

Appeal No. VA10/1/009

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

Maxela Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2190636, Supermarket at Lot No. Unit 2, Abberley Square, High Street, Tallaght Retail Centre, Tallaght, County Dublin

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

Damian Wallace - QFA, MIPAV, Valuer

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF AUGUST, 2010

By Notice of Appeal dated the 8th day of February, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €200,000 on the above described relevant property.

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

"The valuation is excessive in comparison to similar retail units in South Dublin County Council."

The appeal proceeded by way of an oral hearing held in the Offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 9th day of April 2010. At the hearing the appellant was represented by Mr. John Algar, Bardon & Company and Mr. Denis Maher, MRICS, a valuer in the Valuation Office, appeared on behalf of the respondent. Each representative, having taken the oath, adopted his précis and valuation, which had previously been received by the Tribunal and exchanged with the other party, as his evidence-in-chief.

The Property

The subject property comprises of a ground floor retail unit, in use as a small supermarket, together with an internal first floor retail area with stairway access from the front of the ground floor. The accommodation on the ground floor includes the retail area to the front along with a stockroom, freezer, canteen and toilets to the rear, while the first floor is used as a fashion shop with a small store at the rear.

The property has street frontage of approximately 7 metres and widens to approximately 14.5 metres after a depth of approximately 3 metres, with an overall depth of approximately 30 metres. The upstairs retail area extends to approximately 12 metres in depth. The overall finish is to a high modern specification including tiled floors, smooth plastered walls and tiled ceilings.

The areas have been agreed by the parties as set out in their précis of evidence.

Location

The property is located in the Abberley Square complex in the Tallaght Retail Centre on the east side of Belgard Road, 0.3km west of Tallaght Village. Abberley Square is a five-storey development consisting of retail units on the ground floor and a mixture of offices, crèche, residential apartments and a multi-storey car park overhead.

Services

The property is served with mains water, drainage, electricity, telephone and has also an air conditioning system in the retail area.

At Issue

Quantum

Tenure

The subject premises is held on a 25-year lease from 21 September 2006 at an initial rent of €179,080 per annum. The rent was reduced, on agreement with the landlord, in July 2009, to €143,264 per annum and has subsequently been further reduced to €110,000 since March 2010.

Valuation History

The valuation of the ground floor was assessed as part of the revaluation of the South County Dublin rating authority area in 2007 and a rental value of €175,600 was fixed, based on a Zone A rate of €900 per square metre. The first floor was added and valued at €150 per square metre at a revision valuation in 2009 resulting in an overall assessment of €200,000, issued on 16th June 2009. On 25th July 2009 the occupier, Mr. Bulgakov, appealed this valuation to the Commissioner. The Valuation Certificate was issued unchanged on 12th January 2010 and on 8th February Bardon and Company lodged an appeal to the Valuation Tribunal on behalf of the occupier.

Initial Comments

At the outset of the appeal Mr. Denis Maher raised the question of the validity of the appeal, given that the appellant had introduced new evidence which had not been relied upon at first appeal stage to the Commissioner. Mr. Maher contended, on this basis, that the appeal was invalid. The Tribunal considered this issue and the Chairperson advised Mr. Maher that he could articulate his concerns in the course of his submission and this issue, along with all other issues, would be considered by the Tribunal in advance of arriving at a decision.

Appellant's Evidence

Mr. Algar having, taken the oath, commenced his evidence by adopting his written précis as his evidence-in-chief. He outlined details of the premises, confirming that the subject property is situated within the Abberley Square Complex. Abberley Square is located on the east side of the Belgard Road close to the junction with the Tallaght by-pass and is approximately 0.3 kilometres west of Tallaght Village. Mr. Algar said that Abberley Square is a 5-storey development consisting of retail units on the ground floor and a mixture of offices, crèche, residential apartments and a multi-storey car park overhead and the occupiers include Kingsbury Furniture, Paddy Power, Londis, Snap Printing and Chartbusters.

Mr. Algar confirmed that the premises comprises of a large ground floor retail unit with frontage onto High Street and the accommodation includes a retail area to the front together with a stock room, freezer, canteen and toilets on the ground floor and an extensive retail mezzanine floor overhead with a small store at the rear. The retail area is fitted with tiled floors, smooth plastered walls, and tiled ceilings and has main services including an air conditioning system in the retail area. Mr. Algar confirmed that the accommodation has been agreed with the Valuation Office and comprises a total gross internal floor area as follows:

Ground Floor 425.47 sq. metres

Mezzanine 165.20 sq. metres

Mr. Algar said that the rateable valuation was initially assessed at €200,000 and the initial appeal to the Commissioner of Valuation was dealt with by the occupier Mr. Max Bulgakov. Mr. Algar's company, Bardon & Company, were only instructed by the occupier after the Valuation Certificate was issued on 12th January 2010 and they lodged the appeal to the Valuation Tribunal on 8th February 2010. Mr. Algar then proceeded to highlight what he considered to be the three key factors affecting the rateable valuation:

1. Location

Mr. Algar said that Abberley Square is located in a high profile location on the Belgard Road, however, the units on the west side of Abberley Square benefit from their huge profile to the Belgard Road while the subject unit is located on the east side of Abberley Square with frontage on to High Street, an inferior location. This view is supported by the fact that there is a number of vacant units next to the subject unit while there are no vacant units on the west side of the square facing Belgard Road. He said that he believed that the retail units facing Belgard Road are more valuable and that the more appropriate comparable location to the subject property is High Street.

2. Zoning

Mr. Algar stated that the standard procedures set out by the Valuation Office for valuing retail units is the zoning method. However, he pointed out that the Zone C and the Remainder Zone have been valued at the same level. He contended that this is incorrect and that a level of 50% of the Zone C level should be applied to the remainder section.

3. Frontage-Depth Ratio

Mr. Algar added that the Revision Officer applied an additional 10% to the ground floor on the basis that this unit has a large depth in contrast to the frontage. He said that this is appropriate in extreme cases; however the dimensions of the subject property do not merit an additional charge.

Mr. Algar then offered 6 comparisons (attached at Appendix 1 to this judgment)

1. San Giovanni Restaurant, High Street, Tallaght
2. Unit 2, Block 6, High Street, Tallaght
3. Paddy Power, Unit 3, Abberley Square, Tallaght
4. Unit 11, Abberley Square, Tallaght
5. Argos, Unit 241, The Square Shopping Centre, Tallaght
6. Zavvi, Unit 30.31, Liffey Valley Shopping Centre, Clondalkin

Mr. Algar discussed his comparisons and indicated that the Zone A value for High Street was €50 per square metre and he was of the view that the subject property is more comparable to High Street than to the superior properties in Abberley Square, fronting the Belgard Road. He also pointed out that the Valuation Office typically zone the remainder section of a property at 50% of the Zone C rate; that his comparisons support this view; and that this approach was not followed in respect of the subject property.

Mr. Algar concluded his submission by contending for a valuation of €25,000, broken down as follows:

| | | | |
|-----------|-------------------|-------------------------|-----------|
| Zone A | 65.31 sq. metres | @ €50.00 per sq. metre | = €2,452 |
| Zone B | 88.15 sq. metres | @ €325.00 per sq. metre | = €28,649 |
| Zone C | 88.15 sq. metres | @ €162.50 per sq. metre | = €14,324 |
| Remainder | 183.86 sq. metres | @ €81.25 per sq. metre | = €14,939 |
| Mezzanine | 165.20 sq. metres | @ €150.00 per sq. metre | = €24,780 |
| | | | €25,144 |
| | | Say | €25,000 |

Cross-Examination

In cross-examination Mr. Maher raised a number of queries regarding Mr. Algar's previous correspondence with the Valuation Office wherein he contended for a valuation of €163,000 and he also asked Mr. Algar if he was satisfied that the tone for South County Dublin was set when revaluation took place in 2007 (based on net annual values as at 30th September 2005). Mr. Algar confirmed that when he received his instructions from the occupier he did an initial amount of work on the valuation and his initial assessment was that it should have been valued at €163,000 but when he had had an opportunity to do some further work he changed his opinion and valued it at €25,000. He further confirmed that, in his opinion, as the property was subject to revision it brings it back into the system and on that basis the overall property can be considered. Mr. Algar added that the unit seems to be the only one at the rear of the Abberley Square centre that is valued at €900 and in his view this is excessive.

Respondent's Case

Mr. Denis Maher, having taken the oath, adopted his précis as being his evidence-in-chief and confirmed that he agreed with the description of the property and location as set out by Mr. Algar in his presentation to the Tribunal.

Mr. Maher referred to the validity of the appeal on the basis that the grounds of appeal to the Commissioner were different to those set out in the appeal to the Tribunal and he suggested that this is not in accordance with the Act and on this basis the appeal is invalid. However, Mr. Maher added that there was a procedural error in the computation of the valuation of the ground floor as part of the revaluation in 2007 and if the appeal was to be dismissed by the Tribunal it would not allow this issue to be rectified and Mr. Maher said he was happy to have this issue rectified at this stage.

Mr. Maher also advised that he wished to bring up the issue regarding re-visiting valuations, as this was something that the Tribunal has adjudicated on in **VA09/3/005 - Centocor Biologics (Ireland) Ltd.**

Mr. Maher said that properties are to be revised in line with the tone of the list, and the tone for the block in which the property is situated is clearly set at €900 per sq. metre Zone A and the 2005 rent figures justify this valuation. Mr. Maher added that the 10% addition applied for the frontage was done mainly in the case of supermarkets where there is often a small

front area and a large rear area, but added that the converse also applies. Mr. Maher referred to the Zone A level of €650 per sq. metre on High St. and said this was based on a collection of the rental evidence for properties on High St, while the evidence of the rents for the subject property justifies a Zone A level of €900 per sq. metre. He concluded by stating that the tone of the list in this area is set, more so than any other location around the country, because of the 2007 revaluation and on that basis, the valuation as set out below is fair and reasonable. He has already corrected a procedural error that occurred in the zoning part and on this basis contends for a valuation of €178,000 as follows:

Ground Floor:

| | | | | |
|------------------------------------|-------------------|----------|---------------|----------------|
| Zone A | 65.31 sq. metres | @ €900 | per sq. metre | €58,779 |
| Zone B | 88.15 sq. metres | @ €450 | per sq. metre | €39,668 |
| Zone C | 88.15 sq. metres | @ €225 | per sq. metre | €19,834 |
| Zone Balance | 183.86 sq. metres | @ €12.50 | per sq. metre | €20,684 |
| Frontage/Depth Ratio | | @ 10% | | €13,897 |
| <u>Add:</u> | | | | |
| 1st Floor Retail | 165.20 sq. metres | @ €150 | per sq. metre | <u>€24,780</u> |
| Total | | | | €177,642 |
| Say | | | | €178,000 |

Mr. Maher then introduced details of his comparisons (attached at Appendix 2) in support of his valuation:

Comparison No. 1: Property No. 746327, Unit 1/Block 1, Tallaght Retail Centre. Occupier: Mizzonis Take Away. Valuation €73,800.

Comparison No. 2: Property No. 746333, Block 1, Unit 6-8, Belgard Rd., Occupier: Chartbusters. Valuation €17,000.

Comparison No. 3: Property No. 746329, Block 1, Unit 3 & 4, Belgard Rd., Occupier: Marrons' Centra Supermarket. Valuation €151,600.

Cross-Examination

In response to questions, Mr. Maher confirmed that he did not use any comparisons at the rear of Abberley Square because there are no properties valued there. He confirmed that he does not have any opinion on whether or not the Belgard Road is better than the other side as he can only take account of rents as they determine value. Mr. Maher also confirmed that he can see the merit of applying the 10% addition to the front of properties as it helps to keep the overall rents equitable, but he acknowledged that there was no 10% addition in any of the comparisons offered by Mr. Algar.

Summary

Mr. Algar summarised his case and said that the property seems to be out of line with the tone of the list as there are no other units at the rear of Abberley Square valued at €900 and the most comparable evidence is High St. Mr. Algar advised that he did not believe that the Revision Officer is unable to revise the valuation of the existing portion of the subject property as the whole property is up for revision and he also added that he felt a 10% addition for the front portion was unfair.

Mr. Maher summarised his case, stating that there was a previous valuation of €175,000 on the subject property, the calculation of which included an error resulting in the property being over-valued by approximately €22,000. He stated that he could have contended for the current valuation of €200,000 without correcting the procedural error which had occurred in the calculation of the previous valuation. However, Mr. Maher said that in fairness to the tenant he had corrected the error, as a result of which the valuation of €178,000 for which the respondent is now contending is little changed from the previous valuation.

Findings

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

1. The Tribunal has considered the point made by the Respondent concerning the validity of the appeal and refers both parties to a previous decision of the Tribunal in **VA95/5/015 - John Pettitt and Son Ltd.:**

“This Tribunal is of course a creature of statute. It is not a Court established by or under the Constitution or by or under the Courts (Establishment & Constitution) Act 1961.

Whilst its existence depends on the 1988 Act, the validity of its actions and decisions must surely be constitutionally safe as falling within the Provisions of Article 37 thereof. In any event it would in our view be quite invidious for a Tribunal of this nature to have a rule of practice or procedure or to adopt a jurisprudence which is at variance with that practiced in the Courts above mentioned and in particular in the Supreme Court. It seems to us therefore that we ought, and indeed must follow the principles enunciated in the cases above identified. Accordingly it is our firm view that it would be quite wrong to have a practice of exclusion which, given the importance of the case and the interests of justice, did not permit of exceptions or deviations therefrom. So, it is therefore our decision that whilst, as a general rule, where a ground of appeal has not been advanced before the Commissioner it will not be possible to raise it before us nevertheless, in exceptional circumstances where the interest of justice requires, this Tribunal will permit the raising of a ground, the reception into evidence and the reliance on a point of law none of which have previously been so raised or so adduced. We are satisfied that the previous judgments of this Tribunal, on this point, were all intended to be read and understood in this manner.”

2. The Tribunal was not provided with evidence to support any consideration to changing or amending the per sq. metre rates applied by the respondent to the upper floor and noted that both parties agreed on the valuation of same at €150 per sq metre.
3. The Tribunal notes the reference in Mr. Algar’s précis that the property concerned in this appeal is the entire property and not just the most recent extension but supports the view that the property must be valued in line with established practice, where the additional accommodation is valued in isolation and then bolted on to the existing assessment to arrive at the overall value of the subject property. This reflects established precedent as outlined in the Tribunal judgement **VA05/3/054 – Pfizer Ireland Pharmaceuticals**.
4. The Tribunal, however, acknowledges the fairness in the approach adopted by the respondent in correcting the procedural error which led to a higher than appropriate valuation.

Determination

Having regard to the above evidence the Tribunal determines the valuation of €178,000.

And the Tribunal so determines.