

Appeal No. VA05/2/002

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

Joe O'Neill Management Consultants Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. 8B/Unit 43, Navan Enterprise Centre, Limekilnhill, An Uaimh Rural, Navan, County Meath.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF AUGUST, 2005

By Notice of Appeal dated the 6th day of April, 2005 the appellant appealed against the determination of the Commisisoner of Valuation in fixing a rateable valuation of €28.00 on the above described relevant property.

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

"The R.V. is excessive in comparison to other similar office units in the general area. The revision officer has not properly analysed the comparisons he relied upon in arriving at the valuation."

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 20th day of May, 2005.

The appellant was represented by Mr. Joseph Bardon, F.S.C.S, F.R.I.C.S. of Bardon & Co., Chartered Surveyors, Rating Consultants and Valuers. Mr. John Smiley, a valuer in the Valuation Office, appeared on behalf of the respondent. Both parties adopted their précis as their evidence-in-chief. Mr. Bardon indicated, however, that the details incorporated in Mr. Smiley's précis with regard to Tenure were correct and formally accepted them. Both parties included charts, photographs and comparisons in their précis of evidence.

The Property

The property is located in the Navan Enterprise Centre, off the Trim Road and circa 1km south west of Navan town centre. The Centre, which used to be known as the Exhibition Centre, was extensively renovated in 1998 and divided into units. The Centre now comprises a part single storey, part two-storey complex containing both office and workshop units of varying sizes. There are shared canteen and toilet facilities also in the Centre. The subject property, Unit 43, consists of a first floor office within this complex.

Tenure

The property is held under a renewable annual licence agreement from April, 2003 at €10,583 per annum, the occupier being responsible for rates, internal repairs and fire insurance.

Valuation History

The property was initially assessed at €28.00 R.V. by way of a Proposed Valuation Certificate on the 17th September, 2004 by Mr. Smiley, acting as Revision Officer.

Representations were received from the appellant on the 7th October, 2004 seeking that the property be excluded from the Valuation List on the grounds that the activity carried out was of

an educational nature. These were turned down and a final Valuation Certificate issued, retaining the property in the Valuation List with no other changes.

An appeal was received by the Commissioner on the 23rd December, 2004 from Bardon & Co. on behalf of the occupier, the grounds of which were that the valuation was excessive because:

1. The revision officer had not quoted any comparisons in his report and
2. This was an office within a reconstructed unit in an industrial estate where there was no profile.

The decision of the Commissioner was to make no change and the valuation was appealed to the Valuation Tribunal on the 6th April, 2005.

Appellant's Case

Mr. Bardon having taken the oath proffered evidence on behalf of the appellant. He indicated to the Tribunal that the main thrust of his appeal was directed towards the inconsistency in the valuation approach adopted by the respondent under both Methods 1 and 2 in respect of the comparisons outlined in his précis of evidence and set out at Appendix 1 to this Judgment. Mr. Bardon began by commenting upon and challenging the NAVs resulting from the application of Method 2 i.e. the adjusted Annual Licensed Rental Values. The units referred to, he said, Units 2, 6 & 8 and 14 occupied by Navan Chamber of Commerce, Intranets Limited and Meath County Council respectively were similar offices to the subject and located on the same floor of the said Centre as the subject. Mr. Bardon stated that, in his view, the basis of these valuations carried out by Mr. Philip Colgan, Revision Officer on the 10th April, 2002 was flawed. The basis of NAV adopted by Mr. Colgan was clearly outlined in the Valuation Reports referable to the aforementioned units. In each case the NAV was arrived at by adjusting the annual rent achieved by the said unit in order to revert to November, 1988 values. However, Mr. Bardon added that there was a great inconsistency in the percentages applied in adjusting the rents to 1988 levels, ranging from 20% in the case of Unit 2 to 51% for Unit 14. Mr. Bardon put it to the Tribunal that the same index linked percentage adjustment should have been applied to the rents achievable by all three of the respondent's key comparators given that the licenses in respect of each of the

premises commenced from a common date i.e. January, 2002. The methodology adopted by Mr. Smiley on behalf of the respondent was thus flawed, Mr. Bardon argued.

Mr. Bardon informed the Tribunal by way of contrast that if the Jones Lang La Salle ERV Offices Index had been applied to the licensed rents referable to Units 2, 6 & 8 and 14 over the same period the following NAVs and RVs should have been arrived at:-

Unit	NAV(€)	RV(€)
2	1,573.13	7.86
6 & 8	5,100.00	25.50
14	3,135.60	15.67

Reverting to Method 1 Mr. Bardon added that the respondent's inconsistency was not just limited to Method 2. The respondent, he said, was equally inconsistent under Method 1, which was based on the application of a rate per square metre to floor areas. Under Method 1, wide variations in the rates per square metre in respect of the respondent's comparators emerged viz,

Unit 2 - rate per square metre	€2.67
Units 6 & 8 - rate per square metre	€4.00
Unit 14 - rate per square metre	€72.00

This represented a range in levels of 36.7%, Mr. Bardon stated, whereas all units should have been valued at the same rate per square metre.

In his concluding direct evidence Mr. Bardon indicated to the Tribunal that in his view the best comparator to the subject property in County Meath were the offices of Denis Coakley, located in Bracetown Office Park, Clonee, Co. Meath (see Appendix 2 to this Judgment). These were refurbished offices being let as serviced offices and valued at €28.43 per square metre following Valuation Tribunal Appeal (**VA92/1/011 – Denis Coakley**). Mr. Bardon pointed out that the floor area of those premises was valued on an external basis and that for comparison purposes a couple of adjustments required to be made to that rate: -

1. An upward adjustment of 10% to convert floor areas from gross to nett (as Coakley's floor area was calculated on an external basis).
2. A further upward adjustment of 50% to reflect the size, age and location of the subject premises.

These adjustments resulted in a notional rate of €46.91 per square metre which, Mr. Bardon argued, was the appropriate rate to be applied to the subject as opposed to the respondent's rate of €62.00 per sq. metre.

Mr. Bardon was cross-examined by Mr. John Smiley for the respondent who enquired if he accepted the relevance of Section 63 of the Valuation Act, 2001, which established the correctness of the Valuation List and in that connection asked Mr. Bardon if the Valuation put on the units in the Navan Enterprise Centre by Mr. Colgan should have been different. Mr. Bardon's response was to the effect that while he did indeed accept the spirit of Section 63 it did not seem logical to him that three virtually identical units should have three different rates per square metre applied to them i.e. €52.67, €54.00 and €72.00 per sq. metre. Mr. Smiley persisted in his line of cross-examination and asked Mr. Bardon if he nevertheless agreed that cognisance should be taken of all units in the complex despite significant differences in the individual rates, when considering a rate per sq. metre for the subject. Mr. Bardon replied in the affirmative but qualified his reply by insisting that the basis for such rate had to be logically compelling. Mr. Bardon insisted that the rates were not taken into account logically and their relevance was consequently flawed.

Mr. Bardon was finally pressed by Mr. Smiley as to the appropriateness of Coakley's of Clonee as a comparison given its distance from Navan and relative nearness to Dublin. However Mr. Bardon was satisfied, based on his local knowledge of County Meath, that Coakley's did indeed present as the best comparator, as a serviced office which has been valued, subject to the aforementioned adjustments 1 & 2.

Respondent's Case

Mr. Smiley described the property in line with his précis. The subject was a first floor office unit in the Navan Enterprise Centre. The Centre comprises a part single storey, part two-storey complex containing both office and workshop units of varying sizes. In the Valuation List there were 24 office units and 4 workshop units and there was an extensive car park at front, sides and rear.

Mr. Smiley outlined the Valuation History of the subject and referred to the application for exemption on educational grounds, which was subsequently turned down. Mr. Smiley informed the Tribunal that he had discussions with Mr. Algar of Bardon & Co. and advised him that the respondent's valuation was based on the rates which were applied to similar units in the list which had been valued in 2002 by Mr. Philip Colgan of the Valuation Office. He contended therefore that a tone had been set for the list and that the valuations as laid down for the individual units in the Centre were correct, pursuant to Section 63 of the Valuation Act, 2001.

The Tribunal then drew Mr. Smiley's attention to an apparent anomaly in the rates applied to Units 2 and 14 which were similar in size to the subject yet were rated at €52.67 per sq. metre and €72.00 per sq. metre respectively while the subject was rated at €62.00 per sq. metre. If Section 63 was mandatory, the Tribunal asked of Mr. Smiley why had he had not valued the subject at €52.67 per sq. metre or for that matter at €72.00 per sq. metre instead of €62.00 per sq. metre. The issue the Tribunal added was one of consistency.

Mr. Smiley responded to the effect that he had regard not only to Units 2 and 14 but also to Units 12 and 16 in the list when determining an appropriate rate for the subject.

The Tribunal, following lengthy interaction with Mr. Smiley on the same theme, suggested to him, that when valuing the subject unit a pre-existing inconsistency was spotted in respect of other similar sized units in the Centre. In an attempt to rectify this anomaly, the Tribunal put it to Mr. Smiley that he chose instead to steer a middle course and valued the subject at €62.00 per sq. metre (a mid point between €52.67 and €72.00)

This, in itself, the Tribunal concluded, apart from being harsh on the subject who had a claim to be levied at €52.67 per sq. metre, was also unfair to the occupier of Unit 14, who was being levied at a rate of €72.00 per sq. metre!

Mr. Smiley was cross-examined by Mr. Bardon who referred him to the report of the Appeal Officer Mr. Patrick McMorrow dated the 11th March, 2005. In particular Mr. Bardon focused on the Response of the Revision Officer (Mr. Smiley) incorporated in that report which indicated that Mr. Smiley considered Units 2 and 6 & 8 and 14 of the Navan Enterprise Centre exclusively as comparisons. Mr. Smiley's reaction was that the comparisons as stated in the final report were not exhaustive and that he did indeed consider other units in the Centre, including Units 12 and 16 as set out in his précis at comparison pages 1 and 2. Mr. Smiley apologised for this omission and stated further that while he did not speak to Mr. Philip Colgan directly in relation to the "other units", he did in fact refer to all the Valuation Office information available in respect of such units. Mr. Bardon then put it to Mr. Smiley that the reality was that he did not consider the "other units" at all.

Mr. Bardon then proceeded to ask Mr. Smiley to account for the inconsistency in the percentages used by Mr. Colgan, ranging from 20% to 51% to adjust comparator rental values in the Centre to 1988 levels. Mr. Smiley replied to the effect that he had to have regard to the status quo, i.e. the treatment of other units. Mr. Bardon concluded his cross-examination by re-emphasizing the point that in his view Mr. Colgan's methodology was flawed, inconsistent and resulted in an inequity to the subject.

Findings

1. The methodology invoked by the respondent as outlined in Method 2 of its précis in applying different percentages to similar sized units in the Navan Enterprise Centre in order to adjust 2002 rental values to 1988 level for the purposes of NAV calculation was flawed.
2. The respondent's approach as outlined in Method 1 of its précis, ostensibly referable to the tone of the list but which nevertheless produced variations in the rates for similar

3. The anomalies resulting from Methods 1 and 2 above should have been highlighted at Revision stage and reported to Mr. Patrick McMorrow, Appeal Officer, Valuation Office.
4. Against this background the respondent cannot rely on the provisions of Section 63 of the Valuation Act, 2001.
5. The appellant's comparison, Coakley's of Clonee, as adjusted, while of interest, is not considered appropriate given its distance from the subject.
6. In the circumstances because of the respondent's flawed methodologies, the Tribunal deems the appellant to be entitled to the lowest rate obtaining under the preferred methodology, Method 1 – viz €52.67 per sq. metre being the rate applicable to Unit 2, a similar sized unit in the Navan Enterprise Centre.

Determination

Having regard to the evidence adduced and the arguments proffered the Tribunal determines the rateable valuation of the relevant property as follows:

NAV

First Floor Offices: 89.37 sq. metres @ €52.67 per sq. metre	= €4,707.12
Rateable Valuation €4,707.12 @ 0.5%	= €23.53
Say	€23.00

And the Tribunal so determines.