

Appeal No. VA06/3/043

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

Gleeson Interiors

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. 1B.2B. Unit E12 Ground Fl., Calmount Business Park,
Kilnamanagh, Tallaght Kilnamanagh, Tallaght East, County Dublin

B E F O R E

John Kerr - BBS. ASCS. MRICS. FIAVI

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF JANUARY, 2007

By Notice of Appeal dated the 2nd day of August, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €72.00 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 as assessed is excessive, inequitable and bad in law. Part of the property (as assessed) is not occupied by our clients and thus the RV is greater than it should be."

The appeal proceeded by way of an oral hearing which took place in the Offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 6th December, 2006. The Appellant was represented by Mr. Eamonn Halpin, B.Sc.(Surveying), A.S.C.S., M.R.I.C.S., M.I.A.V.I., and the Respondent by Mr. Damien Curran, B.Sc(Surveying), Dip.(Environmental Economics), M.R.I.C.S., a Staff Valuer with the Valuation Office.

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 Property

The property is described as a ground floor, end of terrace commercial unit, situated in the Calmount Business Park adjacent to Ballymount Road Lower, close to an intersection with the M50, in the South Dublin area of Tallaght. The unit is part of a large, mixed use Business Park which continues to be developed. The unit is finished to a good modern standard and occupied by an interior design consultant with much of the open floor plan used for fabric display and storage, and contains an office within.

As the respective written submissions, exchanged prior to hearing, indicated disagreement on the measured floor area of the subject relevant property, the Tribunal made contact with both the Appellant and the Respondent in this case and, on 27th November, 2006, received confirmation from both parties that the measured floor area was mutually agreed at 135 sq. metres. The result of this agreement was that both parties adjusted their respective NAV and RV calculations, with Mr. Curran advising that the RV figure being sought by the Commissioner of Valuation was now being reduced from €72 to €64 and Mr. Halpin, on behalf of the Appellant, confirmed that his client was now seeking an RV of €52, i.e. an increase of €7 on the figures noted in his précis.

As a further consequence of the agreement reached between the parties on the floor area calculations Mr. Halpin confirmed, prior to the commencement of the hearing, that the second Ground of Appeal noted above, was withdrawn by him on behalf of his client.

Tenure

No evidence was adduced by either party with respect to tenure.

Valuation History

This property was first revised in September 2005 and a Draft Valuation Certificate was issued on 27th October, 2005, with an RV of €72. Following representations received from the Appellant's Agent stating that part of the subject property was not occupied by his clients, a Final Certificate of Valuation was issued by the Commissioner of Valuation on 5th December, 2005, with an RV of €72. Gleeson Interiors, through their Agents Eamonn Halpin & Co. Ltd., filed an Appeal dated 12th January, 2006. Further information was provided to the Appeal Officer & Revision Officer on 3rd June, 2006, and on 7th July, 2006 the Commissioner of Valuation issued the result of the First Appeal with the RV unchanged at €72.

Without a change being effected by the Commissioner of Valuation on the Rateable Valuation figure of €72, the Appellant, again through its Agent, filed a Notice of Appeal to the Valuation Tribunal dated 2nd August, 2006, seeking a reduction in the Rateable Value.

Appellant's Case

Proceedings commenced when Mr. Halpin assumed his position in the stand, took the oath, formally adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission.

Mr. Halpin again confirmed the agreement reached on the floor area and, as a consequence, confirmed that item (i) under heading "Remedies sought" on page 4 of his submission, could accordingly be deleted. He also confirmed that item (vi) on page 6 under the heading "Appellant's case in relation to quantum" should be ignored. He further noted a spelling error in the name of the Calmount Park Industrial Estate on the first line of page 5, and three typographical errors on page 8 of his submission, adjusting his reference to VA02/2/053 to correctly read VA02/2/054 and vice versa on that page, and in his final Comparison property City West, the word "basis" to correctly read "based". He then provided a verbal summary of his submission contending that Calmount Park has a high office content in each of the buildings, and greatest in G block, where the office component represents 75% of the floor area. He stated that Calmount is a traditional industrial area, that Block E and Block F

therein were relevant to his case, being broadly similar to each other and to the subject relevant property. He acknowledged that the unit in this Appeal is well finished to modern standards but said that the Planning Permission granted was for use as a warehouse on the ground floor and office on the first floor, though the Planners in the Local Authority office appeared to be amenable to more commercial use on the warehouse ground floor area to include workshops with offices, provided those offices were ancillary to the office uses overhead. Again, reminding the Tribunal that the public generally regard Ballymount as an industrial area, he acknowledged that there are some modern office developments to be found there but said that the passing rents reflect an industrial influence, particularly when compared to rents being paid at City West.

Mr. Halpin summarised the location, details of the accommodation and history of the development in Calmount Park. He explained that, when development commenced in 1999, the initial units were considered high quality industrial with office component of approximately 50%, such offices finished to a high standard. At that time, he stated, the Commissioner of Valuation generally valued the offices at a rate of €60.95 per sq.metre, and the warehouse areas at €47.62 per sq. metre, the latter reduced where ceiling heights were compromised. He indicated that in later years, when Phase 3 of the development was advanced, three storey units with approximately 75% of gross floor areas dedicated to office use were added, again finished to a high standard, with lift service and both surface and underground parking, but the rate per sq. metre, on either office or ground floor, calculated by the Valuation Office did not change. He summarised his case, as follows:-

1. Moderate office location in established industrial area.
2. Ground Floor of the subject initially intended as storage/ancillary now includes part office area, which the planners had originally anticipated to be on the first floor.
3. Rental values are moderate in the Park and significantly below passing rents at City West and Kilcarbery Park.
4. The rate applied by the Commissioner of €75.17 per sq. metre is at variance with the established “tone of the list” for comparable properties.
5. The level applied by the Commissioner is excessive, being 23% higher than that set on the first floor office areas, which Mr. Halpin considered to be superior to the subject.
6. The type, nature and location of the premises and the relative values in Calmount Park do not justify what he considered as a premium applied in this case by the Commissioner.

Mr. Halpin offered a schedule of seven comparison properties on pages 7 and 8 of his summary, details of which are at Appendix 1 attached to this Judgment. Comparison No. 1 indicated office and warehouse rates per sq. metre set in a two storey structure in phase 3 of the Park, at €60.95 and €47.62 respectively. His second Comparison, being the one he considered most comparable, also in the Park, identified as Unit F4, also indicated that the office area had an applied rate to calculate the Net Annual Value, again at €60.95 per sq. metre, and similar rates on the office area of Unit G15 being his Comparison No. 4, wherein he noted the office area represented approximately 92% of the gross floor area of the building, and again the same rate as an example of a composite rate per sq. metre applicable to both Showroom and offices in the two storey unit, i.e. Comparison No. 5, Unit G14 in the Park. Mr. Halpin advised that none of the foregoing valuations had been subjected to Appeal to the Valuation Tribunal, whereas, his remaining two Comparison properties at Kilcarbery Park, Nangor Road, and City West, had been agreed on the basis of Valuation Tribunal test case **VA02/2/050** in one, and by agreement at First Appeal on 307.88 sq. metres of office area at €82 per sq. metre on the other, which he described as a superior, higher value unit in premier City West development off the Naas Road.

He concluded his submission by referring to his correspondence dated 27th November, 2006 to the Tribunal which provided an amendment to his opinion of Net Annual Value, which he was now calculating at a rate of €60.95 applied to the agreed floor area of 135 sq. metres, resulting in a requested Rateable Valuation figure of €2.00.

Cross-examination

Mr. Damien Curran then commenced cross-examination of Mr. Halpin, focusing his initial queries seeking clarification on the appropriate manner in which to describe the subject unit, to which Mr. Halpin would not agree that it should be considered as an office, but did concede that his précis contained reference to it as a commercial/office unit. Mr. Halpin, in reply to additional queries, stated that he considered the subject to be a ground floor unit, and the first floor to be a separate or independent property, confirming that the finish in the unit was to a good standard and that the agreed floor area was calculated on a Gross Internal Area basis, though the comparisons in his précis of evidence were measured for rating purposes, at the time, on a Gross External Area basis. Mr. Halpin also confirmed that none of the warehouses in Calmount Park had glass walls and accepted that the subject was an exception. He also confirmed, under further cross-examination, that Calmount Business Park itself

provided good comparisons for the exercise, particularly if the RVs had been subjected to the rigours of Appeal. He stated that some offices in Block G, in his opinion, were superior to the subject and had a lift service. Asked by Mr. Curran what benefit a lift could be to a ground floor property like the subject Mr. Halpin replied that it had to do with the style of the building. He would not accept the proposition put to him by Mr. Curran that the subject relevant property should be compared to other units, which are offices within the Park, as he considered the office element of the unit to be less than its primary use.

Respondent's Case

Mr. Curran then assumed his position in the stand, took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. In summarising his submission, he again confirmed that the floor area was agreed at 135 sq. metres calculated on a Gross Internal Area basis, which resulted in an RV of €64 (as amended). He stated that a vast number of units within the Park had mixed office/warehouse configurations and that there was a well-established "tone of the list" for same, which reflected adjustments for eave heights. He confirmed that the Commissioner had applied a rate of €60.95 per sq. metre to the offices in the mixed-use units in the Park.

However, he contended that the subject, when considered in its actual state, is a ground floor office unit. He then referred to his comparisons, attached hereto as Appendix 2, noting that the first three therein, all measured on a Gross External Area basis, referred to offices and not to mixed units. He declared that the Valuation Office had erred in the RV established on Comparison No. 3 of Mr. Halpin's submission, which he stated clearly was compared with and reflected a level per sq. metre applicable to another mixed use property, which Mr. Halpin described earlier during the hearing as a unit within Block E within the subject building and larger in area than the subject.

Cross-examination

Mr. Halpin then commenced cross-examination of Mr. Curran. He queried when the foregoing error came to light in the Valuation Office on the Rating of the first floor above the subject premises, in reply to which Mr. Curran indicated that he was not sure if it was when submissions were received from Mr. Halpin or possibly at the Representation Stage or Appeal Stage. Mr. Halpin queried how the other units in Calmount Park were rated, and in

particular Block E, to which Mr. Curran stated that they were treated as mixed-use units where they prevailed on a single floor, and offices where used as such.

Mr. Halpin declared that in Block F, being a two storey unit, the stores located at the ground floor therein, were revised at a rate of €41.90 per sq. metre and asked Mr. Curran if he would agree that the only difference between same and the subject relevant property was the ceiling and plastered walls featured in the latter. Mr. Curran, in reply, disagreed, contending that the subject property was not used as a store and considered its use to be more akin to a retail type unit. Mr. Curran would not accept that there existed a significant difference in the finish specifications between the subject unit in Block E and those in Block G. He acknowledged that he was not aware that the latter was fitted with raised access floors and stated that the units in Block G were rated differently as they were not considered as mixed-use units.

Findings

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

1. It would appear that there exists a range of values applied per sq. metre for stand-alone office space in Calmount Park from €76.18 to €80.
2. There appears to be agreement that the “tone of the list” in Calmount Park for office/mixed use is €60.95 per sq. metre.
3. Offices in Calmount Park are generally finished to a higher or enhanced specification, including the provision of lifts, raised access floors, ceilings, and in some cases, marble finish lobby floors.
4. The subject relevant property should not be considered as in office use only, but effectively as a showroom with office.
5. The ground floor is not raised.

