

Appeal No. VA09/4/011

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

LANIDOR

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2196773, Shop at Lot No. 8, Laurence Street Mall, Laurence Town Centre, St. Laurence Gate, Drogheda Borough, Co. Louth

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Joseph Murray - B.L.

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF MAY, 2010

By Notice of Appeal dated the 30th day of November, 2009 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €107.00 on the above described relevant property.

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

1. The appeal proceeded by the way of an oral hearing held in offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 4th day of February, 2010. At the hearing the appellant company LA Franchise Partner Ireland Limited t/a LANIDOR was represented by Ms. Dolores O'Donoghue, a Director of the company. Mr. Noel Rooney, Dip. Env.Econ, a Valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation.

The Property Concerned

2. The property concerned in this appeal is a retail unit on the Laurence Street Mall of the Laurence Street Town Centre development in Drogheda, Co. Louth. The Laurence Street Town Centre is a newly-built, mixed-use development on the site of the former Drogheda Grammar School, with frontage to William Street, Peter Street, Laurence Street and Palace Street situated close to West Street, which is the prime retail location in Drogheda. The Town Centre development provides retail space at two levels, with enclosed car-parking at two levels underneath and with office and storage accommodation overhead.
3. Access to the car-parks is from Palace Street and Peter Street and the retail malls are directly accessed from pavement level on William Street, Laurence Street and Peter Street. The main entrance to the retail malls is located at the junction of William Street and Peter Street. Internally the malls and the car-parks are linked by lifts and travelators to all levels.
4. The retail element of the development provides a total of some 50 units of various sizes at two levels known as Laurence Street Mall and Peter Street Mall, anchored by Marks & Spencer, Boots Chemist and Shaws Department Store. The Laurence Street Mall is at the upper level and it is here that the Marks & Spencer, Boots Chemist and Tommy Hilfiger units are to be found. The Shaws Department Store is on the Peter Street Mall and, as mentioned elsewhere, both malls are interlinked by travelators and lifts which also provide access to and from the car-parks.
5. The subject property, known as Unit 8, occupies a good location on the Laurence Street Mall convenient to the Marks & Spencer store and the units occupied by Boots and Tommy Hilfiger. The agreed area of the unit is 94 sq. metres with a frontage of 8 metres.

Rating History

6. The subject property, together with a number of other units in the centre, was first valued in September 2008 and on 15th September of that year the Revision Officer issued a valuation certificate to the effect that it was proposed to determine the rateable valuation of the property at a figure of €125. Following representations by the appellant a certificate in final form was issued by the Revision Officer wherein the property concerned was assessed at a rateable valuation of €107. No change was made on foot of an appeal to the Commissioner of Valuation lodged under section 30 of the Valuation Act, 2001 and it is against this decision by the Commissioner that the appeal to this Tribunal now lies.

Appellant's Evidence

7. Prior to the commencement of the oral hearing Ms. O'Donoghue made a written submission to the Tribunal on which she elaborated in her direct evidence given under oath at the hearing. In her evidence Ms. O'Donoghue contended that retailing patterns in Drogheda have changed significantly over the past five years or so due to the development of the Scotch Hall Shopping Centre on Marsh Road, the Laurence Street Town Centre development and retail park-type developments on the periphery of the town convenient to the M1. As a consequence, the volume of retail space has increased significantly leading to a change in shopping habits which adversely affected trading levels in the town centre itself. Whilst West Street is still regarded as the prime retail location in the town, the secondary retail locations close to West Street have borne the brunt of the increased competition from the new retail development schemes. In fact it was her opinion that there now exists an over-supply of retail space in Drogheda and its environs.
8. In regard to the Laurence Street Town Centre development, Ms. O'Donoghue acknowledged that while it was close to West Street nonetheless it was located in a secondary retail location and suffered from a lack of profile. These drawbacks, she said, were exacerbated by the one-way traffic flow in the immediate area and the lack of on-street car-parking. These adverse factors, Ms. O'Donoghue said, had given rise to a high vacancy rate within the development, leading to a restricted tenant mix. All of these factors, Ms. O'Donoghue said, were in sharp contrast to the Scotch Hall Shopping Centre on Marsh Road, which was anchored by Dunnes Stores and which had opened two or three years before the Laurence Street development. This centre, she said, occupied a prominent location fronting onto the river with easy access from the main entrance road to the town. Scotch Hall, Ms. O'Donoghue said, had a much

superior tenant mix than the Laurence Street development and had a much lower level of vacant units. She also said that the initial asking rents in Scotch Hall were in the order of €110 to €130 per sq. foot, compared to €55 to €70 per sq. foot in the Laurence Street Town Centre development.

9. Ms. O'Donoghue said the location of the property concerned, close to the entrance of the Marks & Spencer unit, was of little benefit and expressed the view that a high percentage of the users of the car-parks did not actually shop in the centre but went elsewhere. In contrast to the Scotch Hall Shopping Centre, the Laurence Street Town Centre was not a shopping destination in itself but an enclosed mall-type development occupying a secondary retailing location within the town centre.
10. Ms. O'Donoghue said she was aware of the fact that a number of assessments in the centre had been agreed with the Valuation Office at representation stage. The occupiers in these instances, she said, had been advised mainly by Dublin-based Valuers, who, in her opinion, were not fully conversant with the changes in retailing activity that had taken place in Drogheda in recent years. In her opinion the rateable valuation of the property concerned should be €85 and in support of this she referred to the valuation applied on retail premises in Drogheda, which is attached at Appendix 2 to this judgment.
11. Under cross-examination, Ms. O'Donoghue agreed that the Laurence Street development was located closer to the town centre than Scotch Hall, but she said that this did not confer any added value due to the inferior traffic flow arrangements in the town and the lack of profile. Furthermore, she said that the presence of Marks & Spencer was of little value to other retailers in the Laurence Street centre as their customer base was at the upper end of the market, who tended to come to shop only at Marks & Spencer and then move on elsewhere. Ms. O'Donoghue agreed that the majority of the retail units that were vacant were located on the Peter Street Mall.

The Respondent's Evidence

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

13. In his evidence Mr. Rooney contended for a rateable valuation of €107 calculated as set out below:

Floor Area	94 sq. metres	Frontage	8.0 metres	
Zone A	8 x 6.1 =	48.8 sq. metres	@ €240.00 per sq. metre	= €1,712.00
Zone B	Balance =	45.2 sq. metres	@ €120.00 per sq. metre	= €5,424.00
				= €7,136.00
Total NAV	say €7,000.00			
RV @ 0.63%	= €107.10			
Say	€107.00			

14. In support of his opinion of rateable valuation Mr. Rooney introduced 8 comparisons, details of which are set out in Appendix 3 attached to this judgment.

15. Mr. Rooney in his evidence said that he was the Revision Officer appointed to value all the units in the Laurence Street Town Centre, a task which he carried out in September 2008. In approaching his task, Mr. Rooney said he had regard to the prevailing levels of value in Drogheda, including Scotch Hall Shopping Centre which he thought was of particular relevance as it also was an enclosed shopping centre which had been valued about 2 to 3 years earlier. Following the issue of draft certificates of valuation in September 2008 he had negotiations with several valuers representing many occupiers in the centre, which culminated in a number of agreements which were confirmed in the certificates of valuation issued in March 2009 and which had not been further appealed. These valuations, Mr. Rooney said, now represented the “Tone of the List” within the centre and it was his opinion that the tone so established was fair and reasonable. In this regard the valuers who had advised the occupiers had also been involved in advising occupiers in Scotch Hall.

16. In relation to Ms. O’Donoghue’s comments regarding the differences in asking rents at Scotch Hall and Laurence Street Town Centre, Mr. Rooney said he had considered the evidence available to him and this showed that the initial rents in Scotch Hall varied from €5 to €105 per sq. ft. and those for Laurence Street Mall varied from €49.50 to €85 per sq. ft. However, Mr. Rooney said, initial asking rents in shopping centres were of limited assistance as allowances had to be made for a number of factors including size, the financial quality of the tenants and the timing within which the agreement was entered during the course of the

development process. Mr. Rooney said he had examined the valuation records in order to establish the details of the assessments of the various properties put forward by Ms. O'Donoghue as being comparable and the results of this examination indicated the following:

1. Jacqui's, Laurence Street Zone A - €45 per sq. metre (Pre 1988 Valuation Act)
2. Paddy Dwyer Shoes, Shop Street Zone A - €205 per sq. metre
3. Shoe Rack, Dyer Street Zone A - €15 per sq. metre
4. Card Gallery, West Street Zone A – Not Available (Pre 1988 Valuation Act)
5. Paco, Scotch Hall Zone A - €300 per sq. metre

17. Mr. Rooney said comparisons nos. 1 and 4 were of no assistance whatsoever, whilst the other 3 comparisons did not undermine to any extent the €240 per sq. metre used in valuing units in the Laurence Street Mall.

18. Under cross-examination, Mr. Rooney confirmed that his prime comparisons were the Zone A level established in the Scotch Hall Shopping Centre and the several agreed assessments in the Laurence Street development. These levels of value, he said, represented the tone of the list when it came to valuing the property concerned and the Zone A rate of €240 per sq. metre was, in his opinion, fair and reasonable. Whilst he agreed that Scotch Hall occupied a better location than the Laurence Street development, he was of the view that he had fully taken this into account when applying a Zone A rate of €240 per sq. metre as against the €300 per sq. metre Zone A rate in Scotch Hall.

Findings & Determination

The Tribunal has carefully considered all the evidence, both written and oral, submitted by both parties and finds as follows:

1. The main statutory basis for valuing a property on foot of a revision is set out in section 49(1) of the Valuation Act, 2001 which states:

“If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating

authority area as that property is situate in, of other properties comparable to that property.”

In other words, the valuation of the property concerned is to be determined in accordance with the tone of the list, although this expression is not explicitly referred to within the Act.

2. The statement of the value of the property appearing on the valuation list shall be deemed to be correct (see Section 63 of the Valuation Act, 2001). Accordingly the onus of proving a valuation appearing on the valuation list is incorrect lies with the appellant.
3. Ms. O’Donoghue is an experienced retailer and she put forward her evidence in a clear and forthright manner. The Tribunal accepts without reservation her un-contradicted evidence that the volume of retail space available in Drogheda has increased significantly in recent times and that this has led to a change in retail patterns within the town and its environs.
4. Two of the most important developments in relation to the growth of retail outlets in Drogheda are the Scotch Hall and the Laurence Street Town Centre developments. Both schemes are enclosed shopping centres which, by their very nature, tend to be introverted buildings which present a bland exterior appearance with bright, well lit and high quality finished malls, as is the case in these two centres. It is common case that of the two, the Scotch Hall Shopping Centre is the better from a locational point of view, is much larger and has a better tenant mix.
5. From the evidence put forward by both sides it is clear the core issues in dispute are firstly, whether or not there exists within the Laurence Street Town Centre development a "tone of the list" and secondly, whether the 20% differential between the Zone A rates in Scotch Hall and the Laurence Street Mall adequately reflects the difference between the two in terms of location.
6. As a general rule the Tribunal treats comparisons drawn from within the same centre and valued at the same time as the subject of an appeal with a degree of caution. However, since the comparisons put forward on behalf of the Commissioner of Valuation by Mr. Rooney were in respect of 7 units on the same mall as the subject and whose assessments had been agreed following negotiations with several well-known and experienced rating consultants,

this gives an added value to this evidence and Mr. Rooney's contention that a tone has been established. The fact that these same valuers were also involved in negotiations in relation to the assessments in the Scotch Hall development adds strength to Mr. Rooney's argument that a fair and reasonable relationship has been established between the relevant Zone A rates in Scotch Hall and the Laurence Street Mall.

7. The comparisons put forward by Ms. O'Donoghue in regard to other premises in Drogheda were of limited assistance, particularly those whose valuations had been assessed prior to the introduction of the Valuation Act, 2001.
8. Ms. O'Donoghue's opinion of rateable valuation of €85 represents a Zone A rate of approximately €190 per sq. metre, which, in the opinion of the Tribunal, cannot be substantiated in the light of the evidence put forward by Mr. Rooney and indeed the evidence in relation to the shop premises on Shop Street and Dyer Street.

Conclusion

Having regard to the foregoing, the Tribunal has come to the conclusion that the Zone A rate of €240 per sq. metre applied to the subject premises is fair and reasonable. Notwithstanding the fact that Ms. O'Donoghue put forward her case in a most admirable manner, the Tribunal has come to the conclusion that she did not introduce evidence or submissions sufficient for the Tribunal to set aside the tone established in the Laurence Street Mall which forms part of the Laurence Street Shopping Centre development. The Tribunal is also of the view that the relationship between the Zone A rates in the Laurence Street Mall and Scotch Hall fairly represents the differential in the location of the two properties.

Accordingly, the valuation of €107 is affirmed.

And the Tribunal so determines.