

Appeal No. VA11/5/117

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

Smokey Joe's

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 861463, Restaurant at 9 Main Street (rear of), Dundrum, County Dublin.

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

Fiona Gallagher - BL

Member

Patrick Riney - FSCSI, FRICS, ACI Arb

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF JANUARY, 2012

By Notice of Appeal dated the 29th day of July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €41,000 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:
"The valuation is excessive, inequitable."

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 24th of November 2011. At the hearing, the appellant was represented by Mr. Terry Devlin, BSc, MSCSI, MRICS, of O'Donnell Property Consultants, with 10 years' experience as a rating consultant. The respondent was represented by Mr. Dean Robinson, BSc (Hons) Surveying, a valuer in the Valuation Office. The Tribunal was furnished with submissions in writing on behalf of both parties. These submissions were detailed and to the point. Both parties adopted their submissions as their evidence-in-chief at the oral hearing.

Location

The subject property, Smokey Joe's, is located to the rear of 9 Main Street, Dundrum, as indicated on the location maps and layout plans in Appendices 1 and 2 of the appellant's and respondent's précis. It is clear that the subject property is located up a laneway approximately 19 metres off the lower main street in Dundrum.

The Property Concerned

The property comprises a ground floor café/restaurant, with an ancillary kitchen and staff areas. Access to the property is via a laneway off the main street, between the EBS and AIB premises, and beside Cedar's Beauty Salon. The property has been modified significantly over the years to arrive at its current layout. It was originally made up of three separate units comprising offices, warehouse and a showroom, whereas the subject property is now made up of two combined units. As a result, the property is somewhat irregular in shape.

Basis of Valuation

The property was the subject of a revaluation as one of all rateable properties in the Dún Laoghaire Rathdown County Council area. The valuation order for Dún Laoghaire Rathdown County Council specifies the 30th of September 2005 as the valuation date. The valuation of this property, on appeal to the Commissioner of Valuation, was determined in accordance with section 48(3) of the Valuation Act, 2001, and was determined by reference to the values of comparable properties stated in the valuation list in which the property appears.

Valuation History

1. A valuation certificate (proposed) was issued on the 15th of June 2010. The property had a valuation of €45,500.
2. Representations were lodged by the occupier of the subject property on the 8th of July 2010 and the valuation was reduced to €41,000.

3. An appeal was lodged by the appellant to the Commissioner of Valuation on the 8th of February 2011 by Mr. Terry Devlin of O'Donnell Property Consultants. The valuation issued unchanged at €41,000 after this first appeal.
4. An appeal was lodged with the Valuation Tribunal on the 29th of July 2011.

Tenure

It is understood the subject property is held under a 35 year lease, with provision for five-yearly rent reviews, from August 1989 and that it was last reviewed in August 2004 to a rent of €27,500 per annum exclusive. It is also understood the said head lease includes both the Smokey Joe's unit and the adjoining Cedar's unit (property no. 341967, rateable valuation €12,070).

Appellant's Evidence

Mr. Devlin took the oath, adopted his précis as his evidence-in-chief and confirmed the agreed area of the subject property is 113.80 sq. metres.

He referred to his précis in some detail, pointing out that the subject property did not benefit from any profile as it is situated up a laneway off the main street in Dundrum. He argued the property was not easily identified from the main street and made the point that without the banner sign at the entrance to the laneway, it would not, in his opinion, be noticeable at all.

In his opinion, there were a number of factors which had been taken into consideration when calculating a net annual value (NAV)/ for the subject property.

Location

Mr. Devlin stated that the Dundrum village area had changed beyond recognition over the last number of years as a direct result of the opening of the Dundrum Town Centre. The main retail emphasis in the village had moved towards the new centre with obvious negative effects on the original retail areas. In his opinion, due to its poor location, up a laneway to the rear of the main street, the subject property could be described as comparable to the Zone C levels applicable on the main street.

Comparable Properties

Other café/restaurants in the general area of the subject included the Roly's, L'Officina, Mao and Milano restaurants located on the town square at Dundrum Town Centre (comparisons 1, 2, 3 and 4).

These properties (details of which are attached at Appendix 1 to this judgment) were valued on an overall basis at between €420 and €500 per sq. metre. In his opinion, these were the prime locations in Dundrum.

The ground floor of Roly's restaurant, his comparison 1, was valued at €420 per sq. metre. This, Mr Devlin said, was a prime location for a restaurant/café in Dundrum, yet the level of €360 per sq. metre applied to the subject property was only 14% less than this prime level.

He pointed out that the foregoing comparables, along with the Dundrum Credit Union comparison, number 6 in his précis, and the Hyperlynx, (his comparison 5) enjoyed profile, ease of access and superior internal layout to the subject property.

Mr Devlin accepted the agreed Zone A level for retail property on the main street was €700 per sq. metre. Allowing for the fact that the subject property was situated some 19 metres back from the main street, it was his opinion that an adequate allowance should be made by the respondent. He had proposed a level of €200 per sq. metre for the subject property to make allowance for the fact that there is separate access to the property and pointed out that in his opinion the level of €360 per sq. metre applied by the respondent was excessive.

Internal Layout

In view of the fact that the property had been substantially altered over the years from the original layout, Mr Devlin pointed out the occupiers had to work around the old buildings and adapt them as best they could. The result was an irregular shaped building, with a narrow entrance opening out slightly to give a serving and seating area. There was also a seating area to the front of the property but this was somewhat removed from the serving area and also the kitchen area. The toilets were situated in the centre of the building taking up space that could be put in to better use. In his opinion, the impact of the poor internal layout of the subject unit had not being sufficiently allowed for in the valuation applied by the respondent.

Mr. Devlin referred in some detail to his comparisons 1 to 7, consisting of properties on the main street of Dundrum and in Dundrum Town Centre, and which had been valued at rates from €420 to €700 per sq. metre. These properties were in far superior locations to the subject property and he argued that a substantial allowance should be made to take account of the negative factors relating to the subject property. He pointed to his table of comparisons (also attached at Appendix 1 to this judgment).

In concluding his evidence, Mr. Devlin stated that his opinion of valuation was as follows:

Restaurant/kitchen 113.80 sq. metres @ €200 per sq. metres = €22,760

NAV Say €22,700

Cross-Examination

In answering questions from both the Tribunal and the respondent, Mr. Devlin pointed out that while four of his comparisons were units in Dundrum Town Centre, he had included three properties which were on the main street of Dundrum. He also confirmed that his preferred comparison was the Sherry Fitzgerald premises located on the main street of Dundrum which had been valued using a rate of €700 per sq. metre for Zone A, €350 per sq. metre for Zone B and a rate of €175 per sq. metre for Zone C. He accepted that nowhere in the Valuation Act did it allow the Valuation Office to calculate a rent and deduct 10% for poor access. However, he was of the opinion that a reduction of 14%, which had been allowed by the Valuation Office from the prime level of €420 per sq. metre in the Dundrum Town Centre, was not adequate. He was also of the opinion there was no other similar property to the subject, except for the property immediately beside it.

Respondent's Evidence

Mr. Dean Robinson took the oath and adopted his précis as his evidence-in-chief.

He confirmed that he had valued Zone A levels on Main Street in Dundrum at €700 per sq. metre and that the subject property had been valued in accordance with section 48(3) of the Valuation Act, based on comparable properties in the same area.

He referred in detail to his comparisons as follows.

Comparison 1

Property at 5 Pembroke Cottages, Co. Dublin, located on Main Street in Dundrum. He also pointed out that this property had a poor layout and configuration, consisted of retail use at ground floor and office and storage space on the first floor. This property was held on a leasehold basis, with a rent of €28,000 per annum commencing on the 1st of February 2005 on a 4 year 9 month lease. This equated to an overall level of €458 per sq. metre, with stores at €150 per sq. metre and a first floor office at €220 per sq. metre.

Comparison 2

This is at 9 Main Street, Dundrum, Co. Dublin, and is a neighbouring unit to the subject property. He pointed out that the main access to the property is from the side of the building and that it comprises retail and office space. The property was held on a leasehold basis for €44,500 per annum exclusive commencing on the 1st of May 2004 under a 35 year FRI lease with provision for five-yearly rent reviews. This equated to a Zone A rate of €677 per sq. metre or €579 per sq. metre overall, with the first floor office at €220 per sq. metre.

Comparison 3

The Courtyard, Dalkey, Co. Dublin. This is a standard retail unit located in a courtyard just off the main street in Dalkey. He pointed out that similar to Main Street in Dundrum, Main Street, Dalkey, had been valued at a Zone A rate of €700 per sq. metre. The property comprises retail and storage space. The property was held under a lease and is valued on the list at €398 per sq. metre overall. The unit had a 10 year lease with five-yearly rent reviews, commencing on the 1st of April 2006 for a rent of €34,500 per annum exclusive. This equated to an overall rate per sq. metre of €611.38.

Comparison 4

9 Main Street (rear of), Dundrum, Co. Dublin. This is the adjoining retail unit and is very similar to the subject property in terms of quality and build. The property was held on a leasehold basis for a rental of €12,070 per annum exclusive as stated by the appellant.

Mr. Robinson was of the opinion that a fair valuation of the subject property was as follows:

Retail area	113.80 sq. metres @ €400 per sq. metre	=	€45,520
	Less 10% due to location and condition	=	<u>€ 4,500</u>
	Valuation Office estimate of NAV (rounded to)		€41,000

Cross-Examination

In answering questions from both the Tribunal and the appellant, Mr. Robinson confirmed that his most relevant comparisons would be numbers 3 and 4, i.e. The Courtyard, Dalkey, Co. Dublin and 9 Main Street (rear of), Dundrum, Co. Dublin, the adjoining unit.

While he accepted the Cedar's unit was visible from the main street, he was of the opinion that the subject property could have some profile. He was also of the opinion that, if the subject property had been valued as an extension to 9 Main Street, he would probably have valued it at close to €200 per sq. metre.

Mr. Robinson was asked whether he felt that the passing rent on the subject property was unreliable and he replied that this rent was set 22 years ago and that significant improvements had been carried out by the tenant since this time. He also contended that over a 20 year period a rapport would have built up between the tenant and the landlord and accordingly there could be some discount in the rent. In his opinion, the property was far superior now than when it was first let.

Summing Up

Mr. Devlin, on behalf of the appellant, summed up his case as follows:

1. The property was located *circa* 19 metres off the main street with no profile.
2. The internal layout was not ideal for restaurant use.
3. He pointed out that it had been accepted that if the property had been valued as an extension to 9 Main Street, it would have been valued at close to €200 per sq. metre.
4. In his opinion, his comparables justified the value applied by him in his valuation assessment.

Mr. Robinson, on behalf of the respondent, summed up his case as follows:

1. He was of the opinion that his submission had justified the levels applied by him in his valuation.
2. He pointed out that four of the comparisons used by the appellant were located in Dundrum Town Centre, which was completely different to the subject property.
3. He stated that no comparison issued by the appellant justifies the levels applied by him.

4. He was of the opinion that his comparisons 3 and 4, in particular, i.e. The Courtyard, Dalkey, Co. Dublin, and the unit adjoining the subject, Cedar's Beauty Salon, adequately justified the levels applied by him in his valuation.

Findings

The Tribunal has carefully considered all of the evidence and arguments submitted and adduced by the parties, and finds as follows.

1. The statutory basis of valuation is set down in the Valuation Act, 2001, wherein at section 48(3) the net annual value of a property 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, 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.*"
2. The fact that the subject property has no frontage to the main street of Dundrum, and is *circa* 19 metres set back from it, justifies a significant reduction in the levels applied to the main street of Dundrum.
3. The Tribunal has noted that it was accepted by the respondent that if the subject property had been valued as an extension to a property with frontage to the main street, it would have been valued at a level close to €200 per sq. metre.
4. The Tribunal accepts the points made by the appellant in regard to location, comparable properties and internal layout, in justifying the level of €200 per sq. metre applied in his valuation.

Determination

Having regard to the foregoing, the Tribunal considers the following to be a fair and reasonable valuation of the subject property:

Restaurant area 113.80 sq. metres @ €200 per sq. metre = NAV €22,760

NAV say 22,700

And the Tribunal so determines.