

Appeal No. VA08/5/023

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

Helena Goodwin

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2174718, Creche at 3 Hermitage Garden, Lucan, County Dublin

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Brian Larkin - Barrister

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF DECEMBER, 2008

By Notice of Appeal dated the 28th day of June, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €6,680.00 on the above-described relevant property.

The grounds of Appeal are set out in a letter enclosed with the Notice of Appeal, a copy of which is attached at Appendix 1 to this Judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7 on 25th day of September, 2008. At the hearing the appellant, Ms. Helena Goodwin, represented herself. Ms. Theresa O’Sullivan, BSc, MIAVI, Valuer, represented the Valuation Office. Mr. Jim McAndrew, Managing Valuer, Valuation Office gave evidence to the Tribunal in relation to how schemes of valuation were arrived at in the overall revaluation exercise and the evidence they were based on.

Valuation History

A Valuation Certificate was issued on 12th December, 2007 with an NAV of €6,680. The appellant lodged an Appeal to the Valuation Tribunal on 1st July, 2008.

The Property

The subject property comprises part of a residential property that is in commercial use (known as Little Folk Pre-school) and is located at 3 Hermitage Gardens, Lucan, Co. Dublin. The property comprises a ground floor area with 2 rooms, with a total NIA of 33.40 sq. metres. The interest in the property is held freehold.

Accommodation

Floor areas are agreed as follows: 33.40 sq. metres.

The Appellant’s Case

Having taken the oath, Ms. Goodwin adopted her précis as her evidence-in-chief. She stated that the valuation given to the Little Folk Pre-school is based on the market rental value of the premises. In her opinion the market rental value of the subject is nil, as South Dublin County Council attached a condition to the planning for this childcare facility (Register Reference SDO4A/0352) stipulating that *“The childcare facility shall be operated only by the relevant professional person in residence in the dwelling of which it forms part and it shall not be separated from the existing dwelling either by way of sale, letting or otherwise”*.

Ms. Goodwin then stated that her premises was compared with other crèches in the area, unfairly in her opinion, as she had to comply with a second planning condition that said *“the hours of use shall not exceed 9.30am - 2.45pm Monday to Friday only.”* This condition left her in an unfair trading position with other crèches in the area which were free to trade from early till late each day, including during school holiday time. Ms. Goodwin’s total weekly

trading hours were capped at 34 hours, whilst for other crèches in the area, the maximum trading hours rose up to 70 hours.

Ms. Goodwin went on to say that of the 4 comparisons used by the Valuation Office 3 had a restriction on the premises preventing them from being rented. Ms. Goodwin said that the children attending her centre had to be a minimum of 2 years 9 months old, and this was to comply with Health Service Executive (HSE) regulations and insurance.

The appellant did not offer the Tribunal any comparisons to support her case.

Cross Examination

Under cross examination by Ms. O'Sullivan for the Valuation Office, the appellant was asked if the respondent's first comparison, 1 Willsbrook Road, was similar in location to the subject. Ms. Goodwin replied that this was the case, but that this comparison had no time restriction on trading. Comparison 2 was similarly located, being allowed to trade between the hours of 9.30 to 17.30 daily, but again this comparison did not have a restriction on renting the premises. Comparisons 3 and 4 had no time restrictions, and operated from 7.30 to 19.00 daily, but did have a restriction on planning. The appellant also stated that while 4 crèches operate from the Coldhurst area were registered with full planning permission to operate as crèches and were trading for the past 4/5 years, only 2 were rated.

Respondent's Evidence

Having taken the oath, Ms. Theresa O'Sullivan, adopted her précis as her evidence-in-chief.

Ms. O'Sullivan said that the comparisons used by her (see Appendix 2 hereto) were similar in location, use and structure to the subject. She said that it was her belief and understanding from the Valuation Office system used by her to obtain information on the comparables, that these properties were all sessional care centres (i.e. trading from 09.30-12.30 hours). The appellant said that this was not the case. Ms. O'Sullivan said that because the subject was a commercial building, it must be rated. She said that when valuing 2 similar properties which traded different hours, she would value these properties the same, as it is the property that is rated and not the market. The appeal was made by reference to the "tone of the list". She said that the "tone of the list" was set by extensive market analysis, and research, and that the Managing Valuer would give his views later during the hearing to explain how the valuations

were arrived at. She said that while all the comparables had been valued at the same level of €200 per sq. metre, crèches in residential areas (as in ‘house’ crèches) were all valued between €200-€250 per sq. metre (rising to €250 for a superior property). When asked by the Chairperson if she placed any weight on the planning restrictions attached to the subject, Ms. O’Sullivan said that she wouldn’t change her valuation.

Cross Examination

Under cross examination by the appellant, Ms. O’Sullivan was asked if she gave any consideration to the limited times of trading (i.e. that the appellant did not have an opportunity to increase business) of the subject, she replied that planning permission restrictions relating to same were not an issue when valuing. Ms. Goodwin said that from her point of view the rateability of her property should be based on the planning permission that was granted by the relevant planning authority. She explained that she was unable to operate her business for the same number of hours as her competitors, and therefore it was not a level playing pitch. Ms. O’Sullivan accepted that the subject property has restrictions, but believed that the valuation placed on same was correct.

Mr. Jim McAndrew, Managing Valuer with the Valuation Office

Mr. McAndrew took the oath and briefly stated that Valuers in the Valuation Office use the 2001 Act for the purpose of valuing properties. He stated that the revaluation of the subject was based on this Act. Where a valuation order for a County Council area has been made, all commercial property is valued in that area for a particular date. The date on which the subject was re-valued was 30th September, 2005. A valuation is put on the property, a draft certificate is issued, and the rate payer has 28 days in which to make representations. It is at this stage that a level is set on the different properties on the list. This, he said, may be appealed by the ratepayer.

He then referred to Section 31(a)(ii) of the Valuation Act, 2001 which states that an appeal “*shall specify by reference to values stated in the valuation list in which the property concerned appears of other comparable properties, what the appellant considers ought to have been determined as the property’s value*”. In the case of the subject property, Ms. O’Sullivan compared same with other properties on the list. Once the valuation is issued, Mr. McAndrew said that an appellant could appeal it by reference to values of properties on the list.

Mr. McAndrew then referred to Section 63(1) which states that *“The statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act”*.

He handed in a document headed “Basic Revaluation Principle” which he said was from a UK revaluation source. He quoted the document in full as follows:

“What is required in rating is to find the rent, which the hypothetical tenant might reasonably be expected to pay. The actual rent for any property is of significance, but is not conclusive of value. What has to be established is a general level of value which is derived from a summary of all rents in a particular area for the class of property being considered. The rental evidence used for the revaluation must provide the evidence to achieve a general level of valuation. It is recommended that all available rents be analysed in the first instance.”

Mr. McAndrew said that in the case of a greenfield site there is no evidence to work on, except for rents in the area as well as the capital cost. He said that there will be “the odd case” that’s going to be unique but once levels are settled and valuations are issued it is difficult to change levels.

Asked by the Tribunal whether someone like the appellant could have a unique case Mr. McAndrew said that if there was something unique about a particular case the tone could be a small bit less and a reduction in the valuation could be made.

Findings and Determination

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

1. Mr. McAndrew provided directional assistance to the Tribunal, specifically mentioning Section 31(a)(ii) and Section 63(1) of the Valuation Act. He said that if an appellant could prove that there was something unique about his/her case, then an allowance should be made.
2. Because of planning restrictions the appellant’s hours of trading are capped at a maximum of 34 hours per week, whilst the hours of trading enjoyed by the respondent’s comparison properties are much greater. Her potential for income is therefore vastly inferior to that of those comparisons.

3. The subject is a pre-school and, under HSE regulations, intake is restricted to children between the ages of 2 years 9 months and 5 years. The comparisons are crèches and can cater for a much wider age profile along with longer trading hours that leads to potentially higher earnings.

Having regard to the above findings, the Tribunal determines that the valuation should be reduced as follows:

11.36 sq. metres	@	€160	per sq. metre = €1,817.60
22.04 sq. metres	@	€160	per sq. metre = <u>€3,526.40</u>
NAV			€5,344.00

And the Tribunal so determines.