

Appeal No. VA08/5/113

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

Mr. Jim McGonigle

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2185828, Retail (Shops) at Clondalkin Travel Centre, No. 4 Tower Road, Clondalkin, County Dublin

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Leonie Reynolds - Barrister

Member

Aidan McNulty - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF JANUARY, 2009

By Notice of Appeal dated the 29th day of July, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €49,800.00 on the above described relevant property.

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

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 24th October, 2008. The appellant was represented by Mr. Patrick O'Dwyer, MIAVI, APCS, O'Dwyer English Auctioneers, 19 Main St, Clondalkin, Dublin 22. The respondent was represented by Mr. Damian Curran, MRICS, ASCS, a Staff Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At Issue

Quantum.

The Property

The subject property is described as a modern, ground floor, purpose built retail unit in a building reconstructed in the mid 1990's. The upper floor of the building comprises three separate units with independent access provided from the ground floor and was not the subject of appeal. The building is a two storey, end of terrace, commercial premises with the ground floor trading as a retail travel agency under the name and style of Clondalkin Travel Agency. The building faces on to Main Street, Clondalkin which is described as a mixed retail office and residential neighbourhood in the central business district of old Clondalkin Village which lies approximately 10km south west of Dublin City Centre. The front elevation of the building features two large display windows. The structure is built of concrete block with brick cladding, concrete floors, timber frame windows, and a slate hip roof on timber trusses.

Tenure

Twenty-one-year lease commencing 1st February, 1996 [August 1996, as per appellant] with rent reviews every five years. Initial [2001 as per the respondent] rent €34,950 per anum. Lease assigned to current occupier and appellant in November, 2003.

Services

All mains services including power, water, foul and storm sewer, telephone. The building is served with warm air central heating and is considered to be in good structural and decorative order.

Area

Agreed by the parties at 82.85 sq. metres.

Valuation History & Relevant Dates

The property was the subject of a Revaluation carried out in the Dublin South County Council area and a Proposed Valuation Certificate issued on the 5th June, 2007 with a valuation of €49,800.

February, 2008: Appeal filed with the Commissioner of Valuation.
 Appeal concluded and valuation remained unchanged.

July, 2008: Appeal filed with the Valuation Tribunal.

Valuation Contended for by the Respondent at Tribunal

While the valuation currently in the Valuation List is €49,800 the Respondent contended for a valuation of €44,850 before the Tribunal.

Appellant's Case

Mr. O'Dwyer took the oath, adopted his précis as his evidence-in-chief, and provided the Tribunal with a review of his submission. At the outset he remarked that the Valuation Office had erred by relating the valuation of the subject to methodology adopting a zoning approach in terms of Zone A, which in his view failed to consider market rental conditions at the relevant valuation date in the Clondalkin Village area. Mr. O'Dwyer explained that the passing rent on the subject premises as of September, 2005, i.e. the relevant valuation date would have amounted to a sum of €34,900 p.a. and that the Open Market Rental Value (OMRV) would have risen to €40,000 p.a. as of October, 2008. Mr. O'Dwyer also argued that the Commissioner of Valuation should have considered the usage of a travel agency as part retail and more akin to office use and noted that the planning granted by the Local Authority on the subject is for office, rather than retail use.

Mr. O'Dwyer addressed each of the four comparison properties appended to his précis and attached herewith as Appendix 2.

Comparison 1

He stated that this premises had a current rent of €20,000 p.a. on approximately 28 sq. metres, fronting on to Tower Road which he concluded reflected a Zone A rental equivalent of €115 per sq. metre. He noted that in the Revaluation exercise carried out by the Valuation Office the valuation figure applied as of September, 2005 amounted to €20,400 p.a.

Comparison 2

Again considering the current rent passing of €36,000 p.a. on this 81 sq. metres retail unit in the Monastery Shopping Centre, the agent estimated that the Zone A rate per sq. metre in this premises would calculate at €700. However he acknowledged that he was not privy to the passing rent at the relevant valuation date of September, 2005.

Comparison 3

Mr. O'Dwyer described this premises as commanding a prime location at the junction of Main Street and Monastery Road, purpose built and concluded that a passing rent during March, 2006 in the sum of €20,538 p.a. on the 42 sq. metres amounted to an equivalent Zone A rate of €75 per sq. metre.

Comparison 4

Acknowledging this premises as his firm's trading headquarters, Mr. O'Dwyer confirmed that O'Dwyer English Auctioneers were paying a rent of €13,200 p.a. in this converted building with its large ground floor double frontage in a prime position on Main Street, Clondalkin. Citing this comparison property as having similar characteristics to the subject, being formerly residential and recently converted to commercial use, Mr. O'Dwyer contended that the passing rent on their office premises would provide an equivalent Zone A rental of €259 per sq. metre on circa 32.4 sq. metres.

The agent reiterated his view that this property was superior in terms of location and profile to the subject premises enjoying the considerable advantage of a higher profile than that available for Clondalkin Travel on Tower Road.

Mr. O'Dwyer emphasised that the main point of his evidence was to highlight the wide variance of rental values for retail properties in the centre of Clondalkin Village.

He declared that the rate per sq. metre applying to Zone A retail premises ranging from €750 on Tower Street to €50 on Main Street, as calculated by the Valuation Office, was “*unjustified, unfair and inequitable*”.

He concluded that the passing rent on the subject in September, 2005 at €34,900 represented a Zone A equivalent of €84 per sq. metre. He explained that in the village centre very few retail units are alike, with many being quite small and converted from former residential use and stated that some purpose built infill development occurred in the village core in the 1980's. Mr. O'Dwyer said that his client felt very distressed at the prospect of the annual rates bill increasing on his premises from a sum of €1,680 when he acquired the leasehold interest in 2003, to a current level assessed at circa €3,000 p.a. and argued that a travel agency business should not be considered in a retail category for rating purposes.

The agent then addressed the ten points set out in summary format in his précis (and in a letter accompanying the Notice of Appeal, attached at Appendix 1 hereto) repeating his views that the current valuation is excessive and inequitable, and added that:

- A valuation determined by the Valuation Office of €49,800 does not represent market conditions.
- The bank, post office, chemist and victuallers have vacated the neighbourhood in recent years and moved to newer and more attractive locations.
- The area is characterised by residential units and a streetscape bearing signs of dereliction.
- The opening of the new ring road had significantly reduced traffic flow through the village centre.
- Former floor area calculation differences had been resolved and agreed with the Valuation Office.
- There is very limited parking or free parking in the area of the subject premises and a deficit exists in the provision of commercial loading bays.
- The area suffers from inadequate and poorly maintained public utility infrastructure.

- That security measures including the use of roller shutters to doors and windows at night, together with the large number of derelict residential units nearby and on the Main Street conspire to offer a less than attractive commercial and social environment.

Cross-examination by Mr. Curran

Mr. Curran addressed his queries to Mr. O'Dwyer, who in turn replied/affirmed as follows:

1. The relevant valuation date was September, 2005.
2. The passing rent at the valuation date was €34,900.
3. The subject lease was reviewed in 2001.
4. There was an increase in local retail market rents of approximately 20% from 2001 to 2005.
5. The Valuation Office had employed the zoning method in the Revaluation of commercial premises in Dublin South County Council including all retail units in Clondalkin Village.
6. The use of the subject may be considered as retail but he requested that consideration be given to the unique nature of the services provided in a travel agency.
7. His comparison property No. 1 carried a valuation of €20,400 p.a. which would reflect a Zone A equivalent of €900 per sq. metre, but he did not have sufficient details on same to analyse the numbers fully.
8. His comparison property No. 2 carried a valuation of €23,200 p.a. but he was not aware that the premises had been extended since the valuation date and accepted a Zone A equivalent calculated by the Valuation Office of €650 per sq. metre.
9. His comparison property No. 3 carried a valuation of €25,200, though he declared that the passing rent was approximately €20,500, but accepted the details on the Valuation List as cited by Mr. Curran, which resulted in a Zone A rate of €850 per sq. metre.
10. He confirmed that the passing rent of €13,200 p.a. on their own offices i.e. comparison property No. 4, was set in 1998 and debated what the OMRV might have been in September 2005. He informed the Tribunal that the valuation on that premises was being appealed seeking a reduction to €20,000 p.a. which would, by his calculations, increase the equivalent Zone A rate based on the passing rent from €259 to €390 per sq. metre, whereas the Commissioner's valuation would result in an equivalent €600 per sq. metre, Zone A.

11. The subject premises, though more attractive as a purpose built unit, would rank lower in value to “the more superior” location of comparison property No. 4 on Main Street.
12. He would not agree with the respondent’s interpretation of Section 31 of the Valuation Act, 2001 as he felt the market rental conditions in 2005 were not fully considered by the Valuation Office.
13. He relied upon evidence available on a neighbouring premises to analyse and devalue Zone A rent on the Valuation Office comparison property No. 1, namely Bank of Scotland Ireland, while accepting the respondent’s advice that the passing rent on same in January, 2006 was €39,600 p.a.
14. He acknowledged that he was not aware that the rent of €27,320 on Hibernian Auctioneers premises adjusted to €32,780 in October, 2006 did not include the large first floor office areas overhead.
15. He did not have details on the date rent was set on Cribbin’s Butchers i.e. Comparison No. 4 in the respondent’s submissions but acknowledged that, having regard to the information provided at hearing by Mr. Curran, the OMRV on this premises might be reasonably estimated at €40,000 p.a. as at September, 2005.
16. The majority of issues outlined in his letter accompanying the Notice of Appeal (at Appendix 1 hereto) applies in a general sense for all retailers within the Clondalkin Village core.

Respondent’s Case

Mr. Curran took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. He circulated a copy of two Clondalkin Village Ordnance Survey maps for the assistance of the Tribunal, with the consent of the appellant, which were marked up to indicate Zone A values established during the Revaluation of South County Dublin, relating to the old village centre of Clondalkin ranging from €600 to €850 per sq. metre Zone A. He explained the manner in which the hierarchy of Zone A values were derived following an analysis by the Valuation Office of passing rents as of September, 2005. He outlined his own work on about 200 commercial properties in Clondalkin Village and stated that, having analysed the passing rents on the retail units there, he concluded that one side of the Main Street set the highest Zone A value of €850 per sq. metre though directly opposite, because of dereliction and limited number of units combining with a predominance of residential

properties, those few remaining shops lying on the south side of Main Street had a Zone A rental calculated at €600 per sq. metre.

Mr. Curran offered an explanation as to how the increments in Zone A values were determined by the Valuation Office in various locations within the village having regard to agglomeration of retail units, propinquity of car parking, the location of the main thoroughfare, profile, mix and range of retail services being offered together in the village with empirical market rental data applicable, as at September, 2005.

He noted that the subject located on Tower Road was determined to have an equivalent Zone A rental value of €750 per sq. metre while acknowledging that two detached retail units in poor condition across Tower Road were deemed to carry a Zone A value of €650 per sq. metre. The respondent also confirmed that the net internal area of the subject was agreed with the appellant at 82.85 sq. metres with the Zone A element at 37.88 sq. metres. Mr. Curran stated that the passing rents on Main Street, Clondalkin in September, 2005 ranged from €700 per sq. metre up to €1,300 per sq. metre and the OMRV at the same time on Monastery Road for retail units ranged from €750 to €900 per sq. metre Zone A. He contended that property identified as comparison No. 1 in the appellant's précis carrying a valuation of €20,400 p.a. in 2005 would have a Zone A rating of €900 per sq. metre. He provided the Tribunal with a brief description of each of the four comparable properties outlined in his précis and attached herewith as Appendix 3, namely: Bank of Scotland Ireland, Tower Road; Bernardo's, Main Street; Hibernian Auctioneer's, Tower Road; and Kevin Cribbin Butchers, Tower Road, citing Zone A rents of €750 per sq. metre on the Tower Road premises and €850 per sq. metre at Barnardos on Main Street.

Mr. Curran repeated that the Zone A rents were derived from an analysis of market rents as at the relevant revaluation date, which created the Valuation List. Of the approximately 200 properties valued in Clondalkin, he stated that just three properties were being appealed to the Valuation Tribunal, the subject being one. He acknowledged that parking is a problem in Clondalkin Village but a problem for all with limited paid and free parking facilities in the area.

Cross-examination by Mr. O'Dwyer

In reply to questions raised by Mr. O'Dwyer, Mr. Curran advised the following:

1. In common with many villages the built retail environment in Clondalkin Village core comprises many converted and some purpose built units generally of reasonably good construction, with two notable exceptions with reduced Zone A rentals on Tower Road.
2. Market rents as of September, 2005 supported the Zone A rental hierarchy on Tower Road ranging from €650 to €750 per sq. metre.
3. A rent of €61,900 p.a. was in his view achievable in September, 2005 for Hibernian Auctioneers premises on Tower Road.
4. The Zone A rental values of €750 to €850 per sq. metre in the respondent's submission represented an analysis of market rents passing as of September, 2005 at Tower Road and Main Street, Clondalkin.
5. Apparent anomalies in the differences of Zone A values equating to €100 per sq. metre drawn from references to retail properties on Main Street and Tower Road should not be considered in isolation but in the context of the Revaluation exercise carried out by the Valuation Office, which was charged with the task of valuing a large number of relevant properties together.
6. Empirical evidence on neighbouring properties in the Clondalkin Village was used to establish Zone A rental values on premises where direct market rental evidence was not available.
7. The Commissioner of Valuation had attended to all statutory requirements to inform and notify all ratepayers of the Revaluation and available appeals procedures, in the South Dublin County Council area.
8. The apparent increase in the appellant's rates liability was not based on an error of the Valuation Office but he acknowledged that when the premises was redeveloped about 1995 the revision appeared to have applied only to the upper floor resulting in the continuation of a rating charge on the subject which may have been set some years earlier.

In concluding his evidence Mr. Curran reiterated that the principle of *rebus sic stantibus* was followed by the treatment of the subject premises as a retail unit, that all provisions of the Valuation Act, 2001 were followed by the Commissioner of Valuation and the practice of applying the zoning method to the retail units was employed as part of the exercise to make relative rents within the Clondalkin Village area.

Statement by the Appellant

Upon request Mr. McGonigle addressed the Tribunal, having taken the oath, and outlined a range of trading difficulties for retailers in general and for himself in particular, in the old village core of Clondalkin, citing the lack of availability of parking as of particular concern. He stated that he believed that he was poorly informed and advised by the Valuation Office, and made reference to two letters which he said contained statements to the effect that the Valuation Office had erred in the past in the manner by which the rates were levied on his premises. He expressed serious concern as to the apparent circa 400% increase in rates liability now faced by Clondalkin Travel Agency on an annual basis. His request to circulate copies of the two copy letters was declined by the Tribunal. This decision had regard to the Registrar's written request to the appellant's agent dated 8th September, 2008 requesting submission within a determined time frame of all relevant information to the Tribunal. As,

1. copies of same had not been accordingly furnished,
2. the circumstance was not of an exceptional nature, and
3. in accordance with established Rules,

the Tribunal did not admit copies of the letters into evidence.

Findings

1. The subject relevant property should be rated as a retail travel agency having regard to its use as at September, 2005.
2. Though useful in some ways the information submitted by the appellant on his four comparison properties was not sufficient to assist the Tribunal with an analysis of empirical rental data of the Open Market Rental Values of those properties as at September, 2005 and to form an opinion on their equivalent Zone A rental values.
3. The apparent wide variation of rental values declared by the appellant was not supported by either submitted or adduced evidence at hearing.
4. The respondent did not challenge or provide evidence refuting the claims of dereliction made by the appellant in the areas of Tower Road and Main Street.
5. The issue of significant trading difficulties associated with the provision or absence of parking facilities in the area was agreed by both parties.

6. The respondent did not contest the apparent negative impact resulting from the removal of traffic from the village centre following the construction and opening of the outer ring road.
7. The respondent did not challenge the alleged poor quality of utilities infrastructure, the reported inadequate levels of maintenance and upkeep declared to have caused constant overflowing of effluent waste in the area of the subject property.
8. Similarly the evening time use of security shutters drawn down over the village core retail units and the resultant negative impact on the streetscape was not challenged by the respondent.
9. Items 4, 5, 6, 7 & 8 above, taken together, suggest significant difficulties for retailers in the village core and in particular those a little removed from the prime retail area, the latter acknowledged by both parties as being the north side of Main Street.
10. The Tribunal considers the evidence submitted and adduced at hearing indicates that the social and physical conditions of the village core do not represent an area either improving or static, but more particularly one which might be characterised as losing many of its former trading advantages to newer shopping centres, be they neighbourhood or regional, within relatively short distances of the village core and which offer a wider and broader mix of tenants and services capable of generating and sustaining increased levels of footfall, at the expense of the village retail core.
11. The Tribunal is of the view that when the Valuation Office carried out the Revaluation exercise and with specific reference to the subject, the analysis of passing rents may have failed to adequately consider some of the foregoing phenomena in such a manner as would a hypothetical tenant in his analysis of market rental considerations of the subject relevant property.

Conclusion

Having regard to all of the foregoing and the provisions of the Valuation Act, 2001 the Valuation Tribunal considers that the valuation of the subject property should be calculated by reference to the valuation date of the 30th September, 2005 on the following basis:

Net Internal Area Retail

Zone A	37.88 sq. metres	@ €700 per sq. metre	€26,516
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Zone B	42.78 sq. metres	@ €50 per sq. metre	€14,973
Zone C	2.19 sq. metres	@ €175 per sq. metre	<u>€38,325</u>
Total			€1,872.25
Say			€1,800

And the Tribunal so determines.