

Appeal No. VA08/5/008 & 114
& 117

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

Mitsubishi Motors Ltd. (VA08/5/008)
Sean Fitzpatrick Wholesale Ltd. (VA08/5/114)
J. Harris Assemblers Ltd. (VA08/5/117)

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 406882, Warehouse at Mitsubishi House, JFK Industrial Estate, JFK Drive, Clondalkin (VA08/5/008) & Property No.408483, Warehouse Cash & Carry at 4 John F. Kennedy Avenue, Naas Road (VA08/5/114) & Property No. 408482, Warehouse at Naas Road (VA08/5/117), County Dublin

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

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

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF DECEMBER, 2008

By Notices of Appeal dated the 24th day of June, 2008 (VA08/5/008) and the 31st day of July, 2008 (VA08/5/114 & 117), the appellants appealed against the determination of the Commissioner of Valuation in fixing valuations of €487,000.00 (VA08/5/008), €411,000.00 (VA08/5/114) and €2,238,000.00 (VA08/5/117) respectively on the above described relevant properties.

The Grounds of Appeal are set out in the Notices of Appeal, copies of which are attached at the Appendix to this judgment.

1. With the consent of the parties the oral hearing in relation to these appeals was held contemporaneously in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 21st day of October and the 8th day of December, 2008.
2. At the oral hearings the appellants were represented by Mr. Owen Hickey, SC, instructed by Maguire Desmond, Solicitors. Mr. Brendan Conway, BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent, the Commissioner of Valuation.
3. At the hearing held on 21st October, 2008 the Tribunal heard legal submissions and evidence in order to enable the Tribunal to issue a judgment in relation to a number of matters of a legal nature which could have a bearing on the valuation in relation to each of the properties concerned.
4. Having considered the evidence and arguments adduced the Tribunal issued its judgment on 18th November, 2008.
5. The hearing held on 8th December, 2008 received evidence in relation to the valuation of each property, having regard to the findings contained in the judgment dated 18th November, 2008 already referred to. The determination of the Tribunal of 18th November, 2008 may be summarised as follows:
 - (i) That each property is in beneficial occupation.
 - (ii) That each property concerned is to be valued in its actual state, i.e. *rebus sic stantibus*.
 - (iii) That in arriving at an estimate of the net annual value of each property under section 48(3), it cannot be assumed that the Camac culvert has been reconstructed as required under the section 3 notice.
 - (iv) That the cost of reconstructing the culvert is without the repairing assumptions contained in section 48(3).
 - (v) That, accordingly, each property must be valued in its existing state.
 - (vi) That a hypothetical tenant in the market would be aware of the restrictions imposed by the dangerous state of the culvert which is an intrinsic part of the property to be valued.
 - (vii) That the hypothetical tenant would also be aware of the inherent risk of flooding were a failure of the culvert to occur within the boundaries of the property concerned and would also be conscious that this possibility could give rise to higher than normal insurance costs.
6. In each instance the valuers for the appellant and the respondent adopted a common valuation approach. Firstly they agreed the valuation of each property on the assumption

that they were not affected by the matters emanating from the decision taken by South Dublin County Council to designate the Camac culvert as being a dangerous structure under the relevant provisions of the Local Government (Sanitary Services) Act, 1964 as amended by the Environmental Protection Act, 1992. Having carried out this exercise they then applied to the valuation so agreed what they considered to be an appropriate reduction having regard to the findings and determination of the Tribunal dated 18th November, 2008.

VA08/5/008 - Mitsubishi Motors Ltd.

Valuation currently in the Valuation List €487,000

7. The property concerned in this appeal is a detached industrial building with two-storey offices to the front with access from John F. Kennedy Drive. The Camac culvert runs diagonally across the south-east corner of the site for a distance of 16 metres.

The Appellant's Evidence

8. Mr. Pat Allen, the former Technical Director of Mitsubishi, said the necessary culvert reconstruction works would cause problems in relation to access to and egress from the property during the reconstruction period.
9. Mr. Tadhg Donnelly of Brian Bagnall & Associates, Surveyors and Valuers, who gave evidence on behalf of all 3 appellants, in his evidence said that the valuation of this property had been agreed with the respondent on the assumption that it was not affected by matters associated with the Camac culvert. In his opinion the valuation agreed required to be adjusted in the light of the Tribunal's findings contained in the judgment dated 18th November, 2008. Accordingly therefore he proposed the following valuation:

Base valuation as agreed	€487,000
Less for remedial works and disturbance 16%	€77,920
Net annual value of the property concerned Say	€409,000

10. Mr. Donnelly said that in arriving at his allowance of 16% he had regard to the budget cost of replacing the culvert as provided by SIAC Construction, in the sum of €395,000 exclusive of VAT. Mr. Donnelly said he also had regard to the disturbance to the appellant's business that would directly arise from the culvert reconstruction works. He estimated the cost of the disturbance to be €41,000.

The Respondent's Evidence

11. Ms. Triona McPartlan, BSc (Hons) Estate Management, a valuer in the Valuation Office, gave evidence on behalf of the respondent, the Commissioner of Valuation. Ms. McPartlan in her evidence said she adopted the same valuation approach as Mr. Donnelly and put forward a valuation of the property concerned as set out below:

Base valuation as agreed	€487,000
Less for the Camac culvert factors	<u>€20,000</u>
Net Annual Value of the property concerned	€467,000

12. Ms. McPartlan said that in arriving at her opinion of what was the appropriate allowance for the matters contained in the Tribunal's judgment dated 18th November, 2008 she had regard to the estimated cost of the reconstruction works provided by SIAC, i.e. €395,000. Ms. McPartlan said she had recapitalised this figure at 5% in order to reflect the findings of the Tribunal. In her opinion the actual and future disruption of use of the Mitsubishi premises due to the Camac culvert and its replacement was *de minimis*. In the circumstances she felt her allowance of €20,000 was more than adequate.

VA08/5/114 - Sean Fitzpatrick Wholesale Ltd.

Valuation currently in the Valuation List €411,000

13. The property concerned in this appeal is a cash and carry outlet with customer car-parking at the front and a yard at the rear for loading and unloading purposes. The premises are located within the John F. Kennedy Industrial Estate, and are accessed from Killeen Road at a point close to the Nangor Road roundabout. The Camac Culvert runs from west to east across the car-park and delivery area for a distance of 177 metres. The warehouse building is not directly affected nor are there currently any restrictions on the use of the property.

The Appellant's Evidence

14. At the hearing on 21st day of October, 2008 Mr. Fitzpatrick, the Managing Director of the appellant company, said that the reconstruction of the Camac culvert would so disrupt his business that it would have to close down for a period of six months. The location of the culvert was such as to render the car-park and delivery area unusable and would give rise to major difficulties in relation to access. A cash and carry outlet, Mr. Fitzpatrick said, could not operate without adequate car-parking and loading/unloading areas.

15. Mr. Tadhg Donnelly said that he had agreed the valuation of the property concerned with the respondent on the assumption that it was not affected by matters associated with the Camac culvert referred to in the Tribunal's judgment dated 18th November, 2008. Having regard to the location and extent of the Camac culvert within the boundary of the property concerned, and the serious disruption to the appellant's business as a result of the reconstruction of the culvert, he had arrived at what he considered to be a fair and reasonable estimate of the value of the property concerned, in accordance with section 48(3) of the Valuation Act, 2001. In arriving at his opinion of net annual value Mr. Donnelly said that he had regard to the estimated cost of reconstructing the culvert to meet the requirements of South Dublin County Council provided by Clifton Scannell Emerson Associates. The estimated cost of the works was €1,570,000 exclusive of VAT. Accordingly he put forward the following valuation:

Base valuation as agreed	€404,000
Less for replacement of Camac Culvert (€1,570,000 @ 5%)	<u>€78,500</u>
Net Annual Value of the property concerned Say	€325,500
Alternatively discount the base valuation @ 20% = €325,000	

The Respondent's Evidence

16. Mr. David Molony, a District Valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation. In his evidence Mr. Molony said that he had agreed the valuation of the property concerned with Mr. Donnelly as being €404,000 on the assumption that it was not affected by matters associated with the Camac culvert. However, having regard to the findings of the Tribunal contained in its judgment dated 18th November, 2008, Mr. Molony said that in his opinion the appropriate method of dealing with the matters set down in the judgment was to make what he called an "end allowance". In the circumstances he contended for a rateable valuation of €375,000 calculated as set out below:

Base valuation as agreed	€404,000
Allow for valuation factors as per judgment dated 18 th November, 2008	
Less say 7.5%	<u>€30,000</u>
Net Annual Value of the property concerned Say	€375,000

17. Under examination Mr. Molony agreed that the necessary culvert replacement works would interfere with the occupier's use of the property but felt that his "end allowance" of 7.5% took this fully into account. He also agreed that if he were valuing the property on a

capital value basis or a depreciated replacement cost basis he would have regard to the cost of the replacement works. Mr. Molony said that he had not however valued the property concerned on either of these bases, but had estimated the net annual value of the property concerned in accordance with section 48(3) of the Valuation Act, 2001 having regard to the earlier findings of the Tribunal. Mr. Moloney said that whilst the occupier's use of the property would be affected to some degree during the reconstruction works there would be no interference with the access to the premises.

VA08/5/117 - J. Harris Assemblers Ltd.

Valuation currently on the valuation List €2,238,000

18. The property concerned in this appeal is a large industrial complex located between the Naas Road, the Longmile Road and John F. Kennedy Avenue, used for the assembly of trucks for the construction and transport industries. Access to the property is off the Naas Road at a point close to its junction with the Long Mile Road and the Nangor Road. The Camac culvert runs in a west to east direction across the property just inside the northern boundary of the premises fronting onto John F. Kennedy Avenue for a distance of 419 metres.

The Appellant's Evidence

19. Mr. Pat Davis, Consultant Engineer of Clifton Scannell Emerson Associates, in his evidence given on 21st October, 2008 said that his company had advised the appellant to introduce restrictions regarding the parking and movement of vehicles along the line of the culvert. He further advised the appellant that it would be necessary to cordon off a strip of the yard during the period of the reconstruction of the culvert. This, he said, would further reduce the area between the rear of the buildings and the boundary fence along John F. Kennedy Avenue currently used for parking and circulation purposes.
20. Mr. Tadhg Donnelly said in his evidence that he had once again agreed the valuation of the property concerned with the respondent on the assumption that it was not affected by matters associated with the fact that the Camac culvert had been designated as being a dangerous structure. Having regard to the findings of the Tribunal as contained in the judgment dated 18th November, 2008 and bearing in mind the location and extent of the culvert within the property concerned he had adjusted the valuation of the property as agreed in order to take account of all the above matters. Accordingly therefore it was his

opinion that the net annual value of the property concerned was €1,720,000 calculated as set out below:

Base valuation as agreed	€2,000,000
Less allowance for Camac culvert considerations 14%	<u>€280,000</u>
Net annual value of the property concerned Say	€1,720,000

21. Mr. Donnelly said that in arriving at his 14% allowance he had regard to the estimated costs of the culvert replacement works provided by the appellant's consultant engineers in the sum of €4,950,486 exclusive of VAT. Mr. Donnelly said he had discounted the above figure at 5% to give an annualised figure of €247,874 which he rounded up to €280,000 in light of the Tribunal's earlier findings.

The Respondent's Evidence

22. Mr. Denis Maher, ASCS, MRICS, a Valuer in the Valuation Office, gave evidence on behalf of the respondent, the Commissioner of Valuation. In his evidence Mr. Maher said he had agreed the valuation of the property concerned with Mr. Donnelly on the assumption that it was not affected by the Camac culvert considerations. He then adjusted this valuation so agreed in order to take account of the Tribunal's findings contained in the judgment dated 18th November, 2008 in order to arrive at his opinion of net annual value in accordance with section 48(3) of the Valuation Act, 2001 calculated as set out below:

Base valuation as agreed	€2,000,000
Less allowance for Camac culvert considerations say 5%	<u>€100,000</u>
Net annual value of the property concerned	€1,900,000

23. Under examination Mr. Maher said there was no relationship between the cost of the culvert replacement works and the rental value of the property concerned. Mr. Maher said he did not agree with Mr. Donnelly's valuation methodology and contended that his end allowance of 5% was fair, having regard to the findings of the Tribunal in its judgment dated 18th November, 2008.
24. Mr. Maher agreed that if he were preparing a valuation in accordance with section 50 of the Valuation Act, 2001 (the contractor's basis) he would have regard to the cost of the culvert replacement works. However, the fact of the matter was that he had prepared his valuation in accordance with section 48(3), and there is no facility within that section to deal with works of a capital nature, such as the cost of replacing the culvert. Mr. Maher stressed that his end allowance of 5% fully reflected all the matters that a hypothetical

tenant would take into account in arriving at an estimate of the rental value of the property concerned at the relevant valuation date including the heightened possibility of flooding due to the damaged state of the culvert.

Findings

At the oral hearing the parties were represented by Counsel. The Tribunal is indebted to them for the range and depth of their submissions and argument in relation to a number of matters touching on the valuation of the properties concerned, which were of assistance to the Tribunal in arriving at determinations, which it considers to be fair, proper and in accordance with the provisions of section 48(3) of the Valuation Act, 2001.

- (1) The statutory basis of valuation is set down in section 48 of the Valuation Act, 2001, wherein at section 48(3), the net annual value of a property is defined as being, *“the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant”*.
- (2) The onus of showing that the valuation of the property concerned, appearing in the valuation list, is incorrect is on the appellant.
- (3) It is clear from the findings of the Tribunal in its judgment dated 18th November, 2008 that the presence of the culvert in its current dangerous state would have a detrimental effect on the rental value of each of the three properties concerned on the basis of the assumptions contained in section 48(3) of the Valuation Act, 2001. The problem facing the valuers, therefore, was how to give effect to the findings of the Tribunal in arriving at their respective opinions of net annual value.
- (4) All the valuers in the first instance agreed a valuation of each property concerned on the assumption that they were not affected by matters arising out of the designation by South Dublin County Council that the Camac culvert is a dangerous structure under the provisions of the Local Government (Sanitary Services) Act, 1964 as amended. The second step was then to adjust the valuation so agreed so as to reflect the findings of the Tribunal contained in its judgment dated 18th November, 2008.

- (5) Mr. Donnelly in arriving at what he considered to be an appropriate level of adjustment in each instance relied heavily upon the estimated cost of replacing the culvert to a design, size and specification necessary to meet the requirements of the County Council and the Office of Public Works. In effect, Mr. Donnelly annualised the cost of the replacement works at a rate of 5% and used this as a basis for calculating his adjustment factor in each instance. In the Mitsubishi appeal however, he also added in a figure of €41,000 in respect of current and future disturbance occasioned by the Camac culvert.
- (6) The Respondent's valuers on the other hand took the view that the adjustment should be expressed by way of an "end allowance" and considered the replacement costs to be not relevant in arriving at an estimate of net annual value in accordance with the statutory provisions. Ms. McPartlan, who gave evidence in relation to the Mitsubishi appeal, however said that in arriving at her opinion she had, as a guide, had regard to the replacement costs which she also devalued at 5%, thus giving a reduction of just over 4%.
- (7) The Tribunal accepts the proposition that the cost of the culvert replacement works would be a relevant factor in arriving at the value of each property concerned on a capital value basis or when preparing a valuation for rating purposes using the contractor's basis method of valuation in accordance with the provisions of section 50 of the Valuation Act, 2001. In the context of these appeals the valuation of each property was as a first step arrived at by all the valuers concerned in accordance with the provisions of section 48(3) having regard to rental values/assessments of similar properties in the vicinity which themselves are not affected by the Camac culvert. Whilst a hypothetical purchaser in the market would probably take into account the likely replacement cost of the culvert when arriving at an opinion of capital value it does not necessarily follow that the hypothetical tenant envisaged in rating law would do likewise as both would take different considerations into account when arriving at their respective opinions of value. Whilst the replacement cost might serve as a guide in order to arrive at an opinion as to what the appropriate allowance might be for each of these properties it should be exercised with a degree of caution.
- (8) It is common case that each of the properties concerned is affected by the presence of the Camac culvert within its boundaries, to a greater or lesser extent depending upon the location and length of the culvert within each property, the restriction

imposed upon the current use of the property, and the likely restrictions on the use of the property during the period of the reconstruction works which will be carried out at some time in the foreseeable future. There are, of course, other considerations such as the heightened risk of flooding should the culvert collapse – obviously the danger of this happening is a function of the length of the culvert within each property concerned. For example, it would be very minor in relation to the Mitsubishi premises where the length of the culvert is only 16 metres.

- (9) In essence the hypothetical tenant in arriving at an opinion of rental value in each instance would have regard firstly, to the fact that the property within its boundaries contains the Camac culvert which has been designated as being a dangerous structure. Whilst the hypothetical tenant would also take into account all the matters referred to in the preceding paragraph he would not, however, be concerned with the costs of the replacement works as these are outside the repairing assumptions contained in section 48(3).
- (10) All valuations no matter how prepared require the valuer to use his/her judgement at the end of the valuation exercise and to review the resultant figure within the terms of the rating hypothesis – otherwise referred to as the “stand back and look” stage. In the context of these appeals the Tribunal has come to the conclusion that adjustments should be made to each of the agreed valuations in order to reflect the findings of the Tribunal in its earlier judgment. It is purely a matter of opinion no matter how or in what circumstances that opinion was formed.
- (11) In relation to the Mitsubishi premises the Tribunal has come to the conclusion that the actual and future interference with its use by the appellant is minimal and that a reduction of 5% is appropriate to reflect all the various valuation factors referred to in the judgment dated 18th November, 2008.
- (12) It would appear that there are no current restrictions on the use of the Fitzpatrick property due to the dangerous state of the Camac culvert. It is likely however that there will be severe disruption to the appellant’s business during the reconstruction period. However this Tribunal does not accept that it will be necessary to cease trading for six months, but that it will be possible to devise a scheme of work in order to enable trading to continue, albeit with some significant restrictions on parking and loading and unloading activities. In the circumstances the Tribunal finds that in this instance a reduction of 15% is warranted in order to fully reflect the findings of the Tribunal in its judgment dated 18th November, 2008.

(13) In relation to the Harris property restrictions have already been imposed in relation to the parking and movement of vehicles over the line of the culvert. The area so affected by this restriction will be increased during the period of reconstruction works. Having regard to the scale and nature of the premises the overall effect will not be as significant as in the Fitzpatrick property. In the circumstances the Tribunal finds that an adjustment of 12% is appropriate in this instance.

Determination

Having regard to the foregoing the Tribunal determines the net annual value of each of the properties concerned in these appeals to be as follows:

(a) VA08/5/008 - Mitsubishi Motors Ltd.

Base valuation as agreed	€487,000
Less allowance for Camac culvert factor 5% say	<u>€24,000</u>
Net Annual Value of the property Say	€463,000

(b) VA08/5/114 – Sean Fitzpatrick Wholesale Ltd.

Base valuation as agreed	€404,000
Allow for Camac culvert considerations Less 15% say	<u>€60,000</u>
Net Annual Value of the property concerned	€344,000

(c) VA08/5/117 – J. Harris Assemblers

Base valuation as agreed	€2,000,000
Allow for Camac culvert considerations Less 12%	<u>€240,000</u>
Net Annual Value of the property concerned	€1,760,000

And the Tribunal so determines.