Appeal Nos VA14/2/005

& VA14/2/006

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

James Keane **APPELLANT**

And

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2198226, Warehouse/Warerooms at Lot No. Unit 20 (Flr. 0), Glenrock Business Park, Ballybaanbeg, Ballybrit, East, County Borough of Galway; and Property No. 2212528, Warehouse/Warerooms at Lot No. Unit 21 (Flr 0), Glenrock Business Park, Ballybaanbeg, Ballybrit, East, County Borough of Galway.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF DECEMBER 2014

Stephen Byrne – Barrister **Deputy Chairperson**

Barry Smyth – FRICS, FSCSI, MCI Arb **Deputy Chairperson**

Frank Walsh – QFA, Valuer **Member**

By Notices of Appeal received on the 23rd day of June, 2014, the Appellant appealed against the determination of the Commissioner of Valuation in fixing rateable valuations, respectively, of €59 and €56 on the properties the subjects of the appeals.

The grounds of appeal are set out in the respective Notices of Appeal, a copy of each of which is attached to this judgment at Appendix 1.

Description of property

The subject property consists of two ground floor industrial units – Unit 20 (end of terrace) and Unit 21 (terraced unit). The properties are located at Glenart Business Park around 3 km North East of Galway City Centre close to the N6 and N17 roads.

Valuation history

The property was originally valued as one unit – RV €125. The r ate applied was €37.58 per square metre. The owner applied to get the property sub-divided into two units. In 2013 the property was sub-divided. On 3rd January 2014 a proposed valuation issued for 2198226 (RV of €64) and a newly created property bearing no. 2212528 (RV of €62). On 12 February 2014 final valuation certificates issued. On 22nd March 2014 there was an appeal to the Commissioner of Valuation. On the 30th May 2014 valuation certificates issued and the valuation of property No. 2198226 was reduced to €59 and property No. 2212528 was reduced to €56. On the 23rd June 2014 an appeal was lodged with the Valuation Tribunal.

The hearing

The appeal was dealt with by way of oral hearing held before the Tribunal on the 23rd day of September 2014. Owen Kennedy of Joyce, Mackie & Lougheed, Auctioneers and Valuers, represented the Appellant. He gave evidence for and on behalf of the Appellant. His précis of evidence was adopted as his evidence in chief. He was cross-examined by Mr Karl Gibbons. Mr Karl Gibbons in turn gave evidence on behalf of the Respondent. His précis of evidence was adopted as his evidence in chief. He in turn was cross-examined by Mr Owen Kennedy. The properties at issue have been described as ground floor industrial units. They are adjacent to each other. They feature as units 20 and 21 on the external photographs as adduced in evidence. Unit 20 (property No. 2198226) has been described as end of terrace. Unit 21 (property No. 2212528) has been described as mid terrace. The properties originally comprised a single unit. The owner (the Appellant) applied to get the property sub-divided into the aforementioned separate units.

As has been stated, the appeal proceeded by way of oral hearing heard on the above date. The Tribunal has had evidence and submissions from experts on behalf of the Appellant and the Respondent.

As has been stated, Mr Kelly represented the Appellant. He, as is his entitlement, takes issue with the valuation as struck by Mr Gibbons, on behalf of the Respondent.

Mr Kennedy's criticism and/or objection in summary is that the Respondent ought when striking the valuation, to have had regard to and to have applied the provisions of section 48 of the Valuation Act, 2001. The Appellant's criticism and/or objection is, it seems and in principle an objection based in law and/or legal principle. Colloquially put, the Appellant, acting through

Mr Kennedy, "charges" the Respondent with applying a legally invalid, incorrect and/or inappropriate approach to valuation of the subject property.

If this criticism and/or objection stands up to scrutiny, it necessarily follows that the rate as struck cannot stand, having been constructed on a fundamentally flawed premise.

The Tribunal, in passing, observes that the grounds of appeal as submitted do not readily convey to any interested party that the Appellant's appeal constitutes, in essence, a fundamental challenge to the legal basis employed by the Respondent in arriving at the rate as struck and which is under appeal.

That said, the Respondent has not raised any formal objection. For reasons that will become clear, there is no harm done, so to speak.

Notwithstanding the Appellant's failure to make sufficiently clear in his grounds of appeal his intention to advance what is, in effect, a legal challenge to the Respondent's approach to valuation, the Tribunal has decided that it will entertain the appeal on its merits and intends to deal with same.

The Tribunal does not, however, want this to be viewed as any kind of precedent put in place to encourage the "cloaking" of fundamental points of law in generalised 'one size fits all' grounds of appeal.

As stated and in summary, the Appellant raises a legal challenge to the Respondent's approach to valuation. The Respondent, through Mr Gibbons, steadfastly refutes this. Notwithstanding stern cross-examination, Mr Gibbons has 'stuck to his guns'. Insofar as he is concerned, his approach to valuation is, in accordance with the law, in other words, is as provided for by and/or under the Valuation Act, 2001.

In view of the discrete issue which has been raised by the Appellant, the Tribunal is of the view that the most efficient way of determining what might be termed the 'core dispute' in this appeal is for the Tribunal to determine as a "preliminary issue" whether the Appellant is correct in his assertion that there has been a fundamental error in what might loosely be termed the approach by the Respondent to valuation of the subject property.

Colloquially put, the conflict runs as follows:

- The Appellant maintains that the property should in law have been valued under section 48 of the Valuation Act, 2001.

- On this presentation, valuation under section 49 of the 2001 Act is invalid and/or incorrect.

- The Respondent accepts that the property has been valued under section 49 of the 2001 Act. The Respondent asserts that section 49 is the correct approach to valuation in the circumstances.

The Tribunal must and at the outset express its deep appreciation to the Registrar for drawing attention to the very useful decision of the Tribunal, Ref. No. VA08/5/125 in the case of **Marks & Spencer (Ireland) Limited v. Commissioner of Valuation**, judgment of the Tribunal of the 9th day of April 2009.

The above mentioned decision is extremely instructive and clear in its consideration of the overarching scheme and purpose of the Valuation Act, 2001 "which came into effect on the 2nd day of May 2002 and is the sole Statute dealing with valuation of relevant properties for rating purposes".

A number of useful observations emerge from a consideration of this decision and indeed a consideration of the material provisions of the Valuation Act, 2001. These are as follows:

(a) Approach to valuation fundamentally depends on whether one is dealing with "revaluation" or "revision".

(b) Revaluation occurs periodically. One of the core objectives of revaluation is to periodically strike a fair and equitable rate in respect of relevant properties by reference in particular to local authority areas. Revaluation evolves gradually. It is progressive. As a process it crystallises into the preparation and/or compilation of a valuation list. The valuation list is expressly provided for under section 21(2) of the 2001 Act. It is also expressly referred to under section 49 of the Act of which more anon.

(c) The valuation list, when prepared and/or compiled, is intended and as a general principle, to inform and/or guide the approach to valuation under section 49 of the Act.

(d) Sections 48 and 49 of the 2001 Act provide for distinctly and materially different approaches to valuation. As a general principle, the sections are intended to apply in distinctly different circumstances.

(e) As a matter of general principle, the section 48 approach applies on revaluation. In other words, periodically and given that the initial valuation round has been completed where the Commissioner exercises power, which is, in essence, the power to revalue under and by virtue of section 25 of the Valuation Act, 2001.

(f) As a matter of general principle, the section 49 approach to valuation applies on revision. In other words, in between periods of revaluation and in circumstances where an occupier is of the view that there are grounds to warrant a revision (review) of the valuation of his property as suggested by the valuation list relating to the relevant local authority area.

(g) Exceptionally, the approach to valuation where revision is at issue can in limited circumstances be made by reference to section 48(1) of the Act. Having regard to the wording of section 49, such approach to valuation can exceptionally occur where "*there are no properties comparable to the property situated in the same rating authority area*".

(h) As has been stated, the provisions of sections 48 and 49 where they are deemed to apply stipulate materially different approaches to valuation. Under section 48, the valuer is required to determine "net annual value" as defined. Should section 48 be deemed to apply, regard may properly be had to the exigencies of the market place and to the sad prevailing reality that the commercial silk purse has seamlessly and apparently without warning and/or expectation, evolved into a patently unmarketable sow's ear.

(i) Consider in this regard the definition of net annual value as contained in section 48 of the 2001 Act being "*the rent for which one year with another the property might, in its actual state, be reasonably expected to be 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 stage 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*."

(j) Section 49 if deemed to apply, is materially different. Under section 49 determination of value must be by:

- Reference to the value as appearing in the valuation list.

- Relating to the same rateable authority area as the property is situate in.

- There is a further requirement that the person and/or body and/or authority determining the valuation must have regard to "comparable properties".

Turning then to deal with the instant appeal, the following points occur:

(a) This is not a revaluation. As has been stated, revaluations occur periodically. There is no evidence to suggest that this is a revaluation.

(b) In point of fact, the Tribunal is, without hesitation, satisfied that this is a revision. The Appellant has at all times and up to the date of appeal hearing, proceeded on the basis of revision. There has and as of the date of the appeal hearing been a vain and veiled attempt to "switch horses".

(c) This being a revision, prima facie section 49 is in law the correct approach to valuation unless and exceptionally, there is reliable evidence to support a conclusion that there are no comparable properties as defined.

(d) The Appellant has attempted, more by dint of submission and cross-examination than by adducing positive evidence, to persuade the Tribunal that the properties evidenced by the Respondent as comparable properties were not and in the circumstances and in reality comparable.

(e) Such submission/cross-examination falls flat and by reason in particular of the Appellant's misguided reliance on net annual value and/or present market exigencies in support of same.

(f) In any event and for reasons which will be amplified forthwith, the evidence of Mr Gibbons, in substance unchallenged, permits the Tribunal to comfortably conclude that there is sufficient, cogent and reliable evidence to satisfy the discrete section 49(1) requirement that reference be made to comparable properties when determining value.

(g) In conclusion, the Tribunal determines that the approach to valuation as adopted by the Respondent is in law and in the circumstances correct.

Having so determined, the Tribunal proceeds to consider whether and having applied the correct approach to valuation, the value as struck is, in the circumstances, fair, equitable and reasonable. In fairness, the Appellant, through Mr Kennedy, has not sought to challenge, to any great extent, the substance of the evidence as advanced by Mr Gibbons on behalf of the Respondent. The Appellant, for reasons that have been set out herein, has been more directly concerned with challenging the approach adopted by Mr Gibbons to the valuation.

The evidence as adduced by the Appellant in support of his appeal to the effect that the rate as struck was excessive and/or unreasonable is, it seems, intended to support an argument that the valuation ought to have been determined under section 48(1) and by reference, inter alia, to net annual value as defined. This argument has not been successful. The "weight" to be attached to the evidence as adduced in support of such a failed argument necessarily struggles and ultimately perishes.

The Tribunal is therefore left with the evidence of Mr Gibbons. As stated, it is in substance unchallenged.

Rather than go through the evidence of Mr Gibbons seriatim the Tribunal proposes to append the précis of evidence of both of the experts to this determination at Appendix II.

In summary, the substantially unchallenged evidence of Mr Gibbons evidences the identification by him of comparable properties (five in total). The comparable properties are

stated in the valuation listed for Galway City Council. Galway City Council is the relevant rating authority.

The comparable properties are all located in the same "industrial estate" as subject properties. The comparable properties are evidently warehouse units similar to the subject properties.

Each of the comparable properties has a rate of €34.17 per square metre applied. Mr Gibbons, when arriving at the appropriate rate in respect of each of the subject properties, has applied a rate of €34.17 per square metre. This is as it should be. It reflects equity and fairness to this Appellant and to the owners of similar units located in the same industrial hub.

In conclusion, the rate as struck is in the circumstances fair, equitable and reasonable and should stand and the Tribunal so determines.