

**Appeal No. VA14/5/301 & VA14/5/303**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**AN tACHT LUACHÁLA, 2001  
VALUATION ACT, 2001**

**GILES J. KENNEDY & CO.**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

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

Property No. 747167, Office(s) Floors -1,0,1 Eccles Street, County Borough of Dublin.

**AND**

**GILES J. KENNEDY & CO.**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

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

Property No. 747172, Office(s) Floors -1,0,1,2,381 Eccles Street, County Borough of Dublin. (Conjoined Appeals)

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 24<sup>TH</sup> DAY OF JULY, 2019**

BEFORE:

**Carol O'Farrell - BL**

**Chairperson**

**Michael Brennan – BL, MSCSI**

**Member**

**Patricia O'Connor - Solicitor**

**Member**

## **1. THE NOTICES OF APPEAL**

- 1.1 By Notices of Appeal both received on the 4<sup>th</sup> September 2014 the Appellant appealed against the determinations of the Respondent pursuant to which the net annual value '(the NAV)' of 80 Eccles Street was fixed in the sum of €35,900 and the net annual value of 81 Eccles Street was fixed in the sum of €34,900.
- 1.2 The Notices of Appeal for both properties stated that the valuation is incorrect on grounds that the valuations of the properties are excessive and inequitable.
- 1.3 The Notice of Appeal for 80 Eccles Street stated that the Appellant considers that the valuation of the Property ought to have been determined in the sum of €21,400.
- 1.4 The Notice of Appeal for 81 Eccles Street stated that the Appellant considers that the valuation of the Property ought to have been determined in the sum of €20,200.

## **2. THE HEARING**

The conjoined appeals proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 20<sup>th</sup> March 2019. At the hearing the Appellant was represented by the Mr Brian Bagnall FRICS FSCSI and Mr Liam Diskin B.SC, (Prop. Mgmt. & Investment) of the Valuation Office represented the Respondent.

## **3. THE PROPERTY**

- 3.1 The Properties are located on the south east end of Eccles Street, Dublin 7 opposite the Mater Private Hospital close to the intersection with Dorset Street. The Properties comprise of two adjoining and interconnecting three storey over basement mid terrace Georgian buildings.

The appeal in respect of 80 Eccles Street relates only to the basement, ground floor and first floor of that property.

3.2 Except for the second and third floor in 80 Eccles Street, the properties are used as a solicitor's office.

3.3 The Property is occupied under a related parties lease.

#### **4. REVALUATION HISTORY**

4.1 On the 11<sup>th</sup> January 2013, valuation certificates proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Properties were sent to the Appellant indicating a valuation of €52,300 for 80 Eccles Street and €55,900 for 81 Eccles Street.

4.2 Final Valuation Certificates were issued on the 16<sup>th</sup> December 2013 stating a valuation of €52,300 for 80 Eccles Street and stating €55,900 for 81 Eccles Street.

4.3 The date by reference to which the value of the Properties was determined is the 7<sup>th</sup> April 2011.

4.4 Appeals were made to the Respondent under section 30 of the Valuation Act 2001 against the respective determinations of value on the grounds that the values were incorrect. Those appeals were successful, and the valuation of 80 Eccles Street was reduced to €35,900 and that of 81 Eccles Street to €34,900.

#### **5. THE RELEVANT STATUTORY PROVISIONS:**

5.1. The net annual value of each Property must be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

*"The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value."*

5.2 Section 48(3) of the Act provides for the factors to be considered in calculating the net annual value:

*“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable 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.in respect of the property, are borne by the tenant.”*

## 6. THE AGREED FACTS

The floor areas of the Properties were agreed between the parties as follows:

### 80 Eccles Street

<b>Floor Level</b>	<b>Use</b>	<b>Area (Sq. m)</b>
Basement Floor	Offices	51
Ground Floor	Offices	80
First Floor	Offices	90

### 81 Eccles Street

<b>Floor Level</b>	<b>Use</b>	<b>Area (Sq. m)</b>
Basement Floor	Offices	47
Ground Floor	Offices	47
First Floor	Offices	61
Second Floor	Offices	47
Third Floor	Offices	30

## **7. THE DISPUTED ISSUES**

7.1 This appeal raised the sole issue as to whether the net annual value of the Properties as determined by the Respondent is correct.

## **8. THE APPELLANT'S EVIDENCE**

8.1 In accordance with the Rules of the Tribunal, the parties had exchanged their respective Précis of Evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his Précis as his evidence-in-chief in addition to giving oral evidence.

8.2 Mr. Bagnall outlined his view that the Mater Hospital's location on Eccles Street is an important demand factor for occupiers on the street notwithstanding the limited availability of car parking. He stated that substantial upgrades to allow for medical use have taken place in some properties in the vicinity of the hospital resulting in higher rental values and that this has impacted the tone of the list for Eccles Street. Mr. Bagnall pointed out that the Properties are maintained in good order and are as originally constructed except for an extension which was constructed approximately 50 years ago to the rear of No. 81. He differentiated the subject properties from lettings of other properties on Eccles Street for medical related use which would have required planning permission and substantial works.

8.3 Mr. Bagnall described the condition of the Properties as being tired and unmodern. He stated that the Properties do not benefit from an open plan structure or a lift, that some rooms are in use as offices and one had been subdivided to create a deed and document storage area and post area. There is no rear access or parking. It was his opinion that these are all elements that would impact rental levels.

8.4 Mr. Bagnall relied on the Tribunal's decision of the 7<sup>th</sup> March 2017 on Appeal Reference VA14/5/539 between Lisa Underwood v Commissioner of Valuation (hereinafter "70 Eccles Street") to support his opinion of value. In his opinion 70 Eccles Street, located 10 doors up from the Properties, is similarly circumstanced as it too is in its original condition save that a lift has been installed.

8.5 Mr. Bagnall pointed out that similar Georgian office building in neighbouring streets would only achieve €120 to €130 per sq. m. at ground floor level whereas office accommodation on Eccles Street would achieve €140 per sq. m. at ground floor level. Mr Bagnall acknowledged that Blessington Street has a more tired in appearance than Eccles Street but in his view Parnell Square would be a better location with car parking availability. His second comparable property is situated is a Georgian office building measuring 420 sq. m. on Parnell Square West and is valued at €44,800.

8.6 Under cross examination Mr. Bagnall re-iterated his view that Parnell Square is a superior location to Eccles Street and acknowledged that Mountjoy Square and Belvedere Place, the locations of his third and fourth comparable properties, are inferior to Eccles Street.

## **9. THE RESPONDENT'S EVIDENCE**

9.1 Mr. Diskin confirmed that there was no dispute as to the physical characteristics of the Properties and outlined the layout of the Properties by reference to their respective floor plans.

9.2 Mr. Diskin stated that the location of the Mater Private hospital is an important market factor and outlined two key rental transactions (KRT) in respect of two properties on Eccles Street to support his valuation. He stated that the terms of the lease for KRT 1 were typical of the time when that 17- month lease was made in April 2011. That property is let for medical related uses. The lease in respect of the KRT 2 property was made on the 23<sup>rd</sup> July 2010 for a term of 4 years and 9 months. That property is also used for medical related purposes.

9.3 In addition to the properties, Mr. Diskin also relied on the NAV comparables at 66 and 67 Eccles Street which he stated were similar Georgian properties to support his opinion of value.

9.4 Under cross examination, Mr. Diskin stated that property values on Dorset Street would be lower. He said that all office buildings on Eccles Street have a consistent rental level

irrespective of their specific locations on the street but accepted that those with lifts would have higher values. In relation to KRT 1, he accepted that it was let on a short-term lease. He confirmed that he did not inspect 66 Eccles Street and was unaware that a Gym was operating from the basement. Under cross-examination he stated that Eccles Street was in his opinion a more attractive location than Parnell Square despite the proximity of Parnell Square to the Rotunda Hospital and O’Connell Street. Despite the more central location of Parnell Square, he considered that properties on Eccles Street would obtain higher rental levels as Parnell Square did not have same prestige as Eccles Street. Except for 70 Eccles Street, he considered the location of the Appellant’s comparable properties to be inferior.

9.5 When Mr. Diskin was asked by the Tribunal why he omitted the property situated at 70 Eccles Street from his evidence, he stated that the Tribunal’s decision on the appeal in respect of that property “*takes away from uniformity and that one property does not set a tone*”. He further stated that it was considered by the Respondent but disregarded as being irrelevant on the basis that of the 8 properties valued on Eccles Street only 3 had been appealed to the Tribunal.

**10. TRIBUNAL’S FINDINGS AND CONCLUSIONS**

10.1 Mr. Bagnall’s criticism of Mr. Diskin’s comparables understandably focussed on the Tribunal’s determination of the value of 70 Eccles Street.

10.2 The Tribunal amended the value of 70 Eccles Street, Dublin 7. from €51,900 to €38,170 as follows:

<b>Level</b>	<b>Use</b>	<b>Area (sq. m)</b>	<b>NAV (per sq. m)</b>	<b>NAV</b>
-1	Office	55.90	€110	€6,149
0	Office	55.49	€140	€7,768
1	Office	77.10	€120	€9,252
2	Office	65.38	€110	€7,191

3	Office	78.10	€100	€7,810
<b>Total</b>			<b>Say</b>	<b>€38,170 (decrease)</b>

10.3 This Tribunal is not bound to follow the decision of another Division of the Tribunal. However, in the interests of comity and to avoid inconsistencies in decision making, the Tribunal will normally follow a prior decision where the properties are similarly comparable and the relevant circumstances are substantially the same, subject, to any later material change in circumstances.

10.4 Having regard to the statutory scheme for determining the valuation of properties a decision of the Tribunal within the hierarchical framework of agreements, adjudications by the Respondent and appeals to the Tribunal has greater authority. During the life of a valuation list, a decision of the Valuation Tribunal as to the value of a property should be respected and guide the value of other properties comparable to that property on the valuation list in the rating authority area concerned. The Commissioner has power under the Act to revisit values as a result of a Tribunal determination.

10.5 The Tribunal does not consider it necessary to look beyond the 70 Eccles Street decision. It is persuasive authority that supports a similar approach on this appeal. That Tribunal had before it the same two KRTs. In its determination the Tribunal considered the 2011 lease in respect of KRT 1 was not representative of the then rental market in circumstances where

*“same was entered into for a period for one year and five months by parties who had been engaged in a leasehold arrangement for the previous 11 years. This extension of the lease for a short period was to coincide with the delayed completion of the Mater Hospital development adjacent to the subject property, to where it is assumed the then tenant was relocating”.*

No evidence was adduced before this Tribunal that could suggest that the determination in respect of 70 Eccles Street was arrived at on a mistaken understanding of the facts or the



law. Nor was there any other good reason adduced as to why this Tribunal should not follow that decision.

10.6 The Tribunal is of the view that Eccles Street is marginally a more attractive location than Parnell Square and that the difference in locations of the Appellants first comparable property which is 70 Eccles Street and its second comparison which is situated at 30 Parnell Square is properly reflected in the value of 70 Eccles Street. While a difference of environment may provide a good reason as to why Parnell Square is a less valuable area for a Georgian/Victorian office building than Eccles Street, the Tribunal does not ”

10.7 The Tribunal is disappointed that the Respondent has not taken account of the determination in respect of 70 Eccles Street or even refer to it as a comparable property notwithstanding the compelling and significant similarities of that property to the appeal Properties. It is to that comparison that most weight must be given as it most closely resembles the subject properties in terms of location, size, construction and use.

**11. DETERMINATION:**

Accordingly, the Tribunal allows the appeals and decreases the net annual value of the Properties as stated in the Valuation Certificates as follows:

**80 Eccles Street**

<b>Level</b>	<b>Use</b>	<b>Area (sq. m)</b>	<b>NAV (per sq. m)</b>	<b>NAV</b>
Basement	Office	51	€110	€5,610
Ground	Office	80	€140	€11,200
First	Office	90	€120	€10,800
<b>Total</b>		<b>221</b>		<b>€27,610</b>

**Say €27,600**

**81 Eccles Street**

<b>Level</b>	<b>Use</b>	<b>Area (sq. m)</b>	<b>NAV (per sq. m)</b>	<b>NAV</b>
Basement	Office	47	€110	€5,170
Ground	Office	47	€140	€6,580
First	Office	61	€120	€7,320
Second	Office	47	€110	€5,170
Third	Office	30	€100	€3,000
<b>Total</b>		<b>232</b>		<b>€27,240</b>

**Say €27,200**

And the Tribunal so determines.