

Appeal No. VA91/2/004

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Generics Software Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices and Carpark at Lot 8a Clonard House, Balally, Dundrum - Sandyford, Co. Dublin

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Paul Butler

S.C.

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF OCTOBER, 1991

By notice of appeal dated the 12th July 1991 the Appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £170.00 on the above described hereditament.

The grounds of appeal as set out in the notice of appeal are that;-

- 1) the R.V. £170.00 is bad in law in that it represents double rating.
- 2) the revised R.V. £170.00 is excessive and inequitable.
- 3) No regard has been had to the fact that the basement is incapable of any

beneficial occupation in its actual dilapidated state, in consequence of which the valuation attributable to it should be deleted and the description amended accordingly.

The Premises:

"Clonard House" is a Georgian style residence, now used for offices and situated in the grounds of the Irish Management Institute at Sandyford Road, Co. Dublin. The premises comprise 5 offices at ground floor level and 9 offices at first floor level. The basement is disused.

Written Submissions

A written submission was received on the 20th September, 1991 from Mr. Desmond M Killen FRICS IRRV of Donal O'Buachalla & Company Ltd. on behalf of the Appellants. Mr. Killen said that the premises is held in fee simple by the Irish Management Institute and that at the date of revision the premises were occupied by Generics Software Ltd. under an agreement made on the 15th September, 1988 for a term of 2 years and 9 months from the 1st September, 1988 to the 31st May, 1991 at a rent of £27,000 per annum. He said that the occupier was responsible for insurance and rates, but not repairs. The letting included the fitted carpets and the right to use seven car spaces. Mr. Killen said that there is accord between the parties on the following:

- a) The rateable valuation is to be calculated at 0.63% of the N.A.V. as at November 1988
- b) The area of the offices is 4,600 square feet
- c) The lease rent was £27,000 at September 1988
- d) The tenant was responsible for rates and insurance but not external

repairs.

Mr. Killen said that the matter for the determination of the Tribunal is the assessment of the Net Annual Value of the hereditament in accordance with Section 11 of the Valuation (Ireland) Act, 1852. Mr. Killen said that to arrive at an appropriate N.A.V. the rental of £27,000 has to be reduced by an amount to allow for:

- a) The probable average annual cost of repairs
- b) The fact that seven car spaces are already included in the rateable valuation assessment of the I.M.I.
- c) The rental value of the carpets and curtains.

Mr. Killen said that from 1986 to 1988 the I.M.I spent £139,127 on the eradication of dry rot infestation. He said that the outgoing of repairs from 1988 to date are as follows:

1989	£4,230.00
1990	£ 741.78
1991	£3,982.00

He said that the outlay in 1990, while the responsibility of the occupier, was paid by the I.M.I.. He said that the outlay for 1989 and 1991 of £8,212 was required to keep the premises in a proper state of repair to command the rent of £27,000 per annum. He said that although the carpets, on the stairs and some of the upper floor, showed signs of wear, that a rent would be paid for this non-rateable fitting. He said that the capital cost of a carpet would be in the region of £40 - £50 per square yard i.e. £21,000 to £26,000. He then set out his estimate of Net Annual Value as follows:

Estimate of N.A.V.

Rent - (Sept. 1988)		£27,000
Deduct a) Repairs	1,000	
b) Carpets (£20 P.W.)	1,040	
c) 7 Car spaces @ £3 p.w.	<u>1,092</u>	<u>£ 3,132</u>
		£23,868

He said that the 7 car spaces are already included in the rateable valuation assessed on the I.M.I.. Mr. Killen said that the rates impact factor would adapt the rent to reflect the proposed downward burden of rates, in this case, which was not envisaged when the rent was established. He then calculated what he would consider to be a proper rateable valuation as follows:

$$\begin{aligned}
 \text{N.A.V.} &= (\text{Rent}) \quad \frac{\text{£23,868} + (\text{Rates}) 178.93 \times 32.13}{1 + (\text{Ratio}) 0.63\% \times (\text{Rate}) 32.13} \\
 &= \frac{29,617}{1.202} = 24,639 \\
 \text{R.V.} &= \text{£24,639 @ } 0.63\% \\
 &= \quad \quad \quad \underline{\underline{\text{£155}}}
 \end{aligned}$$

A written submission was received on the 23rd September, 1991 from Mr. Christopher Hicks an appeal valuer in the Valuation Office on behalf of the Respondent. In this precis Mr. Hicks described the premises and outlined the valuation history. As regards repairs Mr Hicks said that, in the present case, it must be assumed that both parties to the lease were fully aware of the condition of the building and that, in particular, the landlord did not expect to have to carry out major repairs that in the case of "full repairing" 2 year 9 month lease he would have been able to oblige the tenant to carry out. As regards fitting out Mr. Hicks said

that a basic level of fitting out is usually taken for granted in a short term lease. He said that in the present case the tenant undoubtedly expected to take up occupation at the start of the lease without having to incur the expense of, say, fitting a carpet which after 33 months would cease to have any value to him. He said that at inspection the carpet at the first floor level had clearly been left in place during much of the repair work and was the worst for wear. He said that the ground floor carpet is in reasonable condition though of moderate quality only. He said that these carpets may have been in place during the previous 9-year tenancy of Memory Computers and they are certainly the same carpets which are included in the new lease currently under negotiation. Mr. Hicks said that in his opinion the rent agreed as from the 1st September, 1988 is in this case the Net Annual Value as defined in the Valuation Acts.

He then calculates his rateable valuation as follows:

N.A.V. £27,000 @ 0.63% = £170.10 Rateable Valuation £170.00.

Mr. Hicks submitted a comparison of 3 Carrickbrennan Road, Monkstown, Co. Dublin, the details of which are attached as Appendix A.

Oral Hearing

At the oral hearing which took place in Dublin on 25th September, 1991, Mr. Desmond Killen of Messrs. Donal O'Buachalla & Co. Ltd., represented the appellant. Mr. Aindrias O'Caomh, Barrister at Law, instructed by the Chief State Solicitor appeared on behalf of the Respondent. Also present were Mr. J. Byrne, Secretary, I.M.I., Mr. Brendan Millar of Messrs. Stephenson Gibney & Associates, and Mr. Christopher Hicks and Mr. Donal O'hUallachain both of the Valuation Office.

Mr. Killen referred to his written precis and said that although there was an actual rent passing in the instant case, that rent did not represent the true Net Annual Value since it did

not take account of and make deductions for annual repairs, carpets and the car-parking spaces which, he argued, had already been rated as part of a separate hereditament.

In the course of the hearing, Mr. Killen amended the figure shown in his precis relating to deduction for repairs. In the light of further evidence and as a result of questions from the Tribunal, Mr. Killen said that a deduction of £4,000 should be made for repairs.

Applying the calculation described as the 'rates impact factor' which appears to have been introduced by the Commissioner of Valuation, Mr. Killen arrived at a R.V. of £140 for the subject premises.

Mr. Byrne gave evidence that the car-spaces valued as part of the hereditament occupied by I.M.I. included the car-spaces allocated to the tenants of Clonard House, the subject premises.

In reply to questions from Mr. O'Caomh, Mr. Byrne agreed that while the site map indicated 266 car-spaces in all, of which 7 are adjacent to Clonard House, the lease of Clonard House does not refer to an exact number of car-spaces.

Mr. Byrne explained that the carpets in the building had been leased and laid by I.M.I. and were depreciating at 10% per annum.

Mr. Millar explained that the tenants had taken over the premises when they had been brought to a reasonable state of repair. While the dry rot had been treated it was seen as an ongoing problem together with other maintenance problems due to the age of the building, among them being poor roof slating, leaks, faulty windows, a rotting balcony at the rear of the building and a leaking conservatory.

In reply to Mr. O'Caoimh's contention that the respondent's valuer had counted only 229 car-spaces in all, Mr. Millar stated that he had not counted the car-spaces himself but was satisfied that the 266 car-spaces shown on the site map reflected the true position.

Mr. O'hUallachain, who was the Appeal Valuer in 1988, explained that a Valuation of £510 had been placed on the premises in 1987, and that £40 of this Valuation was attributable to 'Portacabin' offices. When the property was inspected on appeal, it was discovered that reconstruction work was going on as a result of the discovery of dry rot. The 'Portacabin' offices had been removed and the R.V. was reduced to a provisional figure of £75.

Mr. O'hUallachain said that he understood from the revising Valuer's calculations that there were 266 car-spaces attached to the I.M.I. building and an additional 7 attached to the subject premises.

In reply to Mr. Killen, Mr. O'hUallachain said that the provisional R.V. of £75 referred to the building and the car- park and that no specific amount was allocated to the car- spaces.

Mr. Hicks gave evidence that the arms-length rent passing in this case was taken as the N.A.V.. He pointed out that if the tenant were to be responsible for very high outgoings then the N.A.V. would be less than the rent but that in this case the tenant was responsible only to keep the building in its actual state, which was fairly poor due to its age and related problems. He said that the tenant had agreed to pay the rent and to assume the liabilities in relation to necessary repairs, on top of that rent. Mr. Hicks said that, in his opinion, the carpets were old and had no value at all.

Mr. O'Caoimh submitted that even if the car-spaces had been valued as part of a separate hereditament, nonetheless it had been shown that certain car-spaces formed part of this hereditament and had always been valued as such.

He said that the carpets had no value at the relevant time and could not affect the R.V. of the premises. Mr. O'Caoimh further submitted that the rent passing does represent the N.A.V., with the tenant undertaking to pay the rent and to maintain the property in its actual state. He said that the N.A.V. as envisaged by Section 11 Valuation (Ireland) Act, 1852 indicates the rent paid by the tenant under a letting agreement which defines clearly the obligations and liabilities of that tenant.

FINDINGS

The Tribunal notes that there is uncertainty as to the number of car-spaces attached to the subject premises and as to whether or not these are included in the valuation of a separate hereditament. Nonetheless the Tribunal is satisfied that a carpark has always been valued as part of the subject hereditament and must be so considered. If, in fact, this carpark has also been valued as part of the premises occupied by the I.M.I., the position should be clarified and appropriate measures taken.

The Tribunal accepts the Respondent's evidence as to the condition of the carpets and their minimal value for the purposes of assessing Net Annual Value.

It is clear that the tenants on entering into the agreement to lease the building, knew of its condition and were aware of the extent of their liabilities in relation to its upkeep. The Tribunal notes and accepts Mr. Hick's contention that the tenants were responsible only to keep the building in its already fairly poor state of repair and that there were no hidden or extremely high outgoings.

While it appreciates the appellant's reasons for attempting to apply the so-called "rates impact factor" in view of recent trends in the Valuation Office, the Tribunal is satisfied that the actual rent passing in this case represents the true Net Annual Value of the subject premises and accordingly affirms the decision of the Respondent.