

Appeal No. VA05/2/022

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

Lidl Ireland GmbH

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Supermarket at Lot No. 11Aa.Unit 12, Ballyowen, Lucan-Esker, Lucan, County Dublin.

B E F O R E

John Kerr - BBS. ASCS. ARICS. FIAVI

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF OCTOBER, 2005

By Notice of Appeal dated the 4th day of May, 2005 the appellant appealed against the determination of the Commissioner of Valuation in setting a rateable valuation of €1,220.00 on the above described relevant property.

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

"The R.V. is excessive in comparison to the levels assessed on other supermarkets in the general area. This unit has the burden of an unused first floor area."

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 21st June, 2005. The appellant was represented by Mr. Joseph Bardon, FSCS., FRICS., Dip. Environmental Economics, and the respondent by Mr. Bríain Ó'Fhloinn, a District Valuer with the Valuation Office.

In accordance with the Rules of the Tribunal, prior to the commencement of the hearing the parties had exchanged their respective submissions to the Tribunal. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

The Property

A new stand-alone, two storey purpose built detached building with a supermarket operating on the ground floor and unused accommodation overhead, sited on land of circa 5,900 sq. metres with a cobblelock car park, providing parking for approximately 190 cars.

The property is located on the east side of Hermitage Way about two kilometres south-east of Lucan in Ballyowen, which is a highly populated area some twelve kilometres west of Dublin City Centre. The subject relevant property adjoins the Ballyowen Shopping Centre, which is anchored by Eurospar and circa eleven retail units.

The subject property is built to a standard usually associated with Lidl, with tiled flooring on the ground floor and suspended ceiling overhead. The retail area on the ground floor was calculated at 1,188 sq. metres, the stores & loading bay rounded to circa 282 sq. metres and the office, canteen and toilets at 39 sq. metres, all such areas agreed between the parties.

The unused first floor was also agreed by the parties to occupy a nett internal floor area of 1,485 sq. metres. This floor features fourteen windows, each measuring 5.5 metres x 3.2 metres, concrete floors, concrete block finish, with an open roof, two stairs and a lift shaft, excluding a lift. Electricity service is provided and connected to the first floor.

Tenure

Freehold

Valuation History

- The subject property was listed for revision by South Dublin County Council on 5th June, 2004, and Mr. Bríain Ó'Fhloinn was appointed on that date as the Revision Officer.
- A final Valuation Certificate was issued by the Commissioner of Valuation in the amount of €1,220 to the occupier on 23rd November, 2004.

- An Appeal was lodged with the Commissioner by Bardon & Company on 22nd December, 2004.
- The Commissioner, having considered the appeal, made no change to the rateable valuation and issued the Certificate of Valuation at an RV of €1,220 on 7th April, 2005.
- Bardon & Company filed an appeal to the Valuation Tribunal on 4th May, 2005, citing the grounds above noted.

Appellant's Case

Mr. Bardon, on behalf of the appellant, took the oath, formally adopted his précis as his evidence-in-chief and provided the Tribunal with a review and synopsis of his submission. He explained that, due to time constraints, he was not in a position to engage in representations on behalf of his client during the period August to November, 2004. He expressed concern that no discussions took place with the Appeal Officer from November 2004 to early April 2005, but acknowledged that he did have an opportunity to review the file with Mr. Ó'Fhloinn.

Mr. Bardon explained to the Tribunal that the first floor was constructed in accordance with the planning permission granted by South Dublin County Council and not in response to an anticipated need or requirement of his client, Lidl Ireland GmbH. He noted that in two other locations, Newbridge and Galway, Lidl had also constructed first floor space but had rented both of those upper floor units to third party occupiers.

He also contended that the Valuation Office had traditionally included the value of car parking spaces, without attributing a burden, as an element of the valuation exercise when rating supermarkets, provided parking charges were not applied or levied on the customers of the supermarket. He indicated that the Revision Officer appeared to have included a figure of €12,953.83 in respect of the car park in the net annual value in this particular exercise. By request of Mr. Ó'Fhloinn and with the agreement of Mr. Bardon, this issue was not pursued further during the course of the hearing and reference to same in Bardon & Company's précis of evidence was not, by mutual request, considered by the Tribunal.

Mr. Bardon explained how the building specification for Lidl supermarkets follows similarity in terms of size, layout and construction details with variances occurring only on internal layouts. He explained that car parking facilities are provided in response to capacity parameters determined in turn by the size and configuration of the site available for

development. Internal finishes in the subject property were predominantly part tiled and part painted concrete block walls, tiled concrete floors, with acoustic tiled ceilings in the supermarket, office and canteen areas only. He summarized the history of the planning permission applying to the site when Lidl purchased it, which apparently contemplated a discount food store in one unit on the ground floor and an independently accessed leisure facility at the first floor. A second of three proposed units was to provide for a crèche on the ground floor, a local serviced office facility on the first floor and a final third component or unit to be a community facility building. However, he explained, Lidl had a policy where possible of not sharing their properties with others and though they had been approached to do so, had resisted and declined same. Conversely, Mr. Bardon indicated that Lidl had no particular use for the first floor but had complied with the relevant planning permission and conditions, and by copy Architects Opinion on Compliance (provided to the Tribunal subsequent to the Hearing) from Kenny Kane Associates, Architects, Designers and Town Planners, dated 16th day of October, 2003, confirmed that the retail unit, as built, was in substantial compliance with the relevant planning conditions, fire safety certificate and applicable building regulations. Refer to Appendix 1 attached.

A further key element of Mr. Bardon's case was to contest the notion of value applied by the Commissioner on the first floor of the subject premises and he argued that the hypothetical tenant, as contemplated under the Valuation Act, 2001 would not be prepared to value same at the rate of €43.93 per sq. metre on the agreed floor area of 1,485 sq. metres as set out in Mr. Ó'Fhloinn's précis of evidence. He argued further that all of the rates per sq. metre applied by the Valuation Office were overstated in his opinion and set out the following as his estimate of rateable valuation:

Ground floor

Supermarket	1,188 sq. metres @ €78.60 per sq. metre	€3,377
Offices, Canteen & Toilets	39 sq. metres @ €44.42 per sq. metre	€1,732
Stores	234 sq. metres @ €30.75 per sq. metre	€7,196
Loading bay	48 sq. metres @ €30.75 per sq. metre	€1,476

First floor

Unused area	1,485 sq. metres @ €27.34 per sq. metre	<u>€40,600</u>
		€44,381

€44,381 @ 0.63% = €09.60

Say RV

€10.00

He did not consider applying a separate NAV figure for the car park.

He felt it was appropriate to consider his primary comparison property (No. 1 in his Schedule of Comparisons, attached herewith as Appendix 2). He explained that the referenced Eurospar grocery outlet, which was located directly opposite the subject, was valued by the Valuation Office at €88.84 per sq. metre. Mr. Bardon suggested that that rate which was applied to Eurospar should be discounted by two amounts, namely €6.83 per sq. metre and €3.41 per sq. metre to reflect the absence of adjoining complementary units around the subject and the burden of first floor unused area, respectively, to represent the value of the subject. He also sought the support of the Tribunal, as is noted above, on the rates per sq. metre applied by the Valuation Office to the office, canteen and toilet areas, the stores and loading bay, as well as the unused first floor area. Referring to his other two comparisons, namely Superquinn and Tesco, both at Lucan, he suggested that the comparative rates per sq. metre applying to both should be substantially discounted to reflect the presence of 22 retail units and significant parking over and under ground associated with the former, and ten retail units with 250 car spaces over ground associated with the latter, again to fairly represent the factors influencing NAV on the subject property.

Cross-examination

Mr. Ó'Fhloinn commenced cross-examination by seeking affirmation by Mr. Bardon in terms of location linked to the visibility of the business conducted within the subject relevant property. Mr. Bardon confirmed that the subject was located within an area of high population density and enjoyed visibility from Hermitage Way and that the roundabout served the Ballyowen Shopping Centre. Mr. Ó'Fhloinn stated that Eurospar might be considered as part of a local neighbourhood centre, with eight retail units, medical office and restaurant, and was not as visible to passing traffic as the subject property. Mr. Ó'Fhloinn then described the parking layout providing spaces for 190 vehicles in a 'U' shaped configuration around the two storey Lidl building. He stated that if there was a substantial shortfall or deficit in terms of available parking spaces to the subject, he would have considered a possible reduction in the value for rating purposes, but conversely declared that good and adequate parking was crucial to the successful operation of a large grocery store and that, in any event, planning would not be granted if there was not sufficient land available to provide for parking. Mr. Ó'Fhloinn stated that Mr. Bardon had previously acknowledged that car parking should be valued as a principle in rating valuation. Mr. Ó'Fhloinn contested

the appellant's description of the first floor of the subject as akin to space suitable for storage. He explained that it was an open, column free zone with two independent access points. In reply to a question from Mr. Ó'Fhloinn, Mr. Bardon was unable to identify the price paid by his client for the site. Mr. Ó'Fhloinn queried Mr. Bardon's description of the first floor as a "burden" on the operation of the ground floor supermarket and Mr. Bardon was unable to identify a potential use which a hypothetical tenant might have for this first floor space. Mr. Ó'Fhloinn referred him to a possible leisure centre operator as a potential user.

Mr. Ó'Fhloinn explained that the appeal to the Tribunal was not one on the decision of the Revision Officer, though he stated that Mr. Bardon chose to include in his evidence a summary of the Revision Officer's notes in support of his evidence.

Mr. Ó'Fhloinn then addressed Mr. Bardon's précis of evidence, the comparisons cited therein and then the above noted suggestion of applying the two levels of discounts to reflect the first floor "burden" effect and absence of retail units. Mr. Ó'Fhloinn put it to the Tribunal that Eurospar at their location were required to share parking facilities with others in a poorer layout and with poorer visibility. In reply, Mr. Bardon stated that Lidl did indeed draw its customers from a large base, but visibility was not a critical issue to them. The matter of Superquinn facilities located on the Newcastle Road, Mr. Bardon's comparison No. 2, was then discussed. Mr. Bardon contended that the foregoing was about four times larger in ground floor area than the subject, but that the Valuation Office does not distinguish or factor in a quantum discount for large grocery floor areas and that the Superquinn comparator was poorly chosen because of its size and nature within a shopping centre supporting twenty other retail outlets.

Respondent's Case

Mr. Ó'Fhloinn took the oath, formally adopted his précis as his evidence-in-chief and requested the Tribunal to adopt the contents of the said précis completely, as read.

He then explained that he was the Revision Officer appointed, as noted in his submission. He explained that he reflected carefully on the matter of valuing the car parking facility. He expressed his view that there was an appropriate level of parking provided for the subject, reflecting as it did in his opinion, adequate capacity for the ground and first floors and which accordingly should be apportioned between both floors. He referred to his comparison No. 1, Eurospar, and drew the attention of the Tribunal to the fact that the parking there was neither

exclusive to Eurospar nor configured as efficiently as the subject. He also explained that the visibility of Eurospar was more restricted than the subject and the former had an interior with an unceiled exposed RSJ roof generally over the supermarket, excluding the check-out area, whereas the subject had a ceiling. He also explained that Eurospar and Lidl had similar ground floor areas and that Tesco, his comparison No. 2, was located at a secondary location and was of a much lower building specification. Mr. Ó'Fhloinn's comparisons are at Appendix 3 to this Judgment.

Cross-examination

Mr. Bardon questioned Mr. Ó'Fhloinn seeking to establish that when the latter first valued the subject, he had applied the same level in terms of rate per sq. metre on Lidl as that applied on Eurospar. In reply Mr. Ó'Fhloinn acknowledged that Eurospar was the nearest comparison available to him and could not be ignored and that, at the time, he was aware that free car parking facilities were not valued, but as the subject had essentially a dedicated and exclusive car park for its own customers, he felt compelled to value it allowing for a 20% reduction to reflect circulation inefficiency. Asked by Mr. Bardon if he was aware that car parks are not valued where no parking fees arise Mr. Ó'Fhloinn said he knew there had been a case in Navan where an attempt had been made to value a car park separately but this approach was rejected by the Tribunal on appeal. He accepted Mr. Bardon's statement that the Navan case dated from 1989. He would not agree that it was the stated policy of the Valuation Office not to value car parks, saying that each case was decided on its merits and he had therefore felt obliged to include a value for the car parking spaces dedicated to the subject property, as, in his view, they were exclusively controlled by the occupier of the subject. Mr. Ó'Fhloinn looked to his three comparisons namely the Eurospar in the Ballyowen Shopping Centre, Tesco in the Lucan Shopping Centre and Superquinn on the Newcastle Road, and asserted that all were good comparison properties. He then explained how Superquinn was set back from the Galway Road, in a good location, but with poorer access than the subject. Mr. Bardon contended that the heavier load of traffic resulting in poorer access to Superquinn, might be attributed to its trading success. Mr. Ó'Fhloinn went on to state that, in his opinion, the Lidl premises was better than Tesco, located about 500 yards from the Galway Road in a housing estate, whereas Tesco was closer to the main Galway Road and Mr. Ó'Fhloinn also argued that access to the subject was easier than to Tesco. Mr. Ó'Fhloinn did not consider the absence of seven or eight adjoining retail units a disadvantage to the value of the subject and further expressed his view that the first floor

would be considered by a hypothetical tenant with possible future planning permission. He confirmed that he had applied the principle of *rebus sic stantibus* to the first floor which, in his view, might appear as space akin to a store, but notwithstanding same he felt that the hypothetical tenant might consider alternative uses, subject to planning considerations and fit-out options. He again noted the two access points independent of the ground floor layout and the good natural lighting on the first floor, described again by him as clear span open space. He described the ground and first floor stores as similar and attributed the same values to each, being €43.93 per sq. metre.

Findings

The Tribunal has considered all of the contents of the written submissions and the evidence and arguments adduced at Hearing and makes the following findings:

1. The parking, though appearing to be dedicated to the use and customers of Lidl, was not exclusive to same and there was no rebuttal to statements indicating that it was an open car park, free of controls.
2. There was no evidence to suggest or support the contention that the shell & core specification of the first floor was identical for rating purposes to the stores on the ground floor and accordingly the resultant rate per sq. metre should not be considered as commensurate with same.
3. The hypothetical tenant would be required to consider the property, as is, where is, and not for what might be.
4. There was no evidence offered to support the claim for a reduction on the ground floor areas to reflect the existence of an alleged described burden created by the provision of the first floor space overhead.

Conclusion

In view of the foregoing, the Tribunal has concluded that the respondent's valuation, subject to the removal of the Net Annual Value sum applied to the Parking area, fair and reasonable in relation to the subject property on all of the ground floor areas. But the Tribunal, mindful of the foregoing and having carefully considered the positions argued by both parties, have in addition concluded that the first floor areas should not be considered as equivalent to the ground floor stores for rating purposes, but more appropriately at a rate equivalent to 50% of

that which applied to the Stores area below and accordingly arrives at the following calculations:-

Level	Block Ref.	Use	N/O/I	Height	Length	Breadth	Area Sq. M	NAV/ €Sq.M	NAV €
0	1	Supermarket	N	nett	20.00	59.40	1188.00	95.21	113,109.48
0	2	Offices etc.	N	gr.int.	4.60	8.50	39.10	80.57	3,150.29
0	3	Stores	N	nett	4.60	50.80	233.68	43.93	10,265.56
0	4	Stores	N	nett	6.30	7.60	47.88	43.93	2,103.37
1	5	Stores	N	nett	25.00	59.40	1485.00	21.97	32,625.45
							2993.66		€161,254.15

As stated above, the Tribunal considers it fair to ignore the Net Annual Value sum of €12,953.83 applied by the respondent to the car park as set out in the Revision Officer's Report (see copy at Appendix 4 to this Judgment), the Net Annual Value on the subject property is calculated , as follows:-

€161,254.15 less €12,953.83 (parking)	= €148,300.32
RV @ 0.63%	= €934.29
	Say €149,234.61

And the Tribunal so determines.