

Appeal No. VA04/1/022

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

**Appleyard Motors Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Showroom, Office & Workshop at Lot No. 1.2.5B/T15.T16.T17, Blackthorn,  
Dundrum Balally, County Dublin

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Frank O'Donnell - B.Agr.Sc. FIAVI.**

**Member**

**Michael F. Lyng - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 1ST DAY OF SEPTEMBER, 2004**

By Notice of Appeal dated the 3rd day of March, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €85.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"Valuation excessive & inequitable, no regard has been had to VA02/2/067 Section 40 should apply."

## **Introduction**

1. This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper on the 26<sup>th</sup> of May 2004. At the hearing the appellant was represented by Mr. Owen Hickey, BL, instructed by Messrs Vincent & Beatty Solicitors, 67/68 Fitzwilliam Square, Dublin 2 and the respondent by Mr. James Devlin, BL, instructed by the Chief State Solicitor. Expert valuation evidence was given by Ms. Sheelagh O Buachalla, BA, A.S.C.S, a director of GVA Donal O Buachalla and Mr. Christopher Hicks, a valuer in the Valuation Office, on behalf of the appellant and respondent respectively.

## **2. The Property**

The property concerned is a former end of terrace warehouse converted to a car sales showroom together with office, canteen, parts store and workshop. The property is located in the Stillorgan Industrial Park at the junction of Maple Avenue and Blackthorn Drive. Access to the property is on Maple Avenue.

## **3. Rating History**

A revision of the rateable valuation of the property concerned was fixed at €85. No change was made at first appeal stage and it is against this decision that the appeal to this Tribunal lies.

## **4. The Appellant's Evidence.**

Mr. Graham Sedgwick, the Chairman of the appellant company, gave evidence in relation to the history and the operation of his company's business in Stillorgan Industrial Park. Appleyard, he said, first opened in Stillorgan in 1985 and as the business developed the company kept moving to larger and better located premises within the estate. The property concerned was their fourth such premises and the company had moved in there about two years ago following considerable reconstruction and up-grading of what was previously a standard warehouse building. These works were necessary, Mr. Sedgwick said, in order to render the building suitable for car showroom purposes in line with prevailing market

standards. Since moving, he said, the traffic situation on Blackthorn Drive had deteriorated to such an extent that it was impacting on the efficient operation of his company's repair and service departments.

Ms. O Buachalla having taken the oath adopted her précis and valuation which had previously been received by the Tribunal as being her evidence-in-chief. In her evidence, Ms. O Buachalla contended for a rateable valuation of €628 calculated as set out below:

Ground floor showroom/offices	770.6 sq.metres @ €77= €59,336
1 <sup>st</sup> Floor canteen/ parts store	227.7 sq.metres @ €40= €9,110
1 <sup>st</sup> Floor offices	145.6 sq.metres @ €50= €7,282
Workshop	686 sq.metres @ €35= <u>€24,017</u>
 Total NAV	 €99,745 @ .63% = €628

Ms. O Buachalla said that in arriving at her opinion of Net Annual Value she had taken into account the fact that the subject property was essentially a converted warehouse and not a purpose-built modern car showroom facility. She also had regard to the restricted site area and the detrimental effect of the traffic congestion on Blackthorn Drive on the profile of the building and its ability to benefit from what would, in normal circumstances, be a good corner location.

In support of her opinion of value Ms. O Buachalla introduced details of five comparisons as set out in Appendix 1 attached to this judgment. Ms. O Buachalla said that she was also relying upon the finding of this Tribunal in the appeal **Stillorgan Renault v The Commissioner of Valuation (VA02/2/067)** and indeed went on to say that this comparison was probably the most relevant.

## 5. The Respondent's Evidence

Mr. Christopher Hicks having taken the oath adopted his précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief.

In his evidence Mr. Hicks contended for a rateable valuation of €85 calculated as set out below:

Ground floor showroom,		
ground & 1 <sup>st</sup> floor offices	1275.44 sq.metres@ €5.28	€21,524
Workshop	686.2 sq.metres@ €0.80	<u>€4,859</u>
NAV		€156,383
RV	@ 0.63%	€85.21

In support of his opinion of value Mr. Hicks introduced details of three comparisons as set out in Appendix 2 attached to this judgment.

Mr. Hicks said all his comparisons were similar in use to the subject property, all were originally typical warehouse buildings and occupied corner locations with frontage to Blackthorn Drive. Only the Saab premises (comparison A) had direct vehicular access onto Blackthorn Drive.

Under cross-examination Mr. Hicks said that the appellant had traded in Stillorgan for almost twenty years and ought therefore to have been aware of the traffic situation. Whilst he agreed that the traffic problem had deteriorated in recent times Mr. Hicks said that the position was temporary and would improve sometime in the near future when major ongoing road works in the area were completed.

Mr. Hicks agreed that the subject property was larger than any of his three comparisons but expressed the view that there was no good reason to make an

allowance for quantum. Mr Hicks said that all his comparisons were located nearby, were warehouse buildings converted to car showroom purposes and shared the same traffic problems as the subject property. In the circumstances there was no good reason to depart from the level of values established by the comparisons put forth by him.

In relation to the subject property Mr. Hicks explained the difference in areas between himself and Ms. O Buachalla. Ms. O Buachalla, he said, had excluded part of the mezzanine area which she said was used solely for access purposes. He, on the other hand, had valued approximately 130 sq.metres of the mezzanine space as it was used as offices and for customer services purposes.

## **6. Other Matters**

- A. In response to a question from Mr. Hickey, Mr. Hicks confirmed that he was the revision officer appointed by the Commissioner of Valuation pursuant to Section 28 of the Valuation Act, 2001. He also agreed that he had prepared a report at first appeal stage which was considered by the appeal valuer and his staff valuer before the decision was taken to make no change. Mr. Hicks said that he did not consider his action in this regard prejudicial to the outcome of the first appeal process.
- B. Following legal submissions by both parties the Tribunal said it would be prepared to accept further written submissions in relation to Mr. Hicks' evidence in this regard if the parties wished to avail of the opportunity.
- C. By a letter dated the 18<sup>th</sup> of June, 2004 a letter was received by the Tribunal from the Chief State Solicitor's Office to the effect that Mr. Hicks' true role in the appeal process had been misunderstood. The facts of the matter were as follows:
  - Mr. Hicks was the revision officer appointed pursuant to section 28.
  - At first appeal stage Mr. Hicks prepared a report (including a recommendation) which he forwarded to Mr. Seamus Connolly, a Staff Valuer, for his comments and recommendations.
  - In due course Mr. Patrick F. Cooney, the Appeal Officer, having considered the submission from Ms. O Buachalla on behalf of the

On the 21<sup>st</sup> of June 2004 the Tribunal received a written submission on behalf of the appellant from Mr. Owen Hickey, BL.

In his submission Mr. Hickey contended that for a revision officer appointed pursuant to section 28 of the Valuation Act, 2001 to have a role in an appeal to the Commissioner of Valuation pursuant to section 30 of the Act would be a breach of the principle of natural and constitutional justice and in particular the principle “*nemo iudex in causa sua*”. Accordingly Mr. Hickey submitted that the Valuation Tribunal should attach no weight to Mr. Hicks’ evidence on the basis that such evidence was biased.

On the 25<sup>th</sup> of June 2004 the Tribunal received a letter from Messrs Vincent and Beatty, Solicitors, acting on behalf of the appellant in response to the letter from the Chief State Solicitor.

Messrs Vincent and Beatty, in their letter, contended that it was unfair for Mr. Cooney to take a decision as the appeal officer based on a report and recommendation prepared by Mr. Hicks given the fact that he was the original revision officer. The fact that Mr. Hicks’ report may have been supplemented by comments and or recommendations made by Mr. Seamus Connolly, Mr. Hicks’ Staff Valuer, did not alter the underlying situation.

Messrs Vincent and Beatty also contended that Mr. Cooney could not have been in a position to make any decision at first appeal stage unless he himself had inspected the property. As the ultimate decision at first appeal stage was taken by Mr. Cooney it was inappropriate for anyone other than Mr. Cooney to appear at the Tribunal to give evidence in relation to that decision. In support of this

argument the Tribunal was referred to the judgment of the Valuation Tribunal in the case of **Courts Limited. v The Commissioner of Valuation VA98/3/070** wherein the Tribunal made the observation that an expert witness appearing on behalf of the respondent must be “in a position personally, to stand over, support and under-pin the results declared at first appeal stage”.

## **Decision**

### **The Preliminary Issue.**

The Valuation Act, 2001 which came into effect on the 2<sup>nd</sup> of May 2002 repealed (with one minor exception) all the then existing statutory provisions relating to the valuation of property for rating purposes. The 2001 Act introduced new procedures for the revision and first appeal processes. These new procedures did not replicate the requirement under the repealed enactments that the valuer at first appeal stage must not be the valuer who made the original valuation (see section 20 Valuation (Ireland) Act, 1852).

In relation to this appeal the following provisions of the 2001 Act are relevant to the issue in dispute;-

a) Section 11

*(1) The Commissioner may delegate in writing a specified function of the Commissioner under this Act to any officer of the Commissioner.*

*(2) Where a function is delegated under subsection (1), the officer concerned shall perform the function under the general direction and subject to the general control of the Commissioner and in accordance with such (if any) limitations as may be specified in the delegation in relation to the area or period in which or the extent to which he or she is to perform the function.*

*(3) Any function, when performed by an officer to whom it has been delegated under this section, shall be deemed to have been performed by the Commissioner.*

(4) *A delegation under this section may relate to the performance generally of a function or to the performance of a function in a particular case or class of case or in relation to property in a particular area.*

(5) *The Commissioner may revoke a delegation under this section at any time either generally or in relation to a particular case or class of case or in relation to property in a particular area.*

(6) *Where, as respects a particular case or class of case, a delegation of a function is revoked at a time when the function has not been fully performed, the Commissioner himself or herself or another officer of the Commissioner to whom a delegation in respect of that function has been made under this section may continue the performance of the function as respects the case or class of case.*

(7) *The Minister may give such general directions in writing to the Commissioner in relation to the exercise of his or her powers under this section as the Minister considers appropriate and the Commissioner shall comply with any such directions.*

(8) *Subsection (7) shall not be construed as enabling the Minister to exercise any power or control in relation to the exercise in particular circumstances by the Commissioner of his or her powers under this section.*

b) Section 28;-

(1) *In this section "property concerned" means a property in relation to which a person, by virtue of his or her appointment under this section, is entitled to exercise the powers conferred by this section.*

(2) *The Commissioner may of his or her own volition appoint an officer of the Commissioner to exercise, in relation to such one or more properties as the Commissioner considers appropriate, the powers expressed by this section to be exercisable by a revision officer, and such an officer who is so appointed is referred to in this Act as a "revision officer".*

(3) *If an application under section 27 is made to the Commissioner, the Commissioner shall appoint an officer of the Commissioner to exercise, in relation to the property or properties to which the application relates, the powers expressed by this section to be exercisable by a revision officer, and such an officer who is so appointed is also referred to in this Act as a "revision officer".*

(4) *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 situate 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,*

*(b) if that property does not appear on the said valuation list and it is relevant property (other than relevant property falling within Schedule 4 or to which an order under section 53 relates), do both of the following—*

- (i) carry out a valuation of that property, and*
- (ii) include that property on the list together with its value as determined on foot of that valuation.*

*(5) A revision officer shall, if the property concerned is property that has been the subject of an application under section 27, within 6 months from the date of his or her appointment under subsection (3) in respect of that application—*

*(a) make a decision as to whether the circumstances referred to in subsection (4) exist for the exercise by him or her of the powers under that subsection in relation to that property,*

*(b) if he or she decides that those circumstances do exist, exercise those powers in relation to that property accordingly.*

*(6) If a revision officer exercises, in relation to the property concerned, any of the powers under subparagraph (i) or (iii) of paragraph (a), or paragraph (b) of subsection (4), he or she shall issue to the occupier of that property and to the rating authority in whose area the property is situate a new valuation certificate or, as the case may be, a valuation certificate in relation to the property.*

*(7) If a revision officer exercises, in relation to the property concerned, the powers under subsection (4)(a)(ii), he or she shall issue to the occupier of that property and to the rating authority in whose area the property is situate a notice indicating the manner in which those powers have been exercised in relation to that property.*

(8) *A certificate under subsection (6) or a notice under subsection (7) shall be issued no later than 7 days before the relevant amendment to the valuation list under subsection (10) is made.*

(9) *If a revision officer decides that the circumstances referred to in subsection (4) do not exist for the exercise of the powers under that subsection in relation to a property referred to in subsection (5) he or she shall, forthwith after the making of that decision, issue to the person or as the case may be, each person who applied for his or her appointment under subsection (3) in respect of the property a notice of the decision.*

(10) *The revision officer concerned shall amend the relevant valuation list in the appropriate manner to take account of the exercise by him or her of the powers under subsection (4) in relation to a property.*

(11) *Without prejudice to the preceding provisions of this section, the Commissioner may, at any time, amend a valuation list so as to—*

*(a) correct any clerical error therein, or*

*(b) amend any other detail appearing on the list that in the opinion of the Commissioner is inaccurate (other than the valuation of any property).*

(12) *The Commissioner may also, at any time, amend a valuation list so as to take account of any alteration in a boundary that is made under or by virtue of any enactment.*

(13) *If the Commissioner exercises any of the powers under subsection (11) or (12) he or she shall, as soon as may be after the occasion concerned of their being exercised, issue to each occupier of a property that is affected by such exercise and to the rating authority in whose area that property is situate a new valuation certificate in relation to that property.*

(14) *An amendment of a valuation list made under subsection (10), (11) or (12) shall have full force, from the date of its making, for the purposes of the rating authority concerned making a rate in relation to the property concerned by reference to that list as so amended.*

(15) *Where—*

*(a) an amount of monies is paid on account of a rate made in respect of a property, and*

*(b) it appears, consequent on an amendment of the value of the property made pursuant to an exercise of the powers under this section, that that payment involved an overpayment or an underpayment of the amount due in respect of such a rate,*

*then the balance owing or owed, as the case may be, to or by the person concerned may be paid or recovered, as appropriate—*

*(i) in the case of an overpayment, by making a refund to the person concerned of an amount equal to that balance or allowing an amount equal to that balance as a credit against the amount owed by the person concerned on account of a rate made in respect of that or any other property, and*

*(ii) in the case of an underpayment, by recovering from the person concerned an amount equal to that balance as arrears of the rate concerned (and, accordingly, any of the means provided under any enactment for the recovery of a rate may be employed for that purpose).*

c) Section 33

*33.-(1) In this section "the appeal" means an appeal made to the Commissioner under section 30.*

*(2) The Commissioner shall consider the appeal and may, as he or she thinks appropriate-*

*(a) disallow the appeal, or*

*(b) allow the appeal and, accordingly, do whichever of the following is appropriate-*

*(i) amend the value of, or any other detail in relation to, the property, the subject of the appeal, as stated in the relevant valuation list and, accordingly, issue a new valuation certificate in relation to the property to-*

*(I) the occupier of the property,*

*(II) the rating authority in whose area the property is situate, and (III) if the said occupier or authority is not the appellant, or is not the only appellant, to the appellant or each other appellant, as the case may be,*

*(ii) decide that the property, the subject of the appeal, ought to be included in, or, as the case may be, ought to be excluded from, the relevant valuation list and-*

*(I) in the case of a decision that the property ought to be so included-*

*(A) determine the value of the property, and*

*(B) issue a valuation certificate in relation to the property to each of the persons referred to in subparagraph (i),*

*II) in the case of a decision that the property ought to be so excluded, notify each of the persons referred to in subparagraph (i) of that decision,*

*(iii) amend any detail in relation to the property, the subject of the appeal, stated in the relevant notice under section 28(7) and, accordingly, notify each of the persons referred to in subparagraph (i) of that amendment.*

*(3) For the avoidance of doubt, the cases in which the powers under subsection (2)(b) are exercisable include the case where the Commissioner allows an appeal against a decision of a revision officer referred to in section 30(1)(v).*

*(4) As soon as may be, but not earlier than 7 days, after the Commissioner has issued a valuation certificate under subsection (2) or made a notification under that subsection, he or she shall amend the relevant valuation list in a manner consonant with his or her decision to issue that certificate or make that notification.*

*(5) The Commissioner may employ such procedures as he or she considers appropriate for the purposes of the consideration of the appeal.*

*(6) The Commissioner shall make a decision on the appeal within 6 months from the date of his or her having received the appeal.*

It should be noted that under Section 33(5) *“The Commissioner may employ such procedures as he or she considers appropriate for the purposes of the consideration of the appeal.”* Presumably under section 11(1) the Commissioner may delegate his functions under section 3 to an officer of the Commissioner known as the appeal officer although there is no mention of such a person anywhere in the 2001 Act. Whilst there is no express provision in the Act as to how the first appeal process should be managed it would, in the Tribunal’s opinion, render the appeal process more transparent if the original revision officer was not involved. However, this comment is not to be construed as impugning Mr. Hicks’ role in this appeal. Mr. Hicks is a valuer of some considerable experience who has given evidence to this Tribunal on many occasions. When appearing before the Tribunal Mr. Hicks is fully aware of his responsibilities as an expert witness and that any opinion expressed by him thereat must be honestly held and free from bias.

At the oral hearing Mr. Hicks was specifically asked by the Tribunal if the opinion of value contended for by him was his opinion and his alone. Mr. Hicks answered in the affirmative. In the circumstances therefore the Tribunal has no difficulty in accepting Mr.

Hicks' evidence at face value. Nonetheless the Tribunal stands by its earlier comment that it would be better if the revision officer had no involvement in the first appeal process.

## **Quantum**

The Tribunal has carefully considered all the evidence adduced by the valuers. The Tribunal has also had regard to the judgments of the Tribunal in cases **Stillorgan Renault v The Commissioner of Valuation (VA02/2/067)** and **Alo Kavanagh Cars v The Commissioner of Valuation (VA01/2/030)**. In light of the above the Tribunal makes the following findings.

1. The most relevant comparisons are those motor showrooms located on Blackthorn Road all of which are converted warehouse buildings and are similar in category and mode of use.
2. Due to the development activity in Sandyford Industrial Estate and the adjoining Stillorgan Industrial Park the level of traffic activity has grown due to the increase in the numbers of people employed there. Whether the underlying problem will be ameliorated with the completion of the major road works in the area nearby and the introduction of LUAS only time will tell. What impact traffic situation has on the letting value of car showrooms is difficult to say and neither valuer made any attempt to quantify what it might be.
3. The Tribunal is of the view that the mezzanine space used as offices and for customer care purposes (area 130 sq.metres) should be valued.
4. Accordingly therefore the Tribunal determines that the rateable valuation of the property concerned in accordance with the provisions of the Valuation Act 2001 is €756 calculated as set out:

Ground Floor, Showroom/Offices 770.6 sq.metres @ €5.71	= €6,048
Workshop 686 sq.metres @ €4.44	=€30,486
First Floor Offices 140.5 sq.metres @ €5	=€8008
First Floor Canteen/ Parts Store 227.7 sq.metres @ €45	=€10246
Mezzanine space 130 sq.metres @ €35	<u>=€4550</u>
NAV	=€19,337
Say €120,000	
Rateable Valuation @ 0.63%	=€756