

Appeal No. VA08/5/072

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

Ladbroke (Ireland) Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 463076, Betting Shop at 10/11 Fortunestown Shopping Centre, Tallaght, County Dublin

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF NOVEMBER, 2008

By Notice of Appeal dated the 4th day of July, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €43,600.00 on the above described relevant property.

The Grounds of Appeal are set out in 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 Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 16th day of September, 2008. At the hearing the appellant was represented by Mr. John Behan, BSc (Surv), MIAVI, of Mason, Owen & Lyons, Commercial Property Consultants. The respondent was represented by Mr. Liam Diskin, BSc (Hons) Property Management & Investment, BSc (Ord) Property & Estate Agency, a Valuer in the Valuation Office. Mr. Declan Lavelle, Managing Valuer in the Valuation Office, also gave evidence on behalf of the respondent, the Commissioner of Valuation.

The Property Concerned

The property concerned is a retail unit situated within Fortunestown Shopping Centre, located on the Cookstown Road, Tallaght, Dublin 24, in a residential area. The shopping centre comprises 12 units. The subject property which trades as a betting shop is a double fronted ground floor unit.

The total agreed accommodation is 116.47 sq. metres. However, the zoning method was in dispute between the appellant and the respondent. Zone A accommodation was agreed, but the appellant contended that an area of 0.57 sq. metres. should be valued as Zone C, whereas the respondent extended the depth of Zone B to include this area, given its small size.

The accommodation as submitted by both parties is set out below:

Appellant:	Respondent:
Zone A 57.95 sq. metres	Zone A 57.95 sq. metres
Zone B 57.95 sq. metres	Zone B <u>58.52</u> sq. metres
Zone C <u>0.57</u> sq. metres	Total 116.47 sq. metres
Total 116.47 sq. metres	

The property concerned is occupied under two leases. The first lease is for a term of 35 years running from 1st March, 1987. The second lease dates from 1995 and runs in conjunction with the first lease. The current rent on the property is €38,000 per annum and the lease provides for 5 yearly rent reviews.

The Appellant's Evidence

Mr. John Behan having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the respondent, as being his evidence-in-chief.

Mr. Behan contended for a NAV of €38,000, calculated as follows:

Retail Zone A 57.95 sq. metres	@ €436.44 per sq. metre	= €25,292
Retail Zone B 57.95 sq. metres	@ €18.22 per sq. metre	= €1,646
Retail Zone C 0.57 sq. metres	@ €109.11 per sq. metre	= €62
Total NAV		= €38,000

In support of his opinion of rateable valuation, Mr. Behan introduced two comparisons, details of which are set out in Appendix 2 attached to this judgment. The two comparisons are other retail units within Fortunestown Shopping Centre. The first, Hickey's Pharmacy, is situated next door to the subject property, is the same size and has the same review date as the subject property. The second comparison, Continent Food Supply, is half the size of the subject property and was reviewed six months prior to the subject property.

Mr. Behan stated that the subject property was located in a poor retail location within the Tallaght area, there was not a large footfall, amenities were basic and it was dated in comparison with other developments in the Tallaght area. In his view these factors should be reflected in the valuation. It was his view that new tenants would not be prepared to locate in the centre at the current rental levels being paid. Mr. Behan in his evidence submitted that the rateable valuation of the subject property should be in line with the current open market rent being paid for the subject property and the comparison properties.

The Respondent's Evidence

Mr. Liam Diskin, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as being his evidence-in-chief. In his evidence, Mr. Diskin contended for a NAV of €43,600, calculated as follows:

Retail Zone A 57.95 sq. metres	@ €500 per sq. metre	= €28,975
Retail Zone B 58.52 sq. metres	@ €250 per sq. metre	= <u>€14,630</u>
Total NAV		= €43,605
Rounded to		= €43,600

In support of his valuation, Mr. Diskin introduced four comparisons, details of which are set out in Appendix 3 to this judgment. One of these comparisons was also referred to by the appellant, namely Hickey's Pharmacy. Mr. Diskin stated that this property was zoned on the same basis as the subject property, in that a small area which could form a possible Zone C was included in Zone B.

Mr. Diskin stated that all the comparables and indeed all retail properties within the shopping centre were valued at the same Zone A value of €500 per sq. metre and further that the subject property was the only property currently under appeal to the Valuation Tribunal. The first comparison property, Hickey's Pharmacy, was appealed but was agreed at first appeal stage. Mr. Diskin stated that the values arrived at by the respondent in relation to the properties within the shopping centre were based on an analysis of all available market values at the time of the revaluation.

In his evidence, Mr. Diskin also indicated that the immediate area around the centre had experienced residential growth, which would benefit the centre.

Mr. Declan Lavelle, Managing Valuer with the Valuation Office, also gave evidence on behalf of the respondent. It should be noted that Mr. Lavelle was not listed as a witness in the respondent's précis and he stated that he was there simply to give evidence as to how the revaluation was arrived at and general evidence about the shopping centre. In those circumstances, it is only the evidence which Mr. Lavelle gave on such matters that the Tribunal took into consideration.

Mr. Lavelle stated that a valuation of €500 per sq. metre Zone A was applied to all properties within the Fortunestown Shopping Centre, including the comparison properties of both the appellant and the respondent. This valuation was arrived at following an analysis of the market information available to the Valuation Office. Mr. Lavelle further stated that the area surrounding the subject property had experienced immediate development in recent times. A new public house had been opened behind the subject property and there had been significant apartment development to the north of the site.

Findings

1. The statutory basis of valuation is set down in section 48 of the Valuation Act, 2001, wherein at section 48(3), the net annual value of a property is defined as being, "*the rent for which, one year with another, the property might, in its actual state, be*

reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant”.

2. The onus of showing that the valuation of the property concerned, appearing in the valuation list, is incorrect is on the appellant.
3. There was no dispute between the parties as to the description of the subject property, the description of its location or the total area accommodation. There was an issue in relation to the manner in which the property was zoned, in that the appellant contended that 0.57 sq. metres should be valued as Zone C, whereas the respondent submitted that given the small area involved, this should be included in Zone B. In view of the very small area involved, the Tribunal is of the view that the inclusion of the disputed area of 0.57 sq. metres within Zone B, as was done by the respondent, would have no appreciable impact on the rateable valuation of the property. As was stated in evidence by Mr. Diskin, the same zoning method was applied by the respondent to one of the comparison properties, Hickey’s Pharmacy.
4. In arriving at its decision, the Tribunal is relying on the comparisons put forward by both parties. Mr. Behan in his evidence adduced details of two comparisons and Mr. Diskin in his evidence adduced four comparisons. The most relevant comparison is the comparison common to both parties, namely Hickey’s Pharmacy, which is of a similar size to the subject property, is held under a similar lease and is subject to a similar rental value. The rateable valuation of this common comparison was appealed, but was accepted by the appellant at first appeal stage. The evidence given by Mr. Diskin was that this property was valued at a Zone A value of €500 per sq. metre, as were all the properties within the Fortunestown Centre, including all comparisons referred to by both parties.
5. The Tribunal accepts the evidence given by Mr. Diskin and Mr. Lavelle on behalf of the respondent that the value of €500 per sq. m. Zone A applied to the Fortunestown Shopping Centre was arrived at following an analysis of all available market values at the time of revaluation.

6. The Tribunal finds that the appellant failed to put forward any evidence in support of his contention that the NAV arrived at by the respondent was incorrect or to contradict the respondent's evidence that the Zone A value applied was based on an analysis of all available market information. He therefore failed to discharge the onus on him of showing that the valuation of the property concerned appearing in the valuation list was incorrect.

Determination

Having regard to all the evidence adduced and to the foregoing findings, the Tribunal dismisses the appeal and affirms the NAV of €43,600 appearing in the list in respect of the property concerned.

And the Tribunal so determines.