

Appeal No. VA11/5/100

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

Ruiqing Wang

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 401127, Take Away, at 72 St. Laurence's Park, Stillorgan, County Dublin.

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb
Chairperson

Deputy

Tony Taaffe - Solicitor

Member

Thomas Collins - PC, FIPAV, NAEA, MCEI, CFO

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF JANUARY, 2012

By Notice of Appeal dated the 27th day of July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €54,400 on the above described relevant property.

The Grounds of Appeal as out in the Notice of Appeal are:

"The valuation is excessive and inequitable."

The appeal proceeded by way of an oral hearing, held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 15th day of November, 2011. At the hearing the appellant was represented by Mr. Donal O'Donoghue, BSc (Hons) Estate Mgmt, DipVals, AssocSCSI., The respondent was represented by Mr. John Purcell, BSc, MRICS, MSCSI, 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 the facts relevant and material to the appeal.

At issue

Quantum.

The Property

The subject relevant property comprises retail accommodation located on the ground floor of a two storey mid-terrace dwelling within a block of six retail units. The first floor is used as a residence and accordingly excluded from the subject rating exercise. The subject property is currently trading as a Chinese Take Away. There is limited parking available fronting the foregoing retail units.

Location

The subject property is situated in the long established neighbourhood retail centre of St. Laurence's Park in Stillorgan. St. Laurence's Park is located on the eastern side of Stillorgan Shopping Centre, between the Old Dublin Road and the N11.

Services

The subject relevant property is served with mains power, water, telephone, storm and foul sewer.

Tenure

The property is understood to be held by Haybrook Ltd., a wholly owned subsidiary of Treasury Holdings, on a 35 year lease commencing 1st January, 1998, with 5 year rent reviews. The passing rent for the entire property at the Valuation Date of September 2005 was €55,000 per annum. including the overhead apartment and this figure was agreed between landlord and tenant on 1st January, 2003. Haybrook Ltd. sublet the property on 9th

July, 2007 for a term of three years at a rent of €78,000 per annum again including the overhead residential accommodation. The present occupier entered a new Sub-lease with Haybrook Ltd., on 15th February, 2011, for a term of ten years, at a rent of €60,000 per annum again for the entire building.

Floor Areas

The agreed floor areas, measured on a Net Internal Area (NIA) basis, are as follows:-

Block	Level	Use	Area sq. metres
1, 2, 3	0	Zone A	57.85
2, 3	0	Zone B	17.26
4,5	0	Store	25.86
		Total:	100.97

Total Zoned Area: 75.11 sq. metres

Total Area: 100.97 sq. metres

Valuation History

June 2010: A Valuation Certificate (proposed) was issued with an RV of €54,400.

July 2010: Representations were lodged with the Commissioner of Valuation. The valuation remained unchanged.

February 2011: An Appeal was lodged with the Commissioner of Valuation. Following consideration of grounds of appeal submitted, the valuation remained unchanged.

July 2011: An Appeal was lodged with the Valuation Tribunal on 28th July, 2011.

Appellant's Case

Mr. Donal O'Donoghue took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. The following is a summary of the salient points made by the Consultant Valuer while referring to his précis:-

- He confirmed the foregoing details with respect to the nature of the accommodation, the location of the relevant property, the tenure and then summarised the matters which, in his opinion, required consideration by the Valuation Tribunal and the factors which influenced the Net Annual Value on the subject.
- Mr. O'Donoghue contended that the Valuation Office had erred in their analysis of rents which were paid on the subject property during the period 2003 – 2008 and noted that he had raised such concern in correspondence to the Valuation Office dated 15th October 2010, 4th July 2011 and 27th October, 2011, copies provided at Appendix 1 hereto. He emphasised that in his opinion, the Valuation Office had initially failed to consider the contribution to rent made by the residential component of the property.
- He further contended that the Commissioner of Valuation had possibly overlooked the reduction in Zone A rental values from €2,000 per sq. metre down to €1,475 per sq. metre on foot of appeal negotiations which concluded with a circa 26% reduction on the retail Zone A value levels in the Stillorgan Shopping Centre situate across the old Dublin Road and opposite the subject.
- He advanced the argument that the opening of the Dundrum Town Centre complex in 2005 materially changed the retailing environment of Dun Laoghaire Rathdown and cited extracts of the Local Authority's County Development Plan 2010 – 2016 in support of his opinions.
- He outlined his views on the adverse effects brought to bear on retailing generally in Stillorgan, which he attributed to the opening of the Dundrum Town Centre. He cited a list of tenants, most of which were national brand retailers, which traded from the Stillorgan Shopping Centre during September 2005 and which subsequently, ceased

- Mr. O'Donoghue noted the nearby two large unoccupied tracts of building land, namely the sites of the former Blake's & Esmond Motors and recited the history and nature of those business establishments when they operated there a number of years ago. He argued that their failure to continue trading reflects the overall trend in the Stillorgan village area, which has been in decline for a number of years, as evidenced by a reduction in a wide range of retailing activities.
- The valuer advised that the foregoing trends have served to highlight exposure in the Stillorgan village to retail/commercial vulnerability directly linked to impact of the Dundrum Town Centre development.
- The appellant's valuer also drew attention to the fact that the Dublin Bus services of 46A, 63 and 145 no longer run through Stillorgan village.

Appellant's Comparison Properties

Comparison No. 1

Property: 11a Lakelands Road, Stillorgan, Co. Dublin.

Occupier: Des Delaney Victuallers

Comparison No. 2

Property: 11b Lakelands Road, Stillorgan, Co. Dublin.

Occupier: The Washing Line

Comparison No. 3

Property: 57, Deerpark Road, Mount Merrion, Do. Dublin

Occupier: Michael's Food & Wine

Comparison No. 4

Property: 70, St. Laurence's Park, Stillorgan, Co. Dublin

Occupier: EcoPipe

Referring to comparisons 1 and 2, Mr. O'Donoghue described the parade of shops on Lakelands Road as a small neighbourhood retail centre within a residential area, broadly similar to the subject with ground floor retail and ancillary stores. He noted that the Zone A rents of the foregoing retail units was €50 per sq. metre and the stores were valued at a level of €100 per sq. metre.

The third comparison, 57 Deerpark Road, again described as part of a neighbourhood retail centre, bears a Zone A rate of €500 per sq. metre and €100 per sq. metre on the store.

Insofar as his Comparison Property No. 4 at 70, St. Laurence's Park, Stillorgan, was contemporaneously the subject of an appeal to the Valuation Tribunal, the information provided on same was not taken into consideration.

The foregoing considered and by reference to **VA08/5/125 Marks & Spencers (Ireland) Ltd.**, the Consultant Valuer sought a valuation on the subject relevant property, as follows:-

Zone A	57.85 sq. metres	@	€500 per sq. metre	= €28,925
Zone B	17.26 sq. metres	@	€250 per sq. metre	= € 4,315
Store	25.86 sq. metres	@	€50 per sq. metre	= <u>€ 1,293</u>
Total				€34,533
NAV Say €34,500				

Cross-examination of the Appellant

In response to questions put by Mr. Purcell and the Tribunal, Mr. O'Donoghue stated that:-

- i. He was familiar with the determination by the Valuation Tribunal in respect of **VA08/5/125 Marks & Spencer (Ireland) Ltd.**, and in particular the contents and context of the section which reads as follows:-

“At the time of an appeal to the Tribunal under section 34 the situation will have moved on significantly, in that by far the greater percentage of entries in the list would have been accepted, agreed or determined at section 30 appeal stage and hence representative of an as yet emerging tone of the list. 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 a 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 attach such weight to this evidence as is considered appropriate. Finally a stage will come – but only when all the appeal procedures under sections 30 and 34 are completed – when the tone of the list will finally become established and thereafter cannot be challenged. From this point onwards section 49 will come into play and rental evidence as such will be of lesser importance in the assessment process. Furthermore the valuation of each property currently in the list cannot be altered until the next revaluation under a new section 19 order is completed except in those instances where a revision of valuation under section 28 is carried out and it is found that a material change of circumstances as defined in section 3 has occurred”.

- ii. He was not relying on September 2005 market rents as he believed that he may now look to an emerging “tone-of-the-list” to support his case.
- iii. He did not believe that the tenants at St Lawrence’s Park benefited directly from the influence of the owner/developer of the Stillorgan Shopping Centre who had taken a leasehold interest in the subject and other nearby like properties, but believed that the “property play” by the said developer over a number of years created artificially high levels of rent being paid in the area for small retail units.
- iv. He acknowledged that the attributed rent to the retail area of the subject of €41,700 p.a., as outlined in his correspondence of 15th October, 2010 compared with the Net Annual Value of €43,324, which was assessed on the subject property during the period 2003 – 2005.
- v. He confirmed that the rent being paid by the tenant in September 2005 for the entire premises was €55,000 per annum.
- vi. The initial Zone A rent suggested by the Valuation Office on the subject was €800 per sq. metre but the calculation of same had not excluded rental revenue generated by the overhead residential area.
- vii. The Valuation Certificate for the subject property issued on 5th July, 2011 pre-dated the Valuation Certificates for the Stillorgan Shopping Centre, which issued on 5th August, 2011.

viii. He confirmed that the Lakelands Road neighbourhood retail centre is approximately one mile from the subject.

Respondent's Case

Mr. John Purcell took the oath and adopted his précis as his evidence-in-chief. The location, description and floor areas were common case.

Mr. Purcell outlined the basis of valuation of the subject indicating that in common with other properties valued for rating purposes under the Revaluation exercise carried out in Dun Laoghaire Rathdown County Council Rating Area, the valuation level was initially derived from the analysis of available open market rental information of comparable properties and then applied to the subject. He added that the valuation of this property, on appeal to the Commissioner of Valuation, was determined by reference to values of comparable properties stated in the Valuation List in which they appear.

Respondent's Comparison Properties

The respondent provided details on five comparison properties, listed hereunder, details of which are attached at Appendix 2 to this judgment.

Comparison No. 1

Property: 73, St. Laurence's Park, Stillorgan, Co. Dublin.
Occupier: Samuel P. Dunne Ltd., t/a Blueprint

Comparison No. 2

Property: Maple House, Kilmacud Road Lower, Stillorgan, Co. Dublin
Occupier: Xtravision

Comparison No. 3

Property: Lenehan's Parade, Lower Kilmacud Road, Stillorgan, Co. Dublin
Occupier: Osage Ltd., t/a Appleton's Creative Framers

Comparison No. 4

Property: 8, The Hill, Stillorgan, Co. Dublin
Occupier: D.S.Q. Group Ltd., t/a Apache Pizza

Comparison No. 5

Property: 2, The Hill, Stillorgan, Co. Dublin
Occupier: Teddy Cheung t/a Treasure Chinese Take Away

The précis of evidence furnished by Mr. Purcell provided information on all of the foregoing with respect to lease details at or about the relevant Valuation Date of September 2005 for each of the properties; their relative distance from the subject; noting that the first comparison property adjoins the subject, the second and third comparisons face onto the Kilmacud Road Lower and the fourth and fifth are situated on The Hill, all in the Stillorgan area. His schedule of comparison properties also provides details of Zone A rents ranging from €800 per sq. metre on the adjoining retail premises to €1,250 per sq. metre for the retail units facing the Lower Kilmacud Road. He added that the two comparators chosen on The Hill, both retail units, were assessed on an overall basis at €600 per sq. metre.

Mr. Purcell explained that the Stillorgan retail area is generally characterised by a hierarchy of Zone A rental values determined for rating purposes commencing at the upper level of €1,475 per sq. metre within the Stillorgan Shopping Centre, reducing to €1,250 per sq. metre on the Kilmacud Road Lower, €800 per sq. metre at St. Laurence's Park and on the northern side of the old Dublin Road and reducing to €600 per sq. metre for those small units located on The Hill at Stillorgan. These details were graphically represented on a copy map attached to his précis.

Cross-examination of the Respondent

Responding to various questions asked by the Tribunal and the appellant, Mr. Purcell responded as follows:-

- 1) A "tone-of-the-list" has emerged for retail properties in the Stillorgan village area, as indicated on the aforementioned marked-up map attached to his précis of evidence.
- 2) He would not accept that the Commissioner of Valuation had erred in determining a fair and reasonable valuation on the subject.

- 3) The value of the subject was determined initially by the analysis of available rental data and latterly by comparison made with other like properties in the St. Laurence's Park neighbourhood centre.
- 4) He would not accept the argument made by the appellant that St. Laurence's Park is one of the weakest retail trading centres in the Stillorgan area.
- 5) He considered the proximity of St. Laurence's Park to the Stillorgan Shopping Centre as a major benefit to the retail trade being conducted there, sharing profile, exposure and the footfall generated the larger district retail centre across the road.
- 6) St. Laurence's Park is a long established destination type neighbourhood retail centre served with off-street parking, albeit limited, and enjoying benefits derived from exposure onto a busy suburban road, namely the Old Dublin Road.

Summation by the Appellant

Mr. O'Donoghue concluded that the Commissioner of Valuation in the instant case had failed to give adequate consideration to the influence the reduced Zone A rates on the opposite Stillorgan Centre should have on the subject's Zone A level. He re-stated his view that St. Laurence's Park is an older neighbourhood retail centre, which is and has for a number of years been suffering from a substantial reduction in retailing activity, initially due to the delayed redevelopment of the nearby Stillorgan Shopping Centre, and in more recent years, as a result of the development of the enormous Dundrum Town Centre retailing complex just a short distance away.

Summation by the Respondent

Mr. Purcell concluded by remarking that the Commissioner of Valuation had fully discharged his duties in a responsible, fair and equitable manner, relying firstly on a range of rental data initially, and subsequently by comparing the level assessed on the subject with other levels from the developed "tone-of-the-list" for retail units within the Stillorgan area. He added that the map illustrating Zone A rents in the Stillorgan village area demonstrated both the hierarchy of Zone A rental levels and a rationale for same correlating the location of each of the retail groupings with the Stillorgan Shopping Centre complex.

Findings & Conclusion

The Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at both hearings and finds as follows:

1. The Tribunal notes the respondent's reliance on both passing rents during 2005 on each of his comparison properties but further takes note that just one, namely Comparison Property No. 1, was offered to support the Zone A level of €800 per sq. metre sought by him for the subject.
2. Though the other comparisons cited by the respondent were useful to represent different thresholds of Zone A values either evolving or possibly established in the area of Stillorgan generally, this Tribunal is of the view that acceptance of such evidence without question or a full understanding of the underlying rental values which may have influenced the Zone A levels in the area, may possibly lead to an unsafe valuation determination.
3. The Tribunal notes that the parties did not dispute the level of influence by a large developer in the area, not only in terms of the adjoining district retail centre, but also at St. Laurence's Park.
4. The Tribunal is not fully satisfied that leases entered into by the developer in a number of units at St. Laurence's Park and other retail outlets beyond the Stillorgan Shopping Centre provide or reflect market rental values as the interest of a special user, such as a developer, needs to be considered and factored in to the analyses.
5. The Tribunal is also mindful of the significant reduction in Zone A retail rates in the Stillorgan Shopping Centre in the range of 26%, which on the face of the evidence appeared to have followed the decision which led to the publication of the value of the subject.

Determination

All of the foregoing considered, the Valuation Tribunal determines that the valuation of the subject property should be computed as follows:-

Zone A	Block 1,2,3	57.85 sq. metres	@	€700 per sq. metre	= €40,495
Zone B	Block 2,3	17.26 sq. metres	@	€350 per sq. metre	= € 6,041
Store	Block 4,5	25.86 sq. metres	@	€50 per sq. metre	= <u>€ 1,293</u>
				Total	= €47,829

NAV Say €47,800

And the Tribunal so determines.