Appeal No. VA12/3/030

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

European Refreshments Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2211518, Office(s) at Ground to Fourth Floors, Southgate Shopping Centre, Colp West, St. Mary's, Meath, Co. Meath

B E F O R E

Fred Devlin - FSCSI, FRICS	**Deputy Chairperson**
Tony Taaffe - Solicitor	**Member**
Michael Connellan Jr - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF FEBRUARY, 2013

By Notice of Appeal received on the 27th day of August, 2012, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,935 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are as follows:
“The valuation is excessive."

This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Holbrook House, Holles Street, Dublin 2 on the 30th day of October, 2012.At the hearing the appellant was represented by Ms. Siobhán Murphy BSc (Surv), MSCS, MRICS, a senior surveyor at GVA DonalOBuachalla, Property and Rating Consultants. Mr. Dean Robinson BSc (Hons) Property Economics, a valuer at the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation.

Prior to the commencement of the oral hearing and in accordance with the rules of the Tribunal, each party forwarded to the Tribunal and exchanged a précis of the evidence they proposed to adduce under oath at the hearing. From the evidence so tendered and additional testimony received at the hearing the following facts relevant and material to the appeal were either agreed or are so found.

The Property Concerned

The property concerned consists of 4 floors of high quality third generation office accommodation within a mixed-use development known as the Southgate Centre which also contains a large supermarket, several retail units, a gymnasium and ancillary car parking at basement and surface levels. The Southgate development occupies a prominent location on the southern edge of Drogheda on what was formally the main Dublin to Drogheda and onwards to Belfast road (N1) before the completion of the M1. There are plans to construct a link road from the roundabout to the M1 but it would appear that it may be sometime before this happens. It was also proposed to expand the Southgate development but once again it would appear that this is unlikely to happen for some considerable time.

The Southgate development contains a Dunnes Stores supermarket and several mall units, some of which have external frontage, and a gymnasium in addition to the subject property. A number of the mall units are still vacant some 2-3 years after the centre first opened. Extensive car parking facilities are available at below ground floor level and surface level.

The subject property consists of 4 floors of office accommodation accessed from 2 entrance lobbies at ground floor level. The office accommodation is modern and the specification and fit-out meets the requirements of third generation standards and provides raised access floors, floor boxes, carpet tiles, suspended ceilings incorporating recessed category 2 light fittings, double glazed PVC fenestration and air-conditioning throughout.

Accommodation

The accommodation measured on a net internal area basis has been agreed as follows.

Floor	Area sq. metre
Ground Floor	116.35
First Floor	766.40
Second Floor	1,938.38
Third Floor	1,278.56
Fourth Floor	335.96
Total	**4,435.65**
Car Spaces	100

Under the terms of the lease the demise includes 100 car parking spaces in the basement car park which although delineated on the plan attached to the lease are not similarly designated in the car park itself. Car parking at the centre is open to all users and visitors to the centre free of charge.

Tenure

The property concerned is occupied under the terms and conditions of a 20 year lease from the 16th July, 2010 at an initial yearly rent of €429,073.50. The lease provides, *interalia,* for rent reviews at 5-yearly intervals and the lessee has the opportunity of breaking the lease at the end of the 10th and 15th years of the term. At the commencement of the lease the lessee was granted a 6.5 month rent-free period.

Rating History

On the 10thNovember 2011 a valuation certification (proposed) was issued stating that it was proposed to enter the rateable valuation of the property concerned on the valuation list in the figure of €865. On the 15th December 2011 a valuation certificate in final form was issued to the same effect. On the 24th January 2012, the appellant appealed the assessment of €865 in accordance with Section 30 of the Valuation Act 2001. During subsequent negotiations it came to light that the Valuation Office had miscalculated the area of the property concerned and in due course a certificate was issued to the effect that the rateable valuation of the property concerned had been increased to €1,935. The appellant, being dissatisfied with the outcome of the appeal, lodged an appeal to this Tribunal under the provisions of Section 34 of the Act.

The Appellant's Evidence

Ms. Murphy, having taken the oath adopted her written précis and valuation which had been previously received by the Tribunal as being her evidence-in-chief.

In evidence Ms. Murphy stated that in her opinion the rateable valuation of the property concerned in accordance with the statutory provisions contained in the Valuation Act, 2001 was €1,347 calculated as set out below:

Ground Floor	116.35 sq. metres @ €60.70 per sq. metre	=	€ 7,068.00
First Floor	766.40 sq. metres @ €60.70 per sq. metre	=	€ 46,558.00
Second Floor	1,938.38 sq. metres @ €60.70 per sq. metre	=	€117,757.00
Third Floor	1,278.56 sq. metres @ €60.70 per sq. metre	=	€ 77,672.00
Fourth Floor	335.96 sq. metres @ €60.70 per sq. metre	=	€ 20,410.00
Totals	**4,435.65 sq. metres**		**€269,465.00**
Car Spaces	100		
Total NAV			€269,456.00
			x 0.005
			RV€1,347

In support of her valuation Ms. Murphy introduced six comparisons, details of which are contained in Appendix 1 to this judgment. Three of Ms. Murphy's comparisons are properties within the Southgate development whilst the other three are in respect of other office accommodation in the Drogheda area.

Ms. Murphy said that in arriving at her valuation she had regard to a number of factors including:

1. The location of the Southgate development on the immediate outskirts of Drogheda.

2. The fact that although the surrounding area is earmarked for future comprehensive commercial development this is unlikely to proceed in the foreseeable future due to current economic circumstances.

3. The fact that the construction of the proposed link road from the roundabout to the M1 is unlikely to commence in the near future.

4. The lack of demand for retail units in the centre where 70% of the mall units are still vacant and to let.

5. The passing rent which if adjusted by reference to the IPD office rental index would give the following result:

   IPD Index: December 1988 = 100.6

   IPD Index: December 2010 = 199.3

   Passing Rent July 2010: say €429,000

   Imputed rent as of November 1st, 1988* = 429x106.6/199.3

   [*see section 49(2)(b) Valuation Act, 2001]

   Equivalent Rent: say €216,500

In further submission, Ms. Murphy said that little weight shouldbe attached to the comparisons from within the centre by virtue of their size relative to that of the property concerned and also having regard to their use. Nonetheless some regard should be given to the valuation of the supermarket retail space which is valued at €55 per sq. metre. In her experience, retail space usually commanded a higher rent than office accommodation.

In regard to her other three comparisons, Ms. Murphy said that she considered her Comparison No. 1 (the former Coca-Cola offices at Mellview House, M1 Retail Park) to be the most relevant. However, due regard had to be had to the fact that it occupied a better location than that of the subject property by virtue of its proximity to and access from the M1. Due regard also had to be had to the fact that these offices were approximately 55% of the size of thesubject property and were also built to the same third generation office accommodation specifications. The other two comparisons, Ms. Murphy said, were of limited assistance although they were located in the same rating authority area as the property concerned.

Under cross-examination Ms. Murphy agreed that neither the Dunnes Stores nor the Southgate Fitness Centre were relevant comparisons within the true meaning of Section 49(1). With regard to the former Coca-Cola offices she agreed that this property was not located within the Meath County Council Rating Authority Area and did not, therefore, meet the requirements of Section 49(1) in that it was not located in the same rating authority area as the property concerned.

When questioned about the Drogheda Port Offices (Comparison No. 2) Ms. Murphy said that the location and specification of this building was on a par with the property concerned but was of the opinion that the rate per sq. metre used in this instance, i.e. €75.18 per sq. metre, should be adjusted downwards by 15% in order to reflect the fact that the building was only approximately 6.4% of the size of the property concerned. She also pointed out that the rate per sq. metre reflected the availability of ample on-site car parking. This evidence, Ms. Murphy said, indicated that the appropriate rate per sq. metre of the property concerned should be in the order of €63.90 per sq. metre.

Ms. Murphy agreed that the International Fund Services building (Comparison No. 3) was located in the same rating authority area as the property concerned. However, Ms. Murphy contended that this building was less than 50% of the size of the property concerned and occupied a superior location. Accordingly she felt that the rate per sq. metre used in this instance, i.e. €82 per sq. metre, should be adjusted down by 20% – 10% to reflect the superior location and 10% to reflect the difference in size when it came to valuing the property concerned. This, she said, would indicate that the appropriate rate per sq. metre for the property concerned would be in the order of €65.60.

When Mr. Robinson pointed out that this building was valued on a gross internal area basis Ms. Murphy agreed that if this was so then the figure of €82 per sq. metre should be adjusted to €90 per sq. metre on a net internal area basis, i.e. the same basis on which the property concerned was valued. She also agreed that the car parking had been valued at €100 per space.

When asked why she adjusted the sq. metre rates used in valuing the port offices and the international services building, Ms. Murphy said that she had done so to reflect “quantum” which was common valuation practice. When it was pointed out to her that this was not supported by the evidence of the two comparisons introduced by her in that the larger of the two was valued at a rate per sq. metre substantially in excess of the smaller one, Ms. Murphy acknowledged this to be the case but said that an office building with an area in excess of 4,000 sq. metres situated within the Drogheda area would only be let if there was a substantial discount to reflect its size and limited demand.

When questioned about the IPD index Ms. Murphy conceded that it was not Drogheda specific and indeed that it represented the movements in rents and capital values in what were regarded to be prime properties in prime locations.

The Respondent's Evidence

Mr. Robinson, having taken the oath adopted his written précis and valuation which had been previously received by the Tribunal and the appellant as being his evidence in-chief. In evidence Mr. Robinson put forward the following estimate of net annual value in accordance with the statutory provisions as set out below:

Office	4,435.65 sq. metres @ €85 per sq. metre	=	€377,030.35
Car Spaces	100 @ €100 each	=	€ 10,000.00
Total NAV			€387,030.35

Rateable Valuation = Total NAV €387,030.35 x 0.5% = €1,935.15

RV €1,900

In support of his valuation Mr. Robinson introduced three comparisons, details of which are contained in Appendix 2 to this judgment.

Mr. Robinson said that he was the revision officer appointed by the Commissioner of Valuation and in carrying out his duties he had prepared his valuation having regard to Section 49(1) of the Act. Mr. Robinson acknowledged that he had miscalculated the area of the offices at revision stage and that this had only come to light at appeal stage. In the circumstances he had reduced the rate per sq. metre from €100 to €85 per sq. metre to reflect the increased area. This figure, he said, was well supported by his comparisons, particularly comparisons no. 2 and no. 3.

Under cross-examination Mr. Robinson said he had first inspected the property concerned in early November 2011 by prior arrangement with the appellant. On the occasion of his visit the staff member who had agreed to meet him was unavailable but nonetheless he was able to inspect the property and subsequently was supplied with lay-out drawings and all other relevant information that he had requested. Mr. Robinson said that he had carried out some check measurements on-site and thereafter calculated (wrongly as it turned out) the area by reference to the drawings supplied to him. Mr. Robinson agreed that the appellant had not attempted to benefit from this error which inevitably led to a substantial uplift in the valuation of the property for rating purposes.

Mr. Robinson, in response to further questioning from Ms. Murphy, agreed that his comparison no. 1 was of little assistance to the Tribunal. With regard to his comparison no. 2 (a common comparison) Mr. Robinson said that it was a highly relevant comparison in that it was a third generation office building occupying a location similar to that of the property concerned. Mr. Robinson agreed that his comparison no. 3 was located in Duleek, a small town some distance from Drogheda and that it was approximately one tenth of the size of the property concerned. He also accepted that the offices had the benefit of dedicated car parking.

Findings

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

1. This appeal arises out of a request for a revision of valuation pursuant to Section 27 of the Valuation Act, 2001.

2. The statutory basis for reviewing property on foot of a request for a revision is set down in Section 49 of the Act which states as follows:

   *"**49.–** (1) 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.*

   (2) For the purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then–

   (a) in case a valuation list is in force in relation to that area, the determination referred to in subsection (1)in respect of the first-mentioned property shall be made by the means specified in section 48(1), but the amount estimated by those means to be the property's net annual value shall, is so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that

would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20,

(b) in case an existing valuation list in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988, but the amount estimated by those means to be the property's net annual value shall, in so far as it is reasonably practicable, be adjusted so that the amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act."

In this instance the property has been valued in accordance with Section 49(1) *"by reference to the values, as appearing on the valuation list relating to the same rating authority area as the property is situate in, of other properties comparable to that property"*

3. It is common case that the property concerned comprises third generation office accommodation in the Southgate Centre, a new mixed-use development on the southern outskirts of Drogheda. It is also common case that, because of current economic circumstances, proposed further commercial development activity in the area, and the proposed link road to the M1, will not proceed for some considerable time. It is further agreed that most of the mall units in the centre are vacant and not trading.

4. Of all the comparisons introduced by the parties, the most relevant are the Drogheda Port Offices, the International Fund Services building (a common comparison) and to a lesser extent the Civic Offices in Duleek. No weight whatsoever is attached to the former Coca-Cola Offices (Mellview House, M1 Retail Park) by virtue of the fact that it is located in a different local rating authority area than the property concerned and hence does not meet the criteria set down in Section 49(1).

5. Neither is any weight whatsoever attributed to Ms. Murphy's comparisons from within the Southgate development in that they are, respectively, a supermarket, a

gymnasium and an auctioneers premises located in an external parade of retail outlets. None of these could be said to be comparable to the property concerned.

6. The respondent's comparisons nos. 1 and 3 are of limited assistance in so far as they are considerably smaller than the property concerned and indeed the Civic Offices in Duleek occupy a substantially different location in a small town some distance from Drogheda.

7. In fact the most relevant comparisons are firstly the International Fund Services offices which are valued at approximately €90 per sq. metre on a net internal area basis, i.e. the same measurement basis as that used when valuing the property concerned. This building is approximately half the size of the property concerned and in Ms. Murphy's opinion there should be an adjustment of 10% to the €90 per sq. metre to reflect the difference in area. Ms. Murphy also expressed the view that there should be a similar downward adjustment to reflect the inferior location of the property concerned. In this instance the 100 car parking spaces in the curtilage of the property are valued at €100 per space.

8. The Drogheda Port building is substantially smaller (285 sq. metres measured on a net internal area basis) than the International Fund Services building, and yet it is valued at €75.81 per sq. metre to include "ample on-site car parking." Neither party expressed the view that this building was inferior in terms of fit-out and finish tothe property concerned or tothe International Funds Services building although Ms. Murphy was of the opinion that its location was somewhat on a par with the subject property.

9. Ms. Murphy in her evidence contended that there should be an allowance for quantum when valuing the property concerned. Whilst in a general sense there may be a presumption in favour of a quantum allowance, any argument for such a proposition would be given greater credence if supported by comparison evidence which is not the case in this instance.

10. Ms. Murphy also carried out an exercise using the IPD rental index for office accommodation. This index and other similar property indices are useful tools in some instances, but not when carrying out a valuation in accordance with Section

49(1) where regard must be had to the “tone of the list” for property which is truly comparable to the property concerned and in a similar category of use.

11. Having reviewed the comparison evidence the Tribunal has come to the conclusion that the location of the property concerned is on a par with that of the International Funds Services building which is valued at a figure equivalent to €90 per sq. metre on a net internal basis. In the circumstances, therefore, the Valuation Tribunal considers that €85 per sq. metre at which the property concerned is valued is fair and not unreasonable. However, having regard to the actual situation that currently pertains in relation to the car parking at the centre the Tribunal has come to the conclusion that the hypothetical tenant envisaged in rating law would not pay extra for a facility which at the valuation date was free to all users of the centre.

Determination

Having regard to the above, the Tribunal determines that the rateable valuation of the property concerned as set out below:

Offices 4,435.65 sq. metre @ €85 per sq. metre = €377,030

100 car parking spaces reflected.

Net Annual Value say €377,000

RV@ 0.5% = €1,885

And the Tribunal so determines.