

Appeal No. VA11/5/093

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

VHI Swiftcare

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2182588, Clinic at Unit 13, Rockfield Medical Campus, Balally,
Dundrum, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Michael F Lyng - Valuer

Member

Thomas Collins - PC, FIPAV, NAEA, MCEI, CFO

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF DECEMBER, 2011

By Notice of Appeal dated the 19th day of July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €13,000 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:
"The valuation is excessive, inequitable."

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 2nd day of November, 2011. At the hearing the appellant was represented by Mr. Terry Devlin, BSc, MSCSI, MRICS of O'Donnell Property Consultants. Ms. Maeve Diamond, BSc (Hons), MRICS, MSCSI, Dip Arb, 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, Mr. Devlin and Ms. Diamond forwarded to the Tribunal and exchanged a précis of the evidence and valuation which they proposed to adduce at the oral hearing. From the evidence so tendered and additional evidence received orally at the hearing the following material facts were established or are so found.

The Property Concerned

The property concerned which is used as a VHI Swiftcare clinic is located on the ground floor of what is known as Block 13, Rockfield, a large mixed-use development at Balally, Dundrum, Dublin 14. The property is located adjacent to the Luas stop at Balally and close to the Dundrum Town Centre development.

Block 13 is one of two interlinked multi-storey office buildings built in or about 1998. In May 2005 planning permission was obtained for a change of use from permitted office use to health clinic at ground, first, second and third floor levels of Block 13 subject to seven conditions. In February 2007 planning permission was obtained for a change of use from offices to use for the provision of medical services in respect of floors four and five of Block 14.

The VHI Swiftcare clinic provides "walk in" medical care for minor illnesses and injuries available to members of the VHI and the public alike. It is agreed that the accommodation which is provided to a very high standard of finish and fit-out provides a reception area, patient lounge, six consulting rooms, two clinical rooms, an x-ray room, ultra-sound room, plaster room, nursing treatment room, two clinical rooms and associated male and female toilet and changing areas, staff rooms, administration offices and toilets and stores. Access to the clinic from the car park is via an access lobby which serves all floors in Block 13. Entrance to the lobby area, which is above car park level, is by way of three/four steps and a

ramp to facilitate entry by disabled persons. Seven car parking spaces at the entrance to the clinic have been reserved solely for those patients visiting the clinic.

The area of the property concerned measured on a net internal area basis is agreed to be 515 sq. metres and there are 6 car parking spaces at lower ground level.

Tenure

At the hearing a copy of the lease under which the property is occupied was made available to the Tribunal. A perusal of the lease indicates that the demised property is held under a 20 year lease from 7th November, 2005 at an initial yearly rent of €15,800.

Rating History

As part of the revaluation of all relevant properties in the Dun Laoghaire Rathdown County Council rating authority area the net annual value of the property concerned was initially assessed at €157,100. At Representations Stage the valuation was increased to €213,000. Following an appeal to the Commissioner of Valuation in accordance with Section 30 of the Valuation Act, 2001 the valuation remained unchanged at €213,000. The appellant being dissatisfied with the Commissioner's decision lodged an appeal to this Tribunal.

The Appellant's Evidence

Mr. Devlin, having taken the oath, adopted his written précis which had previously been received by the Tribunal and the respondent as being his evidence-in-chief. In evidence Mr. Devlin contended that the net annual value of the property concerned should be €62,000 calculated as set out below:

Clinic 515 sq. metres @ €300 per sq. metres	=	€154,000
Car spaces, 6 @ €1,250 per space	=	<u>€ 7,500</u>
Net annual value		€62,000

In support of his opinion of net annual value, Mr. Devlin introduced 3 comparisons, details of which are contained in Appendix 1 attached to this judgment. He said that the fit-out of the clinic cost approximately €10,000 and it was agreed between the parties to the lease that the landlord would make a contribution of 50% towards the cost by way of a loan, which would be repaid by the tenant as part of the rent payable under the lease. The appellant had advised

him that the loan repayment equated to €42,900 per annum, thus leaving the actual rent payable to be €172,900. Mr. Devlin also advised the Tribunal that the owners of the Balally Partnership “as the landlords” were also directors of the appellant company; so to that extent the lease was between connected parties.

Under cross-examination Mr. Devlin confirmed that his Comparison No. 1 (floor 4-Block 14) was mainly in office use. When asked if he had agreed the net annual value of Suite 29-32, Beacon Court (Ms. Diamond’s Comparison No. 4) which devalued at €600 per sq. metre, Mr. Devlin agreed but said that this property was not truly comparable to the property concerned, as it formed part of the Beacon Hospital development. The subject property on the other hand, he said, was located in a mixed-use development without the added advantage of being part of a development which provided a private hospital and all the services associated therewith. Mr. Devlin said that for the same reason, Ms. Diamond’s Comparison No. 3, (suites at the Blackrock Clinic) “was not comparable to the property concerned.” Asked about his Comparisons Nos. 1 & 2, Mr. Devlin agreed that the medical suites in Block 14 were valued at €300 per sq. metre. He also agreed that office accommodation in the same building was valued at €260 per sq. metre so that planning permission for medical purposes attracted a premium of approximately €40 per sq. metre. Nonetheless, Mr. Devlin said that there was no good reason to value the property concerned at €400 per sq. metre when units in similar use in Block 14 were valued at €300 per sq. metre. When asked by the Tribunal if the rent payable under the lease was €15,800, Mr. Devlin agreed. He further agreed, that on the face of it, the rent payable was on the basis of the accommodation in its fitted out state ready for occupation as a medical clinic. Mr. Devlin also agreed that no other unit of occupation in the Rockfield development had the benefit of reserved car parking, in addition to those spaces which formed part of the demise. In answer to further questions from the Tribunal, Mr. Devlin said that the difference in rental of the property concerned, with the benefit of its current fit-out, would be in the order of 20% more than if the property had been rented in shell condition.

The Respondent’s Evidence

Ms. Diamond, having taken the oath, adopted her written précis and valuation which had previously been received by the Tribunal and the appellant as being her evidence-in-chief. Ms. Diamond stated that, in her opinion, the net annual value of the property concerned was €13,000 calculated as set out below:

Clinic 515 sq. metres @ €400 per sq. metre	=	€206,000
Car spaces, 6 @ €1,250 per space	=	<u>€7,500</u>
Net annual value		€13,500
NAV (rounded)		€13,000

In support of her opinion of net annual value, Ms. Diamond introduced 4 comparisons, details of which are contained in Appendix 2 attached to this judgment.

In evidence Ms. Diamond said that she was the valuer at revaluation stage when the net annual value of the property concerned was initially assessed as €157,100, equivalent to €290 per sq. metre. At Representations Stage she was provided with details of the lease under which the property was occupied and in the light of this the NAV was increased to €13,000. At Appeal Stage the valuation was affirmed in the light of the rent being paid and having regard to the valuation of other properties of a similar use to the property concerned. The latter approach, Ms. Diamond said was in line with the sentiment expressed by the Tribunal in its judgment in the appeal **VA08/5/219 - Marks & Spencer**.

Under cross-examination Ms. Diamond agreed that the original use of the property concerned was as office accommodation and that the demise included 6 car parking spaces. In relation to her comparisons, Ms. Diamond agreed that Comparison No. 1 was subject to an appeal to this Tribunal and hence had to be considered as being an unreliable comparison. In regard to her Comparison No. 2, Ms. Diamond agreed that it was in the same category of use as the property concerned and valued at a sq. metre rate of €300. Ms. Diamond went on to say that the subject property was superior to this property in a number of respects. Firstly, it was located in a building which was solely given over to medical use whereas the comparison was in a building where most of the space was in office use – Secondly, it had the benefit of 7 dedicated car parking spaces at the front for its patients and thirdly, it benefited from a better quality fit-out.

When questioned about her Comparisons No. 3 & 4, Ms. Diamond agreed that these properties would be of particular interest to the consultants and others engaged in medical practice, by virtue of the fact that they were located adjacent to private hospitals whose services would be available to the occupiers of these suites. It was for this reason, she said,

that the suites at the Blackrock Clinic and the Beacon are valued at €600 per sq. metre. Ms. Diamond also pointed out that the valuation of the Beacon Court suite (Comparison No. 4) had been agreed with a staff member of O'Donnell Property Consultants.

When asked by the Tribunal how she could substantiate the valuation of the property concerned at €400 per sq. metre as against €300 per sq. metre for the medical units in Block 14, Ms. Diamond answered that there were three factors to take into account, the first being that Block 14 was mixed-use whereas Block 13 was solely in medical use. Secondly the standard of finish and fit-out was superior and more extensive than those in the other medical suites and thirdly, the added advantage of car parking spaces at the front. In her opinion each of these factors warranted an uplift of approximately 11%. When asked by the Tribunal if such uplifts were warranted, Mr. Devlin said that in his opinion an uplift of around 10% more than €300 per sq. metre would be more appropriate.

Findings

The Tribunal considered all the evidence and arguments adduced by Mr. Devlin and Ms. Diamond and finds as follows:

1. Firstly, it should be said that the expert witnesses put forward their evidence in a clear and concise manner and in accordance with good professional practice.
2. It is common case that the property concerned affords medical and clinical accommodation to a very high standard of finish and fit-out. It is also common case that under rating law the property concerned is to be valued in the state that it stands - *rebus sic stantibus*.
3. In this case the property concerned is occupied under a lease at an initial yearly rent of €215,800 with a commencement date of 7th November, 2005, which is very close to the Section 20 date of 30th September, 2005. Due to the fact that the initial rent to some extent includes a financial contribution made by the landlord towards the cost of the fit-out, the rent so agreed must be treated with some degree of caution. It would also appear that there may be a connection between the landlord and the tenant so that also would lead the Tribunal to exercise caution when considering the rent as reliable evidence.

4. In regard to the comparison evidence, the Tribunal attaches little weight to the Blackrock and Beacon Court assessments as they are medical suites attached to well known private hospitals. Little weight is attached to Ms. Diamond's Comparison No. 1, in so far as it is subject to an ongoing appeal to this Tribunal. Ms. Diamond's remaining comparison, i.e. No. 2 (Ultralase Ireland unit) is a common comparison. It is also Mr. Devlin's Comparison No.1, a medical suite on Floor 4 of Block 14. The net annual value of this property was agreed at €300 per sq. metre "to reflect the medical use planning permission" by a consultant acting on behalf of the owners of Block 14.
5. The appellant's Comparison No. 2, the (Well at Work) unit which is at level 1 in Block 14, is also in medical use and is also valued at €300 per sq. metre.
6. Having considered all of the comparisons, the Tribunal attaches most weight to the Ultralase and the Well at Work units. It is common case that some upward adjustment to the €300 per sq. metre applied to these units is justified, in order to reflect the differences in fit-out, the fact that Block 13 is solely in medical use and the availability of reserved car parking spaces for patients. Ms. Diamond thought the upward adjustment should be in the order of 33% whereas Mr. Devlin felt that a 10% upward adjustment would be appropriate.
7. In relation to the rent paid under the lease, the Tribunal is of the view that this should be treated with some caution on two counts. Firstly, the rent reflects the landlord's contribution to the fit-out cost which has been annualised by some method or other within the initial rent at €42,800 per annum. Secondly, there also appears to be some connection between the landlord and tenant which may have been a factor when the rent paid on the lease was agreed.

Determination

Having regard to the foregoing, the Tribunal determines the net annual value of the property concerned to be as follows:

515 sq. metres @ €350 per sq. metre = €180,250

6 Car spaces @ €1,250 per space	= € <u>7,500</u>
	€187,750
Net annual value, say	€188,000

And the Tribunal so determines.