

Appeal No. VA04/2/026

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

Mentor Graphics Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices at Lot No.Unit 9, East Park, Drumline, Shannon Town, Ennis, County Clare

B E F O R E

John Kerr - BBS. ASCS. ARICS. FIAVI

Deputy Chairperson

Michael McWey - Valuer

Member

Brian Larkin - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF SEPTEMBER, 2004

By Notice of Appeal dated the 8th day of April, 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €660.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

“The valuation is inequitable, excessive and bad in law. The subject property is an industrial building and should be described as such.”

At issue

Quantum

The appeal proceeded by way of an oral hearing which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 9th June 2004. The appellant was represented by Mr. Martin O'Donnell, B.A., MIAVI, Principal of Frank O'Donnell & Company, Valuation, Rating & Property Consultants, and the respondent by Mr. Paschal Conboy, Chartered Surveyor, B.Ag(Hons), Valuer Grade 1 in the Valuation Office.

Both parties having taken the oath adopted their respective précis, which had previously been received by the Tribunal, as their evidence-in-chief. From the evidence so tendered the following emerged as being the facts relevant and material to the appeal.

The Property

The relevant property is a new, purpose built, two storey building with office and production area/warehouse to the rear. The building has been constructed with a concrete portal frame, with the external walls and roof clad with insulating panels and stone wall features on the external elevation around the reception area at the front of the building. The offices are good quality and laid out in open plan with some stud walling and with suspended ceilings at 2.89 metres on the ground floor and 2.77 metres on the first floor. The office area is served by a lift and with air conditioning. The warehouse/production area to the rear of the office area is contained within five bays to an eave height of 8 metres. Much of the area to the rear is used as workspace for writing compact discs and includes offices, physical workspaces and racking system areas, all of which is served by a heating and air conditioning system. There are 61 car spaces marked off to the front and rear of the building.

Agreed Areas

Two storeys of offices provide accommodation of 1,111 sq. metres net lettable or 1,357 sq. metres gross external.

The production/warehouse area to the rear has a gross external area of 604 sq. metres.

The plant room has an area of 30 sq. metres.

The foregoing area calculations were agreed between the parties.

Tenure

The property is held under a 20-year lease, on FRI terms, which commenced in January of 2001, with rent reviews every five years and a 10-year break option. The rent was calculated on a gross external area of 1,951 sq. metres at €143.51 per sq. metre. (21,000 sq. ft. @ £10.50 = £220,500 = €280,000). This was payable on a shell and core rent basis.

€1.2 million was expended on the fit-out including a contribution of €570,000 by the landlord to be recovered by him following first rent review.

Planning

It is understood that Planning Permission was granted for the subject in 2000.

Valuation History

The proposed Valuation Certificate issued on 4th June, 2003, with a proposed R.V. of €660.00. Following representations to the Revision Officer a Valuation Certificate issued on 7th August, 2003 unchanged and following a subsequent appeal a decision issued on the 16th March, 2004, again confirming an unchanged R.V. of €660.00.

Appellant's Case

Mr. Martin O'Donnell, on behalf of the appellant, explained some apparent differences in floor area dimensions, which he related to variations in measurement practices adopted, but confirmed agreement between the parties on the dimensions outlined above. He provided the Tribunal with a synopsis of his précis-of-evidence and circulated copies of the following in support of his evidence.

- a) VA01/1/011 Caruso Ltd., t/a Quality Hotel and Commissioner of Valuation.
- b) VA01/1/017 Funcom Dublin Limited and Commissioner of Valuation.
- c) VA95/1/104 Champion Sports Limited and Commissioner of Valuation.
- d) 2 colour photographic images of Dromore House, Shannon, Co. Clare and Flextronics, East Park, Shannon (Ref: V.O. Comparison No. 4).

In addressing his basis of calculation of proposed NAV and RV in relation to the subject property he drew the Tribunal's attention to the following;

- 1) 4 comparable properties, details of which are set out in Appendix 1 attached to this judgment, which he described as being similar in purpose to the subject, within close proximity of same and all of which are located within the Shannon Free Zone.
- 2) The subject property must be valued in accordance with the provisions of the Valuation Act, 2001.
- 3) With particular emphasis focused on the Tone-of-the-List, citing the judgments rendered on Champion Sports Ltd., and Caruso Ltd., by the Tribunal, as noted above.

Mr. O'Donnell emphasised that, in his view, the rent being paid on the subject relevant property is higher than market rent for similar properties in the area and contended that the Valuation Office erred in considering his client's property as primarily office instead of being primarily industrial in nature but containing ancillary office accommodation, which would correspond to each of the four comparison properties outlined by him.

Under cross-examination by Mr. Paschal Conboy, for the respondent, Mr. O'Donnell confirmed that his four comparison properties are primarily industrial and explained his view that differences in quality explained the variation in the valuation analysis employed on the warehouse components of his comparison properties. Mr. O'Donnell also indicated his view that Net Annual Value may be affected by a myriad of facts and "not necessarily" only market rents. In response to Mr. Conboy, he acknowledged that the Valuation Office was correct in their contention that the subject property is let at a premium rent and when the passing rent of €280,000 for the subject was compared by Mr. Conboy with €190,000 for comparison No. 1 introduced by Mr. O'Donnell, the latter was unable to explain how the RV on the comparison at €507.90 far exceeded the level of €370.00 being sought by the appellant. Mr. O'Donnell confirmed that he was not in a position to explain the passing rent differential. He did however suggest that Comparison No. 1 may have a lower eave height, have office accommodation that is of a lower standard and be substantially devoid of natural light and ventilation when compared to the subject. Mr. Conboy challenged this response and suggested it conversely supported his contention that the rent being paid on the subject is calculated at an office rate as distinct from an industrial rate with office component. Mr. O'Donnell stated that the Valuation Office should have looked to the Tone-of-the-List as the primary function and

not, as it appeared to him to be the case, of direct market evidence. He went on to state that there were not sufficient numbers of industrial units offered for letting frequently in Shannon and acknowledged that if the offices were separate interests, then practice would dictate that they would be rated at a higher level. He added that the subject property may not be let at so-called premium office levels and reiterated his view that the Tone-of-the-List is of critical importance to the assessment of rates. Mr. Conboy replied that **Champion Sports Ltd.- VA95/1/104** followed earlier legislation requiring particular attention to “similar function and recently revised hereditaments”. Mr. Conboy declared that Section 49 of the Valuation Act, 2001 does not make such mention. A debate ensued with Mr. O'Donnell and Mr. Conboy exchanging views as to the primacy of “passing rent” over the Tone-of-the-List, and vice versa.

Respondent's Case

Mr. Conboy restated his view that the rent being paid on the subject was a reflection of the quality of the building offering high-grade office accommodation in over 60% of the area of the structure. He noted that some 929 sq. metres of additional space was being added to the building when it was inspected in March of 2003 and that the rent was due to increase in September of last year to €423,000 to take account of same.

He reviewed the main elements of four comparison properties annexed to his précis, details of which are set out in Appendix 2 attached to this judgment.

His first comparison is an office building featuring modern second floor offices occupied by Intel Communications, paying a contemporaneous rent of €136.67 per sq. metre gross internal on 1969.34 sq. metres. He explained his view that Mentor Graphics are not paying a discounted rent and if the same criteria were adopted to devalue the passing rent on Intel Communications' space, compared to the core rent of €80,000 passing on the subject property, the latter would command a higher RV of €702.

He offered a similar opinion on the data introduced by his comparison No. 2, i.e. third floor of Dromore House.

His comparison No. 3, 1 East Park, is a warehouse with 8 metre eaves and ancillary three storey offices, held on a 21 year lease from January 2001, at a rent of €133,323 p.a. The rent on the office area, which represents about one third of the warehouse space, analysed

at €41 per sq. metres. Mr. Conboy contended that Mentor Graphics is accordingly not an industrial building as evidenced by the much higher office rental rate being paid on it.

His comparison No. 4 was introduced to offer further evidence that the passing rent on Mentor Graphics is approximately 45% higher overall than this 10,572 sq. metres logistics centre.

Following cross-examination and a brief exchange of views between the parties, Mr. O'Donnell and Mr. Conboy summed up their evidence.

Findings

1. It is acknowledged by the Tribunal that the subject relevant property is somewhat difficult to describe given its high level of high quality office space to less than 40% remaining warehouse/production area.
2. The Tribunal has considered the features of all of the eight comparison properties and recognizes the considerable efforts employed by both parties to offer similar buildings in close proximity to the subject, and accordingly satisfy the provisions of Section 49(1) (a) of the Valuation Act, 2001.
3. The comparable properties noted above in 2. are all within the same Rating Authority area.
4. Certain adjustments should properly be made when calculating passing rents on the comparisons tendered to the Tribunal, to accommodate quantum, quality of space and locational criteria, as well as relationship considerations of the mix and scope of spatial uses.

Determination

Having carefully reviewed both written submissions, the additional submissions made at Hearing and all of the other evidence adduced, all taken in context with the Findings above, the Tribunal now concludes that:-

- a) The subject relevant property is essentially a hybrid building offering quality office and warehouse/production accommodation at a level higher than that more

commonly attributed to or associated with buildings described as industrial in nature.

- b) Taking the subject all as one relevant property, integrated as it is under one roof and occupied by a single tenant, as distinct and different in nature from a dedicated office or warehouse/production facility within a complex providing for more than a single occupier and use, allowance should be made in calculating its valuation for Rating purposes.
- c) There exists a 43% difference between the RV assessed and the RV sought in this case.
- d) The Tribunal considers comparisons No. 3 and No. 4 provided by the Valuation Office most relevant inasmuch as both comprise office and warehouse areas with the latter devaluing at €34.17 and €37.58 respectively, and the office areas at €41.00 and €47.16, also respectively. The quantum of gross floor area of comparison No. 4 compared to the subject, is also noted.
- e) The subject contains an approximate gross floor office area ratio of 2:1 to its warehouse/production areas, whereas the ratios cited by Mr. O'Donnell's comparisons 1-4 are broadly 1:2, 1:3, 1:1.3 and 1:5 respectively.
- f) Having considered all of the foregoing, the Tribunal considers the following as a fair and reasonable approach to, and calculations of, the Rateable Valuation on the subject.

| <u>Details</u> | <u>Area</u> | <u>Rate</u> | | <u>N.A.V.</u> |
|------------------------------|----------------------|-----------------------------|----------|--------------------|
| Offices (net lettable) | 1,111 m ² | @ €74.00 per m ² | = | €82,214.00 |
| Production/Warehouse (gross) | 610 m ² | @ €37.58 per m ² | = | €22,924.00 |
| Plant (gross) | 30 m ² | @ €17.08 per m ² | = | <u>€512.00</u> |
| Total NAV | | | = | €105,650.00 |

Rateable Valuation €105,650 x 0.5% = €528.25

Say €520.00

And the Tribunal so determines.