

Appeal No. VA11/5/097

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

Moran Insulations Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 382550, Gymnasium/Fitness Centre at Friarsland Hall, Roebuck Road, Clonskeagh, County Dublin

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF JANUARY, 2012

By Notice of Appeal dated the 27th day of July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €165,900 on the above described relevant property.

The grounds of appeal as set out in the Notice of appeal are
"The Valuation is excessive and inequitable." "Section 48 of the Valuation Act, 2001 has not been correctly implemented by the Commissioner of Valuation. The principal of "rebus sic stantibus" should apply and the property should be valued in its actual state."

The appeal proceeded by an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 12th December, 2011. At the hearing the appellant was represented by Mr. Donal O'Donoghue, BSc (Hons) Estate Mgmt, DipVals, Assoc SCSI, MIAVI, a director of OMK Property Advisors and Rating Consultants. The respondent was represented by Ms. Fiona Mullins, BSc (Hons) Property Studies, a valuer in the Valuation Office. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

At Issue

Quantum

The Property

The property concerned is a complex of single storey buildings which are used as a gymnasium, fitness centre/swimming pool and bathroom showrooms. The property is located off Roebuck Road, Clonskeagh, almost opposite to Mount Anville and Our Lady's School and grounds. The surrounding area is mainly residential in character and Belfield University Campus is close by.

The property has considerable frontage to Roebuck Road but lacks profile as it is bounded by a high stone brick built wall. Access to the property is through White Oaks residential estate and the premises has the benefit of generous off street car parking facilities. The only other commercial property in the immediate vicinity is a closed down filling station which now operates for car washing purposes only and is awaiting redevelopment.

Accommodation

The area of the property concerned measured on the gross external basis has been agreed as follows:

Gymnasium/Fitness Centre	1,464.57 sq. metres
Showroom	<u>282.31</u> sq. metres
Total Area	1,746.88 sq. metres

Rating History

The subject property was valued as part of the revaluation of relevant property in the Dun Laoghaire-Rathdown rating authority area prepared under Section 19 of the Valuation Act, 2001. Each individual property was valued in accordance with the provisions of section 48 of the Act and the date by reference to which the valuation of each property was made is the 30th September, 2005 as specified under section 20 of the Act.

On the 10th September, 2010 a valuation certificate (proposed) was issued to the effect that it was proposed to value the property concerned in the sum of €231,000. Representations were made in respect of this proposed valuation and in due course the value of the property concerned was entered on the valuation list at €231,000. Following an appeal to the Commissioner of Valuation under section 30 of the Act the net annual value (NAV) was reduced to €165,900. The appellant being dissatisfied with the Commissioner of Valuation's decision in this regard lodged a further appeal to this Tribunal under section 34 of the Valuation Act.

The Appellant's Evidence

Mr. O'Donoghue, having taken the oath, adopted his written précis which had previously been received by the Tribunal and the respondent as being his evidence-in-chief. In his evidence Mr. O'Donoghue said that in his opinion the NAV of the property concerned in accordance with section 48 of the Valuation Act, 2001 was €70,000 calculated as set out below:

Gymnasium/Fitness Centre 1,746.88 sq. metres @ €40 per sq. metre = €69, 875.20

NAV say €70,000

In support of his NAV Mr. O'Donoghue put forward two comparisons, details of which are set out in Appendix 1 to this judgment.

In his evidence Mr. O'Donoghue said the premises which are mainly of timber construction was built in 1986 and their use at that time was as a swimming pool (12 metres long) and bathroom showroom and sales complex. Over the years the property was modified and

extended in a piecemeal fashion and in its present use accommodation provided therein is laid out in a fragmented and haphazard manner. Furthermore Mr. O'Donoghue said that the property is in poor overall repair and condition and is practically obsolete by current leisure industry requirements. Mr. O'Donoghue also said that the use of the property as a gymnasium/fitness centre and bathroom showroom was an unusual combination which would have an adverse effect on its demand in the open market and hence on its rental value.

Mr. O'Donoghue said that in his opinion the Valuation Office in arriving at its estimate of net annual value did not fully take into account the condition of the property, the nature of its construction and its mixed use.

Under cross-examination Mr. O'Donoghue confirmed that he had no rental evidence to support his valuation of the property concerned. When asked why he had valued the subject property at €40 per sq. metre when his two comparisons were valued at €10 per sq. metre (Monkstown) and €25 per sq. metre (Stillorgan), Mr. O'Donoghue said that he had made due allowance for the differences in the nature of construction, repair, location and facilities provided at each of the three properties.

In response to a question from the Tribunal, Mr. O'Donoghue said that whilst he had provided several photographs of the exterior of the property he had not submitted any of the interior and agreed that it might have been helpful to the Tribunal if he had done so.

The Respondent's Evidence

Ms. Mullins having taken the oath adopted her précis and valuation which had previously been received by the Tribunal as being her evidence-in-chief. In her evidence Ms. Mullins valued the property concerned as set out below:

1464.57 sq. metres	@	€100 per sq. metre	=	€146,457.00
282.31 sq. metres	@	€100 per sq. metre	=	€ 28,231.00
Less 5%			=	<u>(€ 8,734.40)</u>
			=	€165,953.60
NAV Say		€65,900		

In support of her opinion of net annual value, Ms. Mullins introduced three comparisons, details of which are set out in Appendix 2 to this judgment. Ms. Mullins said that the property concerned and her comparisons no. 1 and no. 2 were in the same use category. She said that in arriving at her estimate of net annual value she had regard to the fact that the subject property was of timber construction and not purpose built as were her two comparisons. In regard to her Comparison No. 3, the leisure complex at Stillorgan, she acknowledged that it was much larger than the subject but said she included it because it was occupied under a lease arrangement and was hard market evidence.

Under cross-examination, Ms. Mullins agreed that the property concerned was in relatively poor condition and she had therefore made an end allowance of 5% to reflect this fact. As far as location was concerned Ms. Mullins said that the location of the property concerned and the Monkstown premises (comparison no.2) were better than that of the Glenalbyn Swimming Pool, Stillorgan (comparison no.1).

In response to further questioning from the Tribunal, Ms. Mullins agreed that the property concerned had to be valued in its present state and condition in accordance with the rule of *rebus sic stantibus*. She agreed that perhaps her 5% allowance for disrepair may have been insufficient. She also agreed that the probable annual cost of maintaining a timber built structure some 25 years' old would be greater than that for a purpose built fitness centre of traditional construction. Ms. Mullins went on to agree also that the length of the swimming pool at the subject property, i.e. 12 metres, as against 25 metres in Monkstown and 33 metres in Glenalbyn, would also make the subject property less attractive to a hypothetical tenant.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and finds as follows:

1. It is common case that the property concerned is of timber construction and is not a purpose-built gymnasium and fitness centre.
2. It is also common case that the building is in poor external repair and condition and this is a factor that must be taken into account when arriving at an estimate of its net annual value in accordance with the rule of *rebus sic stantibus*.

3. The Tribunal attaches most weight to Ms. Mullins' comparisons nos.1 and 2 and attaches little, if any weight to her comparison no. 3, by virtue of its size and use.
4. The Tribunal notes that Mr O'Donoghue did not include any photographs of the interior of the property which if he had would have been of assistance to the Tribunal, particularly having regard to Mr. O'Donoghue's statement that the property is "practically obsolete by current leisure industry standards".
5. The Tribunal is of the opinion that a hypothetical tenant in the market at or about the relevant valuation date for a gymnasium/fitness centre premises would have regard to a number of factors including the scale and nature of construction of the property, its age, its state of repair and the range of facilities provided therein. An important feature would be the length of the swimming pool.
6. The Tribunal found Ms. Mullins a good witness who, under examination by the Tribunal, gave answers that were honest and straightforward even if they did not help her cause.
7. The précis of evidence provided by both valuers in this appeal were concise and with regard to valuation matters plainly stated the witnesses' opinions of net annual value. Whilst each provided comparative evidence, no attempt was made by either witness, particularly Mr. O'Donoghue, to state what allowances, if any, should be made to the assessments of their comparisons in order fairly to reflect the physical locational or any other difference that might exist between them and the property concerned and that might have an effect on their relative values.
8. Under the rules of the Tribunal each party is required to submit to the Tribunal and exchange a précis of evidence each witness intends to use at the oral hearing.
9. The purpose of this requirement is to ensure that each party has ample opportunity to consider the other party's evidence in order better to prepare its defence at the oral hearing. The précis should contain sufficient material to enable the Tribunal to be conversant with the physical attributes of the property concerned and better identify the issues between the parties.
10. In relation to valuation evidence, an expert witness' précis should primarily contain an objective opinion of the valuation of the property concerned in accordance with the relevant statutory provisions. The valuation so proffered should also set out the rationale upon which the valuation is based and contain details of relevant and supportive comparisons. The précis should also contain an analysis of these comparisons and clearly indicate any qualitative, quantitative or other allowances that

have been made to reflect any difference that exist between them and the property concerned. Ideally the précis should contain a statement to the effect that all relevant facts in relation to the property concerned and the comparisons being relied upon have been agreed or, at least, are not in dispute. There is of course a fine line to be drawn between a précis which adequately covers all the relevant facts and facts to be taken into account in arriving at a net annual value, and one which is excessive in length, poorly drafted and contains irrelevant material.

Determination

In the final analysis the Tribunal concluded that the respondent, in arriving at its opinion of the net annual value of the property concerned, did not make adequate allowances to reflect its age, nature of construction, state of repair, inefficient layout for its current use and the size of the swimming pool. In the circumstances therefore the Tribunal determines the net annual value of the property concerned, in accordance with section 48 of the Valuation Act, to be as follows:

Fitness Centre/Showroom 1,746.88 sq. metres @ €70 per sq. metre = €122,281.60

NAV say €123,000

And the Tribunal so determines.