

Appeal No. VA11/5/063

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

Tony Browne

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2166637, Office (3rd Generation), Suite 11, The Mall, Beacon Court, Blackthorn Road, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Tony Taaffe - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF JANUARY, 2012

By Notice of Appeal dated the 11th day of July, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €103,000 on the above described relevant property.

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

"The layout & size of the unit & the additional office space developed in Sandyford from the September 2005 date to the date the property was entered on the list in December 2010."

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 22nd day of November, 2011. At the hearing the appellant was represented by Mr. Conor Ó Cléirigh FSCSI, FRICS of Conor Ó Cléirigh & Company. Ms. Fiona Quinn, BSc ARICS, a valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation. 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 and additional oral evidence from the expert witnesses at the oral hearing the following facts relevant and material to the property concerned were either agreed or are so found.

At Issue

Quantum

The Property Concerned

The property which is the subject of this appeal is a three-storey “own door” type office building in an internal court yard development on The Mall of the Beacon Court development scheme. The Beacon Court development is a substantial commercial and residential development built in a number of phases and includes the Beacon Private Hospital, the Beacon Hotel and the Beacon Clinic.

Beacon Court is located within the Sandyford industrial estate at the junction of Blackthorn Road and Blackthorn Drive about 10km south east of Dublin’s City Centre. The development and the surrounding area is well serviced by public transport including the Luas green line, and the M50 arterial motorway is close by.

Accommodation

The agreed accommodation measured on a net internal area (NIA) basis are as follows:

Offices/Ground Floor 90.80 sq. metres

Offices/First Floor 105.90 sq. metres

Offices/Second Floor 105.90 sq. metres

Total area 302.60 sq. metres.

Five car parking spaces at basement level are included as part of the property concerned. Internally the office accommodation has a smooth plastered and painted wall finish, in the

ceiling, concrete floors with a carpet top finish. Double-glazed window units are provided throughout. Toilet and canteen facilities are provided at all three levels of the stairwell. The property does not have a lift. All main services are connected and a combined air-conditioning and heating system is provided through ceiling mounted units. It was agreed that The Mall has been built and finished to accord with current market demands for modern office accommodation of high quality.

Tenure

The property is held under a long-term lease arrangement which provides for the payment of an annual service charge to cover an agreed proportion of the costs incurred by the superior lessor for providing a range of common services.

Rating History

The property was valued as part of the revaluation of all relevant property in the Dun Laoghaire Rathdown rating authority area on foot of a Valuation Order made by the Commissioner of Valuation under Section 19 of the Valuation Act, 2001. In accordance with the order, the net annual value (NAV) of each property in the rating authority area was individually determined in accordance with Section 48 of the Act. The specified valuation date by which the value of each property is to be determined was the 30th of September, 2005.

On the 15th of June, 2010 a valuation certificate (proposed) was issued to the fact that it was proposed to value the property concerned in the sum of €103,000. The appellant made representations in relation to this proposal but to no avail and in due course a certificate was issued confirming the NAV of the property as originally determined. An appeal to the Commissioner of Valuation was lodged in accordance with section 30 of the Valuation Act. However, the valuation remained unchanged as a result of this appeal. The appellant, being aggrieved at the Commissioner's decision, lodged an appeal to this Tribunal under Section 34 of the Valuation Act.

Appellant's Evidence

Mr. Ó Cléirigh, having taken the oath, adopted his précis and valuation which had previously been received by the Tribunal and the respondent, as being his evidence-in-chief. In his evidence Mr. Ó Cléirigh contended that the proper valuation of the subject property in accordance with section 48 of the Valuation Act was as set out below:

| | | | | |
|--------------------|------------------|---|-------------------|---------------------|
| Offices (3 Floors) | 302.6 sq. metres | @ | €12 per sq. metre | = €64,151.20 |
| 5 cars | | @ | €1,000 per space | = <u>€ 5,000.00</u> |
| | | | | Total = €69,151.20 |

NAV Say €69,000

Mr. Ó Cléirigh said that he had based his valuation of the property concerned having regard to rental values of similar office accommodation at Beacon Court (€265 per sq. metre) less an appropriate downward adjustment of 20% to allow for subsequent physical changes in the locality. In support of his opinion of NAV, Mr. Ó Cléirigh introduced two comparisons, details of which are set out in Appendix 1 attached to this judgment.

In further evidence Mr. Ó Cléirigh said that the property concerned was currently available to let at €13,000 per annum on a floor by floor basis and that tenants had been agreed in relation to the second floor accommodation at this level but the lease had not yet been signed.

Mr. Ó Cléirigh confirmed that he accepted that the property had to be valued having regard to rental levels prevailing at the 30th September, 2005 but contended that regard must also be had to prevailing market conditions that existed in December 2010 when the property was valued.

At 2010 it was clear that a substantial change had taken place in the Sandyford location between 2005 and 2010 leading to a dramatic increase in the quantity of office accommodation available. In 2005 he said the amount of space available was 19,432 sq. metres whilst in 2010 it was 54,253 sq. metres. Mr Ó Cléirigh said rental levels prevailing in 2005 reflected the then current supply and demand situation of the market at the time. If the supply in 2005 was in the order of 54,000 sq. metres as it was in 2010, this would have had an adverse effect on rental levels; somewhere in the order of at least 20%.

In his précis Mr. Ó Cléirigh included a copy of the judgment in relation to a case decided by the Lands Tribunal in England: - Barlow (H) & Sons Limited v Wellingborough Borough Council and James (Valuation Officer); Others v Same (LVC/814-822/1979). When questioned about its relevance in regard to this appeal, Mr. Ó Cléirigh said he was not relying upon it but merely introducing it for information purposes as it dealt with the effect on the

values of a number of shops in a parade by the erection of a large shopping precinct close by post the relevant valuation date.

Under cross-examination Mr. Ó Cléirigh agreed with Ms. Mullins that all office units in the mall were valued at a uniform level of €320 per sq. metre regardless of size, as borne out by her comparisons 1,3,4 and 5. It was agreed that there had been a number of lettings in the Beacon Mall vicinity after September 2005 and indeed right up to the present time.

When questioned about his comparisons, Mr. Ó Cléirigh agreed that the Beacon Mall occupied a better office location than Heather House. He also agreed that the area of these offices as stated by him were greater than those contained in the valuation records by some 10-12% and this would have the effect of increasing his rate per sq. metre by the corresponding amount.

Respondent's Evidence

Ms. Mullins, having taken the oath, adopted her précis which had previously been received by the Tribunal and the appellant as being her evidence-in-chief. Ms. Quinn contended for a NAV of €103,00, calculated as set out below:

| | | | | |
|----------------------|-------------------|---|--------------------|------------------|
| Offices First Floor | 90.80 sq. metres | @ | €320 per sq. metre | = €29,056 |
| Offices First Floor | 105.90 sq. metres | @ | €320 per sq. metre | = €33,888 |
| Offices Second Floor | 105.90 sq. metres | @ | €320 per sq. metre | = €33,888 |
| Car Spaces 5 | | @ | €1,250 per space | = <u>€ 6,250</u> |
| | | | | Total = €103,082 |

NAV say €103,000

In support of her opinion of NAV Ms Quinn introduced five comparisons, details of which are set out in Appendix 2 attached to this judgment. Four of Ms. Quinn's comparisons are located on the mall and were all valued at the same rate per sq. metre. In only one instance (comparison no. 3) was the valuation questioned at representation stage when no change was made. The owner at this stage was represented by a well-known rating consultant and as it turned out no further action was taken.

Ms. Quinn said the valuation as it stands was individually determined following an analysis of all available open market information of comparable properties in the vicinity. To date the Commissioner of Valuation had considered the grounds of appeal put forward by the appellant and had regard to the values of comparable properties as contained in the valuation list. In the end the valuation of the property concerned was affirmed at €103,000.

Under cross-examination Ms. Quinn said that in her opinion there was an emerging tone of the list and accordingly it was in order to have regard to the properties similar in all respects to the property concerned whose values had not been challenged at any stage in the revaluation process. Representations had been made but no changes made in the valuation. Ms. Quinn agreed that her comparison no. 4 was the most relevant in that it was an offices building laid out over three levels as was the subject. Alas she was unaware that this building was the subject of an inter-party lease arrangement. Ms. Quinn said she had no interim lease in this regard other than that the initial rent in May 2002 was €90,123 per annum. She agreed that such lettings were not fully reliable; it would not in any event have changed her opinion of the NAV of the property in the sum of €81,200.

In response to further questions from the Tribunal, Mr. Ó Cléirigh agreed that the value of the property concerned had been determined by reference to rental allowance prevailing at or about September 2005. Ms. Quinn agreed rental values probably increased from 2005 to 2008 and from that point onwards had sharply declined. Ms. Quinn said that she did not consider it appropriate to value the accommodation at the first and second floor levels at a rate per sq. metre lower than that applied to the ground floor. As far as The Mall was concerned, she said, all office accommodation was valued at a uniform rate per sq. metre with no allowance for size or location, be it ground, first or second floor level. Ms. Quinn said that she was aware that there was a greater stock of office accommodation in this location in 2010 than there was in 2005.

Findings

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

1. This appeal is against the valuation made by the Commissioner of Valuation in respect of the property concerned as part of the revaluation of property in the Dun

Laoghaire Rathdown rating authority area. The valuation of each property was individually assessed on the basis set down in section 48 of the Valuation Act, 2001 which 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 specified valuation date in accordance with section 20 of the Act is the 30th September, 2005.
3. In accordance valuation practice, the onus of proving that the valuation as determined by the Commissioner of Valuation is incorrect lies with the appellant.
4. It is common case that the property concerned offers good quality office accommodation and is capable of being sublet on a floor by floor basis. It is also common case that the development is well served by public transport and is located conveniently to the M50 arterial motorway.
5. The Tribunal has carefully considered all of the details of the comparisons introduced by both parties and attaches most weight to those located in The Mall and in close proximity to the property concerned. In this regard the valuations of these properties were calculated on the basis of €320 per sq. metre and such levels were supported by comparable evidence. In this regard the Tribunal acknowledges that the rent in respect of Suite 9 (Ms. Quinn’s fourth comparison) must be treated with some degree of caution. However the rest of Ms. Quinn’s comparisons are well supported by reputable evidence. The Tribunal attaches little weight to Mr. Ó Cléirigh’s

comparisons in so far as Heather House is located in what is predominately an industrial location. Furthermore the relevant details introduced by Mr. Ó Cléirigh in relation to these properties were to some degree imprecise and incomplete.

6. Having regard to the above the Tribunal has come to the conclusion that Mr. Ó Cléirigh, despite his best efforts, has not succeeded in bringing forth evidence or argument of sufficient strength to warrant a reduction in the valuation of the property concerned as determined by the Commissioner of Valuation.

Determination

The Tribunal affirms the valuation of the property concerned in accordance with section 48 of the Valuation Act to be €103,000.

And the Tribunal so determines.