

Appeal No. VA91/2/054

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

Income Investments Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Lot No. 61/Unit 5 Hanover Quay, Ward: South Dock, County Borough of Dublin

B E F O R E

Mary Devins

Solicitor

Brian O'Farrell

Valuer

Padraig Connellan

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF DECEMBER, 1991

By notice of appeal dated the 23rd day of July, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing the rateable valuation of the above described hereditament at £25.

GROUND OF APPEAL

The grounds of appeal as set out in the Notice of Appeal are as follows:

- (1) That the rateable valuation is excessive.
- (2) That in setting the valuation cognisance was not taken of a Circuit Court decision.

- (3) That in setting the valuation Section 5 of the 1986 Valuation Act was not complied with.

PROPERTY

The property is one of ten units in premises known as Benson Street Enterprise Centre, Hanover Quay, Dublin. The entire, partially constructed premises were purchased by the appellant company in 1979 for £70,000. Having completed the building, the company failed to let it for a number of years. The building was then sub-divided into units which have been let to individual tenants.

Each unit is of solid concrete block construction apart from the rear external wall and has concrete floor and an internal pre-cast concrete roof slab incorporating wired glass roof lighting. Headroom is 9 ft (2.7m). Individual access to each unit is by means of a pedestrian door and a small roller shutter loading door opening off an access corridor. One toilet is provided in each unit. Each unit is provided with a fire door.

VALUATION HISTORY

Units 2,3 and 4 were first valued in 1985 First Appeal as part of a subdivision of the parent lot, 6a Hanover Quay, at an R.V. of £24 each for 990 sq ft (92m²). This figure was appealed to Circuit Court and reduced to £17 on 14th April, 1988. The remaining seven units of the Centre were valued in the 1990 Revision. The subject property of 990 sq ft gross was valued at £25 R.V. or 0.63% of estimated N.A.V. of £3,956 for November 1988; the other six units were valued on the same basis. This property was appealed and no change was made at First Appeal. It is now the subject of this Tribunal Appeal.

ORAL HEARING

At the oral hearing which took place on 13th November, 1991 Mr. Edward Mc Kone of Income Investments Limited represented the appellant. Mr. Terence Dineen of the Valuation Office appeared on behalf of the Respondent.

Mr. Mc Kone, in evidence, referred to his written submission dated 5th November, 1991 and said that Unit 5, the subject premises, was exactly similar to Units 2,3 and 4 of the Centre, the valuation of which had been decided at Circuit Court Appeal on 14th April, 1988. Mr. Mc Kone stated that the valuation of £25 should be reduced to £17 in accordance with the aforesaid Court decision.

Mr. Mc Kone submitted that the application of .63% to the 1988 N.A.V. was not a sacrosanct principle. What was sacrosanct, he said, was Section 5 of the Valuation Act 1986, and the circumstances of the subject premises and of the adjoining units had not changed since the introduction of that Act. In the light of the recent Circuit Court decision, notwithstanding the provisions of the 1986 Valuation Act, the matter should be considered "res judicata".

Mr. Mc Kone further submitted that the application of .63% did not have regard to the nature of the tenement, its tenure or the type of tenants in occupation. He said that the typical tenant would be a small, one-person, potentially uncertain business venture. Mr. Mc Kone pointed out that the Circuit Court judge would have taken all these factors into account in arriving at his decision.

With regard to Section 5 of the Valuation Act 1986, Mr. Mc Kone submitted that subsection 1 of this Section was not necessarily predominant over subsection 2, but that the relationship between similar tenements was paramount in subsection 1 as in subsection 2.

He further argued that if there is ambiguity between the two subsections, the interpretation should favour the applicant, particularly in view of the unique facts in this case. Tenants were

entitled to consistency and equity and were entitled to budget on the basis of R.V.'s of exactly similar units.

Mr. Dineen elaborated on his written submission dated 7th November, 1991.

By means of a chart which is appended hereto as Appendix 1, Mr. Dineen showed how he arrived at a figure of £4 per sq ft as his estimate of N.A.V. as of November 1988.

Replying to the appellant's submission that no cognisance had been taken of the Circuit Court decision, Mr. Dineen said that the Circuit Court appeal was decided on the basis of existing law before the 1986 Valuation Act. He further submitted that the Circuit Court decision was made without reference to N.A.V.'s. He argued that by valuing properties at .63% of the 1988 N.A.V., the respondent was complying with the provisions of Section 5 subsection 1 & 2 of the 1986 Valuation Act. The 1986 Act allowed a percentage of rent to be taken as N.A.V. By applying a uniform percentage to N.A.V. in Dublin City properties the respondent was ensuring consistency and uniformity.

In the course of the hearing Mr. Dineen agreed with the appellant that if the Tribunal were to reject the latter's argument in the case, a reduced R.V. of £24 would be placed on the subject premises.

FINDINGS

While the Tribunal would, of course, always be influenced by recent Circuit Court decisions, it is not bound by them. In the instant case, the Tribunal is satisfied that firstly the Circuit Court decisions of 1988 dealt with cases listed for revision in 1985 and therefore before the passing into law of the Valuation Act 1986 and secondly the Circuit Court judge did not appear to take

into account net annual values, which must now be taken into account, by virtue of the provisions of the Valuation Act 1986.

The Tribunal is conscious of the aim of the Respondent to achieve uniformity in valuations. It is not convinced, however, that Mr. Dineen has given any or sufficient evidence to show that the application of .63% to the 1988 N.A.V. is the sole or best method of achieving same. In the absence of the Respondent's clear interpretation of Section 5 of the Valuation Act 1986 the Tribunal is not satisfied that sufficient evidence has been given to show that "compliance with the 1986 Act is now essentially achieved by valuing properties at 0.63% of the 1988 rent".

The Tribunal does, however, accept Mr. Dineen's point that the appellant, by relying solely on similar units which were decided in the Circuit Court, is arguing for consistency on a narrower basis than that required by the 1986 Act.

Taking into account all of the above and the healthy state of rental values of industrial property in Dublin City generally, the Tribunal is satisfied that the correct R.V. of the subject premises is £24 and so determines.