

Appeal No. VA11/5/135

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

Lisa Murphy t/a New Lisa Life

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 521049, Retail (Shops) at Lot No. 30A Sandycove Road, Sandycove, County Dublin.

B E F O R E

Maurice Ahern - Valuer, IPAV

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF FEBRUARY, 2012

By Notice of Appeal dated the 10th day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €41,700 on the above described relevant property.

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

"The valuation is incorrect, excessive & bad in law." "The location of the property, its condition, the restricted ceiling height and no natural light in the basement. The passing rent on the property."

The appeal proceeded by way of an oral hearing at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 23rd day of December, 2011, 9th January, 2012 and the 16th January, 2012. At the hearing the appellant was represented by Mr. Francis McGaugh BL, instructed by Keans Solicitors. Mr. Eoin P Conway, BSc (Hons), Dip Prop Econ, MRICS, MSCS, ACI Arb. of Weir & Conway gave expert evidence on behalf of the appellant. The respondent was represented by Ms. Rosemary Healy Rae BL, instructed by the Chief State Solicitor. Mr. John Purcell, BSc, MRICS, MSCSI, a Valuer in the Valuation Office, gave expert evidence on behalf of the respondent. On the final day of the hearing only the expert witnesses were in attendance.

On the opening day of the hearing the appellant sought discovery of Valuation Office records for a property occupied by Buckley Galleries, at 27/28 Sandycove Road, Sandycove, County Dublin, identified in the valuation list as Property No 521048. This property is adjacent to the subject property. The Tribunal heard submissions from both parties on the discovery issue on 9th January 2012 and following a brief adjournment the Tribunal directed the respondent to allow the appellant's representative, Mr. Conway to have sight of the records relating to the physical survey of the property undertaken on behalf of the Commissioner of Valuation, in advance of resumption of the hearing on the 16th January 2012. Mr. Conway indicated his acceptance that the respondent would redact the records the subject of discovery in order that any security sensitive information would be omitted.

The Issue

Discovery and Quantum

Description

The property is located in a two-storey over basement period property, formerly residential and now converted to retail use. It is situated on the main street in Sandycove village at the junction with Elton Park. The area is predominantly residential in nature. The subject property comprises the ground floor and basement portions of the building. The construction appears to be standard concrete block and brick, with a tiled apex roof. The floor between the ground and basement portions appears to be of concrete construction.

Location

The property is located in the well-established, urban village of Sandycove on the Main Street. Sandycove is a section of the main road (**R119**) that connects Dun Laoghaire to Dalkey.

Accommodation

The accommodation, measured on NIA basis, was agreed by the parties as follows and was:

Ground Floor Zone A	36.40 sq. metres
Ground Floor Zone B	32.20 sq. metres
Ground Floor Zone C	0.85 sq. metres
Other (Basement)	<u>34.45</u> sq. metres
Total	103.9 sq. metres

Tenure

The subject property is held on a 15 year lease with five year reviews, from the 1st November, 2008. The passing rent on that date was €30,000.

Appellant's Evidence

On 16th January 2012, Mr. Eoin Conway took the oath and adopted his précis as his evidence in chief. He maintained that access to the property is via a timber framed set of doors with a secondary means of escape via a fire door to the rear of the property. The property is laid out as a retail unit to the front with tiled floors and plaster painted and wallpapered walls and ceilings. Treatment rooms, kitchen and WC are located to the rear. Access to the basement is via a single timber stairway. The basement has a restricted height of 1.96 metres and has no natural light. The basement was originally intended to be used as ancillary storage however it is fitted out as beauty salon treatment rooms. However, due to dampness, poor ventilation and no natural light and constant odours it is used only occasionally as a treatment room.

Mr. Conway submitted a schedule of rent paid in respect of the subject property by the previous occupier and by the appellant from October 1998 to October 2011. Mr. Conway provided no rental evidence in respect of the 6 comparison properties he put forward.

Mr Conway stated that the subject is a standalone commercial property in a residential location approximately 1km from Sandycove Village. He adverted to the subject property being in a poor state, noting that it had previously been vacant for 12 to 18 months.

In arriving at his opinion of NAV, Mr Conway said that he considered a valuation of the property on an overall basis, at €350 per sq. metre, and, alternatively, on a zoned basis. However, he stated that since the Commissioner of Valuation mainly values retail property on a zoned basis, he was relying on the zoned basis for his valuation. Mr. Conway gave his opinion that the true rental value of the subject property as at the valuation date of 30th September, 2005 was €23,262, calculated as follows:

Zone A	36.4 sq. metres @ €400 per sq. metres	= €14,560
Zone B	37.7 sq. metres @ €200 per sq. metres	= € 6,440
Zone C	0.85 sq. metres @ €100 per sq. metres	= € 85
Other/Basement	34.45 sq. metres @ €54.50 per sq. metres	= <u>€1,877</u>
Total		= €23,262

Mr. Conway put forward the following comparisons:

Comparison 1

Matt Britton Carpets Limited, 68 Glashule Road, Dunlaoghaire, County Dublin.

NAV €19,400 Zone A Level = €650 per sq. metre

This property is located on Glashule Road close to the junction with Adelaide Road in the centre of Glashule. It is a standard retail unit with good frontage and is in good condition.

Comparison 2

Centra Forum Foods Limited, The Forum 29/31 Glashule Road, Glashule, County Dublin.

NAV €90,000 Zone A Level = €650 per sq. metre

This property is located on Glashule Road in the centre of Glashule. It is a standard retail unit on Main Street and is in good condition.

Comparison 3

Michael Buckley t/a Buckley Galleries, 27/28 Sandycove Road, Sandycove Road, County Dublin.

NAV €39,500 Zone A Level = €350 per sq. metre

Comparison 4

Sandycove Fine Arts, 55 Glashule Road, Sandycove, County Dublin.

NAV €27,300

Comparison 5

Mitchell Son, 54 Glashule Road, Sandycove, County Dublin.

NAV €47,000

Comparison 6

Clarkes, 94 Carysfort Avenue, Blackrock, County Dublin.

NAV €13,690 Shop valued at €200 per sq. metre

Mr. Conway stated that his comparison no. 3, Buckley Galleries, is in close proximity to the subject and that both were categorised by the Valuation Office as retail properties. Mr. Conway also stated that, in his opinion, properties in the village of Sandycove are worth more than a property at the subject location. The hypothetical tenant, he said, would not pay more for the subject than for a property in Sandycove Village.

In the course of cross-examination, Mr. Purcell put it to Mr. Conway that the main commercial centre in the vicinity of the subject property is Glashule Village, which, he stated, is within 100m of the subject property and has around 40 retail premises. Mr. Conway maintained, however, that Sandycove Village was more relevant in terms of valuing the subject property. Mr. Purcell also suggested that the lease agreement in respect of the subject property might not be at arms length. However, Mr. Conway rejected this proposition.

Respondent's Evidence

Mr John Purcell took the oath and adopted his précis as his evidence-in-chief. Mr. Purcell contended for the following valuation:

Block A Level 0 Zone A	36.4 sq. metres @ €650 per sq. metre	= €23,660.00
Block B Level 0 Zone B	32.2 sq. metres @ €325 per sq. metre	= €10,465.00
Block C Level 0 Zone C	0.85 sq. metres @ €162.50 per sq. metre	= € 138.00
Block D Level -1	34.45 sq. metres @ €150 per sq. metres	= € 5,168.00
Total		€9,431.00
NAV Say	€39,400	

In support of his opinion of NAV, Mr Purcell put forward 5 comparisons:

Comparison 1

Martin-Hudson and Gibson Ltd, 51 Sandycove Road, Sandycove, County Dublin.

Level 0	Zone A	24.4 sq. metres @ €650 per sq. metre	= €15,860
Level 0	Zone B	7.6 sq. metres @ €325 per sq. metre	= € 2,470
Level 1	Showroom	27.0 sq. metres @ €320 per sq. metre	= € 8,640
Total			= €26,970
Valuation Office estimate of NAV: (rounded to)		€26,900	

The property is located within 75m of the subject property. It is held on a 25 year lease from 17th April 1995, passing rent of €28,100 agreed from 17th April, 2005. This equates to a Zone A Rent of €90 per sq. metre.

Comparison 2

Boylesports Bookmakers Ltd, 32C Glashule Road, Sandycove County Dublin

Level 0	Zone A	29 sq. metres @ €650 per sq. metre	= €18,850
Level 0	Zone B	10 sq. metres @ €325 per sq. metre	= € 3,250
Level 0	Store	13 sq. metres @ €200 per sq. metre	= € 2,600
Total			= €24,700
Valuation Office estimate of NAV: (rounded to)		€24,700	

The property is located within circa 300 metres of the subject property. It is held on a 20 year lease from 1st October, 1999, passing rent of €24,750 agreed from 1st October, 2004. This equates to a Zone A Rent of €650 per sq. metre.

Comparison 3

Anne Moore t/a Jeeve Dry Cleaners, 34 Glashule Road, Sandycove County Dublin.

Level 0	Zone A	23.1 sq. metres @ €650 per sq. metre	= €15,015
Level 0	Zone B	22 sq. metres @ €325 per sq. metre	= € 7,150
Level 0	Store	4.4 sq. metres @ €200 per sq. metre	= € 880
Total			= €23,045

Valuation Office estimate of NAV: (rounded to) €23,000

The property is located within circa 300 metres of the subject property. It is held on a 9-year lease from 20th June, 2006 on a passing rent of €30,000. This equates to a Zone A Rent of €54 per sq. metre.

Comparison 4

Mitchells and Son Wines 54 Glashule Road, Sandycove County Dublin

Level 0	Zone A	32.9 sq. metres @ €650 per sq. metre	= €21,385
Level 0	Zone B	33.6 sq. metres @ €325 per sq. metre	= €10,920
Level 0	Remainder	23.9 sq. metres @ €200 per sq. metre	= €4,780
Level 1	Offices	49.8 sq. metres @ €200 per sq. metre	= € 9,960
Total			= €47,045

Valuation Office estimate of NAV: (rounded to) €47,000

The property is located within circa 300 metres of the subject property. It is held on a long lease with five year review periods, on a passing rent of €72,500 agreed in 2007. This equates to a Zone A Rent of €1,123 per sq. metre.

Comparison 5

Evelyn Keyes t/a House of Shoes, 56 Glashule Road, Sandycove County Dublin

Level 0	Zone A	28.93 sq. metres @ €650 per sq. metre	= €18,805
Level 0	Zone B	32.33 sq. metres @ €325 per sq. metre	= €10,507
Level 0	Remainder	19.76 sq. metres @ €162.5 per sq. metre	= € 3,211
Total			= €32,523

Valuation Office estimate of NAV: (rounded to) €2,500

The property is located within circa 300 metres of the subject property. It is held on a 35-year lease from 5th December, 1988 on a passing rent of €35,496 agreed from the 6th December, 2003. This equates to a Zone A Rent of €709 per sq. metre.

In the course of cross-examination, Mr. Conway asked Mr. Purcell if he had considered valuing the subject property on an overall basis. Mr. Purcell replied that it had been valued on a zoned basis in accordance with RICS guidelines. Mr. Conway put it to Mr. Purcell that his comparison no. 1 was actually 250m from the subject property, and not 75m, as stated in his précis. Mr. Conway also put it to Mr. Purcell that his remaining 4 comparisons were located in Glasthule Village, which has about 40 retail properties, as opposed to the subject, which is a standalone property isolated from other retail properties. Regarding the property occupied by Buckley Galleries, Mr. Conway asked why the Buckley property, which was the closest comparison to the subject property, is valued at €350 per sq. metre, while the subject is valued at €650 per sq. metre. Mr. Purcell stated that the two properties are very different. He advised that the Buckley property is a converted coach house with a stable at the back, an asbestos roof, and single block walls.

Summaries

In summary, Mr. Conway indicated that the Zone A level of €650 applied to the subject property was the same as that applied to retail units in Glasthule Village and also to retail units in Dun Laoghaire. Mr. Conway said that the Buckley property, which is adjacent to the subject property, could not be ignored as both are described as retail shops. Mr. Conway contended that his client had been treated unfairly and stated that the basis of the instant appeal is that the subject property has a Zone A level of €650 per sq. metre, while the Buckley property adjacent to the subject property has a Zone A level of €350 per sq. metre. He stated that the subject property has a rental history, all at arms length, and that the valuation should change with the market.

In summary, Mr. Purcell stated that the appellant relied on passing rent on the subject property which, in his opinion, might not be at arms length. Mr Purcell also contended that the appellant had relied on old rental payments which are of no relevance to the current revaluation exercise. Mr. Purcell concluded by saying that the Buckley property referred to

by the appellant does not set a tone of the list, as argued by the appellant, and he asked that the valuation be affirmed.

Findings

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

1. The Tribunal is satisfied that the village of Glasthule is the main centre of commercial activity nearest to the subject property.
2. The appellant's comparison number 3 (i.e. the Buckley property), while adjacent to the subject property, is distinguished from the subject in several respects.
3. Each of the comparison properties put forward by the respondent, valued at a Zone A level of €650 per sq. metre, is located within a parade of shops.
4. The subject property is somewhat isolated from other retail properties.

Determination

Having regard to the foregoing, the Tribunal determines the rateable valuation of the property concerned to be as follows:

Ground Floor Zone A	36.4 sq. metres @ €18 per sq. metre	= €2,495.20
Ground Floor Zone B	32.2 sq. metres @ €309 per sq. metre	= € 9,949.80
Ground Floor Zone C	0.85 sq. metres @ €155 per sq. metre	= € 131.75
Basement	34.45 sq. metres @ €143 per sq. metre	= € 4,926.35
Total		= €7,503.10

NAV Say €37,500

And the Tribunal so determines.