

Appeal No. VA05/1/011

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

Biospheric Engineering Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. 41,41a/5, Freeport, Village of Barna, Galway, County Galway.

B E F O R E

John Kerr - BBS. ASCS. ARICS. FIAVI

Deputy Chairperson

Patrick Riney - FSCS FRICS FIAVI

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 18TH DAY OF APRIL, 2005

By Notice of Appeal dated the 17th day of January, 2005 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €21.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal which is contained in Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing, which took place in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin, on the 2nd March, 2005. The appellant was represented by Mr. Eugene McKeown, of Biospheric Engineering Limited, and the respondent by Mr. Colman Forkin, B.Sc., (Surveying) MRICS, ASCS, MIAVI, Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, prior to the commencement of the hearing the parties had exchanged their respective submissions to the Tribunal. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

The Property

The property comprises a first floor office as part of a larger retail and office development, which shares in common with others, a ground floor toilet and street-side entrance. The property is of recent construction within a complex, featuring ground floor retail units with overhead offices. The complex within which the subject property is located features front elevations onto the public street and the subject property was occupied, as new, approximately 2½ years ago.

The village of Barna is located approximately five miles west of Galway city, in close proximity to the northern shoreline of Galway Bay.

At the commencement of the Hearing, both the appellant and respondent confirmed that they had reached an agreement on the floor area of the subject, at 53 sq. metres, which in turn reflected a reduction in the RV from €21.00 to €19.92.

Tenure

The property is Leasehold and was vacant at date of First Appeal.

Valuation History

The subject property was first revised on 9th June, 2004, at an RV of €21.00. Following consultations between the appellant and the respondent at First Appeal, the Commissioner of Valuation reaffirmed the RV at €21.00 on 23rd December 2004.

Appellant's Evidence

Mr. McKeown assumed his position in the stand, took the oath and formally adopted the contents and attachments of his letters dated 15th January 2005 and 18th February 2005, together with photographs and copy maps attached thereto, which had been previously exchanged with the Valuation Office, and the former attached to the formal Notice of Appeal to the Valuation Tribunal by the appellant, signed and dated on 17th January, 2005, as his précis and evidence-in-chief.

From the outset Mr. McKeown indicated that there were a number of issues specific to this case which formed the basis of his appeal, summarised as follows;

- a) The floor area measurement which, as noted above, was agreed with the Valuation Office at 53 sq. metres prior to the formal commencement of the hearing.
- b) The Valuation Office, by their use and introduction of Comparison properties (see Appendix 2 to this judgment) to the Appeal, selected at Oranmore and Moycullen, erred by not applying an appropriate reduction multiplier on rental rates for office space in these locations to reflect lower demand and consequent lower rental rates in the village of Barna.
- c) He noted that the Valuation Office appeared to have failed to recognise the dynamics of commercial property supply and demand in Barna, which he described as a coastal village primarily serving as a dormitory community to the city and large scale industrial and commercial enterprises within employment opportunities located in Galway city and the peripheral town of Oranmore.
- d) He noted that the IDA had traditionally supported enterprise investment to the east of Galway city in close proximity to the National Primary Routes serving Galway from the south and to the north, namely Limerick and Sligo, and along a corridor to the east, in the direction of Dublin. Mr. McKeown made reference to the large land bank of potential development lands held by the Department of Agriculture at Athenry, and the nearby IDA site of circa 200 acres. He emphasised that Oranmore, unlike the village of Barna, is considered an industrial hub and well served with infrastructure, communications and telecommunications to broadband

standard, which has stimulated a very different and increased level of demand for support office rental space.

- e) Mr. McKeown stated that the village of Moycullen is considered suitable for industrial and commercial development, and is located also west of the city of Galway, but adjacent to the main National Primary Route from Galway serving Oughterard and Maam Cross. By contrast, the appellant contended that Barna is generally perceived as a residential area and devoid of any substantial increase in supply of either office or industrial new space, as evidenced by the Draft Land Use Objectives Map, dated December 2003, prepared by Galway County Council and labelled a Pre-draft Public Display Document, a coloured copy of which was provided to the Tribunal by Mr. McKeown. To support his argument, Mr. McKeown also provided a similar copy Land Use Zoning Map, again labelled a Pre-draft Public Display Document, for the village of Moycullen, and also a copy of the Oranmore Land Use Zoning Map figure 6.1, and drew the attention of the Tribunal to the industrial, enterprise and business technology zoned areas as applicable on each copy map.

Addressing specific details of the subject property, the appellant noted that the first floor office, being the area under Appeal, is within a recently constructed building described as a 1½ storey structure, with the first floor windows of the subject being of a dormer style, as evidenced by the photographic images provided by both the appellant and the Valuation Office in their respective submissions. Mr. McKeown stated that there was no lift to the first floor, which was in contrast with property Comparison No's 1, 2 and 3 in the Valuation Office submission. He contended that the stairs would be perceived as problematic inasmuch as its use would not be available to those suffering certain physical disabilities, and also informed the Tribunal that the ground floor toilet is a facility shared with other key holders within the building complex, and is fitted to accommodate the needs of the physically disabled and is frequently used by the staff and patrons of the nearby pharmacy and doctor's surgery.

Mr. McKeown indicated that, in previous discussions with the other occupiers of the building, anecdotal evidence would indicate a general level of dissatisfaction with the Valuation Office's assessment for Rates on each of the relevant premises within the complex. He also indicated that, as tenant, he has made the commercial decision to exercise an available break clause in his Letting Agreement and will cease his tenure at the conclusion of the current term

of his lease. Mr. McKeown offered hearsay evidence in relation to the business of the freeholder of the property and tenants adjoining his unit. He also confirmed that the building of which his unit forms part, is serviced with a sewage treatment plant and acknowledged that so to is Moycullen, but informed the Tribunal that Oranmore is now connected to the main sewage treatment plant for Galway, located on Mutton Island.

Mr. McKeown concluded his Appeal by expressing his view that Rates on office space in Barna village should be discounted by factors of 25% for location, a further 25% for quantum and finally 10% to reflect the absence of on-floor w/c, and/or lift facilities against the equivalent Rate applicable at Oranmore. By the application of these discounts Mr. McKeown concluded that the RV on the subject, taken together with all of the other elements of his Appeal, should be no greater than €1.00.

Cross-examination

Mr. Forkin enquired why Mr. McKeown appeared to identify his primary Comparison as that labelled as Comparison No. 1 in the précis of evidence submitted by the Valuation Office. Mr. McKeown, in reply to Mr. Forkin, confirmed that he did not offer specific comparative evidence in his précis of evidence. Mr. Forkin stated that €75.17 is the Tone-of-the-List, which was the rental figure employed by him in his calculation to establish Net Annual Value, an exercise which he is obliged to follow in accordance with the Valuation Act 2001. Mr. Forkin challenged the assertion of Mr. McKeown that there was no other Appeal filed within the building complex comprising the subject. Mr. McKeown, in reply to a query from Mr. Forkin, confirmed that he has sublet his interest in the subject property.

Respondent's Evidence

Mr. Forkin then approached the stand, took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission.

He acknowledged the above noted agreement and adjustment to the floor area of the subject and stated for the record that the subject Revision was part of a larger exercise carried out in the building, as outlined and detailed in his submission as Comparison No's 4 and 5. He identified Comparison No's 2 and 3 in his submission as his primary Comparators and acknowledged that both of those Moycullen office units are serviced with lift access. He

acknowledged that Oranmore lies adjacent to a major National Roads Authority Route and lies in close proximity to substantial enterprise and investment activity in the Galway area. However, he contended that, as his Comparisons had shown, the rental figures employed in his Comparisons indicated fair market comparables in terms of space, first floor locations and all drawn from within the Local Authority area of Galway County Council, as he was required to do in accordance with the Act. He asserted again that €75.17 per sq. metre Rental Rate, as indicated in his Schedule of Comparisons, No's 1, 2, 3, 4 and 5, represents the Tone-of-the-List noting that his Comparison No's 4 and 5 related to first floor offices adjoining the subject property. Mr. Forkin also stated that his first three Comparisons were revised before 2004, and that though Comparison No's 4 and 5 were revised in 2004, as noted in his précis, Comparison No. 5 was subjected to the First Appeal process.

Cross-examination by Mr. McKeown

Mr. McKeown commenced cross-examination and indicated that his task was particularly difficult by virtue of the absence of Appeals on recent Revision of offices in his area. In reply to a question by Mr. McKeown, Mr. Forkin confirmed that Moycullen village is witnessing a level of development activity exceeding that of Barna village and the appellant also queried why the respondent had not offered additional Comparison properties, drawn from Moycullen, in his submission. Mr. Forkin confirmed his view that Moycullen office development in particular is more active than Barna. Mr. Forkin would not concur with Mr. McKeown on the latter's argument that a lift to first floor offices would always enhance the market Rental Rate for same but did concede that in some specific circumstances a minor adjustment for same might be appropriate and reasonable. The appellant expressed his concerns and reservations with regard to the manner in which the Valuation Office conducted the Valuation exercise and in particular with the time frame made available to him as an appellant to file his Appeal following issuance of the Valuation Certificate, and considered the time frame within which he had to prepare and file an Appeal to the Tribunal, declared by him to be effectively only fourteen days, to be unfair and an abuse of the system.

Mr. McKeown summarised his Appeal and concluded by noting three points:

- a) Office space in Oranmore, in his view, should not be used as equivalent Comparisons without significant adjustment to reflect levels of demand when compared to much lower demand levels in Barna.

- b) Though to a lesser degree, he felt that demand for office space in Moycullen, driven by locational characteristics, better infrastructure and proximity to a more travelled route to Connemara, also commands a Rental Rate in excess of Barna.
- c) The Valuation Office erred by not adjusting the deemed Rental Rate on the subject to reflect the absence of lift service from the ground floor and the ground floor toilet facilities shared-in-common with other users of the building.

Mr. Forkin concluded by referring to his précis of evidence, which he considered to be a fair and accurate approach to calculation of the Net Annual Value and RV of the subject based on reliable comparative data indicating the Tone-of-the-List.

Judgment

Following adjournment and consideration by the Tribunal of the contents of the submissions and arguments made by both appellant and respondent at the Tribunal Hearing, a verbal Judgment was delivered, which found and concluded the following;

1. By the agreement of both parties, demand for office space in Oranmore and Moycullen is greater than in Barna, as reflected by the copy Draft Area Plan and Zoning maps submitted for each of the three locations and by the declared level of new office development in each of the three areas, being identified as those used to establish the Tone-of-the-List, as set out in Mr. Forkin's submission.
2. Consideration must be had for the agglomeration of industrial and commercial enterprise activities east of Galway in close proximity to the major National Primary Routes serving the north, east and south out of Galway and the consequent effect on demand and rental rates for office space in Oranmore.
3. Similarly, the increase in growth and demand for developed property, including office space, in Moycullen in very recent times, west of Galway city would support the contention made by the appellant that such demand, in accordance with normal market conditions, would bring upward pressure on rental rates for office space.

4. For historical and infrastructural reasons, as well as locational considerations, being a coastal community, the village of Barna has not been the focus of substantial new inward investment or enterprise encouragement and development. The appellant's contention that Barna village is primarily a dormitory community of Galway city was not challenged by the respondent.
5. The appellant did not provide the Tribunal with empirical data to support his view of the Tone-of-the-List or other appropriate comparative information in relation to rentals within the Local Authority area.
6. Mr. Forkin, in reply to questions from the Tribunal during the course of the Hearing, advised that his Comparison property No. 1, located at Oranmore, was based on a value established in 2001, the Moycullen properties on 2003 values and Comparison No's 4 and 5, being the adjoining premises to the subject property at Barna, on 2004 values, and that the last Comparison No. 5 had been subjected to the rigours of First Appeal to the Commissioner of Valuation. The latter point was not noted within the précis of evidence adopted by Mr. Forkin.
7. The Tribunal was not convinced by Mr. Forkin's general opinion that a rental adjustment should not be made to reflect the views that a hypothetical tenant might have when considering applicable Rental Rates to first floor offices, serviced or not serviced with lift and/or same floor dedicated toilet facilities.

Having regard to all of the foregoing, the Tribunal concluded that the appropriate Rental Rate per sq. metre, in this circumstance, should be reduced to €65 per sq. metre, leading to the following calculation of Rateable Valuation.

Agreed floor area: 53 sq. metres x €65 per sq. metre = €3,445 NAV

Applying the appropriate factor of 0.5% = €17.23

Say €17.00 RV

And the Tribunal so determines.