Appeal No. VA14/5/926

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Clarefield Investments Ltd **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 842727, Industrial Uses, Event Centre at Mulberry Lane, Donnybrook, County Borough of Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF NOVEMBER, 2017

BEFORE:

Stephen J. Byrne - BL	**Deputy Chairperson**
Aidan McNulty - Solicitor	**Member**
Thomas Collins – PC, FIPAV, NAEA, MCEI, CFO	**Member**

By Notice of Appeal received on the 4th day of September, 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €17,060 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

"The subject property's estimate of net annual value is excessive and inequitable, The subject property is a very old CA shed to the rear of a retail unit on Mulberry lane, Donnybrook. The building dates from the 1930s and is in moderate repair with an old single skin asbestos roof. It is in use as a store with a small element of display to the front. It is vastly inferior to purpose built industrial units in the vicinity and elsewhere in the Dublin City area."

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence on the 10th day of May, 2016 and the 7th day of April, 2017 adduced before us by Mr Eamonn Halpin of Eamonn Halpin & Co. Ltd on behalf of the Appellant, who contended for a net annual value of €9,640, and Ms Claire Callan of the Valuation Office on behalf of the Respondent to the appeal,

DETERMINES

The property the subject matter of this Appeal is situate at 16 Mulberry Gardens, Donnybrook, Dublin 4. The main approach in terms of access to the property is via a narrow road, as can be seen from the photographs as put in evidence. The property was constructed in or about the 1930's. It is in the main a corrugated iron structure with an asbestos roof.

The entire property is, by any measure, small extending to a total agreed area 518.32 square metres. The ground floor extends to 273.68 square metres. A portion of the front of the ground floor, referred to in Ms. Callan's precis of evidence as a showroom appears to span an area of 54.93. This appears and from the evidence to have been used as some kind of a display area. Having said that, it is noted that the property was not, and as at the valuation date, used for what might be termed retail purposes. Such 'goodies' as may have been on display and as may have been visible to a prurient passer-by, were not put there with the intention and/or purpose of enticing any potential consumer indoors.

The remainder of the ground floor appears to have been in use primarily for storage purposes. The first floor comprising 44.64 square metres has been characterised as offices. The photographs of that portion of the ground floor characterised as offices and of the first floor do not, it has to be said, bear out this particular characterisation. The impression as to use of the property (and it is assumed at or close to the valuation date) is one of storage moving from organised and purposeful at the front to less organised bordering on chaotic at times as one moves to the rear and as one moves upstairs onto the first floor.

The Appellant appeared at one point to make the case that portion of the first floor is incapable of beneficial occupation and should not and for that reason be included in the valuation list. This argument does not appear to have been pressed all that strongly at the hearing of the Appeal.

It is noted that the property is freehold.

The Commissioner stands over an NAV of €17,050, which equates to €55 per square metre.

The Commissioner maintains that the property can and should be viewed as a workshop (or equivalent). As such, on the Respondent's case, the property has been valued in line with properties in use as workshops and which are broadly speaking comparable (in terms of size and location) with the subject property.

The Respondent Commissioner argues that a 'tone' has been set for comparable (in terms of size and location) properties wherein those properties consistently attract a rate equivalent to €55 per square metre.

It follows on this reasoning that the Commissioner, when considering this particular property and more particularly, "*any relevant considerations in relation to the subject property relative to that group*" [as per precis of evidence of Clare Callan at page 12] can find no basis for and/or justification for applying a lower rate to the subject property.

Mr. Halpin, for the Appellant, seeks a significantly reduced NAV in the sum of €9,640. Mr. Halpin maintains that the ground floor can and should be valued as a warehouse and/or showroom and/or stores carrying a rate of €33 per square metre whilst the first floor offices are valued at a lesser rate of €13.67 per square metre.

Mr. Halpin argues that a significant adjustment on the rate regarded by the Respondent as the uniformly and/or equitably applied rate of €55 per square metre should be applied and by reason of a number of factors, notably:

(a) Age and/or construction. This building was constructed in the 1930's and is in the main built from corrugated iron with an asbestos roof.

(b) Access/parking. Immediate access is via a narrow road off the main thoroughfare with no immediate and/or convenient parking available to the subject property. On Mr. Halpin's argument there is virtually no adjacent and/or convenient parking.

(c) Eave heights. Mr. Halpin argues the eave heights of the subject property is such that the Tribunal ought to take this into account when determining whether or not some appreciable and/or significant adjustment on the rate as applied ought to be made.

As is clear from the above, the Appellant was represented by Mr. Eamon Halpin who gave evidence on behalf of the Appellant. Mr. Halpin adapted his precis of evidence as his evidence in chief and was cross-examined by Ms. Clare Callan. Ms. Clare Callan, for her part, gave evidence on behalf of the Respondent. She adapted her precis as her evidence in chief and was in turn cross-examined by Mr. Halpin.

The subject property falls to be assessed under Section 48 of the Valuation Act, 2001. Under Section 48(1) of the 2001 Act, valuation is determined by estimating what is termed the net annual value. Under Section 48(3) the net annual value is defined as "*the rent to which the property in its actual state might reasonably be expected to let from year to year and on the assumption that the recoverable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property at that stage and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property are borne by the tenant.*"

It is well established that when attempting to determine the estimate of the 'hypothetical bid', one must have regard to "*the physical state and/or condition of the property*" (as of the date of valuation) and "*the use to which the building is put*" (as of the date of valuation). Insofar as "*use*" is concerned, the authorities suggest that uses other than the existing use may be taken into account when arriving at the estimate of the net annual value.

In the case of *Harper Stores Limited v. Commissioner of Valuation* [1968] IR page 166, at page 172 of his Judgment, Mr. Justice Henchy states as follows:

> "*The use of the words 'actual state' in reference to the hereditament does no more than apply to the subject matter of valuation of the principle of rebus sic stantibus. Lord Paramoor said in Great Western and Metropolitan Railway Companies v. Kensington Assessment Committee that the hereditament should be valued as it stands and as used and occupied when the assessment is made. Whether the tenant and the tenancies are imaginary or hypothetical, the hereditament may not be looked upon as anything other than the actuality or reality which it is.*
>
> *As Lord O'Brien L C J said in Armstrong v. Commissioner of Valuation, the words 'actual state' were introduced to ensure that the hereditament or building were valued such as it was rebus sic stantibus and to prevent speculation as to mere contingencies and speculation as to what the value of a house might be under conditions different from those existing. If it is a house in a slum area, it may not be valued as if it were standing in a fashionable road; if it is a shop, it may not be valued as a factory; if it is a garage, it may not be valued as a cinema. It seems to me that the words 'actual state' connote existing factors that go to make up the premises as they are currently occupied and used are all that would affect the rent that would be paid by a hypothetical tenant.*"
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> (Per Lord Ashbourne C in Armstrong case 2 at page 501).

Later on in the Judgment at page 172, Mr. Justice Henchy states as follows:

> "*This includes all the advantages and disadvantages legal and otherwise attaching to the premises which would affect the mind of the hypothetical tenant from year to year in deciding what rent he would pay*"

Towards the end of his Judgment, Mr. Justice Henchy goes on to state as follows at page 174:

> "*The Appellant's argument is that since the Commissioner is bound to value the premises before 1st March in its actual state, he could not take into account its condition when the reconstruction will be completed after 1st March. I do not accept this as a correct statement as a limitation of the Commissioner's function. He must of course make the valuation on the premises in their actual state but since actual state connotes the premises as it stands <u>with its potentialities and disabilities</u>, he may, in order to achieve a correct assessment, have to look at past, present and future. As I said earlier this premises differs from that of an unfinished new house which has, as yet, no rateable occupier and has no real 'actual state' as a house. In such a case the Commissioner*

> *cannot make a valuation on the basis that the house would soon be finished or beneficially occupied. The position is different when the premises are beneficially occupied. If, for example, the hereditament being valued is a seaside boarding house which the Commissioner finds closed without furniture or stock, he may have and ought to have regard to the use it was put to last summer and will be put to next summer; Southend on Sea Corporation v. White. Conversely, where the business is seasonal, premises are open for business and the Commissioner values them. He is bound to have regard to the fact that they will be closed when the season ends.*"

As to the actual use of the subject property as of the valuation date, it appears from the evidence as adduced that the property was used and in the main for storage purposes.

Having regard to the comparative evidence as adduced, the parties appear to accept that the property, given its location and construct could potentially be used as what has been described in evidence as a workshop.

Thus the Appellant, by way of comparison, produces a suite of properties comprising 10C Donnybrook Road, Dublin 4, all of which have been described as workshops. The property situate at 20/21 Shaw's Lane, off Bath Avenue, Dublin 4 comprises a ground floor workshop. The property at 25A Beach Road, Sandymount, Dublin 4 is described as a workshop (ground floor). Similarly, properties at 45 Tritonville Road, Sandymount, Dublin 4 and 23-27 Tritonville Road, Sandymount, Dublin 4 and St. Clare's Avenue, Dublin 6W.

The Respondent put in evidence property No. 849495 All Glass Windscreens, Brookville Road, Dublin 4 which has, it seems and from the evidence, been classed as a workshop. Similarly, property No. 848250 79 Sandyford Road, Dublin 6 has also been classed as a workshop.

From the evidence as adduced, workshops, depending on their size and their location, can attract rates which range from €25 per square metre to €55 per square metre.

From the evidence as adduced, workshops which are relatively equivalent in size to the subject and which are located in relative close proximity to the subject attract invariably, if not uniformly, a rate of €55 per square metre.

It is clear from the evidence as adduced that workshops in relative close proximity to the subject and which attract a rate equivalent to €55 per square metre enjoy, to a greater and/or lesser extent, a measure of 'convenience' parking whereby the individual intent on availing of the service offered by the particular workshop can conveniently park relatively close to, if not adjacent to, the workshop and whilst availing of whatever service that individual property has to offer.

Notably, a number of the workshops put forward as evidence of equity and uniformity are what might be termed garage-like offering services such as 'garage repairs', All glass windows', 'auto service tyres'.

From this evidence the Tribunal concludes that this is the type of potential use the parties have in mind when contemplating the NAV of the subject property and when deciding to align the subject with comparisons which each of the parties has offered in evidence as supporting their respective, yet distinct positions.

Commercial concerns of this type tend to require as a fundamental to commercial survival, sufficient space on and/or adjacent to the property concerned for the parking of vehicles, which said vehicles, by reason of their having a purpose to attend at the individual workshop are in need of some measure of service and/or repair, be it tyre, windscreen, gearbox etc.

As is clear from the photographs as put in evidence, the subject property does not have the advantage of the kind of vehicular access and/or parking which is in the Tribunal's view a fundamental mainstay of any property which is about and/or which is contemplating use as a workshop.

The photographs which have been put in evidence show a narrow street leading up directly to the outer façade of the subject. There are double yellow lines on either side of this narrow road. The road, having virtually cornered at the subject, takes a sharp, somewhat abrupt turn to the left and into what appears to be a further and equally narrow sweep at the end of which there is, the Tribunal has been informed, a public car park which is metered.

Ms. Callan in evidence maintained that 'potential' users of the 'services' on offer by a hypothetical tenant installed and operating as a workshop could (if they had a mind to) park immediately outside the subject property. Having regard to the position on the ground as summarised above and as is clear from the photographs which have been put in evidence, this particular argument is not and in the circumstances sustainable.

Further Ms. Callan argued that potential users could, and if they so wished, avail of the public car park which is located relatively close to the subject and can be accessed by means of the road, part of which can be seen in the photographs as put in evidence. This car park can also be accessed via the main thoroughfare, that is to say Donnybrook Road.

The Tribunal has carefully considered this particular argument and has come to the conclusion that it carries little, if any, weight. The Respondent argues (inferentially) that the subject property has workshop potential and ought therefore to be valued in line with comparable workshops. Buttressing this argument, the Respondent has offered, and by way of comparison, workshops which provide garage or garage-type services. It is clear from the photographs accompanying the properties that the Respondent has put in evidence that both of the 'comparative' properties have the benefit of a measure of parking immediately outside and adjacent to the said properties. The benefit of persons offering 'proximate parking' is as it should be when the particular property is in use as a 'workshop', offering in the case of property no. 849495 some class of 'windscreen' service and in the case of property no. 848250 a general what might be termed 'mechanical' service. This particular type of service, in the normal course of things, needs to have direct physical access to the' ailing automobile'.

What impression is the potential user of the 'Commissioner's workshop at the corner of Mulberry Lane left with when directed to a public car park some distance away and when told to have sufficient coins for the meter and when reminded to hawk his or her damaged windscreen, tyre or gearbox from the car park to the workshop?

The Tribunal, and having regard to the evidence as adduced, is constrained to view the subject property as having potential as a workshop with particular emphasis on a workshop which provides a service (of one kind or another) to troubled motorists.

Having been thus constrained, the Tribunal takes the view that the subject property, because of its particular location; the peculiarity of access; the patent absence of any adjacent and/or convenient parking is particularly and/or materially disadvantaged to the point that the hypothetical tenant, viewing the property with such potential in mind, must expect and is entitled to expect, a significant discount on prevailing rents for equivalent properties in the locality in which the property is situated (Donnybrook).

Mr. Halpin has suggested an adjustment of rates downwards to an NAV of €9,640. In so doing, Mr. Halpin has 'lumped together' factors including that of parking/access; the age/construction of the property; and the eave heights.

Whilst it is accepted that the subject property was constructed sometime in the 1930's and in the main from materials (corrugated iron/asbestos) which said materials have more or less fallen out of use and/or are redundant, the subject property, as is clear from the photographs, is or appears to be structurally sound and is and has been in use and functioning, albeit in the main for storage.

The Tribunal assumes that the products stored, some of which have been assembled for display, are of some commercial value and/or interest. Further, the Tribunal assumes that the Appellant, as occupier, would not countenance storing products with such commercial value and/or interest on the Appellant's property unless satisfied that the property was equipped to meet this particular requirement with all that entails to include adequate levels of protection from the physical elements and from any persons who might have an interest in depriving the owner of the custody of same. The year of construction and the materials used, have not, and on the evidence as adduced, robbed the subject property of commercial advantage/appeal to any or any appreciable extent and in any event, not to the point where the Tribunal is minded to conclude that such attributes, when viewed, whether in isolation or in combination with others, merit downward adjustment of the appropriate rates.

Whilst Mr. Halpin in evidence and in submission made reference to a concern that he expressed in relation to the eave heights of the subject property, this particular articulation never crystallised in evidence to the point at which the Tribunal could safely and reasonably conclude that this particular attribute in and of itself warranted some appreciable adjustment to the rates as set by the Respondent.

The Appellant, and for reasons as set out above, is entitled to succeed on one of three arguments as raised. For the sake of convenience, this has been referred to as 'access/parking'.

A property such as the subject property, which has, it seems, been marked as having workshop potential and having been further marked as a potential workshop offering specialised/general auto repair, ought, if it is to have any prospect of sustaining itself commercially, to enjoy at a minimum, a modest measure of proximate/convenience parking, both on and off site, as it were.

As is clear from the evidence, the subject property does not, and as of the valuation date, enjoy this most basic of requirements. It is difficult in such circumstances to countenance the property's sustained survival as a commercially viable workshop and more particularly a workshop offering specialised/general auto services.

This 'individual consideration' born of the particular locality of the subject property, and the peculiarity of access is, and in the circumstances, 'relevant'. It is, in the Tribunal's view, likely to play and play heavily on the mind of the hypothetical tenant, which hypothetical tenant is by the Respondent and the manner in which the Respondent has approached this particular appeal, confined to contemplating use of the subject property as a workshop, offering specialist and/or general auto services.

Further, and as a 'relevant consideration', it is, in the Tribunal's view and in the circumstances, likely to play on the hypothetical tenant's mind to the point at which he or she would baulk when asked to pay an annual rent at a rate suggested by the NAV as proffered by the Respondent equating as it does to €55 per square metre.

All of that said, the subject property, whilst constructed sometime in the 1930's, presents as structurally sound. Whilst relatively small, it is compact. As is clear from the evidence, it functions well and as of the valuation date it meets the modest day to day commercial requirements of its owner and/or occupier.

In addition and as is clear from the evidence as adduced, the general location in which the property is situate, must be viewed as good in the commercial sense of things with properties of equivalent size attracting relatively decent levels of rates which the Appellant's neighbours and commercial competitors are, and on the evidence as adduced, content to bear as representing their particular share of the overall tax burden.

The competition for all or any available commercial space in the locality at which the property is, broadly speaking, situate is borne out by a consideration in particular of the photograph of the property situate at 25A Beach Road, Sandymount, Dublin 4 which appears at page 13 of Mr. Halpin's precis of evidence. As is clear from this photograph, there is a structure which presents as a narrow shed with little or no natural light which is, by any measure, small (52.16 square metres) and which is, it seems, used as a workshop. The property is rateable. It appears to command rates at a level which is equivalent to €45 per square metre. Persons intent on pulling up in their motor vehicles with a view to availing of whatever service this particular workshop offers must be conscious of the fact that there is, or appears to be, a public footpath adjacent and contiguous to what is, or what appears to be the front entrance to this particular commercial property.

This, in the Tribunal's view, evidences a demand in the general locality for property which has commercial potential and regardless of age/construction/materials and regardless of how crude or basic structure and when due account and/or regard or weight is given to what appears, and from the evidence, to be a not inconsequential impairment of vehicular access.

Thus the Tribunal, accepts that this particular Appellant is, in the particular circumstances of this Appeal, entitled to a reduction in rates and to reflect the fact that the property's potential as a workshop, (or more particularly the property's potential as a workshop which offers specific and/or general auto services), is significantly impaired by the subject property's particular location and by the peculiarity of access with the de facto absence of anything which might be characterised as proximate and/or convenient parking. The Tribunal, when marking this fact must record a reduction which is fair and reasonable, not just to this Appellant, but in addition to the Appellant's neighbouring ratepayers. In addition, the Tribunal has to attach appropriate and significant weight to matters as referenced above wherein properties in the location to which the subject property broadly speaking belongs and which might be characterised as an equivalent size to the subject, attract relatively decent levels of rates.

When the above matters for and against are weighed and balanced one against the other, the Tribunal concludes that a fair and reasonable adjustment to the level of rates as fixed by the Respondent to meet the subject property's individual characteristics as set out above is a reduction of one quarter of the rate which was fixed by the Respondent.

Thus the NAV as fixed by the Respondent, being an NAV of €17,060 should, and in the Tribunal's view and for the reasons set out herein, be reduced by one quarter which in turn yields an NAV of €12,795, which on the Tribunal's calculation, equates to €40.19 per square metre.

And the Tribunal so determines.