

Appeal No. VA14/5/985

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

MM Halley & Son Solicitors

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the issue of Quantum of Valuation in respect of:

Property No. 857134, Office, 5-6 Great Georges Street, Waterford, County Waterford.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30th DAY OF NOVEMBER, 2015

BEFORE:

Stephen J. Byrne – BL

Thomas Collins – PC, FIPAV, NAEA, MCEI CFO

Carol O’Farrell – BL

Deputy Chairperson

Member

Member

By Notice of Appeal received on the 5th day of September, 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €22,500 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”.

"Age of property. Condition of property. Layout of the property. Listed status. Extended vacancy period."

Oral hearing of this appeal took place in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 8th day of April 2015. Mr Gavin Quinlan of REA O'Shea O'Toole and Partners appeared on behalf of the Appellant. Ms Gillian Beale of the Valuation Office appeared on behalf of the Respondent.

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 same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

The Issue Arising: Quantum

This appeal has arisen from the recent revaluation of the Waterford City and Council County rating authority area, undertaken pursuant of Part 5 of the Valuation Act 2001.

Section 48(1) of the Valuation Act 2001 requires the value of a relevant property to be determined under that Act by estimating the net annual value of the property. For the purposes of the 2001 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 expected to let from year to year, on the assumption that the probable 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.

The net annual value (NAV) of the subject property at the statutory valuation date i.e. the 28th October 2011 was determined at €22,500. The Appellant argues for a NAV of €12,900.

The Property the Subject of the Appeal

The subject property is situate at 5/6 Georges Street, Waterford which is a pedestrian street, approximately 200 metres from the junction of Barrowstrand Street and Broad

Street. It is a three storey Georgian mid terrace office building over basement with an arch to the side providing pedestrian access to the City Council pay and display car park which lies to the rear. It is constructed of random rubble and brick walls, suspended timber and part concrete ground floor with suspended timber upper floors, single glazed timber casement and sliding sash windows. Internal walls and ceilings are plastered and painted and the property is lit by fluorescent strip lighting. Services are provided by way of heating, electricity and water. The ground floor of the property is split into a number of small rooms some of which have no natural light, with large structural walls throughout. There is no lift in the property and there is no private parking to the front or at the rear of the property

The total net internal floor area of the subject property is agreed at 296.62 sq. metres as follows:

Level	Use	Area Sq. Metres
Basement	Stores	28.34
Ground Floor	Offices	45.21
First Floor	Offices	122.98
Second Floor	Offices	100.09

The attic space has been omitted by agreement on the basis that it is incapable of beneficial use.

Tenure

The property is held freehold.

Appellant's Evidence

The Appellant made a number of points which may be summarised as follows:

- (i) In order to determine the net annual value of the subject property, regard must be had to the property in its actual state at the relevant date, i.e. the 28th October 2015.
- (ii) At the revaluation date, the rental market for office space in general was relatively inactive and there is an oversupply of offices in Waterford City.

- (iii) The subject property is in a poor condition and in its existing condition has effectively become obsolete for modern business requirements. It has been available to let since it was vacated six years ago with no discernible interest from the market due to the costs that would be required works to bring the property to a modern specification. The photographs of the interior of the property evidence the poor condition of the interior and significant rising damp.
- (iv) The subject property does not accommodate the widest possible range of abilities in that access to the front entrance is via two granite steps.
- (v) The subject property is listed in the Record of Protected Structures (RPS No. 135) which has cost implications for refurbishment works due to onerous conservation requirements.
- (vi) The property is situate in a mixed use office and retail location in the city centre.
- (vii) More modern city centre offices with private parking have been valued on a similar basis and, in some instances, floor levels have been assessed at rates below those applied to the subject property.
- (viii) Some city centre properties of similar age to the subject property with lift access have been valued on a similar basis and, in some instances, some floor levels have been assessed at rates below those applied to the subject property.

Mr Quinlan offered the following comparators which he took from the emerging list:

- (i) 22 O'Connell Street - four storey office building the NAV of each floor assessed at €90 per sq. metre - *circa* 100 metres from the subject property;
- (ii) 8 Gladstone Street - five storey retail/office building the NAV of 1st floor assessed at €85 per sq. metre, 2nd floor at €65 per sq. metre, 3rd floor at €45 per sq. metre and 4th floor at €25 per sq. metre – situate less than 100 metres from the subject property;
- (iii) Broad Street Centre - the NAV of 1st floor assessed at €85 per sq. metre and 2nd floor at €65 per sq. metre - *circa* 150 metres from the subject property;

- (iv) I Parnell Street – the NAV of the 1st floor assessed at €85 per sq. metre and 2nd floor assessed at €65 per sq. metre - principal office district on the edge of the area known as the Viking Triangle;
- (v) Durands Court, off Parnell Street, the NAV of the ground and 1st floor offices assessed at €90 per sq. metre - principal office district.

Mr Quinlan relied on these comparators to demonstrate that more modern properties located in similar or better locations and in better condition than the subject property have been assessed at similar or lower levels than the subject property. For the reasons advanced, he estimates the NAV per sq. metre of the ground floor of the subject property at €60 per sq. metre and in respect of the basement and upper floors he applies the same % differential as used by the Commissioner of Valuation in assessing the NAV for the property giving a total NAV for the subject property of €12,900.

Mr Quinlan also gave evidence that a new tenant at a minimum would have to spend €300 per sq. metre to refurbish the subject property giving a total refurbishment cost of €88,986 and that if such expenditure were to be rentalised for a 10 year lease (by deducting the €8,898 from the NAV of €22,500 it would produce a revised NAV of €13,602.

Under cross-examination. Mr Quinlan agreed that the Respondent's Informer Property 1 was of some assistance. He stated that he was reliably informed that Informer Property 2 was leased in August 2006 on a 4 year 9 month lease, that no new lease had been negotiated upon expiry in 2011 and that the occupier is overholding. He accepted that the annual rent of that property was €16,000 in 2006. Mr Quinlan did not accept that Informer Property 3 was of any assistance due to its location outside the city centre in a mainly a residential area with nearby school and church and in his opinion the rental evidence was removed in time by reference to the revaluation date. He accepted that all properties put forward as comparators had stepped entrances and that the repair issues in the subject at property were common to all Georgian properties at some time or another and that there is a repair cycle.

Respondent's Evidence

In the course of her oral evidence on behalf of the Respondent, Ms Beale informed the Tribunal that she was heavily involved in the revaluation of Waterford and she made the following points:

- (i) The NAV of the subject property is to be estimated in accordance with section 48 of the 2001 Act and the estimate value of what a hypothetical tenant would pay by way of rent in accordance with section 48, not necessarily what any particular tenant is paying.
- (ii) The Commissioner and/or his or her officers gathered information from owners and occupiers of rateable properties as was considered necessary for the performance of their functions. The information was utilised to obtain market information relevant to rent levels in the Waterford city. This analysis of market rents provided the basis for estimating the appropriate NAV per square metre or Zone A to be applied to a group of properties sharing similar characteristics, including the subject property. The Commissioner for Valuation would then go on to consider any relevant individual considerations in relation to a subject property and, if appropriate make further adjustments to the NAV.
- (iii) The subject property is approximately 200 metres from the prime retail and commercial area at the junction of Barrowstrand and Broad Street.
- (iv) The subject property has repair issues. Whilst it has not been occupied for six years, it was formerly in office usage and can still be so used.
- (v) The condition of every property falls into disrepair at some point so there is a repair cycle. When valuing properties, repair is not taken into consideration.
- (vi) On the issue concerning the disadvantage of having an approach to the entrance to the subject property over two steps, Ms Beale pointed out that the comparable properties have the same problem, and as such there was nothing to support a discount being made for that reason.
- (vii) The Appellant bears the onus of proof and had not put forward any rental information of similar properties to contradict or challenge the informer properties.

- (viii) With regard to the Appellant's comparators, the Appellant is not comparing like with like.
- (ix) Within Waterford a total of 123 Georgian properties were valued at the same level (i.e. ground floor at €105 per sq. metre) as the subject property.
- (x) The primary consideration in valuation is to establish uniformity and equity as between ratepayers.

Ms. Beale relied upon three items of market information to estimate the NAV of the subject property, all of which are Georgian properties in office use

- (i) 29 The Mall - total floor area of 256.25 sq. metres
 Lease commencement date 1 March 2011 - Term 8 years
 Rent per annum €25,000 - Net Effect Rent October 2011 €22,518.55
 NAV Ground Floor at €110 per sq. metre, First Floor at €90 per sq. metre;
 Second Floor at €70 per sq. metre
- (ii) 22 Parnell Street
 Lease commencement date 1 April 2011 - Term 1 year
 Rent per annum €16,000 - Net Effect Rent October 2011 €14,111.87
 NAV Ground Floor at €115 per sq. metre
- (iii) 1 Newtown Road/Dunmore Road
 Lease commencement date 1 August 2009 - Term 5 years
 Rent per annum €8,500 - Net Effect Rent October 2011 €5,272.19
 NAV Ground Floor at €109.40 per sq. metre

Under cross-examination, Ms Beale clarified how the rental information concerning Informer Property 2 had been obtained and accepted in light of Mr Quinlan's evidence that the occupier had not entered a new lease in 2011. She stated that in her view the vacancy rates on The Mall are similar to those on Great Georges Street. She did not agree that Informer Property 3 is not a comparable property in view of its distance from the city centre.

The Findings of the Tribunal

The Tribunal, having examined the particulars of the property the subject of this appeal and having examined and considered the written evidence and having heard the oral evidence adduced before us by the parties to the appeal holds as follows:-

1. This appeal concerns the NAV of the subject property, that is to say the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable 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. This means that the rent to be ascertained is the figure which the hypothetical landlord and tenant would, in the opinion of the Tribunal, come to as a result of bargaining for the property.
2. As the subject property has lain vacant for the past six years, there is no actual rent which might provide a starting point for the assessment of the NAV so regard must be had to the rents of similar properties at the revaluation date. The Tribunal must therefore consider and evaluate the evidence before it and in doing so have regard to the actual rents and the degree of comparability found in those other properties.
3. The Tribunal accepts that when estimating the NAV of a property, the property must be valued individually having regard to the underlying principles of uniformity, fairness and equality. So, although rents may vary greatly from property to property assessments must show a uniform pattern.
4. However, the NAV of the subject property has to be estimated in its actual condition at the valuation date. Whilst the tenant and the tenancy are hypothetical, the property must be looked at in its actual state. In the opinion of the Tribunal, the hypothetical tenant would not be

prepared to pay the full rental value for the subject property in its actual state. On the contrary, the hypothetical tenant would either refuse to take a tenancy of the property from year to year until the property was put into repair or, alternatively, the hypothetical tenant would expect a substantial reduction on the rent in order to let from year to year on a full repairing covenant. The hypothetical landlord would be pleased to let the property whilst retaining the freehold reversion and obtaining from the hypothetical tenant a covenant to keep the property in repair.

5. Mr Quinlan estimated the NAV of the subject property in its actual state at €12,900 without adducing any rental evidence of comparable properties in a similar condition at the valuation date. Ms Beale estimated the NAV of the subject property on the basis that it is a Georgian building in office use without regard to its actual state.
6. In the Tribunal's view, none of the Informer properties were in a similar condition to the subject property. The only common characteristic that the Informer Properties share with the subject property is the fact that they are all Georgian properties, used as offices. Informer Property 2 is a standalone property and Informer Property 3 is located outside the prime or near prime office locations in the city centre and the Tribunal places no weight upon these comparables.
7. Informer Property 1 is of some assistance in that it is a three storey over basement end of terrace Georgian building. The lease of that property commenced in March 2011. The net effect rent per square metre in October 2011 was assessed in respect of that property as follows

Ground Floor	-	€110
First Floor	-	€90
Second Floor	-	€70

The Tribunal accepts the evidence of Mr Quinlan that the subject property has remained vacant as a consequence of its actual state. In the Tribunal's view the hypothetical tenant would not have taken a tenancy from year to year of the subject property on the valuation date in its actual state unless a 15% reduction was made from the rent. The rent should be further reduced by 5% to reflect that rental values on Great Georges Street would, in the Tribunal's view, be proportionally less than those in The Mall.

DETERMINATION

In view of the foregoing the Tribunal determines that the net annual value of the subject property is as set out below

Level	Use	Area (m ²)	€/ per sq. metre	NAV
O	Offices(s)	45.21	84.00	€ 3,797.64
1	Offices(s)	122.98	68.00	€ 8,362.64
2	Offices(s)	100.09	52.00	€ 5,204.68
-1	Store	28.34	24	€ 680.16
			Total NAV	€18,045.12

SAY €18,000