

Appeal No: VA17/5/811

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

JAMES LUCEY T/A JAMES LUCEY AND COMPANY

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1325225, Office at 9b, Lot 42b, Lot 9c Emmet Square, Birr, County Offaly.

B E F O R E

Majella Twomey - BL

Deputy Chairperson

Frank O'Grady – MA, FSCSI, FRICS, FIABCI

Member

Fergus Keogh – MSCSI, MRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF AUGUST 2019**

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 12th day of October, 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV)' of the above relevant Property was fixed in the sum of €11,500.
- 1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because : The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

- The premises in their entirety comprise a Protected Structure. Planning regulations restrict renovations.
- The rooms cannot be sub-divided or extended into open plan use. The high ceilings cannot be replaced with heat efficient lowered ceiling or modern lighting without permission. Signage to advertise the type of business is also restricted. Windows must remain as timber up and down sashes with additional upkeep and maintenance costs.
- Access for customers is by way of high steps from street level with difficulty for elderly and disabled persons.
- Street parking is limited and must be paid for.
- Traffic congestion and noise is a problem as every vehicle passing Birr must drive past the premises due to the absence of a town by-pass or ring road.
- The Valuation Office's new valuation has been based simply on a square footage basis whereas the letting value would be the same for each room even if only half the square footage as the room is deemed suitable if sufficiently big irrespective of its size or the square footage calculation. Letting values in small rural towns differ from large towns and cities which are based on a square footage calculation.
- I value the premises not at €11,500 but rather €7,592.64

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €7592.64.

2. REVALUATION HISTORY

2.1 On the 3rd day of March, 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €11,500.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a

valuation of €11,500.

- 2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th day of October, 2015.

3. THE HEARING

- 3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 2nd day of July, 2019. At the hearing the Appellant appeared in person and the Respondent was represented by Mr. John Turley – MSCSI, MRICS of the Valuation Office.
- 3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and 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.

4. FACTS

- 4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.
- 4.2 The subject of this Appeal comprises the hall floor portion of the property known as Cumberland House which is located on Emmet Square, Birr, Co. Offaly. Birr is a designated Heritage Town with considerable Georgian history and character. Emmet Square is located in the centre of Birr.
- 4.3 Cumberland House is a notable Georgian structure within the town of Birr dating from c. 1730 / 1760. It is a Listed Property on the Birr Town Record of Protected Structures. It is of typical Georgian construction detail including cement rendered mass concrete walls, timber sliding sash windows and a slate covered pitched roof.
- 4.4 The primary and main access to the property is from Emmet Square via a series of limestone steps. There is a secondary access to the subject hall floor element from the adjoining Emmet Street. This access is at street level with no steps.

- 4.5 The net internal floor area of the subject is agreed at 115.04 sq. m. (1,238 sq. ft.). The accommodation is divided into four individual rooms with two rooms each being located either side of an entrance hallway which is common and shared with other occupiers of the building. The accommodation is of typical Georgian proportions.
- 4.6 The Appellant has been in practice as a solicitor for c. 40 years, occupying various accommodation within Cumberland House and has occupied the hall floor accommodation for c. 35 years and is currently paying a rent of €3,800 pa.

5. ISSUES

- 5.1 This Appeal concerns the application of established principles of valuation with the primary issue arising being the quantum of value.

6. RELEVANT STATUTORY PROVISIONS:

- 6.1 The net annual value of the Property has to 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.”

- 6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account 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 in respect of the property, are borne by the tenant.”

7. APPELLANT'S CASE

- 7.1 The Appellant was taken through his precis of evidence by his attending barrister Mr. James Nerney, BL. He outlined the occupational history of the property by previous tenants and commenting that as the property is a Protected Structure that he as an occupier is subject to burdensome repair and maintenance liabilities citing the example of the sash windows being costly to maintain and repair. He also outlined some of the constraints imposed by the Local Planning Authority relating to signage on the property.
- 7.3 The Appellant stated that the occupied rooms were unsuitable for open plan office use as they cannot be extended or subdivided and were not heat efficient due to the height of the ceilings. He also expanded on other day to day issues which arise in occupying an office suite divided by a shared hallway including lack of client privacy.
- 7.4 The Appellant stated that access via the limestone steps was difficult for elderly and or infirm clients and that it was not possible to construct an access ramp. He stated that on-street car parking was metered and limited and that there was excessive noise and vibration intrusion from traffic congestion from heavy duty goods vehicles passing the property.
- 7.6 The Appellant stated that the second floor accommodation within the building had been vacant for eight years and that a dental practice also on the second floor is shortly to vacate the building.
- 7.7 The Appellant submitted that the method of calculation adopted by the Valuation Office is based on a mathematical calculation being a rental rate per square foot and does not have regard for room size and is too crude a method to accurately arrive at a true valuation. He commented that, generally, Georgian properties are unsuitable for modern use by referencing the 18 year vacancy of nearby offices on Emmet Square formerly occupied by a firm of solicitors and a former newsagent's shop also on Emmet Square which has been vacant for 5 years.
- 7.9 In addition the Appellant commented on Birr as a business and commercial location being inferior in comparison to the neighbouring town of Tullamore it being the county town of Offaly which benefits from having a rail link, proximity to the M6 motorway

and being the location of the local Court House, there no longer being a court house in Birr.

- 7.10 The Appellant did not submit any specific rental evidence or rental comparisons in support of his opinion of the property's rental value of €7,500 p.a., however he did comment individually on the Key Rental Transactions (KRT'S) and the NAV Comparisons as submitted by Mr. Turley on behalf of The Commissioner of Valuation in his submitted précis of evidence.

These comments in summary are as follows and are in the same order as the properties appear in Appendix 1;

- i. KRT 1 This property is a purpose built modern building and not comparable to an 18th century Georgian building.
- ii. KRT 2 This property is comparable to the Appellant's premises being an upper floor however the accommodation is open plan.
- iii. KRT 3 This property is a first floor suite occupied by a beautician and not comparable to the subject premises.
- iv. NAV Comparison 1. This property is occupied by a solicitors practice and has access directly from street level without the requirement for access steps and benefits from a facility to have signage.
- v. NAV Comparison 2. This property is a Georgian property formerly occupied by a firm of solicitors and currently vacant for 18 years.
- vi. NAV Comparison 3. This property is a former solicitors offices with direct access from street level and without the requirement for access steps.
- vii. NAV Comparison 4. A property that is located in Tuallamore which in the Appellant's opinion is not a comparable location.

- viii. NAV Comparison 5. A property that is also located in Tullamore which in the Appellant's opinion is not a comparable location.
- ix. NAV Comparison 6. Whist being located in Birr this is not a comparable property as it is not a Listed Structure and has the benefit of direct access from street level without the requirement for access steps .
- 7.11 Under cross examination by Mr. Turley, the Appellant confirmed that it's repairing liability in the premises was internal only with no responsibility for external repairs and insurances other than for its own public liability cover.
- 7.12 The Appellant confirmed that each occupied room has its own access door under its control adding that a shared hallway was a disadvantage.
- 7.13 The Appellant acknowledged that there was a secondary street access from Emmet Street at street level commenting that it was unsuitable as it gave access directly to a rear room rather than a hallway.
- 7.14 The Appellant acknowledged that car parking was available on the street outside of the property commenting that it was limited and used by a nearby commercial garage.
- 7.15 Under questioning by the Tribunal the Appellant was unable to quantify its claim of burdensome costs in its occupation of the property compared to those of a tenant in a property that is not a Listed Protected Structure.

8. RESPONDENT'S CASE

- 8.1 Mr. Turley for the respondent referencing his Precis of Evidence outlined the history of the property and confirmed the agreed area of 115.04 sq. m. He also set out the milestone dates in relation to the Appeal along with evidence of Representations made and the grounds of the Appeal. He referred to the small number of appeals made to the Valuation Tribunal following the Offaly County Council Revaluation where 59 no. appeals were received following the 2,490 Valuation Certificates having been issued.

- 8.2 Mr. Turley stated that the Respondent relied on three items of market information to inform the estimate of net annual value (“the NAV”) of the Property, the summary details of which are attached in Appendix 1. He explained that these three Key Rental Transactions (“KRTs”) were investigated and analysed regarding the date of transaction relative to the valuation date and any inducements or other individual features of the transaction to arrive at the net effective rents (the ‘NERs’). These NERs equate to the basis of valuation set out in Section 48 of the 2001 Act as amended on the statutory valuation date
- 8.3 Mr. Turley also stated that the NERs provided the basis for deciding the appropriate NAV per square metre to be applied to the group of properties sharing similar characteristics and the if there are any relevant individual considerations in relation to the property, relative to the group of properties, a further adjustment is made to the NAV.
A valuation level of €100 per sq. m was applied to the property.
- 8.4 Mr. Turley also referenced six NAV Comparisons four being located in Birr and two in Tullamore. Five of comparisons are Listed Protected Structures with the ground floor sections of the Birr located properties analysed to show a valuation rate of €100 per sq. m. and the Tullamore located properties analysed in a similar manner to show a rate of €110 per sq. m.
Details of these comparisons are attached in Appendix 1.
- 8.5 Mr. Turley advised that all of these properties were valued at a uniform rate with no appeals haven been made by the occupiers. He discounted the Appellant’s claim of costly occupational costs on the basis that the lease under which the premises is occupied is on an Internal Repairing Basis with the landlord having the liability for external repairs and maintenance.
- 8.6 In respect of any issues that may relate to the external access to the property being via a number of steps Mr. Turley advised that a second access via Emmet Street was available at direct street level.
- 8.7 Under cross examination by Mr. Nerney, Mr. Turley confirmed his opinion of value of €100 per sq.m. for ground floor offices in Birr and accepted that the higher rate of €110 per sq.m. applies in Tuallmore due to it being a better location.

9. SUBMISSIONS

- 9.1 No legal submissions were made by either party to this Appeal.

10. FINDINGS AND CONCLUSIONS

- 10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Offaly County Council.
- 10.2 The Tribunal accepts the Appellant's basic argument that the subject premises is not located at ground floor. However it does not accept that the subject property may be described as first floor accommodation. Similar accommodation in comparable Georgian properties is generally referred to being at hall floor level. It is the Tribunal's opinion that this hall floor accommodation is more desirable for a hypothetical tenant than its first floor equivalent. However, property at ground floor level, is, undoubtedly, superior to hall floor level as access at ground floor level is not by way of steps, as is the case in the subject property. The Tribunal finds that the subject property does have a disadvantage in comparison to ground floor properties due to the nature of the access, via 12 steps to the front door. The Tribunal finds that a reduction should be granted for same.
- 10.3 The Tribunal accepts that the Respondent has valued ground floor office accommodation in Birr at €100 per sq. m. and first floor accommodation at €70 per sq.m. and noted the higher rates applied to its Tullamore based comparisons.
- 10.4 The Tribunal considers that the subject of the Appeal is not a self-contained premises, with the accommodation being divided by a shared access hallway to the other floors in Emmet House, which is not ideal for the day to day running of a commercial office. The Tribunal also accepts that the access steps to the Emmet House are not a means of access convenient and suitable for all visitors.
- 10.5 It is the Tribunal's finding that the Respondents evidence in KRT 2 is the most relevant of its KRT's as it located right beside the subject property as, is, therefore, the closest in terms of location to the subject property. The Tribunal finds that Comparisons numbers 1 and 3 of the Respondent's comparisons are the most relevant of the

submitted comparisons as they are both situate in Birr, in close proximity to the subject. Furthermore, they are both used as offices and are both listed as protected structures.

10.6 Taking into account the fact that the subject property is not self-contained and at hall floor level, as opposed to ground floor level, the Tribunal finds that these factors can be taken into account in decreasing the valuation of the property.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €8,630.

Use	Area Sq. M.	Value Per Sq.M	€ Total
Offices	115.04	75	8,628

But say, €8,630

And the Tribunal so determines.