

Appeal No. VA02/4/010

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

John Weldon

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Showroom at Map Reference Unit 2 Cow's Lane Music Hall, Ward: Royal Exchange A Temple Bar, County Borough of Dublin

B E F O R E

Tim Cotter - Valuer

Deputy Chairperson

Brian Larkin - Barrister

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF APRIL, 2003

By Notice of Appeal dated 14th November 2002, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €76.18 on the relevant property above described.

The Grounds of Appeal as set out in the Notice of Appeal are: " excessive; inequitable, bad in law, not designated, poor location, quantum allowance."

The oral hearing took place in Dublin on the 10th February 2003. Mr. John Weldon Managing Director of John Weldon Auctioneers presented the case for the Appellant.

Mr. Raymond Sweeney District Valuer who holds an Economics Degree from the N.U. I. appeared for the Respondent.

The Evidence

The Appellant affirmed his précis.

Mr. John Weldon went through his précis which included some relevant photographs of his property at Unit 2, Music Hall, Cow's Lane, Dublin. 8 and referred to the following headings:

(1) Poor Location – Cow's Lane was a new street and did not feature on any street map or Ordnance Survey Map of the City - nobody could locate it.

(2) Excessive – There was no footfall or passing trade. Many businesses in the area had closed down, including Cuan Hanley. Shoppers tended to gather at the top and bottom of the street but did not venture down into the street he said. In the circumstances the valuation of €76.18 was too high.

(3) Inequitable – One side of Cow's Lane has the benefit of rates remission while his side did not. The Appellant signed the lease in 1999 on the basis of the double rent relief and rates remission available to lessees. He indicated that he signed the lease before 31st December, 1999 and should have qualified for the 10 years rates relief. In point of fact the Appellant did get three months rent relief, but that was as far as it went. Furthermore he stated that the development on his side of the street has not been completed and then had attracted the wrong kind of people to the area viz drug addicts, layabouts etc. This had devalued his property and there should be a reduction in rates to reflect that.

(4) Bad in law – The Appellant's understanding was that the basis of calculation of the rate was linked to the amount of rent paid. He stated that the Valuation Office believed his rent to be IR£17,000(€21,585.55) whereas it was in fact £15,924 (€20,219.32). This factor should have been taken into account.

(5) Not designated – Unit 2, the subject property was supposed to have been rates free for ten years. One side of Cow’s Lane was designated while the other was not. If the Appellant had known that he would have opted to acquire property on the other side of the street. The rates were too high for an area that needed investment.

(6) Survival – John Weldon Auctioneers was a small company and offered two people full time jobs as well as a part time position. It was a small family business and he had not budgeted for the rates he now had to pay. They were just about keeping their heads above water. If there was no rates remission and full rates had to be paid they would be unable to survive. Consequently they would be faced with the stark choice of going under or exiting the Development just as three other units had done due to lack of business.

The Appellant was cross-examined by Mr. Sweeney as to why he had chosen the location in the first place given the downsides he was now portraying. In reply he stated that he worked for a competitor auctioneering firm – O’Reilly Auctioneers – and had wanted to go into business on his own account. Questioned by Mr. Sweeney in relation to the alleged number of units which had closed, he stated that he was not aware that this was simply a temporary phenomenon or that there were active indications that they were to be re-let in the very near future. He conceded that Mr. Sweeney’s assertion that a coffee shop would be opened in one of the units on receipt of Planning Permission could well be true, however he stood by his assertion that Cow’s Lane was dead from a trading point of view. He gave evidence that he signed the lease on the 23rd December 1999 only to discover after taking up occupation, that the rates relief only applied to units on the other side of the street and not to him. It was a great source of disillusionment to him and he indicated that he had taken legal proceedings against Temple Bar Properties Ltd on that score.

Mr. Sweeney gave evidence in accordance with his précis. The property comprised an Auctioneers/Jewellers showrooms located in Music Hall on the western side of Cow’s Lane which was a new pedestrian-only street linking Lord Edward Street West with Essex Street West in Temple Bar. He stated that while the location was secondary in retail terms, it was appropriate to specialist use, where goods/services were sufficiently attractive to discerning

customers to induce them to an off-centre location. He expanded on this theme by describing the outlets/units as being part of a relatively new concept – “ a visually stunning purpose built designer street with high-end retail outlets”. On that note Mr. Sweeney fully accepted that the business was totally dependent on passing trade. He said the rate applied of £12 per sq.ft. (€15.24) was rock bottom and reflected the location and was on a par with similar properties. He said that Cow’s Lane would shortly appear on a Dublin Street map.

Mr. Sweeney was cross-examined by the Appellant, Mr. Weldon. It was put to him that his comparing of the Units in Music Hall with those in Scarlet Row did not stand up to scrutiny. When pressed as to the number of units closed in Music Hall, Mr. Sweeney’s responses were not conclusive. He stated that the Units had an 80% success rate with only one premises closed and that Cow’s Lane would establish a niche in the property market. When put to him that the subject was not comparable to the properties in his précis and that it was located on a street in Dublin which had no existence in seven hundred years, he accepted that it had no geographical presence and that the average person would not carry a map around with them but he maintained that the rate of £12 per sq.ft. (€15.24) or €63.80 per sq. metre was rock bottom. The Appellant put it to Mr. Sweeney that the reality was that the subject location was unique and that it featured a number of anomalies including the designation of one side of the street and the non-designation of the other, non referencing on city maps etc. Fixing a rate on the basis of a unit in Sauls Court viz €63.80 per sq. metre because there was simply no other comparable property was not appropriate in these cases and was not a satisfactory way of dealing with a unique development, Mr. Weldon said while noting that Cuan Hanley was an exception to this figure. In relation to non-designation the appellant submitted that the excuse that the property was not finished on time put forward by the Council was not acceptable. The lease had been signed before 31st December 1999 and the allowances, including rates relief which formed part of his decision to invest, should have been granted.

Mr. Weldon accepted that while his difficulties with Temple Bar properties and Dublin City Council were another matter, even at this stage now two years on, any reduction in rates would help some way in an extremely precarious business environment and help prolong his stay in Music Hall, Cow’s Lane that bit longer.

Findings of Fact

- 1) The Tribunal accepts the unique nature of the Cow's Lane development. It is not comparable to Temple Bar. It is located on the western side of the old City, not on any street map and does not benefit from any significant footfall or passing trade. Furthermore it is frequented by drug addicts and down and outs who are a deterrent to shoppers who otherwise might be tempted to walk into the area and view the shops.
- 2) The Tribunal did not accept in general terms that the other retail units in the area were viable and part of an 80/20% success rate proffered on behalf of the Respondent simply because only one other Unit in Music Hall had appealed.
- 3) The Tribunal accepted that the Appellant was in survival mode in attempting to carry on business in a location, which at the conceptual stage seemed exciting but in reality was struggling to compete with more "high street" locations.
- 4) The Tribunal accepted the Appellant's contention that a five year view had to be taken of the Cow's Lane project and that any financial relief along the way in the nature of rates allowance or whatever was very welcome in his effort to sustain employment and maintain a presence in the area.
- 5) No significant data in relation to passing rents had been canvassed by either party before the Tribunal.
- 6) The Tribunal accepted the Respondents argument that in the normal way, £12 per sq.ft. was the lower end of the commercial spectrum but deems the subject property to be unique and entitled to special status.

- 7) In the circumstances the Tribunal allows the appeal to the extent that a 50% reduction in the net annual value per square metre is appropriate. The Tribunal therefore determines the rateable valuation as follows:

$$\begin{aligned} 74 \text{ square metres @ } \text{€}1.90 &= \text{NAV } \text{€}6060.60 \times .63\% \\ &= \text{RV } \text{€}8.18 \end{aligned}$$

The Tribunal therefore determines the rateable Valuation on the subject premises to be ~~€~~8.00.