

Appeal No. VA11/1/026

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

Fenlon Industries Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2205677, Workshop at Lot No. 7Aa/3, Kilcannon, Enniscorthy Rural, Enniscorthy, County Wexford.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF SEPTEMBER, 2011

By Notice of Appeal dated the 23rd day of March, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €83 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, given the established tone for comparable properties. The building here is comprised of a very basic uninsulated workshop with poor offices. The suggested NAV is thus excessive in view of the relative value of the property."

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 2nd day of June, 2011. The appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), ASCS, MSCSI, MRICS, and the respondent by Ms. Orla Lambe BSc (Surveying), MIAVI, a Valuer in 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.

At issue

Quantum.

Test Case

It was agreed by the parties that this case would serve as a test case for the following appeals: VA11/1/024 – Ambrex Limited, VA11/1/025 – H2Only Purified Water, and VA11/1/027 – Ambrex Products Limited, and consequently that the determination of the Valuation Tribunal on the subject case with respect to the rates per sq. metre be applied to establish the net annual value of the subject properties in the aforementioned three appeals., and by extension the rateable valuations on the respective subject properties in those appeals.

The Property

The subject property comprises a workshop, which is used for the manufacturing of steel products, together with ground floor offices and ancillary storage. The workshop is constructed of a steel portal frame with double skin cladded roof and side walls, the latter positioned above masonry hollow core non-insulated circa 2.5 metre high block walls. The offices are situated at the entrance to the subject property with a canteen behind, and both are finished with plastered and painted walls, the office area with recessed lighting in a suspended ceiling and the canteen ceiling is represented by the underside of the Kingspan roofing panel. There is ample circulation space fronting the property.

Location

Access to the subject property is provided by passing over a laneway which intersects with the Old Dublin Road, approximately 4 kms from Enniscorthy, and is situated near the N11, being the main Dublin to Wexford Road. The area is considered an established industrial/commercial location and features a mixture of older and modern industrial buildings.

Services

The subject relevant property is served with mains power, water, telephone, storm and foul sewer.

Tenure

Understood to be Freehold.

Floor Areas

The agreed floor areas, measured on a Gross External Area (GEA) basis, are as follows:-

Ground Floor Offices:	53.66 sq. metres
Workshop (5m eaves):	464.00 sq. metres
Store:	48.19 sq. metres

Valuation History

May 2010:	Draft Valuation Certificate issued with an RV of €87.
June 2010:	No change made at Representation stage.
July 2010:	Final Valuation Certificate issued at RV €87. Subject Relevant Property entered onto Valuation List.
August 2010:	The appellant appealed to the Commissioner of Valuation.
February 2011:	The valuation was revised to €83 at Appeal Stage.
March 2011:	The appellant appealed the decision of the Commissioner of Valuation to the Valuation Tribunal by Notice of Appeal dated 23 rd March, 2011.

Appellant's Case

Mr. Eamonn Halpin took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. He opened his case by bringing to the Tribunal's attention the following amendments to his written submission:

1. Page 11: Store area should read 53.66 sq. metres and offices 48.19 sq. metres, resulting in a NAV figure calculated by him of €733 and €988 respectively, which when added to the workshop/warehouse NAV, would compute to a value of €9,646 or an RV of €48.23, rounded to RV €48.
2. Page 9: Comparison No. 7. Rate per sq. metre applicable to the Darren Langrell Furniture Ltd., property to correctly read €29 per sq. metre for the workshop and €20.50 per sq. metre for the showroom. The agent confirmed that the RV computed at €79 was correct.

Mr. Halpin then brought the Tribunal through the main points of his case describing the age, condition, nature, location, profile and main features of the premises being the subject of the appeal. He explained that the complex was built circa fifteen years ago and that it had only recently been listed for revision. He noted that the premises might better be described as an industrial workshop used for the fabrication of steel products, accessed off a narrow laneway, which in turn intersects with the old Dublin Road on the outskirts of Enniscorthy town, Co. Wexford. Mr. Halpin drew attention to the relatively dated specification of the workshop and stated that although the metal cladding to the walls and roof was double-skinned, the masonry lower walls were constructed of hollow core concrete block and installed without the benefits of insulation. He cited six principal arguments to support his case, as follows:-

1. The property is at a moderate location without profile and accessed via a narrow lane from the public road.
2. The subject buildings were erected on a site which at the outset was at the rear and lowest value position in the estate.
3. Lack of insulation in the masonry walls.
4. The Commissioner had not made sufficient allowance for the quality of the building and the influence of the foregoing points.

5. The age and condition of the building would be a matter of consideration, which would be reflected in a bid by the hypothetical tenant, a point not adequately considered by the Commissioner.
6. The NAV is unsustainable in line with the “tone of the list” for comparable properties in the subject Rating Authority Area, and the appellant is seeking to have this matter of inequity resolved by the Valuation Tribunal.

Appellant’s Comparison Properties

Mr. Halpin reviewed NAV calculations and rateable values of 9 comparison properties, details of which are outlined in pages 7 to 10 respectively, noting again the amendments to Comparison No. 5, as outlined above. The foregoing details are attached hereto as Appendix 1.

Comparison No. 1 was described by Mr Halpin as one of approximately thirty modern workshop/storage units built within the past ten years to a high specification with 6 metre eave heights, in a business park at Gorey, Co. Wexford, all assessed for rating purposes at the equivalent of €20.50 per sq. metre.

The appellant’s next two comparison properties were located near Enniscorthy, albeit on the opposite side of town to the subject. These small workshop units, assessed at a rate of €17.08 per sq. metre, were described by Mr. Halpin as being without profile, and being older units, but reclassified and upgraded during 1996.

Citing his Comparison No. 4, Mr. Halpin explained that the reason why this property had been chosen was to provide the Tribunal with evidence that the rate per sq. metre applied to offices associated with industrial type premises is not set at a uniform level, but stressed that the offices and showroom/store in this comparison property are constructed and finished to reasonably good standards.

In relation to his Comparison No. 5, Mr. Halpin stated that this property was included to reflect the “tone of the list” for office space, which he described as somewhat dated, set at a level commensurate with the rate applicable on the adjoining factory and warehouse in this

premises, which was built with IDA support initially, before extension, near Gorey in the 1980s.

The appellant's Comparison No. 6 is located in a rural setting between Bridgetown and Duncormick, approximately 6 – 7 miles from Wexford town, and was described by Mr. Halpin as suitable evidence to indicate a range of rates per sq. metre values applicable to older workshops.

Mr. Halpin also addressed the rates per sq. metre values established for the workshop and offices in his Comparison Property No. 7, which he described as a much superior building to the subject, and located in a new business park close to the subject. Mr. Halpin stated that the property is a former school building, extended and converted for industrial engineering purposes, with trade sales area and offices and workshops to the rear, in a high profile location on the main Dublin to Wexford road, near Ferns.

Mr. Halpin described his final comparison property as a rural workshop near the village of Camolin, Co. Wexford, the value of which was determined recently by the Valuation Tribunal **VA09/3/027 - Kehoe Brothers Machinery Ltd.** Again Mr. Halpin drew to the attention of the Tribunal the varying values of rates per sq. metre applied by the Tribunal to the workshop areas in this comparison property, which range from as low as €8.55 per sq. metre in one exceptionally small area, to €16.87 per sq. metre, up to a maximum of €21.36 per sq. metre in an area which features up to 7 metre high eaves and a mobile gantry crane.

Appellant's Valuation

Noting agreement with the respondent on the description and floor areas of the subject relevant property, Mr. Halpin sought support from the Tribunal for the workshop/warehouse area to be assessed at €17.08 per sq. metre, the store at €13.67 per sq. metre and the offices at €20.50 per sq. metre, which would compute to the net annual value established above and an estimated RV of €48.

Mr. Halpin concluded his direct evidence by describing the lane as a basic surfaced 4-metre wide carriageway, which extends from the old Dublin Road to the yard which contains the subject relevant property, but emphasised that a number of other premises are also located within the same compound.

Questions from the Tribunal and Cross-examination by the Respondent

In response to questions raised by Ms. Lambe and the Valuation Tribunal, Mr. Halpin advised as follows:-

- The subject is located off the old Dublin Road, near the town of Enniscorthy.
- The area may be characterised as primarily industrial in nature.
- The N11 Wexford to Dublin Road is reasonably close, but there is no direct access from the subject property to same.
- The subject relevant property does not have profile to the N11.
- The subject buildings are basic and at the time of inspection the roof over the office was leaking. The office and canteen fit-out, though basic, would be considered as a typical standard for such areas associated with a steel fabrication workshop.
- While acknowledging that a roof leak may be a landlord's responsibility to repair, Mr. Halpin indicated that, in any event, the hypothetical tenant would make provision for same when considering the amount of rent he might be prepared to offer on the premises.
- Confirming that Comparison No. 1. in his précis represented the best example he might rely upon in his evidence, Mr. Halpin acknowledged that it is located near Gorey, some distance away from the subject property.
- Mr. Halpin also re-confirmed the various locations of his other comparisons properties, nos. 2, 3, 4, 5 and 6, all of which are removed by some distance from the subject. He acknowledged that the workshop at his Comparison No. 7 property, located near the subject, was valued on the List at a rate of €29 per sq. metre.
- Mr. Halpin advised that the foregoing Comparison No. 7, unlike the subject, has good profile onto the main Wexford to Dublin Road, and repeated that his Comparison No. 8 had direct frontage onto same.
- Mr. Halpin noted that his Comparison No. 9 was also removed from the old Dublin Road in Enniscorthy, by some distance, and accordingly, the only property near the subject listed in his précis, was Comparison No. 7.
- Mr. Halpin challenged the contention of the respondent and the interpretation taken from Finding No. 1, Page 9, Appendix No. 7 to the respondent's written précis, namely a copy of Tribunal Judgment **VA10/1/029 – O'Leary International Ltd.**, attached hereto as Appendix 2. Mr. Halpin concluded that the Valuation Tribunal may have reached its finding by placing the emphasis on the most suitable comparisons which were

immediately adjacent to that particular property under appeal, arguing that in the subject case there was a paucity of suitable comparison properties nearby.

Respondent's Case

Ms. Orla Lambe then took the oath and adopted her précis as her evidence-in-chief. Ms. Lambe noted that details of the location, description and floor areas of the subject property were common case.

Ms Lambe added that the basis of valuation was consistent with normal revision practice, with the RV assessed at 0.5% of the NAV, with the value adopted by reference to those of other revised properties within the same Rating Authority area, all in accordance with Section 49(1) of the Valuation Act, 2001. The RV was calculated in the following manner:-

Office:	53.66 sq. metres @ €41.00 per sq. metre	=	NAV € 2,200.06
Stores:	48.19 sq. metres @ €20.50 per sq. metre	=	NAV € 987.89
Workshop:	464.00 sq. metres @ €29.00 per sq. metre	=	<u>NAV €13,456.00</u>
		Total =	NAV €16,643.95

$$RV = €16,643.95 \times 0.005 = €83.21$$

$$\text{Say RV} = €83$$

Respondent's Comparison Properties

Ms. Lambe provided details of nine comparison properties together with location maps and summary details, all contained within Pages 6 to 17 inclusive of the respondent's précis, and attached hereto as Appendix 3.

The respondent's first three comparisons are located in close proximity to the subject property and the workshop areas within, with eaves heights of 6 metres for the first two and 6.6 metres for the latter, and were each valued at €29 per sq. metre. Ms. Lambe noted that her first comparison property featured offices which comprise circa 55% of the associated workshop area and like her other comparisons, is located within an industrial area in close proximity to the subject and Enniscorthy town.

The respondent's second and third comparison properties were both described as new, with profile onto the old Dublin Road, and built to modern warehouse standards.

The respondent's fourth comparison property, the subject of Valuation Tribunal Judgment **VA10/03/011 – John Bolger**, was described as a warehouse with 8.6 metre eaves height, and a rate of €31 per sq. metre applied thereto.

The remaining five comparison properties cited by the respondent were submitted to indicate a consistency of a rate of €29 per sq. metre applied to warehouses in the Enniscorthy area, but Ms. Lambe kindly noted for the benefit of the Tribunal that each of her comparisons nos. 5 to 9 inclusive was valued and entered on the valuation list at the same time as the subject, and in accordance with Valuation Tribunal practice, that such evidence should be treated with some degree of caution.

Ms. Lambe summed up her direct evidence, making the following points:-

1. Having reviewed the valuation, the respondent considered that there were no grounds for adjustment at First Appeal.
2. Section 49(1) of the Valuation Act, 2001, employing the principle of "tone of the list" to establish the relative value of all relevant properties in the Local Authority Rating Area, was applied in the instant case
3. All comparisons in the respondent's written submission were drawn from the immediate area of the subject, which Ms Lambe considered to be consistent with the Valuation Tribunal determination **VA10/1/029 – O'Leary International Ltd.**, Finding 2 therein.
4. Matters raised by the appellant were considered and reflected in the valuation determined on the property by the Commissioner, and in accordance with all of the foregoing Ms Lambe considered the RV of €83 to be fair and equitable.

Questions from the Tribunal and Cross-examination by the Appellant

In response to questions raised by Mr. Halpin and the Valuation Tribunal, Ms. Lambe advised as follows:-

- a) She had considered the influence of the comparatively large office to warehouse area in her Comparison No. 1.

- b) She considered the location of her Comparison No. 2 to be similar to that of the subject.
- c) All her comparison properties, to one degree or another, like the subject, share yard space with other users, and accordingly the impact of shared use within a compound for the subject relevant property did not give rise to special treatment or consideration to the rate per sq. metre assessed on the latter.
- d) She did not agree that the office area and finishes within her Comparison Property No. 1 were superior to the subject office area.
- e) She acknowledged that her Comparison No. 2 was in a new industrial complex and that her Comparison No. 3 was valued in 2002. She confirmed that she had inspected her Comparisons Nos. 4, 5, 6, 7, 8 and 9, but that she did not physically inspect her Comparisons Nos. 1, 2 and 3.
- f) Noting that she had seen her Comparison No. 1 from a distance – as it enjoys partial profile to the nearby old Dublin Road – Ms Lambe confirmed that she was relying upon same as her primary comparator and was satisfied that the NAV and RV computed on same, together with her Comparisons Nos. 2 and 3, were correctly established in accordance with Section 63 of the Valuation Act, 2001.
- g) Ms Lambe acknowledged that the offices in her Comparison No. 1 were to a good standard but declared them not to be considered as third generation quality.
- h) Ms Lambe acknowledged a failure to recall, or ability to confirm, that her Comparison No. 1 is located within a secure compound.
- i) Ms Lambe confirmed that her Comparison No. 2 is one of approximately thirty units located in a modern business park or campus environment, accessed via an estate road.
- j) Ms Lambe would not acknowledge a significant difference in quality of finishes and decorations between the offices in the appellant's Comparison No. 7, Darren Langrel Furniture Limited, and the subject.
- k) Ms Lambe would not acknowledge any variation or difference applicable to the rate per sq. metre to be applied to offices ancillary to industrial units throughout the subject Rating Authority Area, though she acknowledged that certain variations arise in the records for Co. Wexford.
- l) Ms Lambe confirmed that her Comparison No. 5 was built in the 1980s or 1990s to an IDA specification which set the standard then for industrial buildings in Enniscorthy, which accordingly reflected the rate per sq. metre applied thereto.
- m) Ms Lambe referred to the determination in **VA10/3/011 – VA10/3/017 - John Bolger**, and in particular to Paragraphs 7, 8 and 9 on Page 3 thereof. In reply to specific queries

raised by Mr. Halpin with respect to the area of the site in that case, and the quality of construction of the units and the profile and high visibility of that complex, Ms. Lambe declared that she was satisfied that in the instant case, the respondent had considered all of the issues apposite to the circumstances to establish a fair rate per sq. metre to apply to the NAV of the subject.

Findings

The Valuation Tribunal thanks the parties for their efforts, arguments and contributions at hearing and the written submissions that preceded same.

1. The basis of valuation in property listed for revision under Section 28 of the Valuation Act, 2001 is set down in Section 49(1) of the said Act.
2. In accordance with rating law and practice, the burden of proving that the valuation of a property appearing on the valuation list is incorrect lies with the appellant.
3. The Tribunal considered all of the evidence provided by the parties and in particular the comparative evidence provided by the respondent and the appellant.
4. The Tribunal, in considering the foregoing evidence, notes the variations arising in the values applied to warehouse units in the Rating Authority area of Co. Wexford.
5. In considering the “tone of the list”, the Tribunal, in the instant case, has particular regard to the arguments put forward by the appellant which suggest that the subject property is located, constructed, finished and positioned, all taken together in a manner and to a standard, which in his view would command a lower bid from the hypothetical tenant when compared to the properties cited by the respondent in her précis, Comparisons Nos. 1 to 4 inclusive.
6. The Tribunal would have found the arguments proffered by the respondent more cogent and helpful if the valuer had personally visited and inspected all of her comparison properties, rather than relying upon distant viewings and file details maintained in the Valuation Office.

7. The Tribunal considered with caution the values outlined in the respondent's Comparison Properties Nos. 5 to 9 inclusive, for the reasons cited in the respondent's précis.
8. The Tribunal considered the profile, specification, mix, location, ingress and egress to and from the respondent's Comparisons Nos. 1, 2 and 4 inclusive, together with their propinquity to the subject and compared these with similar characteristics and features of the appellant's comparison properties and their distance from the subject.
9. The Tribunal finds that, on balance, the properties addressed in the respondent's Comparison No. 4, John Bolger, though germane in terms of proximity, and accordingly suitable as representative of a "tone of the list", nevertheless do not fully reflect conditions, features, construction standards, building age and type, to accord with the levels of values established on the Valuation List for properties cited as the respondent's Comparisons Nos. 1, 2 and 3.
10. The Tribunal conversely considers that the comparison properties cited by the appellant, though similar in many regards to the subject, should nevertheless have been supported by available evidence of more local similar properties which taken together, might more accurately reflect a "tone of the list" for the subject offices, stores and workshop.

Determination

Having regard to the findings above, the Valuation Tribunal determines as follows:-

Office:	53.66 sq. metres @ €36.90 sq. metres	=	NAV € 1,980.05
Stores:	48.19 sq. metres @ €18.45 sq. metres	=	NAV € 889.11
Workshop:	464.00 sq. metres @ €26.10 sq. metres	=	<u>NAV €12,110.40</u>
		Total =	NAV €14,979.56

$$RV = €14,979.56 \times 0.005 = €74.90$$

Say RV = €75

And the Tribunal so determines.