Appeal No. VA11/5/048

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

V.H.I Board **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 515128, Retail (Shops) at 35-36 George's Street Lower, Dun Laoghaire, County Dublin.

B E F O R E

Niall O'Hanlon - BL **Deputy Chairperson**

Damian Wallace - QFA, Grad Dip **Member**

Patricia O'Connor - Solicitor **Member**

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

By Notice of Appeal dated 5th July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €87,800 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:
"The valuation is based on retail rental values and the subject property in its existing layout could not be let as such." "Over stated areas." "Comparison with assessments of 1-2 Anglesea Buildings, Upper Georges St, Hibernian - 93 Georges St Lower & 35 Upper Georges St. Dun Laoghaire."

The appeal proceeded by way of an oral hearing which was held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 13th day of October, 2011. At the hearing the appellant was represented by Mr. Philip Chambers FSCS, FRICS, Dip Project Mgt TCD and the respondent was represented by Mr. Liam Diskin BSc (Hons) Property Management & Investment, BSc (Ord.) Property Valuation & Estate Agency of the Valuation Office.

At the hearing both parties adopted their précis which had previously received by the Tribunal as being their evidence-in-chief.

Valuation History

Pursuant to Section 19 of the Valuation Act 2001 the property was the subject of revaluation as one of all rateable properties in the Dun Laoghaire Rathdown Rating Authority area. The Valuation Order specifies the 30th day of September 2005 as the valuation date.

The proposed Valuation Certificate was issued on the 15th June 2010 with a proposed rateable valuation of €98,100. The Final Valuation Certificate issued on the 10th day of December, 2011 with a valuation of €87,800. An Appeal was lodged to the Commissioner of Valuation on the 8th February, 2011 following which the valuation remained unchanged. On the 6th July, 2011, a Notice of Appeal to the Valuation Tribunal was lodged against the decision of the Commissioner.

The Property

The subject property is a semi-detached property used as an office, located at 35 and 36 Lower Georges Street, Dun Laoghaire, Co. Dublin, with dual frontage onto Georges Street Lower and side access via a pedestrian laneway on one side.

Accommodation

The areas for valuation purposes were agreed as follows:

Block 1 – 4 Ground Floor Office 127.25 sq. metres

Block 5 – 9 Ground Floor Stores	31.35 sq. metres
Block 10 – 13 First Floor Office	131.42 sq. metres

Tenure

Freehold

The Appellant's Evidence

Mr. Chambers took the oath and adopted his précis as his evidence-in-chief and identified the main issue as the deficiency in location of the subject property in that it is located opposite a hospital. He felt that this resulted in a different pattern of retail trade to that of the respondents' comparisons. Mr. Chambers confirmed that areas had been agreed but wished to put it on the record that he took issue with the quality of the accommodation in the subject property, pointing out that a significant amount of the accommodation in the subject property was made up of what he termed "obstructed space". He cited in particular the fact that the subject property was made up of two buildings adapted by the occupiers for their own use some years ago, resulting in the requirement for an entrance ramp, the steps going down into the fire door used as a barrier between the two units and the set of steps going up into the garage / storage area at the rear. Mr. Chambers stated that in his opinion the respondent's Comparison Number 2 (Sherry Fitzgerald) was a much more commercial building than the subject property. He also stated that the respondent's Comparison Number 1 (Aviva) had a more distinctive frontage and clear cut office / administration space, as opposed to the subject property. Mr. Chambers stated that the zoning method was not the most suitable method of analysis for this property and it was his opinion that the most suitable method was to relate rents to others in the street and adjust for disadvantages.

Mr. Chambers contended for an NAV of €69,280, an analysis of which was set out in detail in his précis. Mr. Chambers did not provide any comparisons for his contention but stated that he had arranged a letting of the first floor of the subject property in 2004 at a rent of €215 per sq. metre on a 4 year 9 month lease. He felt that the remaining space in the subject property would compare with that.

Cross Examination of the Appellant

On questioning from Mr. Diskin, Mr. Chambers agreed that the subject property was located in front the entrance to Bloomfields Shopping Centre but he did not agree that this was of benefit to it as he felt that the effect of the pedestrian flow was simply to channel people to Bloomfields. Mr. Chambers agreed with Mr. Diskin that it was the appellant's choice to suspend the ceilings and raise the floors in some parts of the subject property but insisted that this requirement was imposed on the appellant's by the physical restrictions of the subject property.

Mr. Chambers pointed out in respect of the respondent's Comparison No. 2 (Sherry Fitzgerald) that this property has an active double frontage, an excellent return frontage to Georges Street, decent ground floor and first floor accommodation and was deemed to be a landmark building. The respondent confirmed that the rent of this property was €63,000 per annum in 2008.

Mr. Chambers stated as his opinion that he felt that that some parts of the ground floor of the subject property could be valued at a bit more than €275 per sq. metre. Mr. Chambers felt that the rear of the subject property was inferior to the lower level and that an appropriate rate would be €175 to €200 per sq. metre. Mr. Chambers referred to the proposed amended valuation on page 3 of his précis. It became apparent that a figure of 14.39 sq. metres had been excluded from Mr. Chambers's calculations and following discussion between the parties, it was agreed that this figure was to be split between building A and building B as follows:

Building A- 92.58 sq. metres plus 7.19 sq**.** metres = 99.77 sq. metres
Building B- 82.13 sq. metres plus 7.20 sq. metres = 89.33 sq. metres

The Respondent's Evidence

Mr. Diskin took the oath and adopted his précis as his evidence-in-chief. He confirmed that the subject property was initially valued on a zoned basis but that once he had visited the property, he agreed with Mr. Chambers that this was not the most suitable method of valuation and the valuation was subsequently recast on an overall basis, as follows:

Ground Floor Offices: 127.25 sq. metres @ 400 per sq. metre	=	€50,900
Ground Floor Stores 61.85 sq. metres @ €100 per sq. metre	=	€ 6,185
First Floor Office 131.42 sq. metres @ €250 per sq. metre	=	€32,855
Total NAV		€89,940

Notwithstanding that this method of valuation produced a NAV of €89,940, Mr Diskin contended for the valuation determined at first appeal stage, i.e. €87,800. (This is the valuation currently in the Valuation List for the subject property and the valuation against which the appellant has appealed.)

Mr. Diskin agreed with the Tribunal that Section 48 of the Act focused on NAV and while he was influenced by comparable properties, the only rental evidence he had was in respect of the upper floor of the subject property. He further agreed that the rent of a building was an ideal reflection of its' value on the valuation date but in the circumstances he felt that he had to look at the overall scheme of things. He further stated that in a situation such as this where there was no rental value, then he would look at evidence in respect of other rentals and adapt accordingly. He made the point that a revision was easier in that they would take into account two or three comparisons down the street which would reflect the tone of the list. Mr. Diskin further stated that he had considered properties which had valuations based on market evidence collected at the time.

Mr. Diskin presented 4 comparisons for consideration by the Tribunal and commented on those comparisons as follows:

1. Comparison 1: Aviva Direct Ireland Ltd., 93 Georges Street Lower, Dun Laoghaire, Co. Dublin.

Mr. Diskin stated that this is the nearest high street property to the subject property but accepted that this was a slightly higher profile area than the subject property. On questioning from the Tribunal as to the lack of comparable rental evidence to that of the subject property, Mr. Diskin pointed out that there was a limited number of high street office buildings available to use as comparables as the zoning method was suitable for the vast majority of comparable properties.

2. Comparison 2: Sherry Fitzgerald, 35 Georges Street Upper, Dun Laoghaire, Co. Dublin.
   This is situated in a lower profile area. The net annual value in September 2005 was €51,849. Mr. Diskin felt that the subject property was in a better location.

3. Comparison 3: Seamus Monaghan and Partners, 66 Georges Street Upper, Dun Laoghaire, Co. Dublin.
   The subject property was in a superior location to this. Mr. Diskin felt that the property itself was a slightly more desirable property to rent and there was no rental evidence available on this comparison.

4. Comparison 4: The Tailoring Co., First Floor, 86 Georges Street Lower, Dun Laoghaire, Co. Dublin.
   A 4 year 9 month lease was signed in or around the date of the revaluation order, the 30th September 2005. Mr. Diskin stated that the respondents had applied a level of €250 per sq. metre on the vast majority of above the shop offices, such as this one.

Mr. Diskin went on to state that the subject property was at the heart of Dun Laoghaire's commercial centre and was further of the opinion that the subject property had a good profile with side access which he described as very accessible and adaptable.

Cross-examination of the Respondent

On cross-examination Mr. Diskin confirmed that once it became apparent that the zoning method was not suitable, he did not want to compare the subject property to other retail properties as a lot of properties in the vicinity were not comparable as they were zoned. When questioned about possible allowances for the subject property, Mr. Diskin agreed that the Comparison No. 1 had a better pedestrian flow but again stated that the subject property had a better profile. He accepted that parts of the office accommodation in the subject property were poorer quality but he felt that this had been reflected in his valuation. Mr. Diskin was also of the opinion that if the rear garage / storage area at 30.55 sq. metres were to be treated solely as a garage, then an appropriate value would be €3,000. He accepted Mr. Chambers' point that the respondent's comparison 4 was occupied by a repairs/tailoring business as opposed to an administrative office but stated again that the value of over-the-shop offices in the centre of Dun Laoghaire was set at €250 per sq. metre regardless of the use. Mr Diskin felt that there was no indication that rents had changed much between 2004 and 2005.

Both Mr. Chambers and Mr. Diskin made brief closing submissions.

Findings

Having considered all the evidence, the Tribunal finds as follows:

1. Section 20 of the Act provides that the revaluation order made under Section 19 shall specify one date by reference to which the value of every relevant property shall be determined. In relation to the Dun Laoghaire Rathdown Rating Authority area the valuation date is the 30th September 2005.

2. The Tribunal has previously clearly set out its views on the principles to be applied to a revaluation under Section 19 of the Valuation Act 2001 in **VA08/5/125 - Marks & Spencer's (Ireland) Limited v Commissioner of Valuation**, stating at paragraph 12 of that judgment "*that in the circumstances of revaluation under Section 19, that the valuation of "every relevant property" is to*

3. Section 48 (3) specifically states that "S*ubject 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"*.

4. Section 48 (1) states that "*the value of the 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*". As stated in **VA09/1/022 - Lifestyle Sports Ltd v Commissioner for Valuation** at paragraph 4 of that judgment "*revaluation is based on rental evidence under Section 48 (1)"*.

5. The Tribunal notes the paucity of rental evidence provided for properties comparable to the subject property within the subject's rating area.

6. The Tribunal notes that the areas of the subject property were adjusted and agreed as follows:

Block 1 – 4 Ground Floor Office	127.25 sq. metres
Block 5 – 9 Ground Floor Stores	31.35 sq. metres
Block 10 – 13 First Floor Office	131.42 sq. metres

7. The Tribunal accepts the appellant's evidence that the subject property is of inferior quality in terms of accommodation when compared with the comparisons provided, given the physical limitations of the building. Having said that, the Tribunal accepts that the subject property is situated in a better location than Comparison No. 2 but not in as good a location as Comparison No. 1.

Determination

Having considered all the evidence and submissions, the Tribunal considers that a fair and equitable assessment of valuation of the subject property is as follows:

Ground Floor Offices 127.25 sq. metres @ €350 per sq. metre	=	€44,537.50
Ground Floor Stores 31.35 sq. metres @ €100 per sq. metre	=	€ 3,135.00
First Floor Offices 131.42 sq. metres @ €215 per sq. metre	=	€28,255.30
Car Park Space	=	€ 1,750.00
Total		€77,677.80

NAV say €77,000

And the Tribunal so determines.