

Appeal No. VA97/4/039

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

Walsh Western International

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Warehouse at Lot No. 1Ca Western Business Park, Townland: Knockmitten, DED:
Clondalkin Monastery, South County Dublin. Co. Dublin
Quantum - High Bay Warehouse

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Barry Smyth - FRICS.FSCS

Member

Finian Brannigan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF JUNE, 1998

By Notice of Appeal dated the 30th day of July 1997 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,850 on the above described hereditament.

The Grounds of appeal as set out in the Notice of Appeal are that;

- "1. The rateable valuation is excessive, inequitable and bad in law.
2. The rateable valuation is excessive in comparison to other similar hereditaments."

The appeal proceeded by way of an oral hearing which took place on the 20th February 1998 in the Tribunal Offices, Ormond House, Ormond Quay Upper, Dublin, 7. The appellant was represented by Mr. Owen Hickey B.L. with Mr. Tim Cummins, Financial Director of Walsh Western and Mr. Martin P. O'Donnell B.A. M.I.A.V.I. from Frank O'Donnell & Company. The Respondent was represented by Mr. Eamonn Marray B.L. and Mr. Kevin Heery B. Comm., M.I.A.V.I., a District Valuer with the Valuation Office.

Agreed Facts

The Valuers were agreed on the location, description, construction, use and floor areas of the premises which are briefly as follows;

Three-storey offices	10,289 sq.ft.
High Bay Warehouse(15 metre high)	35,978 sq.ft.
Truck Docking Building(6 metre high)	8,743 sq.ft.
Open Canopy	1,567 sq.ft.

The total site area is 5 acres. The site was purchased in 1994 for £720,000. The total site development cost and the construction of the buildings including an area leased to Cadbury (Ireland) Ltd. amounted to £4,900,000. The total constructed area including the Cadbury (Ireland) Ltd. section is 97,465 sq. ft.

Issues

Appellant's Case

Mr. Tim Cummins, Financial Director of Walsh Western having taken the oath gave evidence in relation to two leases involving the subject premises:

1. Darshaan Properties Limited and Walsh Western (Holdings) Ltd.
2. Darshaan Properties Limited and Cadbury (Ireland) Ltd.

Mr. Cummins stated that Darshaan Properties Limited and Walsh Western are both owned by the same individual and that the first lease is one between connected companies within the Walsh Western Group. The rent reserved in the lease is not calculated on an open market rental value basis but rather is a financial amount to cover the repayment of loans over

ten/twelve and fifteen year periods and also any tax arising to Darshaan Properties Ltd. The rent reserved is not an open market rental value or in any way property related. This agreement could not be considered to be an arms length transaction.

Rent in the Cadbury case is also a financial exercise and includes £45,000 per annum for extra work required by Cadbury which amounted to £250,000 amortised over 5 years. The rent also includes a number of services which the landlord is obliged to provide to Cadbury including building and public liability insurance, landscaping and maintenance and security. In his opinion these amounts reduce the rent on the face of the lease which is equivalent to £7.50 p.s.f. to a figure of £4.93 p.s.f

On cross examination Mr. Cummins stated that the leases were not standard commercial leases in that they had five year break clauses, but stated that they do have a rent review clause with the rent to increase on review. Cadbury are liable for a service charge in addition to the rent amounting to approximately £17,000 per annum which covers landscaping, maintenance etc. Although the lease provides for the payment of the insurance premium by Cadbury it is not charged out.

Mr. Martin O'Donnell having taken the oath adopted as his evidence in chief his précis which had previously been exchanged with the Valuation Office Valuer and submitted to the Tribunal. Mr. O'Donnell stated that in his opinion the fair rateable valuation was £1,220 calculated as follows:

<i>Description</i>	<i>Area sq.ft.</i>	<i>Rate p.s.f.</i>	<i>N.A.V.</i>
Offices	10,289	£4.00	£ 41,156
Warehouse (15m)	35,978	£3.50	£125,923
Warehouse (6m)	8,743	£2.85	£24,917.55
Canopy	1,557	£1.00	<u>£ 1,557.00</u>
Estimate of NAV as at 10th November, 1988			£193,553.55
		@ 0.63%	£ 1,219.39
Rateable Valuation Say			£ 1,220.00

He provided six comparisons as follows;

1. **Cadbury (Ireland) Ltd. and Walsh Western Int. Ltd.,
Western Business Park, Oak Road, Dublin 12.**

(Part of the same complex as the subject premises).

<i>Description</i>	<i>Area sq.ft.</i>
Offices	3,304 sq.ft.
Warehouse	36,629 sq.ft.

This is held on a twenty five year lease from 22nd May 1995 at a rent of £302,000 per annum with five year rent reviews. There is a break option available to the tenant every fifth year. This rent equates to £7.56 p.s.f. Certain expenditure is borne by the landlord including the building insurance, public liability insurance, landscaping and maintenance and security which equates to £2.56 p.s.f. reducing the net rent to £5.00 p.s.f. as at June 1995. He then adjusted this back to 1988 utilising the J.L.W. index which provides for a reduction of 30% over that period producing a rent of £3.50 p.s.f. The Tribunal was informed that this lease had not been signed by the parties at the date of the hearing. The lease does provide that the tenant is responsible for a service charge and insurance premium thus allowing the landlord to recoup the expenditure although in practice it appears that this is not done.

2. **United Drug Ltd. Belgard Road, Tallaght - VA94/1/010**

<i>Description</i>	<i>Area sq.ft.</i>	<i>Rate p.s.f. (analysed from R.V.)</i>
Offices	25,400	£4.50
Warehouse (9m)	38,578	£3.50

The Tribunal determined the rateable valuation in this case at £1,650. Mr. O'Donnell analysed this on the basis of £3.50 p.s.f. on the High Bay (9/10m) Warehouse. There is a lift serving the office accommodation, which is a relatively high proportion of the overall accommodation and is to an unusually high standard and specification as noted by the Tribunal. The rent on this was analysed at £4.50 p.s.f.

3. **Frans Maas, Swords Business Park - 1997/4 Revision**

<i>Description</i>	<i>Area sq.ft.</i>	<i>Rate p.s.f. (analysed from R.V.)</i>
Offices	8,065	£4.40
Warehouse (11m)	17,000	£3.00

4. Team Aer Lingus, Dublin Airport

<i>Description</i>	<i>Area sq.ft.</i>	<i>Rate p.s.f. (analysed from R.V.)</i>
Offices	65,291	
Warehouse (22.4m)	99,963	
Warehouse (15m)	80,522	£4.00
Agreed @ £4.00/sq.ft. overall - 1992/4 First Appeal		

5. Gilbeys Ltd. Belgard Road, Tallaght

<i>Description</i>	<i>Area sq.ft.</i>	<i>Rate p.s.f. (analysed from R.V.)</i>
Offices	16,795	£4.50
Warehouse	19,534	£3.25

6. Reckitt & Coleman, Belgard Road

<i>Description</i>	<i>Area sq.ft.</i>	<i>Rate p.s.f. (analysed from R.V.)</i>
Detached Offices	14,639	£4.25
Warehouse (9.1m)	60,504	£2.85

7. P.W.A. Ltd. - VA93/2/035

<i>Description</i>	<i>Area sq.ft.</i>	<i>Rate p.s.f. (analysed from R.V.)</i>
Offices	11,676	£3.65
Warehouse	54,702	£2.50

8. Precision Engineering, Western Industrial Estate

<i>Description</i>	<i>Area sq.ft.</i>	<i>Rate p.s.f. (analysed from R.V.)</i>
Warehouse	6,407	£2.65

No's 7 & 8 are both basic warehouses with ancillary office accommodation.

In cross examination Mr. O'Donnell stated that high bay warehouses are currently fashionable and are likely to be more popular in the future within certain businesses, and that there are a number of planning applications for such accommodation. The only difference however from traditional warehouses is that they have greater head-room. He accepted that the higher

head-room should have a higher N.A.V. and thus R.V. than traditional warehousing accommodation. In relation to the leases, he stated that the Walsh Western lease was not an arms length transaction and the Cadbury lease not signed but a draft was in place and that under the terms of the draft lease the landlord could recoup the various costs that he had deducted from the passing rent. He accepted that there should be an adjustment from the seven metre head-room rate to the fifteen metre head-room rate and accepted that the fifteen metre head-room rate should be higher than £3.50 p.s.f. He stated that the Hewlett Packard comparison with a High Bay warehouse at £4.50 p.s.f., was deduced from an overall rate which was agreed and that the breakdown was not agreed. In relation to the Tibbet and Britten Group comparison being put forward by the Valuation Office, he accepted that the rate of £4.00 p.s.f. was on the offices however he said that it could be argued that this rate reflected in addition to the offices, 10 acres of hardcore and concrete yard areas. It was put to him that in Tibbett and Britten the construction cost was £42 p.s.f i.e. lower than the subject premises and the agreed rateable valuation indicates £4.00 p.s.f. on the high bay accommodation, thus indicating that the capital cost basis was unreliable. He responded that that basis had been used by both sides in the United Drugs Case and that a developer would look at the cost to determine the return he requires.

Mr. O'Donnell compared directly the Walsh Western and United Drugs Buildings and analysed the cost of Walsh Western at £58 p.s.f. and that of United Drug at £61 p.s.f. However these figures include site costs and an analysis of the building cost for Walsh Western in 1994 was £50.27 p.s.f, and for United Drug in 1990 was £43.23.

The Respondent's Case

Mr. Heery having taken the oath adopted as his evidence in chief his précis which had previously been exchanged with the appellant's valuer and submitted to the Tribunal. Mr. Heery stated the main difference between himself and Mr. O'Donnell was the rate p.s.f. to be applied to the High Bay warehouse.

Mr. Heery assessed the rateable valuation at £1,850 calculated as follows;

3 Storey Offices	10,289 sq.ft. @ £4.50	=	£ 46,301
High Bay Warehouse (15m)	35,978 sq.ft. @ £5.75	=	£206,874
Truck Docking Building (6m)	8,743 sq.ft. @ £3.50	=	£ 30,601
Open Canopy	1,567 sq.ft. @ £1.00	=	<u>£ 1,567</u>
			£285,343
	@ 0.63%	R.V.	= £1,800.00

These figures above are to include car parking and truck parking yard.

In support of these figures Mr. Heery introduced the information in relation to the lease on the premises from Darshaan Properties Ltd. to Walsh Western (Holdings) Ltd. at the yearly rent of £385,000 which if brought back to 1998 levels using the J.L.W. industrial index indicates an N.A.V. of £270,000. The C.P.I. index for the same period indicates an N.A.V. of £319,000. These figures produce an R.V. in the range of £1,700 to £2,000. He also cited the Cadbury lease at £302,680 and stated that this analysed at £9.50 approximately on the High Bay warehouse section of that letting.

He set out the floor areas comprehended in the above lease as follows:-

High Bay Warehouse (15m)	23,643 sq.ft.
Dispatch / Loading Area (6m)	13,876 sq.ft.
Canteen (first floor)	2,462 sq.ft.

Mr. Heery indicated that industrial units currently under construction in the Western Business Park adjacent to these premises are being marketed at £6.50 p.s.f. for units with 6.7 metre headroom. He thus contended that the rateable valuation of £1,850 was reasonable.

Mr. Heery introduced four comparisons as follows;

1. **Tibbett and Britten Group (Ireland) Ltd.**

15n Fox & Geese Townland 1996/4 F/A

High Bay Warehouse (12 metre)

34,000 sq.ft. @ £4 p.s.f.

Offices

2,500 sq.ft. @ £4 p.s.f.

Battery Charging Room

1,265 sq.ft. @ £3 p.s.f.

Security Office

465 sq.ft. @ £5 p.s.f.

N.A.V. £152,028

R.V. @ 0.63% £ 960

He stated that this was agreed at 1996/4 first appeal and noted that the office content was basic and the location on the Robinhood Road would not be as prominent as the subject property.

2. **Hewlett Packard (Manufacturing) Ltd.**

Barnhall, Leixlip, Co. Kildare

Agreed valuation 1997/4 revision - £9,300. This is a major complex of 460,000 sq.ft. The High Bay Warehouse was valued as 35,720 sq.ft. (15 metre) @ £4.50 p.s.f.

3. **United Drug Ltd.**

5A Tallaght, Tallaght West

(Also the Appellant's comparison number two, although Mr. Heery's analysis was somewhat different.)

Offices

25,400 sq.ft. @ £5 p.s.f. (appellant £4.50 p.s.f.)

Warehouse

38,578 sq.ft. @ £3.80 p.s.f. (appellant £3.50 p.s.f.)

Stores

1,478 sq.ft. @ £3.00 p.s.f.

Works Office

1,478 sq.ft. @ £3.50 p.s.f.

Loft

1,478 sq.ft. @ £1.00 p.s.f.

Security Office

155 sq.ft. @ £4.00 p.s.f.

4. **Unit 10D/4, Westgate Business Park,**

Tallaght Kilnamanagh (VACANT)

Rateable valuation 1991/3 First Appeal £800 analysed as follows;

Offices

6,339 sq.ft. @ £5.25 p.s.f.

Warehouse (7 metre)

25,748 sq.ft. @ £3.65 p.s.f.

Mr. Heery made the following further comments in relation to the appellant's comparisons: that the headroom in United Drug Ltd. was only 9 metres and in the Frans Maas was 11 metres as opposed to the 15 metre headroom in the subject premises: that the Team building at Dublin Airport is a special aircraft building: that Gilbeys and Reckitt & Coleman are more in the nature of standard warehouses though of good quality and that Precision Engineering is a first generation building.

He stated that as the volume storage capacity of a higher headroom warehouse building is improved there should be a significant differential to the rate per square foot applied.

In cross examination Mr. Heery stated that as in the Cadbury lease, insurance, service charges etc. are described as additional rent and are reclaimable by the landlord, there is no basis for the deductions made by Mr. O'Donnell. He accepted that the rateable valuation of £1,850 might reflect £6 p.s.f. versus £5.75 p.s.f. which he applies to the £1,800 in his first calculation but other approaches produced a range of figures ranging from £1,700 to £2,000 and therefore the figure of £1,850 was reasonable. He conceded that there was no direct rental evidence in relation to High Bay Warehouses. He stated that first generation warehouses with 6 metre headroom had rateable valuations assessed at approximately £2.50. More modern warehouses 7 metre headroom had rateable valuations at £3.65 p.s.f. He noted that the volume in a 15 metre headroom building was doubled. In relation to the Tibbett and Britten Group comparison he gave no explanation as to why there was the same rate p.s.f applied to both the warehouse and the offices but did state that all that is valued is the building and the land in its immediate vicinity and not the much larger site which is part of an ongoing development.

It was noted in cross examination that the Hewlett Packard building cost £96 p.s.f. to construct which is twice the cost of the subject. In relation to United Drug Ltd., Mr. Heery was of the opinion that the Walsh Western premises was better located. The office specification was somewhat higher in United Drug and the warehouse similar but with lower headroom. In relation to the Westgate Business Park comparison he accepted that it is only half the size of the subject but did not feel it appropriate to have a quantum alteration at this level.

Submissions

It was submitted on behalf of the appellant that there was no evidence of different rents for different eaves heights except as set out in Mr. O'Donnell's evidence; that the Cadbury lease is inclusive of services and therefore has to be adjusted downwards and also contains a break clause in the tenant's favour which would increase the rental value of the premises to the tenant and that the cost of the premises *vis à vis* the cost of standard premises was not substantially different. On the basis of Mr. Heery's evidence that standard rents today are £6.50 p.s.f. it was submitted that the assessment of the subject, with 56,000 sq.ft. @ £3.50 p.s.f., was appropriate and that no evidence to the contrary had been presented.

It was submitted on behalf of the respondent, that the Tribunal should keep in mind that some additional value has to be given to the greater eaves height, that the market is bereft of comparisons at the moment but that such premises as these are becoming fashionable and that the relevant question is what added value should apply for the difference in eaves height. The appellant it was argued was relying on United Drug Ltd. but had in cross examination accepted that a higher rate per square foot should apply to a high bay Warehouse. It was submitted that the rate per square foot applied by the appellant bears no relation to the proper rate per square foot which should apply in the case of this kind of warehouse and that regard must be had to the leases, in particular the Cadbury's lease, which was at arms length. It was submitted that no justification existed for the Tribunal looking behind the leases. In conclusion it was submitted that the figure of £3.50 proposed by the appellant is much too low when account is taken of Mr. Heery's comparison No.4 a standard warehouse with 7 metre headroom, valued at £3.65 p.s.f. Therefore the Tribunal was invited to affirm the Commissioner's figure.

Determination

The Tribunal accepts that there is a shortage of rental evidence in relation to High Bay Warehouses. However as the Tribunal, the Commissioner and consultants have had no difficulty in the past in dealing with premises for which there is a shortage of rental evidence the Tribunal sees no reason why there should be any difficulty in this case.

High Bay Warehouses are more expensive to construct than standard height warehouses and it is reasonable to assume that they are constructed to the particular height because the occupier or operator regards them as being more beneficial to his business and therefore more valuable than a standard height warehouse rather than simply to make a statement on the skyline. It follows in the view of the Tribunal, that if an owner/occupier or promoter of a

High Bay Warehouse regards it as more valuable than equally the hypothetical tenant will do so and therefore the Tribunal must value a High Bay Warehouse at a rate per square foot greater than a standard warehouse.

In relation to the two leases which were provided to the Tribunal namely that between Darshann Properties Limited and Walsh Western Holdings and Darshaan Properties Limited and Cadbury (Ireland) Limited, the Tribunal accepts that the first is not an arms length transaction but more in the nature of a funding exercise between two closely related parties and therefore of no value to the Tribunal in coming to a decision on this matter. The Cadbury's lease however is an arms length transaction *albeit* that the tenant is an important customer of the landlord. There is nothing in the lease to stop the landlord assigning his interest and thus distancing the relationship between the parties. The lease provides for the recoupment by the landlord of various costs incurred by him in relation to the premises and also contains an option for the tenant to break the lease on its fifth anniversary.

The facts relating to the Cadbury letting are therefore relevant to the determination of the Tribunal.

Of the other comparisons put forward by the parties, United Drug is common to both although with marginally different analysis. The high office content in that comparison and the standard of offices is noted, as is the fact that the warehouse has a 9 metre headroom as opposed to 15 in the subject premises. The Frans Maas building has an 11 metre headroom as opposed to 15 metres and is less well located than the subject. The Team Aer Lingus building seems to be very specialised although it could be adapted to alternative uses. The appellant's other comparisons are in the nature of standard warehouse/office buildings.

The respondent's comparisons include Tibbett and Britten Group (Ireland) Ltd. with 12 metre headroom at £4.00 p.s.f. and Hewlett Packard's High Bay warehouse of 35,720 sq.ft. with 15 metre headroom (almost identical to the subject) at £4.50 p.s.f.

Having regard to the foregoing and the evidence adduced by the parties the Tribunal determines the rateable valuation at £1,490 calculated as follows;

Offices

10,289 sq.ft. @ £4.50 p.s.f. (the guide here is United Drug and the rate reflects an increase p.s.f. for quantum, United Drug being

25,000 sq.ft.)

£46,300.50

High Bay Warehouse

35,978 sq.ft. @ £4.50 p.s.f. (this reflects the £4.00 p.s.f. on Tibbett and Britten with 12 metre headroom, £4.50 p.s.f. on 35,720 sq.ft. with 15 metre headroom at Hewlett Packard and United Drug Ltd. with 38,578 sq.ft. at £3.50 or £3.80 p.s.f. (depending on analysis but with 9 metre headroom)

£161,901

8,743 sq.ft. 6 metre warehouse @ £3.00 p.s.f. (This is more in the nature of standard warehouse space).

£ 26,229

Canopy 1,567 sq.ft. @ £1.00 (agreed) £1,567.

Total N.A.V = £235,997.50

@ 0.63% = £ 1,486.78

Say = £ 1,490