

Appeal No. VA88/0/068

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

New P.M.P.A. Insurance

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Lot No. 133, Capel Street, County Borough of Dublin

B E F O R E

Hugh J O'Flaherty

S.C. Chairman

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF OCTOBER, 1988

By notice of appeal dated the 16th August, 1988, the appellants appealed against the determination of the respondent fixing the rateable valuation of the above described hereditaments at £310.00.

Mr. Jerome O'Connor ARICS, who is a company surveyor with the appellants submitted to the Tribunal a written history of the complex 133/136 Capel Street of which the appealed premises forms a part. He also gave evidence before the Tribunal. The complex of 133/136 Capel Street was purchased by P.M.P.A. Insurance Company Ltd. in December 1970, for a consideration of £85,000.

At the time of purchase the complex was largely vacant but occupied by 6 tenants. The total rental income at the time was £4,135 per annum.

Of the hereditaments currently under review, only the premises 5, 6 & 7a Meetinghouse Lane were occupied at the time of P.M.P.A.'s purchase of the complex. They were occupied by Messrs. Irish Tapes Ltd. under a lease for a term of 28 years from 1st April 1968 and at a rental of £840 per annum with no reviews.

The complex of 133/136 Capel Street was acquired by P.M.P.A. Insurance Company Ltd., because of the proximity to its headquarters in Wolfe Tone Street, as a garage repair workshop. Shortly after the purchase of the property a planning application was lodged in April 1971 for the change of use of 133 Capel Street and 7 & 8 Meetinghouse Lane to a garage repair workshop including car sales and services. Planning permission for this use was granted by Dublin Corporation in September, 1971. P.M.P.A. Garage (Capel Street) Ltd. opened its doors shortly thereafter and continued trading up until 1982.

The property was viewed as having a long term development potential. In late 1982 a Planning application was lodged for a development consisting of a Shopping Arcade, Staff Sports Centre, Exhibition Area and Offices. This application was in respect of the entire complex. Planning permission was granted in May 1983 for this development by Dublin Corporation but their decision was appealed to An Bord Pleanála by An Taisce together with the Cistercian Order in Ireland. Eventually in March 1985 An Bord Pleanála issued a permission for the proposed development subject to 8 conditions.

The development potential of the complex is said to be limited by the fact that it coincides with a considerable portion of St. Mary's Abbey, a 12th century Benedictine (subsequently Cistercian) monastery founded on the site of an earlier church reputed to date from 998 A.D. Among the conditions imposed by an An Bord Pleanála are the following:

1. An Archaeologist to be retained by the developer to supervise the examination and excavation of items of archaeological interest found on the site.
2. Structural items of archaeological interest found during construction to be treated and preserved in situ in accordance with instructions to be given by the Office of Public Works. An agreement with the

Planning Authority to be sought re consequential structural alterations to the layout of the development.

Partly as a result of the slump in the property market which had occurred by 1985 and partly as a result of the change in direction in relation to property within P.M.P.A. following the appointment of the Administrator in 1983 and partly as a result of the onerous conditions contained in the approval, the development was not proceeded with.

In June 1988 P.M.P.A. concluded the sale of part of 7 & 8 Meetinghouse Lane to Styletex Ltd. for a consideration of £22,000. Styletex Ltd. had a factory unit on East Arran Street which backs on to the property sold.

P.M.P.A. Garage (Capel Street) Ltd., a subsidiary of the P.M.P.A. Group continued trading in 133 Capel Street, 7/8 Meetinghouse Lane until early 1982 at which time because of rising losses it was decided to cease operations. Attempts were subsequently made to let the premises but with little success. The premises was let in 1983 for a few weeks to a "Dandelion Market" but this operation never got off the ground.

P.M.P.A. staff commenced using the premises as an unofficial car park in 1982. The premises became an official company staff car park in 1985 and has been used as such since then. Because of difficulties of access the premises could not be used commercially as a car park.

Mr. O'Connor also described various efforts that had been made to sell the complex which, to date, have proved abortive. The Tribunal is of the view that the question of a possible future sale is not relevant to the matters it has to determine.

Mr. Desmond M. Killen FRICS, ARVA who is a fellow of the society of Chartered Surveyors in Ireland and is a Director of Donal O'Buachalla & Co. Ltd., of 86 Merrion Square, Dublin 2, made a written submission on the 23rd September, 1988. Mr. Killen is a very experienced surveyor having been with the company of which he is a Director since 1972 and having worked for some years in the Valuation Office, Department of Finance, Northern Ireland.

In the course of his written submission Mr. Killen stated that Capel Street can be considered to be very much a secondary trading location with many premises vacant and available to let or for sale. The complex, a veritable warren, was purchased in the early 1970's, with the sole purpose of re-development as a shopping centre. A number of factors - a depressed property market, the

provision of Designated Areas nearby with the attractive tax and rates relief incentives, the cost of re-development vis-a-vis the potential future income - have combined to make any re-development completely unviable and the complex practically unsaleable.

There was reference to Section 11 of the Valuation (Ireland) Act 1852 and Section 5 of the Valuation Act, 1986.

There was put forward four methods by which a just rateable valuation might be arrived at, viz Rental Evidence, Profits Methods, Contractor's Methods and Comparative Method.

In the result, Mr. Killen relied on the nett annual value (derived from Rental Evidence) as being the most reliable.

They were set out, too, in the written submissions certain comparisons which the Tribunal thinks are not as relevant as certain other comparisons that were put before the Tribunal.

Mr. Desmond Feehan who is a District Valuer with the respondent, with 37 years experience in the Valuation Office, made a written submission on the 23rd September, 1988 and was good enough to furnish the Tribunal with further rental evidence on 27th September, 1988, in advance of the hearing.

He set out the valuation history of the premises as follows:-

1973 - Listed by Dublin Corporation to revalue. Revising Valuer reported that premises, which had been occupied by Department of Posts and Telegraphs, was acquired by P.M.P.A. Insurance Co. Ltd. and converted to a garage for servicing and repair of cars. The ground floor was used for servicing and storage, and the first floor was used as a repair workshop. Cars were taken from ground floor to first floor by means of a lift. There was also access to first floor by stairway. The first floor was of reinforced concrete. The second floor was in good condition, and there were offices, canteen and toilets. The valuation was increased to £310.00. This figure was not appealed.

1987 - Premises listed for revision of valuation.

The Revising Valuer proposed that no change should be made.

P.M.P.A. appealed this decision, and Mr. Feehan was deputed by the Commissioner to inspect the premises, and report on it.

On inspection, on 16th February 1988 he found that 133 Capel Street with Rateable Valuation of £310.00, was part of a composite parcel of buildings, 133 to 136 Capel Street. There were several Valuation Lots, each with a separate valuation. Some of these valuations had been appealed and some had not.

Mr. Feehan made the point that the operative date for the valuation of £310.00 was the 1st November, 1987, and the appellants were in agreement with this as being the relevant date. At the time of inspection, he found that the buildings covered by the valuation of £310.00 were in good repair, and similar in condition to when valued in 1973. The building was under utilized. The ground floor was being used as a car park for P.M.P.A. employees. He was advised that the lift to the first floor was not in working order. He was also advised that blocks 7,8,9,10,11 had been sold to Styletex Ltd., who operated a clothing factory at adjoining 27. 27a. 27b. Arran Street East, for £23,000.

Mr. Feehan was of the opinion that no case had been made for a reduction and that the valuation of £310.00 was moderate.

Mr. Feehan thought that the points being made for a reduction, viz that the premises were vacant to a considerable extent and that a reduced valuation might facilitate a sale were not reasons which would form the basis for a reduction in valuation.

Mr. Feehan put before the Tribunal certain comparisons and these are reproduced in full at Appendix A to this judgment.

Oral submissions were made at the hearing on the 29th September, 1988, at which both Mr. Killen and Mr. Feehan elaborated on what had been set forth in the course of their written observations.

The Tribunal concluded that the parties were agreed on the area in question in the premises. What they disagreed upon was what the correct rateable valuation should be and a big gap opened up between the parties because the appellants felt that the correct rateable valuation

should be £75.00 whereas the respondent felt that it should be £310.00. The parties were agreed that as a guideline 1% of Nett Annual Value (N.A.V.) would represent the correct rateable valuation. Where the parties disagreed was in determining what the N.A.V. should be.

There is set out hereunder a table (prepared by Mr. Killen and agreed to by Mr. Feehan) which contrast the parties' respective positions on estimated values.

Existing R.V. £	1988 Rates £	AGREED AREAS			V.O. ESTIMATE	
		m ²		ft ²	N.A.V. £	R.V. £
		Gross External				
310	7,812	<u>Ground Floor:</u>			30,000	310 ie 1.03%
		Entrance	234	2,518		
		Workshop	799	8,597		
		Toilets/Office	33	355	@ 1.40	
		Canteen/Stores	261	2,808		
		<u>First Floor:</u>				
		Canteen/Stores	1,070	11,513	@ 70	
		<u>Second Floor:</u>				
		Stores	422	4,540	@ 30	

				APPELLANTS ESTIMATE	
				N.A.V. £	R.V. £
<u>Ground Floor:</u>				7,500	75 i.e. 1%
Entrance		2,518	@ 25p	629	
Workshop		8,597]			
Toilets/Offices		355]	@ 50p	5,880	
Canteen/Stores		2,808]			
<u>First Floor:</u>					
Canteen/Stores		11,513	say	1,000	

Second Floor:

Stores 4,540

With regard to the premises in question Mr. Killen in a vivid phrase said that he considered the premises "functionally and physically obsolete" and the Tribunal has much sympathy with this view. If there was any market to let these premises it is felt that they would have been let by now. The Tribunal would point to the comparisons that have been put in evidence and, in particular, 9 Meetinghouse Lane and from 10/11 Mary's Abbey. These work out at about £3.00 per square foot rental value and it is agreed by the respondent that the most that could be sought for any part of the premises in question is £1.40 per square foot rental value. The Tribunal is of the opinion that there must be a reduction further than that.

The Tribunal would also note the effect of the designated areas legislation on the premises in question. Certain areas were made "designated areas" in Dublin's inner city under the terms of the Urban Renewal Act, 1986. The objectives of that Act are:-

- (a) "To stimulate investment in new building and in reconstruction and development work, and to provide a major stimulus for the construction industry which has the potential to expand output and employment in the short term and
- (b) to revitalize inner city areas in Dublin which are likely to remain undeveloped unless special measures, involving Government intervention are taken".

A brochure entitled "Inner City Development New Incentives for Designated Areas" issued by Dublin Corporation was put in evidence and forms part of the record of these proceedings.

It was urged on behalf of the appellants that the fact that people could get tax and rates incentives by going into the designated areas, which were so near the premises in question, provided a disincentive to letting these premises. The respondent countered by saying that even in the designated areas people were looking for a reduction in their rateable valuations.

The Tribunal is conscious, too, that nowadays anyone looking for warehouse accommodation, which is the only possible use the premises could be put to (aside from being used as a car park) are looking for security as well as ease of facility in the sense that vehicles should be able to gain access easily to the premises. These factors are not present in the premises in question; the premises were originally used as a bakery; were then converted into a garage and, on any view, could not be what any prudent man of business would seek to warehouse anything of value - especially having regard to the prevalence of crime and vandalism in the city.

As regards the fact that areas nearby constitute "designated areas" the Tribunal is of the opinion that this is a relevant and important factor; indeed it bodes ill for these premises that in fact the areas designated in the city have not been put to the use that was envisaged by the Act and has happened in other parts of the country; that may come yet but, in the meantime, these premises on Capel Street must exist under the shadow of the designated areas dispensation.

The Tribunal is of the opinion that clearly as a matter of principle this is something that should be taken into account and would refer to the fact that it was taken into account in a recent decision of the House of Lords Clement v Addis Ltd. (1988) 1 All England ERE. R. 593. In the course of his speech Lord Keith of Kinkel at p.596 said that the application of the rebus sic stantibus rule means that the state of premises should be given to a wide construction so as to include intangible as well as physical advantages and disadvantages. See, too, the other cases cited in the course of that decision with regard to the effect of the making of a demolition order or the like on rateable valuations.

The Tribunal is clearly of the opinion that the premises are, on any view, an odd lot. This is due to their size, shape and location. All comparisons have to be tentative and qualified but in this case that applies to a greater extent and while the Tribunal has made use of certain of the comparisons as showing the most that could be commanded for warehousing in this area it feels that it must go a good distance from what the best could command.

The Tribunal, therefore, considers that the following figures are applicable:-

Ground Floor

Entrance	234m ²	2518 ft ²	@ £1.20 per sq.ft.	= £ 3,021.60
Workshop	799m ²	8597 ft ²	@ £1.20 per sq.ft.	= £10,316.40
Toilets/Office	33m ²	355 ft ²	@ £1.00 per sq.ft.	= £ 355.00

Canteen/Stores 261m² 2808 ft² @ £1.00 per sq.ft. = £ 2,808.00

First Floor

Workshop/Store 1070m² 11513 ft² @ £0.30 per sq.ft. = £ 3,453.90

Second Floor

Stores 422m² 4540 ft² @ £0.10 per sq.ft. = £ 454.00

TOTAL **£20,408.90**

SAY: £20,000 N.A.V.

Accepting 1% of N.A.V. that would produce a rateable valuation of £200.00. However, the Tribunal is left with the concern that these premises might not be capable of being let at all as a warehouse and that, at most, they might be let as a car park which is their current use. It was put strenuously to the Tribunal and the Tribunal has come to the viewpoint that it would take a brave person to venture in to these premises as a tenant; he would have enormous problems getting property insurance; he would have great problems making the premises secure and all in all such a venture would present many obstacles. We are conscious, too, of the effect that the "designated areas" legislation must have on these premises. The Tribunal will make allowance for these factors in the particular circumstances of these premises.

In all the circumstances we think that the correct rateable valuation is £175.00 and that the respondents figure should be reduced accordingly to that figure.

The Tribunal has considered an application on behalf of the appellants for, at least, a contribution towards costs. Paragraph 12(1) of the First Schedule to the Valuation Act, 1988, obliges the Tribunal to award costs to a "successful" Appellant or Respondent "unless there is a good reason for not doing so". The Tribunal is of the opinion that while the Appellant has succeeded to an extent, nonetheless it is not such as to justify the description of being a successful party because this carries the implication that the other party has wholly failed to maintain a semblance of his position. The Tribunal is aware, too, that the Circuit Court in hearing Appeals most often did not award costs in quantum cases.

Accordingly, the Tribunal decides that there should be no order as to costs.

