that in his opinion the ground floor units enjoyed a better profile than those at first floor level and also had the benefit of direct access from the car park. These factors he said were reflected by the difference in the actual licence fees being paid. In regard to the property concerned, Mr. Algar said the valuation in this instance must take into account

the fact that the use of the canteen and meeting room was also available to the occupiers of the first floor units on request.

Under examination Mr. Algar said that the information in relation to the 2005 licence fees was provided to him by the managers of the Enterprise Centre. Mr. Algar said that submissions had been made by him in respect of all the units at representations stage and all relevant information in relation to the Enterprise Centre was made available to the Commissioner of Valuation at that stage. Mr. Algar confirmed that the subject property was the only unit in the Enterprise Park that was subject to an appeal to this Tribunal.

When asked about his comparison, Mr. Algar agreed that it was a two storey office building which formed part of a larger workshop complex. He agreed that in truth it was not a relevant comparison.

The Respondent's Evidence

Ms. McPartlan having taken the oath adopted her précis which had previously been received by the Tribunal and the appellant as being her evidence-in-chief.

In evidence Ms. McPartlan said that she considered the net annual value of the property concerned to be €36,600 calculated as set out below:

Offices – ground floor –	103.36 sq. metres @ €25 per sq. metre =	€3,256
First floor canteen & meeting room-	59.54 sq. metres @ €25 per sq. metre =	€1,396
Total		€6,652
Net annual value, say		€6,600

In support of her opinion of net annual value, Ms. McPartlan introduced three comparisons details of which are set out in Appendix 2 attached to this judgment.

In her evidence Ms. McPartlan drew attention to the fact that all her comparisons were ground floor units in the Nutgrove Enterprise Centre and were valued at the same rate (€25 per sq. metre) as the subject property. Ms. McPartlan said that the valuation so determined was supported by the fact that each of these units was occupied under a separate licence arrangement to the property concerned subject to a licence fee equivalent to €42 per sq.

metre. Appeals in respect of all the units in the centre have been made to the Commissioner of Valuation and in each instance no change was made to the valuation. The appellant in this case was the only occupier to appeal to the Tribunal.

Under cross-examination Ms. McPartlan confirmed that her three comparisons were self-contained ground floor units and to that extent were different from the property concerned and the units at first floor level. When asked why she had made no allowance in her valuation of the property concerned to reflect the fact that the property concerned was at two levels and the accommodation at first floor level was available to the occupiers of the first floor units on request, Ms. McPartlan said she did not consider these factors to be material to the extent that they would have an effect on rental value.

Findings

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

1. This appeal is against a valuation made by the Commissioner of Valuation on foot of a revaluation of all relevant property in the Dun Laoghaire Rathdown rating authority area under the provision of the Valuation Act, 2001. Section 48 of the Act sets down the basis upon which each relevant property is to be determined. Section 48 states as follows:

“48.—(1) The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.

(2) Subsection (1) is without prejudice to section 49.

(3) Subject to section 50, for the purposes of this Act, “net annual value” means, in relation to a property, 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. The relevant valuation date for the revaluation in accordance with Section 20 of the Act is 30th September, 2005.
3. The parties presented their evidence and made their submissions in a very professional manner. It is clear from the evidence so presented that the only issue between them is whether there should be a difference in the rate per sq. metre attached to the ground floor units (BO-7, BO-8 & BO-9) and the subject property.
4. Having considered the evidence the Tribunal finds as a matter of fact that the ground floor office units are materially different to the property concerned in a number of respects, as the property concerned – Firstly, it is at two levels and shares a common entrance lobby with the occupiers of offices at first floor level. Furthermore, the canteen and meeting room at first floor level which forms part of the property concerned is also available to others on request and lastly the toilets of the first floor level are also shared with the occupiers of the office units at this level. These are important factors which the hypothetical tenant envisaged under Section 48 would take into account when arriving at an estimate of rental value on the assumptions contained in Section 48. In the circumstances the Tribunal finds that the valuation of the property concerned should be assessed at less than the €25 per sq. metre as put forward by the respondent.
5. An examination of the licence fees payable in respect of the various office units, although not on all fours with the hypothetical tenancy envisaged in Section 48, indicate that occupiers are prepared to pay a higher rent for the own door units at ground floor level.

Determination

Having regard to the foregoing the Tribunal finds that the valuation of the property concerned put forward by the appellant is fair and reasonable. Accordingly, therefore, the

Tribunal determines the net annual value of the property concerned in accordance with Section 48 to be €34,200 calculated as set out below:

Valuation

Ground floor offices	103.36 sq. metres @ €10 per sq. metre =	€21,706
First floor canteen & meeting room	59.54 sq. metres @ €10 per sq. metre =	<u>€12,503</u>
Total		€34,209
Net annual value, say		€34,200

And the Tribunal so determines.