

Appeal No. VA04/1/023

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

**BUY4NOW**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Offices at Lot No. Beacon Court 9 (Flr. 0,1,2) The Mall, Balally, 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 2nd day of March, 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €195.00 on the above described relevant property.

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

"On the basis that the RV is excessive inequitable and bad in law."

### 1. Introduction

At a preliminary meeting with representatives of the parties to these appeals held on the 26<sup>th</sup> May, 2004 it was agreed that evidence and submissions would be given in respect of the property occupied by **Buy 4 Now (VA04/1/023)** and that the levels of value determined in this appeal in regard to the office accommodation and car parking spaces by the Tribunal would form the basis for arriving at the valuations of the other nine properties under appeal.

### 2. The Oral Hearing

The oral hearing was held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 20<sup>th</sup> of July 2004. Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI, appeared on behalf of the appellant The respondent was represented by Mr. Christopher Hicks, a Valuer in the Valuation Office.

### 3. Background

The development known as Beacon Court was listed for revision by Dun Laoghaire Rathdown County Council and in January 2003 Mr. Hicks was appointed as the revision officer by the Commissioner of Valuation pursuant to Section 28 of the Valuation Act, 2001. In July 2003 Valuation Certificates were issued in respect of 38 properties in those sections of the Beacon Court development known as The Mall and The Avenue. In particular certificates were issued in respect of the properties the subjects of these appeals as follows:

<b>Appeal Reference No.</b>	<b>Occupier</b>	<b>Rateable Valuation</b>
VA04/1/023	Buy4Now	€95
VA04/1/034	SINI Group Ltd.	€202
VA04/1/036	Cathal O'Sullivan	€96
VA04/1/025	Mortgages Direct Ltd.	€248
VA04/1/041	Tony Fitzpatrick	€95
VA04/1/038	Agar Estates	€242
VA04/1/043	Keyline Products Ltd.	€94
VA04/1/044	John Paul Construction	€95
VA04/1/018	T W & P Morrissey	€207
VA04/1/019	O'Brien Textiles	€95

An appeal in respect of each of the above assessments was lodged and in each instance the Commissioner of Valuation affirmed the valuation as determined at revision stage. It is against these decisions by the Commissioner that the appeals to this Tribunal now lie.

#### 4. Beacon Court

All of the properties under appeal are located in a new development known as Beacon Court which is located in the Sandyford Industrial Estate at the junction of Blackthorn Avenue and Blackthorn Road. Over the past several years a number of office developments have been built in Sandyford and it is now one of the most important out of town office locations in the greater Dublin area.

The Beacon Court development when completed will provide a number of office buildings together with a private hospital and clinic, hotel, crèche and extensive car parking at basement level. The properties which are the subject matter of these appeals are all located in that section of the Beacon Court development known as The Mall. The Mall as designed comprises 27 individual three-storey office buildings arranged around an enclosed courtyard. Each building in The Mall has its own separate entrance off the courtyard and is so designed that it is capable of occupation on a floor-by-floor basis or in combination in order to meet incoming occupiers' specific space requirements. Beacon Court has been designed, constructed and finished to a high standard specification. None of the buildings in The Mall and The Avenue have the benefit of a lift or raised access floors. All the buildings in The Mall are identical in construction, design, internal layout and finish.

#### 5. The Appellant's Evidence

Prior to the oral hearing the Tribunal received written submissions and valuations prepared by Mr. Eamonn Halpin which were subsequently received into evidence at the hearing.

In evidence Mr. Halpin contended for a rateable valuation of €165 in respect of the property occupied by **Buy4Now (VA04/1/023)** calculated as set out below:

Ground Floor 67.63 sq.metres @ 120 per sq.metre	8,115.60
1 <sup>st</sup> Floor 80.32 sq.metres @ €109 per sq.metre	8,754.88
2 <sup>nd</sup> Floor 84.31 sq.metre @ €88 per sq.metre	<u>7,419.28</u>
Total 232.26 sq.metres	24,290.00

+ 8 Cars @ €54q	<u>2,032.00</u>
Total NAV	26,322.00
RV @ 0.63%	165.82
Say	€165

Or

Net area 232.26 sq.metres @ 102.50 per sq.metre	€23,809.00
8 Cars @ €254	<u>€2,032.00</u>
	€25,841.00
RV @0.63%	€162.80
Say	€163

In support of his opinion of value Mr. Halpin introduced details of nine comparisons as set out in Appendix 1 attached to this judgment.

Mr. Halpin said that in his opinion the level of assessments in Beacon Court was excessive and not supported by the valuation of comparable properties in the surrounding area many of which had the benefit of lifts and raised access floors. He also expressed the view that the respondent's valuation methodology was flawed on two grounds- firstly, he was of the opinion that a lower rate per sq.metre should be applied to the office accommodation at first and second floor levels and, secondly, that there was no justification for valuing the smaller office units at a higher rate per sq.metre than that applied to an entire building having an area of circa. 240 sq.metres.

Mr. Halpin said that the Beacon Court development was an attractive development but far from ideal in use. The occupiers of The Mall and The Avenue he said were subject to quite restrictive management rules regarding signage and other matters. Furthermore the service charge was higher than normal due to the enclosed nature of The Mall and the costs associated with the heating and maintenance of the common areas.

In regard to the respondent's comparisons Mr. Halpin expressed the view that the evidence of other properties in Beacon Court valued at the same time as those under appeal and which were not themselves appealed should be disregarded.

Under cross-examination Mr. Halpin agreed that virtually all the office units in Beacon Court were owner-occupied and consequently there was no rental evidence available. That being the case he agreed that the most appropriate method of valuation to use was the comparative method. Mr. Halpin further agreed that the respondent's comparisons (other than those in Beacon Court) were in the main, located close to Beacon Court. However, Mr. Halpin again expressed his objection to the inclusion of comparable evidence drawn from Beacon Court itself at this stage in the appeal process.

## **6. The Respondent's Evidence**

Mr. Hicks in evidence said that when he was appointed as the revision officer for the Beacon Court development he could find no evidence of rental value as the various offices were owner-occupied. In the circumstances he had carried out an analysis of the valuations of other buildings in the Sandyford Industrial Estate area in order to arrive at what he considered to be the appropriate rate per sq.metre to apply to the office accommodation. In all he valued 38 separate office units in Beacon Court at the revision stage and of these 16 were the subject of appeals to the Commissioner of Valuation who subsequently took the decision to make no change in each instance. Following his decision the 16 appellants lodged further appeals to the Valuation Tribunal.

Mr. Hicks said that in his opinion the 22 unchallenged assessments in relation to Beacon Court currently in the valuation list constituted prime comparative evidence in support of his valuation now before the Tribunal. The other evidence drawn from the Sandyford Industrial Estate and other developments in the vicinity area also supported his opinion of value.

Beacon Court, Mr. Hicks said, was a unique development and the underlying design concept was to provide own door type office accommodation built to a high standard of design, specification and finish. Sandyford was an established and successful out-of-town office location. These are all factors which ought to be taken into account when arriving at the appropriate level of assessment.

At the hearing Mr. Hicks amended his valuation previously submitted to the Tribunal in respect of the Buy4Now premises (VA04/1/023) as set out below:

Offices 232.26 sq.metres @ €125 per sq.metre = €29,032.50

Car Spaces 8 @ €17.43	=€2539.44
Net Annual Value	=€1,572.94
Rateable valuation @ .63%	=€199

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

Under cross-examination Mr. Hicks confirmed that at first appeal stage he had prepared a report, including a recommendation in respect of all the appeals in Beacon Court which he had submitted to his staff valuer. This report, he understood, formed part of the documentation considered by the Commissioner of Valuation before he took the decision to make no change. Mr. Hicks confirmed that under the 2001 Act the Commissioner could only alter the valuation of a property under appeal and had no power to amend the valuation of similar properties not under appeal even if they were in the same scheme of development. Mr. Hicks said that he did not believe this restriction was a factor in the Commissioner's decision not to alter the valuation of those properties in Beacon Court which had been appealed.

When asked why he had applied a higher rate per sq.metre to those offices which consisted of one floor only, Mr. Hicks said he felt such action was in accord with good current valuation practice. He was also of the opinion that tenants would pay a premium over and above the norm for small units of occupation. Mr. Hicks was also of the opinion, that, in general, incoming tenants would not expect to pay a lower rent for office accommodation at first and second floor levels without the benefit of a lift. As far as he was concerned the accommodation at all levels was of equal value. In any event Mr. Hicks said that there was no evidence of rental value in Beacon Court to support or undermine his opinion in this regard.

### **Findings**

The Tribunal has carefully considered all the evidence both oral and written submitted by the parties and the arguments adduced and makes the following findings:

1. Over the past several years Sandyford Industrial Estate has become a major out of town office location. To that extent there is a substantial body of comparative evidence available in the Sandyford Industrial Estate vicinity.

2. Beacon Court is a somewhat unique mixed development scheme which by common consent has been constructed and finished to a high standard. The buildings in The Mall and in The Avenue sections of the development have been designed and tailored to meet the demands of small space users. The design of the individual buildings provides a floor plate of 75 to 80 sq.metres at three levels and each building is capable of single occupation or on a floor by floor basis so as to meet incoming occupiers' requirements. The scale and nature of the Beacon Court development is such that occupiers, be they owner-occupiers or tenants would anticipate that a service charge arrangement would be in place to meet the cost of providing a range of common services including heating and lighting of the common areas, ongoing site maintenance and security etc.
3. In relation to the evidence submitted there are four questions to be answered by the Tribunal each of which will have a bearing on the outcome of these appeals. The questions to be answered may be summarised as follows:
  - a. Does the evidence given by Mr. Hicks in relation to other properties in the Beacon Court development valued at the same time as those which are the subject of these appeals and which were not themselves appealed constitute part of the tone-of-the-list as that expression is understood in rating parlance?
  - b. Are the base levels of €125 per sq.metre and €17.42 per car parking space as contended for by Mr. Hicks fair and reasonable having regard to the provisions of the Valuation Act, 2001?
  - c. Was Mr. Hicks correct in applying a premium value over and above the base level of assessment to those office units containing one or two floors only?
  - d. Should there be a differential in the level of assessments for ground, first and second floor levels having regard to the absence of a lift as contended for by the appellants?
4. It is common case that the most appropriate method of valuation in so far as these appeals are concerned is the comparative method. Such an approach is in accordance with Section 49(1) of the Valuation Act, 2001 which inter alia states:

*“that a determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority as that property is situate in, of other properties comparable to that property.”*
5. Obviously what constitutes relevant comparative evidence of value is a subjective exercise and the valuer's task is rendered more difficult by the fact that property by its

very nature is not homogenous. Accordingly adjustments have to be made to reflect the characteristics, both positive and negative, such as location, scale, quality of finish etc. which would have a bearing on hypothetical rental value. Obviously the greater the similarity to the property being valued the more relevant will be the evidence. The evidence of comparables put forward by the valuers in all of these appeals is wide-ranging in terms of size and location and (with the exception of the office in Beacon Court put forward by Mr. Hicks) contained few which are strictly comparable in terms of size and nature to those which are the subject of these appeals.

6. In relation to the Beacon Court evidence the Tribunal finds that Mr. Hicks was fully entitled to put it forward for consideration by the Tribunal. That being said, however, it is somewhat in the nature of a self-proving exercise and consequently must therefore be treated with a certain degree of caution.
7. Section 63(1) of the Valuation Act, 2001 which came into effect on the 2nd of May 2002 states:

*(1)“The statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act.”*

In effect therefore the onus is on the appellant to prove that the valuation under appeal is incorrect. Having carefully considered all the evidence adduced the Tribunal finds that the appellant in the Buy4Now case has not succeeded in so doing and accordingly the Tribunal finds that the valuation contended for by the respondent is fair and reasonable having regard to the provisions of the 2001 Act. The Tribunal is conscious that the amended valuation put forward by Mr. Hicks at the hearing was €199 based on the Net Annual Value of €1,572. In the circumstances of this appeal the Tribunal has decided to round this figure down to €1,000 thus giving a rateable valuation of €195.

8. In regard to whether or not Mr. Hicks was correct in applying a premium value over and above €125 per sq.metre for smaller units the Tribunal in absence of any empirical evidence by way of actual rental values or capital costs finds for the appellant. In any event having regard to the relative small size of the offices under appeal it would be hard to sustain an argument that a premium or quantum allowance should be made. Quantum in normal circumstances is allowed in those instances where the property concerned is quite large and an incoming tenant would not expect to pay a rent proportional to that charged for much smaller premises.

9. The appellants in these appeals argued that there should be a differential in the rate per sq.metre applied to the ground, first and second floors to reflect the absence of a lift. Once again in the absence of evidence to support this contention the Tribunal does not propose to make any such differential particularly in the light of the evidence to the fact that price paid for the property the subject of appeal reference numbers VA04/1/039 and VA04/1/040 was more or less the same.

### **Determination**

Having regard to the foregoing the Tribunal determines as follows:

1. That the rateable valuation of the property occupied by Buy4Now VA04/1/023 be affirmed at €195;
2. That the rateable valuation of the other properties the subject matter of the nine other appeals as listed at paragraph 3 of this judgment be determined by applying a uniform sq. metre rate of €125 to the office accommodation and €317.43 per each car parking space.
3. The Tribunal recommends that the Commissioner of Valuation exercise his powers under Section 40 of the Valuation Act, 2001 in respect of the other properties of Beacon Court which in the light of the above are similarly circumstanced.