

Appeal No. VA02/1/010

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

Kayfoam Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Factory and land at Map Reference 5A Kilcullenbridge Rd, Naas 1, ED:Carnalway,
County Kildare

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Maurice Ahern - Valuer

Member

Patrick Riney - FSCS. MIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF OCTOBER, 2002

By Notice of Appeal dated the 7th day of January, 2002, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €07.90 on the relevant property described above. The grounds of appeal as set out in the Notice of Appeal are:

- (1) The Valuation is excessive and inequitable.
- (2) The Valuation is bad in law.

The said appeal proceeded by way of an oral hearing that took place on the 26th of July 2002 in the Valuation Tribunal, Dublin. Ms. Sheelagh O Buachalla BA., ASCS., of GVA Donal O Buachalla appeared on behalf of the appellant. Mr. Joseph McBride ASCS., MRICS., MIAVI., District Valuer appeared on behalf of the respondent. Both valuers prepared written summaries of their evidence which they exchanged with each other and gave to the Tribunal in advance of the hearing.

The Property

The main factory building was constructed in 1965 and was formerly the Irish Rubber Factory. It was purchased in July of 1992 by the present occupiers from the previous owners who had been put into receivership. The building is located on a secondary road connecting Naas to Kilcullen with frontage to the Naas Road. The property in question is extensively used in the manufacture of mattresses and mattress bases.

It is clear that since the property in question was purchased in July of 1992 considerable changes have been made. A new warehouse of steel frame construction with concrete block walls has been added. The offices at ground floor level have been extended to the front of the building to provide extra showroom and canteen space. A two-storey works office has been added internally. A first floor office over the existing offices was also added. A store was added to the left side of the building and an open store added to the rear of the building. In addition a large area of mezzanine floor was added. This is extensively used in the manufacturing operation.

The premises in question are held freehold and were purchased by the current owners for €144,408.32 (£350,000). Said premises includes a site area of 9 acres.

Area

The only issue between the parties in relation to the area of the subject premises was the mezzanine floor. While the summary provided by GVA Donal O Buachalla indicated that the mezzanine floor had been completed in December of 1992 and had been included in the previous valuation, the submissions on behalf of the Commissioner of Valuation suggested that this area had been subsequently added.

Valuation History

The premises were valued in 1992 after the purchase by the appellant and the valuation was revised downward from R.V. €736.45 to R.V. €285.69. The property has been revised in 1994/3 revision and 1996/4 revision. On both occasions the valuation was unchanged.

The Appellant's Evidence

Mr. Denis Donoghue gave evidence on behalf of the appellant. He had been an executive director of the appellant company up to 1996 and was now a part-time director. He indicated that the roof had been recladded in order to prevent leaking. Leaks had been identified by the time the property was purchased. Because the company was involved in bed manufacturing and because staining to a mattress would devalue any such product, it was essential that the roof in question be repaired and so it was recladded. He indicated that a mezzanine floor was installed sometime in 1993. This was a freestanding unit which was "demountable". The said mezzanine floor was increased in size by adding an extra 50% thereto in 1997.

Mr. Allan McMillan ASCS., ARICS., MIAVI of GVA Donal O Buachalla also gave evidence. He indicated that he had dealt with the appeal against the original valuation in 1992. He indicated that he had agreed a valuation with the Valuation Office which was then represented by Mr. Denis Maher in or about June of 1993. In his view the property had been purchased on the open market although the company was in receivership. He says that he and Mr. Maher agreed to include some of the work which was ongoing at the time including the mezzanine floor. It was his evidence that work in relation to the mezzanine floor could be deemed to be reflected in the agreed valuation in June of 1993. He indicated that the property had been revalued in 1994 and 1996 but that the valuation had remained unchanged. In his view he would not calculate the value of the new warehouse added to the premises on a "stand alone" basis. He said that this warehouse should be treated as being an integral part of the old building and that therefore the basic valuation utilised for the old building should be used also. He referred to the decision **VA98/3/009 Gaynor and McVeagh -v- The Commissioner of Valuation.**

He suggested that the determination of the division of the Tribunal in that appeal indicated that where a part of a premises appears to have been in existence at the time of a previous valuation and had not been materially altered, there was no basis to add an additional value over and above that assessed on that previous valuation date. In his view, the determination appeared to suggest that because the relevant part of the premises appeared to exist at the time of the earlier valuation, it must be deemed to be included in that earlier valuation and therefore could not be treated as an addition in any later valuation. In his view the fact that the mezzanine was a movable structure, plus the fact that it was an insertion to the premises (rather than an addition) meant in any event that it should not be regarded as having additional value.

In cross-examination he agreed that in the Gaynor and McVeagh case the yard, the subject matter of the dispute, was present on the property in 1991 when the property had been valued in that case whereas it was clear that the mezzanine floor was not present on the property in 1992 when the revised valuation was carried out. He agreed that the property had originally been sold while the previous owner had been in receivership and not in liquidation, though he made no real formal distinction between either form of insolvency so far as the effect on the price of the property was concerned. He agreed that the floor size had been increased as far as the mezzanine was concerned in 1997 which obviously could not have been included in the 1992 valuation.

Ms. Sheelagh O Buachalla also gave evidence. She believed that the mezzanine floor had been taken account of in the valuation in 1996 which had remained unchanged from the previous valuations. In her view the addition of the extra third of the mezzanine floor was negligible. The main additions were the warehouse and the extended offices. In her view the value of the warehouse and new offices did not operate to double the rateable valuation per square metre. She took the view that the value of those new additions should increase the value of the warehouse and offices by 25%.

Ms. O Buachalla did not rely on any comparisons, taking the view that the best comparison was the subject. The valuation fixed on it originally related to the purchase price, which she said was the best evidence of its value.

She acknowledged that monies equivalent to almost twice the original purchase price had been spent on the improvements in question.

The Respondent's Case

Mr. Joseph McBride gave evidence on behalf of the respondent. He indicated that there had been no mention of the mezzanine floor at the time of the valuation in 1992. It had clearly not been in place at that time. He speculated as to why the mezzanine had not been referred to in 1994 and 1996, and commented that a valuer might regard the change in question as being insufficient to warrant an increase at those times. He was of the view that the extensions carried out in question were extensive and costly. In his view the R.V. in question was moderate in all the circumstances and especially having regard to other similar industrial buildings in the Naas area.

He was cross-examined by Ms. O Buachalla. He indicated that there was no mention of the mezzanine floor in 1992 though it was accepted that there was a mezzanine floor present by the time the valuation of June of 1993 was agreed. He expressed the view that the cost of investment was a factor to be taken into account when assessing the rateable valuation. He agreed that he had not relied on the 1992 valuation in coming to his conclusions. He referred to a letter in relation to the earlier valuation in 1992. It had been written in June of 1993. While this letter was headed "without prejudice", by agreement between the parties it was made available to the Tribunal and to all parties. It referred to works being undertaken within the interior of the premises but did not refer to the mezzanine floor. Ms. O Buachalla and Mr. McBride both then made submissions.

Determination

The principal issues between the parties appear to be:

- (i) Whether or not the mezzanine floor should be included in the most recent valuation as an addition which now falls to be valued as such.
- (ii) The appropriate additional value to be attributed to the premises by virtue of the addition of the warehouse and extended offices.

(i) Mezzanine Floor

The evidence of Mr. McMillan indicated that works being carried out were deemed to be included in the agreed valuation arrived at in or about June 1993. However there is no evidence as to the extent of the mezzanine floor at that stage. It is unclear whether it had been completed by then. Under normal circumstances the Valuation Office would be reluctant to include in its valuation, works which were under construction but which had not yet been completed.

It is also clear that there is no express reference to the inclusion of the mezzanine floor in any valuation or revision. It is true that the revisions in 1994 and 1996 did not expressly refer to the mezzanine either. However the mezzanine floor was substantially expanded in 1997.

Having considered the determination of the Tribunal in **VA98/3/009 Gaynor and McVeagh –v- Commissioner of Valuation**, it is the Tribunal's view that this decision can be distinguished. In that case there was clear evidence that the yard, the subject matter of the dispute, was present in 1991 at the time of the revision of the relevant premises. However in this case there is no such clear evidence. While it may well be that the mezzanine was under construction, it is impossible to know what if any value was then attributed to it. It is also clear that unlike the yard in the Gaynor and McVeagh case, the mezzanine in question was substantially increased in 1997, which is clearly an addition. The Tribunal takes the view that the Commissioner of Valuation is obliged to value the property as he finds it, including the mezzanine floor in question. The fact that it is not expressly referred to at the time of the 1992 valuation is not clear evidence that it was taken into account. Indeed the evidence is somewhat ambiguous in this regard. What is clear, however, is that it has in any event been materially altered since. For these reasons the Tribunal believes that the area of the mezzanine floor should be included in the valuation.

(ii) Value of the additional premises

The Tribunal takes the view that these premises have been significantly improved by virtue of the additional offices and warehouse. The appellant relied on the original valuation which was fixed by relation to the purchase price of the property which was at that stage suggested to be the best evidence of its value. It is noted that the property in question was sold in the course of a receivership, which while not exactly the same as a sale in the course of a liquidation, cannot be said to be the same as a full and free open market sale. It is also notable that almost twice the amount of the purchase price has been spent on the property in 1999. While it is clear that building costs have increased between the original purchase date in 1992 and the time these additional works were carried out, it is in the view of the Tribunal an extremely significant sum.

The Tribunal is also in a position to look at the valuations provided in respect of comparative properties in the area. The appellant was concerned that additional value in relation to the warehouse and extended offices was deemed an increase from €12.03 per square metre to €23.92 per square metre i.e. an increase of 100%. In her view an increase in value of 25% was more appropriate.

However it is of interest to examine the comparisons provided by the Valuation Office. Comparison 1, is a very similar floor space of a “new” factory at €27.34 per square metre. Other comparisons provided valuations for warehouses between €27 and €41 per square metre. While some of the comparative properties vary in size it does seem that valuation of the warehouse premises at €23.92 per square metre does not appear unreasonable.

The Tribunal is also of the view that the additional office space appears, having regard to the comparisons, to be fairly valued at €34.17 per square metre.

In the circumstances, the Tribunal values the premises as follows:

1992/3 First Appeal : €7,101

(R.V. @ 0.5% on NAV) = €285.7 or £225.

Value of Extensions since 1992: €45,116

(R.V. @ 0.5% of NAV) = €222.20 (£175).

Therefore the total rateable valuation is €507.90 (£400).

Accordingly the Tribunal determines the R.V. of the property in question to be €507.90 and affirms the determination of Respondent.