

Appeal No. VA08/2/015

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

Patrick Mulrooney

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2189457, Shop at Lot No. 38 Unit 6 Q Retail Park, Rathbane North, Rathbane, Glentworth, Prospect, Rathbane, County Borough of Limerick

B E F O R E

John Kerr - BBS. ASCS. MRICS. FIAVI

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Tony Taaffe - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF OCTOBER, 2008

By Notice of Appeal dated the 10th June, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €65 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal and pages attached thereto, copies of which are at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 25th day of July, 2008. At the hearing the appellant represented himself. Mr. David Molony, BSc, MRICS, a District Valuer in the Valuation Office, represented the respondent, the Commissioner of Valuation.

Valuation History

A Valuation Certificate issued on 2nd July, 2007 with an RV of €65. Patrick Mulrooney submitted representations on 27th July, 2007. The Revision Officer issued his decision to make no change to the valuation in November, 2007. An appeal to the Commissioner of Valuation was lodged on 23rd November, 2007. The Commissioner issued his decision to make no change to the valuation of €65 on 12th May, 2008. The appellant lodged an appeal to the Valuation Tribunal on 10th June, 2008.

The Property

The subject property is described as a coffee bar located in Q Retail Park close to the Roxboro roundabout on the Childers/Southern Ring Road and opposite the Roxboro Shopping Centre, positioned south of Limerick City centre. The Q Retail Park comprises the Quality Hotel, Aldi, Southside Pharmacy, Fine Wines, Bambury Bookmakers and a crèche. There is a large surface car-park to the front of the development. The property comprises a ground floor mid-terrace lock up shop that is contained within a 4 storey structure. The Quality Hotel occupies the upper floors. The property is in use as a sandwich bar. The lease is 25 years (commenced March, 2007), the rent is €40,000 pa, and a 4 month rent free period was given. All main services are connected to the property.

Accommodation

The overall floor area is agreed at 98.6 sq. metres but the parties differ on its internal configuration as to use.

The Appellant's Case

Having taken the oath, Mr. Mulrooney adopted his précis as his evidence-in-chief. He confirmed that the parties agreed on the measured floor areas, but said that the use of the floor area was different from that described in the Valuation Office submission. Mr. Molony for the Respondent said that he would elaborate on this matter under cross examination and in his own direct evidence at a later stage during the hearing.

Mr. Mulrooney then moved on to say that the remainder of his submission was in relation to the comparisons that are used as the basis of the calculation for the rates for the subject unit. He said that the original valuation listed two units in Greenpark Shopping Centre which is in an affluent location in relatively close proximity to the University of Limerick Campus. This is at a junction of two very busy roads, with access onto both roads and with the units enjoying high visibility, while the subject, which is near Southhill, is surrounded by Local Authority housing and is in a relatively deprived area. Mr. Mulrooney said that the units that were chosen as comparisons were unfair, as Southhill (considered by some as one of the poorest most deprived parts of Limerick) should not be compared with units on O'Connell Avenue/South Circular Road which is one of the wealthiest parts of the city. He said that both the Ballinacurra Pharmacy (respondent's Comparison No. 3) and Moviedrome Ltd. (respondent's comparison at First Appeal) are in far superior locations, in the Greenpark Shopping Centre. He said that the Greenpark Centre had eight units all occupied, while the Q Retail Centre had seven units, with only four of these units occupied at the relevant valuation date. He also said that the Q Retail Centre had rents reduced by approximately 20% in early 2007 and that three units remain vacant.

Mr. Mulrooney said that 'Lets Do Coffee' (Café 89.98 sq. metres @ €68.31 per sq. metre, kitchen 127.34 sq. metres @ €41 per sq. metre, located within the former Krupps factory site, now called the Limerick Enterprise Development Park (an industrial complex) and adjacent to the Q Retail Park, has a substantially lower rateable valuation than the subject property. That coffee shop is directly beside the main entrance to this overall trading area (both Q Retail and Limerick Enterprise Development Park) and also shares an internal entrance to all of the internal commercial units in the Limerick Enterprise Development Park, (one of which is a Call Centre with 700 employees). He also stated that 'Let's do Coffee' enjoys higher visibility to passing traffic than the subject which is further away from the main entrance to the trading area.

Mr. Mulrooney summarised his evidence by saying that the units that were chosen by the Valuation Office for comparison were unfair because the subject is in the general area of Southhill (the Roxoboro trading area), and the units in the Q Retail Centre (where the subject property is located) should have been compared with other comparable units in the Roxoboro Shopping Centre, which is just across the road from the subject, as there was no real difference in the trading conditions in these two complexes. Mr. Mulrooney listed units such

as Thomond Enterprises (RV €107.93) and Xtravision Ltd. (RV €63.49) situated on the corner of the Roxboro Shopping Centre as suitable comparisons. That shopping centre is anchored by Tesco and surrounded by a variety of diverse traders such as a pub, Chinese restaurant, bank, amusement arcade, fruit & vegetable shop, bookmakers, paint shop, post office, hairdresser, etc., whereas Q Retail has seven units, only four of which were occupied. Mr. Mulrooney concluded by stating that in the Valuation Office précis of evidence, reference was made to the rateable valuations of the other units in Q Retail, and he considers the use of these valuations as unfair as they were all established at the same time.

Mr. Mulrooney contended for a valuation of €33.17 calculated as follows:

Restaurant	62.8 sq. metres	@ €68.31 per sq. metre	= €4,289.87
Other	35.80 sq. metres	@ €27.26 per sq. metre	= € 975.91
		Total NAV	= €5,265.78
		RV @ 0.63%	= €33.17

Cross Examination

Under cross examination by Mr. Molony, the appellant confirmed that the lease on the subject property is 25 years (commenced March, 2007) and the rent is €40,000 pa. When asked to compare this rent with his estimated NAV of €5,265 Mr. Mulrooney said that the current passing rent is no longer representative of market rents which he stated have decreased since the lease was entered into. Mr. Mulrooney said that he was in communication with the landlord to get his rent reduced. He further stated that the valuation should be based on a comparison with other units in the vicinity and not based on rents.

When asked to confirm if there were any restrictions on the use of the unit, Mr. Mulrooney said that a variety of other users could rent the subject building if it became vacant in the future, subject to planning. When asked if he took the unit under the lease as a shell, Mr. Mulrooney confirmed same.

Respondent's Evidence

Having taken the oath, Mr. Molony adopted his précis as his evidence-in-chief and provided the Tribunal with photographs of the subject property and an aerial photo of the shopping areas of Q Retail Park and Roxboro Shopping Centre.

He said the subject location benefited from a high volume of passing traffic and had access to Childers/Southern Ring Road and secondary access to a new road linked to Dublin/Limerick/Cork Road. He then gave a brief description of the locations of his various comparisons as listed at Appendix 2 attached to this judgment. He said that there were 2 different car-parks attached to both Q Retail Park and Limerick Enterprise Development Park. He stated that the Southside Pharmacy (his comparison No. 1) which was the subject of a 2007 appeal to the Commissioner, is located next door to the subject, has a shop floor area of 172 sq. metres valued at €109.30 per sq. metre, while the store area is similar in size and level to the subject. His comparison No. 2, Fine Wines, is similarly situated and valued.

Mr. Molony said that there was a code of practise for valuing, where similar usages were compared in arriving at valuations. He explained that, for example if a purpose-built and purpose-designed restaurant was to be valued, it would be compared with other like restaurants in the area. In such a situation, different rate per square metre levels would be applied to the restaurant's public and kitchen areas.

In the case of the subject property, (and indeed coffee shops in general), Mr. Molony stated that this is not a restaurant, but rather a sandwich bar and as such is a retail unit. He said that the practise of valuing sandwich bars is the same throughout the State, where these bars would be valued the same as the adjoining retail units in a given trading area. He said that if one was to adopt a practise of carving up the various areas within a retail unit for the purpose of valuation, a situation could lead to chaos within the system. In the case of the subject, the unit was let as a shell, and was valued accordingly.

Mr. Molony went on to say that considerable play was made with regard 'Let's do Coffee' as a comparison in the appellant's evidence. He stated that this was a restaurant proper serving fully cooked breakfasts and dinners daily and its primary function was to serve the workers in the old Krupps Centre.

Mr. Molony contended for a valuation of €65 calculated as follows:

Shop	90.01 sq. metres	@ €109.30 per sq. metre = €9,847.93
Store/preparation	8.50 sq. metres	@ €27.32 per sq. metre = <u>€ 232.22</u>
Total NAV		= €10,080.15
RV @ 0.63%	= €63.50	Say RV €65

Cross Examination

During cross examination, Mr. Molony was asked by the Tribunal to clarify the aforementioned code of valuation practise where similar usages were compared in arriving at valuations, and where purpose-designed restaurants were valued differently to retail units that were located in the immediate vicinity. He reconfirmed that a food preparation area in a purpose-designed/built restaurant would be valued differently to that of the public area in the same restaurant.

Mr. Molony then proceeded to discuss the Ballinacurra Pharmacy (his comparison No. 3) which has a level of €170.78 per sq. metre adopted in the valuation assessment at appeal, whereas the subject has a level of €109.30 per sq. metre which is a difference of 36%. He said that an allowance has been shown to have been given for the superior location of this pharmacy to that of the subject location. Mr. Mulrooney replied that he couldn't agree that the difference here is reasonable as he believed that a rate of €68 per sq. metre (the same as on 'Let's do Coffee') should be applied. Mr. Molony said that it was unreasonable for the appellant to seek a 60% differential in value between 'Let's do Coffee' and the subject.

Mr. Molony was asked by the Tribunal if he believed that he had applied the principle of the "Tone of the List" when valuing the subject property. Mr. Molony stated that he had and that he was more than generous with the levels applied to the subject.

Mr. Molony was also asked by the Tribunal to comment on the statement at page 2 (C) of his précis which cited the Grounds of Appeal to Valuation Tribunal as "*Property is unfairly compared with those located in wealthy suburb - should be compared with Southhill Roxboro*", whereas the appellant gave a further four grounds in his Notice of Appeal (low occupancy, poor access, poor visibility and poor trading conditions) as grounds to rely on at the hearing of this appeal. Mr. Molony said that he had dealt with these issues at Revision, Representation and Appeal stages.

Findings and Determination

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and finds as follows:

1. The appellant is not entitled to subdivide a retail unit for rating purposes and therefore the Tribunal accepts Mr. Molony's internal areas and uses for the subject property.
2. The respondent's case was supported by 5 comparisons, 2 of which were retail units located in the same Q Retail Park as the subject, with the primary comparator noted by Mr. Molony as Southside Pharmacy.
3. The Southside Pharmacy and Fine Wines were listed for revision at the same time as the subject property per the Standard Valuation Report (Draft) a copy of which is contained the respondent's précis of evidence.
4. It would appear that Southside Pharmacy remained unchanged at First Appeal at a level of €109.30 which equates to the levels of Comparison 2 (Fine Wines) and those of the subject.
5. The Tribunal accepts these properties as valid comparisons. However, given the stated fact that they were valued at the same time as the subject, this evidence must be treated with some degree of caution, all the more so as the valuations were not subjected to the rigours of any appeal in the case of Fine Wines or of an appeal to the Valuation Tribunal in the case of Southside Pharmacy.
6. Roxboro Shopping Centre is a large retail setting, with Tesco as the anchor tenant capable of generating and sustaining strong footfall for neighbouring traders.

Having regard to the above findings, the Tribunal determines that the valuation of the subject property to be €57 calculated as follows:

Shop:	90.01 sq. metres	@ €8.37 per sq. metre	= €8,854.28
Store/prep:	8.50 sq. metres	@ €24.59 per sq. metre	= <u>€209.00</u>
Total NAV			= €9,063.28
RV @ 0.63%			= €57.09
Say €57			

And the Tribunal so determines.