

Appeal No. VA05/2/017

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

Shaffrey & Co. Solicitors

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. Aspen Court, Block 1, Floor 2, Bray Road (Cabinteely),
Foxrock, Foxrock Carrickmines, County Dublin.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

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

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF SEPTEMBER, 2005

By Notice of Appeal dated the 26th day of April, 2005 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €63.00 on the above described relevant property.

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

"The Rateable Valuation is excessive having regard to the tone of the list"

1. This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 9th of June, 2005. At the hearing the appellant was represented by Mr. Conor Ó Cléirigh, MRICS, ASCS, FIAVI and Mr. Christopher Hicks, a valuer in the Valuation Office, appeared on behalf of the respondent the Commissioner of Valuation.

2. At the outset it was agreed that this appeal would be in the nature of a test case and that the determination of the Tribunal herein would form the basis of agreements in relation to the following appeals.

VA05/2/015 – Purecom Ltd.	RV € 87
VA05/2/016 – Harry Sheridan	RV € 119
VA05/2/018 – Rockall Technologies	RV € 66
VA05/2/019 – Rockall Technologies	RV € 71

3. The property concerned is a self-contained office unit at second floor level in an office development known as Aspen Court. The Aspen Court complex consists of four separate three-storey buildings, which share a common basement car park.

4. Aspen Court is located at Cornelscourt on the west side of the Old Bray Road in that section between Mart Lane and Cornelscourt Hill. Cornelscourt is an established residential and commercial location about 8 kilometres from Dublin City Centre. The area adjacent to Aspen Court is mainly residential in character.

5. Aspen Court comprises four separate buildings of virtually identical design, construction and finish. When developed it was intended that each building would be let as a single unit of occupation, but due to market circumstances each building is now occupied on a floor-by-floor basis. The buildings are constructed to a high standard with an attractive glazed elevation. Each unit of occupation has the benefit of gas fired central heating by way of wall mounted radiators and under-floor trunking for contemporary office use. None of the buildings has a lift and toilet facilities are provided at ground and first floor levels only.

6. The property concerned is at second floor level and the agreed area of the accommodation provided measured on a nett internal area basis is 74.52 sq. metres. Two parking spaces at basement level are included as part of the demise. The entire is occupied under lease at an initial yearly rent of €21,000 per annum plus all usual outgoings.

Rating History

7. On the 15th of September 2004 the revision officer appointed pursuant to section 28(7) of the Valuation Act, 2001 issued a Certificate of Valuation to the effect that the rateable valuation of the property concerned had been assessed at €63. No change was made on foot of appeal to the Commissioner of Valuation and it is against this decision by the Commissioner that the appeal to this Tribunal lies.

The Appellant's Evidence

8. Mr. Ó Cléirigh having affirmed, adopted his précis and valuation, which had previously been received by the Tribunal as being his evidence-in-chief.
9. In his evidence Mr. Ó Cléirigh drew the Tribunal's attention to a mathematical error in his valuation as a consequence of which he was now contending for a rateable valuation of €41 as set out below.

Offices	74.52 sq. metres @ €82 per sq. metre	= €6,110
Car Spaces:	2 @ €20	= <u>€40</u>
Net Annual Value		= €6,550
Rateable Valuation @ 0.63%		= €41

10. In support of his opinion of net annual value Mr. Ó Cléirigh introduced 7 comparisons, details of which are set out in Appendix 1 attached to this judgment. Mr. Ó Cléirigh said that market evidence of lettings in Aspen Court indicated offices at 2nd floor level were let at discount of 14.4% on rents achieved for offices at ground floor level. On this basis he expressed the view that the rateable valuation of units in

the development, which were the subject of other appeals, should be valued on the following basis.

Ground Floor Offices - €105 per sq. metre

First Floor Offices - €95 per sq. metre

Second Floor Offices - €82 per sq. metre

11. In his evidence Mr. Ó Cléirigh said that in arriving at his opinion of net annual value he had carried out an analysis of the rateable valuation of other offices in the Dun Laoghaire/Rathdown area in order to form an opinion as to what was the established tone for office accommodation. The result of his analysis showed quite a large variation ranging from €5.67 per sq. metre (comparisons No.s 5 and 6) with a high of €23.00 per sq. metre (comparisons No.s 4 and 7). Mr. Ó Cléirigh said that the quality of the accommodation varied considerably in terms of specification and location and opined that the offices at the Stillorgan dual carriageway/Priory Drive represented the top end of the market. These offices, he said, were superior in all respects to those at Aspen Court.
12. Mr. Ó Cléirigh drew the Tribunal's attention to his comparison No. 7. These offices he said were at first floor level in a new two-storey development beside Aspen Court with shops at ground floor level and offices overhead. The rateable valuation of these offices he said was assessed in November 2003 but the occupier had not lodged an appeal, as he had not received any correspondence from the Valuation Office. In the circumstances Mr. Ó Cléirigh said little weight should be attached to this comparison.
13. Under cross-examination Mr. Ó Cléirigh confirmed that in his negotiations with Mr. Hicks at appeal stage he had not made any reference to passing rents but had relied solely on comparable evidence. Mr. Ó Cléirigh agreed that the office units were let on a gross internal area basis whereas the valuations were assessed on nett internal area basis. Mr. Ó Cléirigh said that whilst that may be the case the rental evidence indicated by him showed that the accommodation at second floor level was let at a

lower rate per sq. metre than similar accommodation at first floor level in the same block.

14. When questioned about the comparisons introduced by him Mr. Ó Cléirigh said that they were only a representative sample and agreed that there may be other offices in the Dun Laoghaire/Rathdown area valued at both higher and lower levels than those shown in his comparisons. When asked to comment on Mr. Hicks' comparison Mr Ó Cléirigh said that comparison No.s 4-7 were all in Aspen Court and valued at the same time as the property concerned. The fact that the occupiers of these had not appealed their assessments did not alter the situation that at the relevant date i.e. 15th September, 2004 these assessments were not in the valuation list. As far as the other comparisons were concerned he was familiar with the facts in relation to them and indeed he had acted for the occupier of comparison No. 3 and had agreed its valuation at first appeal stage.

The Respondent's Evidence

15. Mr. Hicks having taken the oath adopted his précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief.
16. In his evidence Mr. Hicks contended for a rateable valuation of €63.00 calculated as set out below:

Offices 74.52 sq. metres @ €123.00 per sq. metre	= €9,166.00
Car Spaces 2 @ €381.00 each	= €762
NAV Say €10,000 @ 0.63%	= RV €63

17. In support of his opinion of net annual value Mr. Hicks introduced seven comparisons details of which are set out in Appendix 2 to this judgment.
18. In evidence Mr. Hicks said that when he first came to value Aspen Court he looked at assessments of other offices in the area. Accordingly he considered his comparisons

No.s 1 & 2 to be the most relevant as they were located in a new development immediately adjoining Aspen Court. In his opinion the quality of these offices was just as good as those in Aspen Court. However if anything the offices in Aspen Court itself were better insofar as they were located in a purpose built office development with basement car parking facilities whereas the adjoining offices at first floor level were situated over a parade of shops.

19. In regard to comparison No. 3, this was a common comparison whose valuation had been agreed with Mr Ó Cléirigh at first appeal stage. The valuation agreed at that time reflected its relatively poor profile and location within a neighbourhood shopping centre.
20. Mr. Hicks defended his decision in introducing other units in Aspen Court valued at the same time as the property concerned, as being relevant comparisons. Mr. Hicks said that since the occupiers of these units had not appealed their assessments, this indicated that they considered them to be fair and reasonable.
21. Mr. Hicks said he was familiar with all of Mr Ó Cléirigh's comparisons and accepted that they were representative of the levels of assessments for offices in the Dun Laoghaire/Rathdown area. However, as far as he was concerned the most relevant comparisons were those introduced by him by virtue of the fact that with the exception of comparison No. 3 all were located close to or in the Aspen Court development itself.
22. Under cross-examination Mr. Hicks agreed that the offices in Aspen Court did not have the benefit of a lift and said that in his opinion this would not necessarily have a bearing on rental values at the different levels. When it was pointed out to him that actual rental levels in Aspen Court indicated that there was a discount of 14.4% between offices on the first and second floor levels, Mr. Hicks said that this evidence had not been put before him until he got a copy of Mr Ó Cléirigh's précis of evidence.

If the information had been available to him at an earlier stage in the appeal process he would have had some regard to it.

Determination and Findings

The Tribunal has carefully considered all the evidence and argument adduced by the parties and makes the following findings:

1. Aspen Court by common consent is a new office development built to a high standard of construction and specification.
2. The four buildings within the development are all three storey and each is let on a floor-by-floor basis. Mr. Hicks in arriving at his assessment of individual units of occupation applied a uniform rate of €23.00 per sq. metre regardless of what levels the offices were at. Mr Ó Cléirigh introduced evidence of lettings in Aspen Court to show that offices at second floor level were let at a 14.4% discount to the first floor level rate. Armed with this evidence, Mr Ó Cléirigh applied different rates per sq. metre to offices at ground, first and second floor levels although he had no evidence to show that there should in fact be any difference between the assessments at ground and first floor level.
3. Both valuers introduced several comparisons. Mr. Hicks relied upon comparisons located close to the property concerned including four in the Aspen Court development that were valued at the same time as the property concerned. Mr Ó Cléirigh on the other hand relied on comparisons in other parts of the Dun Laoghaire/Rathdown functional area. As a general rule the Tribunal attaches more weight to comparisons located close to the property under appeal, provided of course that they are of a similar type and category of use.
4. Four of Mr. Hicks' comparisons are located within the Aspen Court development and as stated in evidence were first valued at the same time as the property concerned. Mr. Hicks contended that as the occupiers of these property did not

appeal, it was to be assumed that they considered the assessments to be fair and reasonable. The Tribunal attaches little weight to this evidence and of all the comparisons introduced accords most weight to Mr. Hicks' comparisons No.s 1 & 2 by virtue of the fact that they are located relatively close to Aspen Court.

5. Having regard to the evidence the Tribunal finds that Mr. Hicks' general level of assessment i.e. €123.00 per sq. metre is fair and reasonable. However the Tribunal has come to the conclusion that the offices at second floor level warrant a discount and this is borne out by actual rental evidence in the Aspen Court development, which shows a discount of 14.4% between offices at first and second floor levels. The Tribunal is conscious that this information was not available to Mr. Hicks until the Tribunal appeal stage and notes his comment that if it had, he would have had regard to it. Accordingly therefore, the Tribunal determines that the property concerned be valued at a rate of €105.00 per sq. metre.
6. Mr. Hicks values the car parking spaces at €381 per space but introduced no evidence to support this level of assessment. Mr Ó Cléirigh's evidence indicates that the value of car parking spaces in the Dun Laoghaire/Rathdown area varies from a low of €127 per space (comparison No. 6) to a high of €381 (comparison No. 4). Making the best judgment it can in the circumstances, the Tribunal considers €250 per space to be appropriate in this location.

Determination

1. Having regard to the above findings the Tribunal determines the rateable valuation of the property concerned to be €3.00 calculated as set out below:

74.52 sq. metres @ €106.00 per sq. metre	=	€7,899.00
Two car spaces @ €250 per space	=	€500.00
Net Annual Value	Say	= €8,400.00
RV @ 0.63%	Say	= €3.00

Rider

2. The Tribunal further determines that the assessments of the other properties under appeal be determined on the following basis:
 - Offices at ground and first floor levels - €123.00 per sq. metre
 - Offices at second floor level - €106.00 per sq. metre.
 - Car Parking spaces - €250.00 per space.
3. As determinations of this Tribunal cannot be regarded as “a material change of circumstances” the Tribunal recommends to the Commissioner of Valuation that he exercises his powers under Section 40 of the Valuation Act, 2001 in respect of those offices at second floor level in Aspen Court whose assessments were not appealed in order to ensure equity as between ratepayers.
4. A similar recommendation is made in respect of the valuation of car parking spaces in all the properties affected.

And the Tribunal so determines.