

Appeal No: VA18/4/0017

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020**

**CARLTON REAL ESTATES LIMITED
Trading as COLDWELL BANKER COMMERCIAL CARLTON ESTATES**

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No., 174104 Office(s) at Ground Floor, 55 South Mall, Cork, County Cork

B E F O R E

Carol O'Farrell - BL

Chairperson

Allen Morgan - FRICS, FSCSI

Member

Ken Enright - Solicitor

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE (th) DAY OF NOVEMBER 2021**

1. THE APPEAL

1.1 By Notice of Appeal received on the 7th November 2018 the Appellant appealed against the determination of the Respondent made pursuant to section 28 of the Valuation Act 2001 pursuant to which the rateable value of the Property was fixed in the sum of €146.00.

1.2 The sole ground of appeal is that the valuation of the Property is excessive.

2. VALUATION HISTORY

2.1 The Respondent was requested by Cork City Council to appoint a revision officer on the basis that a material change of circumstances had occurred in respect of the Property.

- 2.2 Following that request the Respondent appointed Mr O'Connor as the revision officer who inspected the Property and upon being satisfied that a material change of circumstances had occurred as a property having been previously valued together with the first floor on the valuation list, these two floors became liable to be valued separately. Pursuant to his powers under section 28(4) of the Valuation Act 2001 ('the Act') Mr O'Connor having determined that the appeal Property occupied by the Appellant is a single relevant property proceeded to issue on the 31st May 2018 a proposed valuation certificate indicating a rateable valuation ('RV') of €156.00.
- 2.3 Being dissatisfied with the valuation proposed, representations were made to the revision officer on the 4th July 2018. Following consideration of those representations, the revision officer issued a final valuation certificate on the 31st October 2018 stating an RV of €146.00.

3. THE HEARING

- 3.1 The Appeal proceeded by way of an oral hearing held remotely on the 22nd November 2021. At the hearing, the Appellant was represented by Mr. Patrick Falvey C.V. MIPAV and the Respondent by Mr. John O'Connor of the Valuation Office.
- 3.2 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.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts:

- 4.1 Location: The Property is located in a six-storey building at 55 South Mall Cork city on the corner of South Mall and Princes Street which thus provides double frontage. South Mall is a centre of commercial activity in Cork city. Princes Street is a retail street primarily associated with restaurant, bar food related businesses.
- 4.2 Accommodation: The Property comprises the ground floor of the building which was constructed in the 1980's. The agreed net internal area of the Property is 113 sq. m which is mainly laid out on an open plan format. The accommodation comprises 2 offices, a meeting room and a tea station and store to the rear. The ground floor is raised

approximately 60 cm above street level and is accessed via an internal lobby and steps. Access from the street is via a small entrance lobby with three steps up to the office floor level. The building has a rear entrance from Princes Street mainly used by the occupiers of the upper floors. The building is heated via an old- fashioned gas fired central heating boiler system. The occupiers of the building have to share five toilet cubicles which are interspersed throughout the building off the stairs core. The nearest cubicle to the appeal Property is located at mid floor level between the ground floor and the first floor. There are no on-site parking facilities serving the Property.

- 4.3 The Appellant has been in occupation of the property since 2013 and currently occupies the Property under a 20-year IRI Lease from the 9th December 2016.
- 4.4 The Property was the subject of an application of the rating authority under section 27(2) of the Act.
- 4.5 The revision officer decided that a material change of circumstances existed for the exercise by him of his power under section 28(4) of the Act as amended in relation to the Property.
- 4.6 On this revision appeal the property was valued by reference to values on the existing valuation list for the rating authority area since 1988.

5. ISSUE

- 5.1 The only issue for the Tribunal's consideration is whether or not the Respondent correctly determined the RV of the Property based upon a net annual value (NAV) of €205.05 per square metre ('psm').

6. RELEVANT STATUTORY PROVISIONS:

- 6.1 The provisions of section 28 (4) and 49 of the Valuation Act 2001 as amended are relevant to the hearing of this appeal.

S.28(4) provides:

A revision officer, if he or she considers that a material change of circumstances which has occurred since a valuation under section 19 was last carried out in

relation to the rating authority area in which the property concerned is situated or, as the case may be, since the last previous exercise (if any) of the powers under this subsection in relation to the property warrants the doing of such, may, in respect of that property —

- (a) if that property appears on the valuation list relating to that area, do whichever of the following is or are appropriate—
 - (i) amend the valuation of that property as it appears on the list,
 - (ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within *Schedule 4*,
 - (iii) amend any other material particular in relation to that property as it appears on the list.

Section 49(1) provides:

- (1) If the value of a relevant property (in *subsection (2)* referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28 (4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situated in, of other properties comparable to that property
- (2) For the purposes of *subsection (1)*, if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then –
 - (a) in case a valuation list is in force in relation to that area, the determination referred to in *subsection (1)* in respect of the first-mentioned property shall be made by the means specified in section 48 (1), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20
 - (b) in case an existing valuation list is in force in relation to that area, the determination referred to in *subsection (1)* in respect of the first-mentioned property shall be made by the means specified in section

48 (1) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988, but the amount estimated by those means to be the property's net annual value shall, in so far as it is reasonably practicable, be adjusted so that the amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act.

6.2 The phrase “valuation list” is defined in section 3 of the Act. It has the meaning assigned to it by section 21 of the Act and the phrase “existing valuation list” is defined to in section 3 to mean a valuation list in force immediately before the commencement of the 2001 Act.

7. APPELLANT’S CASE

7.1 Mr Falvey submitted that the valuation of the Property is excessive when compared to similar office properties on South Mall. He said the Appellant’s main concern is that the Property has been unfairly rated which puts the Appellant at a competitive disadvantage due to the imbalance of rates in the South Mall area. He said the current rates bill is disproportionate to the market rent and explained that the costs of occupying the Property are high because in addition to rent and rates the Property is burdened with a high annual management service charge due to the age of the building.

7.2 Mr Falvey described the accommodation in the Property. He said the Property is entered from South Mall via three steps in a lower lobby area measuring approximately 6 sq. metres which space he said could arguably be deducted from the net internal area as it is unusable for any purpose other than circulation space. He pointed out that the Property is not wheelchair accessible and that the small lobby area at the entrance is liable to flood approximately twice every year.

7.2 He relied upon five comparable properties to contend that the valuation of the Property is excessive.

7.3 His first Comparable was property number (PN) 5014724 which consists of a first-floor office suite in the same building as the Property measuring 114sq.m. and not 106 sq. m. as contended by Mr Falvey who accepted that the store area had been omitted from his measurement. It has a rateable valuation of €74 based on a NAV of €111 psm. Mr Falvey

contended that the fact that the first floor of No. 55 is assessed at almost half the level of ground floor demonstrates that the valuation of the appeal Property is incorrect.

- 7.4 His second Comparable was PN 190003 which consists of the second-floor offices at No 55 South Mall overhead the appeal Property measuring 114m² and not 106 sq. m. It has a rateable valuation of €82.53 based on a NAV of €124 psm. Mr Falvey stated that these offices are occupied under a 4-year 9-month lease from the 15th December 2019 at a similar annual rent to that of the appeal Property.
- 7.5 His third and fourth Comparables consists of two office properties (PN 174119 and PN 2214616) at 60 South Mall, a three-storey corner office building. The ground floor of this building is PN 174119 and it measures 51.28 sq. m and has a rateable valuation of €58.41. PN 2214616 comprises the offices at second floor and according to Mr Falvey has a rateable valuation of €28 based on a NAV of €65 psm. This building has street level access and is situated in prominent corner position at juncture of Marlboro Street and South Mall. Mr Falvey acknowledged when cross-examined by Mr O'Connor, that he was aware that PN 174119 was valued prior to 1988.
- 7.6 Mr Falvey's fifth Comparable was PN 173995 at 14 South Mall. This property is a modern 4 storey office building which he says was substantially renovated in the mid 2000's, the Georgian façade only being retained. The ground floor office area measures 92.23 sq. m. and was valued at €205.05 psm in October 2016. Mr Falvey accepted when cross-examined by Mr O'Connor that he had estimated the overall NAV of €100 psm on the floor area of 492 sq. m. rather than by the area of 365.93 sq. m. used to calculate its rateable valuation as appearing on the valuation list.
- 7.7 Mr Falvey considered the first and second floors located overhead the appeal Property and the ground floor 60 South Mall to be his best comparators. He considered the first and second floors within the same building to be relevant in terms of highlighting the significant difference between their respective values and that of the appeal Property. He pointed out that not all businesses want to be located in ground floor offices especially where lift access to upper floors is available. In his opinion, a fair rateable valuation of the appeal Property is €100 which devalues as follows:

$$113 \text{ sq. m @ } \text{€}140 = \text{€}15,820 \times 0.63\% = \text{€}99.66 \text{ say } \text{€}100.$$

8. RESPONDENT'S CASE

8.1 Mr O' Connor confirmed that the Property has been the subject of a request for a revision application by Cork City Council in 2018. He confirmed that he had reduced the rateable valuation as stated in the proposed valuation certificate following upon the representations as he was unable to establish that any other ground floor office on South Mall had been valued at the NAV rate of €218.72 psm and he considered it fair to reduce the NAV rate to €205.05 psm.

8.2 Mr O'Connor pointed out that prior to the hearing of the appeal the net internal area of the appeal Property had been agreed at 113 sq. m. and by reason of that agreement Mr Falvey was precluded from arguing that the entrance lobby ought to be excluded from the rateable floor area because it was mere circulation space facilitating access into the Property and was of no benefit to the Appellant. In respect of the latter point, he did not in any event accept that this lobby area was not beneficial to the Appellant's use of the Property given that it helped prevent the ingress of flood waters into the primary office space area.

8.3 Mr O'Connor stated that the valuation had been determined in the exercise of his powers under section 28(4) of the Act and that the appeal Property was valued by reference to the tone of the list. He said that all values on the list that had been determined prior to around October 1988 were disregarded as new valuation methodology was introduced by the Valuation Act 1988.

8.4 He commented that lack of car parking is the same for all the properties on South Mall a point which was readily accepted by Mr Falvey.

8.5 Mr O'Connor valued the Property in the sum of €23,170.65 at a NAV psm of €205.05 to the agreed net internal area which yielded a rateable valuation of €146. He relied upon ten ground floor office properties on South Mall which he said have similar characteristics to the appeal Property to support the valuation figures for which he was arguing. They are as follows:

1. PN 174104	55 South Mall	Office Ground Floor 113m ² @ €218.72
		Office First Floor 114 m ² @ € 102.52
		NAV €36,402.64 RV €228.55
2. PN 174063	39 South Mall	Office Ground floor 109.80 m ² @ 205.05
		NAV €22,514.49 RV €241.25

3. PN 174097	52 South Mall	Office Ground Floor 111.48m ² @ €205.05 Office First Floor 166m ² @ € 109.36 NAV €41,102.73 RV €253.95
4. PN 174169	80a South Mall	Office Ground Floor 92.90m ² @ €205.05 Office First Floor 26.66m ² @ €136.70 NAV €22,693.56 RV €142.21
5. PN 173984	10 South Mall	Office Ground floor 97.73m ² @ €205.05 Office First Floor 61.87m ² @ €95.67 Office Second Floor 76.92m ² @ €82.02 Office Third Floor 66.42m ² @ €68.35 NAV €36,808.65 RV €203.16
6. PN 173971	2 South Mall	Office Ground floor 66.60m ² @ €205.05 Office First Floor 69.30m ² @ €102.52 NAV €20,760.97 RV €139.67
7. PN 174029	23 South Mall	Office Ground Floor 66.98m ² @ €205.05 NAV €13,734.24 RV €86.53
8. PN 173985	11 South Mall	Office Ground Floor 111.23m ² @ €204.94 NAV €22,795.76 RV €144
9. PN 174096	51 South Mall	Office Ground Floor 106.06m ² @ €204.94 NAV €21,735.94 RV €136
10. PN 174193	9/90 South Mall	Office Ground Floor 168 m ² @ €204.94 NAV €34,429.92 RV €215

8.6 Mr O'Connor pointed out the Appellant's first and second comparable properties are at first and second floor level, that the third comparable was valued before 1988 and for that reason was not a valid comparison pointing out that the Valuation Tribunal has on many occasions disregarded pre-1988 NAV valuations.

8.7 In his opinion, the Property is valued according to the established tone of the list of the rating authority area and that any properties with pre-1988 valuations are not truly comparable. He pointed out that the Appellant bears the onus of proof to establish that the determination is incorrect and requested that the Tribunal affirm the valuation of the Property as determined by the Commissioner of Valuation on the basis that it is fair, reasonable and equitable.

9. FINDINGS AND CONCLUSIONS

- 9.1 Turning to the consideration of the evidence, the valuers between them produced evidence of the rateable values of 15 properties in the tight geographical area of South Mall.
- 9.2 Further to the above, Mr Falvey reasonably argued that the current real-world costs of occupying the Property due to its age should influence and moderate the rateable value of the Property especially if those costs are potentially much higher than those which would apply to the other office properties on South Mall. However, no evidence was adduced to show the service charges payable in respect of the Property are disproportionate to those payable in respect of other office buildings on South Mall. Aside from that fact, this is an appeal from a determination made under section 28 of the Act. Since the enactment of the 2001 Act, a valuation order has not been made pursuant to section 19 in respect of the rating authority area of Cork City Council. This essentially means that where a relevant property in Cork city falls to be valued by a revision officer in exercise of his or her powers under section 28(4), the relevant property is valued not by reference to open market rental values prevalent or proximate to the date of the revision application but to values ascertained and applied in 1988 or thereabouts to comparable relevant properties on the existing valuation list for Cork city. This means that in order to succeed on this appeal the Appellant has to satisfy the Tribunal that similarly circumstanced ground floor offices on South Mall have been valued at a NAV psm of less than €205.05.
- 9.3 Mr Falvey presented five comparable properties to demonstrate that the valuation was excessive. In the first place he referred to the valuations of the first and second floor offices in No 55 South Mall, which are overhead the appeal Property, to point out that those offices which are of equivalent size and have the benefit of a lift for access have been valued at almost half that of the appeal Property. It is quite clear from a study of the comparable properties having first floor offices that there is no consistency between first floor areas and their respective values on South Mall. Prior to subdivision in 2018, the first floor of No 55 was valued at €102.52 psm and following subdivision, was increased in value to €111 psm. The first floor of No 52 was valued at €109.36 psm, the first floor of No 80a was valued at €136.70 psm, the first floor of No 10 was valued at €95.69 psm, and the first floor of No 2 was valued at €102.52. Mr O'Connor was unable to provide an explanation for these inconsistencies. What does appear as far as the comparable properties are concerned is that their ground floors have been valued consistently at

either €205.05 psm or €204.94 psm and the appeal Property is clearly not out of line with those ground floor values.

9.4 Mr Falvey also relied on PN 174119 at No 60 South Mall as a direct comparable but accepted that it had been valued prior to 1988. His fourth comparable is a first-floor office which was also valued prior to 1988. His final comparable at No 14 South Mall was of no assistance because Mr O'Connor clarified at the hearing that the ground floor was valued at the same rate as the appeal Property. The difficulty for the Appellant is that the details of relevant properties on the existing valuation list for Cork city do not provide a detailed breakdown of the elements of rateable value, such as the measurements of each floor of a property or the value attributed to each floor. Aside from PN 174119, the Appellant did not adduce any evidence of a ground floor office property on South Mall where the NAV psm was less than €205.05. While Mr O'Connor adduced evidence of three such properties (being PN 173985, PN 174096 and PN 174193 referred to above in paragraph 8.5) assessed at €204.94 psm, when asked by the Tribunal, he could not explain how the 0.11 cent differential had arisen. In any event, the Appellant can derive no assistance from such an inconsequential discrepancy.

9.5 The lack of parking facilities on South Mall, though laudable in environmental terms, is undoubtedly an inconvenience in the operation of the Appellant's business and, possibly an inconvenience to other businesses on South Mall and may even be a deterrent to a potential tenant. However, most if not all the properties on South Mall are suffering the same disadvantage and from the evidence given in respect of comparable properties there is nothing that indicates different unit rates were applied as against those which may have limited on-site parking spaces and those that have none. The Tribunal accepts that the provision in the building of single cubicle toilet facilities at the mid sections between each floor level means that the Property's facilities in this regard do not equate with modern standards and requirements, and are an outdated feature which negatively affects the appeal Property but from the tone evidence there is nothing that indicates whether or not allowances were made for office properties that have communal or shared toilet facilities as against those that do not. There was simply nothing in this appeal to show that this element by itself would affect the rateable value of the Property. For the sake of completeness, the suggested omission of the small entrance lobby from the valuation raised almost as a throwaway point by Mr Falvey towards the end of his evidence cannot be considered by the Tribunal given that the parties had agreed the area of the appeal

Property prior to the appeal hearing and the fact of that agreement is recorded by both Mr Falvey and Mr O'Connor in their respective précis of evidence.

- 9.7 Despite his genuine efforts, Mr O'Connor was unable to assist the Tribunal as regards the methodology and principles adopted for the composition of the existing valuation list in Cork city in the wide sense or the values applied to office properties located on South Mall. The Tribunal cannot but have sympathy with the Appellant who made a clear and concise presentation of their appeal but on the material before us, exiguous and unsatisfactory as it is, the Tribunal does not consider that this is a situation in which we can properly interfere with the determination of value made by the Respondent. The revaluation of Cork city will involve a completely fresh appraisal of the rental value of the appeal Property and those other office properties on South Mall without any regard to their earlier values. This hopefully will provide for a fairer and more equitable distribution of the rates burden amongst ratepayers.

10. DETERMINATION:

- 10.1 For the above reasons, the Tribunal finds that the Appellant has not discharged the burden of proof that the determination of value made by the Respondent was excessive and, accordingly, the appeal is disallowed.