

Appeal No. VA11/5/113

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

O'Briens Wine Off Licence

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2196325, Retail (Shops) at D5, The Courtyard, Beacon South Quarter, Sandyford, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Frank Walsh - QFA, Valuer

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH 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 €198,700 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 & inequitable." "The Commissioner has completely over estimated the relative value of this unit on a one year with another basis. This is a very moderate unit part of an unfinished development, with limited potential. Greater allowance must be made to reflect the disadvantages of this location."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 24th day of November, 2011. At the oral hearing the appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, of Eamonn Halpin & Company Limited. The respondent, the Commissioner of Valuation was represented by Mr. Neil Corkery, BSc (Hons) Property Valuation and Management.

Prior to the commencement of the oral hearing and in accordance with the rules of the Tribunal, Mr. Halpin and Mr. Corkery each forwarded to the Tribunal and exchanged a précis of the evidence they proposed to adduce at the oral hearing. From the evidence so tendered and additional evidence received orally at the hearing, the following facts material and relevant to the determination of the net annual value of the property concerned were agreed or are so found.

The Property Concerned

The property concerned is a retail unit located in the Courtyard of what is known as the Beacon South Quarter development which is accessed off Blackthorn Road, Sandyford. The Beacon South Quarter development is a large mixed use development which consists of a neighbourhood shopping precinct at two levels, including a Dunnes Stores outlet, a children's museum, a number of office buildings and several apartment blocks, most of which are in a non-completed stage.

The property concerned, which is located at the lower level of the shopping precinct is located opposite to the Dunnes Stores supermarket, is a retail outlet operating as an off-license.

Agreed accommodation measured on a net internal area basis is as follows:

Ground Floor Retail – 602.00 sq. metres

Mezzanine Store – 35.20 sq. metres

Tenure

The property was let on a shell basis subject to the terms and conditions of a 25 year lease from March, 2007 at a headline rent of €225,000 per annum. *Inter alia* the lease provides that

the rent be reviewed at the end of the fifth year. At the commencement of the lease, the tenant was granted a six month rent free period for fitting out purposes.

The Appellant's Evidence

Mr. Halpin, having taken the oath, adopted his précis which had previously been received by the Tribunal and the respondent as being his evidence-in-chief. In his evidence, Mr. Halpin put forward his opinion of net annual value in accordance with Section 48 as follows:

Shop Zone A – 90.28 sq. metres @ €500 per sq. metre =	€45,140
Shop Zone B – 90.28 sq. metres @ €250 per sq. metre =	€22,570
Shop Zone C – 90.28 sq. metres @ €125 per sq. metre =	€11,285
Retail Balance – 331.16 sq. metres @ €62.50 per sq. metre =	€20,697
Mezz. Walkway – 35.20 sq. metres @ €35 per sq. metre =	<u>€1,232</u>
	€100,924
NAV Say	€100,900

OR

Shop (Overall) – 602.00 sq. metres @ €170 per sq. metre =	€102,340
Mezz. Walkway – 35.20 sq. metres @ €35 per sq. metre =	<u>€1,232</u>
	€103,572
NAV Say	€103,500

In support of his opinion of net annual value, Mr. Halpin introduced eight comparisons, details of which are contained in Appendix 1 attached to this judgment.

In his evidence Mr. Halpin said that the Beacon South Quarter development had not lived up to expectations and most of the apartments and office buildings in the scheme, for which the shopping element was provided to cater for, had not been completed and was stalled at various stages in the construction process. This obviously is having an effect on retailers who had negotiated leases and agreed rents on the presumption that the scheme would be built out as planned, giving rise to a strong local customer base which had not been realised and probably would not be for some considerable time. As a consequence, a number of traders had vacated their premises and in so far as the subject property is concerned, the passing rent

was reduced to €10,000 per annum, i.e., less than 50% of the headline rent stated in the lease.

Mr. Halpin said that the valuation put forward by the Valuation Office was unsustainable in the light of the actual state of the development. It was clear that the Valuation Office had relied solely on the headline rents appearing in the leases without regard to what was actually happening on the ground. Furthermore, as can be seen from the comparisons introduced by him of other retail outlets throughout the rating authority area, the valuation of the property concerned was unrealistic. Mr. Halpin also contended that, the “add on” of €10,000 for the benefit of the off-licence was arbitrary and of doubtful validity under the Valuation Act 2001.

Under examination Mr. Halpin said he was aware that, there was in place an agreement with rating consultants through the Rating Forum, that premises with the benefit of an off-licence would be subject to an “add on” of €10,000 as part of the revaluation process, but added that he was not a party to this agreement nor did he think that it was appropriate.

When asked by Mr. Corkery, if the comparisons included in his précis (i.e. Mr. Corkery’s) supported the net annual value of the property concerned, Mr. Halpin said that, in a revaluation situation comparable evidence of this type was of little assistance, as they were all based on rents that were agreed on a false premise as evidenced by what had happened in regard to the property concerned, where actual rent being paid was less than 50% of the headline rent appearing on the lease.

The Respondent’s Evidence

Mr. Corkery, having taken the oath, adopted his written précis which had previously been received by the Tribunal and the appellant as being his evidence-in-chief. In his evidence Mr. Corkery put forward his opinion of net annual value in accordance with Section 48 as set out below:

Retail 602 sq. metres @ €310 per sq. metre =	€186,620
Store 35.20 sq. metres @ €60 per sq. metre =	€2,112
Add on for off-licence =	<u>€10,000</u>
Total	€198,732

Valuation Office Estimate of NAV (rounded to) €198,700

In support of his opinion of net annual value, Mr. Corkery introduced four comparisons, details of which are set out in Appendix 2 attached to this judgment.

Mr. Corkery said that the valuation of the property concerned, in the first instance, was determined following an analysis of available open market rent of comparable properties in the rating authority area as at 30th September, 2005. At Section 30 appeal stage, the valuation was determined by the Commissioner of Valuation, by reference to the values of comparable values stated in the valuation list.

Mr. Corkery said that the rent paid under the lease was €220,850 and not €225,000 as stated by Mr. Halpin. This rent, Mr. Corkery said, was on a shell basis before tenants fit out was completed and which included the mezzanine storage area.

Under cross-examination, Mr. Corkery agreed that retail rental levels peaked in 2007. In his opinion, rental levels in 2007 were at least 5% above those prevailing in 2005. When asked if the occupier of Unit C1, (Diamond Living – his Comparison No. 1), had vacated the unit due to trading difficulties, Mr. Corkery said he was aware that that had happened, but Diamond Living were trading at the time the valuation had been determined. Mr. Corkery said that, at the time the retail units were valued in 2010, he was aware that only approximately 400 of the 1,100 apartments in the scheme were completed and that construction work on the remaining units had ceased. He was, he said, aware that the overall development project could be described as a failed scheme. Mr. Corkery said he did not know the Pinots Restaurant, (his Comparison No. 4) was now closed.

Closing Submission

In his closing submission Mr. Halpin said, the Beacon South Quarter Development scheme was a failed entity and this was obvious in 2010, when the retail units within the scheme were valued as part of the revaluation exercise. The headline rents – on which the rating assessments were – based are, he said, not relevant, as they were agreed in expectation that there would be over 1,100 apartments in the Beacon Quarter scheme, which would provide custom for the retail element of the scheme. The fact that this had not occurred meant that the unit shops were unviable at the rents prevailing.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and finds as follows:

1. The development of the Beacon Quarter scheme as planned has stalled and due to economic uncertainty it is unlikely that it will be built out for some considerable time.
2. The shopping element of the scheme, which is at two levels, contains a number of vacant units. In a general sense, the retail element of this development is in the nature of a neighbourhood retail precinct.
3. The Tribunal accepts Mr. Halpin's evidence that the rent of the subject property (and possibly others) which was entered into in 2007, was predicated on the basis that the overall development scheme which would include 1,100 apartments and a number of office buildings, would be completed in the near future and would create a demand for retail and food outlets providing a range of convenience goods and services to cater for a strong locally based customer base. That this had not happened, has given rise to trading difficulties to such an extent that several of the original tenants had either moved out or had obtained substantial reductions in rent.
4. Mr. Corkery, under cross-examination agreed that when the property concerned and other units within the shopping centre area were valued in 2010, it was clear that the Beacon Quarter development scheme was in severe difficulty and that construction work had effectively ceased.
5. The rule of *rebus sic stantibus* requires that an estimate of the net annual value of a property prepared under Section 48 must have regard to all intrinsic and extrinsic factors which would have a bearing on rental value. In this regard, it is common case that the Beacon Quarter development in 2010, when the assessment was first made and indeed at the subsequent appeal stage, was in difficulties and that it would be some considerable time before it would be completed as planned. In such circumstances, it is hard to understand why the valuation of the property concerned was determined at the level now stated in the Valuation List.

6. The Tribunal accepts Mr. Halpin's contention that the rents agreed in 2007 were predicated on the completion of the Beacon Quarter as planned within the foreseeable future and which, when completed, would give rise to a strong local customer base sufficient to support the retail element as provided for within the scheme. The fact that the developers (or perhaps more probably NAMA) has significantly reduced the rents is a clear recognition of the fact that the scheme has failed to meet the retailers' expectations and is testament to the fact that the lease rents do not form a reliable basis upon which to determine the net annual value of the property concerned as part of the revaluation programme.
7. The Tribunal accepts Mr. Corkery's evidence that there is in place an agreement which provides that Dunnes, which have the benefit of an off-licence, will be subject to an uplift of €10,000 to their net annual value.

Determination

Having regard to the foregoing, the Tribunal determines the net annual value of the property concerned, in accordance with Section 48 of the Valuation Act, 2001, having regard to the fact that the relevant valuation date under Section 20 of the Act is 30th September, 2005 as follows:

Retail:	602 sq. metres @ €200 per sq. metre =	€120,400
Mezzanine store:	35.2 sq. metres @ €50 per sq. metre =	€1,760
Add on for off-licence		<u>€10,000</u>
		€132,160
*Net annual value, Say		€132,000

And the Tribunal so determines.

* The above valuation equates to a Zone A rate of approximately €603 per sq. metre.

Note:

In the light of the above determination, the Tribunal suggests that the Commissioner of Valuation reviews the assessments of other retail units in the Court yard and exercises his discretionary powers under Section 40 as considered appropriate.