

Appeal No. VA09/4/025, 026 &
027

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

Conor Ó Cléirigh & Co Ltd (VA09/4/025)
Val O'Brien (VA09/4/026)
Redleaf Property Ltd. (VA09/4/027)

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2199312 (Unit G5), Property No. 2199311 (Unit G2) and Property No. 2199313 (Unit G1), Office(s) at Lot No. 43 to 50-50a, Foley Street, Mountjoy A, Mountjoy, County Borough of Dublin.

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

Frank Walsh - Valuer

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF JUNE, 2010

By Notices of Appeal dated the 23rd December, 2009, the appellants appealed against the determination of the Commissioner of Valuation in fixing valuations of €19 (VA09/4/025), €3.00 (VA09/4/026) and €45 (VA09/4/027) on the above-described relevant properties.

The grounds of appeal as set out in the Notices of Appeal are:

"The nature and location of the development, the demand for office space in the locality and the tone of the list." (VA09/4/025 and 026).

"The nature and location of the development, the particular location of this unit within the scheme, the demand for offices in the locality and the tone of the list." (VA09/4/027).

These appeals proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 26th day of February 2010. By agreement, the three appeals were heard together and at the hearing the appellants were represented by Mr. Conor Ó Cléirigh, ARICS, ASCS, FIAVI, who is the occupier of the subject property in appeal VA09/4/025. The respondent was represented by Ms. Jacqui McKinnell, BSc, MSCS, MRICS, a District Valuer in the Valuation Office.

Location

The subject properties are located in Dublin City Centre within a development known as The Steelworks bounded to the south by Foley Street and to the east by Beaver Street. The development sits immediately adjacent to an enclosed green park area, known locally as Foley Park on its west. There is direct access from Foley Street to Talbot Street by James Joyce Walk and James Joyce Street.

The Steelworks is a new mixed-use development comprising of 4 multi-storey blocks providing office and apartment space over a basement car park, arranged around a central landscaped courtyard. The subject properties are located in the block known as “The Stockyard”.

The Properties Concerned

The subject properties are modern, self-contained ground floor units, with entrances leading directly from the internal courtyard. Internally they are finished to a high standard. The subject properties in VA09/4/025 & 026 are mid-terrace, while the subject property in VA09/4/027 is end-of-terrace.

VA09/4/025 – The property concerned (Unit G5) is situated on the north east corner of the development and has two parking spaces within the basement parking area. Total agreed accommodation is 82.78 sq. metres.

VA09/4/026 – This property (Unit G2) is situated to the north west of the development, close to Foley Park. It also has two basement parking spaces and total agreed accommodation is 168 sq. metres.

VA09/4/027 – This property (Unit G1) is located beside property VA09/4/026 and has one basement parking space. Total agreed accommodation is 81 sq. metres.

Tenure

The three properties are all held on a freehold basis.

Rating History

Draft certificates were issued on 27th February 2009 in respect of all three properties proposing the following rateable valuations – VA09/4/025 - RV €49; VA09/4/026 - RV €97 and VA09/4/027 - RV €72. Representations were received on 26th March 2009 and final certificates were issued with the same RV in respect of VA09/4/025, an RV of €93 in respect of VA09/4/026 and an RV of €45 in respect of VA09/4/027. The appellants in all three cases appealed against these valuations to the Commissioner of Valuation and following consideration of the appeals, the Appeal Officer issued his decisions on 30th November 2009 in relation to VA09/4/025 & 026 and 1st Dec 09 in relation to VA09/4/027, that the RVs remained unchanged in each case. The appellants appealed those decisions to this Tribunal by means of notices of appeal dated 23rd December 2009.

The Issue

Quantum.

The Appellant's Evidence

Mr. Conor Ó Cléirigh, having taken the affirmation, adopted his précis of evidence as his evidence-in-chief. He made a number of corrections to his précis. Firstly, he amended the unit number in relation to VA09/4/026 – Val O'Brien at page 1 of his précis from Unit G1 to Unit G2. Secondly, he amended the accommodation at page 6 in respect of all three units as follows:

Unit G1 – 81 sq. metres with 1 car space;

Unit G2 – 168 sq. metres with 2 car spaces;

Unit G5 – 82.78 sq. metres with 2 car spaces.

Finally, as a result of the amendments to the areas, Mr. Ó Cléirigh made amendments to the rateable valuations he contended for at page 8 of his précis. His amended RV's are as

follows:

VA09/4/027 – 81 sq. metres @ €60 per sq. metre	=	€4,860
1 car park space	=	<u>€ 500</u>
Total NAV	=	€5,360
@ 0.63%	=	RV €3.70
Say		RV €34

VA09/4/026 - 168 sq. metres @ €70 per sq. metre	=	€1,760
2 car park spaces @ €500 pa each	=	<u>€1,000</u>
Total NAV	=	€2,760
@ 0.63%	=	RV €80.38
Say		RV €80

VA09/4/025 - 82.78 sq. metres @ €70 per sq. metre	=	€5,794
2 car park spaces @ €500 pa each	=	<u>€1,000</u>
Total NAV	=	€6,794
@ 0.63%	=	RV €42.80
Say		RV €43

Mr. Ó Cléirigh set out a number of factors, which he contended should affect the net annual value (NAV) of the properties concerned. Firstly, he stated that although the area had experienced considerable inward investment arising from tax designation under the North East Integration Area Plan, it was unable to shake off its legacy and continued to experience anti-social problems. He said that these factors were relevant to the office market and that demand for these properties was mainly from people seeking to buy the units to avail of the tax incentives, but that the rental demand was quite weak. He stated that there were a number of units which had been available to let for quite some time. In Mr. Ó Cléirigh's view the fact that the development was a mixed-use development also had a bearing on the NAV. He stated that the development was not equivalent to an office complex and that there were issues with litter due to the presence of apartments. Furthermore, as a result of the large number of apartments overhead, there were plumbing issues with water dripping down through the ceilings into the subject properties. Mr. Ó Cléirigh stated that as a result of these issues with leaks, insurers of the properties would not cover flood damage. Finally, Mr. Ó

Cléirigh added that the occupiers of the subject properties had to contribute to additional costs within the service charge, arising out of the large concentration of apartments in the complex, such as the cost of a night porter.

Mr. Ó Cléirigh contended for a valuation rate of €70 per sq. metre in respect of properties VA09/4/025 and VA09/4/026 and a rate of €60 per sq. metre in respect of property VA09/4/027. He stated that property VA09/4/027 occupied the unit at the end of the complex, right beside an unsightly derelict area and that there was a problem with stones being thrown at the office, which resulted in the occupier having to replace the windows. Therefore, in Mr. Ó Cléirigh's view, this property should be assessed at a lower rate than the other properties.

In support of his contentions of RV, Mr. Ó Cléirigh referred to a number of comparisons. The first comparison Bord Gáis Éireann Tribunal appeal (VA02/2/065 - Bord Gáis Éireann) was valued at a rate of €8.34 per sq. metre by the Valuation Tribunal. The second comparison, Ulysses House, was valued at €82 per sq. metre and his final comparison, other units in The Steelworks complex, were also valued at €82 per sq. metre. Mr. Ó Cléirigh accepted that the valuations in respect of the other units in The Steelworks development appeared on the Valuation List, but notwithstanding this, he was of the view that the subject properties should be valued at a lower rate, having regard to the factors that he had set out.

Cross-Examination

It was put to Mr. Ó Cléirigh that the derelict building to the rear of the development was scheduled for regeneration under the North East Integration Area Plan and that the area adjacent to property VA09/4/027, described by him as derelict, was as a result of the demolition of three blocks of flats in accordance with this plan. Mr. Ó Cléirigh agreed that the surrounding area was scheduled for regeneration and that it was in a period of transition, but stated that this period was extending and that the issues experienced by the occupants of the subject properties had to influence the NAV of the properties. He denied that he had exaggerated the desolation of the area, by providing a number of photos of the rear of the complex and only providing one photo of the complex itself in his précis. He stated that he did not dispute that the development was a nice scheme, but at the same time he argued that it existed cheek by jowl with a disadvantaged area, which had to be taken into account.

Mr. Ó Cléirigh contended that the view of the adjacent unsightly area was worse from property VA09/4/027 than from any other unit within the development, as this was the closest unit to that area and directly overlooked it, and that a potential tenant would take this into account in determining how much rent he would be prepared to pay for this unit. He accepted that the risk of anti-social behaviour was in common with all the occupiers in The Steelworks building, given its location, and that the issues in relation to plumbing, the inability to obtain insurance cover in respect of flood damage and the increased service charges were in common with the occupiers of the respondent's comparisons and with the other occupiers of the complex. However, Mr. Ó Cléirigh contended that the plumbing issues only came to light during the latter stages of the assessment of the complex and that the other units had been assessed earlier on, when these issues had not been fully appreciated.

Mr. Ó Cléirigh accepted that Bord Gáis Éireann was the first building in the area to be valued and that this valuation underpinned the tone of the list and he further accepted that the Tribunal's decision in that case (**VA02/2/065 – Bord Gáis Éireann**) made reference to specific anti-social behaviour in the area and that this had therefore been built into the tone of the list for Foley Street and the surrounding area. It was put to him that the established tone of €82 per sq. metre for properties in The Steelworks already included the risk of anti-social activity. Whilst accepting that generally speaking the best comparison is the closest, Mr. Ó Cléirigh refused to accept that in these cases the best comparisons would be the other units within The Steelworks complex, contending that the Tribunal was entitled to take a fresh look at the valuations of the units within the complex.

Respondent's Evidence

Ms. Jacqui McKinnell, 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. McKinnell contended for RVs as follows in respect of the three properties as follows :

VA09/4/025

Office Area	82.78 sq. metres @ €82 per sq. metre	€6,787.96
2 Car Spaces	€500 each	<u>€1000,00</u>
Total NAV		€7,787.96

@ 0.63% RV €49.06
Say RV €49

VA09/4/026

Office Area	167.76 sq. metres @ €82 per sq. metre	€13,756.32
2 Car Spaces	€500 each	<u>€ 1,000.00</u>
Total NAV		€14,756.32
@ 0.63%		RV €2.96 Say RV €3

VA09/4/027

Office Area	81 sq. metres @ €82 per sq. metre	€6,642.00
1 Car Space	€500 each	<u>€500.00</u>
Total NAV		€7,142.00
@ 0.63%		RV €44.99 Say RV €45

In support of her contention of RVs, Ms. McKinnell referred to the same five comparisons in respect of the three properties. All five comparisons are offices located within The Steelworks development and they are valued at a rate of €82 per sq. metre. There are two car parking spaces with Comparison 3, Ó Briain, Beary, Dorman Architects, which are valued at a rate of €500 per space, similar to the subject properties. Ms. McKinnell also referred to Ulysses House, located on Foley Street across from The Steelworks, where car parking spaces are also valued at the same rate.

Ms. McKinnell stated that the accommodation, which was modern, purpose-built and of good specification, was reasonably similar for all three properties, with some minor amendments. She stated that the valuation of the subject properties was made by reference to the values of comparable properties appearing on the Valuation List for Dublin City Council and further that the car parking spaces were also valued in line with the tone of the list. Ms. McKinnell stated that her comparisons were all situated within the same development as the subject properties and were of a similar standard and were all recently established. Ms. McKinnell argued that a clearly defined tone of the list existed within the locality and that the subject properties were valued in line with that tone.

Cross-Examination

Ms. McKinnell refused to accept that the view from Unit G1 (VA09/4/027) was an unpleasant view, but stated that it was “ok” and in, any event, that it was a transitory view, which would probably change and be improved over time. She did accept, however, that a tenant, when considering whether or not to rent this office, would take the view into account in assessing the amount of rent he would be prepared to pay. Ms. McKinnell also acknowledged that if a prospective tenant saw damage from thrown stones on the side elevation that he/she would take this into account, but stated that she did not know whether or not this would affect his/her decision to rent the unit. She contended that this was what one would expect from an area of regeneration in an inner city.

Ms. McKinnell denied that the history of leaks in the ceilings of the subject properties would necessarily have a bearing on the rent that a prospective tenant would be prepared to pay, stating that one had to look at the leaks in context and that the leaks had not been addressed in a timely fashion. She agreed that there would be a higher service charge for a mixed-use development as opposed to a solely commercial development. It was put to her that demand from tenants for units in The Steelworks was fairly weak. She replied that this was dependent on the economic climate.

It was put to Ms. McKinnell that the locality was dogged by on-street drinking and drug dealing. She stated that she did not dispute the anti-social activities, but that it was not specific to this particular area. Ms. McKinnell agreed that when establishing the tone of the list, more weight would be attached to those valuations which had been challenged through the appeal system. She acknowledged that none of the valuations in The Steelworks had been challenged through the appeal system, but stated that professionals had been involved in the valuation process for these properties and that a tone had been established.

Summary by Appellant

Mr. Ó Cléirigh submitted that property VA09/4/027 was particularly disadvantaged, due to its proximity to the adjacent derelict area and its history of vandalism and, accordingly, that the RV should be lower than assessed by the respondent. He argued that the general area, the nature of the development, the service charge and issues with leaks should all be taken into account in valuing the subject properties and that a rate of €70 per sq. metre should be applied to properties VA09/4/025 & VA09/4/026.

Summary by Respondent

Ms. McKinnell submitted that a clearly defined tone of the list existed and that the subject properties were valued based on this. She stated that all her comparisons were located in the same development and that their RVs had recently been established. Ms. McKinnell further submitted that the problems referred to by the appellant in relation to the subject properties were in common with all the comparisons and that there was no reason to suggest that the subject properties were more disadvantaged than the comparisons cited. In particular she stated that the area was currently in a phase of transition and that all the units in The Steelworks at the edge of the development were equally exposed to the risk of vandalism.

Findings

1. The onus of showing that the valuation of the properties concerned, appearing in the Valuation List are incorrect is on the appellant.
2. There was no dispute between the parties as to the description of the subject properties, the location or the total accommodation.
3. In arriving at its decision, the Tribunal was guided by the comparisons provided by both parties. The most relevant comparisons are those cited by the respondent, which are all located within the same complex as the subject properties and are directly comparable. These comparisons are all valued at the same rate as the subject properties.
4. There is therefore a clearly-established tone of the list in respect of properties located within The Steelworks building and the respondent valued the subject properties in line with that tone. The appellant failed to adduce sufficient evidence as to why the subject properties should be valued at a lower rate than the other units located within the same complex and accordingly failed to discharge the onus on him of showing that the valuations of the subject properties as appearing on the Valuation List were incorrect.

Determination

Having regard to all the evidence adduced and to the foregoing findings, the Tribunal dismisses the appeals and affirms the rateable valuations appearing in the list in respect of the properties concerned.

And the Tribunal so determines.