

Appeal No. VA09/2/010

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

DPRA Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 1164459, Office(s) at Lot No. 21a/1 floor 0&1, Pearse Road,
Knocknaganny, Sligo East, Sligo Borough, County Sligo.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Tony Taaffe - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF NOVEMBER, 2009

By Notice of Appeal dated the 11th day of May, 2009, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €72.00 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, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on 1st September, 2009. The appellant, Mr. David Reynolds of DPRA Ltd., represented himself at the hearing. The respondent was represented by Mr. Briain Ó Floinn, a District Valuer with 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 adduced, the following emerged as being the facts relevant and material to this appeal.

At issue

Quantum.

The Property

The subject relevant property comprises a two-storey estate agent's offices with an auction room on the ground floor. The main entrance is at the corner of the unit which separates the private parking area fronting on to the side street (Vernon Street). The other elevation fronts on to Pearse Road which is a main arterial route into Sligo town centre. The building is in very good condition and well decorated internally and externally. It is positioned approximately 400 metres from the main retail area of Sligo town. The junction of Pearse Road and Vernon Street is controlled by traffic lights. The interior fit-out of the premises is commensurate with a modern estate agency office reception and auction room and includes retail display windows on both street elevations, air conditioning, glass partitions dividing two offices on the upper floor, together with a canteen and kitchen to the rear.

Tenure

The interest in the property is held freehold.

Valuation History

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| 18 th July 2008: | Proposed Valuation Certificate issued by the Commissioner of Valuation indicating a Rateable Valuation of €135.00. |
| 21 st July 2008: | Appellant submitted representations to the Revision Officer. |
| 6 th October 2008: | Final Valuation Certificate issued with an RV of €72.00. |
| 17 th October 2008: | Appellant appeals the valuation to the Commissioner. |
| 24 th April 2009: | Commissioner of Valuation issues result of the First Appeal with the valuation unchanged at RV €72.00. |
| 11 th May 2009: | The appellant appeals the Commissioner's decision to the Tribunal by Notice of Appeal dated 11 th May, 2009. |

Appellant's Case

Mr. David Reynolds took the oath, adopted his précis as his evidence-in-chief, and provided the Tribunal with a review of his submission.

Mr. Reynolds commenced by drawing attention to the Commissioner's comparison properties which were both retail and office based. He then proceeded to make a number of points, summarised as follows:-

1. He stated that rates are calculated by reference to rental value of properties.
2. He declared that he would not compare retail rents with office rents.
3. He stated that when Revaluation is carried out there will be a certain equality in the rating system which he felt is currently lacking and in particular in the submission made by the Valuation Office in the current instance.
4. He noted that property rental values have shifted significantly downwards in recent times.
5. He declared that the land on which the subject relevant property is located is zoned for "Office/Professional" uses in the relevant Sligo Development Plan.
6. He indicated that the previous Rates Demand levied on the entire premises including the subject property prior to the current revision was €4,070.
7. He stated that the Commissioner did not adequately consider the rateable valuation of other offices in the area, and relied heavily upon retail premises.

8. He sought relief on liability to rating of the subject auction room, as it was, and remains, vacant.
9. He noted that the nearby property held by McInerney Homes Ltd has been offered for rent for some time, but remains vacant and as such confirms the lack of demand for office property in the area.
10. He contended that the Planning Permission given by Sligo Borough Council Reg. Ref. No. 06/59 dated the 24th August, 2006 providing for "*a 7.5 sq. m. extension to the corner/main entrance of existing offices, alterations to the Vernon Street & Pearse Road elevations, the removal of boundary walls to Pearse Road and Vernon Street and installation of bollards; external signage and all associated site works.*" limited the use of the premises to those of an estate agent's office only.

Mr. Reynolds advised the Tribunal that he was seeking a rateable valuation on the subject property of €38.00, after making a deduction for the auction room.

He then proceeded to provide some details on three comparable properties cited in the submission made by the Valuation Office which were as follows:

1. Foleys Xpress Stop Convenience Store, Pearse Road, Sligo.
2. Ulster Bank, Vernon Street, Sligo.
3. Londis Supermarket, Cleiveragh Road, Sligo.

He reiterated that the Planning Permission on the subject originally known as Pearse House was for office use only and that the Planning Permission for the aforementioned extension was also linked exclusively to office use. He advised the Tribunal that the Sligo Development Plan confirms that the subject corner of Pearse Road and Vernon Street is zoned for Office/Professional use only. He stated that the previous RV on the entire building in the past, prior to extension, which housed Gunne Reynolds Estate Agents, McInerney Homes and M & K Fuels was €54.14, producing a total Rates Demand of €4,070. He noted that the Commissioner has now assessed the Gunne Reynolds (DPRA) portion of the building at an RV of €72.00, creating a Rates Demand of €4,894 which is approximately double that of the former rates, precipitated by what he declared as a small extension of 7.5 sq. metres, coupled with some refurbishment work on the original office. He also stated that the building, when previously rated and used as a Computer Training Centre, was in fact in excellent condition then also.

To support his opinions, Mr. Reynolds offered four comparable properties for consideration by the Tribunal as follows:-

1. Sligo Chiropractor, Pearse Road, located opposite the subject property.
Traditional two storey mid terraced building. RV €30.47
2. Michael Doherty Dental Surgery, Pearse Road.
Refurbished detached prominent corner building. RV €25.39
3. Keady's Dry Cleaners, Pearse Road, opposite the subject property.
Traditional mid terraced two storey building. RV €25.39
4. Paprika Indian Restaurant, Pearse Road.
Detached corner building situated opposite the subject property. RV €29

He also referred to another Estate Agent's office located in Sligo town centre (Sherry Fitzgerald Draper), which he claimed benefits from considerable footfall, is complemented by a large auction room and carries an RV of €30.47.

Mr. Reynolds concluded by informing the Tribunal that the subject property does not have high footfall, is not at a town centre location, does not have Planning Permission for retail use and accordingly, should not be revised by the Valuation Office by reference to other retail premises.

Cross-examination by Mr. Ó Floinn

In reply to questions raised by Mr. Ó Floinn, Mr Reynolds advised the following:

- The premises were previously used as a Computer Training Centre.
- He was not sure how the previous use was valued or how much of same were dedicated to office use.
- The grant of Planning permission provided for a substantial increase of the size of the external windows on both elevations of the subject building together with the 7.5 sq. metres extension.

Mr. Ó Floinn at this time noted the historical use of the building including a ground floor Montessori School and apartments and office use and also expressed his opinion that the zoning controls on the subject site designated on the Sligo Borough Development Plan as RE aspire to "*Protect and Enhance Existing Residential Density*". He also noted:

- That a church group has taken a letting for office and meeting use on the adjoining unit on Pearse Road.
- That none of the comparable properties offered in his submission had Planning Permission matching the subject, but he considered those buildings similar insofar as they provide office type accommodation.
- Most particularly, his comparisons serve as useful references to local office rental rates.
- DPRA Ltd. had moved from a Sligo town centre location at 20 O'Connell Street to the subject location.

Respondent's Case

Mr. Ó Floinn took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission.

He summarised his précis by making the following points:

1. The subject relevant property enjoys a good profile.
2. It is used for the provision of professional services and as a retailer of property.
3. The net annual value calculated by the Valuation Office is fair and reasonable when compared to other values determined on like properties in the Sligo Borough area.
4. The Valuation Office adopted a zoning approach to determine the Net Annual Value.
5. That two premises, namely Auctioneers Davey McMorrogh on Markievicz Road and Jacko Sports, carry an annual rent of €30,000. The subject benefits by its prominence at the corner of Vernon Street and Pearse Road.
6. The previous valuation on the subject was based on its ground floor school comprising 87.8 sq. metres and store of 37.8 sq. metres, giving a total of 125.6 sq. metres, when revised in 1997 and the first floor was not assessed to a rates liability.
7. In his view it was not realistic to value the subject as an administrative office, noting that the Hibernian offices at 20 O'Connell Street in the town centre was believed to be commanding an annual rent of €30 per sq. foot.
8. Though planning conditions may be considered, Planning Permission of itself, he declared, is not a determinant to calculate an RV of a relevant property.

Mr. Ó Floinn referred to his précis and requested that Page 3 be amended so that 6th October, 2009 be corrected to read 6th October, 2008 as the date the final Certificate was issued with an RV of €72.

Mr. Ó Floinn then provided clarification and details on the calculation of net annual values determined on each of the three aforementioned comparable properties namely John Foley, (Xpress Convenience Shop), Ulster Bank, Londis and also the two additional properties - the adjacent unit fronting Vernon Street trading as M & K Fuels and the other unit occupied by McInerney Homes Ltd. Details of the foregoing as extracted from the respondent's submission are attached as Appendix 2 to this judgment.

Devaluations and calculation details provided on the foregoing premises were offered to support the basis of valuation submitted by Mr. Ó Floinn on behalf of the Commissioner which were summarised as follows:

Pearse Rd, Floor 0,

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| Zone A, Offices and window displays | 45.15 sq. metres | @ €150.00 per sq. metre |
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Vernon St, Floor 0,

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| Zone A, Offices and window displays | 32.23 sq. metres | @ €136.67 per sq. metre |
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Vernon St, Floor 0,

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| Zone B, Offices and window displays | 4.48 sq. metres | @ €68.33 per sq. metre |
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Pearse Road, Floor 0,

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| Canteen and Passageway at rear | 7.5 sq. metres | @ €34.16 per sq. metre |
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| Pearse Road, Floor 1, Offices, | 31.3 sq. metres | @ €82.00 per sq. metre |
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| Store under stairs, Floor 0, | 1.7 sq. metres | @ €50.00 per sq. metre |
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NAV €14,391 @ 0.5% = €71.95, Say €72.00

Cross-examination by Appellant

In reply to questions put by Mr. Reynolds to Mr. Ó Floinn, the latter acknowledged the following:

1. Gunne Reynolds, the occupier of the subject relevant property does not provide financial or insurance services on the subject premises.
2. Other Estate Agency offices operate from premises designated for retail use.
3. The Planning permission for the subject is linked to office use.
4. The predominant use at O'Connell Street in Sligo Town Centre is retail.
5. Rents for offices and retail premises have fallen in some locations over the past two to three years.
6. The subject premises is used exclusively for office purposes.

Tribunal Request

Having regard to the considerable debate and time spent on the designated use of the premises and various references made during the course of the hearing to Planning Conditions and more particularly restrictions as to use of the property arising from the relevant Sligo Borough Development Plan, the parties were requested and agreed to make a subsequent joint submission to the Tribunal clarifying details as to land use zoning in force and effect as on the Valuation date for the subject property, ie., October 6th, 2008.

The parties subsequently submitted a copy of materials provided by Sligo Borough Council dated 9th September, 2009 which included a certified copy of the Land Use Zoning Map 22 of the Sligo and Environs Development Plan, 2004 -2010 together with attached excerpt materials and Matrix from the same plan.

Findings

1. The subject offices are used for the provision of professional services associated with the management and operation of a general services Estate Agency.
2. Evidence was not provided at hearing or within the submissions provided to the Tribunal to indicate any specific restrictions limiting the use of the subject premises exclusively to office accommodation.
3. There was no dispute between the parties as to the calculation of the area or areas of the subject premises.
4. There was no disagreement between the parties as to the description, location or condition of the subject relevant property.
5. There were no grounds submitted or adduced at hearing to support the request that relief be granted on the assessment of a rateable valuation attributable to the Auction Room.
6. The appellant did not provide calculations to support the determination of a requested RV in the sum of €38 (excluding Auction Room).
7. A review of the aforementioned copy material provided by Ms. McConville of Sligo Borough Council through the Commissioner of Valuation indicates a Land Use Zoning designation Matrix for the subject land as “RE – Protect and Enhance Existing Residential Density”. However upon further review and more detailed analysis the Tribunal is led to understand that such a zoning objective is governed by a provision requiring the reader to take account of the existing use which would appear to be that of ‘Office/Professional’ as designated on Map No. 3 of the subject Development Plan.

Accordingly the Tribunal is satisfied that there are no grounds to give consideration to any alternative specific, restricted or prohibited use within the context of the foregoing which might materially affect the matter under consideration herein.

8. The details of the comparable properties Nos. 1-4 namely, Sligo Chiropractor, Michael Doherty Dental Surgery, Keady's Dry Cleaners and Paprika Indian Restaurant, cited by the appellant in his précis and as reviewed at hearing, though helpful as a general guide, were not considered to sufficiently support the appellant's argument.
9. Alternatively, the five properties offered as comparisons by the Commissioner of Valuation in his précis and the details accompanying same were considered by the Tribunal to be appropriate, relevant and supportive of the respondent's case.

Determination

Having regard to all of the foregoing the Tribunal is satisfied that the rateable valuation of €72.00 as determined by the Commissioner is fair and reasonable. The Tribunal therefore affirms the valuation.

And the Tribunal so determines.