

Appeal No. VA08/5/096 & 112

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

Brendan O'Hara (VA08/5/096)
&
John Boggans (VA08/5/112)

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 404434, Warehouse at 94 Boot Road, Clondalkin, (VA08/5/096), &
Property No. 5001120, Workshop, at 93 St. Bridgets Lane, Boot Road, Clondalkin,
(VA08/5/112) County Dublin.

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Damian Wallace - QFA, MIPAV, Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF NOVEMBER, 2008

By Notice of Appeal dated the 22nd day of July, 2008 (VA08/5/096) and the 28th day of July, 2008 (VA08/5/112) the appellants appealed against the determination of the Commissioner of Valuation in fixing valuations of €13,230.00 (VA08/5/096) and €16,860.00 (VA08/5/112) respectively on the above described relevant properties.

The Grounds of Appeal are set out in letters enclosed with the Notices of Appeal, copies of which are attached at Appendix 1 to this judgment.

With the consent of the parties these appeals were held contemporaneously at an oral hearing held at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 22nd October, 2008. At the hearing the appellants were represented by Mr. Pat O'Dwyer, MIAVI, APCS, O'Dwyer English Auctioneers. Mr. Desmond English, MIAVI also attended. Ms. Deirdre McGennis, BSc (Hons) Real Estate Management, MSc (Hons) Local & Regional Development and Mr. Liam Diskin, BSc (Hons) Property Management & Investment, BSc (Ord) Property Valuation & Estate Agency, valuers in the Valuation Office appeared on behalf of the respondent. Each representative having taken the oath adopted his/her précis and valuation, which had previously been received by the Tribunal and exchanged with the other party, as his/her evidence-in-chief.

Valuation History

The properties were valued as part of the South Dublin revaluation at valuations of €13,230 - Brendan O'Hara (VA08/5/096) and €16,860 - John Boggans (VA08/5/112). Appeals were lodged on 11th February, 2008 and following conclusion of first appeal stage the valuations were unchanged at €13,230 and €16,860 respectively. On the 23rd July, 2008 Mr. O'Hara, through his agent O'Dwyer English Auctioneers, appealed his valuation to the Valuation Tribunal. In the interim the valuation had been amended to €14,650 to take account of an addition for the yard space to the front of the property, which had not been included in the original valuation. On 30th July, 2008 Mr. Boggans, through his agent O'Dwyer English Auctioneers, appealed the valuation of €16,860 on his property to the Valuation Tribunal.

The Issue

Quantum

Location

The subject properties are located at St. Brigid's Lane, which is at the rear of Boot Road, Clondalkin, Dublin 22. Boot Road is located in Clondalkin beside the Newlands Cross junction and is approximately 7km from Dublin City Centre. Access to the laneway is off Boot Road at the junction of Font Hill Road. St. Brigid's Lane is a lane comprising parts of the rear gardens of former local authority properties on Boot Road.

The Properties

Brendan O'Hara (VA08/5/096)

The subject property, to the rear of 94 Boot Road, is comprised of a semi-detached single storey workshop with concrete floor, concrete block walls and single skinned aluminium roof. It is an extended portion of a domestic garage and is utilised as a mechanic's garage with a small yard to the front. The services include electricity, water and phone and heating is by a single oil boiler hot air system. There is no toilet on the premises. It has a total floor area of 101 sq. metres and the eaves height is 3.5 metres. The property is industrial and is currently used as a car repair garage.

Tenure

The property is held freehold.

John Boggans (VA08/5/112)

The subject property, to the rear of 93 Boot Road, is also comprised of a semi-detached single storey workshop with concrete floor, concrete block walls and single skinned aluminium roof. It has large steel doors leading to a workshop of 116.25 sq. metres and has a small yard to the front. The services include electricity, water, phone, toilet and electric heating. It has an eaves height of 3.5 metres. The property is industrial and has been used as a small engineering works though it is currently vacant.

Tenure

The property has been rented by John Boggans for €400 per week since early 2005. Since June, 2007 however the property has remained unused by the occupier and no rent has been paid due to an injury to John Boggans.

The Appellant's Evidence

Mr. Patrick O'Dwyer referred to his précis of evidence and indicated that the areas of both properties had been agreed with the Valuation Office. He outlined details of the properties and proceeded to deal with Mr. O'Hara's property first. Mr. O'Dwyer confirmed that the subject property is located on St. Brigid's Lane at the rear of 94 Boot Road, in a mainly residential area and the property is a lock up unit located in the converted back garden of this former County Council home. He said that the single storey lock up is essentially the extended portion of a domestic garage and is currently used as a workshop for cars and has

large steel gates leading into a step-in driveway. Mr. O'Dwyer confirmed that the occupier of the property, Mr. O'Hara, is also the owner. Mr. O'Dwyer said that the basic structure of the unit is concrete block walls with a concrete floor and a metal sheet roof and that the services in the unit include electricity and water but that there is no toilet on the premises. He said heating to the unit is provided by a 20-year-old blow heater and the planning permission for the unit is established commercial usage, having been a conversion from residential use. He described the property as old and outdated.

Mr. O'Dwyer then outlined the detail of Mr. Boggans' property, confirming that it is located at the rear of 93 Boot Road and indicated that the fundamental details of both properties are similar. He said that Mr. Boggans' property is the other half of the semi-detached unit and he confirmed that the main difference between the two properties is that Mr. Boggans' property is rented and there is a toilet in it.

Mr. O'Dwyer advised that the properties are situated on a cramped laneway, no wider than the width of two cars and located off a busy road at a dangerous junction with virtually no passing trade.

He said that it is difficult for deliveries to access the laneway and it would be very difficult to bring a lorry up the lane. He added that there are safety concerns with regard to access for a fire engine or an ambulance. He also added that up to six months ago the lane was full of potholes but this had recently been re-surfaced. He concluded that in recent times this type of property has been superseded by more modern high tech purpose built units.

Mr. O'Dwyer then introduced his comparisons, set out at Appendix 2 attached hereto, and he said that his preferred comparison was comparison no. 2 as it is more similar in style to the subject property. He said that this is a modern unit, built within the last 5-10 years, in a vastly superior location and in a secure complex with both designated and customer parking and would achieve a rent of two to two and a half times the subject property. He said this unit at St. Anthony's Business Park offers large vehicle turning area, road frontage onto a busy road and immediate access to local business infrastructure. By contrast the subject property does not enjoy the benefits outlined above and is situated in a residential housing estate. Mr. O'Dwyer advised that the rent is agreed at €12,000 per annum on an area of 116 sq. metres.

Mr. O'Dwyer then proceeded to discuss his comparison no. 1 which he said was a modern unit, built within the last 5-10 years, in a high tech business park and is let at a rent of €97 per sq. metre. Mr. O'Dwyer concluded his evidence by stating that the Valuation Office had placed a value of €130 per sq. metre on the subject properties and all the units in the lane regardless of whether they are owner-occupied or whether they are rented. It is, he said, incorrect, unfair and unjust as they are basing their valuations on short term rents as people who have moved in there tend to move out very quickly because they cannot make it work. In addition, he said, the Valuation Office has placed a value of €30 per sq. metre on a step-in area which they are calling a yard and which he believes does not warrant this level of valuation.

Cross Examination

In cross examination on the **Brendan O'Hara** appeal Ms. McGennis asked a number of questions regarding Mr. O'Dwyer's evidence and his comparisons and Mr. O'Dwyer confirmed that he accepted that the Boot Road area is a location for a lot of garages/car workshops and also acknowledged that his comparisons are located in modern business parks.

Mr. Liam Diskin asked a number of questions regarding the rent paid on **John Boggans'** property and also whether a hypothetical tenant would pay a higher rent because of the yard at the front of the premises. Mr. O'Dwyer accepted that the rent paid in September, 2005 was €400 per week but he further added that there is currently no rent being paid and that Mr. Boggans, following an accident which limits his ability to work, is carrying out some panel beating work for the owner in lieu of rent. He also accepted that having a yard in front of the premises would make the property more attractive to a tenant.

Respondent's Evidence (VA08/5/096 – Brendan O'Hara)

Ms. Deirdre McGennis adopted her précis as her evidence-in-chief and she confirmed that she accepted the description of the property as set out by Mr. O'Dwyer. She stated that the yard at the front of the unit was not initially valued at the time of the valuation but it was added at the appeal stage and this explains why the valuation has increased. She said that there are 15 commercial properties on St. Brigid's Lane of which 12 are in use as garages or car workshops, one crèche, one office and one portacabin. Ms. McGennis then proceeded to introduce her comparisons, set out at Appendix 3 attached hereto. All of the comparisons are

located on St Brigid's Lane and all of the comparisons have a valuation of €130 per sq. metre for the workshop area with €30 per sq. metre for the yard. At this point the Chairperson asked if any of these valuations were tested by appeal to the Tribunal and whether the €130 reflected an analysis of the properties on the laneway or if this value reflected the broader area. Ms. McGennis confirmed that none of the valuations were appealed and she said that the tone was set based on an analysis of all of the properties in South Dublin and also an analysis of the rents paid for properties on the laneway.

Cross Examination

In cross examination Mr. O'Dwyer raised a number of queries regarding Ms. McGennis' comparisons and also a specific query regarding the number of units on the laneway. He indicated that on inspection he found 6-8. Ms. McGennis confirmed that there are 15 units on the Valuation List and 12 of these are garage type units. She also reiterated her view that €130 per sq. metre was the appropriate level for the properties on the lane and while she acknowledged that there are minor differences between the properties and there are certain advantages and disadvantages applicable to each property, on balance the value of €130 per sq. metre is fair.

Respondent's Evidence (VA08/5/112 – John Boggans)

Mr. Liam Diskin adopted his précis as his evidence-in-chief and confirmed that he accepted the description of the property as set out by Mr. O'Dwyer. He confirmed that he was using the same comparisons as offered by Ms. McGennis in her evidence, set out at Appendix 3 attached hereto. He confirmed that the NAV for Mr. O'Dwyer's comparisons is €12,210 for comparison 1, and €18,000 for comparison 2, reflecting a valuation of €130 per sq. metre and €100 per sq. metre respectively. Mr. Diskin confirmed that there are 15 properties on the laneway which appear on the Valuation List.

Mr. Diskin then called Mr. Declan Lavelle, a Managing Valuer in the Revaluation Unit, to give evidence. Mr. Lavelle confirmed that the revaluation process involved an inspection of every property in South Dublin and an analysis of a significant number of rents in the South Dublin area at the valuation date, 30th September, 2005. He said that the appropriate method of valuation for workshops of this type is on a price per sq. metre basis and he confirmed that the Valuation Office took a view on St Brigid's Lane, Boot Road and formed an opinion based on information on transactions that would have been provided to them, and this

included information directly from St Brigid's Lane and also based on information from properties in the wider South Dublin area. Mr. O'Dwyer then asked Mr. Lavelle to justify the €130 per sq. metre valuation placed on all the properties in St Brigid's Lane given that there are different aspects to all. Mr. Lavelle acknowledged that there are certain advantages and disadvantages to all the premises but that one may outweigh the other and he said that he was satisfied that the tone of the list in relation to these properties is set at €130 per sq. metre.

Findings

The Tribunal has carefully considered all of the oral and written evidence produced by the parties and the arguments adduced at the hearing and makes the following findings which are relevant to both properties:

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 properties which are the subject of these appeals are two units of similar construction and finish. The buildings are old and offer very basic facilities and are not purpose built, being extensions of residential garages.
3. The Tribunal notes the location of the subject properties on a road offering no profile, no road frontage and being very difficult to access, particularly if a vehicle is parked in the lane.
4. The Tribunal notes that the location of the units and access difficulties make it likely that the businesses cater for a very localised market.
5. The Tribunal has noted that a valuation of €100 per sq. metre was placed on a much superior premises which offered the benefits of a secure complex, car parking and significantly better facilities at Unit 4, St. Anthony's Business Park (Mr. O'Dwyer's comparison No. 2).

6. The Tribunal noted Mr. O'Dwyer's comments regarding the valuation of the yard at €30 per sq. metre. However as no comparable evidence was given on the yard the Tribunal must value it at €30 per sq. metre.

Determination

Having regarded to the foregoing the Tribunal considers the following to be a fair and reasonable valuation on the subject properties:

Brendan O'Hara (VA08/5/096)

Workshop	101 sq. metres	@	€90 per sq. metre	=	€9,090.00
Yard	50.93 sq. metres	@	€30 per sq. metre	=	<u>€1,527.90</u>
			NAV	=	€10,617.90

John Boggans (VA08/5/112)

Workshop	116.25 sq. metres	@	€90 per sq. metre	=	€10,462.50
Yard	58.50 sq. metres	@	€30 per sq. metre	=	<u>€1,755.00</u>
			NAV	=	€12,217.50

And the Tribunal so determines.