

Appeal No. VA88/0/106

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

**Craig Gardner & Company**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Lot 6d,7, Wilton Place, South Dock, B Ward, (6th floor (unfinished) in Dublin, Co. 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 6TH DAY OF JUNE, 1989**

By Notice of Appeal dated the 19th day of August, 1988 the appellants appealed against the determination of the Commissioner of Valuation in fixing a valuation of £715.00 on the above mentioned hereditament.

The grounds of appeal were:

1. the valuation assessment is excessive and inequitable and bad in law; and

2. the 6th floor section to the premises was incomplete and incapable of beneficial occupation on the 31st December, 1987 and, accordingly, should not be valued.

### **DESCRIPTION OF PREMISES**

The appeal relates to the unfitted-out 6th floor of a six storey office building which has not at any time been fitted out or occupied. The remainder of the building, which is also occupied by Craig Gardners, is valued as a separate hereditament. The accommodation extends to an agreed net area of 994 sq.metres in respect of which the Valuation Office have determined a rateable valuation of £715.00. The premises are described in the valuation list as Offices (unfinished). The total fitting out at the relevant date had yet to be carried out including the provision of ceiling grids and suspended ceilings, light fittings and the wiring thereto and the installation of a mechanical ventilation system. In addition the electrical trunking in the floor was not wired and no floor boxes, socket outlets, partition systems or telephone connections etc. were in place. The planning permission in respect of the development restricts the usage of this hereditament to offices and for no other purpose.

### **VALUATION HISTORY**

This floor and part of the 5th floor were valued for the first time in the 1986 Revision at £1,560.00 and reduced to £1,248.00 on appeal, when described as unfinished. Since then the "part 5th floor," has been fitted out and incorporated in the valuation of the balance of the building.

The 6th floor was valued (unfinished) £715.00 on the 1987 Revision. This figure was appealed and having considered the report of the valuer the Commissioner of Valuation made no change.

The rateable valuation devalues as follows:-

Offices 994 sq.metres at 90p	=	894
Allow 20% for unfinished state	=	179
Total	=	<u>715</u>

### **WRITTEN SUBMISSIONS**

An undated written submission was received on behalf of the appellants from Mr. William A. Tuite. Mr. Tuite is a Chartered Surveyor since 1970 and a Partner in Jones Lang Wootton. In his precis of evidence, Mr. Tuite says that the appeal relates to the unfinished and incomplete 6th floor of a six storey office building which is separately assessed for rates and which has not, at any time, been fitted out or occupied for its designed purposes. The physical condition as of the relevant valuation date, 1st November, 1987, is not, as he understood it, disputed by the Valuation Office.

He says that the question that arises is whether this particular hereditament was complete and capable of beneficial occupation for its designed purpose at the relevant valuation date. It is his contention that the property was not so completed and capable of beneficial occupation and that it therefore should not be rated.

In describing the valuation history of the hereditament,

Mr. Tuite says that in 1985 the revising valuer decided to assess the premises for rates on the grounds that, as at the date of his inspection, there was adequate time for the 5th and 6th floors to be fitted out before the 1st November, 1985. His clients were advised by letter dated 16th May, 1985 of this. An appeal was lodged in November, 1985 against the assessed valuation of £1,560.00 rateable valuation, in respect of the 5th and 6th floors. He says that discussions took place with the appeal valuer, Mr. Dineen, and it was agreed, without argument, that the assessment on the 5th and 6th floors should be struck out on the grounds of non-completion.

Approximately eight weeks later

Mr. Dineen advised that he had changed his mind in relation to this matter and that he proposed to reinstate the existing valuation of £1,560.00 but with a 20% discount to reflect the

uncompleted condition of the two floors involved. A Circuit Court appeal was subsequently lodged in relation to this assessment and this appeal is currently outstanding.

He says that at the relevant valuation date, 1st November, 1987 the hereditament was incomplete and incapable of beneficial use for its designed purpose ie. as offices by virtue of the fact that the total fitting out works had yet to be carried out including provision of ceiling grids and suspended ceilings, light fittings and wiring thereto and the installation of a mechanical ventilation system. In addition he says that the electrical trunking of the floors was not wired and no floor boxes, socket outlets, partition systems or telephone connections etc. were in place. The exact extent of the works required to fit out the buildings were set out in a letter which he enclosed from Robinson Keefe and Devane dated the 16th of February, 1989.

Mr. Tuite says that Craig Gardner and Company occupied the entire office building under the terms of a 35 year lease from the 12th December, 1983, subject to an initial rent of £709,304.00. The lease terms provided for a four month rent-free period in respect of the entire building together with a further 12 month rent free period in respect of the 5th and 6th floors. The 5th and 6th floors were not required for occupation by Craig Gardner at the date the building was leased but it was envisaged that expansion of the practise would necessitate additional accommodation in due course. This expansion did not materialise within the time span envisaged and accordingly the 6th floor was not completed and fitted out prior to the relevant valuation date.

He states that, in his view, the hereditament was incapable of being beneficially occupied for its intended and designed purpose at the relevant valuation date, due to the extent and nature of the works required to render it capable of beneficial occupation and he considered that, in the circumstances, in accordance with standard valuation procedure, that the rateable valuation attributed to the hereditament should be deleted. He says that it is irrelevant to the principle of beneficial occupation whether or not the building is leased under a contract of tenancy or owner

occupied. A building may be owned but nevertheless be incapable of being beneficially occupied or alternatively may be leased and be incapable of beneficial occupation. In support of this he quotes the decision in Mount Investments Limited V The Commissioner of Valuation heard before Judge Martin on the 23rd and 24th February, 1989 where a similarly circumstanced building was the subject of Circuit Court appeal. This case related to a vacant building in Lower Mount Street which was owned as distinct from a leased entity. Judge Martin held on the facts that the building was incapable of occupation.

Mr. Tuite submitted four comparisons which are attached as Appendix A.

A written submission dated the 12th October, 1988 was submitted by Mr. Terence Dineen on behalf of the Commissioner. Mr. Dineen is a Valuer with fourteen years experience in the Valuation Office. In his written submission he says that he inspected the building in January 1988 and found it consisted of the 6th floor of a new office block in Wilton Place. The remainder of the building, also occupied by Craig Gardners is valued as a separate hereditament. He says that the appellants agreed that 90p per square metre is the correct rate for the completed building. He says that Section 11 of the 1852 Act provides "..... the Commissioner of Valuation shall cause every ..... rateable hereditament ..... to be separately valued" also "and such valuation in regard to ..... buildings shall be made upon an estimate of the net annual value thereof; that is to say, the rent for which, one year with another the same might in its actual state be reasonably expected to let from year to year .....". He says that the entire office block is leased from the Industrial Credit Company since January 1984; this portion of it was allowed a 16 month rent free period, so rent has been paid since May, 1985. As there is a rent passing under a lease, de facto, the property has a net annual value and the Commissioner is obliged to enter a valuation in the list. For the unfinished state of the office an allowance of 20% has been granted. He says that equivalent properties such as vacant stores and factories are valued, as are the IDA advance factories all over the country, though many are vacant. Several

office blocks, vacant and unoccupied for years, are valued. He gives a number of examples such as Nos. 2-4 Ely Place, Warrington House, Mount Street Crescent first floor, and 96-100 Lower Mount Street. He says that the buildings in the above three cases are all in the same general condition as the Craig Gardner premises. He also says that the subject property is the subject of a 35 year lease between a very large accountancy firm and a reputable finance company. The Commissioner's case is that, if he believes a property has a net annual value, as it undisputedly has, in his view, in this case, then he is obliged to enter a valuation in the list. Collection of rates, he says is a matter for the Rating Authority. With regard to the 20% reduction, Mr. Dineen says that it is arguable that no reduction should be given in this case as the rateable valuation is based on rent which is comparable to that of other "fitted out" office blocks. He says that it is agreed that the items outlined in the architect's certificates submitted in May 1986 for the building remain to be carried out. The fourteen items in question can be summarised into five categories as follows:

- (a) Decoration
- (b) Lighting
- (c) Ventilation
- (d) Partitions
- (e) Ceiling

He says that whether any of the above items are rateable is debatable - the nearest would be the ceiling - usually suspended acoustic tiles.

He says that this office block is substantially complete and, in his experience, in the condition in which office blocks are normally leased. The block has a letting value and therefore it is proper to enter a rateable value and that the 20% allowance is more than generous.

### **ORAL HEARING**

At the oral hearing which was held on 28th April, 1989

Mr. Angus O Brolchain, Barrister, instructed by A & L Goodbody, Solicitors, represented the appellants. Mr. O Brolchain said that there were two appeals before the Circuit Court relating to 1985 and 1986. These have not yet been heard. He referred to a judgment of Mr. Justice Henchy, Harper Stores Limited V The Commissioner of Valuation [1968] IR P.166. Mr. O Brolchain said that a new building must be seen differently from an old building which had been vacated for reconstruction and, if not completed by the relevant date, it should not therefore be rated.

He also referred to an unreported judgment by Judge Martin in the case of Mount Investments V The Commissioner of Valuation. He said that, although this building had been developed even further than the subject premises, it was found that, as at the 1st of November of the relevant year, it was not capable of being beneficially occupied and the appeal was allowed.

Mr. O Brolchain said that the building was originally valued in 1984 but that the top two floors were not included and although there was no change these two floors were rated the following year.

Mr. William A. Tuite gave evidence that floors 1-4 were let as a shell but with a contribution towards fitting out and a rent free period.

Mr. Donnelly of Robinson, Keefe and Devane gave evidence of the work required to properly fit out the subject floors.

Mr. Aindrias O Caoimh said that there was a difference between the Mount Investments building which Judge Martin decided was not rateable and this premises which was let and for which a rent was paid. The fact that the top floors were not rated in the first year could relate to the rent free period, as there were different rent free periods for different floors. He said that, as a rent

was being paid at the relevant date, the premises were in beneficial occupation and were capable of being brought into full use. He said that an office differed from a new house in that offices are normally let in an unfinished state and are capable of commanding high rents whereas an unfinished house could not be beneficially occupied. The "actual state" of the premises, Mr. O Caoimh said, must take into account the potentiality of the properties. There was no doubt but that the subject property had potential.

### **FINDINGS**

In this case both parties rely on the decision of the High Court (Mr. Justice Henchy) in Harper Stores Limited V The Commissioner of Valuation [1968] IR 166. The two contrasting positions postulated by the Judge were the situation of the appellants in that case where they had contractors in doing works of reconstruction and the case of a new house which is sought to be valued for rating before it is completed. He said that for a considerable time before the 10 weeks in question (while the contractors were in), and ever since the appellants had clearly been in rateable occupation. The 10 weeks in question amounted, not to a sundering of the appellants' rateable occupation, but to a mere variation of the mode of their continuous use of the premises for the purposes of their business.

Applying the reasoning in the Harper Stores case to the present case the Tribunal feels that it must hold that the appellants are indeed in rateable occupation in the sense that this floor was kept in reserve, so to speak; in that sense it could not be in the rateable occupation of anybody else. However, the hypothetical rent that should be paid in respect of it having regard to its "actual state" must attract a substantial discount and the Tribunal feels that 20% is not sufficient but that the correct discount to allow in the circumstances should be 50%.

The rateable valuation will be reduced accordingly.



