

Appeal No. VA06/2/085

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

Daniel Gormley

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s), Yard at Lot No. 46, Glaslough Street, Roosky, Monaghan Urban, Monaghan UD, County Monaghan

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Joseph Murray - B.L.

Member

Patrick Riney - FSCS FRICS FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF DECEMBER, 2006

By Notice of Appeal dated the 19th day of June, 2006 the appellant appealed against the decision of the Commissioner of Valuation in fixing a rateable valuation of €2.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal and in a letter attached thereto, copies of which are in Appendix 1 attached to this judgment.

The appeal proceeded by way of an oral hearing which was held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 19th October, 2006. The appellant was represented by Ms. Margaret Nerney, SC, instructed by the appellant, Mr. Daniel Gormley, Solicitor with Mr. Patrick Nerney, B.E. Chtd. Eng. MIEI, MIAVI. The respondent was represented by Mr. Brendan Conway, BL, instructed by the Chief State Solicitor's Office with Mr. Damien Curran, MRICS, ASCS, BSc (Surv), a Staff Valuer in the Valuation Office. Prior to the hearing the parties had exchanged, and submitted to the Tribunal, their précis of quantum evidence and legal submissions.

The Property

The property, which is located in the centre of Monaghan on Glaslough Street, comprises mainly two storey over basement terraced offices. The original front section is converted residential property and there is a new three-storey extension to the rear.

Tenure

The property is understood to be freehold.

Valuation History

The property was previously valued in 1997 at RV €29.20. It was revised in 2005 at €63 which was reduced to €62 at First Appeal to take account of an adjustment in the area of the first floor.

The Legal Issue

At the outset Ms Nerney, SC, made a legal submission that no written notice of inspection had been served by the Commissioner on the appellant prior to his inspection. This, she maintained, was a requirement of Section 47 of the Valuation Act 2001. She said such notice must be served 3 days prior to inspection. No such notice was served. Monaghan County Council notified the appellant that in due course a valuer from the Valuation Office would carry out an inspection.

Mr. Brendan Conway B.L., for the respondent, said that there was no requirement under Section 47 of the Act of 2001 to serve any notice. This was not what the Act stated. He mentioned that a 3-day notice was required pursuant to Section 47 only where entry had initially been refused by the occupier. In this case entry was granted to the valuer when he

called to carry out the inspection. It was not therefore necessary for the Commissioner to notify the appellant of his intention to carry out an inspection.

The Quantum Issue

Appellant's Case

Mr. Patrick Nerney, having taken the oath adopted his précis as his evidence-in-chief. He stated that he had carried out an inspection of the premises in December 2005. He found a number of factors which, he said, adversely affected the value of the subject premises.

- (i) The premises had a relatively short frontage to Glaslough Street.
- (ii) The adjoining building on the south side, No. 74, had been vacant for 13 years and was not in good condition, the floors were gone and the premises was locked up.
- (iii) The adjoining premises on the north side was occupied by the Masonic Order and was not used for any business or commercial purpose. The front of these premises protruded out about 6¹/₂ feet beyond the front line of the subject premises resulting in its being completely obscured from the view of approaching traffic. The traffic movement in Glaslough Street is one way and flows in a southerly direction.
- (iv) Access to the ground floor is via a flight of steps as illustrated in the photographs contained in his précis. The ground floor is at a higher level than that of Glaslough Street. A "half floor" might be a more apt description for the ground floor of the premises.
- (v) The new extension at the rear of the premises had resulted in a loss of natural light to the rear of the original building at the basement, ground floor and first floor levels – the back windows of the original building had been abolished.
- (vi) The file store and toilet on the first floor did not have any natural light.

He estimated a figure of €35 calculated as set out hereunder as a fair valuation.

Basement staff room and stores	44.41 sq. m.	@ €25	= €1,332
Gd floor reception, waiting room and office	53.52 sq. m.	@ €75	= €4014
First floor offices	42.00 sq. m.	@ €37.50	= €1,575
First floor files store	8.00 sq. m	@ €30	= €240
Nett Annual Value		€7,161 @ 0.5% = RV	€35

He introduced the following four comparisons in his précis, particulars of which are set out at Appendix 2 hereto:

- No. 1 – David O'Connor at No. 28 Glaslough Street was a 1994 revision and the ground floor area was less than half the ground floor of the subject premises.
- No. 2 - Dr. Kieran Burke, 52 Glaslough Street, was also a 1994 revision. These premises were fairly similar in appearance to the subject premises except that the ground floor was level with the street and the front of the building was not set back from that of the adjoining building. It was about half the size of the subject premises at ground floor level.
- No. 3 – Elizabeth M Todd, 54, Glaslough Street was also valued in 1994 at revision stage and was about half the size of the subject premises. It was valued as residential. He said that a shop window had been fitted and it was superior to the subject premises.
- No. 4 – F J Coyle, The Mall, Glaslough Street was a new building and was situated at the back of the Mall. It was used by a civil engineer. The premises was purpose built, well laid out and overlooked part of a public car park.

He said he opted for a rate per sq. metre between Burke's and Todd's.

Cross-examined by Mr. Conway, Mr. Nerney said that David O'Connor's premises was overvalued at €136.67 per sq. metre for the ground floor. He had taken a figure of €75 per sq. metre for the ground floor for the reasons already stated in his direct evidence. Mr. O'Connor's premises was much smaller than the subject premises.

In relation to his comparison No. 4 – F J Coyle – he said that this premises was new, located at the rear of the Mall, was purpose built and overlooked a car park. It also had good natural lighting and was of a regular shape.

He said that the levels per sq. metre applied to the first floor of each of his first three comparisons equated to 50% of the levels which had been applied to their ground floor areas whereas the level applied to the first floor of the subject premises was in the order of 90% of the level applied to its ground floor – i.e. €6 per sq. metre and €107 per sq. metre respectively.

Respondent's Case

Mr. Damien Curran, having taken the oath, adopted his précis as his evidence-in-chief. He said that the subject premises was two storey over basement, terraced offices with a modern, three storey extension added thereto at the rear. They were, he said, in good condition. He opted for an RV of €62 calculated as follows:

Gr. Floor	53.52 sq. m.	@ €107 per sq. m.	= €5,726.64
First Floor	50.00 sq. m.	@ €96 per sq. m.	= €4,800
Basement	44.41 sq. m.	@ €41 per sq. m.	= €1,820.81
Total NAV			= €12,347.45
Including car parking			
Measured net internally			
Rateable Valuation – Total NAV x 0.5% = €61.7 say €62			

He introduced three comparisons details of which are at Appendix 3 hereto. His comparisons No. 2 and No. 3 were the same as Mr. Nerney's comparisons No. 1 and No. 4. He said that, in his opinion, the 1997 valuation on the subject property was the most relevant comparison. He was satisfied that the subject premises had adequate lighting in the front and rear offices and that the stairwell had natural lighting.

Cross-examined by Ms Nerney he said that in forming his opinion of valuation he had made allowances for the matters mentioned by Mr. Nerney in his direct evidence (set out hereinbefore). He also said that the building was of superior quality to the original structure.

He said that Mr. F J Coyle's premises in the Mall was a relevant comparison even though it was in a different location but he said that its location at the back of the Mall was inferior to that of the subject premises.

Findings and Determination

The Legal Issue

1. Section 47, subsection (1) of the Valuation Act 2001 deals with the power of an officer of the Commissioner to enter the relevant property of the occupier in order to carry out his or her functions. It is further stated that the officer of the Commissioner may:

“(a) enter on that property, and

(b) if it is necessary in order to so enter on that property or to survey or carry out a valuation thereof, enter on any other property.”

Subsection 2 of section 47 sets out the conditions under which the power of entry may be executed. The provision states as follows:

“An officer of the Commission shall not, without the consent of the occupier of the property, exercise the powers under subsection (1) in relation to a property referred to in paragraph (a) or (b) of that subsection unless, at least 3 days before the date on which he or she intends to exercise those powers, he or she serves on the occupier of the property a notice of that intention.”

An officer of the Commissioner shall not enter upon the relevant property without the consent of the occupier. However, it does appear that the consent of the occupier is not absolute. The key word in this provision is the word “unless”. In other words, if the revision or valuation officer cannot enter the property because consent to do so has been withheld by the occupier then he or she must give at least 3 days notice to the occupier before the date on which he or she intends to carry out his or her functions as an officer of the Commissioner. (Moreover, this interpretation is supported by the Explanatory and Financial Memorandum of the Valuation Bill 2000).

We also note under subsection 3 of Section 47 that any person who obstructs an officer of the Commissioner in the exercise of his or her powers shall be guilty of an offence.

Appellant’s Case and Section 47

The appellants submitted that the Commissioner for Valuation was in breach of section 47 in not giving 3 days’ notice to the occupier/appellant as he is required to do under subsection 2. They further submitted that this was such a fundamental non compliance with the section that it amounted to “exceptional circumstances” whereby a further ground of appeal could be made before the Tribunal.

The Tribunal interprets Section 47 as stated above, i.e. that 3 days’ notice is required only where entry is initially refused by the occupier. No evidence was produced before the Tribunal that entry was initially refused whereby 3 days’ notice would be required.

Accordingly, we find in favour of the Commissioner that there was no non compliance with section 47 of the Valuation Act 2001 on his part and the issue of exceptional circumstances giving rise to a new ground of appeal does not arise.

The appellant further submitted that the Commissioner incorrectly addressed the appellant as a non-existent entity namely “Daniel Gormley Ltd” instead of Daniel Gormley and Company. This the Tribunal regards as a trivial matter for rating law purposes as it is clear to the Tribunal that Daniel Gormley trading as Daniel Gormley and Company is clearly in occupation. We apply the legal principle “*de minimis non curat lex*” - the law does not concern itself with trifles.

The Quantum Issue

2. The premises has a short frontage to Glaslough Street and is bounded on the south by a vacant and derelict building and on the north by the Masonic Lodge, a premises not used for any business or commercial purpose. In addition this adjoining premises protrudes out about 6¹/₂ feet beyond the front line of the subject premises resulting in its being obscured from the view of the approaching traffic which is one way in a southerly direction.
3. Access to the subject premises is via a flight of steps which run parallel to the street and as a result the ground floor is on a higher level than that of the adjoining street.
4. The new extension to the rear of the subject premises has resulted in a loss of light to the rear of the old building at all levels. The file room, store and toilet have no natural light.

Determination

Having regard to the foregoing the Tribunal is satisfied that the valuation was carried out in accordance with the provisions of the Valuation Act 2001 and determines the rateable valuation to be €5 calculated as set out below:

Ground Floor	53.52 sq. metres	@ €6.30 per sq. metre	= €5,153.98
First floor	50 sq. metres	@ €86.40 per sq. metre	= €4,320.00
Basement	44.41 sq. metres	@ €32.80 per sq. metre	= <u>€1,456.65</u>
Total NAV			€10,930.63
			RV @ 0.5% = €4.65
		Say	RV €5

And the Tribunal so determines.