

Appeal No. VA11/5/004

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

Mario D'Agostini

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 514283, Retail (Shops) at 135 Oliver Plunkett Road, Monkstown, County Dublin.

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Joseph Murray - BL

Member

Mairead Hughes - Hotelier

Member

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

By Notice of Appeal dated the 9th day of June, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €18,290 on the above described relevant property.

The grounds of appeal are set out in the Notice of Appeal, a copy of which is attached at Appendix 1 of this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin, on the 27th day of September, 2011. At the hearing the appellant was represented by Mr. Eamonn Halpin, BSc. (Surveying) MRICS, MIAVI. The respondent was represented by Mr. Dean Robinson BSc (Hons) Surveying, a Valuer in the Valuation Office. Both parties have 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.

Issue:

The only issue before the Tribunal was the issue of quantum.

The Appellant's Evidence

1. On behalf of the appellant, Mr. Eamonn Halpin adopted his précis with one correction thereto; the subject property is not leasehold but is in fact freehold.
2. The subject property is in the middle of a neighbourhood parade of six units on Oliver Plunkett Road, Monkstown, Dublin. This is an established residential area, albeit with limited passing trade in the view of Mr. Halpin. He described it as a moderate commercial location. He contended that it has deteriorated to some extent. A further two (what he described as "largish") developments further up Oliver Plunkett Road have attracted attention away from this parade (and this unit) and as a result, the retail focus has to some extent moved.
3. The parade in question was constructed in the 1950s. The other units in the parade are a Londis shop, a Chinese take-away, an employment centre, a kitchen retail unit and an An Post unit.
4. Mr. Halpin indicated that in his view the parade and the unit was very old fashioned and had not been modernised in some time. He expressed the view that to some extent, the units in the parade were "down at heel". In his view, it was not sustainable to value Zone A of any part of this unit at a rate of €500 per sq. metre.

5. Mr. Halpin contended that the approach taken by the respondent was unfair. More modern units up the road on Oliver Plunkett Road had been given a lower Zone A rating which, in his submission, seemed wrong.
6. Mr. Halpin referred to various comparators (details of which are attached at Appendix 2 to this judgment) as follows:-
 - (i) The first was a fish shop further up Oliver Plunkett Road. It was built in 2006 or later. Zone A of the retail space in this shop devalued at €450 per sq. metre.
 - (ii) He referred us also to the Applegreen premises, again in a new development further up the road. Again, this appears to have been let from 2006 onwards. Zone A of the retail area devalued at €470 per sq. metre.
 - (iii) Mr. Halpin also referred us to a double unit in the New Park Centre in Blackrock on Newtownpark Avenue. Again he contended that although in a superior unit Zone A the retail shop area devalued €500 per sq. metre.
7. Mr. Halpin suggested the appropriate valuation for Zone A of the subject property was the value of €350 per sq. metre. Because the main retail activity had shifted further up Oliver Plunkett Road to where the Applegreen and other modern units nearby were now concentrated, the now inferior location of the subject property should be reflected in the NAV to be fixed.
8. In cross-examination he accepted the neighbourhood parade in question was near a roundabout, although the roundabout had now been moved. He accepted that it was, however, near a junction where four access routes meet, though it was not always easy to see the subject property as one approaches the junction in question. He disagreed that Oliver Plunkett Road was the main access route to Dun Laoghaire.
9. He accepted that in his précis of evidence, he had suggested that it was unsustainable “at this time” to suggest a hypothetical tenant would pay €500 per sq. metre. He confirmed he was referring to 2011 by using the phrase “at this time”. He said one should also consider the appropriate rents in 2005 and 2002. In 2005, the new fish

shop and Applegreen units were not let and the fish shop was certainly not even under construction. Thus the parade was the only shopping area in the immediate locality.

10. However, he said that any hypothetical tenant in September 2005 would have been aware that Applegreen and other units were under construction and were likely to come on stream. He accepted that the subject property was in a well-established parade. He accepted also that there was no rental evidence from any of the other five units in the parade so it was appropriate to look at similar retail spaces nearby.
11. In response to the Tribunal, he indicated that there was no evidence of any unit being let at a rate of €50 per sq. metre in the locality. He indicated the roundabout would have been there in 2005. He said that although Oliver Plunkett Road was on a throughway from Upper Glenageary Road, it was ramped which made it less attractive. He indicated that there were parking spots outside the property though these were often full. In his view, although it was not tenable to say that passing trade was likely to be more voluminous in the middle of a street than at the beginning of a street, it was more attractive to stop at the new development than at the subject location.

The Respondent's Evidence

12. The respondent adopted his précis as his evidence in chief. He concurred with the suggestion that the property in question was in a well established neighbourhood parade. Mr Robinson submitted three comparators, details of which are attached at appendix 3 to this judgment.
13. Mr. Robinson pointed firstly to the Londis property. This was next door to the subject property and had been valued at €500 per sq. metre Zone A for the main retail area. It was similar in terms of quality and build.
14. He referred us also to Bradley's pharmacy at 62/63, Mounttown Road, Dun Laoghaire, Co. Dublin. A frontage to depth allowance had been made in respect of this property. The property in question was held on a 35 year FRI Lease from the 1st of January 2005 at €29,300. This equated to a Zone A of approximately €180, though

15. Mr. Robinson also identified a third comparator, being “The Pizza Slice”, a takeaway/delivery unit further up Oliver Plunkett Road. This was part of the modern development which also housed the Applegreen premises. The property was held on a 20 year FRI Lease fixed on the 1st of March 2005 at €30,000. Its retail area was zoned at €20 per sq. metre though there was a 10% discount given for frontage to depth ratio and layout. Mr Robinson indicated that this unit had an irregular layout internally.
16. In the circumstances, he believed that the overall NAV was fair and particularly that the valuation of €500 per sq. metre for the subject unit’s retail area was appropriate.
17. In cross-examination he indicated he had made no front to depth allowance for any of the units on the parade because there was no rental evidence in relation to those units (all units being held by way of freehold). However, he said that as all units were valued at €500 per sq. metre, this took into account any frontage to depth allowance which might be made in respect of the units. He acknowledged that the rent of €30,000 per annum as of the 1st of March 2005 for the Pizza Slice equated to a €483 per sq. metre Zone A valuation.
18. He also agreed that the Applegreen unit, was a modern unit though not necessarily more attractive. He indicated he did not believe that the units in New Park were more valuable than the subject unit.
19. In answer to the Tribunal, Mr. Robinson said that the Londis Unit, being the unit next door to the subject property, is his main comparator. He accepted that the Pizza Slice unit and the pharmacy premises were in a slightly different location. He indicated that all of the units on the parade had been valued at €500 per sq. metre zone A. There had been representations on two of the other units in that parade and there had also been representations in relation to the pharmacy unit. He also indicated that he had no evidence of any unit being zoned at a Zone A retail space of €350 per sq. metre.

Both sides made brief closing oral submissions.

The Law

20. The Law in this area is clear and has been set out repeatedly in Determinations of the Tribunal in the past. The net annual value of the property means “the rent for which one year with another the property might in its actual state be reasonably expected to be left from year to year...” (Section 48(1) and (3)). The appropriate valuation date of this property is the 30th of September 2005 and the valuation is based on a basket of market rents at that date.
21. It may seem somewhat anomalous that we are asked to ascribe a net annual value to this property in 2011 in respect of the 30th of September 2005. Undoubtedly the change in economic circumstances which has affected the entire country will have affected rental values in the commercial sector. However, the obligation at law is to value the property as of the valuation date rather than to value it at some other date which may appear to be a more sympathetic choice of date (depending on whether rents have risen or fallen between the valuation date and the actual date on which this exercise is carried out). Section 20 of the Act is clear:-
- (i) A Valuation Order shall specify one date by reference to which the value of every relevant property, the subject of the valuation mentioned in the Order shall be determined.
 - (ii) The date so specified shall be not later than the date of the making of the Valuation Order.
22. The “Valuation Order” referred to in Section 20 is, of course, a reference to the Valuation Order referred to earlier in Section 19 of the Act. In the circumstances, therefore, the appropriate valuation date is and can only be the 30th September, 2005.
23. The appellant (and indeed the respondent) is entitled to a degree of latitude in respect of rents immediately before and immediately after the valuation date, if required. However, it is undoubtedly the case the best evidence is the rental information available in respect of the subject property at the valuation date itself. In the instant

case, the subject property as well as all the other properties in the same neighbourhood parade, are held by way of freehold. This does not, however, obviate the requirement to fix an NAV in respect of the property.

24. The respondent has valued all of the properties in the neighbourhood parade at a Zone A rate of €500 per sq. metre. The appellant argues that this is to a degree circular, in that if the original striking of the rate of €500 per sq. metre is wrong for one unit, it does not necessarily make it right for all of the other units by simply repeating it. However, it is notable that there appears to have been representations in respect of at least two of the units, but there has been no appeal by any of the units in question. In one respect, this indicates that the valuation of the respondent remains untested. Looked at another way, however, it appears to indicate a degree of satisfaction (if not resignation) on the part of the various occupiers of the units in question.
25. We note that the fish shop further up Oliver Plunkett Road on which the appellant places the most reliance was not even built (never mind let) as of the 30th September, 2005. This creates a serious difficulty for us in attempting to value the subject property by reference to the fish shop in question since there is simply no evidence in relation to the fish shop to indicate what the appropriate rent for that shop would have been in 2005.
26. We are not persuaded that the Applegreen property being part of a more modern development is a comparable property with the subject property; still less are we convinced that the double unit in the New Park Centre in Avoca Avenue in Blackrock is of any assistance as a comparator.
27. We note the Pizza Slice takeaway and delivery unit some 400 metres from the subject property is a somewhat larger unit (75 sq. metres as opposed to 57 sq. metres approx). The retail Zone A area in the Pizza Slice was valued at €520 per sq. metre (but this was discounted) and was the retail Zone B area with 10% due to the frontage to depth ratio and due also to the quirkiness of the internal layout. The fact that the Pizza Slice is held on a 20 year FRI Lease from the 1st of March 2005 at a rent of €30,000 (equating to a Zone A) of approximately €483 is of assistance. As of March 2005, rents were still rising and it is our view that the Zone A valuation per sq. metre was,

28. There is another way of testing the valuation in question. The overall valuation of the subject property was reduced after first appeal to €18,290 i.e. less than two thirds of the market rent which the Pizza Slice was paying from March of 2005. Mr Halpin contends the appropriate valuation should be a rental valuation of €13,000. It seems to us we would not be justified in assessing the subject property RV at less than half the RV of a property which is only slightly bigger, and allowing for the fact that it is in a more modern development, and which is engaged in the same kind of business and which is just 400 metres on the same road from the subject property. Indeed, the subject property is (probably) in a slightly better location to attract passing trade than the Pizza Slice.
29. There is one other way in which the RV suggested by Mr. Halpin can be tested. Mr. Halpin bases his valuation of €13,000 on a notional Zone A value of €350 per sq. metre for retail Zone A. However, he has not adduced any evidence of any unit whatsoever in the locality where this zone has been applied. Nor was any evidence furnished on behalf of the respondent suggesting that such a rate was prevalent or indeed present in any way in the locality.
30. In our view, therefore, it is not tenable to suggest that the appropriate retail shop Zone A value should be €350 per sq. metre. The appropriate Zone A valuation seems to us to be correctly measured by the respondent at €500 per sq. metre. While Mr. Halpin tentatively suggested other valuations in respect of the other parts of the shop, these were not seriously doubted and in our view, the Commissioner of Valuation's assessment of the value of these other areas is appropriate.

Determination

The Tribunal affirms the determination of the respondent that rateable valuation of the subject property be €18,290 as of the 30th September, 2005. The appeal is dismissed.

And the Tribunal so determines.