

Appeal No. VA94/3/028

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

Temple Bar Properties Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices at Map Ref: 14/19 Crow Street, Ward: Royal Exchange, County Borough of Dublin

Beneficial occupation

B E F O R E

Paul Butler

S.C. (Acting Chairman)

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF SEPTEMBER, 1995

By Notice of Appeal dated the 26th day of October 1994 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £300 on the above described hereditament.

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

- "1 the assessment is excessive and inequitable having regard to the provisions of the Valuation Acts.
- 2 the premises were incapable of beneficial occupation as at the relevant valuation date."

The Property:

The property comprises 14-19 Crow Street, purchased by Temple Bar Properties Limited on the 1st day of August 1991. Premises was formerly in the ownership of CIE.

Valuation History:

The property was first valued at 1954 Revision having being newly erected. The rateable valuation was fixed at £580 and reduced to £550 at First Appeal. At 1956 Revision as a result of separate lettings the following rateable valuations were made:

- | | | |
|-----|-----------------------------------------------------------------------|---------|
| (a) | Offices - ground floor (part), 1st floor (part), 2nd floor & basement | RV £400 |
| (b) | Offices - (ground floor part) | RV £150 |
| (c) | Offices - (1st floor part) | RV £ 50 |

At 1984 Revision the ground floor and basement offices were occupied by CIE and the rateable valuation was fixed at £245. The State occupied the first and second floors and the rateable valuation was fixed at £355 exempt. At 1993/94 Revision following a revision request that the "valuation is excessive", the valuations were amalgamated and reduced to rateable valuation £300. At that point it was reported that the property was vacant and in poorish repair. This valuation was appealed and no change was made at First Appeal. It is against the determination of the Commissioner of Valuation in fixing a rateable valuation of £300 that an appeal lies to the Tribunal.

Written Submissions:

A written submission was received on the 21st day of June 1995 from Mr. Thomas Davenport, ARICS, Chartered Surveyor, Lisney on behalf of the appellant.

In his written submission Mr. Davenport set out the valuation history of the subject property and the history of its development to date. He described the accommodation prior to the recent development as comprising:

Ground floor	-	offices	3,300 square feet
First floor	-	offices	1,310 square feet
Second floor	-	offices	2,110 square feet
Basement	-	stores	1,640 square feet
Total Net Floor Area			8,360 square feet

He said that work commenced on redevelopment of the site in April 1993 and the development was completed in December 1994. He described the completed development as comprising:

Basement: storage accommodation in connection with four ground floor retail units.
 Ground floor: six new self-contained retail units
 First floor: four new residential apartments
 Second floor: four new residential apartments
 Third floor: four new residential apartments.

Mr. Davenport set out his estimate of net annual value and rateable valuation. Mr. Davenport said, referring to Justice Keane's book *'The Law of Local Government in Ireland'*, that for occupation to be rateable it must be exclusive, of value or benefit to the occupier and for not too transient a period. He said that the hereditament in effect was an unfinished building on the 10th day of November 1993. During the course of 1993, the premises were inspected by the Rates Officials from the Rates Department and considered not capable of beneficial occupation. He said that a hypothetical tenant could not be expected to pay rent one year with another for the subject hereditament which was incapable of beneficial occupation in its actual state. He therefore submitted that the rateable valuation should be struck off the Valuation Lists.

A written submission was received on the 30th day of June 1995 from Mr. Tom Costello, District Valuer with over 30 years experience in the Valuation Office.

In his written submission Mr. Costello described the property and the valuation history. He set out his calculation of rateable valuation as follows:

Ground floor	-	offices 3,330 square feet @ £7	=	£23,310
First floor	-	offices 1,310 square feet @ £6	=	£ 7,860
Second floor	-	offices 2,110 square feet @ £5	=	£10,550
Basement	-	1,640 square feet @ £3	=	<u>£ 4,920</u>
				£46,640
RV		£46,640 x 0.63%	=	£ 294
		Say	=	£ 300

A statement of James G. Lawler of DBFL Consulting Engineers was also submitted to the Tribunal on the 3rd day of July 1995 in advance of hearing. In his statement, Mr. Lawler described the development stages of the subject property from initial application for planning permission in September 1992 to appointment of a contractor to the site in November 1993.

Oral Hearing:

The oral hearing took place in Dublin on the 10th day of July 1995. Hugh O'Neill, SC. instructed by Messrs. P.F. O'Reilly & Company appeared on behalf of the appellant and Aindrias O'Caoimh, SC. instructed by the Chief State Solicitor appeared on behalf of the respondent.

In the course of his opening, Mr. O'Neill said that the valuation took place in November 1993 at the commencement of the reconstruction works. He said that in April 1993 there had been extensive exploratory works carried on in the building. At the time of valuation (November 1993) he said that there were various holes in the roof and trenches in the floors and that the building was incapable of beneficial occupation.

Mr. John Quillinan, Property Executive with the appellant company said that he had been familiar with the project since the purchase of the premises in 1991. The same remained vacant until 1992. Some of it was then occupied by the appellant as offices for much of the year 1992. The appellant company was set up to redevelop a significant number of buildings in the Temple Bar area of Dublin. The Government was the sole shareholder in the company.

Mr. Quillinan said that the building was a single entrance building with the main entrance to Crow Street. The floors were partitioned into a number of offices. He produced certain brochures to the Tribunal which he explained. At the time of the valuation, Mr. Quillinan said that it would have cost £50,000 to £60,000 to make the building habitable.

Under cross-examination, Mr. Quillinan said that the building works commenced early in 1993 when there were some tests to examine structures. He agreed that the commencement notice was dated 20th January 1994. He agreed that the appellant was in occupation of the ground floor of the premises during the year 1992. He said that the premises was a concrete building with concrete floors.

Mr. Patrick Walsh said that he was Project Manager with the appellant company. He said that there were holes bored into the structural frame to make structural tests. Much of his evidence was along the lines of Mr. James Lawler's précis (Mr. Lawler did not appear). In answer to the Tribunal, Mr. Walsh said that as holes were bored they were made good within three to four weeks; temporary weathering was carried out. He said that there were 30 to 40 holes in all. He said that in November 1993, the building would have looked like a building site with holes in the floor and plaster off the walls.

When asked under cross-examination, what his qualifications were Mr. Walsh said that he was a Chartered Quantity Surveyor and held a Project Manager's diploma from Trinity College Dublin. He agreed that up to April 1993 the building would have been in the appellant's occupation. Mr. Davenport gave evidence in accordance with his written submission.

In closing, Mr. O'Neill, on the question of the premises being uninhabited for a temporary period, distinguished this case from the facts in the *Harper Stores Limited* case (1968 *Irish Reports* p. 166) in that interruption in that case was only for a period of ten weeks while the contractors were carrying out reconstruction whereas in the present case the interruption was from April 1993 to December 1993. Mr. O'Neill further referred to the case of *Arbuckle Smith & Company Limited v. The Greenock Corporation* (1961 *All ER* p. 568) and to the *Perrinvale Properties Limited* case (VA93/3/047).

Mr. O'Caoimh in closing said that the valuation cannot be nil. The evidence showed that there was test drilling which showed that there were sound floors and walls. These structures were, in fact, used. Reinstatement would have cost £60,000 at that stage. He argued that there was no basis upon which a nominal valuation could be fixed.

Determination:

The Tribunal is satisfied that, at the time of valuation, the premises were capable of beneficial occupation. In the *Harper Stores Limited* case above referred to, Mr. Justice Henchy quoted with approval tests laid down by Farwell L.J. in *Rex v. Melladew* (1907) *1KB 192* as follows:

"The test, in a case like the present, of business premises, appears to me to be: Has the person to be rated such use of the tenement as the nature of the tenement and of the business connected with it renders it reasonable to infer was fairly within his contemplation in taking or retaining it"

In that (the *Harper Stores Limited* case) Mr. Justice Henchy applied, *inter alia* that test and said that the appellants were out of the premises for some ten weeks while contractors were carrying out reconstruction; that it clearly could not be held that during that short period the contractors were in rateable occupation. He went on to say that for a considerable time

before the ten weeks in question, and ever since, the appellants have clearly been in rateable occupation. The ten weeks in question amounted not to a surrendering of the appellant's rateable occupation, but to a mere variation of the mode of their continuous use of the premises for the purpose of their business as retailers of ladies' drapery. During those ten weeks they were using the premises through the agency of contractors not (admittedly) for trading but for the purpose of making structural and other changes which would enhance their trading prospects. This use of the premises was to their benefit as lessees and amounted to rateable occupation.

The Tribunal cannot see a difference in principle between an interruption of some ten weeks and of some nine months. As in the *Harper Stores Limited* case, the Tribunal is satisfied that in the present case, since the reconstruction was but an episode in continual beneficial use of the premises, the Commissioner was entitled to value it.

The Tribunal further finds that, on the evidence, there is no basis for altering the valuation or, indeed, fixing a nominal valuation.

The Tribunal, therefore, affirms the determination of the Commissioner of Valuation in fixing a rateable valuation of £300.