

Appeal No. VA01/3/084

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

Books UpStairs Ltd., t/a Books Now

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Reference 8.19/Unit 15 Ashleaf Shopping Centre, Townland:
Commons, E.D. Terenure Cherryfield, R.D. Templeogue Dublin

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairman

John Kerr - MIAVI

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF APRIL, 2002

By Notice of Appeal dated the 17th October, 2001, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €215.86 (£170) on the above described hereditament.

The grounds of Appeal as set out in the said Notice of Appeal are that:

"the valuation is excessive, inequitable and bad in law".

The appeal proceeded by way of an oral hearing, which took place in the offices of the Tribunal in Dublin on the 4th day of March 2002. The appellant was represented by Mr. Eamonn Halpin of Eamonn Halpin & Co. Chartered Valuation Surveyors and Estate Agents. The respondent was represented by Mr. Joe McBride, a District Valuer in the Valuation Office. Both valuers adopted their written submissions as being their evidence in chief given under oath.

Description of Premises

The premises comprises a retail shop unit located in the Ashleaf Shopping Centre, which in turn is located at the corner of Cromwellsfort Road and Whitehall Road West, known locally as Crumlin Cross in the suburb of Crumlin, in South Dublin.

The Ashleaf Shopping Centre was completed during the year 2000 and consists of twenty-one retail units on the ground floor with Dunnes Stores as the anchor tenant. The Submarine bar, restaurant and offices occupy the first floor. The main entrance to the shopping centre is off Cromwellsfort Road and a secondary access is provided off Whitehall Road West. Access to the basement car park, which provides 513 car spaces, is provided both by internal stairs and travelator from within the mall.

The subject premises under Appeal is unit No. 15 which is used as a retail bookshop with limited storage facilities under a stairwell which serves the first floor above from the mall. The premises is identified and trades under the name of Books Now.

Accommodation

The accommodation comprises of 96 m² with a further 10 m² located under the stairs. Both the Appellant and Respondent agreed on these measurements.

Tenure

The premises is held under a 25 year lease with Rent Reviews every five years. The lease commenced on the 28.03.2000 at an annual rent of €54,598.74.

Valuation History

A 2000/4 Revision established a first RV at €215.86 (£170.00). An appeal was lodged against the revision valuation and the Commissioner of Valuation issued the result of the first Appeal with an unchanged RV.

On the 17th October, 2001, the Appellant filed an Appeal against the Commissioner's decision with the Valuation Tribunal.

Evidence for the Appellant

Mr. Halpin, on behalf of the appellant, set out a number of points during the Oral Hearing and summarized his précis of evidence, the key points of which are as follows;

- The location of the Ashleaf Mall, in his view, is moderate and not comparable with more established high profile centres such as, The Square at Tallaght, Blanchardstown and Liffey Valley Shopping Centres.
- The size of the Ashleaf Centre limits its appeal to local trade only and in effect it is a neighbourhood centre.
- Trading activity within the centre has been disappointing for a number of the tenants, possibly due to poor passing pedestrian flows and the nature of access for many of the shoppers being provided via the underground car park.
- The application by the Commissioner of a NAV backdated to a 1988 Tone of €345.79 (£272.33) per square meter overall on the retail area is, in his view, excessive when considered in the context of the comparables offered by the Appellant. Mr. Halpin contended that the unit adjoining the subject, with a smaller floor area and a current rental of €7,138.21 (£45,000) and an RV €177.76 (£140.00), should be of particular relevance in this instance.
- He was of the view that the Commissioner erred by not giving full consideration to the passing rent on the subject premises and as a result, the NAV (1988 Tone)

is at variance with the actual passing rent particularly when compared to that of the similar sized adjoining retail unit within the mall. To support his position, Mr. Halpin set out two approaches in his précis of evidence to assist the Tribunal to determine the appropriate RV, as follows;

Estimated NAV (1988 Tone)

$$\begin{array}{rcl}
 \text{Shop } 96\text{m}^2 @ \text{€}273 / \text{m}^2 & = & \text{€}26,208 \\
 \text{(understairs) Store } 10\text{m}^2 @ \text{€}109 / \text{m}^2 & = & \text{€ } 1,090 \\
 \text{(Part with restricted heardroom).} & \text{—————} & \\
 & & \text{€}27,298 \\
 @ 0.63\% & = & \text{€}171.97 \text{ Say } \text{€}172 (\text{£}135)
 \end{array}$$

or Passing rent ~~€~~54,598.74 (£43,000) (from March 2000)

at the same relationship that was applied to reach NAV on 2000/4 1st Appeal

i.e. less 50% = ~~€~~27,299 = (£21,500)

@ 0.63% = ~~€~~171.98 Say ~~€~~172 (£135)

Evidence for the Respondent

Mr. Joseph McBride representing the Commissioner of Valuation gave his opinion of the Rateable Valuation on the premises as set out in his précis of evidence, as follows;

NAV

$$\begin{array}{rcl}
 \text{Shop Unit } 96\text{m}^2 @ \text{€}342.67 / \text{m}^2 & = & \text{€}32,896.32 \\
 \text{Under Stairs } 10\text{m}^2 @ \text{€}136.62 / \text{m}^2 & = & \underline{\text{€ } 1,366.20} \\
 \\
 \text{Total NAV} & & \text{€}34,262.52 \\
 \text{RV @ 0.63\% of NAV} & = & \text{€ } 215.85 \\
 \\
 \text{RV} & & \text{€}15.86
 \end{array}$$

Mr. McBride, during the course of the Oral Hearing, sought to rebut the Appellant's assertion that the RV of the subject is excessive if compared to assessments on other units

within the Ashleaf Centre. Mr. McBride stated that the NAV must be in line with adjoining units and the Tone of the List established in the centre. He indicated that 17 ground floor units excluding MacDonalds, were valued on the 2000/4 Revision. He stated that eight First Appeals were lodged and no change had been made to any of the Revision figures on Appeal. He indicated that the Commissioner of Valuation had no reason to believe that the position of the subject unit within the mall of the Ashleaf Centre was disadvantaged when compared to other similar units and offered by way of supporting evidence five comparison premises within the Ashleaf Centre varying in area from 210.6 m² down to 70 m². The details of each of the comparisons are set out on the attached appendix. Mr. McBride also expressed the view that the RV established on the adjoining Butcher Shop is representative of the Tone of the List and accordingly must be considered a fair comparable. He acknowledged the fact that this assessment with its NAV calculated at approximately 60% of the 2000 passing rent, is also the subject of Appeal.

Findings

- 1) The Tribunal was asked to consider the argument put forward by the Appellant that the Commissioner failed to consider the passing rent, which he considered represented Open Market Rental Value as at March 2000, on the subject hereditament in the first instance and secondly, that he also treated it differently from the other units within the centre.
- 2) Both the Respondent and the Appellant agreed on the location, description, layout and floor area of the subject and further generally agreed on the difference in rental value which could be attributed to the area primarily used for storage under the stairs and the retail floor area. Mr. Halpin acknowledged that his written submission to the Tribunal required a correction on page 5 under heading "Description" to reflect parking for 531 cars and not the 600 as submitted. Both the Respondent and the Appellant also agreed the dimensions of the unit having a frontage of 8 metres and a depth of circa 14 metres and both also acknowledged that the unit was well fitted out with a suspended ceiling and timber floor.

- 3) The Appellant, citing his comparisons and in particular No's 1, and 2, indicated that the NAV on same had been calculated as an amount equivalent to 50% of the passing rent. In his comparisons No. 3 and 4, he suggested that the passing rent had been reduced by 44% on comparison No. 3 and by 60% on comparison No. 4. Mr. Halpin argued that the occupier of comparison No. 4, as outlined in the appendix hereto, being the Cosgraves Butcher's unit No. 16, appeared to be paying an extraordinarily high rent of €86,360 per annum and noted that the premises was also under Appeal to the Tribunal. He suggested that the passing rent in this instance might contain a premium.
- 4) Mr. McBride's argument and reference to an earlier conclusion of the Tribunal in VA92/3/018 Tuthills (Crumlin) Ltd. *"that the evidence of comparative valuations within the centre to be of coercive influence upon them having regard to the provisions of Section 11 of the Act of 1852 as amended by Section 5 of the Act of 1986"*, was noted by this Tribunal. Mr. McBride acknowledged to the Tribunal that the Commissioner had considered the passing rent in all cases within the centre and his calculation of NAV also recognized the level of rental payments passing on the adjoining units and the Tone of the list within the centre.
- 5) During the letting of a new Shopping Centre agreements will be entered into during the development process and it is inevitable that the rental values on a square metre basis will vary depending upon the date upon which the lease was agreed, the size and location of the unit and a number of other factors such as configuration, rent free allowance etc. It would appear that the Valuation Office, quite correctly in our opinion, have carried out an analysis of over 16 rents and from that analysis have arrived at what they would consider to be the tone and this accounts for the variation in the ratio between rents and N.A.V.s which range from between 60% to 44%

Determination

Having regard to all of the evidence adduced and arguments made, the Tribunal determines the Rateable Valuation on the subject premises to be €202 calculated as set out below:

Net Annual Value as at 1988					96m ² @	€320 per sq. metre	=	€30,720
					10m ² @	€120 per sq. metre	=	<u>€ 1,200</u>
								€31,920 say €32,000
RV	@	0.63%	of	NAV			=	€202