

Appeal No. VA11/5/029

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

Dr. Robert Kelly

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2202971, Clinic at Floor 2, Suite 5, Concourse Building, Beacon Court, Sandyford, County Dublin.

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb

Deputy Chairperson

Brian Larkin - Barrister

Member

Mairead Hughes - Hotelier

Member

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

By Notice of appeal dated the 10th day of June, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €29,300 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. The hearing commenced on 19th October, 2011 and was adjourned immediately on foot of an application on behalf of the appellant. The hearing resumed on 25th October, 2011 at which time the appeal was struck out on foot of legal submissions by the respondent, with leave to apply for reinstatement of the appeal at the discretion of the Tribunal. The appellant subsequently applied for re-instatement of the appeal and the Tribunal, having considered the application, reinstated the appeal for hearing on 18th November, 2011. At the hearings the appellant was represented by Mr. Morgan Shelley BL on 19th October, 2011, and subsequently by Mr. Benedict O’Floinn BL. The appellant, Dr Robert Kelly, was present at the hearing on 18th November 2011. The respondent was represented by Ms. Rosemary Healy-Rae BL., instructed by Mr. Michael Collins, Solicitor of the Chief State Solicitor’s Office, and by Mr. Dean Robinson, BSc, (Hons) Surveying, a valuer in the Valuation Office. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

At issue

Quantum.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective and revised précis of evidence prior to the commencement of the ultimate hearing and submitted same to the Tribunal. The respondent had also exchanged his revised précis with addendum thereto, a copy of which was also provided to the Tribunal. At the oral hearings, both parties, having taken the oath, adopted their précis (and addendum) as being their evidence-in-chief.

This evidence was supplemented by additional evidence given either directly at / or between the listed hearing dates 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 relevant property comprises a medical clinic suite located on the second floor of the Concourse Building, Beacon Court, Sandyford, Dublin 18. The unit consists of two private medical consulting rooms and a shared reception and kitchen area.

Location

The subject property is located on the Blackthorn Road, in close proximity to the Beacon Clinic Building, the Beacon Hospital, the Beacon Hotel and is in the general vicinity of the mixed-use retail office residential development known as Beacon South Quarter. The property is situated c. 580 m from the M50 and approximately 1.9 km from the N11.

Services

The subject relevant property is served with mains power, water, telephone, storm and foul sewer.

Tenure

The interest in the property is freehold .

Floor Area

The agreed floor area, measured on a Net Internal Area (NIA) basis, is as follows:

Clinic	48.84 sq. metres
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Valuation History

June 2010: A proposed Valuation Certificate (proposed) was issued with a valuation of €39,000.

July 2010: Representations followed, made by Dr. Robert Kelly. The valuation was reduced to €29,300.

February 2011: An Appeal was lodged with Commissioner of Valuation and the valuation was unchanged at €29,300 following consideration of this First Appeal.

June 2011: An Appeal was lodged with the Valuation Tribunal on 13th June, 2011.

Opening Submissions

Mr. Benedict O’Floinn, BL, summarised the position of the appellant by confirming that the valuation on the List of the subject property amounts to €29,300 based on a rate of €600 per sq. metre applied by the Commissioner. His client was seeking a reduction in the valuation to a sum of €12,900 based on a rate of €64 per sq. metre. He then advised that the respondent, in determining the value of the subject property, was relying on “agreed” values with various agents who had represented clients on other properties, which values, he stated had not been challenged or contested through the appeal process of the Valuation Tribunal and accordingly, in his view, reliance on such reflected a “lack of safety” in the evidence proffered by the respondent.

He summarised the dispute between his client and the Commissioner of Valuation as a quantum issue resulting from what he considered to be flawed methodology and values relied upon by the respondent ranging from €300 to €600 per sq. metre. He contended that in the instant case, the subject property should be rated at a level close to the lower end of the scale to make the valuation relative to other common properties. He added that the Beacon complex continues to suffer from a large overhang of available and never occupied floor space and further suffers from inability to let same which he indicated had a self-evident effect on rental values at the Concourse Building.

Ms. Healy-Rae, on behalf of the respondent, provided an outline of her client’s approach and basis of valuation in the instant case. She contended that her client complied fully with all of the pertinent provisions of the Valuation Act, 2001 and that the valuation was determined on the subject relevant property, having regard to all available information. She advised that there was a lack of available rental evidence in and about the area of the Concourse complex for the period of September 2005 but that the valuation was fully supported by the agreements and a range of values established for medical units at Rockfield, Blackrock Clinic, the Clinic building at Beacon and lastly, the only other occupied medical unit on the same second floor of the Concourse building, namely Comparison Property 1 in her client’s précis of evidence.

Appellant’s Evidence

Dr. Robert Kelly took the oath, adopted his précis as his evidence-in-chief, and provided the Tribunal with a review of his submission.

He referred to seven comparison properties, rental details of which are attached as Appendix 2 to this judgment. The rental details he cited included those for three offices in Sandyford, as follows:-

- 1) Unit 1B, Bracken Business Park.
- 2) Part Ground Floor, Heather House and
- 3) Part Second Floor, Heather House.

Dr. Kelly advised that the foregoing properties were the subject of short lettings of 4 years and 9 months each, commencing during 2005 and ranging in area from circa 210 sq. metres, to 126 sq. metres and 277 sq. metres respectively. The appellant informed the Tribunal that the rents being paid by these tenants were €187.25 per sq. metre, €204.52 per sq. metre and €205.76 per sq. metre respectively.

Dr. Kelly's fourth comparison property was a suite on part of the first floor of Beacon Hall, Beacon Court, Sandyford, comprising c. 90 sq. metres on a 21 year lease, which commenced in November 2005 at a rent of c. €23 per sq. metre with a break clause available to the tenant to be exercised at his discretion, at the end of year five.

His fifth and sixth comparison properties were also suites within Beacon Hall, being parts of the Ground Floor comprising circa 172 sq. metres and circa 182 sq. metres respectively for shorter terms of 4 years and 9 months and 3 years, respectively with rent commencement dates of January 2008 and December 2008 respectively. He again cited the rents paid on these lettings at approximately €23 per sq. metre.

The final comparison referred to in his précis was identified as Suite 35, within the Beacon Court complex at Sandyford. He noted that this particular letting was for a much larger floor area of c. 1,636 sq. metres, leased for a term of 25 years which commenced in November 2003, at a rental rate again of €23 per sq. metre and including 22 car parking spaces.

Based on the foregoing evidence, Dr. Kelly's opinion was that the subject relevant property, Suite 5, in the Beacon Concourse building comprising 48.84 sq. metres should be fairly

valued for rating purposes at a level of €264 per sq. metre which would result in a valuation, adjusted on the hearing date by him, of €12,893.76 say €12,900.

Dr. Kelly stated that:-

- i. He and other parties purchased the freehold interest in the subject unit Suite 5 during 2006 at a figure which he advised exceeded €1 million.
- ii. Just one floor of the subject Concourse Building is dedicated to the provision of medical services and such services are limited to the provision of medical examination and consultation functions and no medical interventions or procedures are conducted within the subject unit.
- iii. The sale or letting of the medical suites on the second floor of the Concourse Building since their launch in 2005 has been very disappointing with just two suites currently occupied and in use.
- iv. The adjoining Clinic Building, unlike the Concourse, is wholly dedicated to the provision of medical services on all floors and is effectively fully occupied.
- v. The Clinic, as a centre for medical consultants, is considered to be a far more desirable location and facility to that of the adjacent Concourse Building. Dr Kelly argued that the Clinic Building is also larger and much better established as a medical services complex. He added that the consultants in the Clinic Building derive a greater advantage over their colleagues in the Concourse Building by reason of the cross-referral of patients to a large number of specialists within the former complex.
- vi. He equated the nature of the Concourse building in some ways to the Rockfield medical services building at Balally, Dundrum, but added that the VHI Swiftcare Clinic at Rockfield provides treatment to patients on a walk-in basis without the requirement for referrals from General

Practitioners, the latter in contrast with the facilities and services provided at the Concourse Building.

- vii. The Blackrock Clinic and its large number of Consultant clinics, all within its campus, is in his view a much superior and accordingly a more valuable location due in great part to its long established reputation, profile, range of services offered and the privileges exclusively available to the consultants who maintain their clinics or rooms facilities at the Blackrock Clinic campus.

Cross-examination of the Appellant

In reply to questions raised by Ms. Rosemary Healy-Rae Dr Kelly stated that:-

- All of the suites of the subject Concourse Building include their own waiting rooms and each one has the benefit of an appropriate medical services Planning Permission granted.
- The Concourse building is approximately 80 metres from the Clinic Building and circa 100 metres from the Beacon Hospital.
- The purchase price of circa €1.2 million paid included all fixtures and fittings over and above the developer's building and sales specification.
- His comparisons 1, 2 and 3 inclusive, noted above, are all offices and not medical suites.
- He was not familiar with the interior or lease details of Comparison No. 1, as had he relied upon information provided by the Beacon Court Management Group.
- He was not aware that each of his first three comparison properties were valued on the Valuation List at a level of €260 per sq. metre and acknowledged that all three were much larger floor areas than the subject.

- Further, he was not aware that his comparison properties 4, 5 and 6 were valued as part of one single property, comprising in total of circa 893 sq. metres, under one property number on the Valuation List, at a level of €370 per sq. metre and had not appreciated the significant difference in floor area between the foregoing medical suites and the subject property circa 49 sq. metre unit.
- Similarly, he acknowledged that his Comparison Property No. 7, ie., the Baxter's Suite, in use as a renal dialysis unit, in Beacon Court, comprising circa 1,636 sq. metres is substantially larger than the subject and further accepted that that particular unit generates an annual rental of €28,510 calculated not on the alleged area of 1,636 sq. metres but specifically on 1,248 sq. metres and accordingly rental is paid on the basis of €403 per sq. metre. In addition Ms. Healy-Rae advised that parking for 20 (not 22) spaces with this property is valued at €1,250 per space.
- He acknowledged that the purchase price paid by him and his family on the subject relevant property, including the cost of fittings, equated to an amount of approximately €24,500 per sq. metre. He did not acknowledge the relevance of Ms. Healy-Rae's declared sales comparison values for third generation offices in the Sandyford area during 2005, which she suggested sold within a range from €3,500 to €5,000 per sq. metre.

Respondent's Evidence

Mr. Dean Robinson took the oath and adopted his revised précis and addendum thereto, received by the Valuation Tribunal on the 19th October, 2011, as his evidence-in-chief.

The location, description, accommodation, floor areas and tenure details provided by the respondent were common case to those provided above by the appellant.

Mr. Robinson noted that it was difficult to find rentals for suitable office and medical units for the pertinent period of September 2005 in the Sandyford area. Accordingly, it was his view that the medical units at Rockfield, Balally, Dundrum, should serve as the reference point or benchmark for values with its established 'tone' of €400 per sq. metre.

He stated that the hypothetical tenant would be expected and would be prepared to pay a rental premium to lease a unit with appropriate medical services Planning Permission for a medical clinic or suite in a complex located in close proximity or adjacent to the Beacon Hospital.

Mr. Robinson explained that the valuation on the subject property, on appeal to the Commissioner of Valuation, was determined by reference to the value of comparable properties stated in the Valuation List in which the property appears.

He confirmed the details of the valuation history, as outlined above and then introduced the Tribunal to three comparison properties, (attached herewith as Appendix 3) and an additional five properties, (attached herewith as Appendix 4)

- His first comparison property of similar - size to the subject property - being Suite 1 within the same Concourse Building, is on the Valuation List valued at a level of €600 per sq. metre. Mr. Robinson added that the initial valuation placed on this property by the Commissioner was reduced by a sum of €9,600 to reflect a reduction in the rate per sq. metre from €800 to €600 and noted that the Planning on this unit is similar to the subject, identifying it as a Class 8 Medical Unit Permission.
- The Respondent's second and third comparisons, also medical units of circa 34 sq. metres and 67 sq. metres respectively located in the Clinic Building, Beacon Court and the Blackrock Clinic at Blackrock, were also on the List rated at a level €600 per sq. metre each. Mr. Robinson said that 28 clinics had been valued at Revaluation and agreed at €600 per sq. metre in the Beacon Clinic Building following negotiations with a rating valuation agent representing the occupiers there. He also stated that 38 units at the Blackrock Clinic were similarly valued at €600 per sq. metre by agreement also following negotiations with another agent.
- Mr. Robinson then provided details on three further comparison properties located at the Rockfield Centre, Balally. The first of these comparisons is a circa 350 sq. metre office unit, described as third generation, which is valued at €260 per sq. metre agreed at Representations Stage with the occupier's agent.

- His next two comparisons (nos. 4 and 5) were office suites or clinics, the first being a clinic valued at €300 per sq. metre with medical use planning permission and again agreed at Representations with a rating consultant acting for the occupier.
- The details of the next comparison property (no. 6) were set aside by the Tribunal as the valuation on same was contemporaneously the subject of another appeal, which had recently been heard by the Valuation Tribunal and for which the determination had not yet been made and published.
- His final two comparison properties (nos. 7 & 8) were located at The Mall at Beacon Court. The first of these was an office of circa 70 sq. metre valued at a level of €20 per sq. metre and the second approximately five times larger with an NIA of circa 233 sq. metres, the unit in this case being an eye clinic valued at a level of €70 per sq. metre.

Mr. Robinson explained that the foregoing details were provided to the Tribunal to portray a settled 'tone' for medical suites of €600 per sq. metre for units adjoining or in close proximity to and deriving a benefit from the facilities offered by adjoining hospitals, namely the Beacon Hospital and Blackrock Clinic. He further explained that a medical unit located some distance away from a hospital such as his fifth comparison property in the North Block of Rockfield Centre, fourth floor, though with the benefit of medical use planning, is valued at a level of €300 per sq. metre.

Mr. Robinson offered details on the manner in which the third generation office comparison properties were valued to highlight a premium when the same type properties are granted Planning Permission permitting medical uses.

Cross-examination of the Respondent

Responding to various questions raised by Mr. O'Flóinn and the Tribunal, Mr. Robinson stated as follows:-

- 1) In his opinion, procedure-based activities conducted within medical suites would not command a premium on the rate per sq. metre applied by the Commissioner for rating purposes and Mr Robinson explained that the rating hypothesis requires

the valuer to consider the value of the subject relevant property as “vacant and to let” with the most beneficial occupation in mind.

- 2) The primary distinction to be drawn between the Concourse and Clinic buildings was simply location.
- 3) He did not consider the medical procedures conducted within his Comparison No. 1 property (i.e. Suite 1, Concourse Building) as having any material influence on its valuation. Neither did he consider that its floor plan, aspect, sharing of a reception area or proximity to the lift serving the floor had any significant bearing on its valuation.
- 4) He acknowledged that the subject unit is positioned at the end of a corridor, but did not consider such to warrant any reduction in value.
- 5) He acknowledged that the Clinic Building is wholly devoted to medical uses and is fully occupied, but would not accept that it is qualitatively different to the Concourse Building.
- 6) He further acknowledged that though the Blackrock Clinic is a well established medical centre of fine reputation, his task was not to consider same in the context of commanding a premium; rather it was his task to value the property on the basis of it being vacant and available to let.
- 7) He would not agree with the proposition that there should be a significant difference in rent payable by doctors taking units in the Concourse Building when compared to the Blackrock Clinic and added that, in any event, when the Revaluation was conducted in the Sandyford area, there was a paucity of rental evidence available to be relied upon but in any event, the respondent is now satisfied that a “tone-of-the-list” has emerged for medical suites in Dun Laoghaire Rathdown on the basis of a significant number of valuation agreements reached with agents on various medical units at Rockfield, Blackrock and Beacon.

- 8) He agreed that there was a significant difference between offices and medical clinics at the Concourse Building and again drew attention to the levels of value applied to same ranging from €260 per sq. metre to €300 per sq. metre plus and compared same with the level of €600 per sq. metre currently applied to the subject.
- 9) He also advised that the Luas Green Line provides a very convenient public transportation service to Rockfield, whereas the Stillorgan Luas stop is approximately a 10 minute walk from the Concourse Building .

Closing Submissions by Mr. O' Floinn

He referred to Section 48(3) and Section 49(1) of the Valuation Act, 2001. He drew attention to what he considered to be the absence of a measure or test in the 2001 Act to allow for transition or some notional conduit or mechanism to bridge the steps to be taken in a Revaluation exercise by the valuer safely to arrive at a satisfactory so-called "tone-of-the-list". Mr. O'Floinn reflected on what might constitute a reliable "tone-of-the-list" having regard to the above-mentioned concerns. He contended that the respondent had erred in the first instance and effectively acknowledged same when the rate per sq. metre applied to the subject property and to other properties at Beacon and Blackrock Clinic was initially calculated by the Commissioner of Valuation at €800 per sq. metre, but following various representations and appeals, was reduced to €600 per sq. metre.

He queried how the original level of €800 per sq. metre had been set as the respondent had earlier declared that there was a paucity of rental evidence to be relied upon for medical units in the Dun Laoghaire Rathdown Rating Authority area. Mr. O' Floinn stated that the "tone-of-the-list" requires a common threshold of like properties and with that in mind he acknowledged that Rockfield serves as a useful comparator and also similar in many ways to the Blackrock Clinic. He noted that the Rockfield Centre provides for acute treatment without the necessity of a formal appointment. He added that the Beacon Hospital is an acute care facility, full treatment hospital and accordingly should demand a premium in rental rates over Rockfield, as should the Blackrock Clinic. He urged caution and care in the interpretation and application of Section 63 of the Valuation Act, 2001, as he expressed the belief that the respondent was erroneously using that provision as a shield.

Closing Submissions by Ms. Healy-Rae

Ms. Healy-Rae restated that the Commissioner of Valuation had exercised all of his duties under the Valuation Act, 2001 in establishing the valuation of the subject relevant property. She noted in particular that her client had fully satisfied all of the tasks imposed upon him to determine a fair and reasonable valuation of the subject relevant property, having regard to the “tone-of-the-list” or the value of comparable properties as required by Section 49(1) of the Valuation Act, 2001.

She considered the arguments with respect to “lack of safety” in relying upon the identified valuation data during the course of the hearing as unfounded concern lacking support and displaying an absence of understanding of both the rating hypothesis and the basis for determining a fair and equitable valuation. She referred to section 14 of the Valuation Tribunal determination **VA08/5/125- Marks & Spencer (Ireland) Ltd.**, which states the following :-

“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. Finally a stage will come – but only when all the appeal procedures under sections 30 and 34 are completed – when the tone of the list will finally become established and thereafter cannot be challenged. From this point onwards section 49 will come into play and rental evidence as such will be of lesser importance in the assessment process. Furthermore the valuation of each property currently in the list cannot be altered until the next revaluation under a new section 19 order is completed except in those instances where a revision of valuation under section 28 is carried out and it is found that a material change of circumstances as defined in section 3 has occurred”.

Findings & Conclusion

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at hearing.

The Tribunal finds that:-

1. It would have been helpful to the Tribunal if the parties had been in a position to provide market rental evidence for offices and offices upgraded to medical clinics in the relevant rating authority area for the relevant period of September 2005.
2. The arguments proffered by Counsel for the appellant with respect to his concerns on what constitutes reliable valuation data in the “transition” from the application of Section 48(3) to Section 49(1) of the Valuation Act, 2001 have been considered on a number of occasions in the past by the Valuation Tribunal and its view on same is well represented in the extract passage from **VA08/5/125 - Marks & Spencer (Ireland) Ltd.**, quoted above.
3. Though it appreciates the concerns of the appellant on values reached initially by the Commissioner of Valuation in the determination of value on the subject property, the remit of this Tribunal is to fulfill its statutory functions exclusively on matters of appeal before it.
4. The matter of gradation of values of medical clinics or suites by reference to their proximity to hospitals has been fully considered and the Tribunal believes that it is appropriate in the instant case to apply a premium on the rental value of a planning permitted medical clinic if the location of the latter benefits from proximity to a hospital and any privileges which may arise from same, for the benefit of its occupier.
5. This Tribunal is not satisfied that a rental premium should arise between similar medical clinics in similar locations where the only distinguishing features rest exclusively between the provision of examination and consultancy services to the patient and that of direct medical intervention or surgical or like procedures being conducted.

6. The tribunal is of the view that a building exclusively devoted to the provision of a wide range of medical consultancy services such as the Beacon Clinic Building and the Blackrock Clinic most particularly, with their high level of occupancies, should command a rental level for rating purposes quantitatively greater than a mixed-use building with limited medical use Planning Permissions granted therein, and displaying, as in the subject Concourse Building, a long sustained low level of occupancy.

7. The Tribunal recognizes that third generation office space, when granted Planning Permission for the provision of medical services, should command a rental premium.

Determination

All of the foregoing considered, together with all of the evidence submitted and adduced at hearing, the Valuation Tribunal calculates the valuation of the subject property as follows:-

Clinic 48.84 sq. metres @ €500 per sq. metre = €24, 420

Nav Say €24,400

And the Tribunal so determines.