

Appeal No. VA09/1/001

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

The Health Store

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2194165 Shop at Lot No. Unit No. 20, MacDonagh Junction Shop Centre, Kilkenny No 2 Urban, Kilkenny Borough, County Borough of Kilkenny

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

Aidan McNulty - Solicitor

Member

James Browne - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF MAY, 2009

By Notice of Appeal dated the 9th day of January, 2009, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €210.00 on the above-described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal, a copy of which is at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 10th day of March, 2009. Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI, represented the appellant and Mr. Patrick McMorrow, ASCS, IAVI, a Valuer in the Valuation Office, represented the respondent. At the hearing both parties, having taken the oath, adopted their précis as their evidence-in-chief.

The Property Concerned

Location and Description

The subject property is a ground floor shop unit comprising 137 sq. metres, measured gross internally. It is located in a new development of commercial, retail, office, leisure and residential accommodation known as MacDonagh Junction, located on the northern side of Kilkenny city at the junction of Dublin Road and John Street adjacent to MacDonagh Railway Station.

The development which opened in November 2007 has c.1,100 underground car parking spaces and comprises approx. 50 units with Dunne's Stores as anchor tenant in addition to other tenants who include Next, River Island, TK Maxx, Peter Mark, Champion Sports and others.

Valuation History

The property was valued and a proposed Valuation Certificate was issued on 14th March, 2008 with an RV of €210. On 9th April, 2008 the occupier made representations to the Revision Officer who issued the RV unchanged on 9th May, 2008. Mr. Eamonn Halpin lodged an appeal to the Commissioner of Valuation on the 9th June, 2009 on behalf of the appellants. The Commissioner issued a decision on the first appeal with the valuation unchanged at an RV of €210. Mr. Halpin, for the appellant, appealed the Commissioner's decision to the Tribunal on 9th January, 2009 on the issue of quantum.

Title

Leasehold for a term of 20 years from the 1st October, 2007 at a yearly rent of €140,000 with full repairing and insurance and five year rent reviews.

Appellant's Case

Mr. Eamonn Halpin having taken the oath stated that the valuation adopted by the Commissioner was too high and made the following submissions:

1. The subject property is in a tertiary location and well away from the prime location of the High Street in Kilkenny City with its good parking and easy walking distances.
2. That location away from the High Street is a major, major, consideration. The new Centre is fine but the majority of shoppers shop in High Street and would not walk the distance to the new centre which is almost one mile away.
3. The Centre attracts approx 65,000 shoppers per week according to information available from the letting agents which amounts to uneconomic trading. Dunnes are usually successful as an anchor tenant; however they also have a store in the High Street and the Centre is trading badly. Trading at the Centre was poor even before the recession set in.
4. The Centre is poorly designed, as are the escalators, and although the subject unit is close to the anchor tenant its corner location is one of the quietest corners in the Centre. The development with 50 units has only approx 33 occupied. A number of units cannot be let and others such as Barretts Shoes and Zavvi (formerly Virgin Mega Store) have ceased trading.
5. The initial units that were rented to secure occupancy were in fact over-rented relative to their objective value in terms of overall retail values in Kilkenny.
6. It is inequitable in the extreme to assess the subject property at a level which equates to €20 per sq. metre Zone A when the top figure applied in the High Street is €110 Zone A. The level of €306 per sq. metre overall adopted by the Commissioner is grossly excessive and incomprehensible. The figures do not stack up given the relative value, shape and size of the subject property.
7. The public car park is the main focus of the town and Dunnes Stores at the river acts as the boundary between one part of the city and the other and there is no established pattern of walking from the High Street to the station.
8. The appellant had successfully renegotiated a recent rent reduction. Even if the unit was rent-free and rates-free it would not improve the appellant's position and such a material change in circumstances warrants a reduction for the appellant.

Mr. Halpin assessed a rateable valuation of €10 on the subject property calculated as set out below:

Shop Zone A 47.45 sq. metres	@ €69 per sq. metre	€12,764
Shop Zone B 47.45 sq. metres	@ €134.50 per sq. metre	€6,382
Shop Zone C 42.10 sq. metres	@ €77.25 per sq. metre	<u>€2,831</u>
		€1,977
RV @ 0.50% = €109.88		
Say RV €10		

Cross-examination

Under cross examination by Mr. Patrick McMorrow, Mr. Halpin said that in his view trading was poor in the Centre. He did accept that it could take four to five years before the best trading results would evolve in the Centre. He further added however that it could take forever to evolve. He stated that business is not building and had not improved from the 65,000 shoppers per week.

Mr. Halpin said he has been to the Market Cross Centre and in his view it enjoyed a unique location. He accepted that there were four to six units to let at that Centre and the downturn effect was widespread. He said that he had great reservations about Mr. McMorrow's comparisons.

Mr. Halpin in reply to Mr. McMorrow stated that a market rent agreed in 2004/2005 to secure a unit back then was, in today's climate, too strong a rent; that it was not realistic and would not be sustainable. The Centre has failed to attract shoppers and is not competing with the High Street. The current downturn is affecting it but is not the reason for the struggle in the Centre.

Details of Mr. Halpin's comparisons are at Appendix 2 hereto.

Respondent's Case

Mr. McMorrow, having taken the oath, adopted his précis as being his evidence-in-chief and assessed the rateable valuation of the subject property as follows:

Shop 137 sq. metres	@ €306 per sq. metre	= €41,922
RV @ 0.5%		= €10

Mr. McMorrow stated that the valuation adopted by the Commissioner was in line with his comparisons, that the subject property is located in a good central location within the centre, next to the anchor tenant, Dunnes Stores, and close to the escalators to the underground car parking. The shop is relatively small with good frontage to depth ratio and is centrally located close to the anchor tenant with many national and international names in occupation. The Centre has extensive and accessible parking for some 1,100 cars. The tone within the Centre was set primarily by reference to the only other significant shopping centre in Kilkenny, Market Cross Shopping Centre. There are c 30 units assessed in MacDonagh Junction Shopping Centre, and all retail units were assessed on an overall basis. His comparisons are of similar size to the subject property and were set following consultation and agreement with professional agents at either Representation or First Appeal stages. The subject property carried a premium due to its closeness to the anchor tenant and to the escalators to the underground car park. He stated that all retail units are affected by the recession and that it was not unique to request and be granted rental reductions as in this case. He concluded that the valuation of €210 was fair and reasonable.

Details of Mr. McMorrow's comparisons are at Appendix 3 hereto.

Cross-examination

In cross examination Mr. Halpin said that all of Mr. McMorrow's comparisons were settled and agreed at first appeal stage. As a result he had great reservations with regard to them and this case was the first real test and appeal to the Tribunal from the Centre. Mr. McMorrow replied that in his view Section 49(1) of the Valuation Act 2001 was fully complied with, his comparisons were relevant and the closest units to the subject property and there is a well established local tone within the shopping centre. In his view there was no need to go behind that, and he was relying exclusively on the comparisons within the Centre.

Findings

The Tribunal, having carefully considered all the evidence and arguments adduced by the parties, make the following findings:

1. The Tribunal is cautious with comparison properties valued at the same time as the subject property. However, due consideration is given by the Tribunal to the opinion of professional valuers which resulted in agreements at earlier stages of the appeal process.

In general however, the Tribunal prefers comparisons which have gone through the rigours of the full appeal process.

2. The Tribunal finds that of all the comparisons submitted the ones within the Centre are the most helpful, particularly those adjacent to the anchor tenant and the escalators.
3. The Tribunal finds the respondent's Comparison No.3, Carphone Warehouse, which was agreed and set at representation stage and is next door to the subject property, to be the most appropriate and helpful of the comparisons.
4. The Tribunal is satisfied that section 49 of the Valuation Act, 2001 has been fully complied with by the respondent in this matter.
5. The appellant's comparisons were less helpful as they are all outside the Centre in which the subject property is located. It was accepted in evidence that fifteen months trading was not a proper yardstick and that it takes at least four to five years to establish proper trading within a new shopping centre. The subject Centre has great potential with underground car parking and pedestrian access to the anchor tenant and many national and international names in occupation.
6. The Tribunal is satisfied that it is appropriate, fair and equitable to value the subject property on an overall basis similar to that of all the other units in the Centre.

Determination

Having regard to the foregoing findings, the Tribunal determines the respondent's valuation of €210 to be fair and reasonable and therefore affirms that valuation.

And the Tribunal so determines.