

Appeal No. VA08/3/042

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

Icon Clinical Research Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2192860, Office(s) at Lot No. 1K/1 Block a & b, Carmanhall & Leopardstown, Glencullen, Rathmichael, County Dublin

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Fiona Gallagher - BL

Member

Niall O'Hanlon - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 2ND DAY OF MARCH, 2009

By Notice of Appeal dated the 3rd day of September, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €3,400.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal, a copy of which is at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 20th day of January, 2009. At the hearing the appellant was represented by Mr. Eamonn Halpin, BSc. (Surveying), ASCS, MRICS, MIAVI, of Eamonn Halpin & Company Ltd., and Mr. Pronsias Ó Maolchaláin, BL. The respondent was represented by Ms. Carol Spain, BSc (Hons) Valuation Surveying, CDip. AF, a Valuer in the Valuation Office and Mr. James Devlin, BL.

Location

The subject property is located in the South County Business Park, Leopardstown, Dublin 18, approximately 1km from Junction 14 of the M50 and adjacent to Sandyford Industrial Estate.

The Property Concerned

The property concerned is an extension to Icon Clinical Research HQ, which is a property that already appears in the valuation list (Ref. No. 1024659). The subject property comprises two 4 storey over basement office blocks (known as Blocks A and B), together with a link area to the existing parts of the facility. The offices are finished to a high standard throughout and each block is served by two lifts. There are 28 surface car parking spaces along the perimeter of the building.

The accommodation is agreed as follows:

Basement Stores	387.5 sq. metres
4 Storey Offices	4,140.89 sq. metres

Title

The site was acquired on a phased basis and is held under a number of 999 year leases. The original site of 0.99 acres is held on a lease from 1st January, 1995 and the additional site of approximately 2.05 acres for the first extension of the original building is held on a lease from 1st January, 1998. The most recent addition to the site is held under another separate lease.

Rating History

A Revision Officer was appointed on 12th November, 2007, on foot of a request from the local authority. The revision request was stated to be a BIDS listing and requested revision as necessary to include the two 4 storey office buildings (Blocks A & B), which are an

extension of Icon plc. A valuation certificate was issued in January 2008 proposing a RV of €4,185. The appellant appealed against that valuation and at first appeal stage the RV was reduced to €3,400. This decision was further appealed by the appellant to the Tribunal by notice of appeal dated 3rd September, 2008.

The Appellant's Evidence

Mr. Eamonn Halpin having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the respondent, as being his evidence-in-chief. Mr. Halpin submitted that the subject premises is an extension to the appellant's pre-existing buildings and should therefore not have been assessed separately and also that it is not a property which should be subject to the BIDS entry property level. The appellant's original premises were initially valued in November 1996, with several revisions since as a result of ongoing development, the most recent being in 2002. In his evidence Mr. Halpin argued that the level of valuation should be based on an assessment of the entire building. Mr. Halpin also stated that the atrium and Blocks A and B are mainly located on the site of the original premises, except for a small portion of Block B and thus should not have been revised as they were situate upon the original site, which was already valued and on the list.

In the alternative, Mr. Halpin claimed that the RV placed on the subject property by the respondent is excessive in view of the level established on the site by the earlier phases of the building. In his view the appellant's property is not of comparable value to other new properties in the area as it is saddled with the older section of the building and the hypothetical tenant would reduce his bid for Blocks A and B if he also had to rent the original buildings as well.

Mr. Halpin further argued that the total area of the appellant's holding is very large and that a quantum allowance should be applied. It was submitted that the NAV of the car spaces should not have been included as additions in the calculations to determine the RV, but should have been included in the overall valuation as was the approach when the property was previously valued.

Mr. Halpin contended for a RV of €2,774, calculated as follows:

Offices	3,409 sq. metres @ €102.51 per sq. metre = €349,457
---------	---

Atrium Area	31.67 sq. metres @ €102.51 per sq. metre =	€ 75,003
Basement Stores, Kitchen etc.	387.5 sq. metres @ €41 per sq. metre =	<u>€ 15,888</u>
		€440,385
@ 0.63% =	€2,774.42	
Say RV =	€2,774	

He stated that the level of valuation he placed on the subject premises is based on an assessment of the entire property, but if he was to value the new section as a standalone property, he would probably increase the valuation. In his opinion, it is unfair to value Blocks A and B as a separate standalone entity, as they form part of the whole facility.

Mr. Halpin put forward four comparisons to support his view of rateable valuation. He stated that the best comparison was Lot 1S South County Business Park, known as “Whelan House” which he believes to be valued at €109.34 per sq. metre but the respondent believes to be valued at €111 per sq. metre. In Mr. Halpin’s opinion this building is of comparable standard to Blocks A and B, but of larger size. In assessing the RV of the subject property, Mr. Halpin stated that he would be guided partly by the original buildings on the site, which are valued at €116.17 per sq. metre or €105.95 per sq. metre net of car spaces, and partly by Whelan House.

Under cross examination Mr. Halpin stated that he considered the revision request by the local authority was for the existing building to be revised to take account of the extension. It was put to Mr. Halpin that the revision request was to revise the plot of land referred to therein but Mr. Halpin denied that the respondent had valued that particular plot of land. He claimed that the respondent had gone outside the plot of land referred to in the request and had also revised the property of the appellant located on the existing site, which was already entered on the valuation list. Mr. Halpin stated that on arriving on site and finding the original building in situ the respondent should have exercised its powers under section 28(2) of the Valuation Act to appoint a Revision Officer to revise the appellant’s property as a whole.

Mr. Halpin stated that the first three of the respondent’s comparisons are new buildings of a uniform standard and that they would attract different bids to the subject property, which

consists of some older buildings. He stated that one must have regard to the fact that on site there are a number of buildings and even if they are valued separately this should be reflected in the overall level. Mr. Halpin explained that when constructed the appellant's original facility was built to the highest standard in the South County Business Park and was valued at this level, but admitted that Blocks A and B are now better buildings when compared to the older facility, which because of the time of its construction is of a poorer specification than these newer blocks.

Ms. Susan Nolan, Regional Manager of Facilities and Administration of the appellant company also gave evidence on behalf of the appellant. Ms. Nolan stated that the company manages clinical research trials for pharmaceutical companies and that the premises consist of a general office environment and a laboratory. Ms. Nolan gave evidence as to the history of the building and stated that the first phase of the premises, the H Block shaped building at the front of the premises was constructed and occupied in 1996, with an extension constructed behind it occupied in 1999 and a final phase consisting of Blocks A and B and Blocks C and D occupied in 2008. The old H Block building is connected to the new blocks by an atrium, with the main entrance to the premises located in this atrium area. Ms. Nolan stated that the atrium is the central link between the two developments and to access the old building one must go through the atrium.

Ms. Nolan gave evidence that the atrium consists of a staff canteen, a reception area and a number of meeting rooms used by staff in both the old and new buildings. One system controls the fire and intruder alarm systems for the entire site, there is an integrated access system for staff, the utilities are paid as one and the premises is insured as one site. A new data centre, serving the entire premises was constructed in the lower ground floor of the existing building. This data centre houses the networks for the entire premises, with links to smaller server rooms in Blocks B, C and D.

Under cross examination Ms. Nolan stated that in order for the new blocks to be capable of separate occupation, a lot of changes would be required, as they are linked to the existing building. She admitted that although staff were instructed to use the new entrance, they could gain access through the previous entrance in the old building, but that this entrance was kept

locked for use as a fire exit only. She further stated that staff in Blocks A and B would have a need to go to the existing building to use the meeting rooms and to liaise with the IT staff.

The Respondent's Evidence

Ms. Carol Spain, having taken the oath, adopted her written précis and valuation, which had previously been received by the Tribunal and the appellant, as being her evidence-in-chief. Ms. Spain stated that the reason she had valued Blocks A and B separately to the rest of the appellant's property was that it was the land that was listed for revision in the revision request from the rating authority and this request specified that Blocks A and B were to be valued. In her view Blocks A and B are capable of separate occupation and from viewing the property her impression was that these blocks appeared to be a separate entity to the existing buildings. Ms. Spain further stated that Blocks A and B are of a superior standard to the adjoining property. She stated that there is an obvious age difference between Blocks A and B and the existing building, which is 12 years older and is now of quite dated appearance and of poorer specification.

Ms. Spain contended for a RV of €3,400, calculated as follows:

Offices	4,140.89 sq. metres @ €123 per sq. metre = €509,329
Basement Stores, Kitchen etc.	387.5 sq. metres @ €50 per sq. metre = € 19,375
Car Spaces	28 @ €381 each = <u>€ 10,668</u>
Total NAV	€539,372
RV @ 0.63%	= €3,398
Say	= €3,400

Ms. Spain put forward six comparisons in support of her opinion of rateable valuation, which are all located in the same business park as the subject. Four of the six comparisons are valued at a RV in excess of €120 per sq. metre and in Ms. Spain's view the prevailing level for high specification modern offices in this business park is €123 per sq. metre. Ms. Spain also stated that it is normal to value car parking separately and the prevailing rate in the area is €381 per space. She noted that the secure parking in the basement was not included in the valuation, as there was no access to it at the time of valuation due to construction work. It was also stated by Ms. Spain that a quantum allowance was not applicable in this case, given

that none was applied to her second comparison, Microsoft, which was a much larger building than the subject.

Under cross examination Ms. Spain stated that it was the land that was listed for revision in the revision request and her understanding of that request was that she was required to value Blocks A and B of the appellant's property. It was put to Ms. Spain that given that most of Blocks A and B are on the appellant's existing site which was the subject of a previous valuation (property reference number 1034659), that she was therefore confined to valuing the land which was part of the lot number referred to in the revision request and had no jurisdiction to value that portion of Blocks A and B which are part of property 1034659. In response Ms. Spain stated that she was not confined to valuing the lot numbers and that she could have specific reference to the property. She stated that the lot numbers are used only for identification purpose to value a new building not on the list.

Ms. Spain further contended that she was not asked to value the existing property and nor could she value it, as there was no revision request in respect of this property. She stated that she was asked to revise Blocks A and B and that she had no powers to revise property not listed. When asked whether she could not have listed the existing property for revision herself, she stated that she did not feel it was necessary. Ms. Spain admitted that in arriving at her valuation she had disregarded the existence of the old building and that section 17(2) of the Valuation Act was not considered by her at revision stage. This section provides that:

“an officer may, if he or she thinks it proper to do so having regard to the circumstances of the matter –

(a) value or cause to be valued contiguous relevant properties that are occupied by one person as a single relevant property even though those properties are held under different titles, and

(b) if a relevant property comprises 2 or more parts capable of being occupied separately, value or cause to be valued the several parts as separate relevant properties even though those parts are occupied by the one person”.

Legal Submissions

Mr. Pronsias Ó Maolchaláin B.L made submissions on behalf of the appellant. Mr. Ó Maolchaláin submitted that the essential question which the Tribunal must determine was what was listed for revision by the local authority in the revision request, whether it was the property or the building. Counsel contended that if the meaning of the revision request was that the particular property referred to, property reference no. 498602, was to be valued, then it followed that the valuation could only be made in respect of that portion of the property which was situate on the relevant property. Alternatively if the wording in the request under the section entitled “nature of revision required” was to take precedence, it was submitted that the Tribunal should come to the conclusion that what was listed for revision was the appellant’s entire property, both the original parent property and the extension at Blocks A and B. In those circumstances the provisions of section 28(4)(a) of the Valuation Act, 2001 applied, which section provides that:

“A Revision Officer, if he or she considers that a material change of circumstances which has occurred since a valuation under section 19 was last carried out in relation to the rating authority area in which the property concerned is situate or, as the case may be, since the last previous exercise (if any) of the powers under this subsection in relation to the property warrants the doing of such, may, in respect of that property –

- (a) if that property appears on the valuation list relating to that area, do whichever of the following is or are appropriate –*
 - (i) amend the valuation of that property as it appears on the list,*
 - (ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4,*
 - (iii) amend any other material particular in relation to that property as it appears on the list, ”.*

Counsel stated that on at least three occasions in the past an extension was built and a revision of the entire property occurred, based on a material change of circumstances. It was submitted that the subject property is an integrated part of the appellant’s existing premises and that the entire premises should have been valued together. It is one facility with one canteen for all staff, one data centre, one security access system, one insurance premium and single utility bills for the entirety of the premises. Separate occupation is only possible if

substantial alterations are made. It was contended that the respondent never gave any consideration to section 17(2) of the Act and did not consider whether it was appropriate or not to value Blocks A and B and the existing buildings on the appellant's premises separately

Counsel stated that what had occurred in the present case was that the respondent had mistakenly applied section 28(4)(b) of the Act of 2001, which provides that:

“if that property does not appear on the said valuation list and is relevant property (other than relevant property falling within Schedule 4 or to which an order under section 53 relates), do both of the following –

- (i) carry out a valuation of that property, and*
- (ii) include that property on the list together with its value as determined on foot of that valuation.”*

Mr. Ó Maolchaláin submitted that the respondent had acted *ultra vires* the Valuation Act, 2001, as a necessary pre-condition for section 28(4)(b) to apply is that the property does not appear on the valuation list, which it does in this case.

Counsel further argued that the creation of a new property on the valuation list created a substantial financial obligation on the appellant in terms of the BIDS legislation. It was submitted that this was not a relevant consideration and that the Commissioner had to determine whether the property was rateable under the usual principles.

The Respondent's Submissions

Mr. James Devlin B.L. made submissions on behalf of the respondent. Mr. Devlin submitted that the issue of the BIDS property level was irrelevant to the unit of valuation and was outside what the Tribunal has to consider. He stated that it was agreed by both parties that in valuing a property the respondent should not attempt to either bring a property within the scope of the levy or outside it.

Counsel submitted that section 17 of the Valuation Act, 2001 sets out the general principle and allows for a property to be valued separately if it is capable of being occupied separately and it is proper to do so having regard to the circumstances of the matter. Counsel argued

that even if the subject property is not as a matter of fact a “separate relevant property”, the Revision Officer was correct in valuing it separately in light of the revision request, which requested the valuation of the two new blocks, Blocks A and B. It was submitted that the respondent had to value the property which gave rise to the revision request and there was little to be gained from looking at lot numbers. Mr. Devlin further submitted that if a ratepayer fails itself to make a revision request, it is not in a position to quibble with the way the request is framed by the local authority.

Findings

1. The Tribunal finds that the revision request by the local authority in this case requested the revision of a particular property, property reference number 498602, which property includes the buildings and land thereon. The request states that it is a BIDS listing and asks the Revision Officer to revise as necessary to include the two 4 storey office buildings (Blocks A & B), which are an extension of Icon plc. From the maps provided to the Tribunal by the appellant, it is clear that Block A, the atrium and most of Block B are situate on another property (property reference no. 1034659), which has previously been revised and is on the valuation list.
2. The relevant legislation in this case is section 28(4) of the Valuation Act 2001, which provides as follows:

“A Revision Officer, if he or she considers that a material change of circumstances which has occurred since a valuation under section 19 was last carried out in relation to the rating authority area in which the property concerned is situate or, as the case may be, since the last previous exercise (if any) of the powers under this subsection in relation to the property warrants the doing of such, may, in respect of that property –

(a) if that property appears on the valuation list relating to that area, do whichever of the following is or are appropriate –

(i) amend the valuation of that property as it appears on the list,

(ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4,

(iii) amend any other material particular in relation to that property as it appears on the list.

(b) if that property does not appear on the said valuation list and is relevant property (other than relevant property falling within Schedule 4 or to which an order under section 53 relates), do both of the following –

(i) carry out a valuation of that property, and

(ii) include that property on the list together with its value as determined on foot of that valuation.”

3. Section 28(4) of the Act of 2001 provides that if the Revision Officer considers that there has been a material change of circumstances then he or she may take certain actions depending on whether or not the property appears on the valuation list. Where the property appears on the list, the powers of the Revision Officer extend to amending the valuation, excluding the property from the list or amending any other material particular in relation to the property.
4. The Revision Officer, Ms. Spain, admitted in evidence that in valuing the property, she had disregarded the existence of the old buildings already on the appellant's property. Therefore, it is clear that the respondent failed to consider whether or not there had been a material change of circumstances as was required of her under section 28(4).
5. The evidence in this case would tend to support the view that there was a material change of circumstances in respect of the appellant's existing property (property reference number 1034659) as a result of the construction of the new extension, consisting of Blocks A and B and the atrium, the majority of which is situate on this existing site. It is clear that these new areas are linked to the existing buildings and that the entire facility is one integrated operation.
6. Having regard to the above findings and the jurisdiction of the Tribunal, we direct that the matter be remitted to the respondent in order that the respondent consider whether or not there was a material change of circumstances in accordance with section 28(4) of the Valuation Act, 2001. For these reasons, the Tribunal expresses no view on the quantum of the valuation in respect of the subject property at this time.

7. The Tribunal gives liberty to both parties to re-enter the appeal before the Tribunal in the event of a dispute.

And the Tribunal so determines.