

Appeal No. VA11/5/060

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

Yulin Zhao

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 1034206, Restaurant at 1 Clifton Avenue, Monkstown, County Dublin.

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

Frank Walsh - QFA, Valuer

Member

Patricia O'Connor - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF DECEMBER, 2011

By Notice Of Appeal dated the 16th of June, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €6,100 on the above deescribed relevant property.

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

"Assessable valuation is incorrect".

The oral hearing in relation to this appeal was held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 15th day of September 2011. At the hearing the appellant was represented by Mr. Terry Devlin, BSc, MSCSI, MRICS of O'Donnell Property Consultants and the respondent was represented by Mr. John O'Brien, BSc (Hons) Real Estate Management, MSCSI of the Valuation Office.

At the hearing both parties adopted their précis which had previously received by the Tribunal as being their evidence-in-chief. The only issue between the parties is quantum.

Valuation History

Pursuant to Section 19 of the Valuation Act, 2001 the property was the subject of revaluation as one of all ratable properties in the Dun Laoghaire Rathdown Rating Authority area. The Valuation Order specifies the 30th September 2005 at the valuation date.

The proposed Valuation Certificate was issued on 15th June 2010 with a proposed ratable valuation of €66,100. The Valuation Certificate issued on December 2010 with the valuation unchanged. An appeal was lodged to the Commissioner of Valuation on 8th February 2011 following which the valuation remained unchanged. On 24th June 2011 a Notice of Appeal to the Valuation Tribunal was lodged against the decision of the Commissioner.

The Property

The subject property is located at 1 Clifton Avenue, Monkstown, Co. Dublin. Clifton Avenue is a side street linking Monkstown Crescent and Longford Terrace. The Clifton Avenue/Monkstown Terrace area has a mix of residential, retail office and licenced premises. The subject property comprises a first floor restaurant situate in a two storey end of terrace commercial building.

Accommodation

The areas for valuation purposes were agreed as follows:

Restaurant:	144 sq. metres
Kitchen:	<u>45 sq. metres</u>
Total	189 sq. metres

Tenure

The property was taken on a 35 year lease with 5 yearly rent reviews from the 1st January 2009 at an initial rent of €6,000. This rent was reduced to €8,000 in 2010 and it has now been reduced further to €4,000.

The Appellant's Evidence

Mr. Terry Devlin took the oath and adopted his précis as his evidence-in-chief. Mr. Devlin contended for an NAV of €47,200 on the subject property calculated as follows:

Restaurant/Kitchen: 189 sq. metres @ €250 per sq. metres = €47,250

Say Valuation €47,200

Mr. Devlin provided three comparisons in support of his contention being:

1. Valpariso Restaurant, 99 Monkstown Road, Monkstown, Co. Dublin. Valuation €31,900 (96.17 sq. metres @ €332.50 per sq. metre). Mr. Devlin felt that this comparison had the advantage of a better location and profile than the subject property. It has also benefited from a 5% quantum allowance to reflect poor access and location issues. Mr. Devlin also pointed out that this property is half the size of the subject property.
2. First Floor, FXB at The Pub, Monkstown Crescent, Monkstown, Co. Dublin. Valuation €4,000 (Entire Building). Based on the information made available to him by the respondent, Mr Devlin analysed the first floor restaurant has having a valuation of €9,243 (i.e. 71.1 sq. metres @ €130 per sq. metre). Mr. Devlin stated that this was a well known restaurant run by a company specialising in restaurants.
3. The former Taste restaurant, Monkstown Crescent, Monkstown, Co Dublin. Valuation €75,200 (215 sq. metres @ €350 per sq. metre) Mr. Devlin was of the opinion that the location of this comparison, which has now ceased trading, gave it a significant advantage over the subject property which is located down a side street.

Cross-Examination of the Appellant

Mr. Devlin agreed that it was possible to see the building in which the subject property was located from Monkstown Crescent but felt that a lay person would not be aware that the

building contained a first floor restaurant. Mr. Devlin did not accept that car parking was an issue for any of his comparisons. Mr. Devlin accepted that additional signage on the subject property might be of some help but felt that it would not raise the value of the subject property given its location. Mr. Devlin confirmed that he had carried out an analysis of the comparative rents and had indexed them back to 2005 levels using the Jones Lang LaSalle index. He furnished a copy of his rental analysis to the Tribunal.

Having regard to comparison number 1 (Valpariso), Mr. Devlin calculated that the rental figure per sq. metres adjusted to 2005 levels is €380 per sq. metre (€36,848 divided by 96.17 sq. metres), pointing out that a higher rent would be expected for a smaller unit. In respect of comparison number 3, Mr. Devlin calculated an adjusted rental figure of €260 per sq. metre (€6,192 divided by 215 sq. metre). Having regard to the subject property, Mr. Devlin calculated an adjusted figure of €300 per sq. metres (€7,882 divided by 189 sq. metre) but felt that as the subject property was inferior to comparison number 2, then a lower figure of €250 per sq. metre would be correct. On questioning from the Tribunal, Mr. Devlin accepted that his analysis and adjustments were not an exact science but he argued that they clearly showed that the subject property was overvalued and that the proposed figure of €350 per sq. metres was excessive.

The Respondent's Evidence

Having taken the oath, Mr. O'Brien adopted his précis as his evidence-in-chief. He confirmed his comparisons (details of which are attached at Appendix 1 to this judgment) and stated that a 5% allowance applied to comparison number 2, Valpariso Restaurant because of difficulties with access. Mr. O'Brien contended for a valuation on the subject property as set out below:

Blocks 1 + 2, Level 1 Restaurant 189 sq. metres @ €350 per sq. metre = €66,150

Valuation (rounded) = €66,100

Cross-Examination of the Respondent

Mr. O'Brien agreed that the front to the subject property was not attractive but submitted that this was a matter for the occupier of the building. Mr. O'Brien was of the opinion that the signage on the subject property would attract footfall. Mr. O'Brien stated that the respondent had analyzed a basket of rents in respect of similar type properties and agreed the "tone of the list" at €350 per sq. metres but confirmed that the rent of other properties had also been

considered. Mr. O'Brien contended that the location of the subject property in relation to the Spar Supermarket would drag some footfall down to that area and disagreed with Mr. Devlin's contention that the corner location was more valuable, given that the corner property was currently vacant. On questioning from the Tribunal regarding the advantages which the subject property had over comparison number 2 (Valpariso), Mr. O'Brien repeated that proximity to Spar would drag footfall along the street all day and in addition stated that there was direct access from the street with pay and display parking directly outside the subject property. Mr. O'Brien disagreed that proximity to Spar would similarly advantage comparison number 1 as it was located across a busy main road. Mr. O'Brien did not accept that his comparison number 3 (Yeungs) was located in a different type of area in Dalkey and he felt in fact that this was a stronger comparison than FXB at The Pub. Mr. O'Brien declined to give any opinion as to whether a quantum allowance should be given to the subject property in view of the fact that it was twice the size of comparison number 2 (Valpariso).

Both Mr. Devlin and Mr. O'Brien made brief closing submissions.

Findings

1. Section 20 of the Act provides that the revaluation order made under Section 19 "*shall specify one date by reference to which the value of every relevant property, the subject of the validation mentioned in the order, shall be determined*". In relation to the Dun Laoghaire Rathdown Rating Authority area the valuation date is the 30th September, 2005.
2. The Tribunal has previously clearly set out its views on the principles to be applied to a revaluation under Section 19 of the Valuation Act, 2001 in Appeal Number **VA08/5/125 - Marks & Spencer (Ireland) Limited V Commissioner of Valuation**, stating at paragraph 12 page 5 of that judgment that "*In the circumstances of revaluation under Section 19, that the valuation of "every relevant property" is to be individually assessed in accordance with Section 48 as at the date specified in the Valuation Order. At the time of the assessment in respect of each and every relevant property there is no valuation list in existence nor will there be until all relevant properties have been valued. Consequently at the time of the assessment there are "no other properties comparable" in the list. Section 49 which is based upon the concept of net annual value being determined by reference to comparables or more*

commonly referred to as the “the tone of the list” pursuant to Section 49 cannot have any role to play in the revaluation process and only comes into effect when a revision of valuation is carried out in accordance with sections 27 & 28”. The Tribunal goes on to state in paragraph 14 page 5 of the judgment that “When an individual appeal comes before this Tribunal for determination the Tribunal must consider and evaluate the evidence then put before it be it the actual rent of the property concerned, the rents of other properties of its size, use and location similar to the property concerned and last, but by no means least, the assessment of properties which are truly comparable in all respects to the property concerned and which are currently in the valuation list and attract such weight to this evidence as is considered appropriate”.

3. Section 48 (3) specifically states that *“Subject to Section 50 for the purposes of this Act” “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant”.*
4. Section 48 (1) states that *“The value of the relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value”.* As stated in Appeal number **VA09/1/022 Lifestyle Sports Ltd v Commissioner for Valuation** *“Revaluation is based on rental evidence under Section 48 (1)”.*
5. The Tribunal has been provided with comparable rental analysis by the appellant adjusted to reflect the rental figures at the valuation date. It is noted that such rental analysis has not been challenged or refuted by the respondent.

Determination

Having considered all the evidence and submissions, it is the appellant’s rental analysis adjusted to reflect the rental figures at the valuation date which carries the most weight. The Tribunal, therefore, finds a fair and reasonable rent per sq. metre for the subject property at the valuation date of the 30th September, 2005 would be €300 per sq. metre. Accordingly, the

Tribunal is of the view that a fair and equitable assessment of valuation of the subject property should be as follows:

Restaurant/Kitchen 189 sq. metres @ €300 per sq. metre = €56,700

NAV €56,700

And the Tribunal so determines.