

Appeal No. VA08/4/003

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

Easydentic Ireland Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2193106 Office(s) at Lot No. 23-33/ Pt 3rd Fl. (Castleforbes House),
Mayor Street Upper, North Dock B, North Dock, Co. Dublin

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

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

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 31ST DAY OF MARCH, 2009

By Notice of Appeal, dated the 6th day of October, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €270.00 on the above described property.

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

"On the basis that the RV as assessed is excessive and inequitable. The RV is excessive in view of the established tone for comparable property & relative value of the subject premises."

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 3rd day of February, 2009. The appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), ASCS, ARICS, MIAVI, of Eamonn Halpin & Co. Ltd. The respondent was represented by Mr. Francis Twomey, a District Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective préces of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

The Property

An office suite located on the third floor of Castleforbes House, a multi-storey multi-tenanted office block, situate at the corner of Castleforbes Road and Mayor Street Upper within the Dublin Docklands Development Authority area. The subject office enjoys the benefit of two dedicated car parking spaces in the basement of the building and also enjoys the benefit of a terrace. The area lies between the IFSC to the west and the new Point development works underway to the east and, though improving, the area is generally characterised in development terms as one requiring further development activity, completion of the proposed LUAS - Light Rail service and population by office and ancillary workers.

Tenure

Leasehold for a term of 4 years and 9 months, commencing June, 2007.

Services

Connected to all mains.

Areas

Third Floor Office Suite agreed by both parties:	227.4 sq. metres
Basement:	Two car spaces

Valuation History & Relevant Dates

October, 2007	Revision Officer appointed on foot of request from Dublin City Council to value as necessary.
November, 2007	Property inspected by Revision Officer and RV proposed at €270.
February, 2008	No representations were received and the Commissioner of Valuation confirmed an RV of €270.
March, 2008	Appellant appealed the valuation through their Consultant, to the Commissioner of Valuation.
September 2008	Further submission to Appeal Officer, Mr. Michael Keogh.
September, 2008	Commissioner of Valuation issues result of the First Appeal with the valuation unchanged at RV €270.
October, 2008	The Appellant appeals the Commissioner's decision to the Valuation Tribunal through Eamonn Halpin & Co. Ltd., by Notice of Appeal dated 6 th October, 2008.

Appellant's Case

Mr. Halpin took the oath, adopted his précis as his evidence-in-chief, and sought one correction on the details provided by him on page 7 of his précis, noting that his Comparison Property No. 3 should be corrected to read an equivalent rate per sq. metre on the net annual value of €109.34, correcting the erroneous entry of €95.60 per sq. metre. He prefaced his direct evidence by indicating that the fundamental basis of his client's position was an issue of identifying the relevant data to determine the "tone-of-the-list". Mr. Halpin provided a description of the building, its location, the condition of the subject office suite, its situation with regard to other office facilities within Castleforbes House, the shared reception and lift access to the subject property from the ground floor, and confirmed the existence of two designated parking spaces in the basement car park. He gave a clear indication of the location of the building with reference to the IFSC to the one side, and the Point development to the other. He contended that the passing rent on the subject at €290 per sq. metre corresponds to equivalent suburban rental rates and is less than half of prime city office rental rates at up to €600 per sq. metre, citing a 2008 year end property report published by Savills. He stressed that Castleforbes House is located in a partially developed area and among many older buildings. Addressing the seven comparisons contained within his précis, he noted the following:

- **Comparison No. 1:** Office suites in Ulysses House opposite the Steelworks redevelopment in Foley Street to the west of the subject. Built within the last few years to a high specification similar to the subject in terms of raised access floors and air conditioning, valued at the equivalent of €82 per sq. metre though allegedly earning the same passing rents. Though having a floor area almost three times that of the subject, Mr. Halpin noted that the determination in relation to the nearby Bord Gáis Éireann premises by the Valuation Tribunal (VA02/2/065 – **Bord Gáis Éireann**) resulted in a reduction of the net annual value (NAV) on Ulysses House, largely attributed to neighbourhood influences not dissimilar to those prevailing in the area of Castleforbes House.
- **Comparison No. 2:** Mr. Halpin referred to modern first floor offices of similar area to the subject located on Francis Street where the NAV was established at again approximately €82 per sq. metre and the car spaces, unlike the foregoing at €500 each for two, in this circumstance at the lower level of €380 each.
- **Comparison No. 3:** Again, offices located in Clontarf with an NAV assessed and corrected to read at €109.34 per sq. metre and the car spaces at €250 each.
- **Comparison No. 4:** Offices, 108 sq. metres with one car space, acknowledging that the finish was not as good as the subject, though within the area known as the IFSC and accordingly considered by Mr. Halpin as vastly superior in terms of location when compared with the subject, but carrying a NAV of €136.65 per sq. metre and one car park space levied at €700.
- **Comparison No. 5:** Offices, Pearse Street, built in the late 1990's. Mr. Halpin cited these modern offices, now known as the BT Building, as relevant insofar as the NAV and car parking spaces were levied at €100 per sq. metre and €635 each, respectively.
- **Comparison No. 6:** Being part of a building constructed off Merrion Square in 1993, again bearing a NAV equivalent of €109.34 per sq. metre.
- **Comparison No. 7:** Described by Mr. Halpin as prime offices on St. Stephen's Green, built approximately 30 years ago, with reported very strong rental capacity reflected by historical passing rent back in 1988 of IR £125.06 per sq. metre.

Mr. Halpin also indicated a range of values applying to certain car park spaces in the calculation of RV from a low of €380 to a high of €700 per space. It was noted at the hearing that the latter three comparisons above were not previously submitted for consideration at First Appeal to the Commissioner.

In concluding his submission, Mr. Halpin argued that rental levels cannot be ignored, as in his view they formed the underlying basis for the “tone-of-the-list”. He referred again to the location and neighbourhood conditions of Castleforbes House and many attendant issues of security, anti-social behaviour and lack of employment activity in the area of the subject. He contended that no more than €82 per sq. metre should apply to the NAV of the subject office suite and €250 to each of the car spaces, which would result in a total NAV of €19,311, reducing by the factor of 0.63% to €121.65, which he rounded down to a submitted or requested RV of €121.

Cross-examination by Mr. Twomey

Mr. Twomey commenced cross-examination by seeking Mr. Halpin’s confirmation that:

- a) The subject property is a third floor office suite within a multi-storey, multi-tenanted office block, constructed around 2006/2007 with access provided by lift to the subject suite.
- b) The relevant property may be described as third generation, being part of a development undertaken by an experienced Dublin developer.
- c) The office features an outdoor terrace overlooking the courtyard below, suspended ceilings, high quality lighting, raised access floors, and a passenger lift providing direct access from reception and to/from the basement car park.
- d) Castleforbes Square, which incorporates the office building known as Castleforbes House is characterised by a major mixed use development advancing in phases including blocks of apartments and offices now built and future retail units.

Mr. Halpin confirmed all of the foregoing.

Mr. Twomey then noted that the area of Upper Mayor Street remains under development, with partly and fully completed residential development nearby, as evidenced by the Liffey Trust building to the east, the Point Village and Point Theatre, both completed, noting that the Village is only approximately 190 metres from Castleforbes House. Mr. Halpin, still under cross-examination, contended that short distances between developments are particularly relevant in this case as, in his view, they represent widely differing areas, declaring a virtual ‘sea change’ in the difference of values between partially completed development areas, citing Sir John Rogerson’s Quay on the south bank of the nearby river Liffey, levels up to €500 per sq. metre. Continuing to reply to questions, Mr. Halpin agreed that Spencer Dock is

bounded by Sheriff Street but in his opinion promoted and marketed as nearby the IFSC. Mr. Twomey continued his queries with respect to the proposed LUAS service scheduled to open in 2010 and to pass in the street fronting Castleforbes House. He advised the Tribunal that this service will continue east to the Point and serve as an extension of the Red Line which will provide a direct rail link at Connolly Station. Mr. Halpin considered its potential influence on rental rates as minimal and would not agree with Mr. Twomey's contention that the NAV should relate exclusively to the "tone-of-the-list", effectively disregarding passing rents. Mr. Halpin would not accept that the passing rents are a reflection of current macro economic conditions, which the respondent argued should, in any event, be ignored for the purpose of rating while contending that the subject relevant property is constructed and finished to a very high standard at an excellent location.

In reply to further questions from Mr. Twomey regarding the geographical spread of the comparison properties outlined in the appellant's précis, Mr. Halpin argued that the selection was carefully made by him to determine his view of what the "tone-of-the-list" should be, as he considered that no tone existed for the Castleforbes House office development prior to the Revision carried out by the Commissioner of Valuation. Mr. Halpin also argued that the IFSC and Spencer Dock office developments and their levels were linked to passing rental values, which he considered appropriate when taken together with locational criteria. In reply to additional questions put to him by the respondent, he confirmed that his primary comparison property at first appeal was the nearby Bord Gáis Éireann building whereas his comparison property No. 1 in his current précis is now his primary choice. He acknowledged the very significant difference in floor area of these two buildings, the former at 2,950 sq. metres whereas Ulysses House though first revised as a single entity had subsequently been revised when the building was adapted to provide for small office suites. Mr. Halpin accepted under further cross examination by Mr. Twomey that Ulysses House may have been initially valued on a basis similar to Bord Gáis Éireann, but that the subsequent revision resulted in a substantially different rate per sq. metre applied to determine the net annual value of the office suites.

Mr. Halpin would not agree with the respondent's opinion that the subject relevant property, situate within Castleforbes House, is at an excellent location, a third generation office premises, benefiting from excellent access to transportation services and within a rapidly improving business district.

Mr. Halpin continued to reply to questions, stating that the other comparisons in his précis were offered with a view to assisting the Tribunal to reach a conclusion on a “tone-of-the-list” based on passing rents. This issue was strongly challenged by Mr. Twomey, who in turn expressed the view that a tone has long settled in the North Quays area, initially with the development of the IFSC, later by Spencer Dock and other recent developments in the area. Mr. Twomey also challenged Mr. Halpin on the comparison properties set out by him in his précis, contending that their locations, ranging from off Merrion Square, Stephen’s Green, Francis Street and Clontarf, were not representative of the tone of the list which was available in his opinion within the North Quays area. Under continued direct cross-examination, Mr. Halpin confirmed the view that the net annual value is established by reference to the “tone-of-the-list” but the tone should, of necessity, be linked to rent.

Respondent’s Case

Mr. Twomey took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. He outlined the nature and scope of Castleforbes House as a major new mixed use development comprising offices, apartments, retail units and underground parking within a short distance of the Point village development area. He noted the level of completion of other developments close to the north bank of the Liffey and, in particular, the recent opening of the Liffey Trust Arts Centre in the immediate area. He confirmed that the seven storey Point Village is well advanced in construction terms and the Point Theatre is complete and was recently opened. He set out the reasons underlying the NAV values attributed by the Commissioner of €184.44 per sq. metre and €635 each to the gross internal area of the office and the two car parking spaces designated to the subject, respectively, by referring to the comparison properties outlined in his written précis.

He advised the Tribunal that all the comparisons submitted were drawn from the overall Docklands area, extending in an easterly direction from the Custom House, and the tone of the list was set by having regard to development, as it progressed over recent years in that direction.

His first three comparisons indicated agreement on the NAV applied to the Citibank offices, IFSC; A & L Goodbody, IFSC; and Fortis Bank at Spencer Dock, all three of which comprise very large floor areas of circa 19,400 sq. metres, 10,000 sq. metres and 6,800 sq. metres respectively, with NAV rates agreed with the occupier’s agents at €205 per sq. metre. His

Comparison No. 4, the Dublin Exchange Facility, a multi-tenanted building at the corner of Mayor and Commons Streets was valued at €191.35 per sq. metre, noting that all the other units within that complex were also valued on the same basis.

His Comparison No. 5, Huber Financial Services on the fourth floor of another multi-tenanted building on Guild Street, carries an equivalent NAV rate of €211.84 per sq. metre, and his final Comparison No. 6, was deleted from the record, by consensus of the parties, as it was the subject of a Valuation Tribunal Appeal.

Mr. Twomey concluded that based on his analysis, a tone for offices in the area has emerged producing a NAV at about €191.00 per sq. metre and noted that all of his comparisons are within 15 minutes walking distance of the subject property. He explained that in his valuation approach to the subject he reduced the applicable rate per sq. metre a little, down to a figure of €184.44 to represent the fact that Castleforbes House is a little further away from the city centre and the IFSC. He suggested that Mr. Halpin had initially sought to rely primarily on Ulysses House comparison opposite the Steelworks redevelopment in Foley Street, having selective regard only to the socio-economic problems reported in the Bord Gáis Éireann appeal to the Valuation Tribunal (**VA02/2/065 - Bord Gáis Éireann**). Mr Twomey expressed the belief that the negative influences associated with the location of the BGE complex cast a unique valuation shadow over Ulysses House.

Mr. Twomey explained to the Tribunal that the LUAS rail tracks are being installed on the street fronting the subject relevant property, which will eventually bring service from Connolly Station through the IFSC eastward to the Point and back. This terminus, Mr. Twomey concluded, would be no more than 200 metres from Castleforbes House.

He stressed a requirement placed on the parties to avoid references to current economic conditions and the obligation under the 2001 Act to consider that which has become known in professional rating practice as the “tone-of-the-list”.

Cross-examination by Mr. Halpin

Mr. Halpin rhetorically mused if it is the tone which is to guide a process to produce the NAV, or in the alternative, the rent to establish the tone?

Findings & Conclusions

1. The Tribunal acknowledges the efforts made by both parties seeking to support their respective positions with a view to determining a fair and reasonable “tone-of-the-list” applicable to the subject property.
2. The evidence adduced at hearing supported by the written préces of the parties, resulted in a differential range of applied NAV from €184.44 per sq. metre to €82 per sq. metre.
3. Having regard to the “tone-of-the-list” and Mr. Halpin’s declaration that, though perceived as a better location, albeit a property in poorer condition, his Comparison No. 4 comprising an office with a NAV of €136.65 per sq. metre and a car space at €700 was considered as the most helpful comparator from both parties, while having regard to all the other data provided.
4. As no cogent argument was proffered to support any detailed consideration of the applied value of each of the two car spaces, the NAV apportioned to them by the respondent is considered fair and reasonable.
5. The Tribunal is obliged to consider only the evidence submitted and adduced at hearing and as always adopts the principle underlying rebus sic stantibus, and consequently does not consider the proposed LUAS service relevant in these circumstances.

Accordingly, the Tribunal calculates the rateable valuation of the subject property as follows:

227.4 sq. metres	@ €136 per sq. metre	= €30,926.40
2 Car spaces	@ €635 ea	= <u>€1,270.00</u>
Total NAV		= €32,196.40
RV @ 0.63%		= €202.83
RV Say		€200

And the Tribunal so determines.