

Appeal No. VA11/5/002

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

Mehmood Al Shehab

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No: 308760, Retail (Shops), at 25 Bellevue Avenue, Glenageary, Co. Dublin

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Tony Taaffe - Solicitor

Member

Frank Walsh - QFA, Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF DECEMBER, 2011

By Notice of Appeal dated the 8th day of June, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €21,700 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

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 22nd day of September, 2011. At the hearing the appellant was represented by Mr. Eamonn Halpin, BSc (surveying), ASCS, MRICS, MIAVI. The respondent was represented by Mr. Dean Robinson, BSc (Hons) Surveying, a Valuer in the Valuation Office. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

At Issue

Quantum

Preliminary

Prior to the hearing, both parties agreed the only issue was the issue of the quantum of the rateable valuation. It should be noted that the RV in question was arrived at as part of the revaluation exercise carried out by the respondent in the Dun Laoghaire/Rathdown County Council area which commenced in or about the 27th of June 2008. The valuation date is the 30th of September 2005.

The Appellant's Evidence

On behalf of the appellant, Mr. Halpin adopted his précis as his evidence subject to a minor amendment to page 10 of the précis.

Mr. Halpin acknowledged the property was the subject of a revaluation as one of all rateable properties in the Dun Laoghaire/Rathdown County Council area. The valuation order for Dun Laoghaire/Rathdown County Council specifies the 30th of September 2005 as the valuation date. While the respondent contended the valuation levels were derived from the analysis of available open market rental information of comparable properties and applied to the subject property, Mr. Halpin contended that the Commissioner had made an error in this case. In his view, the property was not similar to others which it was compared with by the Commissioner, and was indeed in a poor location.

The property is in what is described as a "*neighbourhood parade*" of four units comprising a newsagent, the subject property, a beautician's premises and a fourth premises which has

now become residential. The unit dated from the 1950s. Mr. Halpin contended that although the valuation date was the 30th of September 2005, the obligation under section 48(3) of the Valuation Act, 2001 was to assess the net annual value on the basis of “*the rent for which, one year with another, the property might in its actual state be reasonably expected to let from year to year*”. Mr. Halpin contended that this required the respondent to take into account not just the rent which the property might have achieved at the exact date of the revaluation. Rather he contended the respondent was obliged to look at the rental figures before and after that date, including the current rental figures. In his view (although he accepted it was not expressly so stated in the legislation), the test was “*what was the sustainable*” rent for the premises in question on the revaluation date.

The subject property is at 25, Bellevue Avenue, Glenageary, Co. Dublin. Mr. Halpin noted that the former tenant (beautician) of the premises now occupied No. 21, Bellevue Avenue and had agreed a rent dating from the 6th of April 2007 of €24,000. However, he did not believe that this was an appropriate comparative property as the beautician tenant had effectively been forced to pay a premium to stay in the locality when her lease ran out in the subject property. She, therefore, simply transferred her business from the subject property to No. 21. Mr. Halpin explained that the reason she was not given an extended or new lease in the subject property was because there was a fear that she would obtain additional rights under the Landlord and Tenant Acts if she had been provided with such a lease.

Mr. Halpin also contended that No. 24, Bellevue Avenue (which is a newsagents in the same parade and, in fact, beside the subject property) was freehold and, therefore, was of no real assistance in determining what the appropriate passing rent would be.

Mr. Halpin also noted that although a rent had been agreed in respect of the subject matter in August 2008 (commencing 1st January 2009) at €21,000 per annum, this rent had been reduced to €18,000 per annum from the 1st of October 2009 and had been further reduced in June of 2011 to €12,000 per annum.

Mr. Halpin referred us to various comparators details of which are attached at Appendix 2 to this judgment. He suggested the subject property was an appropriate comparator when the most recent rents (as reduced) were considered. We were also referred to Clark’s Convenience Store on Carysfort Avenue in Blackrock which he contended was a superior

location with higher passing trade. It may be noted that this property, unlike the subject property, had no parking outside it.

We were also referred to two properties in Oliver Plunkett Road in Monkstown. These had good passing trade and indeed were in brand new buildings. We were referred also to a unit in the New Park Centre in Newtownpark Avenue in Blackrock which was a double unit in a small shopping centre (with parking) in a far superior location. We were also referred to a unit in the Ballybrack Shopping Centre.

Mr. Halpin contended the relevance of the Oliver Plunkett Road properties was that the main Zone A shop areas were rated at a value of €450 and €470 per sq. metre which was higher than the €50 per sq. metre provided for the valuation of the subject property. Zone A of the properties in the New Park Centre and Ballybrack Shopping Centre were valued at €500 and €50 per sq. metre respectively by the Commissioner. In all cases, Mr. Halpin contended the comparable properties were even better than the subject property if the valuation placed on the subject property was (so far as the main Zone A shop area was concerned) the same or higher.

Mr. Halpin suggested instead that the main Zone A shop area should be valued at a rate of €350 per sq. metre. He did not, however, adduce evidence from any other local property in support of this contention. In the alternative, he suggested that one could, by looking at the average rent over the five years from 2009 to 2013, ascribe an RV of €14,350.00.

In cross-examination he accepted he had not disclosed the rental figures paid by the beautician in his original report but indicated that he was not placing any great weight on those figures at this stage. In his view, the property market had been in decline since 2009 (should this be 2007?) but he nonetheless contended that rents from this year and thereafter were still relevant in fixing the value for 2005. In his view, rental growth was strong in 2004, 2005 and 2006 and indeed peaked in the commercial market in 2007. He reiterated his reasons for not using the other Bellevue Avenue properties as comparators. As an example of how high rental demands were in 2007 and 2008, Mr. Halpin indicated that they had had an enquiry from one prospective tenant who indicated a willingness to pay €50,000 per annum for the subject property in 2008. In his view, it was unrealistic simply to fix the valuation by reference to the rent which was actually being paid as of 30th of September 2005.

The Respondent's Evidence

On behalf of the respondent, Mr. Dean Robinson gave evidence. He adopted his précis as his evidence. In his view, this neighbourhood parade was well established in a settled residential area with free parking.

Mr. Robinson's comparators (details of which are attached at Appendix 3 to this judgment) included:-

- (i) The newsagents at No. 24 next door to the subject property. Mr. Robinson did not feel that the fact that this was freehold prevented him from assessing what the net annual value would be for the property as of September 2005;
- (ii) The adjacent beautician's premises. Mr. Robinson noted the passing rent of €24,000 fixed as in April 2007;
- (iii) Mr. Robinson refers also to a property on the main street in Dalkey. The main retail area here was valued at €700.00 per sq. metre. In his view, this highlighted the difference between a main street and a suburban neighbourhood parade;
- (iv) A neighbourhood parade in Dundrum. Mr. Robinson pointed out this neighbourhood parade property was approximately the same distance from the well-known Dundrum Shopping Centre as the subject property was from Dalkey. In this neighbourhood parade in Dundrum, the main retail area was valued at €600 per sq. metre.

In cross-examination, he indicated that the €550 per sq. metre fixed by him for the main retail area of the subject property was reasonable in all the circumstances. He gave evidence he had looked at rental evidence available in this and other neighbourhood parades. In his view, the main factor to be considered was the evidence in relation to rentals in the adjoining area. Three of his four comparators were from neighbourhood parades and two of those three had an established passing rent based on the value of the main retail area of €550 and €600 per sq. metre. He did not believe that the rates were too high for the neighbourhood parade in which the subject property was located.

Closing Submissions

By way of closing submission, Mr. Halpin reiterated what he says was an error on the part of the respondent which was to place too much weight on the rental paid by the beautician tenant in April 2007 which was:-

- (a) At a premium in order to allow her to stay in the location; and
- (b) At a time when the rental market in the commercial sector was at its height.

He also contended that although the rent equivalent to the NAV fixed of €21,000 had been agreed in August of 2008 in respect of the subject property, this had not been sustainable as it transpired. He contended that the other units on Oliver Plunkett Road, New Park Centre and Ballybrack Centre were superior locations yet had the same or a lower rate per sq. metre in the main Zone A retail area.

By way of closing remarks, Mr. Robinson contended that the rateable valuation provided by the Commissioner was fair and reasonable. The rent agreed in 2008 was agreed at a time when the commercial rental market was no longer at its zenith and in his view a decline had already commenced. He also noted Mr. Halpin's contention that the main retail area of the shop should be revalued at a rate of €350 per square metre. In his submission there was no evidence for this adduced in any of the comparisons or indeed anywhere in Mr. Halpin's evidence.

The Law

The net value of property is to be determined by the NAV which is defined as being "*the rent for which, one year with another, the property might, in its actual state be reasonably expected to let from year to year ...*" (section 48(3) of the Valuation Act, 2001).

We accept Mr. Halpin's suggestion that in fixing the NAV, the respondent is not compelled to look only at the actual rent paid in respect of the subject premises on the actual valuation date. The phrase "*one year with another*" allows the parties a degree of leeway in examining rents before and, where appropriate, after the valuation date in question in order to try to assess what the appropriate rent (and therefore appropriate NAV) should be.

It does appear to us, however, that it would be a wholly artificial exercise for the respondent to be obliged to discount an NAV for a particular valuation date by factoring in what had happened over a six year period subsequently if that six years had seen a sharp decline in rent. Indeed, if the Commissioner had employed a similar methodology over a subsequent six year period in which the rents had dramatically increased, we doubt if the ratepayer would readily accede to such a process.

It appears to us that the most appropriate comparators are the neighbouring properties in the same “*neighbourhood parade*”. The use of properties in shopping centres (with or without anchor tenants) are of extremely limited value as indeed are the properties located on Oliver Plunkett Road referred to by the appellant. It seems to us that a unit such as the subject property on a neighbourhood parade with free parking outside in a settled residential area is likely to be far more reliant on a local repeat trade than on a passing trade and is likely to build up loyal repeat business within the neighbourhood. The presence of free parking outside the door is obviously of assistance especially to customers bringing bags of clothing to be cleaned to the subject property. The property in Carysfort Avenue is a convenience store on a junction with no parking and in our view must be regarded as being in an inferior location with a different kind of trade to that of the subject property.

We do not accept that the newsagent property in the neighbourhood parade in question should be excluded because it is freehold. There is no suggestion that it is not possible to ascertain an NAV in respect of a freehold property. We note also the availability of rental figures for 2007 and 2008 for the beautician’s and the subject property in the same neighbourhood parade. It does not appear to us that these were unreliable or in some way to be ignored. We note also that the appellant has adduced no evidence of any comparable property in which the main retail area has been valued at €350 per sq. metre.

The Tribunal notes the Valuation Certificate initially proposed a valuation of €22,800 though this was reduced following representations to €21,700. Having regard to the NAV of the adjacent similar properties in the same neighbourhood parade, we are of the view the NAV in question of €21,700 is entirely reasonable and is supported by local evidence.

Determination

The Tribunal determines the NAV of €21, 700 estimated by the Respondent for €21,700 is correct.

The appeal is dismissed.

And the Tribunal so determines.