

Appeal No. VA11/5/094

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

**Advanced Radiology**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2196491, Office at Block 13, flr 1, Rockfield, Balally, Dundrum, County Dublin.

**B E F O R E**

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

**Deputy Chairperson**

**Mairead Hughes - Hotelier**

**Member**

**Damian Wallace - QFA, Grad Dip**

**Member**

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

By Notice of Appeal dated the 22nd day of July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €215,000 on the above described relevant property.

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

"The valuation is excessive"

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 7<sup>th</sup> day of November, 2011. The appellant was represented by Mr. Paul Kelly, MSCSI, MRICS, MCI Arb, Director of Mason, Owen & Lyons, Commercial Property Consultants, and the respondent was represented by Mr. Dean Robinson, BSc (Hons), 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 either directly at/or between the hearings 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 ground floor accommodation (also described as Floor One, Block 13) used for the purposes of a health clinic and trading as Advanced Radiology, within a building featuring ground, first, second and third floor levels, all located within Block 13, Rockfield. Rockfield is a mixed development of apartment and office blocks constructed in the early 2000s.

There are 5 surface car parking spaces located fronting the subject property for the use of the customers attending the subject clinic.

Block 13 of Rockfield is concrete framed construction with concrete floors and the external perimeter walls are finished with brick and double glazed aluminium framed windows. The subject floor is a raised access platform and internal walls are plaster finished and painted. Ceilings are suspended. The floor is partitioned to provide for a number of consultation and scanning rooms. Floors in the block are accessed via stairs and a passenger lift and male and female toilets are provided on each floor.

**Location**

The subject property is situated in Rockfield, approximately 200 metres from Dundrum Town Centre, circa 2 km from Junction 13 of the M50 and circa 7.5 km south of Dublin City centre. The Balally stop on the Green LUAS line is located adjacent to the property.

**Services**

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

**Planning**

Planning Permission Planning Reg. Ref. No. D05A/079 and Final Grant No. P/2075/05 was issued by Dun Laoghaire Rathdown County Council on 1<sup>st</sup> July, 2005, for a Change Of Use from previously permitted offices to Health Clinic at ground, first, second and third floor levels of Block 13, Rockfield.

**Tenure**

The property is believed to be held under a 20 year FRI Lease, commencing January 2006, at an initial rent of €25,555, with five year rent reviews. A capital inducement fund was paid by the landlord to the tenant upon execution of the subject lease.

**Floor Areas**

The agreed floor areas, measured on a Net Internal Area (NIA) basis, are as follows:-

Total area: 533.46 sq. metres

Plus 5 no. surface car parking spaces

At the commencement of the hearing, the parties advised the Valuation Tribunal that they had identified an error which suggested that the valuation was based on two rather than five parking spaces. The parties accordingly agreed that this clerical error would result in an adjustment upwards of the valuation of the subject relevant property from the €15,000 on the Valuation Certificate, to a figure of €19,000 to reflect the foregoing adjustment. Accordingly, such was the value now being appealed by the respondent to the Valuation Tribunal.

**Valuation History**

- June 2010: A Valuation Certificate (proposed) was issued with an RV of €171,200.
- July 2010: Representations were lodged with the Commissioner of Valuation. The valuation was changed to €243,000.
- February 2011: An Appeal was lodged with the Commissioner of Valuation. As a result of an issue with respect to area, the Valuation Certificate changed to €15,000. \*
- July 2011: An Appeal was lodged to the Valuation Tribunal on 25<sup>th</sup> July, 2011.

\* Please refer to note above and the adjustment to this figure.

**Appellant's Case**

Mr. Paul Kelly took the oath, adopted his précis as his evidence-in-chief (having noted the foregoing amendment with respect to five rather than two car parking spaces, each valued at €1,250) and provided the Tribunal with a review of his submission. The appellant's consultant valuer made the following points:-

1. He provided a summary of the main issues contained within his précis under the headings of Background, Location, Description, Accommodation, Planning and Tenure, all pertinent to the subject property.
2. He noted the agreement of the parties on the area of the accommodation, measured on a net internal floor area basis, which he advised comprises 533.46 sq. metres together with the 5 surface parking spaces to the front.
3. He also confirmed that the lease on the subject premises provides for a break to be exercised at the sole discretion of the tenant, by prior written notice to the landlord and subject to full compliance with the terms and covenants and performance of all the tenant's obligations under the said lease, on a defined option date determined by reference to the 10<sup>th</sup> anniversary of the lease.

4. The lease is on an FRI basis with an annual rent to be paid in the sum of €225,555 per annum, reviewed every five years on an upward only basis to full open market value.
5. The demised premises are all located on Floor One (also variously described in the documents provided as the ground floor and the first floor) of Block 13, Rockfield Central, Dundrum.
6. He referred to Clause 1.33 in the lease to provide the definition for the permitted user, namely “*wholly and exclusively as offices including the provision of medical and paramedical services and consultancy.*”

Mr. Kelly then provided the Tribunal with three approaches to analysing the rent being paid by his client on the property, which he indicated was made up of two component figures, as follows:-

Office accommodation: 533.46 sq. metres	@ €411.10 per sq. metres	= €219,305
Car parking:	5 No. spaces: @ €1,250	= € 6,250
	Total:	€225,555 annual rent

He then outlined the effect of amortising the capital inducement amount provided by the landlord to the tenant over two terms, namely the first five years and then, the first ten years of the term and established what he considered to be the reduced effective rent in respect of the property. He then took the average of the values computed above between the five and ten year analysis and deduced from same that the average annual rent on the accommodation areas amounted to €276 per sq. metre per annum.

### **Comparison Properties**

The appellant put forward 2 comparisons details of which are attached at Appendix 1 to this judgment.

Comparison No. 1 (common comparison property with the respondent)

Property: 4<sup>th</sup> Floor, Block 14, Rockfield, Balally, Dublin 14.

Occupier: Ultralase

Mr. Kelly drew attention to the fact that though the area occupied by the tenant described as a clinic is considerably less than the subject at 390.87 sq. metres, the valuation on this property is €300 per sq. metre.

Comparison No. 2

Property: 1<sup>st</sup> Floor, Block 14, Rockfield, Balally, Dublin 14.

Occupier: The Well at Work

Here also, the appellant valuer noted similar conditions with a lesser floor area of 385.2 sq. metres bearing a valuation of €300 per sq. metres, again described as a clinic.

Mr. Kelly also stated that the limited number of car parking spaces provided for the foregoing tenants were valued at €1,250, a figure which applied to the subject and which was not in dispute. He contended that the foregoing premises were initially granted planning permission permitting office use but were later granted a Change of Use, similar to the subject property, permitting their use for medical services.

Based on the foregoing criteria, Mr. Kelly concluded that the value of the subject should be determined as follows:-

	<b>Area sq. metres</b>		<b>€per sq. metres</b>	<b>Rent</b>
Offices	533.46	@	€300.00	€160,038
Cars Spaces	5 spaces	@	€1,250.00	<u>€ 6,250</u>
				<u>€166,288</u>
			Rounded to:	€166,000

**Cross-examination**

In response to questions put by Mr. Robinson and the Tribunal, Mr. Kelly stated that:-

1. It was his opinion that it was both fair and reasonable to adopt the approach employed by him to take an average amortisation period of 7½ years to reduce the lease rental sum due from the calculated sum of €411.10 per sq. metre down to €276 per sq. metre, though he

reminded those present that his opinion of value was calculated by reference to an amount of €300 per sq. metre.

2. He could not offer any cogent reason why the capital inducement sum should be written off to reduce the effective rent over a term of either ten or twenty years.
3. He acknowledged that his comparison properties, unlike the subject, were not served by the convenience of ramps or drop-off facilities.
4. He advised that he did not have fit-out costs applicable to his comparison properties Nos. 1 and 2.
5. He acknowledged that he did not have actual rental details for his comparison properties.

### **Respondent's Case**

Mr. Dean Robinson took the oath and adopted his précis as his evidence-in-chief. He also confirmed the adjustment required to the valuation bringing it up to a figure of €219,000 to reflect the corrected number of car parking spaces, i.e. from 2 up to 5.

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 provided the Tribunal with a summary of the salient points of his précis. Addressing section 3 of his précis which contained his comparable evidence and acknowledging, as stated in his written submission, that his Comparison No. 1 property valuation was currently under appeal to the Valuation Tribunal, he agreed to have reference to same deleted in this case.

He then addressed his comparison property no. 2, being the common comparison with the appellant, namely the property occupied by Ultralase on 4<sup>th</sup> floor, North Block of Rockfield Centre. He argued that that particular clinic, with a valuation of €300 per sq. metre, represents an increase over standard quality office valuations which are now settled on the well-developed "tone-of-the-list" in the area, post Revaluation, at €260 per sq. metre. He emphasised that this €40 differential reflects the difference between planning permission facilitating office use with upgraded Change of Use providing for medical services from within such office accommodation.

Comparison property no. 3 was introduced by him to indicate a higher valuation per sq. metre on a medical clinical suite of circa 122 sq. metres located within the Blackrock Clinic, valued in common with 38 other similar units there, at €600 per sq. metre.

Mr. Robinson's Comparison No. 4 property was, again, a medical clinic suite occupying circa 131 sq. metres within the Beacon Court complex in Sandyford, valued at a level of €600 per sq. metre. Mr. Robinson explained that the rate per sq. metre applying to the latter two comparison properties reflected their specific locations with respect to the adjoining hospitals and the facility of the occupying consultants being able to engage in cross-referrals when warranted.

### **Respondent's Comparison Properties (details attached at Appendix 2)**

Comparison No. 2 (common comparison property with appellant)

Property: 4<sup>th</sup> Floor, North Block, Rockfield Centre

Occupier: Ultralase Ireland

Comparison No. 3

Property: Suites 5 & 6, Blackrock Clinic, Blackrock, Co. Dublin

Occupier: Dr. Condon & Dr. Coleman

Comparison No. 4

Property: Suites 29 – 32, Beacon Court

Occupier: Dr. Ray Power

Mr. Robinson concluded his direct evidence by drawing attention to various letters of agreement reached with professional agents representing tenants on Rating Valuations pertaining to occupiers of the 4<sup>th</sup> and 5<sup>th</sup> floors of North Block Rockfield, various medical suites within the Blackrock Clinic and a suite within the Beacon Clinic, Sandyford.

### **Cross-examination of the Respondent**

Responding to various questions asked by the Tribunal and the appellant, Mr. Robinson responded as follows:-



1. Valuations on a large cohort of medical offices, suites, consultation rooms and paramedical services in the Dun Laoghaire Rathdown Rating Authority area have now been agreed with professional advisors acting on behalf of a broad range of clients.
2. The valuations on the foregoing have been segregated to reflect medical units within mixed use office buildings, within medical centres and within medical centres adjacent to hospital facilities.
3. A “tone-of-the-list” is now well advanced to support the value applied per sq. metre on the subject.
4. A quantum allowance should not, in his opinion, apply to the subject or conversely neither should or did a premium apply to those smaller units cited in his schedule of comparison properties noted above.
5. He would not accept Mr. Kelly’s treatment of the landlord’s capital inducements provided the subject occupier which sought to write off the full amount of same over a period of 7½ years from the commencement date of the lease. The respondent referred to Clause 5(b) of the lease agreement between the parties on the subject property dated 11<sup>th</sup> November, 2005, under heading “Determination By Arbitrator” which addressed among other things the manner in which the Reviewed Rent is to be determined by the Arbitrator, having regard to various provisions including, as follows:-

*“the rentalised values of a deemed fit-out, costing [€x,xxx, i.e. the capital inducement sum noted in the lease] incurred by the Landlord on the Demised Premises on the grant of the Lease herein notwithstanding the fact that the Landlord did not incur this sum on a fit-out of the building.”*

Mr. Robinson contended that, accordingly, the capital inducement sum should not be availed of as a means to calculate an effective reduced rent, as said sum must be disregarded for the purpose of rent review.

He concluded his direct evidence by noting that his comparison properties having regard to the varying criteria above outlined with respect to the nature and use of the various accommodations and their propinquity to hospital services and other medical professional consultancy services and the concentration of same within various locations, supported the assessed value of €400 per sq. metre on the subject.

He acknowledged that there was no dispute on the rate per space of €1,250 on the five parking spaces.

### **Summations**

Both the appellant and the respondent availed of the opportunity to provide summation statements.

### **Findings & Conclusion**

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

The Tribunal finds that:-

1. The capital inducement paid by the landlord to the tenant at the commencement of the lease did not influence the review of same on the fifth anniversary, as expressly provided for and cited above and accordingly may be considered as a lease support.
2. Both parties agreed that the subject premises are well fitted out to a high standard and considered suitable for purpose as a medical centre with the benefit and support of the appropriate Planning Permission.
3. The common comparison property, being the Ultralase premises in Block 14 at Rockfield, by the evidence of the respondent, is also granted the benefit of Planning Permission similar in nature to that granted to the subject by the Planning Authority.
4. It was noted that the comparison properties situate adjoining the Beacon and Blackrock Hospital and Clinic respectively, derive added benefits in terms of access to a broad range of medical treatment facilities there, including but not limited to theatre services.

5. Conversely, the subject property and other like facilities at Rockfield do not derive a similar level of benefit because of their location and the absence of any hospital or clinic within the immediate environs.
  
6. The comparison properties cited by the respondent adjoining the Beacon Hospital and Blackrock Clinic are valued at €600 per sq. metre and, in the opinion of the Tribunal, such levels in addition to reflecting the benefit of the proximity to the medical facilities noted above, also bear a premium per sq. metre attributable to their very limited floor area.

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 533.46 sq. metres @ €350 per sq. metre = €186,711

5 parking spaces @ €1,250 per space = €6,250

Total NAV: €192,961

Say €193,000

And the Tribunal so determines.