

Appeal No. VA08/1/008

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

Chino Catering Ltd. T/A Bennigans

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Restaurant/Cafe at Lot No. A M103, Town Square, Dundrum Town Centre, Dundrum, Dundrum Sandyford, Dundrum, County Dublin

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Brian Larkin - Barrister

Member

Damian Wallace - QFA, MIPAV, Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 26TH DAY OF JUNE, 2008

By Notice of Appeal dated the 10th day of March, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €80.00 on the above described relevant property.

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

"On the basis that the RV as assessed is excessive & inequitable it is over assessed in relation to the established tone for comparable property already dealt with by the Commissioner. The unit is over assessed given its actual location, size and relative value."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 30th day of April, 2008. At the hearing the appellant was represented by Mr. Eamon Halpin, BSc (Surveying), MRICS, MIAVI, Eamon Halpin & Co. Ltd., and Mr. Christopher Hicks, a Valuer in the Valuation Office, appeared on behalf of the respondent. Each representative having taken the oath adopted his précis and valuation, which had previously been received by the Tribunal and exchanged with the other party, as his evidence-in-chief.

Valuation History

Dundrum Town Centre is a newly built shopping centre and valuations commenced in mid 2005 with new valuations being issued on a continuing basis, in line with construction work, as units were completed. Bennigans, the subject property, was first valued in late 2005 and a valuation certificate was issued proposing an RV of €50. A copy of the lease was sought but this did not become available until after the final certificate was issued at €50 in December, 2005. Following various correspondence between the Valuation Office and the appellant's agent throughout 2006, the appellant's legal advisors sought leave from the High Court to judicially review the Commissioner's decision. In early 2007 the Commissioner agreed to re-issue the revision to give the occupier an opportunity to appeal. In July, 2007 the Commissioner of Valuation re-issued the rateable valuation at €50. The appellant appealed this valuation and the Commissioner of Valuation issued the result of the first appeal, with the valuation reduced to €80 on 15th February, 2008. On 11th March, 2008 the appellant appealed the Commissioner's decision to the Valuation Tribunal.

Location

The property concerned is located in Dundrum Town Centre, which is a new shopping centre located on an extensive site stretching from the centre of Dundrum to close to the Balally Luas Station. The development extends on to the Sandyford Road and also on to Ballinteer Road, both of which locations already have existing retail outlets. The unit is located in the cinema block of the new Dundrum Town Centre retail commercial development and the main access to the unit is off the old Main Street. The cinema block joins the main block but has its own entrance so that it can trade at times when that block is closed. The development comprises of the subject unit and other restaurant units together with the cinema and a large Virgin music store.

The Property

The subject property is comprised of a new first floor restaurant with ancillary kitchen, WC and staff facilities. It has no direct access to the outside plaza and no balcony or external seating. Access to the restaurant is via stairs or escalator from the main cinema entrance lobby, which adjoins the old Dundrum Main Street.

Appellant's Evidence

Mr. Halpin referred to the photographs set out in his précis and outlined details of the location of and access to the subject property. He confirmed that the grounds of appeal were as set out on Page 5 of his précis and that the substance of the appeal is the same as that which went to the Commissioner of Valuation, even though a number of years have passed in the interim. He said that it was an unusual property and McDonalds was the only restaurant in the building that had direct access from the ground floor, with all others accessed through the main entrance via the escalator. He confirmed that there was no external signage for Bennigans even though both McDonalds and TGI Friday's had signage on the external wall of the building. He also confirmed that the only access to the main shopping centre via the cinema block was through the Virgin store and this was only likely to be used by people who are familiar with the entrance, as it is not that straightforward and as a result there is a limited footfall through this entrance, particularly during the day.

Mr. Halpin added that the unit has no balcony or external seating with access via the stairs or an escalator. The property is held on a 25-year FRI lease at €200,000 representing €444 per sq. metre, which he believes is an incredibly high rent. The subject was the first restaurant to sign up and was given a verbal undertaking that it would be the only steakhouse in the Centre, so the rent must be viewed against this background. However, TGI Friday's, who are also a steakhouse, were then allowed in overhead. He said that McDonalds is completely different to the other restaurants, while there is little difference between all the other restaurants in the block regardless of the floor that they are on. Mr Halpin said the original value of €850 was not sustained and even the amended value of €680 is a complete over-estimate.

Mr. Halpin introduced a number of comparisons, set out at Appendix 1 to this judgment. He said he was very mindful of the original test case decision on the Centre, **VA06/2/045 - Orange Tree Ltd.** and accordingly he set out his comparisons under two headings, those

within Dun Laoghaire Rathdown rating area but outside Dundrum Town Centre and those within Dundrum Town Centre.

Comparisons within Dun Laoghaire Rathdown rating area but outside Dundrum Town Centre

1. McDonalds, Nutgrove Shopping Centre

Mr. Halpin said this was different to the subject property and that it has a drive-through facility and it is 379.22 sq. metres valued at €167 per sq. metre.

2. McDonalds, Stillorgan Shopping Centre

This is a phenomenal property and significantly more valuable than the subject. It has ground and first floor and has a rental capacity of at least twice the subject property. It has 411 sq. metres on the ground floor and 376 sq. metres on the first floor valued at €180 and €80 per sq. metre respectively.

3. McDonalds, George's Street, Dun Laoghaire

This is quite a different property as it is a retail property on a retail street, with a small restaurant on the first floor. It is 108 sq. metres valued at €109 per sq. metre.

Comparisons within Dundrum Town Centre

Mr. Halpin's first comparison was McDonalds and he said this was his primary comparison, but quite different as it was completely superior to the subject property, as it has a day long trade fronting onto the Plaza. He said the rent backs up his case, as the passing rent is €350,000 equating to €1,024 per sq. metre while the rent on the subject property, Bennigans, is €144 per sq. metre which Mr. Halpin believes to be too high in any event. He also said that McDonald's NAV as a percentage of rent is 27%. Mr. Halpin also offers other comparisons: Orange Tree, Bests Ltd, Mao Restaurant and Pizza Hut. He quoted the ratio of NAV to rent as 33% on Orange Tree and as 36% on Bests Ltd. Mr. Halpin said that the significance of the Mao Restaurant is that it has outside seating and is not comparable with the subject property. By contrast there was little difference between the Pizza Hut property and the subject property, and yet Pizza Hut is valued at €17 per sq. metre, while the subject property is valued at €240 per sq. metre.

Finally Mr. Halpin put forward the TGI Friday's property which is valued at €150 per sq. metre which was increased on appeal, and the significant aspect of this property, he said, is that Mr. Hicks valued it at €107 per sq. metre.

Mr. Halpin finally contended for a valuation of €100 per sq. metre on the subject property.

In concluding his evidence, Mr. Halpin referred to the report prepared by Mr. Hicks at the time of valuation and noted the comment therein equating a valuation of €50 to a rent of €40,000. Mr. Halpin said that at that point Mr. Hicks was not aware of the rent on the property and clearly he was of the view that the rent should have been €40,000 and this was too high and even though the valuation is no longer €50 that one line in the report is still relevant. Mr. Hicks clarified this point and said that he valued all these properties in 2005 and the valuation was in direct proportion to the passing rent. However, the **Orange Tree** case changed that and introduced a standard averaging system for valuation of properties in the Centre.

Cross Examination

Under cross examination Mr. Hicks queried aspects of the rent and indicated that Mr. Halpin had quoted rents that Mr. Hicks knew nothing about. Mr. Halpin confirmed that the rent on the subject property is a fact and in his opinion it is too high, but that it is not the only relevant factor and that he believed that Mr. Hicks was wrong to rely solely on the rent for the purpose of the valuation. Mr. Hicks used the Mao rent as the basis of the valuation, while he would have got a different result if he had used the McDonalds rent as the basis.

The Chairperson advised that we needed to move on from the issue of rent as it was all hearsay and the Tribunal had already indicated that it will not take into account any of the rents that are not before it in evidence. Following further questions regarding his comparisons, Mr. Halpin confirmed that he would not rely on TGI Friday's as a primary comparison, but it was of some relevance because the original valuation was done by Mr. Hicks at €107 per sq. metre and was only increased to €150 per sq. metre on appeal. He added that the Tribunal was likely to either confirm the €150 or reduce it.

Respondent's Evidence

Mr. Hicks in his evidence confirmed that he accepted the description of the property as put forward by Mr. Halpin and said that the four storey cinema block was valued a little later than the main block and questions arose as to how it should be valued. The **Orange Tree** case dealt with the three main shopping blocks but the cinema block was different to them. The **Orange Tree** decision allowed for the units to be dealt with on a zoning basis and applied to the units in all three malls, but this does not apply to the cinema block. The Mao restaurant was valued on a zoning basis and a 10% allowance was applied for the slight difference. He added that it was never suggested that **Orange Tree** should apply to the cinema block. McDonalds, with no rent available at the time, was treated the same as the main mall and valued on a zoning basis with reference to **Orange Tree** and not with reference to rent. Mr. Hicks added that McDonalds in Dundrum and Mao are both determinations of the Tribunal following agreement. At this point the Chairperson indicated that they were determinations by consent. Mr. Hicks mentioned the valuation methodology and said that there are three methods of property valuation as follows:

1. You can take the rent and arrive at an opinion
2. Zoning
3. Overall Approach

None of these will produce the same results. Mr. Hicks added that when Mao was valued initially, there were no Tribunal comparisons available as they were all appealed. In seeking a basis he had to look at other properties that were not appealed. Mao cannot be compared by reference to floor layout, but it can be compared by reference to passing rent. In this regard Mr. Hicks relied on, amongst other things, the judgment of the Tribunal in **VA05/1/013 - Pauline & Stacey Hannon** where it states at Item 9 of its findings that:

*“On balance the Tribunal prefers evidence based upon actual rental levels over opinion based evidence no matter how well respected that opinion may be. In this regard the comments of Scott L J in the case **Roberson Bros (Brewers) Ltd. v Houghton & Chester-le-Street Assessment Committee** are apposite.*

‘Where the particular hereditament is let at what is plainly a rack rent or where similar hereditaments were economic sites or so let, so that they are truly comparable, that evidence is the best evidence and for that reason is alone admissible: indirect evidence is excluded not

because it is not logically relevant to the economic enquiry but because it is not the best evidence. Where such evidence is not available, for example if the rents of other premises are shown to be not truly comparable, resort must necessarily be had to indirect evidence from which it is possible to estimate the probable rent which the hypothetical tenant would pay.’”

Mr. Hicks added that in arriving at a valuation he relied upon the facts; he relied on the rents of Mao and Bennigans and also on the valuations of the other four units in this block. These are facts, he said. A lot of what Mr. Halpin had said was opinion. Mr. Hicks then introduced a number of comparisons (attached at Appendix 2 to this judgment): TGI Friday’s, KFC, Pizza Hut and Eddie Rockets. He also introduced other comparisons: G-Star and Replay. He said that at all times Mr. Halpin had relied on the rent of €200,000, in his initial representations and his appeal to the Commissioner and also in the course of the judicial review. He said that in the documentation submitted to the Valuation Tribunal, Mr. Halpin clearly asked that Mr. Hicks should place some reliance on this passing rent in arriving at the valuation while he now seemed to be suggesting that it would be wrong to place any reliance on the passing rent.

Mr. Hicks added that McDonalds is part of the **Orange Tree** decision and it should not be given any more credence than any of the other **Orange Tree** decisions. The established tone is the Mao Restaurant and the four other units in the cinema block above the subject property. McDonalds is not part of the established tone, as it was valued in line with **Orange Tree**, which placed it as a standard unit in a standard mall. TGI Friday’s and KFC are both on the same floor beside each other. TGI Friday’s has 765 sq. metres valued at €145 per sq. metre and KFC is a much smaller unit valued at €122 per sq. metre. Mr. Hicks said that both units are on the same floor and the larger one is valued at a higher rate per sq. metre than the smaller one, as the rent returned in the larger unit has a higher rate per sq. metre than the smaller one. In other words the rent has influenced the decision on how to value it. He added that the rent reflects other factors rather than just looking at the unit and placing a smaller value on the larger unit. The rent, he said, tells them that the larger unit is worth more per sq. metre than the smaller one. Mr. Hicks added that Mr. Halpin is suggesting that this is not the correct approach, but added that if he had no other reason for saying that one unit is more valuable than the other then the rent must give him a key. Mr Hicks’ final comparisons are G-Star and Replay which, he said, take on less significance and the purpose of providing them was because they are on the same level as the subject property.

Mr. Hicks said that the rent in the Mao restaurant is €147,000 while the rent in Chino Catering, the subject property, is €200,000. He added that no reasonable person would say that Mao is worth more than Chino Catering. Mao and the other four units above McDonalds established the tone for this block; McDonalds is not part of the tone as this was treated as a regular unit because of the main access, etc. The correct approach is in taking the rent into account and rent must give a key to the correct valuation; if the rent is less per sq. metre then the valuation should be less per sq. metre. Actual rents are a better way of valuation than floor area as rent overrides all the issues about location, etc. Mr. Hicks concluded by saying that the valuations have all been set fairly in relation to each other and that the valuation of €80 based on a rate of €40 per sq. metre is fair and reasonable and was consistent with the tone of the block/list. He asked the Tribunal to affirm the valuation of €80.

Cross Examination

Under cross examination Mr. Hicks confirmed that on day one he valued the property on a sq. metre basis. Mr. Halpin queried why he had used the Mao Restaurant rent as the basis of the valuation in his report to the Appeal Officer and Mr. Hicks advised that he had originally valued the property on a sq. metre basis, but when the rents became available he felt that was a more persuasive basis of valuing it. He said that it is his view that if a property is worth twice another property then it is reasonable to assume that it should be valued at twice the value of the other property. Mr. Halpin suggested that the basis of the valuation is contrary to the Valuation Act, 2001 in that Mr. Hicks had selected just one property and used that rent to arrive at the valuation for the subject property and he asked why he had not used rents from a number of properties to determine the valuation. Mr. Hicks said that the valuations of the other properties in the block are not out of line with the rent and that in all of the properties the factors that have influenced the tenants and landlords in arriving at the rents include issues such as layout, whether or not the property has a terrace, the view from the property, etc. He does not need to take these issues into account as the rent takes account of all these factors.

Summary

In summarising his case, Mr. Halpin said that this was an extraordinary case and the original valuation was flawed and this flawed manner of valuation had continued on through the appeal process. He said that the valuation had not been based on the tone of the list but on the rent of a single unit, not even on the basis of rents from a package of units. He said that it was

a complete travesty and totally contrary to Section 49 of the Act. He added that they had contended for a valuation of €76 per sq. metre based on the first floor of Mao Restaurant but on balance having considered the matter and looking at the tone of the list in the surrounding area felt that this level was not sufficient and he increased it to €100 per sq. metre which he feels is fair and reasonable.

Findings

The Tribunal has carefully considered all of the oral and written evidence provided by the parties and the arguments adduced at the hearing and makes the following findings:

1. The Tribunal finds both parties' comparisons helpful and prefers the comparisons located in the cinema block.
2. The Tribunal notes the fact that there is very little footfall outside of cinema hours, given that the location of the subject property does not lend itself to direct access from the main shopping centre.
3. The property does not benefit from any outdoor section.
4. The property suffers from a lack of outside signage and is inferior to McDonalds and Mao because of its location and the fact that it requires an escalator or stairs to access the building.
5. The subject property must be valued in accordance with section 49(1) of the Valuation Act, 2001 and the tone of the list. It is important to take cognisance of the passing rent but it should not be the only issue considered.

Determination

Having regard to the foregoing the Tribunal determines the valuation of the subject property to be €111.00 calculated as follows:

450 sq. metres	@ €145.00 per sq. metre	= NAV €65,250.00
@ 0.63%		= €411.07
Say		€411.00

And the Tribunal so determines.