Appeal No. VA15/4/056

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Island Clothing & Mr Michael Mulcahy **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

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

Property No. 2196146, Warehouse/Warerooms, Unit 2413, 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 Byrne - BL	**Deputy Chairperson**
Frank Walsh - QFA, Valuer	**Member**
Orla Coyne – Solicitor	**Member**

By Notice of Appeal received on the 10th day of December, 2015 the Appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €41 on the Subject Property on the grounds as set out in the Notice of Appeal as follows:

"The RV proposed is excessive and inequitable and not in keeping with other comparable property already assessed in Co. Cork.

Part of the property should have a separate assessment as it is separately occupied."

The Tribunal, having examined the particulars of the Subject Property the matter 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 Appellants, who contended for a rateable valuation of €12 and €13, and Mr. Paul Ogbebor on behalf of the Respondent to the appeal,

DETERMINES

That the Rateable Value of the subject property be as set out below:

Use	**Area (sq.m)**	**€/Per sq.m.**	**NAV**
Ground floor (warehouse):	95.31	€22.78	€2,171.16
Ground floor (offices):	10.84	€41.00	€444.44
First floor (office):	106.14	€41.00	€4,351.74
		Total NAV	**€6,967.34**

Reducing factor 0.005%

RV (Rounded to) : €35

Background

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

In its original state the Subject Property was designed, constructed and used as a warehouse with factory/workshop 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 the Appellants and not directly dealt with in evidence, the owner/occupier decided to interfere with the original construct by putting in place a concrete structure with the intention, it seems, of transforming "a bungalow" into a "two-storey" (Mr.Halpin's evidence). It is not clear when precisely this remodelling took place. In any event, it is accepted by the Tribunal that such remodelling did in fact occur. It seems that the remodelling prompted the Respondent to revisit the issue of applicable rates. The Respondent was and in the circumstances and understandably inclined to view this newly evolved structure as something other than a warehouse/factory/workshop.

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

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

As a consequence and as emphasised by Mr. Halpin, the ground floor loses significant head height. The ground floor's loss of head height is put at four metres with a reduced head height to three metres.

The use on the ground floor is a mix of office and what might be termed industrial use as a workshop.

The photographs, as put in evidence by Mr. Ogbebor of the interior of the Subject Property, appear consistent with the use of a portion of the Subject Property as an industrial type complex.

The balance of the first floor of the Subject Property is used as offices.

The Appellants, through Mr. Halpin makes the case that there are legally distinct and separate owners/occupiers of the Subject Property.

The Appellants makes the case that the industrial/warehouse component is occupied by a company, namely Value Technology Expertise Limited.

The layout is perhaps best understood by reference to the block plan having helpfully been put in evidence by Mr. Ogbebor on behalf of the Respondent. This block plan depicts the ground floor and the first floor. The bigger portion of the ground floor marked "1" on the block plan is, according to Mr. Halpin's evidence, occupied by the Company and is, as has been stated, in use as a workshop/factory. The balance of the ground floor marked "2" on the block plan as evidenced is used as offices. The entire of the first floor marked "3" is used as offices.

It appears from the evidence as adduced that the area marked "2" (ground floor) and the area marked "3" (first floor) are occupied by Mr. Mulcahy. They are used by him, according to the evidence, in his capacity as the Polish Consul.

It seems therefore and from the evidence that Mr. Mulcahy, in his capacity as Polish Consul, occupies part of the ground floor and the entire of the first floor and he does so as offices which are intended by him, Mr. Mulcahy, to accommodate the needs and/or requirements of his titular office as Polish Consul.

Mr. Halpin evidences what he terms "his understanding" of the legal arrangements between these outwardly separate and distinct legal entities. Mr. Halpin's understanding as per his evidence is that Mr. Mulcahy holds the material portion of the subject property on a two year, nine month lease at €6,000 per annum.

On examination by Mr. Ogbebor, Mr. Halpin accepts that there is a connection, if not a close connection, between the Company and Mr. Mulcahy.

The two entities, it seems, share a common feature, namely Mr. Mulcahy. The evidence establishes that Mr. Mulcahy, in addition to his diplomatic role, is, to all intents and purposes, is the main element in the Company. The Tribunal infers from this evidence that Mr. Mulcahy manages the Company and has a significant shareholding in same.

An issue which has arisen for consideration in this particular appeal is that of separate occupation giving rise to separate assessment.

The Appellants, through Mr. Halpin, argue that the separately occupied portions of the Subject Property merit, and on the evidence as adduced, separate assessment.

Mr. Halpin's argument on this issue is relatively straight forward. In summary, Mr. Halpin contends that there is evidence of separate and distinct occupation of (in this case) distinct portions of the Subject Property by entities which are in law distinct, that is to say, the Company on the one hand and Michael Mulcahy on the other.

Mr. Ogbebor has made it as clear as he can that he does not accept the Appellants' entitlement to separate assessment. Mr. Ogbebor stated that the Appellant, "wanted the Subject Property valued as one property". This evidence was not challenged by Mr. Halpin during the course of the hearing. It is clear from the evidence as adduced that the Appellants, through Mr. Halpin, are on notice of this statement which is clearly at odds with the case that the Appellants were seeking to make at the hearing. It was also dealt with by Mr. Ogbebor in his précis of evidence as exchanged in advance of these proceedings wherein Mr. Ogbebor states:

> "*1. The Appellant at inspection indicated clearly his requirement to have one single valuation.*
> *2. No details of any separate occupation have been provided by way of lease, agreement etc*."

Neither of these statements were challenged by Mr Halpin during the course of the hearing. In addition Mr. Ogbebor in his evidence emphasised the close connection between the two entities. He noted Mr. Mulcahy as Polish Consul occupies the first floor offices and portion of the ground floor as offices. The Company which occupies the balance of the Subject Property is owned and managed by Mr. Mulcahy.

Further Mr. Ogbebor, in opposing this particular contention of Mr. Halpin's, draws the Tribunal's attention to the patent absence of documentation to support Mr. Halpin's "understanding" of the legal arrangement as between what is (on the Appellants' case) legally separate and distinct occupiers. The Appellant, , did not produce a copy of the lease/tenancy agreement before the Tribunal which may have assisted Mr. Halpin's "understanding" of the relationship between the company and the individual.

Further, Mr. Ogbebor argued that the provisions of Section 17 of the Valuation Act, 2001 operated so as to deprive the Appellants of an entitlement to separate assessment.

It is clear that the Appellants argue an entitlement to separate assessment. It is further clear that the grounds upon which this entitlement is asserted have been put as sparsely as possible; such grounds amount to no more than a bald assertion by Mr. Halpin that the two parts of the one Subject Property are occupied by entities which are, on his argument, in law separate and distinct, one from the other.

The evidence clearly established and was unchallenged that Mr. Mulcahy at one stage advised the Respondent that he wanted the Subject Property valued as a single entity. At a further stage the Appellants then instructed Mr. Halpin to inform the Respondent (and in turn the Tribunal) that he wanted what he maintained are separate occupiers to be assessed separately.

Such materially inconsistent representations coming from the one source demand explanation/clarification. However no explanation and/or clarification was advanced at the hearing.

Absent same, the Appellants of their own making have impaired the credibility of the position which they urge the Tribunal to accept vis à vis separate assessment.

The Appellants, having asserted an entitlement to separate assessment, are, when challenged, required to evidence such entitlement and are, when challenged, required to move in evidential terms beyond bare assertion. These Appellants, having failed in the face of such obvious challenge to move beyond bare assertion, are not in the circumstances entitled to succeed on this particular issue. Thus, the Tribunal rejects the Appellants' assertion to an entitlement to have the different portions and/or uses of the property assessed separately.

The Respondent has taken the view that the Subject Property is a single relevant property and notwithstanding the recent assertion that different uses and/or components are occupied by separate legal entities. For reasons as set out in this Determination, the Respondent is in law and in the particular circumstances entitled to treat the subject property as a single relevant property and charge the occupier and/or owner of that single relevant property the rate as properly assessed.

This, in the Tribunal's view, is and in the circumstances of this particular appeal and insofar as it is relevant, the correct application by the Respondent of the provisions of Section 17(1) of the 2001 Act.

As is clear from the evidence, the use to which the Subject Property is put is what might be described as 'mixed use'. The largest portion of the ground floor is used as a warehouse/workshop/factory of some sort. The balance of the ground floor is used as an office. This is undisputed. The first floor, in its entirety, is used as an office. It is clear from the photographs put in evidence by Mr. Ogbebor that the first floor is fitted out to a high standard for office use.

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

In broad terms, Section 49 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 is a decent number of potentially comparable properties in the immediate vicinity, that is to say, the Euro Business Park, Little Island, Co. Cork.

A broad consideration of the "tone" which emerges from this number of comparable properties evidences the following:

* Warehouses as properly defined and in the neighbourhood to which the Subject Property belongs are consistently and/or uniformly valued at €34.16 per square metre.

* Offices are consistently valued at €41.00 per square metre.

* Mezzanine offices are for some reason distinguished from office and where this discrete designation is deemed to apply, same is consistently and/or uniformly valued at €27.34 per square metre.

* Storage is consistently and uniformly valued at €13.66 per square metre.

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

Simply put, on Mr. Halpin's case, a warehouse with a head height of seven metres cannot, he argues, have the same value as a warehouse which has had its head height reduced to three metres.

This, as a basic proposition, appears to make sense. Moreover, it is, to a degree, supported by careful consideration of the properties which had been originally showcased 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 précis of evidence. There is on this comparison Unit 2407 Euro Business Park, Little Island (Sliding Systems) property No. 220816, a two-storey office which takes up part of the ground floor (40 square metres) and an equal part of the first floor. The balance of the ground floor in the order of 190 square metres is warehouse. Mr. Halpin put it to Mr. Ogbebor and he accepted that this significant portion of this comparable property enjoys "full" "head height" in the order of seven metres.

The Tribunal, in this appeal, is presented with a ground floor with warehouse/workshop/potential use and office potential/use where the warehouse potential/use is and in its entirety appreciably reduced. This has been sacrificed for a first floor which, on the evidence as adduced, is used as an 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 considerable assistance in endeavouring to strike a balance between the Appellants and neighbouring ratepayers.

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 and insofar as it is being used as a warehouse/workshop has a significantly reduced head height. The head height has been reduced from seven metres to three metres.

(d) It follows that the subject property's use and/or potential use as a warehouse/factory is significantly diminished.

(e) This loss of head height is and of itself significant. It is sufficiently significant to warrant and in principle a significant 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 Appellants are in principle entitled to a reduction in the applicable rates and so as to take account of the significant loss of head height extending, as it does, across the entire span of the subject property.

The issue then is how much of a reduction is warranted and so as to achieve uniformity and equity as between neighbouring ratepayers and to afford the Appellants the measure of fairness to which they as an individual ratepayers are 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 the significant interference with the original structure. He has put forward evidence with a view to assisting the Tribunal as to the appropriate reduction.

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

Mr. Halpin has argued for a one third reduction on the rate that ordinarily applies to comparable warehouse type structures which boast what might be termed conventional eaves or head height. Mr. Halpin suggests that this is an approach which has found acceptance in what he termed the neighbouring jurisdiction.

This argument as put forward by Mr. Halpin has not been directly and/or meaningfully challenged by the Respondent. As has been stated, the Respondent, as is his entitlement, 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 any meaningful issue with the margin of adjustment which Mr. Halpin, as an expert retained by the Appellants, has argued 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 an opinion put in evidence by an expert and where and to all intents and purposes such evidence on this particular point is unchallenged.

The Tribunal can and should only reject such expert evidence and in such circumstances where the Tribunal can, when applying its own expertise and a measure of common sense, conclude that the evidence patently lacks credibility and is patently unreliable.

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

(a) The rationale for the adjustment from the rate which ordinarily applies to warehouses in the immediate locality/neighbourhood/facility.
(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 from the rate which is deemed applicable. For ease of reference, this leads to an adjustment from €34.16 per square metre by one third (€11.38 square metre) yielding an applicable rate in respect of this portion of the subject property, that is to say the warehouse portion of €22.78 per square metre.

As to the balance of the property, there is no issue as to use. The evidence establishes that the balance of the property comprising properties marked "2" and "3" on the plan as put in evidence are fitted out as and in use as modern offices.

The arrangement put in place by the Appellants to accommodate his diverse and co-existing interests as "entrepreneur" and "diplomatie" is less than conventional. It is nevertheless and on

the evidence as adduced, an arrangement which functions to meet the diverse demands of the Appellant's co-existing interests. The Tribunal notes that the parties have agreed to discount from consideration common areas and stairwells. Needless to say, the Tribunal accepts and acknowledges same.

Whilst it is not entirely clear, Mr. Halpin appears to argue for differing treatment of the office portion of the property on the different levels.

Mr. Halpin advocates €41.00 per square metre in respect of that portion of the ground floor which is occupied and/or used as an office. He advocates a different rate, that is to say the mezzanine office rate in respect of the entire of the first floor occupied as and used as an office.

As has already been stated, the evidence as adduced suggests the mezzanine office rate when it is deemed to apply is lower than that of the office as properly understood.

Mezzanine has been defined as "*a low ceiling storey or long inner balcony between two main storeys*".

Mr. Halpin, in evidence, characterises the structure which the Appellants have put in place as a "*concrete mezzanine*".

The evidence establishes that the remodelling, with the exception of the staircase put in place to facilitate movement from ground floor to newly constructed first floor, covers the entire span of the Subject Property as originally constructed.

On the evidence the two main storeys, in fact the only two storeys, are the ground floor and the first floor. The Appellant occupies the entirety of the functioning portion of the first floor and has it in use as an office. Moreover, this is as per the Appellant's design, construction and intention when taking it upon himself to remodel the subject property.

The addition of this floor as described and as evidenced cannot and by any stretch and notwithstanding Mr. Halpin's best efforts, be characterised as a mezzanine, be it concrete or otherwise. This construct cannot be construed as occupying a space between two storeys. It can and in substance only be viewed as one of two storeys.

Accordingly, the Tribunal rejects Mr. Halpin's characterisation of the first portion of the subject property as "*mezzanine office*" (attracting the rate that uniformly applies to neighbouring mezzanine offices).

The first floor portion of the subject property was, and as has been stated, designed and constructed as an office and is in use as an office. It has been finished to a high standard for that purpose.

It would and in the circumstances be patently unfair and inequitable to ratepayers in the immediate neighbourhood, who own and occupy properties with first floor offices, and who uniformly pay rates at €41.00 per square metre, to mark this particular ratepayer out for more

favourable treatment, and where the only evidence to support such favourable treatment is the opinion of the Appellant's valuer to the effect that the first floor construct is a "*concrete mezzanine*" and where and on the evidence it is patently clear that the construct, whilst concrete, is not by any means a mezzanine.

In this particular regard, the Tribunal is satisfied that the rate as applied by the Respondent, being €41.00 per square metre, is correct and constitutes fair, equitable and uniform application of rates to this particular portion of the subject property.

In conclusion therefore, the Tribunal, for reasons as set out herein, determines as follows:

(i) That the rate in respect of the warehouse portion of the ground floor of the premises be adjusted to €22.78 per square metre.

(ii) The balance of the ground floor in use as office and as agreed between the parties to be determined at €41.00 per square metre.

(iii) The first floor portion of the premises in use as offices be valued at €41.00 per square metre.

And the Tribunal so determines.