

Appeal No. VA09/1/011

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

Laina Jardine

APPELLANT

and

Commissioner of Valuation
RESPONDENT

RE: Property No. 5001808, Beauty Salon/Massage at Lot No. Unit 2A Orchard Lodge,
Watery Lane, Clondalkin, County Dublin

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Frank O'Donnell - B.Agr.Sc. FIAVI.

Member

James Browne - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF JULY, 2009

By Notice of Appeal dated the 19th day of February, 2009 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €39,100.00 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:

"Property has not got the same value as it did in 2008 when the property was assessed. Due to cut backs in my company and the financial difficulty I face now, this valuation is not affordable and could be detrimental to my business."

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 23rd day of April 2009. The appellant was represented by Mr. Eamonn Halpin, BSc, MRICS, MIAVI, of Eamonn Halpin & Company. The respondent was represented by Mr Ian Power BSc, MIAVI, a District Valuer in the Valuation Office. Both parties adopted their written submissions, which had previously been exchanged between them and submitted to the Tribunal, as being their evidence-in-chief given under oath.

The Property

The property concerned is a single storey ground floor retail property within a new four storey mixed use development off the centre of Clondalkin village. The development comprises a retail unit on the ground floor with domestic use on the upper floors. The area sizes are agreed between the parties at 77.66 sq. metres gross internal area.

Location

The property is located at Unit 2A Orchard Lodge, Watery Lane, Clondalkin, Dublin 22 at the junction with Orchard Lane off the centre of Clondalkin Village. The property has dual frontage.

Tenure

The property is held under a 25 year lease, with five yearly rent reviews, from January 2007 with rent per annum being €35,292.

Valuation History

The rating authority is South Dublin County Council. The property was the subject of a revaluation as one of all rateable properties in the rating authority area. Per a proposed Valuation Certificate the property was valued at €39,100 in 2008. An appeal was lodged and the valuation remained unchanged on the conclusion of the appeal. An appeal was subsequently lodged with the Valuation Tribunal on 25th February, 2009.

The Appellant's Case

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

In his evidence, Mr. Halpin described the property as being located at the edge of the commercial part of Clondalkin village, with only a couple of commercial units situated after the appellant's property and residential properties situate after these units. He described the property as an almost rectangular shaped lock-up ground floor retail unit in a small new multi-story building with the upper floors in use for residential purposes. He stated that the subject unit trades as a beauty salon and that the property fronts onto the street and has a very limited profile when approached from the direction of Watery Lane. He admitted that it has a slightly better profile when approached from the Orchard Lane direction.

He pointed out that there was no on street parking outside the unit but that there was parking associated with a number of other small retail developments in the village including Tesco, the Village Centre and units at Tower Road. He felt that there was no real alternative parking in the area and that the lack of parking was a key element for units in Clondalkin Village.

He stated that the property was held by way of leasehold under a 25year FRI lease from 2007 at a rent of €35,292 per annum. There is provision for 5 yearly rent reviews with 3 months rent free granted at the commencement of the term.

He then referred to page 6 of his précis and went through each point therein as follows:

- “1. One of the best indications of this properties true value is the passing rent. This was agreed at €35,292 (equivalent to a Zone A level of €540/m² but in 2007) which we believe was more than its full value at the time as the occupier was not represented in these negotiations.*
- 2. The appellant believe that it could not possibly be as valuable as suggested by the Commissioner i.e. an NAV of €39,100 in September 2005 given the passing rent & the fact that none of the other units have been let even though available over the last few years. Additionally the passing rent was agreed in 2007 when this is restated at September 2005 levels it would be between 15% & 20% less.*

3. *The level applied by the Commissioner is excessive in view of the established tone of the list of comparable properties (see comparisons directly opposite in the Village Centre Development) These units are more attractive in that they are part of integrated development with very prominent large Molloy's off-licence as anchor. They also have their own small car park attached.*
4. *It is not accepted that there is any market evidence that supports the Commissioners approach to apply the suggested level to this unit in the context of its relative value in the village. The application of zone A levels of €600/m² in this case is again in our view unsustainable as comparable units directly opposite with the benefit of car parking are taken at €500/m². This suggested differential cannot be justified in such close proximity & given the relative rental values.*
- 4A. *Again there is no market evidence to suggest that the shops in Clondalkin are let on zoned basis. Indeed our research & experience would suggest that this is not the case.*
5. *There is a large amount of competition in the village & the hypothetical tenant would factor this into his rental bid. He would be less attracted to this unit as it is separated from the best part of the town centre and enjoys much lower footfall.*
6. *The Commissioner's approach in this case again calls into question the equity and integrity of this valuation scheme adopted in relation to Clondalkin Village as a whole i.e. a Zoned basis which is at odds with the actual letting practices & indeed passing rents. In every case of a retail property in Clondalkin where there has been an Appeal to the Tribunal arising out of the South Dublin Revaluation exercise the Commissioner's NAV has been greater than the passing rent and the Tribunal has reduced the NAV put forward by the Commissioner's Scheme VA08/5/170 - The Molloy Group directly opposite the subject & VA08/5/020 - Ulster Bank.*
7. *The actual complete lack of profile when approaching from the Watery Lane direction must also be taken into account .The comparisons in the Village development opposite actually enjoys a better street profile.*
8. *The appellants seek a reduction to more fairly reflect their unit's relative value."*

Mr. Halpin then introduced his comparisons (details at Appendix 1 hereto) as follows:

1. Shop Units in the Village Shopping Centre

These were described as 8 retail units with car parking for 18 cars and valued at Zone A levels of €500 per sq. metre (save for Molloy's off-license which was valued at €600/per sq. metre)

2. Units 1, 3, & 4, Lynam's Hardware, Clondalkin Town Centre

He described this as being close to the subject property with a very large frontage and car parking outside the door, both to the front and side of the property. It was also described as having high visibility. It was stated that it was valued at €600 per sq. metre Zone A.

3. Unit 6 retail unit at Tower Shopping Centre

This property was valued at €650 per sq. metre Zone A.

Mr. Halpin referred to Molloy's which he said had excellent frontage and which was reduced on appeal from €700 to €600 and referred to the valuation appeal **VA08/5/170 - The Molloy Group** issued on the 16th February, 2009.

Mr. Halpin summarised the appellant's case as follows:

1. *The subject property is located at the edge of Clondalkin Village. The Commissioner has not properly taken into account its actual rental value per the passing rent which was agreed after further rental growth after the Commissioner's valuation date of 30/9/2005 in formulating its NAV.*
2. *The scheme of value adopted by the Commissioner is flawed and the differential applied to the Main St ranging from €500/m² to €850/m² on properties close to each other is too large to be equitable. Some of the properties assessed at €600/m² in the Main Street are actually as valuable or indeed more valuable than those that are assessed at €750/m² elsewhere in the village again this is not equitable and calls into question the validity of the scheme adopted.*
3. *The subject should be assessed in line with comparable properties in the vicinity including those adjacent it. The Village Centre development which are assessed at €500/m².*

4. *The fact that this unit is separated from the rest of its own development and also has such poor profile when approached from the Watery Lane direction are also limiting factors. Additionally the lack of parking outside the premises mean that it is less attractive to the hypothetical tenant than either the units in the Village Centre development opposite or the adjacent hardware shops both of which have their own car parks.*
5. *The appellants seek a reduction in their assessment to more fairly represent their units relative worth.”*

Mr. Halpin, in answers to questions from the Tribunal, stated that Unit 4 of the Village Centre was not his primary comparator but rather he was relying on the whole Centre in putting forward his valuation; that all of the units in the Village Centre do not have frontage onto Orchard Lane and those that do in turn don't have doorways opening out onto the road. He stated that the traffic on Watery Lane was two way while the traffic on Orchard Lane was one way, travelling in the direction of town. He further stated that he rejected the Zoning approach and that other valuations were legitimate but reluctantly accepted that this is the valuation method applied in the present matter. He also stated that while there was evidence of rentals rising from 2005 to 2007 there was great evidence of rental reductions in 2008 and 2009.

Cross examination of Mr. Halpin

Mr. Ian Power questioned Mr. Halpin as to whether he would agree that Orchard Lane was closer to Main Street than Watery Lane. Mr. Halpin replied that that depended on where you stop Orchard Lane; at the point of Molloy's pub it is the same but at other points it is closer. He did not accept that the frontage location on Orchard Lane was better than on Watery Lane. He did not accept that the comparison in the Village Centre were directly opposite the subject property but stated that they were diagonally opposite.

Respondent's Evidence

Mr. Ian Power having taken the oath adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief.

He stated that it was correct that the subject property faced away from Watery Lane but that it is not the last commercial property; rather the shopping centre is the last commercial property and therefore the subject property is not isolated, and furthermore, it has a high profile onto Orchard Lane. He stated that technically it has dual frontage and in normal circumstances this would attract a 5% valuation premium. He stated that the valuation was in line with the 2 closest comparisons. He felt that a hypothetical tenant would look at the dual frontage and the fact that the property is a new purpose built unit. He pointed out that there are no parking restrictions for the nearby parking areas and thus they can be used for access by customers of the subject property. He further pointed out that there is parking at the rear of the development and that parking has been taken into consideration.

He then introduced his comparisons (details at Appendix 2 hereto) as follows:

1. Fitzgerald's Hire Ltd
2. ABP Lynham Hardware Ltd
3. V2 Hair Design
4. Andy Doyle t/a Village Hardware
5. Freynes & Co. Ltd
6. The Molloy Group (VA08/5/170)

He felt that his comparisons 3, 4 & 5 were closer to the subject property than Mr Halpin's comparisons in the shopping centre.

The Chairperson then asked whether he had any view on Zone A, with the tone of the list, and passing rents. Mr. Power replied that he was obliged under Section 49 to look at comparisons on the list. He said rent could be used as an indicator, but that the zoning model had been accepted by the Tribunal. He stated that he did not apply double frontage as the second frontage was onto a laneway and it would have been harsh to apply a 5% premium. He also felt that Molloy's was not the best comparator and he preferred his comparisons 3, 4 & 5.

Cross Examination of Respondent

On cross examination Mr. Power was asked why he did not take the property of AJ Clondalkin into consideration in reaching a valuation; to which he replied that it was because it was too far away from the subject property. He stated that the reduction in the

Tribunal determination **VA08/5/216 – A.J. Clondalkin Ltd.** was on the basis of areas and there was no reduction on quantum. He accepted that the Tribunal reduced the value of Molloy's on appeal but contended that on an overall basis the determination of the Tribunal supported the valuer's position.

Findings

The Tribunal has carefully considered all of the oral and written evidence produced by the parties and the arguments adduced at the hearing and makes the following 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. Section 63 (1) of the Valuation Act, 2001 states: *“(The statement of 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.”* Therefore, the onus is on the appellant to prove that the valuation under appeal is not correct.
3. The Tribunal notes that the areas are agreed between the parties.
4. In arriving at its decision the Tribunal relies on the comparisons put forward by the parties. The Tribunal accepts that the valuation levels in the area were derived from an analysis of available market information of commercial premises, that all properties in the revaluation were valued on a zoned basis and that the subject property was valued comparatively to the other commercial property in the area.
5. The Tribunal finds that the zoning method of valuation in respect of both the subject property and the comparison properties has been correctly applied. The Tribunal considers it reasonable and fair to uphold the valuation method of zoning levels as applied in respect of the subject property. The Zone A level is proportionate to the levels on Valuation Office comparisons 4, 5 and 6.

6. The Tribunal notes that the property has double frontage and is a new purpose built unit and that in normal circumstances a 5% premium might be applied for the double frontage, but this was not applied to the subject property due to the poor position of the second frontage.
7. The Tribunal notes that the issue of parking was taken into consideration by the valuer in reaching a valuation for the subject property.
8. The Tribunal finds the respondent's comparisons 3, 4, & 5 the most relevant.
9. The Tribunal finds that the Valuation Office valuation reflects the tone of the list and the location of the property.

Determination

In reaching its determination the Tribunal has been required to consider only the evidence submitted and adduced. In so doing the Tribunal has made the foregoing findings and in the light of those findings determines that the valuation of the respondent is fair and reasonable. The Tribunal therefore affirms the valuation of €39,100.

And the Tribunal so determines.