

Appeal No. VA08/2/012

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

Clair Doyle T/A Narnia

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. pt. 33.34b.35.36b/B1, Gladstone Street, Sundry Townlands, Clonmel East Urban, Clonmel Borough, County Tipperary

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Leonie Reynolds - Barrister

Member

Patrick Riney - FSCS FRICS FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF NOVEMBER, 2008

By Notice of Appeal dated the 6th day of June, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €165.00 on the above described relevant property.

The grounds of Appeal are set out in the Notice of Appeal, a copy of which is contained in Appendix No. 1 to this judgment.

The appeal proceeded by way of an oral hearing in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 21st day of July, 2008. At the hearing the appellant was represented by Mr. Brian Bagnall, FIAVI, ARICS, ASCS, Brian Bagnall & Associates 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.

History, Location and Description

Clonmel is the county town of Tipperary South Riding and the Borough Council is the Local Authority. The subject property is located in the Market Place Shopping Centre in Clonmel. The Centre was developed in the mid 1990's with Superquinn as the anchor tenant and just over 20 retail outlets. The Centre was rates free for 10 years. This ended on 31st December, 2007. Originally, units B1 and B2 were a single unit valued in 1997 at €92.04. Because of the subdivision of this original unit B1, which is the subject property, and B2 were separately valued, B1 at €65 and B2 at €35. The appellant, as owners of B1, appealed against the valuation of €65.

Market Place Shopping Centre is located just off Gladstone Street. The Centre, as well as having over 20 retail premises, has an Omniplex cinema, a large Superquinn store and a Transport Museum. The subject premises trades as "Narnia" and is positioned close to the Gladstone Street entrance. It is a two-storey unit with retail on the ground floor and storage overhead. The floor areas have been agreed. There is a "pay as you park" car park for 200 cars forming part of the Centre.

Appellant's Evidence

Mr. Brian Bagnall stated that the main thrust of his argument was that the Market Place Centre, as a shopping centre, was valued very highly as against other retail outlets in Clonmel. He referred to a survey of comparisons of retail outlets in Clonmel prepared by him (Appendix No. 2 hereto) wherein the NAV is compared to the rents.

He pointed out that Market Place as a Centre is relevant to itself but when compared with the rest of the shops in the Clonmel Borough, it has three times the average level of rates

appertaining to the other shops in the town. He said that in arriving at a fair NAV of the subject premises he used the NAVs of other shops in Clonmel.

He said that the main shopping area in Clonmel is based on the corner of Gladstone Street and O'Connell Street. He further stated that it was accepted by the Commissioner that the rating assessments on Market Place were disproportionately high. At Page 2 of the Commissioner's Consideration of Appeal document, a copy of which is contained in his (Mr. Bagnall's) précis, it is stated by Mr. Hicks that "*the 'tone' in Market Place is considerably higher than in nearby Gladstone Street where rents are up to four times higher psm.*" Mr. Bagnall maintained that in this response the Commissioner had accepted that the levels in Market Place are disproportionately high. On the same page at point No. 1 thereon, it is stated that "*The rates are at such a level in Market Place that they may be depressing the rents to such an extent that the overall rent/rates liability may be no higher here than anywhere else in Clonmel.*" Mr. Bagnall also pointed out that it was not up to the Commissioner to correct the rent/rates expenditure.

He agreed that Mr. Hicks in his précis was very fair. His summary was that, while recognising the anomaly of the 2005 passing rent and the 1988 NAV being virtually the same his assessment was based on local comparisons i.e. Market Place Shopping Centre. The issue, he maintained, was whether these local comparisons should be the basis for fair assessment. Market Place was out of line with the rest of the shops in Clonmel. He was opting for an RV of €2 as set out in his précis and calculated as follows:

Passing rent €32,380 x .32* = €10,361.60

*based on his comparisons in Clonmel where .32 is the norm for NAV as a fraction of the passing rent

RV @ 0.5% = €1.58 say €2

Alternative method

Shop	89.14 sq. metres	@ €85 per sq. metre	= €7,576.90
1 st Floor Store	98 sq. metres	@ €25 per sq. metre	= <u>€2,450.00</u>
		Total	€10,028.90
		RV @ 0.5%	= €0.13
			Say €2

In summary Mr. Bagnall said that:

(i) He contended that in compliance with the Valuation Act, 2001, the NAV must be in keeping with the NAV's in Clonmel Borough Council area and not purely in Market Place.

(ii) In non Market Place comparisons the rates payable as a percentage of the rent are 9.2%.

In Market Place rates payable are 29% of the passing rent.

Cross examined by Mr. Hicks

Mr. Bagnall agreed that his last submission was in accordance with his own calculations only. The 29% was his calculation for Gladstone Street/O'Connell Street only and did not extend to the rest of the shops in Clonmel. He agreed that the overall average percentage was 15% but that no exhaustive study had ever been done to substantiate this. He pointed out that in his long experience 15% is about normal and that it varies as there are 80 odd Local Authorities in the country. He said that the NAV adopted in this case was higher than the rent payable at the time the Market Place Centre was built in the mid 1990's. He argued that taking comparisons from Market Place is selective. They should be taken from the whole Borough of Clonmel including Gladstone Street etc.

Respondent's Evidence

Mr. Christopher Hicks said that he agreed areas, location etc. in relation to the Shopping Centre. He referred to the plan or map annexed to his précis setting out detailed particulars of the Shopping Centre. The subdivision of the original unit had led to the appeal herein. None of the other units in the Centre can now be appealed or indeed altered by the Commissioner, up or down unless there is a material change of circumstances. He stated that he had used the levels on Market Place in assessing the RV herein and that Mr. Bagnall had accepted that these levels were correct. He then referred to his 5 comparisons as set out in his précis (Appendix No. 3 hereto) and confirmed that his valuation was based on these. He accepted that rents in Market Place have not grown in the same way as the rest of Clonmel. There has not been much growth in the Shopping Centre whereas in the Gladstone Street/O'Connell Street area there had been considerable rental growth. The rents in Market Place are, he agreed, relatively low. In such a situation he pointed out that the 2001 Act provided for that situation – it provides for revaluation the purpose of which is to correct these anomalies and to bring things back into line.

Cross examined by Mr. Bagnall

Mr. Hicks said that he was not aware of any other premises that was assessed in the mid 1990's where the NAV was higher than the passing rent. He reiterated that he had to assess a valuation in accordance with the Act and not otherwise.

Findings and Determination

1. There is a material change in the appellant's premises in that it was a part of a larger unit which was sub-divided to form two smaller units. Unit B1 which is the appellant's premises is one of these. This allowed the appellant to appeal.
2. The Tribunal is required to value this property pursuant to Section 49 of the Valuation Act, 2001 subsection 1 of which states "*If the value of a relevant property (in subsection (2) referred to as the 'first-mentioned property')* falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property".
3. Having heard all the oral evidence and submissions and having considered the préces lodged herein the Tribunal finds that no evidence, acceptable under Section 49(1), has been adduced by the appellant by way of comparable comparisons. Mr. Bagnall's list of comparables (see Appendix 2 hereto) does not contain certain relevant details of the properties listed, i.e. their floor areas and the levels applied per square metre. Nor has Mr. Bagnall offered any comparable evidence to support the figure of €85 per square metre (Shop) and €25 per square metre (1st Floor Store) quoted in his estimate of rateable valuation of €52 arrived at via his "alternative method".
4. The Commissioner on the other hand, in support of his estimate of valuation, has provided 5 comparisons all in Market Place Shopping Centre and these must be accepted by the Tribunal in accordance with Section 49(1) of the Act.
5. In these circumstances the Tribunal is satisfied that the rateable valuation of €165 assessed on the subject premises is fair and reasonable. The Tribunal therefore affirms the rateable valuation of €165 on the subject premises and disallows the appeal made herein.

And the Tribunal so determines.