

Appeal No. VA15/4/039

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

Island Clothing & Christopher Cuddy

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 2196147, Warehouse/Wareroom At Lot No. (Unit 2414) Euro Business Park,
Little Island, Courtstown, Caherlag, Cork Upper, County Cork.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF DECEMBER, 2016

BEFORE:

Stephen J. Byrne – BL

Deputy Chairperson

Frank Walsh –OFA, Valuer

Member

Orla Coyne – Solicitor

Member

By Notice of Appeal received on the 30th day of November 2015 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €43 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

"The proposed RV at €43 is excessive and inequitable.

The RV is excessive given that the property was originally assessed at an RV of €19 when first assessed in 2008. The unit then had 7 meter eaves. The very large increase for the

addition of the 1st floor cannot be justified given the circumstances and the existing tone of the list for comparable properties"

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence on the 12th day of September, 2016 adduced before us by Mr. Eamonn Halpin on behalf of the Appellant, who contended for a rateable valuation of €25, and Mr. Paul Ogbebor on behalf of the Respondent to the appeal,

DETERMINES

Background

The Subject Property is located at Euro Business Park, Little Island in the outskirts of Cork City. Euro Business Park is an industrial estate.

In its original state the Subject Property was, it seems, designed, constructed and, it apparently was, used as a warehouse with factory/workshop type activity on a relatively modest scale. As such and in its original state, the Subject Property enjoyed the benefit of a maximum head height of in the order of seven metres.

For reasons best known to themselves and not directly dealt with in evidence, the owners/occupiers decided to remodel the original construction by putting in place a concrete structure with the intention, it seems, of transforming a “bungalow” into a “two-storey”.

It is not clear when exactly this remodelling took place. In any event, it is accepted that such remodelling did in fact occur. In point of fact, the remodelling appears to have prompted the Respondent to revisit the issue of applicable rates.

The Respondent was, and in the circumstances and understandably, inclined to view this new construct as something other than a warehouse.

The Respondent is required by law to place this new structure in its proper place in the order of rateable properties and as they appear on the list of such properties for the relevant rateable area and so as to achieve, and as between ratepayers, uniformity, equity and fairness.

A feature of note and concerning the new construct is that the new floor as put in place allowing for what appears to be a moderately steep stairs connecting the ground floor to the first floor, covers the entire span of the Subject Property.

As a consequence of this and as emphasised by Mr. Halpin, the ground floor loses head height. The ground floor, according to Mr. Halpin, has a head height of in or about three metres. As has been stated, the newly constructed floor, with the exception of the modest stairs, spans the entirety of the Subject Property. This is, to all intents and purposes, a total eclipse, as it were.

As to use, the ground floor boasts in the main what has been termed a workshop, which said activity makes/embroiders clothing, with the end product stored and placed in boxes reasonably

adjacent to the work stations and as can be seen from the internal photographs as put in evidence by Mr. Paul Ogbebor on behalf of the Respondent.

There is on the ground floor a space which measures 27.47 square metres which said space is occupied as and used as an office.

The first floor is more contentious. It was, it seems, used for an unspecified period as a retail outlet selling children's accessories, buggies and similar items to purchasers who gained access to the first floor by a narrow and steep stairwell as was evident from the photographs produced by Mr. Ogbebor. The current use of the first floor currently, Mr. Halpin informed the Tribunal is that it is used by the Applicant as storage. The Tribunal accepts that this is so. This assertion of fact was not directly put in issue. Moreover, it is to a degree borne out by the photographs of the interior as put in evidence by Mr. Ogbebor.

It is also clear from the said photographs that whilst the retail fit-out remains in situ, the space exudes what might be termed 'retail abandonment'.

Mr. Ogbebor makes the valid point, which was not directly challenged, that the first floor is what might be termed a superior or high end fit-out with suspended ceiling, wooden floor, dry wall and natural lighting. Moreover, this is borne out by the photographs put in evidence. Mr. Ogbebor also contends that this superior high end fit-out, together with available natural light, entitles one to view the first floor as offices or as having office potential.

The parties accept, as they are bound to, that this is colloquially speaking "a revision case". As such, the assessment of applicable rates falls to be examined in the first instance under and having regard to the provisions of Section 49 of the Valuation Act, 2001.

Section 49, broadly speaking, provides that valuation on revision be assessed by reference to properties which:

- appear on the valuation list
- which are comparable to the Subject Property

It is clear from the evidence as adduced that there are a number of potentially comparable properties in the immediate vicinity, that is to say, in the Euro Business Park, Little Island. Broad consideration of the "tone" which emerges from consideration of this number of comparable properties evidences the following:

- * Warehouse, as properly defined and in the neighbourhood to which the subject belongs, is consistently and/or uniformly valued at €34.16 per square metre.
- * Office space, and/or more particularly first floor office space, is consistently and uniformly valued at €41.00 per square metre.

- * Mezzanine office is, for some reason, distinguished from office and where this discrete designation is deemed to apply, same is consistently and uniformly valued at €27.34 per square metre.
- * Storage (first floor) tends to be valued at €13.66 per square metre.

Mr. Halpin argued forcefully that prior to remodelling the Subject Property was valued as a warehouse and at the appropriate level - €19.00 per square metre. Further and following remodelling, the entire of the ground floor cannot, according to Mr. Halpin, continue to be valued as a warehouse not least by reason of the significant loss of head height attributable to the putting in place of the concrete floor.

Simply put, a warehouse with a head height of seven metres cannot, on this argument, have the same value as a warehouse which has had its head height reduced to in or around three metres.

This, and as a basic proposition, appears to make sense. Moreover, it is, to a degree, supported by consideration of the properties which had been originally produced in evidence by Mr. Ogbebor as supporting the rateable valuation as proposed by the Respondent. By way of illustration, consider Property No. 1 as per Mr. Ogbebor's original comparisons as put in evidence. For ease of reference, this is a property which has an address at Unit 2407, Euro Business Park, Little Island. This is property No. 220816.

It is clear from the evidence as adduced in respect of this particular comparable property, that it is a two-storey office which takes up part of the ground floor and an equal part of the first floor. The balance of the ground floor is in the order of 150 square metres or thereabouts is a warehouse. Mr. Halpin put it to Mr. Ogbebor, and he accepted, that this significant proportion of the comparable property enjoys head height in the order of seven metres. This particular property, unlike the Subject Property, has therefore a significant portion of the ground floor – 150 square metres or thereabouts – which has a head height of seven metres. In contrast, the entire functioning portion of the ground floor of the Subject Property boasts a head height of three metres.

Thus the Tribunal is presented with a ground floor with warehouse/workshop potential and/or use and office potential/use where warehouse potential/use is, and in its entirety, appreciably reduced. Same has been sacrificed for a first floor which appears to straddle a range of potential uses from storage to retail to offices to “mezzanine office”.

The Tribunal is fortunate to have presented to it a significant number of properties which establish what might be termed a “tone” for the immediate neighbourhood and which offer the Tribunal considerable assistance in endeavouring to strike a balance between this Appellant and his immediate neighbours.

Having considered matters carefully, the Tribunal concludes as follows:

- (a) The evidence as adduced establishes a rate of €34.16 per square metre, when applied to comparable equivalent properties constructed as and/or used as warehouse/workshop.

- (b) The evidence as adduced establishes that this rate, when it is deemed to apply, applies to comparable and equivalent properties enjoying a head height of seven metres.
- (c) The Subject Property has a significantly reduced head height. The evidence establishes that the head height of the ground floor of the Subject Property has been reduced from seven metres to three metres.
- (d) It follows, and the Tribunal so determines, that the Subject Property's use and/or potential use as a warehouse is significantly diminished.
- (e) This loss of head height is and of itself significant. It is sufficiently significant to warrant an appreciable difference of treatment as between the subject and properties which are otherwise comparable to the subject in terms of size, outlook, location and original construct.
- (f) The Tribunal concludes that the Appellant is, in principle, entitled to a reduction in applicable rates to take account of the significant loss of head height, which said loss of head height, to all intents and purposes, extends across the entire span of the Subject Property.

The issue is how much of a reduction is warranted and so as to achieve uniformity and equity as between neighbouring ratepayers and to afford this Appellant the measure of fairness to which he, as an individual ratepayer, is entitled.

On this particular issue the evidence is and on the face of it "one way". Mr. Halpin has argued in the first instance for a reduction to reflect this significant interference with the original structure. He put forward evidence to assist the Tribunal as to the appropriate reduction.

Mr. Ogbebor, on the other hand, as is his entitlement, puts all his eggs in one basket; he asserts that there should not be any reduction from the figure which he claims has been applied uniformly to warehouse/workshops in the immediate vicinity.

Mr. Halpin has argued for a one third reduction on the rate that ordinarily applies to comparable warehouse property with what might be termed conventional eaves. He suggests that this is an approach which has found acceptance in England.

This contention has not been directly challenged by the Respondent. As has been stated, the Respondent, as per his entitlement, has argued that there are no grounds for any adjustment from the rate that applies to comparable properties boasting full head height.

The Respondent is thereby, and on his election, not in a position to take issue with the margin of adjustment which Mr. Halpin, as expert retained by the Appellant, puts in evidence and under Oath states is in the circumstances fair and equitable.

It follows and the Tribunal so determines that the Tribunal should and in the circumstances be slow to reject such opinion, put in evidence under Oath by an expert and where and to all intents and purposes, such evidence, on this particular point, is unchallenged.

It occurs to the Tribunal that it can and should only reject such expert evidence in such circumstances and where the Tribunal can, whether applying its own expertise and/or experience and/or a measure of common sense, conclude that the evidence patently lacks credibility and/or is patently unreliable.

The Tribunal, having considered the evidence and having carefully noted what was put to Mr. Halpin in cross-examination by Mr. Ogbebor, accepts Mr. Halpin's expert evidence concerning:

- (a) The rationale for adjustment from the rate which ordinarily applies to warehouse property in the immediate locality.
- (b) The rationale for the margin of adjustment.

Accordingly and concerning the ground floor warehouse, the Tribunal holds that the Appellant is entitled to a reduction of one third off the rate that ordinarily applies in the neighbourhood to warehouse property being a rate of €34.16 per square metre. This yields a reduction of €11.38 per square metre, giving a reduced figure of €22.78 per square metre in respect of this portion of the Subject Property.

The parties appear to be in agreement as to the level of rates which applies to that portion of the ground floor and use as an office. The rate as struck for same is €41.00 per square metre.

Moving upstairs, so to speak, there is, as stated, opposing views as to how same should be valued. At one extreme Mr. Halpin argues for valuation as storage and because, on his evidence, this portion of the Subject Property used for this purpose.

Mr. Ogbebor, at the other extreme, agitates for valuation as office space. Whilst Mr. Ogbebor accepts, as he must, that the first floor is not currently in use as an office. He emphasises the standard of the fit-out. Mr. Ogbebor makes the point that the standard of the fit-out is such that the first floor could, without too much endeavour and/or inconvenience, be converted to office use.

Notably, of the six properties put in evidence by Mr. Ogbebor as comparable properties, five have first floor offices. It is noted in the case of property No. 6, Martin Coomey Merchandising, the entire span of the first floor is valued as and one assumes used as offices.

The Tribunal is not in the circumstances persuaded that the first floor can and/or should be valued as storage. Whilst it may, as matters stand, be used as storage, it is clear from the evidence that this is a use borne out of exigency in circumstances where the intended retail use has failed, with the occupier out of retail and/or economic necessity moving its trade to a more suitable location.

As has been stated, it is clear from the photographs in evidence that the first floor retains its retail countenance. Further, the individual or entity responsible for remodelling the Subject Property clearly had, and appears to retain, ambition extending beyond storage as ordinarily understood.

The Tribunal and in the circumstances is more taken by the evidence of Mr. Ogbemor on this particular point. Having said that, the Tribunal is not entirely convinced that the first floor can in truth and in the circumstances be valued as an office. There is no evidence that appropriate planning is in place authorising use of the first floor as an office.

Further, what is the office worker to do should he or she have a need for toilet relief over the course of his or her working day? What about canteen facilities and the like? What is the position concerning fire exits?

These are, in the Tribunal's view, important details touching upon consideration of the approach to valuation of this portion of the Subject Property. They are details which have not been dealt with by either side in evidence.

These are in the Tribunal's view material considerations. Whilst the Appellant bears the onus of proof, the Respondent on this issue, maintains that the correct approach is to value this space as an office. In the absence of evidence concerning details that the Tribunal views as material to a consideration of this issue, the Tribunal cannot and in conscience accept that the first floor can and/or should be valued as an office.

The Tribunal has therefore been put in a difficult position. The Appellant's argument that the first floor be valued as storage is not established on the evidence as adduced. The Respondent's argument that the first floor be valued as office simpliciter, whilst persuasive, has given the Tribunal cause for concern to the extent that the Tribunal is not sufficiently persuaded to adopt the Respondent's argument on this point.

Having been put in this difficult position, the Tribunal nevertheless strives to strike as fair a balance as it can between the parties in an effort to give the Appellants their entitlement to an independent fair, impartial determination of the issues which have arisen, and to give the Respondent uniform, equitable and fair distribution of the burden of rates as between neighbouring ratepayers.

The parties, to their credit, have and perhaps unwittingly, gifted the Tribunal a less than ideal but nevertheless workable means to achieve such balance in the circumstances of this particular appeal.

The evidence as adduced suggests uniform valuation in the neighbourhood of a creature which is not quite an office in the sense that it is dubbed 'mezzanine office' and from available evidence attracts a rate which is lower than 'office' so styled.

It is clear from the evidence that the rate which applies to offices in the neighbourhood is, as has been noted, the rate of €41.00 per square metre. It is clear from the evidence as adduced that the rate for this distinct creature, the “mezzanine office”, is somewhat lower at €27.34 square metres.

Notably, the rate for mezzanine office is appreciably higher than first floor and/or ground floor storage in respect of which the rate is struck at €13.67 square metres.

In the particular circumstances in which the Tribunal finds itself and for reasons which have been set out herein in an effort to strike as fair a balance as it can between the parties and in an effort to secure for the Appellant’s their entitlement to an independent fair and impartial determination of the issues which have arisen and to achieve for the Respondent uniform, equitable and fair distribution of the burden of rates as between neighbouring ratepayers, has concluded that the appropriate rate to be applied in respect of the first floor of the Subject Property is the rate which applies for mezzanine offices, being a rate of €27.34 per square metre.

In conclusion therefore, the applicable rates for the Subject Property are as follows:

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|-------|---------------------------|-------------------------|
| (i) | Ground floor (warehouse): | €22.78 per square metre |
| (ii) | Ground floor (offices): | €41.00 per square metre |
| (iii) | First floor: | €27.34 per square metre |

And the Tribunal so determines.