

Appeal No. VA10/5/074

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

Orm Kitchens Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2148088, Office (Business Park) at Unit D6 Bymac Centre, Northwest Business Park, Blanchardstown, County Dublin

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Veronica Gates - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 25th day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €32,000 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal, are as follows:

"On the basis that the RV as assessed is excessive and inequitable." "This is an industrial unit used as a kitchen and bedroom showroom. The levels applied are excessive for this type of premises at this location."

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 24th day of November, 2010. The appellant was represented by Mr. Eamonn Halpin, BSc (Surveying) and the respondent was represented by Ms. Linda Edwards, a Valuer in the Valuation Office. Mr. Joe McBride, a Valuer in the valuation office also attended.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis 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 directly. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

The Property

The subject property is located within the Bymac Centre, Northwest Business Park, Dublin and is a modern, end of terrace two-storey building at present used as a kitchen showroom by the occupier. The Bymac Centre in Northwest Business Park was constructed in and around 2000 and is laid out in 6 blocks.

Valuation History

The property was the subject of a revaluation as one of all rateable properties in the Fingal County Council rating authority area. A Valuation Certificate (proposed) was issued on 16th June, 2009 with a valuation of €40,000. Representations were received and the valuation issued at €36,000. An appeal was lodged on 8th February, 2010 and the valuation was reduced to €32,000 after First Appeal Stage. The valuation was reduced from €36,000.00 to €32,000 at first appeal in error. This resulted from the subject property being surveyed on a Net Internal Area basis and valued at the same rate as the comparisons at €135 per square metre on the mistaken assumption that all properties in Blocks A and D of the Bymac Centre had been surveyed on a Net Internal Area basis. Subsequent investigations clarified that the properties had been measured on a Gross External Area basis (GEA basis). An appeal was lodged to the Valuation Tribunal on 25th August, 2010.

Appellant

Mr. Halpin having taken the oath, formally adopted his précis of evidence and gave oral evidence that the subject property is one of a series of small units developed by an industrial developer, namely Bymac, and that the Bymac Centre is essentially an industrial development. Mr. Halpin said that the unit is located in Northwest Business Park adjacent to Rosemount Business Park in Ballycoolin, Blanchardstown, West Dublin. The property comprises a new light industrial unit, originally intended to have offices at first floor with ground floor stores. However, the appellant fitted the first floor area as a bedroom fitted furniture display area and the majority of the ground floor is fitted out as a kitchen display area. Mr. Halpin gave evidence that the unit is fitted to a good standard but is not as expensively constructed or elaborately fitted out as some other similar purpose properties elsewhere in Fingal. He submitted that the majority of the interior of the premises is taken up with displaying kitchens and bedroom furniture. The building is constructed with steel portal frame and double skin cladding wall and roof sections. Eaves height is approximately 6 metres and the accommodation comprises ground floor kitchen showroom and small store area to the rear with first floor bedroom display area and toilets. There is limited car parking to the front. Mr. Halpin gave evidence that the subject property is located in the centre of the development and fronts only onto an inner road, therefore lacking a high profile and, as a result, being rather difficult to find. Mr. Halpin suggested that whilst the premises is fine as an industrial space, it is not particularly well suited as a showroom. He said that all of the ground floor is now dedicated to kitchen showroom space and the public come to the premises on a one-off basis by making an appointment. Therefore, there is little potential for passing trade at this location.

Mr. Halpin submitted that values in the Northwest Business Park and the adjoining Rosemount development which were built approximately 10 years ago have generally not exceeded a rate of €108.00 per square metre, even at the top of the market in 2007. In his submission, the level applied by the Commissioner is excessive in view of the level applied to comparable units close by in the Rosemount Development. It is also excessive in view of the level applied to the superior units in Airside Enterprise Park in Swords, whose units reached approximately €140 to €150 per square metre at the top of the market in 2007. Mr. Halpin said that given the location, type and nature of the subject premises, it is very unlikely that a hypothetical tenant would give any premium rent for this property over the comparisons relied upon. Mr. Halpin submitted that the original basis relied upon when formulating a

valuation of €40,000 was not sustainable and that even the reduced valuation constitutes a complete over-estimation of the property's relative and sustainable worth. Mr. Halpin emphasised that if the kitchen display element of the subject property was removed, the subject would effectively revert to being a store.

Mr. Halpin contended for a valuation of €24,000, calculated as follows:

Ground floor showroom & store: 142 sq. metres @ €85 per sq. metre = €12,070

First floor bedroom display area: 142 sq. metres @ €85 per sq. metre = €12,070

Total NAV \hspace{10em} €24,140

Say RV €24,000

Cross-Examination

Ms. Edwards, for the respondent, questioned Mr. Halpin on foot of his oral and written evidence. In answer to Ms. Edwards' question, Mr. Halpin confirmed that the relevant valuation date is September, 2005, when all properties in the Fingal County Council area were valued. However, Mr. Halpin emphasised that the Commissioner of Valuation must comply with the requirements of Section 48(3) of the 2001 Act and assess a fair rent on a "one year with another" basis so as to avoid extreme peaks and troughs in the market. Mr. Halpin said that he felt September, 2005 was a problematic date as it was close to a huge peak and that the Commissioner had failed to put sufficient weight on the one year with another basis and had relied on September, 2005 too heavily. Mr. Halpin confirmed that the fit out of the subject property is typical of an office/showroom. Mr. Halpin did not agree that the subject property is located at the front of the development but submitted that the property really fronts onto an internal road which is not a road that leads anywhere in particular. In answer to questions, Mr. Halpin confirmed that seven of the 12 units are fully converted to offices from industrial units and said that it is not correct to compare the subject property to a purpose-built office.

The Respondent

Ms. Edwards adopted her précis of evidence and referred to a number of sections therein. Ms. Edwards said the property is located within Bymac Centre, Northwest Business Park, West Dublin and is approximately 5 kilometres from the N2 and N3/M50 interchanges. She said that the M50 provides easy access to Dublin Airport and the Port Tunnel, in addition to all other main access routes. The business park is approximately 4 kilometres from

Blanchardstown Village and is accessed from Rosemount Business Park or from Blanchardstown Road North. Ms. Edwards said that the subject property is a modern end of terrace two-storey building, at present used as a kitchen showroom. The ground and first floor have suspended ceilings and florescent lighting. There is a small store area at the rear of the ground floor with its own access doors. Ms. Edwards described the Northwest Business Park as being laid out in six blocks of which blocks A and D are full two-storey buildings with ground floor office/store and first floor office; blocks B and E are single-storey industrial units in use as stores/workshops; blocks C and F are industrial units with two-storey offices to the front and stores/workshops to the rear. The subject property is one of 36 valuations in the Bymac Centre and twelve of these valuations are for units similar to the subject property. She said that seven of the 12 units comprise full ground floor office and full first floor office with the remainder of the units comprising ground floor store and first floor office.

Ms. Edwards said that the subject property was measured on a gross external area basis with internal stairs and toilets being deducted. She said that at all stages of the revaluation process, it was understood that the properties in blocks A and D were surveyed on a net internal area basis. However, it has since been noted that the properties were measured on a gross external basis, less stairs and toilets on each floor. The error in the valuation only came to light when preparing the case for the Tribunal. Ms. Edwards submitted that the valuation is correct at €35,900.00 based on comparisons on the valuation list.

Cross-Examination

Ms. Edwards confirmed that the appellant made representations at First Appeal Stage and asked for a survey on a gross external area basis rather than on a net internal area basis. Ms. Edwards agreed that 5 of the 12 front block units are unconverted to office space. Ms. Edwards did not concede that Northwest Business Park is an industrial estate but said that it is a mixed development. Ms. Edwards referred to her comparisons which she believed to be more appropriate than those submitted by Mr. Halpin as three of the said comparisons are office space situate within Northwest Business Park and the other three are office space situate in Rosemount Business Park and Stadium Business Park which are close by. Ms. Edwards refused to concede that the subject property has been valued at a premium level and she said that Bymac Centre is primarily owner-occupied and has been valued at a lower level than Rosemount Office units.

Ms. Edwards contended for a valuation of €35,900, calculated as follows:

Block 1: Ground floor showroom: 133.16 sq. metres @ €135 per sq. metre = €17,976.60

Block 1: First floor showroom: 132.86 sq. metres @ €135 per sq. metre = €17,936.10

Valuation Office estimate of NAV (rounded to) €35,900

Findings

The Tribunal has carefully considered the evidence adduced by both parties, both in their oral and written evidence and makes the following findings:

1. The Respondent has contended for a valuation of €35,900 and the Tribunal notes the Respondent's opinion that "*the valuation is correct at €35,900 based on comparisons in the Valuation List.*"
2. Three of the Respondent's comparison properties are of similar size, construction and use to the subject property and are located in the subject retail park. All three are valued at a rate of €135 per square metre, "*derived from the analysis of available market information of comparable properties and applied to the subject property.*"
3. The valuation on the subject property against which the Appellant appealed is €2,000. This was the decision of the Commissioner at First Appeal and it is the valuation currently in the Valuation List.
4. The Appellant's grounds of appeal were *inter alia* that "*the RV as assessed is excessive and inequitable.*"
5. None of the Appellant's comparisons are from within the subject retail park.
6. The Tribunal notes the Respondent's reason for contending for a valuation higher than that in the Valuation List, namely the discovery of an error which came to light only in the course of the Respondent's preparation for the hearing before the Tribunal of the instant appeal.
7. The Tribunal has regard, however, to Section 63(1) of the Valuation Act, 2001, which provides that "*The statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act.*"
8. Section 35 of the Act requires that the grounds of an appeal under Section 34 shall be stated. The Valuation Act, 2001 (Appeals) Rules, 2008, provide, at Rule 10 that "*The Notice of Appeal shall set out exhaustively the Grounds of Appeal upon which the appellant intends to rely.*" Rule 10 goes on to state that "*These Grounds of Appeal*

may not be changed or extended (and liberty to amend will not be granted) save in exceptional circumstances. The Tribunal shall not entertain any amendments to the grounds of appeal at hearing and in particular the adducing of new grounds of appeal other than in exceptional circumstances. The Tribunal will adjudicate on such matters having regard to the Rules of the Superior Courts.”

9. Section 34 of the Act provides for a right of appeal against the decision of the Commissioner. For a right of appeal to be exercised pursuant to Section 34, the Commissioner must have made a decision against which the appellant seeks to appeal. The Tribunal is obliged, pursuant to Section 37, to consider any such appeal.
10. As it was not the decision of the Respondent to value the subject property at €35,900 at First Appeal stage it follows that a right of appeal against that decision, pursuant to Section 34, cannot arise. In the circumstances thus arising, the Tribunal is not satisfied that it should have regard to the Respondent’s submission that a valuation of €35,900 on the subject property is correct.

Determination

Having regard to the above and to the general evidence adduced at the hearing, together with the written submissions, the Tribunal is of the view that the valuation on the subject property should be affirmed at €32,000.

And the Tribunal so determines.