

Appeal No. VA10/5/003

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

**Channor Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2197248, Warehouse at Lot. No. Unit 294 Block H, Blanchardstown  
Corporate Park 2, Ballycoolin, County Dublin

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Aidan McNulty - Solicitor**

**Member**

**Fiona Gallagher - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 6TH DAY OF DECEMBER, 2010**

By Notice of Appeal dated the 4th day of June, 2010, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €46,300 on the above-described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are attached at Appendix 1 to this judgment.

1. This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 11<sup>th</sup> August, 2010. At the hearing the appellant company was represented by Mr. Ross O’Gorman, BSc (Estate Management) who is employed in the appellant company, in the role of property manager. Ms. Deirdre McGennis BSc, (Hons) Real Estate Management, MSc (Hons) Local and Regional Development, MIAVI, a valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation.
2. Prior to the commencement of the oral hearing, each party was requested to submit a précis of evidence they proposed to adduce at the oral hearing, a copy of which was made available to the other party. From the information obtained and from additional oral evidence submitted at the oral hearing the following material facts emerged or were so found.

### **The Property Concerned**

3. The property concerned is a mid-terrace light industrial/warehouse unit located within Blanchardstown Corporate Park, which is located approximately 0.6 kilometres north of Blanchardstown Centre and some 10 kilometres north of Dublin City centre. The park is located in an area between the N2 and N3, convenient to the M50 and is accessed off the Ballincullen road south.
4. The property concerned is one of 26 similar type units of various sizes constructed by the appellant and offered on the open market on a for sale or to let basis in 2007. All of the units are currently occupied save for three which are still on the market. The development consists of 3 separate blocks within the park, annotated blocks F, G and H. The property concerned is known as unit 294, and is located within Block H which consists of 7 similar type units.
5. The area of unit 294 for valuation purposes has been agreed on a Gross External Area basis as follows:

Ground floor warehouse	222.15 sq. metres
Ground floor offices	67.04 sq. metres
First floor offices	<u>67.04</u> sq. metres
Total GEA	356.23 sq. metres

6. All units within the development are of identical structural pre-cast concrete portal frame construction with insulated “Kingspan Mini Micro” insulated composite roof cladding system, incorporating 10% roof lighting. The infill external walls are mainly of a “Kingspan Mini Micro” insulated composite wall cladding system and the front elevation incorporates double-glazing curtain walling and tinted glazing. It is common case that all the units in the development enjoy good access, parking and loading facilities and are built and finished to a high quality standard of construction and finish.

### **Rating History**

7. As part of the revaluation of all relevant properties in the Fingal County Council area, the property concerned was valued in the sum of €46,300 and a valuation certificate (proposed) was issued to this effect on 16<sup>th</sup> October, 2009. Following representations, the valuation in final form was issued confirming the valuation at €46,300. An appeal against this assessment was lodged and in due course the Commissioner issued a certificate confirming the valuation of €46,300. An appeal against this determination by the Commissioner was lodged by the appellant on 4<sup>th</sup> June, 2010.

### **The Appellant’s Evidence**

8. In his evidence given under oath, Mr. O’Gorman said he was conversant with Section 48 of the Valuation Act, 2001 which sets down the basis of valuation. Having regard to Section 48, Mr. O’Gorman contended for a rateable valuation of €34,970, calculated as set out below:

Warehouse	222.15 sq. metres @ €78.95 per sq. metre =	€17,539
Offices (two-storey)	134.08 sq. metres @ €130 per sq. metre =	€17,430
NAV say		€34,970

9. In arriving at his estimate of net annual value, Mr. O’Gorman said he fundamentally disagreed with the Valuation Office’s valuation methodology, whereby all useable space was valued at a uniform rate per sq. metre. This practice, Mr. O’Gorman said, was at variance with market practice, which attributed differential rates to pure warehouse/light industrial space and office space, accordingly.
10. In support of his opinion of net annual value, Mr. O’Gorman referred to two transactions, details of which are set out in 2 attached to this judgment.

11. In relation to these comparisons, Mr. O’Gorman acknowledged that the transactions referred to therein had taken place after the relevant valuation date of 30<sup>th</sup> September, 2005, when market conditions were significantly different to those currently prevailing. Mr. O’Gorman said that the level of rates now payable as a result of the revaluation process was a disincentive in the present market and would give rise to an increase in the number of vacant units in the vicinity of the property concerned which, as a result, would give rise to a shortfall in the rates income to the County Council.
12. In relation to the comparisons put forward by the Valuation Office, Mr. O’Gorman said they were not relevant as they contained a higher percentage of office space than unit 294 and this should be reflected in the valuation of the property concerned. Under cross-examination, Mr. O’Gorman agreed that the market had deteriorated since development of Blocks F, G and H commenced in 2004/2005. He also agreed that there were only 3 of the 26 units contained in the scheme currently vacant and that several buildings had been let in 2007/2008, when market conditions were more favourable than they were now.

### **The Respondent’s Evidence**

13. Ms. McGennis, 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.
14. In her evidence Ms. McGennis contended for a valuation of €46,300, calculated as set out below:
- |                        |  |            |
|------------------------|--|------------|
| Ground floor office    | 67.04 sq. metres @ €130 per sq. metre =  | €8,715.20  |
| First floor office     | 67.04 sq. metres @ €130 per sq. metre =  | €8,715.20  |
| Ground floor warehouse | 222.15 sq. metres @ €130 per sq. metre = | €28,879.50 |
| NAV say                |  | €46,300    |
15. In support of her opinion of net annual value, Ms. McGennis introduced 4 comparisons details of which are set out in Appendix 3, attached to this judgment.
16. Ms. McGennis said that she was the designated Valuation Officer in respect of all the units in the development scheme. In arriving at her estimate of net annual value, she had regard to the valuation levels derived from an analysis of all available market information of comparable properties and applied to the subject property. In this regard she said all the available

evidence was analysed on an overall area basis and no regard had been given to the actual use of the accommodation, be it office or warehouse. For the purposes of the revaluation, all units of a similar nature to the property concerned were valued on this basis and this methodology was identical to that used when carrying out the revaluation of the South Dublin County Council Rating Authority Area, which was completed in 2007.

17. Ms. McGennis said that at Section 30 appeal stage, the valuation of the property concerned *“was by reference to the values of comparable properties stated in the valuation list, in which the property appears.”*
18. Under cross-examination, Ms. McGennis agreed that the rental terms in relation to her comparisons did not fully accord with Section 48 and that the lettings had taken place in 2007, sometime after the relevant valuation date of 30<sup>th</sup> September, 2005. Ms. McGennis agreed that rental levels in 2007 and 2008 would require a downward adjustment of about 8% in order to arrive at 2005 rental levels. However, Ms. McGennis said she could not say with any degree of accuracy or consistency what allowance should be made to the passing rent, where the Landlord accepted responsibility for either or both internal and external repairs and insurance costs, in order to arrive at “the rent” on a Section 48 basis. She was, however, prepared to accept Mr. O’Gorman’s proposition that 99 cent per sq. foot ie. “€10.16 per sq. metre” was a fair estimate for insurance costs, which under Section 48 was assumed to be the responsibility of the tenant.

## **Findings**

The Tribunal has carefully considered all the written and oral evidence adduced by the parties and the arguments put forward in support of their respective opinions of net annual value and finds as follows:

1. This appeal arises out of a valuation order made by the Commissioner of Valuation under Section 19 of the Valuation Act 2001, in relation to the Fingal County Council rating authority area. The valuation order is dated 15<sup>th</sup> March, 2007 and, in accordance with Section 20 of the Act, the valuation date by reference to which the value of every relevant property in the area should be determined is the 30<sup>th</sup> September, 2005. The valuation list so created came into effect on the 1<sup>st</sup> January, 2010.

2. In accordance with the 2001 Act, the value of each and every relevant property is to be determined by estimating its “net annual value” which is defined in Section 48(3) of the Act as follows:

*“Subject to section 50, for the purposes of this Act, “net annual value” means, in relation to a property, 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”.*

3. In her evidence Ms. McGennis said that *“in the revaluation of the rating authority area valuation levels were derived from the analysis of available market information of comparable properties and applied to the subject property.”* When the valuation was appealed under section 30 she said *“The valuation of this property, on appeal to the Commissioner of Valuation, was determined by reference to the values of comparable properties stated in the valuation list in which the property appears.”* It should at this stage be pointed out that the latter statement is a reiteration of the method of valuation set down in Section 49 of the Act which cannot have any role to play in a valuation carried out on foot of a Section 19 valuation order. In appeal **VA08/5/125 - Marks & Spencer (Ireland) Ltd.** the Tribunal made reference to and examined the valuation process in some detail and since this appeal is the first to come before the Tribunal in regard to the Fingal Revaluation it may be helpful and timely to all concerned in the rating appeal process to repeat the comments made in the above case:

***“The Valuation Act, 2001***

1. *The Valuation Act, 2001 which came into effect on 2<sup>nd</sup> May, 2002 is the sole statute dealing with the valuation of relevant properties for rating purposes. All previous subsisting Valuation Acts have been repealed.*
2. *Inter alia the Act provides for the revaluation of all properties in the State on a regular basis and also makes provision for the revision of an entry in the Valuation List between revaluations. It is the Tribunal’s view that there is a*

*distinct difference between the valuation principles applied to a revaluation process and a revision of valuation under Section 28.*

3. *It is clear from the Act that it is not the intention of the Commissioner of Valuation to carry out a general revaluation of all properties in the State, but that the revaluation will be rolled out over a period of years on a rating authority area by rating authority area basis in accordance with section 19 of the Act. South Dublin Rating Authority area was the subject of the first revaluation programme and the new Valuation List came into effect on 31st December, 2007.*
4. *Section 25 of the Act provides that subsequent revaluations will be carried out within ten years of the previous revaluation.*
5. *Section 19 of the Act provides that the Commissioner of Valuation after consultation with the Minister for the Environment and Local Government and the rating authority concerned may make an order “specifying a rating authority area as being an area in relation to which the Commissioner proposes to appoint an officer of the Commissioner under subsection 2 to organise and secure the carrying out of a valuation of every relevant property situate in that area...”*
6. *Under section 20 the section 19 order shall “specify one date by reference to which the value of every relevant property, the subject of the valuation mentioned in that order, shall be determined”. In relation to the South Dublin Rating Authority Area the specified date is 30th September, 2005.*
7. *Section 21 provides that the Commissioner of Valuation shall publish “a list comprising every relevant property that has been the subject of the valuation mentioned in the order, and the value of that property as determined by that valuation” within three years from the date on which the order was made. The list above referred to shall be known as the “Valuation List” and this list shall remain in place until the next section 19 revaluation, but subject of course to the proviso that individual entries in the list may be subject to revision under sections 27 and 28 of the Act.*

8. *Section 48 of the Act provides that the value of a relevant property shall be determined by estimating its net annual value as at 30th September, 2005. Subsection (3) sets out in some detail the valuation assumptions upon which the estimate of net annual value is to be determined. It should be said that the definition of net annual value contained in the 2001 Act is substantially the same as that contained in section 11 of the Valuation (Ireland) Act, 1852.*
  
9. *During the revaluation process it is to be assumed that the Valuation Office will firstly assemble and analyse all the rental evidence available at or about the specified valuation date drawn from a wide range of properties in the different use classes situated in the rating authority area concerned or from other rating authority areas if appropriate. The information so assembled and analysed will then be applied directly to the property being valued and not by way of comparison. In those circumstances where there is evidence of the actual rent payable at or about the revaluation date on terms similar to the hypothetical terms contained in section 48, whilst such evidence will be compelling, but not conclusive, it does not necessarily follow that such a rent equates to net annual value as defined in the section.*
  
10. *The decision taken by the Commissioner of Valuation to roll out the revaluation of all relevant properties in the State over a period of years means that in time each rating authority area may have its own specified valuation date under section 20 and consequently its own unique “tone of the list”. In such circumstances it is only right and proper that where a revision of valuation is carried out under section 28 between one revaluation and the next the relevant properties concerned have their net annual values determined as provided for under Section 49 in order to maintain a consistency of assessment and equity between ratepayers in the rating authority area concerned. Section 49 provides “If the value of a relevant property (in subsection (2) referred to as the ‘first-mentioned property’”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property”.*



11. *At this juncture the Tribunal feels it may be of assistance to set out its views on the principles to be applied to a revaluation under section 19 and subsequent revisions under sections 27 and 28.*
  
12. *In the circumstances of a revaluation under section 19, the valuation of “every relevant property” is to be individually assessed in accordance with section 48 as at the date specified in the valuation order. At the time of assessment in respect of each and every relevant property there is no Valuation List in existence nor will there be until all relevant properties in the rating authority area concerned have been valued. Consequently at the time of assessment there are no “other properties comparable” in the list. Section 49 which is based upon the concept of net annual value being determined by reference to comparables or more commonly referred to as the “tone of the list” cannot have any role to play in the revaluation process and only comes into effect when a revision of valuation is carried out in accordance with sections 27 and 28.*
  
13. *On the day a new Valuation List is published a preliminary “tone of the list” is originated, but little weight, if any, can, for comparison purposes, be attached to any of the assessments contained therein as they are as yet unchallenged. After the 40 day appeal period, as provided for under section 30, the situation changes somewhat, in that there is then in the list a substantial number of entries whose assessments have been accepted (or perhaps in some instances agreed at the representation stage under section 29) or otherwise unchallenged.*
  
14. *At the time of an appeal to the Tribunal under section 34 the situation will have moved on significantly, in that by far the greater percentage of entries in the list would have been accepted, agreed or determined at section 30 appeal stage and hence representative of an as yet emerging tone of the list. When an individual appeal comes before this Tribunal for determination the Tribunal must consider and evaluate the evidence then put before it, be it the actual rent of the property concerned, the rents of other properties of a size, use and location similar to the property concerned and last, but by no means least, the assessment of properties which are truly comparable in all respects to the property concerned and which are currently in the Valuation List and attach such weight to this evidence as is*

*considered appropriate. Finally a stage will come – but only when all the appeal procedures under sections 30 and 34 are completed – when the tone of the list will finally become established and thereafter cannot be challenged. From this point onwards section 49 will come into play and rental evidence as such will be of lesser importance in the assessment process. Furthermore the valuation of each property currently in the list cannot be altered until the next revaluation under a new section 19 order is completed except in those instances where a revision of valuation under section 28 is carried out and it is found that a material change of circumstances as defined in section 3 has occurred.*

*15. When the valuation of a property concerned is subject to revision, or when a new relevant property is first valued under section 28, then these assessments will be determined under the provisions of section 49, i.e. by reference to the values of similar properties appearing on the Valuation List for the rating authority area concerned in which the property is situated – in other words in accordance with the “tone of the list”. This is the fundamental difference between a valuation carried out under section 19 which is to be determined solely by reference to section 48(3), and not by reference to rateable valuations of other properties on the list, as is the case under sections 27 and 28.”*

4. It is clear from the evidence given by Ms. McGennis that based on the analysis of available market evidence it was decided that the appropriate level for valuing the subject property and other properties of a similar size and nature in Blanchardstown Corporate Park would be an overall rate of €130 per sq. metre measured on a gross external area basis. This method of valuation, Ms. McGennis said, was consistent with the valuation methodology used in the revaluation of South Dublin County Council and which had been accepted by all the various state bodies involved in the rating valuation process.
5. Mr. O’Gorman in his evidence contended that the methodology used by the Valuation Office was not in accordance with market practice which attributed different rates per sq. metre to office accommodation and warehouse/light industrial space. In his opinion the Valuation Office should adopt market practice.

6. Having considered the matter the Tribunal has come to the conclusion that the practice of valuing all usable space within a typical light industrial/warehouse building at a uniform rate per sq. metre has become the established method used for rating valuation purposes and is now used by the Valuation Office and private practitioners alike. That said, however, the Tribunal is aware that this method of valuation can on occasion give rise to anomalies, when the property in question has a high percentage of available space in office use and where a sub-division subsequently occurs on foot of a revision under Section 28.
7. Ms. McGennis in support of her valuation of the property concerned introduced 4 comparisons, all of which are located within Blanchardstown Corporate Park 2, and were all valued at an overall rate of €130 per sq. metre, i.e. the same as the subject property. The fact that no appeals had been made against these assessments or that they had not been otherwise challenged indicated, Ms. McGennis said, that a tone had been established in the estate. It is noted that each of Ms. McGennis' comparisons is subject to lease arrangements entered into in 2007 and 2008, i.e. some 2 to 3 years post the relevant valuation date of 30<sup>th</sup> September, 2005. It is also noted that in only one instance (comparison no. 3) does the term of the letting accord with the assumption set down in Section 48(3). When asked by the Tribunal what adjustments would be necessary to the passing rents, in order to bring them into line with the assumptions under Section 48(3) as at 30<sup>th</sup> September, 2005, Ms. McGennis said that she would have some difficulty in carrying out such an exercise. However, she did say that a downward adjustment of about 8% would be appropriate to reflect the difference in rental values between 2007/2008 and September, 2005. While she accepted Mr. O'Gorman's assertion that insurance costs would be in the order of 99 cent per sq. foot (ie. €10.15 per sq. metre), she could not say what would be the appropriate allowances necessary to reflect the responsibility for internal and/or external repairs. "Ryde" would seem to indicate that a 10% allowance, i.e. 5% for internal and 5% for external repairs, would be appropriate, upwards or downwards as necessary.
8. The Tribunal attaches little weight to the transaction evidence put forward by Mr. O'Gorman in as much that that took place several years after the relevant valuation date when market conditions had substantially altered.

9. The Tribunal recognises that the primary aim of a revaluation exercise is to create a valuation list where the valuation of each relevant property in the list fairly reflects its net annual value relative to the net annual values of other properties of a similar category or mode of use and equally relative to those properties of a different category or mode of use. In other words, that each valuation in the list is fair and equitable and determined in accordance with Section 48(3). In the circumstances the policy of the Valuation Office in preparing schemes of valuations based on an analysis of all available market information, is perfectly reasonable and acceptable. However, when there exists evidence of actual rental values, then proper regard should be given to that evidence and, where appropriate, such evidence should be accorded greater weight than the levels deduced from an overall analysis of available market evidence, unless there is good reason for doing otherwise. Having examined the rental evidence available in Ms. McGennis' 4 comparisons, the Tribunal has come to the conclusion that an overall rate of €120 per sq. metre is fair and reasonable, having made such adjustments as are necessary to reflect the time difference and lease arrangements.

### **Determination**

Having regard to the foregoing the Tribunal determines the net annual value of the subject property as follows:

Offices	134.08 sq. metres @ €120 per sq. metre = €16,090
Warehouse	222.15 sq. metres @ €120 per sq. metre = <u>€26,658</u>
Total	€42,748
NAV say	€42,700

And the Tribunal so determines.

### **Rider**

Having regard to the above determination the Tribunal suggests that the Commissioner of Valuation exercise his discretionary powers under Section 40 of the Act in relation to other units of a similar size and use to the subject of this appeal and which are also located in Blanchardstown Corporate Park 2.