

Appeal No. VA11/5/122

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

Mr. Naz Raven

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 440119, Retail (Shops) at 10 The Hill, Stillorgan, County Dublin.

B E F O R E

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

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Aidan McNulty - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 5th day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €55,000 on the above described relevant property.

The grounds of appeal are set out in the Notice of Appeal and accompanying schedule, copies of which are at Appendix 1 attached to this judgment.

The appeal proceeded by way of an oral hearing in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 25th day of November 2011. Mr. John Stewart, Chartered Surveyor, FSCSI FRCSI MCI Arb of John Stewart & Associates, Chartered Valuation Surveyors, represented the appellant and Mr Paul Ogbebor B.Eng. (Hons) Civil Engineering, a district valuer at the Valuation Office, represented the respondent. At the hearing both parties, having taken the oath, adopted their respective précis as their evidence-in-chief.

Valuation History

A valuation certificate (proposed) was issued on 15th June 2010 with a rateable valuation (RV) of €58,600. Representations were lodged with the Commissioner of Valuation on the 6th July 2010 and the valuation certificate issued unchanged. An appeal was lodged with the Commissioner of Valuation on the 12th January 2011 and the valuation was reduced to €55,000. The appellant appealed the decision of the Commissioner of Valuation to the Valuation Tribunal by Notice of Appeal received on the 5th August 2011.

The Property

The subject property comprises a two-storey over basement mid-terrace former cottage built over 150 years ago and now converted to commercial use. The ground floor is sectioned into three distinct areas. This consists of a barber shop to the front, the middle part of the ground floor which is narrower with a low ceiling height with no natural light coupled with a partition wall to the third section at the rear. The basement area has been excluded by the Valuation Office as it is subject to regular flooding. The first floor is used as a carpet sales display area and for storage. The floor measurements are agreed between the parties.

Accommodation

The agreed accommodation of the subject property, measured on a net internal area (NIA) basis is set out below:

Ground Floor	62.20 sq. metres
First Floor	63.85 sq. metres
Total Net Internal Area	126.05 sq. metres

Location

The relevant property, known as 10 The Hill, Stillorgan, is located at the bottom and south end of The Hill off the main street in Stillorgan at the junction with Old Dublin Road. The area is an established residential and commercial neighbourhood situated on the western side of the Stillorgan dual carriageway (N11), with access from the M50. There is no parking at the subject property. Car parking for the local shopping centre and the units along Lower Kilmacud Road is available at the shopping centre, in front of the Lower Kilmacud Road units, in the car park attaching to the Reid's complex, and secondary car parking is also available in the Stillorgan Shopping Centre overflow car park.

Services

The main services consist of water, drainage and electricity with storage heating.

Tenure

There was a lease on the property for a term of 25 years with five-year reviews from August 1999 at a commencement rent of €31,743 per annum, reviewed to €45,000 per annum in 2004. The subject property is now owner-occupied.

Appellant's Case

Mr. Stewart took the oath, adopted his précis as his evidence-in-chief and confirmed that both he and Mr. Ogbebor of the Valuation Office had met and agreed the floor areas. Mr. Stewart then provided the Tribunal with a review of his submission. The appellant's agent made the following points:-

He began by pointing out to the Tribunal that the Valuation Office had delisted and excluded the basement area because it was subject to flooding and further stressed that a basement that is subject to regular flooding with all its consequences would in his opinion have a very serious effect on the value of the remainder of the building. The Valuation Office had failed to reflect this and any prospective tenant looking at the building in September 2005, if told of this flooding, may have refused to take such a building or looked for a substantial discount. The toilet for the entire building is located in the basement as shown in the photographs in Mr. Stewart's précis. They show that when flooded the water mark can measure to the level of the top of the toilet bowl. This effectively means that there is no toilet accommodation on the ground floor or first floor of the subject property.

It is noted for clarification purposes that the toilet and the stairs going down to the toilet basement are not valued for these rating purposes.

The ground floor as viewed comprises three sections. The front section, accessed over steps through a raised entrance floor, links directly into the second section through a pinch point where floor to ceiling height is only 1.879 metres (6ft 1 in) taken under the RSJ and compromises the visibility of section two. This renders the area below the beam useless from a commercial point of view and in the appellant's opinion would affect public perception and use of the space to the rear.

The configuration of the front section of the ground floor, used as a barber shop, severely limits its use. It accommodates the stairs to the first floor which is located off the raised entrance platform. The ground floor section of the stairs is fully enclosed and incorporates an L shaped riser to the stairs. This is the only access to the upper floor. This enclosure effectively prohibits use of the raised platform area as it fronts part of the fire escape route. This exclusion restricts the front of the ground floor to a small area adjacent to the only display window on this floor.

The second section to the rear is narrower and as noted above has a restricted aspect. It is limited to the front by a low ceiling height and narrow width of the opening to the front section and to the rear by a partition wall with no windows and no natural light.

The third section of the ground floor located to the rear; its stud partition wall totally screens the rear area from the remainder of the floor. The area is used by the appellant as a tea room and private prayer room. This area consists of a rear fire escape and basement stairs. Mr. Stewart stressed that this section could not be regarded as part of the retail section, showroom office.

The first floor of the subject property which is also laid out in three sections, is used as a carpet sales and display area, and is accessed by the stairs located at the front of the ground floor. Mr. Stewart maintains that the stairs is too narrow for normal commercial use, in that it falls below the 2006 Building Regulations minimum requirements of 800 mm. (at 706 mm.) and so cannot be rentalised as office space. Mr. Stewart also adverted to the possible breach of fire safety regulations with respect to the absence of a fire corridor. The floor of the office

does not have direct access to the street. The floor contains the original chimney breast of the cottage and is set at a level two steps below the section behind. The floor has limited natural light with two small windows to the front giving approximately 0.87 sq. metre and 0.92 sq. metre of natural lighting respectively, with the rear section having a single window opening.

Mr. Stewart stressed that the Valuation Office had not compared like with like, that the property must be viewed as individual, and questioned why the Valuation Office had not reduced the value of the subject property. This was, in his view, beyond belief.

Mr. Stewart assessed the NAV basis at 30th September 2005 as set out below:-

Ground floor	Front area	19.22 sq. metres @ €400 per sq. metre = €7,688.00
	Middle area	20.87 sq. metres @ €350 per sq. metre = €7,304.50
	Rear area	22.10 sq. metres @ €300 per sq. metre = €6,630.00
First floor	Front area	20.79 sq. metres @ €125 per sq. metre = €2,599.75
	Middle area	21.02 sq. metres @ €125 per sq. metre = €2,627.50
	Rear area	22.03 sq. metres @ €125 per sq. metre = <u>€2,753.75</u>
		€29,603.50
	Say	= €29,600
	Less 50% to allow for flooding/sewerage	= <u>€14,800</u>
	Total	= €14,800

Appellant's Comparison Properties

Details of Mr. Stewart's two comparisons are at Appendix 2 hereto attached, namely Casey Properties at 1 The Hill, Stillorgan, and Duncan Aitken, at 4, Old Stillorgan Road, (near Baumanns). 1 The Hill is valued as an office at €400 per sq. metre and 4 Old Stillorgan Road, as a ground floor retail unit at €550 per sq. metre.

Cross-Examination of Appellant

Mr. Stewart, in reply to Mr. Ogbemor, queried the retail classification of the ground floor and stated that in respect of the three sections it was self-evident that the further one goes back the less valuable they are. He said he applied lower levels going back to the pinch point and further back to the partition wall. Mr. Stewart stated the information in relation to his first comparison was given to him by occupiers and auctioneers and by the landlord in relation to

his second comparison. He confirmed that he had not personally measured either and stated that any objections to his comparisons at this stage of the hearing in his mind would be too late, adding that any objection should have been raised weeks ago when he first submitted his documentation. He reiterated that he did not regard the use of the ground floor as retail in the strictest sense, that it is something less than, say, a comparable retail unit, with its display window and walk-in off the street which the subject does not facilitate. The subject is a showroom rather than a retail unit. He was not aware of planning details in relation to a “change of use” and did not see the relevance of evidence produced in 2011 to a September 2005 valuation.

Respondent’s Case

Mr. Ogbebor, having taken the oath, adopted his précis as being his evidence-in-chief. He assessed the valuation of the subject property with agreed areas as follows:

Ground floor	Shop	62.2 sq. metres @ €600 per sq. metre =	€37,320
First floor	Office	63.85 sq. metres @ €230 per sq. metre =	<u>€14,685.50</u>
		Total	= €2,005.50
		Estimate of NAV (rounded to)	= €2,000

Mr. Ogbebor stated that the valuation adopted by the Commissioner of Valuation was in line with his comparisons, that the subject property was in a parade of buildings converted to retail and office use in a cluster of similar properties and that full regard had been given to the age and location of the subject property. The level per sq. metre applied reflects the tone of the list as, he maintained, all his comparisons demonstrate. All factors had been considered to ensure that this property is valued fairly according to its size, location and condition of premises. He stated that his comparisons are like-for-like and that the valuation levels were initially derived from the analysis of available open market rental information of comparable properties and applied to the subject property and now by reference to the values of comparable properties stated in the valuation list in which the property appears.

Respondent’s Comparison Properties

Mr. Ogbebor’s four comparisons, details of which are set out in Appendix 3 attached hereto, are: 3 The Hill, 11 The Hill, 6 The Hill and 8 The Hill, all at Stillorgan with €600 per sq.

metre applied on the ground floor shop areas, and €230 per sq. metre on first floor office areas, where applicable. Mr. Ogbebor provided rental details on three of his comparisons.

Cross-Examination of Respondent

Mr. Ogbebor indicated that the planning information for public inspection at Dún Laoghaire Rathdown planning office dates back only five years and, consequently, he was not in a position to reply to queries raised with respect to “change-of-use” permission. His description of the subject property is supported with pictures in his précis and his illustrated block plan. He stated that his comparison properties were at the top of The Hill, were occupied by arms length anchor tenants and were chosen to illustrate the commercial potential and footfall of The Hill. All his comparisons are from near properties and not selected from shopping centres or anchor tenants in development schemes. He did not believe that the pinch point or the partition wall or the low beam with overhead sign “mind your head” detract from the value of the subject property. He believed there was sufficient head height and that the earlier noted RSJ at the pinch point between the ground floor front and head sections does not restrict the use of the premises. He did not consider the stairs a disadvantage. He did not accept the argument that, as a large retail window does not feature, the premises may not be considered a retail unit. He was of the opinion that the stairs to the first floor had sufficient access. When asked whether a lease with related parties should be disregarded, he said that he had applied Section 48 of the Valuation Act, 2001, and the tone of the list, and that these were his bases of valuation. He would not compare any section of the subject property or his comparison No. 3 with a kiosk. He believed his assessment was fair and equitable and that one should not have varied values for similar type properties, including take-away units, in a retail parade.

Findings

The Tribunal having carefully considered all the evidence and arguments adduced by the parties, makes the following findings:

1. The Tribunal was not satisfied that there was any material difference in the planning use between the ground floor of the subject property and that of the appellant’s comparison 1, which was assessed at first appeal at a ground floor level of €400 per sq. metre.

2. The Tribunal notes the acknowledgement of the respondent that a hypothetical tenant would seek a discount on a rental of premises prone to flooding when compared to a property that was not at such risk.
3. The Tribunal also notes that the basement was deemed to be not capable of beneficial occupation by the respondent, such area including the WC for the premises, and this matter would be considered in any rental offering by a hypothetical tenant.
4. The Tribunal accepts the contention of the appellant that the physical attributes of the subject property, namely head height internally limiting the provision of daylight, the subdivision of the ground floor, the platform step at entrance, the unusually narrow stairs to the first floor and the two steps on the first floor, all taken together, contribute to a compromise in use and reduction in value of the property taken as a whole.

Determination

The foregoing considered, the Tribunal determines that the levels per sq. metre assessed on the subject property should be adjusted and the valuation computed as follows:-

Ground Floor	62.19 sq. metres	@	€400 per sq. metre =	€24,876
First Floor	63.85 sq. metre	@	€200 per sq. metre =	€12,770
Total NAV				€37,646

Say €37,600

And the Tribunal so determines.