Appeal No. VA14/5/148

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

AXA Insurance Ltd **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 856440, Office(s) at 46-52 Wolfe Tone Street, County Borough of Dublin.

B E F O R E

Rory Lavelle – MA, FRICS, FSCSI, ACI Arb	**Deputy Chairperson**
Michael Lyng – Valuer	**Member**
James Browne – BL	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL ISSUED ON THE 3RD DAY OF MARCH, 2015

By Notice of Appeal received on the 4th day of September 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €624,000 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

"The Valuation as assessed is excessive, inequitable and bad in law."

The appeal proceeded by way of oral hearing at the offices of the Valuation Tribunal on the 3rd Floor of Holbrook House, Holles Street, Dublin 2, on the 21st January 2015.

The Appellant was represented by Mr Donal O'Donoghue, BSc (Hons) Estate Management, Dip Val, Assoc SCSI, Assoc RICS, Director at OKM Property Advisors and Rating Consultants; and the Respondent was represented by Mr Dean Robinson, BSc (Hons) Surveying Valuer at the Valuation Office.

LOCATION/DESCRIPTION

The property concerned is located at Wolfe Tone Street, was constructed c. 1974 and is classified by the Commissioner of Valuation as being "second generation". It is interconnected with other AXA Offices at Wolfe Tone Street situated across Wolfe Tone Square from Jervis Street Shopping Centre and close to the LUAS Red Line.

ACCOMMODATION

The agreed floor area is 3,901 sq. metres and the building extends over three floors. Car parking is not included in the relevant property.

BASIS OF VALUATION

The property is included in the Valuation Order for Dublin City specifying 7th April 2011 as the relevant valuation date for the revaluation. The valuation was reduced to €624,000 from €780,000 following representations made by OKM Property Advisors to the Commissioner of Valuation on the 19th November 2012. A Valuation Certificate issued with net annual value of €624,000 on the 16th December 2013. OKM Property Advisors lodged an appeal application dated 8th February 2014 with the Commissioner of Valuation. A further Valuation Certificate issued on the 8th August 2014 with the net annual value unchanged.

An appeal to the Valuation Tribunal was lodged on 4th September 2014.

THE APPELANT'S CASE

Mr O'Donoghue took the oath and adopted his précis as his evidence-in-chief.

He referred in detail to his précis and made a series of points which included the following:

1. Mr O'Donoghue concedes that the property is close to Jervis Street Shopping Centre and the LUAS Red Line.

2. There are no carpark spaces included with the subject property.

3. The property was constructed and designed in the early 1970s and is an early "second generation" office building.

4. The property is well maintained. However, given its age, it requires ongoing capital expenditure and maintenance to ensure it meets the occupier's requirements. This is a tertiary office location in Dublin's north inner city.

5. Mr O'Donoghue includes comparisons classified by the Commissioner of Valuation as "third generation" and within easy walking distance of the subject property which had been assessed at €150 per sq. metre.

6. Mr O'Donoghue points to property numbers 2193081 and 2193085 – Penneys/Primark Head Office, included as comparisons 1 and 2, respectively, as being particularly relevant.

7. Mr O'Donoghue refers to the economic landscape in 2011.

8. Mr O'Donoghue refers to Valuation Tribunal appeal **VA08/5/125 - Marks & Spencer** with regard to the emerging 'tone of the list' and includes eight 'tone of the list' comparisons and three open market lettings.

9. Mr O'Donoghue estimates the net annual value to be €468,000 analysed as 3,901 sq. metres @ €120 per sq. metre = €468,120.

10. Mr O'Donoghue's appeal to the Valuation Tribunal indicates a value of €390,000 or €100 per sq. metre for the subject property.

APPELLANT’S COMPARISONS

In Comparison 1 and 2 Mr O’Donoghue refers to Chapel House, Parnell Street – Penney’s headquarters, a superior “third generation” property in a comparable location which is valued at €150 per sq. metre, lower than the subject property. He has allowed a 20% allowance to account for the property’s age, quality and condition in arriving at his opinion of value.

Comparisons 3 and 4 are also part of Penneys head office and Mr O’Donoghue makes the same comments and adjustments.

The comparisons cited range in floor areas from 2,046 to 2,183 sq. metres as against the 3,901 sq. metres of the subject property.

Comparison 5 – 29 Beresford Street, Dublin 7, is a 1,715 sq. metre “third generation” office building with 26 car spaces analysed at €150 per sq. metre for the building and €2,500 per car space and Mr O’Donoghue states that this a comparable location. Again he makes a 20% allowance.

Comparison 6 – James Joyce Street, Dublin 1, is a 4,414 sq. metres superior “third generation” office building analysed at €100 per sq. metre and €2,500 per car space and Mr O’Donoghue has added a 20% premium to reflect location and other factors.

Comparison 7 – 39-45 Wolfe Tone Street, forming part of the AXA Insurance building, a “first generation” office building, is valued at €110 per sq. metre.

Mr O’Donoghue’s final tone of the list comparison is 16-19 King’s Inn Street, Dublin 7, a “third generation” office building providing 1,024 sq. metres, valued at €150 per sq. metre and €2,500 per car space. Mr O’Donoghue considers this property to be a better building in a comparable location to the subject property.

Mr O’Donoghue includes three rental comparisons being:

- 68-72 Capel Street – a “second generation” office building located in a comparable nearby location providing 1,284 sq. metres which Mr O’Donoghue de-capitalises at €96.85 per sq. metre, allowing an upward inducement of 24%.

- 73 Capel Street – a smaller building at 299 sq. metres, de-capitalised at €61.94 per sq. metre, an indication of market levels.

- 30-34 Westmoreland Street – a 10 year letting of 128 sq. metres in educational use at €124.94 per sq. metre.

CROSS EXAMINATION

Mr O’Donoghue responded to questions put to him by Mr Robinson on the following matters:

1. The issue of car spaces not being included in the valuation. The Tribunal has dealt with this below.

2. The condition and ongoing maintenance issues together with upgrades and what can be expected in a “second generation” building.

3. The contention that this was a tertiary office location, Mr O’Donoghue referring to lack of adjacencies and the mixed nature of the surrounding area.

4. The availability of a building control system which may not be available in some comparisons.

5. Mr O’Donoghue’s opinion of value changing in light of evidence available, his valuation increasing from initial appeal to the Valuation Tribunal, at €390,000 or €100 per sq. metre, and his appearance at hearing before the Tribunal.

6. In relation to his comparisons 1 – 4, the contention that they are situated in a comparable office location, that they were offices over retail space and that car spaces were valued separately.

7. The level of finish to comparisons 5 and 6, the similarity of the location being in the mixed market area.

8. Comparison 7 being part of the AXA building, its valuation being accepted by Mr O'Donoghue, and the contention that it is not a purpose-built building and is a cinema. The valuation equates to a rate of €110 per sq. metre.

9. The market evidence being provided as not tested against the list and in particular comparison No. 9 – 68-72 Capel Street, as an exempt property.

10. Comparison 10 has been appealed to the Tribunal and is not tested on the list. The net effective market rent of this comparison is considerably lower than the level at which the subject property is assessed.

11. Comparison 11 is part fitted and has a 10 year lease without breaks. Mr Robinson questioned why the rent-free period was not devalued over 10 years. There are retail units at street level accepted by the Valuation Office at €160 per sq. metre on the list.

RESPONDENT'S CASE

Mr Robinson took the oath and adopted his précis as his evidence-in-chief.

Mr Robinson in his précis sets out the legislative basis and refers to the appeal provision in the Valuation Act 2001, in particular to section 31 and the decision of the High Court in *Commissioner of Valuation v Carlton Hotel Dublin Airport Ltd and Others* (2013) IEHC 170:

> *"The Court held that there is a duty on the Tribunal (and the Commissioner) to endeavour to ensure that the valuation of a subject property achieves both correctness of value and equity and uniformity of value*
>
> *"The objective, therefore, is to ensure that a rate payer pays a fair share of the rates burden determined by reference to the value of occupation of the relevant property. The scheme of the Act seeks to avoid any rate payer bearing too little or too much of the rates burden, relative to the value of the rateable occupation of the relevant property and comparable properties.*

> *"The Commissioner discharges this duty by deciding the estimate of value based on the evidence that is provided to the Commissioner. The Tribunal determines if the decision of the Commissioner was correct or not based on the specific grounds of appeal."*

Mr Robinson also refers to Section 48 and a definition of net annual value (NAV), stating that:

> *"[t]he estimate is based on a hypothetical tenant paying a rent for exclusive occupation, one year with another, for a property in its actual state on the assumption that the probable annual costs of repair, insurance and any other expenses necessary to maintain the property in that state including rates and other taxes are borne by the tenant.*
>
> *"The actual rent for any individual property may be material in deriving that estimate, but is not in itself conclusive of Net Annual Value (NAV) in the context of Section 48. The estimate of value is what a hypothetical tenant would pay by way of rent in accordance with section 48, not necessarily what any particular tenant is paying.*
>
> *"Analysis of a number of market rents assists in deriving the estimate of net annual value (NAV) and mitigates the impact of outlying rents that may not represent what a hypothetical tenant would bid."*

Mr Robinson refers to location and descriptive factors and states that the property has been extensively upgraded in recent years with new lighting systems, elevators, service ceiling rails, fire alarm, generators and building management control systems installed.

Mr Robinson includes four comparisons and schedule of valuations to establish a tone of the list.

RESPONDENT'S COMPARISONS

Mr Robinson's first comparison – Floors 1, 2 & 3, Abbey Street, Dublin 1 – is 158.37 sq. metres in size, de-capitalises at €159.20 per sq. metre, consisting of offices located over a shop with rent agreed at 1st January 2012. The lease pertains to two rateable hereditaments, property numbers 732192 and 73192, "of which has been valued at €140 psqm 1st floor, €120 psqm 2nd Floor and €100 psqm third floor".

Mr Robinson's second comparison – 20-26 Nassau Street, Dublin 2 – is 457.27 sq. metres in size with four car spaces with rent commencing 1st June 2012 after a 6-month rent free period. Mr Robinson analyses this property at €208 per sq. metre. The property has been valued at €180 per sq. metre on the valuation list.

Mr Robinson refers to the valuation list evidence with the subject property having been classified as "second generation" office. There are, he states, 43 "second generation" office units located in the north inner city. All 43 have been valued, he goes on to say, at a rate per sq. metre of €160, and of these only seven are subject to a Tribunal appeal: the subject and six adjoining units located in the same demise. He adds that of the 36 valuations which have not been appealed, 19 have had professional representation at either representation or appeal stage.

Comparison 3 – Block A & B, Abbey Street Lower, Dublin 1 – An Post National Lottery Company, provides 1,188 sq. metres of offices and 14 car spaces analysed at €160 per sq. metre and €2,500 per car space.

Comparison 4 – Arran Court, Arran Street, Dublin 7 – comprises 626.85 sq. metres of space de-capitalised at €160 per sq. metre and €2,500 per car space.

Mr Robinson includes a table of values for "second generation" buildings, all at €160 per sq. metre.

<u>CROSS EXAMINATION</u>

Mr Robinson responded to questions put to him by Mr O'Donoghue as follows:

1. It was established in cross-examination that Mr Robinson became involved with the subject property at appeal stage and was not involved prior to this.

2. The first in his list of comparisons at Abbey Street is classified as 'over the shop' and that is a category available in the revaluation process.

3. In relation to Mr Robinson's second comparison Mr O'Donoghue put it that the location was superior and Mr Robinson answered that the location and access were similar to the subject.

4. Comparison 3 is referred to as smaller and in a more sought after part of the city.

5. In relation to Comparison 4, Mr O'Donoghue pointed out that it had raised access floors and Mr Robinson agreed. In questioning it was pointed out that this valuation was not agreed to by REA O'Donnell, the Agent, but the client did not want to proceed, as against the statement in Mr Robinson's evidence that it was agreed. Mr Robinson answered that this was not as good a location as the subject and that there were separate car spaces.

SUMMING UP

Mr O'Donoghue stated that at issue is the quantum of an early "second generation" office building comprising 3,091 sq. metres. It does not make sense, he said, to value close-by "third generation" buildings at a lower level and specifically referred to Penneys in this connection. There is sufficient tone and market evidence to support a valuation of €120 per sq. metre, he contended.

Mr Robinson stated that the location of the subject property is less than 50 metres from a LUAS stop, is prime and referred to the fact that the tenant changed its opinion recently. Furthermore, that it is fair and appropriate to use the list and that the valuation tallies with those of colleagues and reflects the list.

FINDINGS

1. Location and Description: The Tribunal has considered the arguments of both parties in regard to location and description. Whilst there is some broad agreement, the Tribunal finds that the subject property is in a tertiary office location and, having had regard to the parties' arguments in respect of condition, the Tribunal finds that this is an "early second generation" office building.

2. Car Spaces: The Tribunal understands from the evidence that there are no car spaces associated with this building for the purpose of this valuation exercise. Mr Robinson put forward that there were 42 car spaces available to the three buildings occupied by Axa (this building and the two immediately adjoining) that do not have a rateable valuation assessed and that a certain number of these should be reflected in the level of €160 per sq. metre assessed on the property. The Tribunal does not consider that these car spaces can be included in the valuation of the relevant property.

3. The Tribunal is persuaded by the Appellant's arguments regarding quantum and, in particular, by the Penneys comparisons.

4. The Tribunal finds it inconsistent that third generation offices in comparable locations be valued at a lower rate per sq. metre.

5. The Tribunal also finds of particular relevance the property at 39 – 45 Wolfe Tone Street, given its size of 2,997 sq. metres, valued at €110 per sq. metre, since it is an inferior building but adjacent to the subject.

6. In relation to the evidence provided by Mr Robinson, the Tribunal is not persuaded that his comparisons 1, 2 and 4 have been suitably adjusted for quantum, with his closest comparison provided being no. 3, comprising 1,188 sq. metres, which again would need to be adjusted for quantum.

7. The schedule provided by the Respondent lists 43 properties of which 36 finalised with no Tribunal appeal and with seven appealed to the Tribunal, one being the subject property and six located on Conyngham Road. The largest agreed property is that at Block 3A and 3B Abbey Street at 13,903 sq. meters and Block C Abbey Street Lower at 2,530 sq. meters, with the next largest at 1,202 sq. metres again on Abbey Street. The smallest property on the list is Dublin City Council, Arran Street West at 37 sq. metres with the majority being considerably smaller than the subject.

8. Mr Robinson's point in relation to this being the first appeal of office space in Dublin City and rates agreed for second generation office space has been considered. However, the Tribunal is persuaded by the quantum argument in this case.

DETERMINATION

Having regard to the foregoing the Tribunal determines the rate of valuation of the property concerned to be as set out below:

3,901 sq. metres @ €125 per sq. metre = €487,625.

Say NAV €487,625.

And the Tribunal so determines.