

Appeal No. VA10/5/067

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

Sean Madigan

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 570098, Workshop at Killeek, St. Margarets, County Dublin

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Aidan McNulty - Solicitor

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 23rd day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €100,100 on the above described relevant property.

The grounds of appeal are set out in the Notice of Appeal and in an accompanying letter, a copy of which is attached at the Appendix to this judgment.

The appeal proceeded by way of an oral hearing, which took place in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 27th October, 2010. The appellant represented himself at the hearing and the respondent was represented by Mr. Karl Gibbons, BSc (Property Valuation and Management), 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.

The Property

The property comprises a steel framed single skin corrugated iron structure which was initially erected in the 1970's as two separate buildings but later joined with a link structure in the mid 1990's. The structures bearing the appearance of traditional farm barns, are grouped and described as Blocks 1, 2 and 3 with an internal eaves height of 6.6 metres. The second group, Blocks 4, 5 and 6, has a lower eaves height of 3.5 metres. A Portacabin structure is sited in close proximity to Block 1. Excluding the circulation area serving those structures, the Rating Authority included in the assessment the concrete surfaced yard areas identified as Blocks 8, 9 and 10 in the valuation. In general terms, Blocks 1 – 6 inclusive may be characterised as farm machinery repair workshops and the extensive yards are primarily used for the storage of farm equipment, equipment supplies and parts. The workshops are constructed on a concrete base. The yard surrounding the complex is enclosed with circa 2 metres steel palisade fencing. The main access route to the main entrance of the yard is a narrow third class paved public road.

Location

The property is situated abutting a minor rural road, about 5 km west of Swords, approximately 3 km north of Dublin Airport and 18 km north of Dublin city centre.

Services

The subject relevant property is served with mains power. Potable water supply is provided by means of a metered domestic connection from the adjoining residence. Similarly, as the site is not served with a foul sewer, staff toilet facilities are provided with the cooperation of Mr. Madigan's parents in their dwelling located adjacent to the subject property.

Tenure

Freehold.

Valuation History

1. The property was valued under a Revaluation Order signed November 2005 for Fingal County Council, at €133,800.
2. In July, 2009, representations were submitted by the appellant. The valuation was reduced to €108,900.
3. In February, 2010: An appeal was lodged by the appellant. The valuation was further reduced to €100,100.
4. August, 2010: An appeal was lodged to the Valuation Tribunal against this decision of the Commissioner of Valuation.

Floor Areas

The agreed floor areas were as follows:

Block 1 – 6	Workshop:	1,357.90 sq. metres
Block 7	Portacabin:	21.30 sq. metres
Blocks 8 – 10	Concrete Yard:	9,653.00 sq. metres

Appellant's Case

Mr. Séan Madigan took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission.

In the course of his evidence, Mr. Madigan confirmed that the valuation against which he was appealing was the valuation following first appeal, i.e., €100,000, namely the valuation on the subject property currently in the list.

Mr. Madigan referred the Tribunal to the points outlined in his document titled “Summary of Evidence”, which included a number of reasons why he felt it necessary to file the appeal with the Valuation Tribunal, as follows:-

1. **Road network.** He contended that the condition and standard of the road surface from the nearby Luttrell’s Cross to his yard made it very difficult and challenging for drivers of larger commercial vehicles to gain ingress and egress to and from his yard and workshops. He provided the Tribunal with a number of photographs enclosed with his submission attached as Appendix 1, indicating in particular the apparent poor surface quality and narrow width of such road.
2. **Water supply.** The appellant also provided a photograph of a metered water supply line taken from the supply at his parent’s dwelling house and stated that the subject property is not serviced with a direct mains potable water supply.
3. **Foul sewer service.** He noted the absence of service to the subject property and the reliance for bathroom facilities on his parent’s dwelling.
4. **Storm water surface.** Again noting that there was no mains service available for storm water management, he informed the Tribunal that he, as the occupier of the subject property, had installed an oil interceptor and a storm water shore on the property to attenuate surface water flooding from the nearby road at his sole expense.
5. **Buildings.** Describing them as barn shed construction of corrugated tin with 6 ft block walls and sliding steel doors, Mr. Madigan indicated their age, extending from the recent connections completed about 12 years ago, to the original structures built approximately 30 to 35 years ago.

6. **The Yard.** He advised that the yard is hard-core rolled with a surface skin of about 4 inches of concrete and noted that much of it is already degraded and damaged due to heavy traffic and weather conditions. He confirmed the installation of the perimeter fence and gates, paid for by him in recent times.

Mr. Madigan contended that the valuation placed on his property must be considered very high when compared to new and almost-new serviced industrial units in prime locations, with office and parking spaces in Fingal. To support his case he provided the Tribunal with some photo images of such properties extracted from a web-based property portal indicating guide rents per sq. metre on various premises in the north County Dublin region.

Mr. Madigan also provided extract copies of Fingal County Council Budget materials for Fingal for the past six year period and extrapolated from same that his rates liability increased by a factor of 244% over the past 12-month period. While explaining that he was quite prepared to pay his fair share of rates levied by the Rating Authority, he expressed strong concerns that a number of parties occupying rateable premises in the area are apparently not paying any rates whatsoever. He considered that situation to be manifestly unfair.

Mr. Madigan also referred to and read a copy of his correspondence dated 23rd August, 2010, attached at Appendix 1, wherein he set out:-

- a. The financial strains his family firm is currently enduring;
- b. The difficulties they have had complying with EU directives to upgrade their facilities resulting in the surfacing and fencing of the extended yard;
- c. The burden of debt which has accumulated on their business;
- d. The payment by him earlier this year of a sum on account of the 2010 Rates to Fingal County Council equivalent to the 2009 liability plus 5% thereon; and
- e. Consideration to be given by the Rating Authority to compute the liability to rates by reference to commercial income rather than potential incomes or rental valuations.

Mr. Madigan also provided the Tribunal with a number of photographs in his précis indicating the age and condition of the subject workshops, the type of palisade perimeter fencing, the portacabin structure and the yard surface. He contended that any effort to compare his complex with others benefiting from proximity to the Airport would be

misleading, and in his view would not conform to principles of equity, fairness and transparency. He cited his difficulty in understanding how his rates liability had risen so significantly between the year 2009 and 2010 and explained how it had increased modestly over the five year period 2005 to 2009 inclusive, ranging from amounts of €3,752 to €4,358, reflecting an average annual increase of a little less than 4%, and then escalating to an amount this year of €15,015, based on the aforementioned valuation.

Mr. Madigan offered his view that industrial-type property prices in the Fingal County Council area had decreased by about 30% since their peak in 2006/2007 and further acknowledged that the relevant year for this valuation exercise was 2005. He concluded his remarks by informing the Tribunal that he had received a Circuit Court Civil Bill, dated 20th October, 2010, representing a demand for payment by Fingal County Council on Madigan Bros (Farm Machinery) Limited for the payment of the full outstanding amount of 2010 rates due to the Rating Authority in the amount of €10,440.

Mr. Madigan expressed dismay and stated that he felt aggrieved with this occurrence, i.e. being served such a demand while the matter of liability on the quantum is under appeal to the Valuation Tribunal.

Cross-examination

In response to various questions raised at the hearing, Mr. Madigan confirmed that the yard area increased to approximately double its size when the perimeter fence was installed. He also confirmed that though narrow, the lane or narrow road from the crossroads west of the property, i.e. Luttrell's Cross, does facilitate the passage of heavy vehicles, albeit with some difficulties.

Respondent's Case

Mr. Gibbons took the oath, adopted his précis as his evidence-in-chief and reviewed his submission. He commenced by confirming agreement between the parties on the areas of the complex, the yard and the circulation area. He explained the yard and the total circulation area now measures approximately 14,673 sq. metres in total whereas in the previous Revision valuations, the area of the yard was not computed or calculated into the valuations. Having described the physical characteristics of the buildings, their condition, the yard and access

routes, he then outlined the basis of valuation, the valuation history and the manner in which the valuation was calculated on the subject, as follows:-

Block 1 – 6	Workshop:	1,357.90 sq. metres @ €45 per sq. metre =	€61,105.50
Block 7	Portacabin:	21.30 sq. metres @ €18 per sq. metre =	€ 383.40
Blocks 8 – 10	Concrete Yard:	9,653.00 sq. metres @ €4 per sq. metre =	<u>€38,612.00</u>
Total:			€100,100.90
Rounded to €100,100			

Mr. Gibbons then referred the Tribunal to Section 3 of his précis containing the comparable evidence, namely Comparison Properties Nos. 1, 2, 3, 4 and 5 attached herewith as Appendix 3. He explained that Comparison Properties Nos. 1 – 4 inclusive each comprised single skin structures, i.e., walls and roofs, ranging in area from 219 sq. metres up to 751 sq. metres, with NAV rates per sq. metre calculated from €50 to a high of €60. He also included rates per sq. metre applied on hard core yards in the range of €4.50 up to €10 and one large concrete yard of circa 5,000 sq. metres assessed at €7 per sq. metre.

Mr. Gibbons also provided photo images in his précis of those five comparison properties and concluded his direct evidence by stating that he felt that the valuation of the subject was fair and reasonable and in accordance with provisions of the Valuation Act, 2001, noting again that the substantial increase in the rates liability arose from the inclusion of the c. 2.4 acre hard surfaced yard.

Cross-examination

Mr. Gibbons responded to various questions put to him and confirmed:-

- a. That he had visited his comparison properties 3, 4 and 5.
- b. That his primary comparison property was Comparison No. 1 which included a workshop of 751 sq. metres, a portacabin, hardcore yard of 4,457 sq. metres and mix hardcore and soil yard of 2,419 sq. metres, together with other rateable elements. He stated that this comparison property is about 14 km from the subject and the enterprise conducted there also has to endure poor access over a laneway off the R132 between Lusk and Ballyboughal, the buildings are similar single skin walls and roof, used as a workshop for scrapping and recycling of cars, and notably the NAV on same was reduced at

representation stage from a figure of about €130,000 down to a sum of €73,400. He stated that he found it difficult to find any market rental evidence of large scale buildings and yard similar in nature and condition to the subject.

- c. Mr. Madigan then noted that he had visited the respondent's comparison properties and said that he would have been satisfied if the NAV on his property had been calculated in an amount similar to the above, and he would have settled with the Rating Authority on a valuation of approximately €70,000.
- d. Mr. Gibbons did not appear to be aware that the occupier of his Comparison No. 1 allegedly did not consider it prudent to appeal his valuation any further as a substantial part of his income is apparently derived from business with the Local Authority.
- e. The respondent confirmed that there was no appeal on his Comparison No. 2 to the Valuation Tribunal, but that there had been exchanges with the occupier's agent in the past. He advised that its primary purpose was for the storage of waste and he was not aware whether or not same was dependent upon a current EPA Licence.
- f. On his Comparison No. 3, Mr. Gibbons suggested that a reduction on the rate per sq. metre in the valuation of the workshop from a level of either €55 or €60 down to €50 may have been attributed to an issue pertaining to the calculation of floor areas.
- g. Mr. Gibbons stated that he had been involved in the valuation of approximately 200 properties in the Fingal Rating Authority Area but was not sure what percentage of these may have had Net Annual Values reduced through Representations or Appeal. In reply to further queries, Mr. Gibbons suggested that property values generally in the Fingal area may have decreased in value from 2005 to present day by approximately 60%.

The parties provided a summary statement on their positions with respect to the foregoing.

Findings

1. The Tribunal is satisfied that the increase in liability of rates in 2010 primarily resulted from the inclusion of the surfaced yard in the Net Annual Value assessment currently being appealed.

2. The information provided by the appellant on guide market rental figures for industrial complexes in the Fingal Local Authority Area, though of interest, was not very helpful as they represented asking, rather than achieved, rental amounts.
3. In reaching its determination below, the Tribunal has considered the limitations and/or absence of utility services to the subject property and has also considered the impact of the poor quality and narrow road service to same from Luttrell's Cross.
4. The Tribunal notes the declaration by the appellant that Planning Permission was neither required by, nor indeed was an application deemed necessary to be filed with, Fingal County Council for the expansion and surfacing of the expansive yard and the installation of the palisade fencing around its perimeter.
5. The Tribunal considers that there was no evidence supporting a reduction in the NAV applied to the portacabin. Conversely, it considers that the scale of both the workshop complex and yard area warrants a reduction in the rate per sq. metre applied to both, and in so doing, has regard to the absence of any comparative evidence available to it with respect to similar properties of like scale and function.

Determination

Accordingly, all of the foregoing considered and taking into account all of the detail of the evidence submitted and adduced at hearing, the Tribunal concludes that the fair and correct Net Annual Value of the subject property should be calculated as follows:-

Block 1 – 6	Workshop	1,357.90 sq. metres @ €36 per sq. metre	= €48,884.40
Block 7	Portacabin	21.30 sq. metres @ €18 per sq. metre	= € 383.40
Blocks 8 – 10	Concrete Yard	9,653.00 sq. metres @ €3.20 per sq. metre	= <u>€30,889.60</u>
Total:			€80,157.40
RV say €80,000			

And the Tribunal so determines.