

Appeal No. VA02/2/014 & 015

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

Modern Plant (Vacant)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices at First and Second Floor, Lot No. 17AB Otter House, Naas Road, Townland of Fox & Geese, DED: Clondalkin, Ballymount, County Dublin

B E F O R E

Frank Malone - Solicitor

Deputy Chairperson

John Kerr - FIAVI

Member

Frank O'Donnell - B.Agr.Sc. FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF NOVEMBER, 2003

By notice of Appeal dated the 16th April 2002, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €290.00 on each of the relevant properties above described.

the Grounds of Appeal as set out in the said Notices of Appeal are that:

"The valuation is excessive and inequitable having regard to the provisions of the Valuation Acts."

The appeal proceeded by way of an oral hearing, which took place in the Offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 7th July, 2003. The Appellant was represented by Mr. Adrian Power-Kelly, FRICS.,FSCS.,ACI.Arb, of Harrington Bannon and the Respondent by Mr. Joseph McBride, B.Agr.Sc, MSc.,ASCS.,MRICS.,MIAVI., District Valuer in the Valuation Office. In addition Mr. Power-Kelly introduced Mr. Conor Whelan, Estate Agent and Leasing Agent, on behalf of Harrington Bannon.

In accordance with the rules of the Tribunal, the parties had, prior to the commencement of the hearing, exchanged their précis and, having taken the oath, adopted them as being their evidence-in-chief. Submissions by way of additional photographs were also made. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

The Property

The property consists of a suite of offices at first and second floor, located within a modern building identified as Otter House, situated on the south side of the N7 National Primary Route (Naas Road), on the south side of Dublin, approximately 300 metres from the M50 motorway intersection with the N7, and approximately 8 km's south-west of Dublin city. Otter House comprises of four floors being ground floor, first, second and third, with side and rear loading and storage yards associated with ground floor showrooms and offices and the warehouse of Modern Plant Ltd. The front of the building provides for surface car parking. The site frontage has been calculated at approximately 130 metres, the site boundaries are defined by the Naas Road to the north, Robin Hood Road to the south and adjoining properties to the east and west. The warehouse adjoins and interconnects with the ground floor showroom / office area of the office block. This section of the property is separately valued for rating purposes and did not form part of the appeal.

The office block is formed of reinforced concrete columns with Breton floor slabs and concrete block partition walls. The external elevations feature insulated double-sided steel panel cladding incorporating double glazed window units. The internal walls are smooth plaster and painted, suspended ceilings with acoustic tiles on aluminium suspension frames

and incorporate recessed fluorescent light fixtures. Floors are raised in the office areas. The floor area accommodation was agreed between the parties as follows: first floor office net internal area: 421 sq. metres; second floor office net internal area: 421 sq. metres, and 9 car park spaces with each suite of the above offices.

Valuation History

The property was first assessed in November of 2001, with an R.V. of €1,433.53 in respect of the entire premises at Otter House, of which the subject properties above form part. Following first appeal, various portions of Otter House were valued separately and assessments were determined then in respect of the subject premises. A Rateable Valuation of €90.00 was determined by the Commissioner of Valuation on each of the two floors on 2001/04 Appeal, following which Harrington Bannon, acting as Consultants on behalf of the appellant, lodged formal appeals to the Tribunal on 16th April, 2002.

The effective date of Valuation is 8th November, 2001.

Tenure

The property is held freehold.

Appellant's Case

Introduced by Mr. Adrian Power-Kelly to the Tribunal, Mr. Conor Whelan, took the oath, as witness, and identified himself as a Letting Agent employed by Harrington Bannon. He advised the Tribunal that the first and second floors, on the Valuation date, were vacant and have remained so to date. He indicated that the market feedback to the letting and promotional efforts by Harrington Bannon has, to date, been generally negative. He advised that Harrington Bannon had been given the authority of the owner of the building to demonstrate considerable flexibility in negotiations with prospective parties, in order to secure tenants for each of the two floors. He suggested that, though originally quoted approximately two years ago at £20.00 per sq. foot per

annum, the owner has recently indicated a willingness to consider offering inducements, such as a rent free period applying to the first 2½ years of a ten-year term, if a suitable tenant were identified for any of the two

subject floors. Mr. Whelan described Otter House as an office building in an Industrial Park location.

Then Mr. McBride, on behalf of the Respondent, sought Mr. Whelan's replies to the following observations and questions. Mr. McBride questioned whether the calculated gross internal floor area of each of the two floors of 5,000 sq. feet was accurately assessed. He also sought confirmation from Mr. Whelan that Harrington Bannon, as Letting Agents, had initially been quoting £20.00 (€25.40) per square foot rental charge and have since reduced the quoted rate to €17.00 per square foot. Mr. Whelan confirmed these figures and contended that they serve as an indication of the downturn in the economy. Mr. McBride indicated his understanding that the third floor of the building had been let to Ulster Bank approximately 1½ years ago, at £17.50 (€22.23) per sq. foot, on 5,000 sq. feet, being the calculated gross internal measurement of the demised area of their lease. Mr. McBride stated that the Tone of the List must always look to a base date. Mr. Whelan then excused himself and departed the hearing.

Mr. Adrian Power-Kelly, having taken the oath, formally adopted his précis as his evidence-in-chief and summarised his submission with the following points:

1. The building was initially assessed as a single hereditament and is now split into various floors.
2. The area where Otter House is located is industrial / warehousing in character.
3. There is a continuing poor level of demand for office rental in the subject area and, though the quoted rate had been decreased, there had not been any evidence of strong interest or demand from potential renters within the past twelve months and his opinion was that the floors may not be rented in the foreseeable future.

4. The buildings near the FBD Insurance offices and Irish Farm Centre, as noted in his Schedule of Comparisons, were predominantly office or office buildings located in better positions, i.e. in office environments and generally closer to the city centre.
5. The current rent quoted on the subject offices is €15.00 per sq. metre, and he contended that this figure discounts to an equivalent of €8.00 per sq. metre when applying the Lisney Rental Index of January 2002, back to the relevant year, being 1988.
6. As at November 2001, the LUAS project had little, if any, effect on demand or rental values and its construction, at least on a temporary basis, may bear a negative impact on the effort to lease space in the subject property.
7. He challenged the accuracy in Mr. McBride's précis of "an improving office location with the proposed Luas rail line passing in front of the subject property with a stop at the Red Cow Roundabout." He informed the hearing that the surface parking was merely compacted hard core material and not tarmacadam.
8. He contended that the Tone-of-the-List confirms office rates at about €8 / m² as agreed at 1st Appeal on the Ground Floor of the subject building.
9. He addressed the "Comparisons" scheduled to the Respondent's précis and concluded in general as follows:
 - a. The Fiat Building is a landmark structure and very prominent.
 - b. The AIB example is a poor comparison as it contains a Banking Hall with teller service, enjoying beneficial proximity to Moran's Hotel and Paddy Powers.
 - c. The Bank of Ireland building enjoys stand-alone status used exclusively as an office building, including the attic area, whereas the subject is attached to industrial space.
 - d. The J. Barry / SIAC complex is again an industrial building, is not in an industrial location and is considered to be another "landmark" building.
 - e. Ulster Bank (Irl) Ltd. is invalid or inappropriate as a comparison, as it is currently under Appeal to the Tribunal.

Mr. McBride then cross-examined Mr. Power-Kelly. He drew attention to the 130 metres of site frontage and prominent position of the subject. Mr. Power-Kelly responded by asserting that the nearby FBD development enjoys better access and prominence.

Mr. McBride stated that Otter House benefits from front and rear access and Mr. Power-Kelly acknowledged that the subject office areas may be characterised as Third Generation with raised floors and air conditioning.

The District Valuer also stated his understanding that free designated car parking would be made available to new tenants of the subject offices. He challenged the relevance of the Lisney Index in this circumstance and, in reply, Mr. Power-Kelly confirmed same was not employed by him as a primary source of evidence. Mr. McBride addressed the Comparison properties submitted by the Agent representing the Appellant. The following points were raised: -

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| Comparison No. 1: | Appellant acknowledged that it is not a Third Generation type building. |
| Comparison No. 2: | Appellant contended this is also not a Third Generation building as it is devoid of a lift and lies adjacent to a halting site. |
| Comparison No's 3 – 8: | All within courtyard of Waverley, access through archway only. Mr. Power-Kelly's opinion that all of these should be considered Third Generation buildings was challenged by Mr. McBride as they apparently do not have lifts, air-conditioning or raised floors. Appellant re-iterated, however, that all are located within an office environment. |

Photographs and a copy site plan were provided to the Tribunal of the FDS offices by the District Valuer to illustrate the apparent 'sheltered' location of Comparison No. 3 submitted by Harrington Bannon. Mr. McBride affirmed that two sides of Block 2 (Comparison 3) had very limited access to natural light on the ground floor. He argued that, based on the foregoing, the subject property of the Appeal should be considered as Third Generation office space and separate in character from the Ground Floor Office & Industrial premises.

Respondent's Case

Mr. McBride, having taken the oath and formally adopted his evidence, immediately asserted that his submission did not suggest a LUAS stop outside the subject, but merely nearby, and that when completed, the facility might add value to the location. He referred to the decision of the Tribunal in appeal VA95/1/104, Champion Sports Ltd. adopting the "Tone of the List" as determining criterion. He maintained that the Tone in these two Appeals was fixed at levels both at and above his recommendations and reflects increases and decreases in market values. He stated the Relevant Date was 1988 and the Valuation Date was 2001 and market trends or changes since then could not be considered.

He summarised the relevant points contained in his précis submission and in the Comparisons appended thereto, which are attached herewith, as Appendix 1.

Mr. Power-Kelly then cross-examined Mr. McBride. The District Valuer stated that the single-sided access to the subject property should only be considered a minor disadvantage and was so reflected in his assessment calculations. Mr. McBride also expressed his view that a "hypothetical" tenant might factor the imminent LUAS service as a value element to the subject location. Mr. Power-Kelly stressed the disruption factors associated with its ongoing construction and its negative impact on the location of his client's property. He also challenged how the Valuation Office could consider the "Fiat" and "J. Barry" Comparisons as applicable to the "Tone" in this circumstance. The cross-examination continued with questions by Mr. Power-Kelly to Mr. McBride as to the relevance, nature, location, use, access, profile and / or location of the various Comparisons submitted by the Valuation Office. The Chairman then read aloud a portion of the aforementioned Champion Sports Judgement, Page 8, attached as Appendix 2 as a preface to his question to Mr. McBride, on the latter's view or otherwise on whether there was a "fundamental change in underlying circumstances....." in this case. Mr. McBride replied that, in his opinion, the downturn in the economy is not relevant and that even if no rent were paid, the property would still be subject to valuation and assessment for rates.

In conclusion, Mr. Power-Kelly stated that the Otter House is in a primarily Industrial location and the Valuation Office assessment on the Ground Floor serves to confirm same.

Mr. McBride concluded his evidence by requesting the Members of the Tribunal to ignore the Ground Floor in this Appeal as it is considered as merely a part of a larger building complex.

Findings

Having carefully reviewed the submission and listened to the well-structured arguments made by the Appellant's Consultant and the District Valuer, the Members have concluded as follows:

- A) The eight Comparisons offered by Harrington Bannon were all of particular relevance, notwithstanding the advice by the Consulting Valuer that all eight valuations were "agreed at Appeal".
- B) The five Comparisons submitted by the Valuation Office were also very useful to assist the Tribunal understand the issues to be considered relevant to the definition and classification of the subject property of this Appeal.
- C) The parties to the Appeal had a challenging task to argue their opinions and views as there appeared to be some differences in interpretation between them on the make-up of the "Tone-of-the-List" applying in this case.
- D) The Tribunal is mindful of the contents of the Champion Sports Ltd. Judgment and considers its Determination both pertinent and valid, albeit some eight years on.

Conclusion

The Tribunal considers:

- (1) The subject property, being the two floors noted in the Appeals herewith, i.e. VA02/2/014 and VA02/2/015 to be in a building located in an area which might be more aptly classified as Industrial / Commercial rather than Office Park.
- (2) The industrial component of the Ground Floor of Otter House cannot be considered in isolation from, and without relevance to, the matter/s under Appeal.

- (3) The nature of the accommodation within the subject properties, i.e. Floors 1 & 2 are similar in nature and use or intended use.
- (4) The subject office areas of the building may be characterised as Third Generation, though located within an Industrial / Commercial environment.
- (5) The Valuations on Floors 1 and 2 should be assessed equally and notes the concurrence of the parties to same.

Determination

In the case of VA02/2/014 & 015 being Modern Plant Ltd. 1st and 2nd floors, each of agreed areas of 421m², the Tribunal hereby adopts what it considers a fair and reasonable Rental Rate of €70 / m².

Therefore, 421m² x €70 / m² equals a Net Annual Value of €29,470 per floor. Applying the appropriate factor of 0.63% the resultant Rateable Valuation on each of the subject properties will thus result in the amount of €185.66. Say €186.

And so the Tribunal Determines.