

Appeal No. VA11/5/045

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

Bright Horizons Family Solutions

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2174597, Creche (Office) at Block C, Unit 7, Nutgrove Office Park,
Rathfarnham, Dublin 14

B E F O R E

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

Deputy Chairperson

Aidan McNulty - Solicitor

Member

Patrick Riney - FSCSI, FRICS, ACI Arb

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF JANUARY, 2012

By Notice of Appeal, dated 6th July, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €37,300 on the above described property.

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

"The valuation is excessive in comparison to the passing rent and the tone of the list."

The appeal proceeded by way of an oral hearing, which took place at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 12th day of October, 2011. The appellant was represented by Mr. John Algar, BSc (Hon) Surv, Bardon & Co., Rating Consultants & Valuers, and the respondent was represented by Ms. Theresa O’Sullivan, BSc, MIAVI, Valuer in the Valuation Office.

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 at the hearing 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 relevant property comprises a two-storey, end-of-terrace building and is described as a modern office unit situated within a purpose-built office park. The property has change of use planning permission and is in use as a crèche. The ground floor accommodation includes two open activity and play areas, a sleep room, toilet, kitchen and a small office. First floor accommodation contains two large open activity areas, a staff room and two toilets. Surface car parking facilities are located to the front of the property.

The building is constructed of part double skin clad walls, part smooth rendered walls, concrete floors, aluminium windows and a flat roof. The interior comprises smooth plastered walls, tiled ceilings and floors covered with carpet and wood laminates.

Location

The relevant property is located just off Nutgrove Avenue in Rathfarnham, Dublin 14, in an established office park adjacent to Nutgrove Shopping Centre, approximately 7 kilometres south of Dublin city centre.

Services

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

Tenure

The property is understood to be held under a 9 year 9 month lease commencing in September 2004 at an average annual rent of €31,370 per annum, reflecting the 6 month rent-free period. The rent was stepped for the first five years, as follows:-

Year 1: €29,900 per annum (six months rent free)
 Year 2 & 3: €33,600 per annum
 Year 4 & 5: €37,350 per annum

Floor Areas

The agreed floor areas, measured on a net internal area (NIA) basis, are as follows:-

Block	Level	Use	Area sq. metres
C7	0	Crèche	97.50 sq. metres
C7	1	Crèche	<u>99.00 sq. metres</u>
Total:			196.5 sq. metres

Valuation History

June 2010: A valuation certificate (proposed) was issued with an RV of €37,300.

October 2010: Representations were lodged to the Commissioner of Valuation. Following consideration, the valuation certificate issued unchanged.

February 2011: Appeal submitted to the Commissioner of Valuation. Following consideration of grounds of appeal submitted, the valuation remained unchanged after First Appeal.

July 2011: The appellant appealed the decision to the Valuation Tribunal by Notice of Appeal dated 6th July, 2011.

Appellant's Case

Mr. John Algar took the oath, adopted his précis as his evidence-in-chief, attached hereto as Appendix 1, and provided the Tribunal with a review of his submission. The appellant's consultant valuer made the following points:-

- Firstly he corrected page 1 of his précis to note that the agreed accommodation areas of 97.5 sq. metres on the ground and 99 sq. metres on the first floor were measured on a net internal rather than gross internal area basis, as erroneously indicated in his submission.
- He then provided rental evidence on the subject noting that the first 5 year term of the lease averaged rental payment by the tenant in the amount of €1,370 per annum, reflecting a rent-free allowance period and the stepped rent. The consultant also acknowledged that the average rent figure outlined on page 3 of his précis at €30,900 was an error. He then confirmed that the rent was reviewed in August 2009 at €37,350 per annum and concluded that the valuation of the subject property was determined by the Commissioner at €37,300, by applying levels of €200 and €180 per sq. metre on the ground and first floors respectively.

Mr. Algar contended that the subject property does not have any profile to Nutgrove Avenue as it is situated behind housing. He added that there is no direct access to the property from Nutgrove Avenue and access is provided only via a cul-de-sac roadway off Meadowpark Avenue and such route is shared with users of various retail warehouses and an ESB industrial complex. He advised the Tribunal that the relevant crèche is operating at less than optimum levels because: it fails to attract attention due to lack of profile; its poor location; use of a first floor within the unit; poor vehicular access and facilities for drop-off and collection of children; and the limitation of only three designated car parking spaces. He further contended that the first floor accommodation, accessed via an internal staircase, would be viewed critically by a hypothetical tenant. He emphasised that the very limited outdoor play and recreation area, devoid of sunlight for long periods and its inefficient triangular layout, would also be perceived as unsatisfactory by the hypothetical tenant when compared with modern purpose-built crèches with their spacious large outdoor play and recreational areas.

Appellant's Comparison Properties

Mr. Algar cited two properties as comparisons for the foregoing, namely Giraffe Childcare at Belarmine, Stepside, and Giraffe Childcare in the Icon Building situate within the South County Business Park at Leopardstown, details of which are included in the attached Appendix 1.

Both of these premises are larger than the subject at 289 sq. metres and 472.2 sq. metres respectively and assessed by the Commissioner of Valuation at €200 per sq. metre. Mr. Algar argued that both comparison properties enjoy considerable profile, operate on a ground floor area only, have excellent access facilities, ample parking, good drop-off and collection arrangements and benefit from outdoor play areas of 260 sq. metres and 255 sq. metres respectively. He also stated that the two comparison properties derive a benefit arising from their respective designs and sizes, as well as from their propinquity to the market they serve. For the record he corrected his précis to acknowledge that in both cases the valuation was established by the Commissioner of Valuation and the occupiers did not seek representations or file appeals. Mr. Algar noted that the size and the numbers of children permitted to attend the comparison properties offered the operators of those crèches economies of scale, which would be reflected in their capacity to pay higher rents than the subject.

Cross-examination of the Appellant

In response to questions put by Ms. O'Sullivan and the Tribunal, Mr. Algar stated that:-

- i. He was not aware of the number of staff employed at his comparison no. 1 property.
- ii. There are possibly up to 20 parking spaces available at the Giraffe Crèche at Belarmine.
- iii. Locals residing at Belarmine and Parkview, both in the Stepside area, may avail of the crèche facility for their children and, accordingly, parking may not be of primary consideration there.
- iv. There is insufficient dedicated parking at the subject property and as it is located at the end of a cul-de-sac, there may be some additional safety issues associated with vehicles turning during drop-off and collection periods.

- v. The valuation calculated by him on the subject relevant property equated to the passing rent during 2004.

Respondent's Case

Ms. Theresa O'Sullivan took the oath and adopted her précis as her evidence-in-chief, attached hereto as Appendix 2. The location, description and floor areas of the subject relevant property were common case. Ms. O'Sullivan noted that the subject property is a modern office unit situated in a purpose-built office park albeit with a planning change of use granted to allow the operation of a crèche. She maintained that the car parking facilities were ample there and considered the absence of passing traffic not as a burden but possibly as an advantage. Ms. O'Sullivan acknowledged that the play area is not ideal because of its configuration, size and location.

She outlined the basis of valuation on the subject property, which she said was determined by reference to comparable properties stated in the Valuation List in which they appear, complying with Section 48(3) of the Valuation Act 2001. She confirmed the valuation history as set out above, and advised that the levels applied by the Commissioner of Valuation on the ground and first floor of €200 per sq. metre and €180 per sq. metre respectively were consistent with and reflected those set on a large number of comparable crèche properties in the area, four of which she cited in her précis.

During the course of the hearing Ms. O'Sullivan accepted that her comparison property no. 3, namely Giraffe Childcare in Block D, ground floor, Cherrywood Science & Technology Park, should be ignored and deleted from the evidence. Her three remaining comparison properties were Bright Horizons Family Solutions at Leopardstown Retail Centre, Ticknock Crèche Partnership at Springvale Hall, Ticknock, Sandymount and Giraffe Childcare, at the Icon Centre in the South County Business Park. This last comparison property was common to both parties. Ms. O'Sullivan reiterated that the ground floor areas of her comparison properties were valued at a level consistent with the subject at €200 per sq. metre and that the first floors in the two comparisons, namely Bright Horizons in Leopardstown Retail Centre and Ticknock Crèche were valued at a level of €180 per sq. metre, both according with the rate set by the Commissioner on the first floor of the subject. The Respondent explained that the valuations on the comparison properties were established on foot of the Revaluation Order in the Dun Laoghaire Rathdown rating authority area and based on rental evidence

provided by the occupiers of those properties. She added that representations were made only on the Bright Horizons Family Solutions property, her comparison no. 1.

Ms. O'Sullivan explained that she had been tasked to value approximately 100 crèche properties in the Dun Laoghaire-Rathdown area and of that number, fourteen occupiers had filed appeals to the Commissioner of Valuation and only three advanced appeals to be heard by the Valuation Tribunal. She asserted that the rates per sq. metre were now well established for crèches in the area, at the following levels:-

Ground Floor:	€200 per sq. metre
First Floor:	€180 per sq. metre
Second Floor:	€160 per sq. metre

She informed the Tribunal that a majority of crèches in Dun Laoghaire-Rathdown are located within converted dwellings and added that smaller crèches are frequently valued for rating purposes, ground floor, at €250 per sq. metre.

Ms. O'Sullivan expressed the view that profile for a crèche is not critical to its successful operation as crèches do not rely upon exposure to passing traffic to trade successfully. She concluded her direct evidence by requesting the Tribunal to consider Section 63 of the Valuation Act 2001 and affirm the valuation on the subject property.

Cross-examination of the Respondent

Responding to various questions asked by the Tribunal and the appellant, Ms. O'Sullivan replies as follows:-

- i. There are only three designated parking spaces fronting the subject unit.
- ii. Mr. Algar's comparison property no. 1 is next to the Leopardstown Shopping Centre and Dunnes Stores but not visible from the shopping centre.
- iii. She did not know if the appellant's comparison no. 1 property is served by a large playground area or the number of permitted child spaces there, but she confirmed that it is fitted with a lift.

- iv. The subject property is at a better location in her opinion than the foregoing comparison as she considered it to be in close proximity to a well established and settled residential community.
- v. She acknowledged that the appellant's comparison no. 1 crèche property may be operating close to its maximum utilisation level, though assisted in that particular case by its profile.
- vi. She agreed that the appellant's comparison no. 2 was purpose built with high rent being paid, albeit between related parties, but added that she considered it to be similar in type to the subject by reason of its proximity to a shopping centre.
- vii. She stated that the crèches in the subject rating authority area, whether purpose built or converted offices, were valued on the ground floor on the basis of €200 per sq. metre.
- viii. She acknowledged that her comparison no. 4 property, which was a common comparison with the Appellant, is permitted a maximum of 115 occupants and has a large play area outside.

Summation by the Appellant

Mr. Algar concluded his direct evidence by confirming that his précis and valuation was prepared and submitted in accordance with Section 48(3) of the Valuation Act 2001. He confirmed that the rent on the subject was paid pursuant to an arms' length FRI lease, which was stepped and included a rent-free period. He expressed the view that the respondent should have given more consideration to the location and type of this particular crèche, which he considered inferior in many respects to both his comparison properties and those submitted by the respondent.

Summation by the Respondent

Ms. O'Sullivan requested the Tribunal again to affirm the valuation of the subject property in accordance with Section 63 of the Valuation Act 2001. She confirmed that every consideration was taken into account including the location, type, nature and facilities of the subject including floor layouts, parking provisions, play areas etc. when the valuation was established by the respondent. She claimed that there was no basis to support the appellant's request for €75 per sq. metre to be applied to the ground and €135 per sq. metre to the first floor, adding that the appellant had not provided rental evidence to support his claim.

Ms. O’Sullivan repeated that she had valued approximately 100 crèche properties in the area and concluded that the valuation of the subject was in line with other similar crèches located in Dun Laoghaire Rathdown.

Findings

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

The Tribunal finds that:-

1. The evidence would support the argument that the location of the subject property, as detailed above, is markedly different in many respects to those of the comparison properties submitted by both parties.
2. Access to the first floor of the subject property is provided by means of an internal stairs whereas Giraffe Childcare i.e. the common comparison property located in the Icon building has the benefit of operating entirely on the ground floor.
3. The Tribunal is satisfied, based on the evidence and arguments adduced at the hearing, that the operation and consequent value of the subject is compromised in part by its diminished profile.

Determination

The foregoing considered, the Tribunal concludes that the levels per sq. metre assessed on the subject property should be adjusted and accordingly the valuation computed as follows:-

<u>Block</u>	<u>Level</u>	<u>Area sq. metres</u>	<u>Rate per sq. metre</u>	<u>NAV</u>
C7	0	97.50 sq. metres @	€180 per sq. metre =	€17,550
C7	1	99.00 sq. metres @	€162 per sq. metre =	€16,038
Total NAV:				€33,588

NAV Say €33,600

And the Tribunal so determines.