

Appeal No. VA10/5/027

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

James Cassin

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2197636, Activity Centre at Lot No. Unit 4, Balbriggan Retail Park,
Dublin Road, Balbriggan, County Dublin.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Patrick Riney - FSCS.FIAVI

Member

Aidan McNulty - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 16th day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €139,200 on the above described relevant property.

The Grounds of Appeal are on a separate sheet attached to 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 held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 20th day of October, 2010. The appellant represented himself at the hearing and the respondent was represented by Mr. Liam Diskin, BSc (Hons), Property Management & Investment, BSc (Ord) Property Valuation & Estate Agency, a Valuer in 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 tendered, the following emerged as being the facts relevant and material to this appeal.

At Issue

Quantum.

The Property

The subject is one of six warehouse-type structures configured in two blocks located in a development identified as the Balbriggan Retail Park, adjoining the Dublin Road on the edge of Balbriggan. There are 164 car spaces provided for the shared use of all of the occupiers, their guests and invitees. Each of the six units is also fitted with rear access facilities.

It is understood that the subject unit was constructed, in common with the others, during the period 2006/2007. The subject is an end-of-terrace unit and described as a children's play-centre with a coffee shop and activity centre.

The unit is constructed with concrete floors, double skin metal cladding over block walls at lower levels, aluminium framed windows, a metal deck roof supported on a structured steel frame. The interior is fitted with vinyl sheeting and laminated timber floors, painted concrete block walls, play areas and equipment and a small dining area described as the Coffee Shop. Eaves heights extend to 8 metres. The external front elevation treatments are completed to a high standard as may be seen from the photo image provided by the respondent in his précis of evidence, attached herewith as Appendix 2. The unit is fitted with a rear loading door. The development is served with good circulation areas and tarmacadamed surface parking. Just two of the six units at the Balbriggan Retail Park are occupied, the other being a fitness gym.

Location

The development is located approximately 1.3 km south of Balbriggan Town Centre.

Services

Mains water, storm, sewer, electricity and telephone service are supplied and connected to the subject property. In addition, the occupier fitted at his own expense, overhead heating in the front area of the unit.

Tenure

Leasehold on a 25, 5 x 5 year lease commencing on 1st December, 2007, a rent holiday provided for six months. The appellant advised that the “permitted use” is stated in the lease as “a children’s play centre, coffee shop and childcare facility”. The lease apparently provides rent reviews on an upwards-only basis, at the end of the sixth, eleventh and sixteenth year of the term, with a break at the end of year five, available for exercise, at the sole discretion of the tenant.

Valuation History

11 th September, 2009:	Proposed Valuation Certificate issued with a valuation of €139,200.
30 th September, 2009:	Representations were submitted by the appellant. No change was made to the valuation at representations stage.
11 th December, 2009:	Final Valuation Certificate issued with a value of €139,200.
8 th February, 2010:	First Appeal lodged by appellant. Valuation remained at €139,200.
19 th August, 2010:	Appeal lodged to the Valuation Tribunal by appellant.

Floor Areas

Following some debate and clarification of various issues, and a joint inspection of the relevant property on 7th October, 2010, the parties agreed that the gross internal area (GIA) of the unit measured circa 699 sq. metres, or circa 733 sq. metres (GEA). However, correspondence dated 26th October, 2010, post hearing, confirmed that the parties had agreed the Gross External Area (GEA) measured on the subject property was 730.66 sq. metres rounded to 730 sq. metres. (Appendix 3)

Appellant's Case

Mr. James Cassin took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. He proceeded by noting that prior to him taking possession of the subject relevant property and in order to operate his business, he was required to apply for and obtain planning permission for a "Change of Use" from Retail/Warehouse to a Children's Play centre, including an additional mezzanine floor within the subject Unit 4. At the request of the Tribunal, written copy evidence of the decision of Fingal Co. Council to grant planning permission together with the planning history preceding this Application was submitted by the parties, post hearing. The copy record held by Fingal County Council Planning Department of the subject permission with Conditions Register Ref: F07A/1578 is attached as Appendix 4. Condition No. 2 therein is noteworthy. Stating as follows:-

"The premises shall be used only as a children's play centre and any change of use from this shall be subject to the prior approval of the Planning Authority". The reason cited by the Planning Authority for such condition states: *"In order to prevent unauthorised development"*.

The decision to grant the permission with conditions by the Planning Authority was dated 25th January, 2008.

A review of the planning history based on documents provided to the Tribunal indicates that the original Planning Permission (F05A/0630) was granted by Fingal Co. Council (FCC) for the development of 7 business units in two buildings to include retail warehousing units and car parking. The appellant's later application for permission (F07A/1087) was refused for "change of use" for a children's play centre with before and after school care at Unit 4. Subsequently on the 25th January, 2008, the aforementioned Permission Ref: F07A/1578 was granted by Notification of Decision permitting a "Change of Use from Retail Warehouse Unit to Children's Play centre including additional mezzanine floor to part of Unit 4" and the Final Grant issued on 3rd March, 2008.

Another Permission issued by Notification on 18th March, 2009, Ref: F08A/1457 by Fingal County Council for a "change of use" from a "Children's Play Centre to a School-aged Childcare and sessional Montessori". The Final Grant issued by Fingal Co. Council on 23rd April, 2009. It is noted that the Revaluation assessment date was 11th September, 2009.

The appellant also noted that valuations of other warehouse units in areas which he considered to be better than the subject, within the Rating Authority Area and with higher local density population bases, were set at substantially lower levels at the time the subject was assessed. He contended that though the subject property is within a complex branded and promoted as Balbriggan Retail Park, there is no retailing activity conducted there, repeating that the only other occupied unit serves as a gymnasium. He again referred to the requirement of the Rating Authority placed on him to obtain permission for a “change-of-use” from the initial Planning Permission granted, prior to commencement of his proposed business as a Play centre in Unit 4. He advised that the Balbriggan Retail Park area was a green field site at the Valuation Date established by the Revaluation Order, i.e. as at 30th September, 2005.

Mr. Cassin stated that the net annual value rate per sq. metre applied by the Commissioner of Valuation was very similar numerically to the rental figure initially agreed by him and his landlord at the commencement of his lease, i.e., the annual rental sum first paid at the end of May 2008. Mr. Cassin added that, significantly, the Commissioner’s figure did not reflect a downward adjustment on the foregoing rate per sq. metre to reflect or incorporate market changes from mid 2008 back to September 2005.

Mr. Cassin declared that the original permission granted for the retail warehouses at the subject location limited the retail uses proposed for Balbriggan Retail Park by excluding, for example, convenience grocery sales, clothing outlets and supermarkets. He also outlined his views that the subject units at Balbriggan Retail Park, including his own, were too small to attract large-scale retail warehouse operators such as DIY branded houses, computer sales firms and others. He expressed his opinion that the units were designed to suit local retailers of electrical goods, furniture and the like and stated that anecdotal evidence supported the contention that the initial 2007 rents quoted by the developer were out of step with the market and much too high for the development. He argued that the subject retail park was, in his view, no more than an aspiration, and that empirical evidence indicates same, with four vacant units and two occupied by non-retailers, some years on since they were built.

The appellant then outlined the changes negotiated by him on the passing rent applicable to his unit from the commencement date of lease, indicating a decrease of approximately 57%.

He also stated that at the time of the issue of the proposed Valuation Certificate, he had secured a reduction of 40% on the annual lease headline rent payable on the subject.

Mr. Cassin argued that the subject unit should not be considered similar to other units in established retail developments within the Fingal County Council area, such as the Pavilions Shopping Centre, the Airside Retail Park or the Scotch Hall Shopping Centre located in Drogheda. He explained that the permitted uses for the remaining units within the Balbriggan Retail Park are already being provided for by major national and international brand houses in nearby Swords and Drogheda.

This situation, in Mr. Cassin's view, bears negatively on the future prospects for the Balbriggan Retail Park. He cited by way of example retailer's names such as DID Electrical, Woodies, PC World, Argos, B & Q, Harvey Norman and Curry's, all of whom he contended are set up and trading to the larger population bases of the previously mentioned centres. He stated that areas with high population densities, served by infrastructure such as the M1, M50, the Dart and proposed Metro North, attract those major warehouse retailers who, in his view, are not likely to set up trading facilities in areas like Balbriggan, with its limited population and infrastructure bases.

Mr. Cassin maintained that the subject park is unlikely to attract any anchor tenant, particularly of a high profile and trading record capable of generating and sustaining significant levels of retail footfall, and accordingly, in his opinion, the valuation of all of the units at the park is flawed, as the exercise was carried out by reference to non-existent retail/warehouse uses there.

Mr. Cassin's précis of evidence contained reference to three comparison properties, namely; Hurly Burly Party and Play Café at Airside Business Park, Swords; Fun Galaxy, also at Airside Business Park, and Kids Zone at Feltrim Industrial Estate, Swords. He explained that all had a similar use as the subject, all were of similar or superior construction to his unit, all are in superior locations to his, serving larger population catchment areas. He calculated the valuation per sq. metre to be €105, €140 and €125 respectively, for each of their ground floors and concluded that, all matters considered fair and reasonable, the valuation on his children's Play centre should amount to €30 per sq. metre calculated on a GIA basis on an adjusted area of 699 sq. metres which would result in a valuation figure of €90,870.

Cross-Examination

Mr. Diskin commenced cross-examination of the appellant by seeking his confirmation that the latter's Comparison No. 1 namely, Hurly Burly is not actually at Airside Business Park, and is in Finglas. Mr. Cassin did not dispute this.

However, the appellant would not agree with the respondent that his comparisons were chosen from areas characterised as industrial in nature, with the exception of the foregoing Comparison No. 1, but acknowledged that Comparison No. 3, Kidzone, has industrial units located nearby. Mr. Diskin also challenged the appellant's details provided on Comparison No. 2, namely, Fun Galaxy at Airside Business Park and indicated that units within the Airside Retail Park, unlike the Business Park, have been revalued at €350 per sq. metre.

Respondent's Case

Mr. Diskin took the oath, adopted his précis as his evidence-in-chief and reviewed his submission. The general description, location, accommodation and tenure details, as outlined by Mr. Diskin, reflected those noted earlier by the appellant. The respondent added that the subject property is in a good location with excellent profile onto the R132 and in turn enjoys good access onto the Dublin Road R132, the M1 and on-bound to the M50.

Mr. Diskin outlined his basis of valuation of the property stating that in the Revaluation of Fingal County Council Rating Authority area, valuation levels were derived from the analysis of available market information of comparable properties and applied to the subject.

Mr. Diskin also said that the valuation of the subject property on appeal to the Commissioner of Valuation was determined by reference to the values of comparable properties stated in the valuation list in which the property appears.

Mr. Diskin again confirmed that the subject property measured on a GIA basis was calculated at 699 sq. metres and at 730.66 sq. metres on a Gross External Area (GEA) basis. He stated that the practice guidance notes agreed by the IAVI and SCS to measure the floor area of Retail Warehousing is on a GIA basis, but not in all circumstances.

Mr. Diskin confirmed that the initial valuation was determined by reference to net annual value of the subject property at €190 per sq. metre, measured on a GEA approach, and during

the course of the hearing suggested that the rate per sq. metre, if the GIA basis were to be adopted, the rate would increase to €200 per sq. metre.

Mr. Diskin then referred the Tribunal to five comparison properties set out in his précis as follows:- Units 1, 2, 3, 5 and 6, all at the Balbriggan Retail Park, with their ground floors ranging from 578 sq. metres up to 757 sq. metres assessed at €190 per sq. metre (GEA) and the only mezzanine store in Unit 1 at €50 per sq. metre. He stated that his five comparison properties were similar to the subject, each with an eaves height of 8 metres, of portal frame construction with double skin cladded roofs and walls and internal walls featuring a cladded finish. Photographic images of the comparison properties were provided in his précis, attached herewith as Appendix 5.

Mr. Diskin confirmed that the valuation on the mezzanine store of his comparison property No. 1 was raised at First Appeal, resulting in a reduction in its valuation from €145,200 to €116,660. He confirmed that the resultant net annual value was calculated by reference to the aforementioned rates of €190 per sq. metre and €50 per sq. metre. He informed the Tribunal that representations were received by the Commissioner of Valuation on the other four comparison properties, but no changes were made to their valuations and there were no follow-up appeals filed on the decisions made by the Commissioner of Valuation on same.

Mr. Diskin advised that Unit 2, also his Comparison No. 2, was occupied by Platinum Gyms and that the other units were vacant at the time of valuation and, to the best of his knowledge, remain so. The valuer also informed the Tribunal that the subject was first valued on revision in late 2008 and the net annual value was determined by reference to the Gross External Area, whereas, in his view, the Measuring Practice Guidance Notes adopted by the IAVI and the SCS, properly interpreted, mandate that the retail warehouses should have been measured on a GIA basis. He explained that the valuation rate applied of €190 per sq. metre on the units at the Balbriggan Retail Park referred to their floor areas calculated by the GEA of those units. He then outlined that in order to agree areas with the appellant and to maintain relativity with the NAV of the other units in the subject Park, the rate per sq. metre was adjusted from €190 to €200 per sq. metre in the subject case.

Cross-examination

In response to queries raised by the appellant and the Tribunal, Mr. Diskin acknowledged that the developer of the Balbriggan Retail Park may not have not achieved his initial objectives for same, as some five years on, the development was still not functioning as a retail park.

He also acknowledged that the nearby Tesco store may be relocating to another location in the area and not to the subject retail park in Balbriggan. He also agreed with the appellant that the subject property is situate in close proximity to the Wavin Factory.

Conclusions and Findings

The Tribunal thanks the parties for the quality of their submissions and arguments in the instant case and in particular the manner in which they answered questions and clarified issues of concern raised during the course of the hearing.

1. The Tribunal has particular regard to the unique circumstances applying to the subject property, having regard to the “change of use” Planning Permission with Conditions Ref. No. F07A/1578 granted by Fingal County Council to the appellant on 3rd March, 2008.
2. The foregoing Permission expressly prohibits the use of the premises for any purpose whatsoever other than as a children’s play centre and adds that any change of use shall be subject to prior approval of the Planning Authority in order to prevent unauthorized development.
3. The principle of *rebus sic stantibus* in rating valuation practice is well established and accepted.
4. Section 48 of the Valuation Act, 2001 sets out the basis of valuation for such properties and the manner in which the net annual value of the property should be estimated having regard to various matters, including its “actual state”.
5. The Tribunal is satisfied that the actual state of the subject relevant property was that of a children’s play centre, and not a retail warehouse.
6. Accordingly, the Tribunal does not consider the comparison properties provided by the respondent as comparable in this case.
7. In the absence of comparable properties from the respondent of other children’s play centres, the Tribunal must have regard to the comparison properties cited by the appellant, the uses of all three of which were undisputed as children’s play centres, and all are located within the same Rating Authority Area.

8. The rates per sq. metre applying to each of the appellant's three comparison properties, as outlined in his précis, range from €105 to €140, ground floor.
9. The respondent challenged the rate per sq. metre computed on comparison property No. 2 at Airside Business Park by reference to the revaluation of other units at the nearby Airside Retail Park.
10. The Tribunal received, from each party separately, copy documents with respect to the above mentioned "change of use" permission granted with conditions, and the planning history preceding same on the subject relevant property. The information provided confirmed the nature of the property and the specific restrictions imposed by the Rating Authority on its use.
11. The Tribunal is not satisfied that the name or brand associated with the development of the subject park, though consistent with the initial planning, development, marketing and promotional objectives, should in any way be considered as a description or definition of the use and purpose of the subject property when assessed for the purpose of revaluation under the Fingal County Council Valuation Order which took effect as at 30th September, 2005.
12. Conversely, the Tribunal holds that the unit should have been considered as a children's play centre and a determination of its value should be made by reference to values as appearing on the valuation list, relating to the same rating authority as that property is situate in, of other properties comparable to that property.

All the foregoing considered, the Tribunal in this particular circumstance is satisfied that the appeal filed by the appellant must be upheld and mindful of the agreement on areas confirmed post hearing determines that the valuation should be as follows:-

730.66 sq. metres @ €130 per sq. metre	= €94,985.80
Say	€5,000

And the Tribunal so determines.