

Appeal No. VA10/5/006

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

Sarah Di Biagio

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2200608, Take Away at Unit 2, Skerries Point, Skerries, County Dublin.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

Damian Wallace - QFA, MIPAV, Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF DECEMBER, 2010

By Notice of Appeal dated the 13th day of June, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €12,800 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are attached at Appendix 1 to this judgment.

1. This appeal proceeded by way of an oral hearing in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 24th day of August 2010. At the oral hearing, the appellant appeared on her own behalf and was accompanied by Mr. Ruggero Di Biagio, a Director of the appellant's Company and the husband of the appellant. Ms. Deirdre McGennis, BSc (Hons) Real Estate Management, MSc (Hons) Local and Regional Development, MIAVI, a Valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation.
2. Prior to the commencement of the oral hearing each party was requested to submit to the Tribunal a précis of the evidence they proposed to adduce and which were subsequently received into evidence under oath. From the evidence so tendered and subsequent oral evidence given at the hearing, the following material facts emerged or were so found.

The Subject Property

3. The subject property is a ground floor retail unit in the two storey L-shaped structure forming part of a new commercial development known as Skerries Point. Skerries Point is located on the western fringe of the town of Skerries where a number of new housing developments have been completed in recent years. Other housing schemes in the area remain in the development stage but are unlikely to be completed for several years due to current economic difficulties. It is intended that the road on which Skerries Point is located (known currently as Town Parks and Kelly's Bay) will become the main distributor road from Skerries, to Balbriggan. The construction of this road has thus far reached a point just beyond the Skerries Point development and it is also unlikely that this will be completed in the near future. Essentially, therefore, the Skerries Point development is located at the end of a cul de sac.
4. The Skerries Point development as designed consists of two separate two-storey buildings. One building which has not yet been built was to contain restaurants with dining space and kitchen accommodation at each level. The second building is a two-storey L-shaped structure with a public house and crèche facility at either end with the remainder of the building being in retail use at ground floor level and commercial use overhead. The development also provides some 200 car spaces at surface and basement level.

5. The retail space consists of seven units and a “Eurospar” supermarket. One of the units (known as Unit 6) has been incorporated into the supermarket; Unit 2 is currently occupied by the appellant; Unit 3 is a pharmacy and Unit 7 is a bookmakers premises. Unit 1 is presently occupied on a short-term letting arrangement. The remaining units are vacant, as are the crèche and public house and the commercial units at first floor level.
6. The area of the subject property has an agreed area of 146.42 sq. metres, measured on a net internal area basis with a frontage of some 7 metres.

Tenure

7. The property is held under a 35 yr lease from the 1st November, 2008 at an initial yearly rate at €1,000 per annum. The lease provides for rent reviews at 5-yearly intervals and in addition to rates and other outgoings the tenant is responsible for a service charge to cover a proportion of the cost of providing a range of common services. The service charge for the year 2010 being €290 per month plus VAT. In September 2009 the rent payable under the lease was reduced to €24,541.92 per annum which figure is to be subject to a further review in September of this year.

Rating History

8. The net annual value was initially determined in accordance with section 48(3) of the Valuation Act, 2001 at €12,800 and a Valuation Certificate (proposed) to this effect issued on the 11th September, 2009. Following representations the valuation so determined was affirmed and no change was made on foot of an appeal to the Commissioner of Valuation under section 30. The appellant, being dissatisfied with the decision of the Commissioner of Valuation, lodged a further appeal to the Tribunal under Section 34 of the Act.

The Appellant’s Evidence

9. Ms. Di Biagio in her evidence said that she and her husband operated a “fast food” business out of the subject property. When they agreed to rent the premises initially they were of the opinion that the distributor road would be completed and that this would give rise to a substantial level of passing trade. As it is, Skerries Point is now at the end of a cul de sac and the actual level of trade greatly below expectations. Ms. Di Biagio said that

this was the reason why the landlord had reduced the rent from €71,000 per annum to €4,541.

10. Ms. Di Biagio said that she and her husband had looked at the assessment of other premises in the Fingal area which operated a business similar to theirs and in all instances the valuation of these premises were lower. As a result of this examination Ms. Di Biagio said that she was of the opinion the valuation of the subject premises should be reduced to €19,000. A schedule of the properties referred to by Ms. Di Biagio is set out in Appendix 2 attached to this judgment.
8. Under examination by Ms. McGennis, Ms. Di Biagio said she did not know the area of any of the properties mentioned in her schedule nor what rents were being paid. When asked about retailing in Skerries, Ms. Di Biagio agreed that there was no recognised shopping centre in the town.
9. Mr. Ruggero Di Biagio in his evidence reiterated all the matters raised by his wife and in particular the fact that the non-completion of the distributor road as planned had greatly reduced the level of passing trade they had hoped for when they first leased the premises.

Respondent's Evidence

13. Ms. McGennis, having taken the oath, adopted her précis of evidence and valuation which had previously been received by the Tribunal and the appellant's as being her evidence-in-chief. In her evidence Ms. McGennis estimated the NAV of the subject property in accordance with section 48(3) as being €42,800 calculated as set out below:

Block 1: Retail Zone A: 43.61 sq. metres @ €50 per sq. metre	=	€23,985.50
Block 1: Retail Zone B: 43.61 sq. metres @ €75 per sq. metre	=	€1,992.75
Block 1: Retail Zone C: 40.97 sq. metres @ €137.50 per sq. metre	=	€5,633.38
Block 1: Retail Zone R: 18.23 sq. metres @ €68.75 per sq. metre	=	<u>€1,253.31</u>
Total NAV		€42,864.94
Say		€42,800

14. In support of her opinion of NAV, Ms. McGennis introduced four comparisons details of which are set out in Appendix 3 attached to this judgment. Two of Ms. McGennis's

comparisons are located in “Holmpatrick Shopping Centre” in Skerries whilst the other two are located in Castlemill Shopping Centre in Balbriggan.

15. Ms. McGennis said that the valuation of the subject property was derived from an analysis of all the available market information in relation to properties of a similar nature in the Fingal County Council rating authority area. In this regard, the subject property and the comparisons are similar in that they are all located within neighbourhood shopping centres. To that extent it was reasonable, she said, to value the units therein at a uniform Zone A rate of €50 per sq. metre.

16. When questioned by Ms. Di Biagio about Castlemill Shopping Centre, Ms. McGennis agreed that it was much larger than the Skerries Point development and it had a Dunnes Store as the anchor tenant. She also agreed that it had a low vacancy rate and a much better road network. Ms. McGennis said that she accepted Ms. Di Biagio’s evidence in relation to the non-completion of the distributor road and that this had an adverse effect on the anticipated level of passing trade. She further agreed that 50% of the retail units in addition to the crèche, public house and commercial units at Skerries Point were vacant. Ms. McGennis said that she had taken all these factors into account when arriving at her estimated net annual value of €42,800 which was substantially lower than the passing rent of €71,000 per annum agreed by the appellant in 2008.

Findings

The Tribunal has carefully considered all the evidence and argument adduced by the parties at the hearing and contained in the written documentation and finds as follows:

1. The Tribunal accepts Ms. McGennis evidence that the Valuation Office carried out an analysis of all the available market evidence in order to arrive at the appropriate valuation of all relevant properties in the Fingal County Council rating authority area.
2. Ms. McGennis in her evidence said that Skerries Point, Holmpatrick and Castlemill are all “neighbourhood shopping centres” and hence it was appropriate to value all the unit shops in these developments at the same Zone A rate of €50 per sq. metre. In the Tribunal’s opinion Ms. McGennis’s judgment in this regard does not stand up to scrutiny. The Holmpatrick development is a parade of four shops and a small local supermarket within a residential estate on the Rush side of Skerries. Under no circumstances could it reasonably be described as a “neighbourhood shopping centre” in the now accepted sense

of that classification. On the other hand the Castlemill development would fall within this type of category by virtue of its size and nature - a Dunnes Stores outlet and some twenty retail units, location and good road network. The Skerries Point as originally designed could possibly meet some of the criteria for being described as a neighbourhood shopping centre. However, the fact that it is not completely built and having regard to its location and the current inadequate road access, indicates that there should be a substantially lower Zone A rate applied to the units therein than that used in Castlemill. The high vacancy rate, the fact that the crèche, public house and commercial units are vacant are clear indicators that the development is not perceived as being a good trading/business location.

3. The Tribunal accepts the appellant's evidence that the Skerries Point development has not proven to be a successful development for a variety of reasons and this is manifest by the fact the 50% of retail units, crèche, public house and commercial units remain vacant and the landlord has seen fit to reduce the rent of the subject property from €71,000 to €24,541 – a reduction of c 65%.
4. In its examination of the comparable evidence put before it the Tribunal attaches no weight to the schedule of assessments introduced by the appellant in that they provided no information regarding size, rents and valuation analysis. This is not surprising given the fact that the appellant's cannot be reasonably expected to have such information available to them. In regard to the respondent's comparisons the Tribunal accepts that there are some similarities between Castlemill and Skerries Point but such similarities as there are, are somewhat limited due to the significant differences in size and locational characteristics. Little weight is attached to the Holmpatrick comparisons in that it is markedly different in size and character to the Skerries Point development.

Determination

Having regard to the findings the Tribunal has come to the conclusion that there should be a substantial difference in the Zone A rate applied to retail units in the Skerries Point development and those in Castlemill. This adjustment is necessary in order to reflect the differences in scale, location and road access between the two developments.

Valuation

Retail Zone A	43.61 sq. metres	@	€370 per sq. metre	=	€16,136
Retail Zone B	43.61 sq. metres	@	€185 per sq. metre	=	€8,068

Retail Zone C	40.97 sq. metres	@	€2.50 per sq. metre	=	€3,790
Remainder	18.23 sq. metres	@	€6.25 per sq. metre	=	<u>€43</u>
Total				=	€28,837
NAV say €28,800					

Rider: Having regard to the above determination the Tribunal respectfully suggests to the Commissioner of Valuation that he exercises his discretion under Section 40 of the Act in relation to other standard rental units in the Skerries Point development.

And the Tribunal so determines.