

Appeal No. VA14/5/149

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

**Oakbell Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

Re: Property Number 754129, Warehouse, Unit 5, Greenmount Industrial Estate,  
Harold's Cross, County Borough of Dublin.

BEFORE:

**Barry Smyth – FSCSI, FSCSI, MCI Arb**

**Deputy Chairperson**

**Carol O'Farrell - BL**

**Member**

**Rory Hanniffy - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 16<sup>TH</sup> DAY OF JUNE, 2016**

By Notice of Appeal dated the 4<sup>th</sup> of September, 2014, the Appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €20,100 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

*"The valuation as assessed is excessive, inequitable and bad-in-law, incorrect application of S 48 Valuation Act, 2001."*

The Appeal commenced by way of an oral hearing in the offices of the Valuation Tribunal, 3<sup>rd</sup> Floor, Holbrook House, Holles Street, Dublin 2 on the 15<sup>th</sup> May 2015. Mr Donal O'Donoghue of OMK Property advisors & Rating Consultants, appeared on behalf of the Appellant and Mr. Robert O'Neill B.L. instructed by the Chief State Solicitor appeared for the Respondent.

### **The Issues**

The Appellant appealed on two grounds, firstly, that the valuation was incorrect insofar as it was excessive, inequitable and bad in law as a result of an incorrect application of Section 48 of the Valuation Act 2001. The Appellant contended for a nil NAV. Secondly, the Appellant argued that the subject property ought to have been excluded from the relevant valuation list because "the property is not capable of beneficial occupation".

### **The Property**

The property, which is located at Greenmount Industrial Estate, Harold's Cross, Dublin 12, is a single story industrial building with offices and warehousing. The original buildings are approximately 200 years old with walls consisting of stone construction which are clad with steel in parts. The roof is asbestos single skin with Perspex sections for natural light.

The agreed gross external floor area is 695.79 sq. metres.

### **Tenure**

The subject property is held freehold

## **Valuation History**

On the 6<sup>th</sup> day of November 2012 the proposed Valuation Certificate issued with a rateable valuation of €39,100. On the 3<sup>rd</sup> day of December 2012 representations were made on behalf of the Appellant and on the 16<sup>th</sup> Day of December 2013 the Final Valuation Certificate issued with a valuation of €20,100. On the 8<sup>th</sup> day of February 2014 an appeal was submitted to the Commissioner of Valuation which said appeal was disallowed by the Appeal Manager. A Valuation Certificate issued unchanged on the 31<sup>st</sup> day of July 2014 with a valuation of €20,100. This decision has now been appealed to the Valuation Tribunal.

## **The Evidence**

In accordance with practice, prior to the commencement of the hearing, the parties exchanged their respective précis of evidence and submitted same to this Tribunal. Mr. O'Donoghue on behalf of the Appellant and Mr O'Connor, on behalf of the Respondent, having taken the oath, adopted their respective précis as being and as constituting their evidence in chief.

Both Mr O'Donoghue and Mr O'Connor's evidence was supplemented by additional oral evidence obtained directly and upon cross-examination. The Tribunal also had the benefit of detailed written and oral submissions submitted by and on behalf of the Parties.

### The Appellant's Case

Mr. Donal O'Donoghue:

Mr O'Donoghue commenced his evidence by submitting that the subject property was in very poor condition. He indicated that he would rely heavily upon the subsequent evidence of Mr Aidan McDonald, Building Surveyor, in support of this contention.

Mr O'Donoghue then addressed the Tribunal regarding Section 48 (3) of the Act and argued that the subject property was not in fact valued in its "actual state".

Mr O'Donoghue argued that the following were factors affecting the net annual value:

- (i) The subject property was designed and constructed in the early 1800's.
- (ii) The subject property forms part of the former Greenmount and Boyne Linen Mills.
- (iii) The subject is a poorly maintained building which has fallen into disrepair and, in the opinion of Mr O'Donoghue, is now beyond any economic beneficial use.
- (iv) Mr O'Donoghue referred the Tribunal to a report entitled "Defect Survey Report" authored by Mr Aidan McDonald. Mr O'Donoghue specifically referred to Mr McDonald's opinion that necessary remedial works would cost approximately €300,000 so as to bring the property up to standard.

Mr O'Donoghue argued that in his opinion the Respondent had erred in including the subject property in the Valuation List as it is incapable of beneficial occupation in its existing state.

He further argued that in accordance with Section 48 of the Act, a relevant property must be lettable for a period of more than one year. He expressed the opinion that the subject property was incapable of being let for one year with another.

Mr O'Donoghue outlined that a film production company used the subject property on a short-term basis (16 weeks) under licence in the summer of 2014. It was submitted that this was the only occupant of the subject property for a period of 10 years.

Mr O'Donoghue then referred the Tribunal to the document entitled "Response to Legal Submissions of Respondent" and in support of his submission that such is the cost of returning the property to a tenable condition, it is not lettable and therefore not capable of beneficial occupation, he specifically relied upon the following caselaw;

- (i) *New Ross Tanning Company Limited v. Commissioner of Valuation*<sup>1</sup>
- (ii) *Bord Gais Eireann v. Commissioner of Valuation*<sup>2</sup>
- (iii) *Perrinvale Properties Ltd v. Commissioner of Valuation*<sup>3</sup>.

Cross-Examination:

Under cross-examination by Mr. O'Neill, Mr O'Donoghue confirmed that Mr Handyman was in occupation of one room in the subject property on the 7<sup>th</sup> day of April 2011 and he accepted that therefore on the relevant date the subject property was available to let. Mr O'Donoghue confirmed that the property was subject to a licence agreement with a film production company in 2014. He confirmed that Wi-Fi is available throughout the building as specifically referred to in the licence agreement. He accepted that heating is also available.

During cross-examination, it was put to Mr O'Donoghue that Mr O'Connor had attended the subject property the previous Wednesday, 13 May 2015, and found it open and occupied. In support of this contention a number of photographs were provided to Mr O'Donoghue. In response, Mr O'Donoghue indicated that he understood the occupier's son was present at the subject property printing out airline tickets when Mr O'Connor attended. Mr O'Donoghue accepted that the room visible in the photographs taken by Mr O'Connor looked to be in good condition.

Mr O'Donoghue then accepted under cross-examination that there may be a small portion of the subject property that is "usable" but he rejected that the offices were usable. He indicated that he was not aware when the computers, which were visible in the photographs, were installed in the various rooms however he stated that they were not present in 2011.

Mr O'Donoghue was then questioned regarding an entity known as Alchemy Maintenance Ltd which was identified as "The Premises/ Owner" in the licence agreement with the film production company. Mr O'Donoghue was provided with a

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<sup>1</sup> Irish Jurists Report Digest [1961]

<sup>2</sup> VA96/4/007

<sup>3</sup> VA93/3/047

Dublin City Council Rate Statement which showed that payments have been received from Alchemy Maintenance Ltd. Mr O'Donoghue indicated that he was not in a position to confirm the situation regarding payments received from Alchemy Maintenance Ltd however he submitted that payments were not indicative of ownership.

In response to questioning regarding attempts to rent the subject property, Mr O'Donoghue stated that Lowe & Associates are attempting to rent same however he was unaware of the rent being sought. He indicated that any such rent would be negotiable.

Upon further cross-examination, he accepted that there were a number of similar properties in the area. When referred to the licence agreement with the film production company, Mr O'Donoghue accepted once again that the property could be used, however he submitted that this was a once off letting.

When asked why the Appellant had contended for a valuation of €3000 in the Representation Form to the Valuation Manager<sup>4</sup>, Mr O'Donoghue explained that his office was very busy at the relevant time and that he had been unable to afford the matter as much time as he would have liked. He did however confirm that he had since revised his position.

Mr Aidan McDonald:

The Tribunal then heard evidence from Mr McDonald, Building Surveyor, who adopted his report<sup>5</sup>. Mr McDonald proceeded to outline the following defects in the subject property:

- (i) The asbestos roof is leaking, decaying and in some areas about to collapse.
- (ii) The rear wall is compromised while the internal partition walls are comprised of timber and are not compliant with fire regulations.
- (iii)The floors are rough and uneven and not appropriate for warehouse use.

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<sup>4</sup> Appendix (v) - Respondent's Précis

<sup>5</sup> Appendix 1 - Appellant's Précis

- (iv) The layout provides for two means of escape but only one is usable while the other is a roller door.
- (v) The electrical facilities are old and not fit for purpose and in the circumstances the property needs to be rewired.

Mr McDonald opined that significant expenditure was required upon the building. He specifically referred to the cost of removing the asbestos roof. He indicated that in light of the costs of repairs and the safety concerns regarding the roof, he would not advise a potential tenant to rent the subject property. Finally, he estimated the repair costs to be €300,000.

Under cross-examination, Mr McDonald stated that the €300,000 cost was simply to make the property safe as opposed to achieving a top building standard.

Mr McDonald accepted that the offices were never fit for purpose but notwithstanding same had been in use since they were constructed.

Mr McDonald confirmed that no part of the building was in use when he inspected same in August 2014. He again inspected the building in April 2015 but did not recall having seen any of the offices in use. Furthermore, he could not comment on whether the computers visible in the photographs taken by Mr O'Connor were present during his April 2015 inspection. Mr McDonald accepted the photographs appeared to depict a working office. He also confirmed the presence of heating in the offices. Finally, Mr McDonald accepted that buildings which are not up to building standards are being rented across the country.

#### The Respondent's Case:

Mr John O'Connor:

The NAV of the subject property is to be estimated in accordance with Section 48 of the 2001 Act. The Respondent gathered information from owners and occupiers of

rateable properties in order to investigate and analyse market rents for the purpose of estimating the appropriate net annual value (NAV) per square metre to be applied to groups of properties sharing similar characteristics.

Mr O'Connor relied upon the following three items of market information in order to estimate the NAV of the appeal property:

- (i) Property No.1337540 - Gravity Climbing Centre, Unit 6A Goldenbridge Industrial Estate, Tyrconnell Road, Dublin 8.
- (ii) Property No. 754138 - 14 A Greenmount Industrial Estate, Harold's Cross Road, Harold's Cross, Dublin 12.
- (iii)Property No. 754139 - 14 B Greenmount Industrial Estate, Harold's Cross Road, Harold's Cross, Dublin 12.

Mr O'Connor confirmed that the rent of each of the aforementioned Informer properties were analysed and the rents were adjusted back to the valuation date and the net effective rent for the properties ranged between €36.86 and €47.52 per square metre.

Mr O'Connor relied upon a sample of 4 properties from 25 comparable properties all of which were located in the same industrial estate as the subject property and which had a rate per square metre of €34. Mr O'Connor outlined that he had applied a 15% discount on the subject property due to its condition.

Mr O'Connor outlined that he had first inspected the property in February 2014 so as to consider whether it was capable of beneficial occupation. He noted that the offices were furnished, had suspended ceilings and were floored with carpet or timber. In this regard he referred the Tribunal to the photographs on pages 9 and 10 of the Respondent's précis.

Mr O'Connor submitted that the photographs supplied by the Appellant did not seem to tally to the building on the ground. He submitted that the photographs contained within the Respondent's précis covered 80-90% of the subject property.

Mr O'Connor referred the Tribunal to the aforementioned licence agreement with the film production company, which was in the sum of €32,000.00 and which related to a period of 16 weeks. He also stated that Mr Handyman had occupied the property up to 2011.

Mr O'Connor then gave evidence of having returned to the subject property on Wednesday, 13<sup>th</sup> May 2015, at which time he noted the door was open. Upon looking through the window he observed computers in operation. He confirmed that he had encountered an individual identified as the owner's son and further confirmed having taken photographs of the subject property.

Mr O'Connor opined that the property was perfectly capable of occupation and that the 15% discount applied was a reasonable allowance for its condition.

Mr O'Connor indicated that he had encountered this type of office construction in the past and in his opinion same was not unusual within a warehouse construction.

Mr O'Connor stated that ordinarily where properties are exempted due to condition, one would tend to expect the property to have no roof. He further stated that he was unaware of any property which was capable of occupation having a nil rating due to its condition.

Cross-Examination:

Under Cross-Examination, Mr O'Connor confirmed that a colleague of his had originally valued the property but that he was happy with the said valuation.

He expressed satisfaction that a hypothetical tenant would pay €20,100 in annual rent.

He accepted that part of the property is in poor condition.

He stated that €34-€38 per square metre reflected the tone within the Greenmount Industrial Estate.

Mr O'Connor confirmed that he was not in possession of any details in respect of the comparison properties referred to at pages 24/25 of the Respondent's précis.

Mr O'Connor stated that on three of the four occasions the property was inspected by the Respondent's staff over the preceding four years, same was found to be occupied.

The Respondent's Submissions:

Mr. O'Neill opened to the Tribunal his detailed written Legal Submissions, which can be summarised as follows:

- 1) The onus of proof rests with the Appellant to show that the property comes within the legal definition of incapable of beneficial occupation.
- 2) In order for a property to be deemed incapable of beneficial occupation it must be "*struck with sterility in any and everybody's hands*"<sup>6</sup>.
- 3) The Appellant has done no more than show that the property is in a poor state of repair and not suitable in its present condition without some work for a variety of uses, and may require planning permission and/or a fire certificate. As a matter of law, and taking the Appellant's case at its highest, such a proposition does not render the subject property incapable of beneficial occupation.

## **Findings**

The Tribunal, having examined the particulars of the property the subject of this appeal, having confirmed its valuation history, having examined and considered the parties précis of evidence and oral evidence as well as the written and oral submissions prepared and delivered on behalf of the parties, makes the following findings:

- 1) While the phrase "rateable occupation" is not defined by the Valuation Act, 2001 case law, including *Telecom Eireann v. Commissioner of Valuation*<sup>7</sup> and

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<sup>6</sup> as per *London County Council v. Erith Churchwardens* [1893] AC 562, *Mary McGrath v. Commissioner of Valuation* VA 11/2/029, *Fabian Doyle v. Commissioner of Valuation* VA 14/2/001

<sup>7</sup> [1994] 1 IR 66

*Iarnrod Eireann v. Commissioner of Valuation*<sup>8</sup> have established that there are three essential ingredients to rateable occupation: firstly, the occupation must be exclusive; secondly, it must be of value or benefit to the occupier; and thirdly, it must not be for too transient a period.

- 2) In order for a property to be deemed incapable of beneficial occupation, the Appellant must prove on the balance of probabilities that the property is of no use to any party or is “*struck with sterility in any and everybody’s hands*”. Per *London County Council v. Erith Churchwardens [1893] AC 562*, *Mary McGrath v. Commissioner of Valuation VA 11/2/029*, *Fabian Doyle v. Commissioner of Valuation VA 14/2/001*.
  
- 3) In circumstances where Mr O’Donoghue himself accepted under cross-examination that:
  - a) Part of the subject property was being used by Mr Handyman in 2011.
  - b) The subject property was available to rent in 2011.
  - c) The subject property was occupied under a licence agreement by a film production company in 2014.
  - d) Part of the subject is “usable”.
  - e) Lowe & Assoc are at present attempting to rent the subject property.

The Tribunal finds that the Appellant has failed to show that the subject property is of no use to any party and the Tribunal therefore finds that the subject property is capable of beneficial occupation.

- 4) No comparative evidence was adduced by the Appellant in support of its contention that the rate applied was excessive and as such the Tribunal is satisfied that the rate applied should remain undisturbed.

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<sup>8</sup> (Unreported), High Court, Barron J., 27<sup>th</sup> of November 1992

**Determination**

Accordingly, the Tribunal disallows the appeal in the present proceedings and confirms the decision of the Respondent. In consequence thereof the rateable valuation of the subject property remains fixed at €20,100.00.

And so the Tribunal so determines.