Appeal No. VA14/5/472

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

The Grand Lodge of Freemasons in Ireland **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 839388, Office(s) at Freemasons Hall, 17 - 19 Molesworth Street, County Borough of Dublin.

B E F O R E

Stephen J. Byrne - BL	**Deputy Chairperson**
Aidan McNulty - Solicitor	**Member**
David Gill – FSCSI, FRICS, FCI Arb, Dip Arb Law	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF MARCH, 2018

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 €246,000 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

"The valuation is excessive and inequitable and bad in law having regard to the provisions of the Valuation Act 2001".

"Incorrect use as the property is a Grand Lodge".

"The valuation is bad in law having regard to the provisions of the Valuation Act 2001, in particular schedule 4."

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 adduced before us on the 26th day of January, 2016 by Michael Horan of OMK Property Advisors for the Appellant and by Mr John Plunkett of the Valuation Office for the Respondent,

DECISION

The subject property was constructed in the 1860's. It has had only one single occupier, that is to say, the Appellant from the date of construction. It is situate at 17-19 Molesworth Street, Dublin 2. It is a three-storey property over basement. It was purpose-built. It is two distinct, yet co-joined, properties. Numbers 17 and 18 boast a large prominent façade finished with portico balustrades, columns, decorative features and a staircase leading to the main entrance. Number 19 is a four-storey over basement period Georgian property.

As to use and as has been stated, it has been used since the date of construction by the Appellant, The Grand Lodge of the Freemasons in Ireland. It has been used to accommodate and celebrate membership of the Grand Lodge and for peripheral and ancillary use to include office accommodation and a dining hall.

The Tribunal, having viewed the photographs that have been put in evidence of the interior of the property, it must be said that there is what be described as an institutional, almost at times, museum-like countenance to the property.

The area involved has been agreed and can be broken down as follows:

Basement:	518.90 square metres
Ground Floor:	448.18 square metres
First Floor:	533.25 square metres
Second Floor:	251.31 square metres
Third Floor:	74.77 square metres

Notwithstanding the fact that this property has been, from inception, used for (in modern terms) the quaint and singular purpose of facilitating, accommodating and preserving the culture, identity and custom of an undoubtedly treasured minority, the Appellant accepts, or perhaps more correctly concedes, that the property and use are not in a position to avail of any of the limited number of exemptions from rates as expressly provided for under Statute.

It follows that the property can and must be viewed as a commercial property for the purpose of assessing the owner and/or occupier's liability for rates, notwithstanding the fact that patently and evidently on the evidence as adduced by the Appellant and from the photographs as put in evidence and more or less accepted by the Respondent, the use to which the property has been put over its long years cannot, and by any measure or stretch, be viewed as commercial.

The Respondent is therefore and in the circumstances properly entitled, if not obliged, and when deciding the appropriate and/or fair measure of rates, to have regard, not just to existing use, but to potential use, that is to say, use of commercial interest and/or value to which the property might usefully apply itself, when it tires of the daily grind of preserving and maintaining a small, yet significant, sliver of the City's and indeed the Country's heritage.

Consistent with this entirely proper approach and guided by well-rehearsed requirements of equity and uniformity, the Respondent searched out and put in evidence an array of properties which, on the Respondent's case, establish that the rate set for the subject property is both fair and reasonable.

In this exercise, the Respondent has (and again it has to be said has properly) searched out and put in evidence properties which bear reasonable comparison to the subject property in that they, broadly speaking, boast a number of, broadly speaking, equivalent characteristics, notably:

Location: Broadly speaking the properties offered by the Respondent as comparable are within the same geographical/social/commercial hub as the subject.

Period: Broadly speaking the properties offered by the Respondent as comparable are what might be termed period properties or buildings. Some of the comparators are protected structures.

The Respondent having introduced this array of comparable properties, argues reasonably persuasively that the evidence as gleaned from a consideration of what might be termed the

'vital statistics' is put in evidence as is pertaining to each of the comparable properties, points to the following:

(a) The use of the period properties as office-type accommodation.
(b) Of the six reliable comparators five are listed as protected structures.
(c) Uniform equitable apportionment of rates to the said properties so used and as follows:

Ground floor:	€160 per square metre
First floor:	€140 per square metre
Second floor:	€120 per square metre
Third floor:	€100 per square metre

The Appellant's comparative evidence (three in number) are all drawn from St. Stephen's Green and all, on the face of it, period properties if anything, bear all of this out.

Thus, a consistent, uniform measure of rates has been struck for properties which are protected structures and which are, relatively speaking, within the same commercial hub as the subject and where the dominant use as of the valuation date (7th April 2011) is for office and ancillary purpose.

Notwithstanding the patent consistency of the comparative evidence as put before the Tribunal by the competing protagonists, the Appellant makes the case that an adjustment of the prevailing rates as evidenced is, in the particular circumstances of this case, warranted, justified and reasonable.

Conclusion

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 in that state 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] 1R 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 hereditaments does no more than apply to the subject matter valuation of the principle of rebus sic stantibus. Lord Parmoor said in Great Western and Metropolitan Railway Companies v. Kensington Assessment Committee (1) 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 LCJ said in Armstrong v. Commissioner of Valuation (2) 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' connotes existing factors that go to make up the premises as they are currently occupied and used or 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 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 the 1st March in its actual state he could not take into account its condition when the reconstruction will be completed after the 1st March. I do not accept this as a correct statement of the 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 with its potentialities and disabilities he may in order to achieve a correct assessment have to look at past present and future.*"
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> *As I said earlier, this case 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 or shop 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; Gage v Wrenn, Southend on Sea Corporation v White. Conversely where the business is seasonal, the 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.*"

Having considered the evidence and the arguments as adduced by the Appellant and the Respondent and having set out in brief a summary of the legal principles which apply to an assessment of rates pursuant to Section 48(1) of the 2001 Act, the Tribunal determines as follows:

The property must be assessed by reference to its actual state as of the date of valuation. The actual state, by definition, includes the actual physical state and its existing use.

In terms of actual physical state the property is by any measure unique. The property is purpose built. In order to ascertain purpose, one has to go back as far as the 1860's. Having gone back that far, one finds that the purpose, broadly speaking, is to accommodate the Irish Headquarters of a by now historical fraternal society.

The property, in its physical state as of the date of valuation, is consistent with this purpose with an ornate interior resplendent and ornately finished hall with extravagant stairway leading from the ground to the first floor.

Externally numbers 17 and 18 visibly stand out from the adjoining properties, which properties, it must be said, are more in keeping with the genre of period properties popping their less than discrete heads up throughout the general area of Dublin 2.

The property internally has been fitted out for the purpose for which it was built with unashamed emphasis on ceremony. No doubt over the years since the property was built, there has been attention given to recording, preserving and displaying fragments of history of interest to the fraternal collective and no doubt of interest at times to a wider audience.

In addition to the rooms which have been fitted out for ceremony, celebration and nostalgia, there are, understandably, rooms given over to ancillary support and used as offices and/or administration.

When considering the assessment of value by reference to actual state (existing use), the Tribunal concludes, as it must and having regard to the evidence as adduced, that the current use of the property is entirely consistent with, in line with, in keeping with the purpose for which it was originally built, which said purpose has undoubtedly evolved over time but has as its core the provision of a headquarters for a fraternal society.

The property, when considered in terms of its physical state and existing use is by any measure, unique. It has been referred to in evidence as having a museum or institutional quality. In the Tribunal's view correctly and accurately captures the core character of the subject property.

It is unfortunate, but nevertheless the case, that this unique property characterised as having a museum or institutional quality, cannot bring itself within any of the exemptions from rates as expressly provided for under the 2001 Act.

Notwithstanding its museum or institutional quality and its uniquely historical perspective, the property falls into the collective of properties that are required to be assessed for the purposes of commercial rates.

This being so, the Respondent is in law entitled when assessing the value of the property for rates purposes, to consider, not just the existing use, but also potential use.

In considering potential use, the Respondent, as is clear from the evidence adduced, has taken the view that the property in line with moderately similar properties which are reasonably proximate can potentially convert itself from historic/ceremonial to accommodating the office requirement and/or capacity of nascent commercial concerns.

It is, it seems acceptable vernacular among valuers to consider value in cases such as this from the perspective of what has been termed the hypothetical tenant who makes the hypothetical bid on the subject property as of the date of valuation.

The hypothetical tenant constructed for the purposes of placing a bid on this particular property, is by law required to view the property in its actual state, that is to say, as it physically presents itself to him or her as of the date of valuation. Further he or she is required by law to view and consider the use to which the property is put as of that date.

Thus presenting the hypothetical tenant has before him or her a purpose-built property dating from 1860 or thereabouts designed and constructed as a headquarters for a fairly exclusive, somewhat quaint and shrouded society to which the hypothetical tenant may or may not be connected. The hypothetical tenant can see that the purpose for which this property had been built has continued. Having viewed the property its rather quaint use is evident to the hypothetical tenant as he or she enters the more ornate rooms with their stained glass windows.

The Tribunal is prepared to assume that the hypothetical tenant is imbued with ambition and a modicum of commercial savvy. He/she looks to the potential that the property has to offer.

He/she has in mind a suite of offices to accommodate the technical and administrative needs of his/her latest no doubt computer driven venture.

The hypothetical tenant knows because he or she has done his or her research that office style accommodation in period buildings is consistently coming in at relatively set levels. He or she is being asked to pay rent at those levels. He or she has not been inside those properties because, it seems, nobody bothered to ask him or her in and he or she in turn did not bother to ask to be invited in.

He or she is nevertheless as confident as he or she can be that the interior of the subject property does not in any real sense equate to those of the other properties.

Further he or she has it on reasonably good authority as far as those other relatively comparable properties are concerned that complete office fit-it and refurbishment is already in place. That is clearly not the position in relation to the property at issue.

It seems reasonable to the Tribunal to conclude that any hypothetical tenant in such circumstances when making a bid will consider aspects of the property which will, in reality, impede and/or restrict conversion from existing (ceremonial/historical) use to potential (office) use.

He or she will undoubtedly be drawn to some of the considerations emphasised by the Appellant in the course of evidence, to include the following:

- The absence of natural light

- Stained glass windows in need of regular maintenance/repair
- The requirement to regularly maintain the more ornate parts of the interior, that is to say, the extensive hallway/stairs which said parts form part of the ‘take’ and are unlikely to yield anything tangible in commercial value. While these areas may not be included when devising the square footage which falls to be assessed for the purpose of commercial rates, the comparative benefit/expense of this relatively significant interior space cannot be overlooked and/or disregarded by a commercially savvy hypothetical tenant when contemplating a bid.

- The overall cost of heating and running this old building

Having considered such impediments and/or restrictions to potential office use, it seems reasonable to conclude that the hypothetical tenant, commercial savant that he/she is, will look for discount on the 'prevailing' value for period style office accommodation in the general locale.

The Appellant has proposed an adjustment or discount from the figure as struck by the Respondent in the sum of €246,000 NAV to the significantly lower sum of €165,321 NAV.

In the Tribunal's view the discount as sought by the Appellant is, in the circumstances, excessive. It does not and in the circumstances adequately take into account what is, or appears from the evidence as adduced, to be a reasonably competitive demand for properties that can be adapted to commercial office use in the general locality in which the subject is located.

The Tribunal is of the view that adjustment to the figure of €204,175 NAV is, in all of the circumstances, appropriate in that it accurately and reasonably accommodates:

(a) The existing use of the subject property as of the valuation date.
(b) The physical state of the subject property as of the valuation date.
(c) Impediments/restrictions to potential use as hereinbefore emphasised.

And the Tribunal so determines.