

Appeal No. VA11/5/161

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

Peter Reade

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 526255, Office at 99 Upper Georges Street, Dun Laoghaire, County Dublin.

B E F O R E

John O'Donnell - Senior Counsel

Deputy Chairperson

Patrick Riney - FSCSI, FRICS, ACI Arb

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 22nd day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of 26,500 on the above described relevant property.

The grounds of appeal are set out in the Notice of Appeal attached at Appendix 1 to this judgment.

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 16th day of January, 2012. At the hearing the appellant was represented by Ms. Tanja Alt, accompanied by Mr. Mark Swan. The respondent was represented by Mr Paul Ogbebor, BEng (Hons), Civil Engineering, a valuer in the Valuation Office.

Preliminary Issue

1. The appeal brought by the appellants was in respect of quantum only. However, at the outset of the hearing, Ms. Alt indicated she had been engaged by Peter Reade to take over the premises and occupy same. She also indicated she was authorised by Peter Reade to represent him for those purposes at the hearing. She then indicated there was a dispute in relation to the description of the premises and the area of the subject premises. While it was noted that the description of the premises as an “end-of-terrace” property had later been corrected by the Valuation Office, Ms. Alt maintained that there was a dispute between herself, on behalf of the Appellant, and the Valuation Office as to the area of the premises. Ms. Alt indicated that she had been told by an estate agent (which she believed to be Dooleys of Dun Laoghaire, who she claimed had measured the premises) that the area measurement was different to the measurements provided by the Respondent.
2. The Tribunal rose in order to allow the parties to try to come to some agreement in relation to measurement. After a short recess the Tribunal resumed. The parties indicated that they had agreed to measure the premises together and to revert to the Valuation Tribunal within one week. The Tribunal indicated that if the measurement is agreed between the parties then this could be communicated in writing. If no agreement is reached then it would be necessary for the Tribunal to reconvene and to hear evidence from both measurers and to be provided with maps, drawings and photographs as well as details of the measurements in dispute at any such adjourned hearing. In the meantime, however, it was agreed that the

appeal against quantum could proceed, the issue to be determined being the appropriate rate per sq. metre for the subject premises.

Appellant's Evidence

3. Ms. Alt gave evidence and referred to her letter of the 4th January 2012. She indicated that she had been authorised by Peter Reade to take over the business. She hoped to get the rent down. However, she was not necessarily taking over the lease though she wanted to keep the business which had been there for some eight years. She indicated Mr. Reade had authorised her to appear in and in effect “run” the appeal, indicating that it was up to her if she wished to have the rating valuation set aside. He also provided her with all of the necessary papers which she then provided to the Tribunal.
4. The Appellant pointed out that the annual rent in 2005 in the property was €15,236.88 and she produced a bank statement to indicate a payment out by way of rent in this regard. She contended that the rate fixed by the Valuation Office in the instant case however was based on an annual rent of €26,500 which is a very significant increase on the actual rent at the time.
5. The Appellant referred us to extracts from www.daft.ie which referred to the rent on other premises at Upper George's Street, Lower George's Street and Patrick Street in Dun Laoghaire all of which were within the vicinity of the subject property. In all cases it appeared that the rate per sq. metre sought as of 2011 was well below the amount assessed by the Valuation Office for September 2005. In this regard, the rent per sq. metre sought for the three premises was €193.76, €135.42 and €161.46. These were obviously 2011 figures. The figure fixed for the premises by the Valuation Office as of September 2005 is €250 per sq. metre.
6. The Appellant also sent us a report from FMBC (Freddie Miller Building Consultancy) setting out the condition of the subject premises. FMBC prepared this report following inspection on Tuesday 18th January 2011; the report was prepared by Freddie Miller in his capacity as a Chartered Building Surveyor. The

report makes it clear that the premises, although in “fair” order, are generally in need of complete internal and external refurbishment. Electrical services were noted to be particularly poor. In addition, floors are off level, timber windows are suffering from wet rot externally, window are generally inoperable and require wholesale upgrading works. Other internal and external fabric repairs are also urgently required. The report also helpfully included photographs. The report is silent on the date on which these difficulties began but it does appear to the Tribunal that a number of these problems are of relatively long standing and as a matter of probability may well have existed (albeit not in as poor condition) in September 2005.

7. Ms. Alt indicated that she could not really add to anything she had said in her letter or the exhibits attached to the letter. She indicated that she would not be taking over the lease and indeed would be unlikely to take over the business if the rates stayed as they were as the project would simply be too expensive for her.
8. In cross-examination she acknowledged that she did not know the rate per sq. metre as at 2005 for the three comparators (it was suggested by Mr. Ogbebor that the rates fixed by the Valuation Office in respect of those properties for that period was €250 per sq. metre). Ms. Alt also believed that the comparator properties were in much better condition than the subject property. She again noted that the area measurements taken of the three premises put forward by her appeared to differ from the measurements provided by the Valuation Office.

Respondent’s Evidence

9. On behalf of the Respondent Mr. Paul Ogbebor adopted his précis as a summary of his evidence. He noted there was a dispute at present in relation to the measurement of the premises but believed that his measurements did not include the toilet. He referred us to his précis on the measurements set out at page 5 thereof. At page 6 he noted the valuation history and observed that no representations had been made to the Valuation Manager in respect of the

valuation of the subject property. An appeal was lodged by the Appellant to the Commissioner of Valuation, following which the valuation remained unchanged.

10. At page 7 and the following pages of his précis, Mr. Ogbebor referred us to the various comparator premises:

- (i) The first was the so-called basement of the subject premises which was a surgery. He indicated that though it might be described as a basement it was in fact at ground floor level, had natural light and had separate access. The rate per sq. metre for that property was €250. No representations had been made to the Valuation Manager and no appeal had been submitted.
- (ii) The next premises were at 90 George's Street Upper. Again a rate of €250 per sq. metre had been applied. Again there had been no representations or appeals. The property was held under a four year lease at €140,000 per annum from January 2008 onwards which equated to a rate of €64.38 per sq. metre.
- (iii) The next property was at 78/79 George's Street Upper. Again a rate had been applied at €250 per sq. metre. Representations had been made to the Valuation Manager but there was no appeal to the Commission of Valuation or to the Tribunal. The property is held on a 10 year lease from March 2003 at an annual rent of €50,000, including car spaces, which equates to €17.62 per sq. metre for the office and €1,000 per car for the parking spaces.
- (iv) The next premises were 81 George's Street Upper. Again, a rate had been applied at €250 per sq. metre. This property is held on a one year lease from the 1st January 2007 at an annual rent of €14,400 excluding car spaces. This equated to a rate of €69.20 per sq. metre for the offices. There had been no representations or appeals in relation to this property.

- (v) The final property was at 93 George's Street Upper. Again, the rate which had been applied was €250 per sq. metre. There had been no representations or appeals in relation to the valuation. This property was held under a 25-year lease from the 2nd March 2006 with a rent of €138,400 equating to a rental of €749.62 per sq. metre.
11. On cross-examination Mr. Ogbebor indicated that he had clarified at 1st Appeal Stage that the basement of the subject property had been separately valued. He also said he had sent the appellants a copy of the report showing which part of the property had been valued for the purposes of this hearing.
12. In response to the Tribunal he indicated that the subject property was held under a rental agreement dated September 2005 with an annual rent of €15,236. This equated to €143.55 per square metre. He indicated he was satisfied that this was an "*arm's length*" lease and that the figures in this regard appeared in the Valuation Office data and he had no reason not to disbelieve them. He indicated that in considering the appropriate rate the Valuation Office looked at this rent but also looked at other rents within the area. He noted also that the lease in question was a 35-year lease running from the 1st January 1978. In his view the rent (at a rate of €143.55 per sq. metre) would not reflect what a hypothetical tenant would pay by way of rent. Because the premises would have been held under lease for a significant period of time prior to the review date (30th September 2005) in his view this would operate to effect a reduction in the rent which a passing tenant would otherwise be prepared to pay.
13. He also indicated that he had been the valuer assigned by the Valuation Office to value all the properties provided as comparators and he indicated that comparators (ii) and (v) were the "*primary*" items of evidence on which he wished to rely.
14. He also indicated in response to a question from the Tribunal that there was not much fluctuation in rent payable in the area between September 2005 and March 2006.

The Law

15. The law is clearly set out in Section 48 of the Valuation Act, 2001. The net annual value is the rent for which one year with another the property might in its actual state be reasonably expected to be let from year to year.

The Issue - Quantum

16. It is notable that a significant number of properties on the same street had been assessed as having the identical net annual value for the period in question of €250 per sq. metre. Only one party made representations (which had no effect on the outcome). No appeal was taken by any party in relation to the rate fixed. This, therefore, is the first time this rate has been tested before this Tribunal.
17. However, it is not without significance that a lease dated the 1st January 1978 fixed a rent which, as of September 2005, equated to a rate per sq. metre of €143.55. The explanation given by the Valuation Office as to why the rent paid by the tenant as of September 2005 was lower than the rent which would have been payable by a hypothetical tenant is of some assistance but is not entirely convincing.
18. We note also the condition of the subject property (best described as “*fair*”) compared to the apparent condition of the properties supplied by way of comparators by the Valuation Office. We note also that all of the comparator properties (with the obvious exception of the ground floor property which is comparator (i)) are (a) closer to the street than the subject property and (b) have access at ground or almost ground floor, whereas access to the subject premises appears to be via some 12 steps.
19. It appears to us that all these factors operate to reduce slightly the amount which a hypothetical tenant would have been prepared to pay for the property in question, by contrast to the comparator properties. It seems to us that a modest discount

should apply of 10% and accordingly we fix the rate per sq. metre in the amount of €25 per sq. metre.

20. A joint inspection of the property in order to allow for measuring took place on the 20th of January 2012. Following that joint inspection the parties agreed amended measurements in respect of the property in question as follows:-

| | |
|-----------------------|------------------|
| Ground floor offices: | 40.11 sq. metres |
| Ground floor kitchen: | 9.37 sq. metres |
| First floor offices: | 45.68 sq. metres |

21. Accordingly, the valuer attached to the Valuation Office, Mr Ogbebor amended page 5 of his report to incorporate these amended measurements. He also amended page 6 to take account of the effect of these measurements on the NAV. The NAV contended for by the Valuation Office is now €2,100 (reduced from €6,500) made up as follows:-

| | | |
|-----------------------|---------------------------------|-------------------|
| Ground floor offices: | 40.11 x €250.00 per sq. metre = | €10,027.50 |
| Ground floor kitchen: | 9.37 x €70.00 per sq. metre = | € 655.90 |
| First floor offices: | 45.68 x €250.00 per sq. metre = | <u>€11,420.00</u> |
| Total: | | €22,103.40 |
| NAV (rounded to) | | €2,100.00 |

Determination

22. Having regard to the adjustment in relation to the office space valuation made by the Tribunal in relation to the rate per sq. metre - from €250.00 to €225.00 per sq. metre - the NAV of the subject property is determined as follows:-

Ground floor offices: $40.11 \times \text{€}225.00$ per sq. metre = €9,024.75
Ground floor kitchen: $9.37 \times \text{€}70.00$ per sq. metre = € 655.90 (unchanged)
First floor offices: $45.68 \times \text{€}225.00$ per sq. metre = €10,278.00
Total: €19,958.65

NAV say €19,900

And the Tribunal so determines.