

Appeal No. VA11/4/014

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

James O'Connor

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2104126, Shop, Restaurant/Café, Studio at Lot No. 1.2 (incl. 17 Trimmer's Lane West), Georges Street Lower, Wexford No. 3 Urban, Wexford Borough, County Wexford.

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Patricia O'Connor - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 16TH DAY OF MAY, 2012

By Notice of Appeal dated the 14th day of November, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €467 on the above described relevant property.

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

"On the basis that the RV as assessed is excessive and inequitable given the size, nature and location of the subject and the established tone for comparable properties." "The subject is a non standard type unit with no retail display to the main shopping street. Additionally it is very large in the context of the local market. The Commissioner has failed to make sufficient allowance for these factors."

The appeal proceeded by way of an oral hearing which took place at the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 21st day of February, 2012. At the hearing, the appellant was represented by Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI of Eamonn Halpin & Co. Ltd. The respondent was represented by Ms. Orla Lambe, BSc (Surveying), MIAVI, a valuer with the Valuation Office. Both parties had previously furnished their written submissions which had been exchanged between them and submitted to the Tribunal.

The Property/Location

The property is located at George's Street Lower, Wexford Town. Because of the nature of the property, it also adjoins Trimmer's Lane West and Selskar Street, with entrances from all three streets. The main entrance is on Trimmer's Lane West. The entrance from Selskar Street leads only to the property's ESB box and is not available for public access. Selskar Street is one of the main retail areas in Wexford Town. George's Street Lower and Trimmer's Lane West would be regarded as secondary streets.

Description

The property comprises 3 portions. The front section comprises a refurbished two storey Victorian property which fronts Selskar Street with an adjoining three storey Georgian town house which fronts Georges Street Lower. In addition a new three storey section has been constructed to the side elevation. The new portion contains a lift and air conditioning. The entire property is a listed building. The property comprises a basement, kitchen for food preparation, ground floor shops, delicatessen and restaurant, first and second floor studio/gallery and third floor offices.

Tenure

The property is held freehold by the appellant.

Floor Area

Floor areas have been measured on a Net Internal Area (NIA) basis and are agreed as follows:

Ground Floor Retail	299.14 sq. metres
First Floor Studio	297.14 sq. metres
Second Floor Studio	162.90 sq. metres

Third Floor Offices	37.95 sq. metres
Basement Kitchen	23.46 sq. metres

Valuation History

June 2010	Ms. Orla Lambe appointed on foot of Wexford Borough County Council to revise property lot 1.2 Georges St. Lower, Wexford Town.
August 2010	Provisional Valuation Certificate issues RV €542
9 th December 2010	Valuation Certificate issued at RV €542
17 th January 2011	Occupiers appeal their assessment through their agents Eamonn Halpin & Co.
21 st October 2011	The Commissioner of Valuation issues the result of the 1 st Appeal with RV €467 (reduced without agreement, only reflecting the original error in floor space)
14 th November 2011	The occupiers appeal the Commissioners decision to the Valuation Tribunal through their agents Eamonn Halpin & Co. Ltd.

The Appellant's case

Mr. Halpin took the oath and adopted his précis as his evidence-in-chief. He confirmed that the areas were agreed with one difference between the parties, being an area of 10 square metres comprising an old vault on the ground floor which the respondent had added into their overall figure but which the appellant had valued separately. Mr. Halpin described the third floor attic as a rough rudimentary store. He stated that this was essentially an unusual property and while it fronts the main retail street, was not what you would expect for a retail centre.

Mr. Halpin contended for a rateable valuation of €208 and he presented the following figures in that regard:

Basement kitchen	23.46 sq. metres	@ €27.34 per sq. metre =	€641
Restaurant / Retail Ground Floor	289.14 sq. metres	@ 82 per sq. metre =	€23,709
Store (Ground Floor old vault)	10 sq. metres	@ €41 per sq. metre =	€410
First Floor	290 sq. metres	@ €41 per sq. metre =	€11,890
Second Floor	162.90 sq. metres	@ €27.34 per sq. metre =	€4,454

hypothetical tenants occupying the entire building which means that the property must be valued in its actual state. Mr. Halpin did not believe that the respondent had made any allowance for this fact. Mr. Halpin also pointed out that in practice the greater value of a property is in the ground floor irrespective of its size. He explained that as a rule of thumb, upper floor accommodation does not usually exceed 1/3 of the value of the ground floor and that the first and second floors are further discounted. Mr. Halpin stated that he had faced some difficulty with comparisons as there was no other property in Wexford with a first floor gallery.

Cross-examination

On cross-examination Mr. Halpin accepted that there was a doorway leading from the subject property to Selskar Street but confirmed with his client that it led to the ESB box and so was not available for use by the property. Mr. Halpin confirmed that there was access from the street into the modern section but said that this was only to the stairway and lift. Mr. Halpin however agreed with Ms. Lambe that it was possible to access the subject property from Selskar Street, Trimmers Lane West and Georges Street but reiterated that this would only be indirectly through the lift gallery and by way of access via the lift into the remainder of the building. Mr Halpin pointed out that when one is on the ground floor of the property, access is constrained by the fact that it is not immediately obvious how one gets to the upper floor.

Ms. Lambe put it to Mr. Halpin that the modern aspect of the subject property could be described as a “trophy building” but he felt that it would not suit a normal type of retailer and would be of no interest to modern retailers. Mr. Halpin confirmed that there were no escalators in the subject property.

Mr. Halpin agreed with Ms. Lambe that the first and second floors of the subject property were capable of being let separately but again pointed out that the subject property was being entirely utilised by the appellants and the respondent must value the subject property in its entirety. Mr. Halpin was not of the belief that the modern part of the building could be used for anything other than a gallery without works being carried out to it.

With regard to his comparisons Mr. Halpin did not accept that comparison no. 1 (Shaws) had a number of advantages over the subject property and he stated that Shaws had triple frontage to Main Street as well as a number of entrances to their property. He accepted that the

subject property was significantly smaller than comparison no. 2 (Heatons) but did not accept that North Main Street or Skelsar Street were better retail areas than South Main Street. Mr. Halpin accepted that comparisons no. 3 and no. 4 (M&J Restaurants and Westgate Design respectively) were mid-terraced units but stated that comparison 4 in particular had the benefit of rear access. Mr. Halpin pointed out that the lack of parking in the immediate vicinity of the subject property was an issue. Ms. Lambe made the point that the subject property was in close proximity to comparison no. 4 (Westgate Design) which provided ample parking.

The Respondent's case

Ms. Lambe took the oath and adopted her précis as her evidence-in-chief. She confirmed that only a small portion of the property had been in use when it had been valued in 2006 and that the property had been reconstructed between 2008 and 2010. Ms. Lambe contended for a rateable valuation of €467 as follows:

Ground Floor Retail	299.14 sq. metres	@ €150.34 per sq. metre	= €44,972.70
First Floor Studio	297.14 sq. metres	@ €19.36 per sq. metre	= €5,749.23
Second Floor Studio	162.90 sq. metres	@ €20.65 per sq. metre	= €3,364.80
Third Floor Offices	37.95 sq. metres	@ €14.93 per sq. metre	= €563.95
Basement	23.46 sq. metres	@ €26.08 per sq. metre	= €611.86
Total	€93,343.54 @ 0.5%		= €466.71
Say RV	€467		

Ms. Lambe provided four comparisons in support of her contention;

1. Subject property 2006 Revision - NAV €7831.00, RV €40
Subject property 2001 First Appeal - NAV €36,452 with 5% allowance for quantum, age, layout. RV €71.
2. Comparison 2 – Chance IT Ltd. trading as Vila, Skelsar Street, Wexford.
NAV €28,400, RV €142 (valued in 2001). This figure devalues at €91.32 per square metre.
3. Comparison 3 – Hibernian Insurance, Skelsar Street, Wexford. This property is zoned.
NAV €25,586.53, RV €126.97 (valued in 1995). This figure devalues to €187.26 per square metre.

4. Comparison 4 – Boots Retail Limited, 56 Main Street North Wexford. This property is zoned. NAV €46,248.06, RV €250 (valued in 2006). This figure devalues at €125.87 per square metre.

When questioned by the Tribunal as to whether the 1995 valuation (Comparison no. 3) could be relied on as it was pre Valuation Act 2001, both Ms. Lambe and Mr. Halpin confirmed that it could be relied upon. Mr. Halpin in particular confirmed that any property that is currently on the list is admissible as a comparison.

Ms. Lambe was of the opinion that the respondent's comparisons were more reflective of the position than the appellant's, given that two of the appellant's comparisons were purpose-built department stores. Ms. Lambe stated that the subject property was finished to a good standard with lift access, three access points and outdoor seating. She was also of the opinion that there was a difference in levels applied to North Main Street and South Main Street. She concluded by saying that she would not attach much weight to the appellant's comparisons no. 1 and no. 2.

Cross-examination

On cross-examination Ms. Lambe confirmed that she had valued the subject property on an overall level but felt that it could equally be zoned from Trimmers Lane West. She further felt it was appropriate to put forward a prior valuation of the subject property as a comparison. Ms. Lambe made the point that in Wexford a lot of stores were all former domestic houses in poor condition. She accepted that the respondent originally did rely on the 1st and 2nd floor rates in respect of the subject property. Ms. Lambe had not inspected the respondent's comparison 2 so was unable to comment on its condition. Ms. Lambe was of the opinion that the subject property was of a much higher construction than the appellant's comparison 2 (Heatons). She was not in a position to contradict Mr. Halpin's assertion that the appellant's comparison 4 (Westgate Design) had rear access. The Tribunal queried why the ground floor rates in both the appellant's comparison 1 (Shaws) and comparison 2 (Heatons) were both €82 per square metre despite comparison 1 being significantly larger. Ms. Lambe was not of the opinion that this implied that South Main Street was less valuable than North Main Street and felt that the reason for that level was probably down to the overall size of the comparisons.

Ms. Lambe agreed with the Tribunal that there should be a percentage relationship between each floor but was unable to say what that percentage should be. When pressed, Ms. Lambe said that because the subject property was capable of being let separately, she felt that the relationship between the ground floor and first floor should possibly be higher than 50% of the ground floor level and suggested possibly 65%, 70% or 75%.

Ms. Lambe agreed that the remainder of the building was two steps higher than the Victorian section, causing a physical split level but said that the hypothetical tenant was the present occupier and the occupier did not see it as a disadvantage. She did accept, however, that another hypothetical tenant might regard this as a disadvantage.

The Tribunal queried the discrepancy between the first floor rates for the subject property and the appellant's comparison no. 2 (Heatons), being €40 per sq. metre for Heatons as opposed to €109.36 per sq. metre for the subject property. Ms. Lambe explained that the subject property was a more attractive property in terms of layout and condition than comparison no. 2. When questioned, Ms. Lambe conceded the respondent's description of the third floor as an attic rather than an office and in that context indicated the possibility that an allowance of up to 50% of the valuation of €41.00 per square metre would not be inappropriate. Mr. Halpin pressed for a further reduction citing the figure of €13.67 per square metre for the third floor stores area in the appellant's comparison 1 (Shaws), pointing out that it was not possible for one to stand up in fifty per cent of the attic space. Ms. Lambe disagreed on the basis that an allowance of 50% was reasonable. Ms. Lambe was not aware of any restrictions on signage in view of the fact that the property was a listed building.

Both parties made brief closing submissions. Mr. Halpin again pointed out that the subject property was somewhat unique and had a number of physical disadvantages. Ms. Lambe again pointed out that the property was fully occupied regardless of its disjointed layout.

The Law

1. This appeal comes before the Tribunal by way of revision. Section 49(1) of the Valuation Act, 2001 provides that:

“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.”

That is, the valuation is to be determined by the tone of the list.

Section 49(2) provides that:

“(2) For the purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then—

(a) in case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48 (1), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20 ,

(b) in case an existing valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48 (1) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988, but the amount estimated by those means to be the property's net annual value shall, in so far as it is reasonably practicable, be adjusted so that the amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act.”

That is, by way of net annual value.

Findings

1. The appellant has provided six comparisons. The respondent has provided a further four, one of which is a prior valuation of the subject property. Mr. Halpin commenced his evidence-in-chief and concluded his closing statement by saying that this is a somewhat unique property. Mr. Halpin is correct in this statement as it is this uniqueness which has posed a problem for the Tribunal in determining which, if any, of the comparisons provided are “*other properties comparable to that property.*”
2. The Tribunal notes that of the 4 comparisons provided by the respondent, 3 of these (comparison nos. 2, 3 and 4) are zoned and as such are of no assistance to the Tribunal. The Tribunal accepts the evidence of Ms. Lambe that it could be possible to zone the subject property from Trimmers Lane West to Selskar Street. However, this is of no assistance whatsoever because the remainder of the property in its present layout cannot be zoned and the respondent has not provided any further comparisons in that regard.
3. Having said that, the Tribunal is of the view that the comparisons provided by the appellant are not of much assistance either in that they are widely varying and do not bear much resemblance to the subject property. Comparisons no.1 and no. 2, being Shaws and Heatons respectively, are large custom built modern department stores with good access and lifts. Given that the subject property comprises a Victorian portion, a Georgian portion and a modern portion which has been constructed as a gallery rather than retail, it is difficult to see how these properties can be comparable to the subject property.
4. The appellant’s third comparison (M & J Restaurant) is a conventional retail/restaurant property which on the face of it might be of some assistance. The retail restaurant on the ground floor is broadly similar in size (280 square metres as opposed to the subject property’s 299.14 square metres). In addition, the kitchens are located in the basement in both properties. However, the basement area in comparison no. 3 is considerably larger (117.24 square metres as opposed to the subject property’s 23.46 square metres). On the other hand, the first floor in comparison 3 is half the size of that in the subject property.

5. The Tribunal accepts that Comparisons No. 3 (M&J Restaurant), No. 4 (Westgate Design), No. 5 (Wexford Insurances) and No. 6 (The Yard) are all mid-terrace units, unlike the subject property which is, to use that expression again, in a unique location, blending as it does three distinct property types together. Comparison No. 4 is broadly similar to the subject property in size. Comparison No. 5 is a modern purpose-built development. Comparison No. 6 is considerably smaller than the subject property. In addition, none of the comparisons provided either by the appellant or the respondent face the restrictions of being a listed building.
6. The appellant seeks a rateable valuation of RV €208 (broken down at the amended page 10 of his précis) as previously set out on page 3 and 4 of this judgment. The respondent on the other hand seeks to rely on the subject property as a comparison based on the 2001 first appeal (RV€171) including a 5% quantum allowance and the 2006 revision of RV €40 when less than a third of the subject property was in use.
7. The difficulty facing the Tribunal is that it has not been furnished with any suitable comparisons. The Tribunal is only in a position to consider the information which is provided to it. The Tribunal notes that out of all 6 comparisons provided by the appellant, none of these has an attic and no evidence has been provided in this regard. Only two comparisons, numbers 3 and 4, have a basement. The appellant's comparison 3 is the best of these as it also has a basement kitchen but this is three times the size of the subject property. Comparison no. 4 has a basement restaurant but this is even larger than the subject property's. The Tribunal therefore is of the view that the comparisons provided in respect of retail and restaurant use are not in any way compelling. In addition the Tribunal has not been furnished with any comparable evidence in respect of a gallery.
8. The Tribunal finds that there is an established tone for comparable properties. However, as previously stated, it is the uniqueness of the subject property which makes it so difficult to provide any comparable evidence in respect of any other properties.
9. We note Ms. Lambe's evidence during cross-examination in relation to the third floor attic. In our view it is appropriate that the valuation of that component of the subject

property should be reduced by 50% from €41.00 per square metre to €20.50 per square metre to reflect its description as an attic rather than an office.

10. While the Tribunal notes the considerable work and careful analysis carried out by both the appellant and the respondent, the Tribunal found the comparisons adduced by either party to be of limited assistance in this case. In the circumstances, the Tribunal, having considered the physical disadvantages and the layout of the subject property, consider a reduction of 5% of the net annual value to be appropriate.

Determination

Having regard to the foregoing, the Tribunal determines the ratable valuation of the property concerned as follows:

Ground Floor Retail	299.14 sq. metres	@ €150.34 per sq. metre	= €44,972.70
First Floor Studio	297.14 sq. metres	@ €109.36 per sq. metre	= €32,495.23
Second Floor Studio	162.90 sq. metres	@ €22.00 per sq. metre	= €3,583.80
Third Floor Attic	37.95 sq. metres	@ €20.50 per sq. metre	= €777.97
Basement	23.46 sq. metres	@ €41.00 per sq. metre	= €961.86
			Total NAV = €92,565.56
			Less 5% Allowance = €4,628.28
			Total = €87,937.28

@ 0.5% = €439.68

Say RV = €440.00

And the Tribunal so determines.