

Appeal No. VA11/5/156

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

Paul Mooney

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 440118, Retail (Shops) at 9 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 17TH DAY OF FEBRUARY, 2012

By Notice of Appeal dated the 18th day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €42,700 on the above described relevant property.

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

"The valuation is incorrect and excessive. The rateable value is not a true reflection of the age, character, arrangement, condition and location of the property as at September 2005."

"The property is a secondary located [sic] on a hill consisting mainly of converted houses."

"Market rents for similar properties were less than the valuation basis. Also compared with other rateable values."

The appeal proceeded by way of an oral hearing, which took place in the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 4th day of January, 2012. The appellant was represented by Mr. Ernan Coughlan, B.Comm., MSCSI, and the respondent was represented by Mr. Paul Ogbebor, B.Eng. (Hons) Civil Engineering, Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given at the hearing either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At issue

Quantum.

The Property

The subject relevant property comprises an end of row two-storey building with a two-storey rear extension, situated approximately mid-way along a streetscape of buildings converted to retail and office use.

The subject building is constructed of a mix of concrete and stone, plastered externally and with a pitched tiled roof. Windows are single glazed timber units with the exception of the front window on the ground floor, which is double glazed. A gated side entrance provides access to the rear. Free car parking facilities are provided approximately 300 metres from the subject property, on the Kilmacud Road.

Location

The subject property is located on The Hill, an established residential and commercial area just off the Kilmacud Road, the main street in Stillorgan, and on the western side the Stillorgan Dual Carriageway (N11). Nearby large retail units include Stillorgan Shopping Centre, Stillorgan Plaza, Lenehans Parade and Leisureplex. The transport network has been improved with the introduction of a bus corridor to Cornelscourt and a link from the N11 to the South-eastern motorway.

Services

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

Tenure

The property is understood to be held on a freehold basis by the Mooney family. The building was leased to the current occupant, with a lease commencing 1st June, 2011 for a term of 5 years.

Floor Areas

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

Block	Level	Use	Area (sq. metres)
1 - 3	0	Office	50.30
4	0	Kitchen	1.61
5 - 6	1	Office	50.27
		Total:	102.18

Total area: 102.18 sq. metres.

Basis of Valuation

The property was the subject of a revaluation as one of all rateable properties in the Dun Laoghaire Rathdown County Council area. The Valuation Order for Dun Laoghaire Rathdown County Council specifies 30th September 2005 as the valuation date. Valuation Levels were derived from the analysis of available market rental value of comparable properties stated in the Valuation List in which the property appears. The valuation of this property, on appeal to the Commissioner of Valuation, was determined by reference to the values of comparable properties stated in the Valuation List in which the property appears.

Valuation History

June 2010: A Valuation Certificate (proposed) was issued with an RV of €42,700. No representations were lodged and the valuation remained unchanged.

February 2011: An appeal was lodged with the Commissioner of Valuation. The valuation remained unchanged.

August 2011: An appeal was lodged with the Valuation Tribunal by the appellant's agent on 19th August, 2011.

Appellant's Case

Mr. Ernan Coughlan took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. The appellant made the following points:

- The subject property has been let and used as offices since 1998.
- Leases granted to tenants on the property in 2006 and 2011 set out permitted uses for the building for offices only.
- Promotional material published by an estate agent seeking tenants for the building identified as a main feature the building as a self-contained two storey office.
- Dublin County Council issued a Grant of Permission in 1991 Decision No. P/3419/91 on the building for “retention of ground floor kitchen and first-floor bedroom extension and for the change of use from residential to retail and office use to the entire of 9, The Hill, Stillorgan”.
- The premises had been occupied by the appellant's family since July 1998 and continually used as offices.
- The current short term letting, he acknowledged, was not at arms-length.
- The Dun Laoghaire Rathdown Development Plans of 2004 – 2010 and 2010 – 2016 identified the zoning in the area as “mixed use”.

- The property, as the address implies, is positioned on the side of a hill in Stillorgan with no parking provided for customers or clients.
- Though listed and considered as retail by the Valuation Office, it was the view of the appellant that having regard to the history of occupation as an office, the subject relevant property should accordingly be exclusively compared with and considered office and not retail.
- The rate applied by the Commissioner of Valuation at €600 per sq. metre on the ground floor is excessive and out of line with the “tone-of-the-list” based on and supported by the comparison properties cited in his précis.

Appellant’s Comparison Properties

Comparison No. 1

Property: 61, Kilmacud Road lower, Stillorgan.
Occupier: Provident Financial Services t/a The Money Doctor.
NAV: €24,500

Comparison No. 2

Property: 63 / 65, Kilmacud Road Lower, Stillorgan.
Occupier: Stillorgan Credit Union.
NAV: €48,800

Comparison No. 3

Property: 11, The Hill, Stillorgan. (Common Comparison)
Occupier: Snip and Sew Alterations.
NAV: €5,480

With regard to the first two comparison properties above, Mr. Coughlan noted that those offices were valued at a rate of €400 per sq. metre on the ground floors and €230 per sq. metre on their first floors and added that his third comparison, a first floor unit located two doors away from the subject at 11, The Hill, Stillorgan, is valued at €230 per sq. metre.

Based on the foregoing criteria, Mr. Coughlan concluded that the value of the subject should be determined as follows:

Block	Level	Use	Area (sq. metres)	€ per sq. metre	NAV
1 - 3	0	Office	50.30	230	€1,569
4	0	Kitchen	1.61	150	€242
5 - 6	1	Office	50.27	185	€9,300
				Total NAV:	€1,110

NAV : €1,110

Cross-examination of the Appellant

In response to questions put by Mr. Ogbebor and the Tribunal, Mr. Coughlan stated that:

- i. The rates payable in the past, as noted in page 7, Section 3.3 of his submission, were based on a 1998 Revision Valuation and the purpose of the Revaluation exercise applicable herein was to bring values to 2005 levels.
- ii. He accepted that the value of the subject relevant property is to be determined in accordance with Section 48(1) of the Valuation Act, 2001 and the Net Annual Value estimated on the property, as set out in Section 48(3) of the Valuation Act, 2001.
- iii. The Planning Permission granted on his Comparison No. 1 as detailed on page 8 of his précis, is for “office use”.
- iv. Appendix 3 to his précis offers a description of the property attached to the Rates bill for 2010 from Dun Laoghaire Rathdown County Council as “house, shop, yard”.

- v. The levels or rates per sq. metre cited in his comparisons did not conform with or match those contended for in his appeal submission to the Tribunal.
- vi. The hypothetical tenant may take a pragmatic view of the current Planning Permission granted on the property, having regard to:
 - (1) the use applied to the property since the Permission was granted,
 - and (2) the failure of Dun Laoghaire Rathdown County Council to serve any enforcement proceedings on foot of alleged non-compliance with Planning with respect to use of the property.

Respondent's Case

Mr. Paul Ogbebor then took the oath. He provided the appellant and the Tribunal with revised pages 3, 4, 6 and 12 of his précis identifying the correct location by photographic images of the subject property, a location map identifying pertinent nearby developments and the proximity of the four comparison properties cited and relied upon by him.

He then formally adopted his précis as his evidence-in-chief.

The location, description, accommodation, floor areas and tenure details provided by the respondent were common case to those provided above by the appellant.

Referring to his précis, he drew attention to the floor plan sketches provided of both floors on page 5, reviewed the Valuation History of the subject relevant property in Section 2.2 of page 6 and provided a synopsis of the details of his comparison properties nos. 1, 2, 3 and 4, as addressed in pages 7 – 12 inclusive.

Respondent's Comparison Properties

Comparison No. 1

Property: 3, The Hill, Stillorgan, Co. Dublin.
 Occupier: The Hill Barber.
 NAV: €15,200

Comparison No. 2

Property: 11, The Hill, Stillorgan, Co. Dublin (Common Comparison).
 Occupier: Snip and Sew Alterations.
 NAV: €5,480

Comparison No. 3

Property: 6, The Hill, Stillorgan, Co. Dublin.
 Occupier: Aqua Beauty.
 NAV: €30,600

Comparison No. 4

Property: 8, The Hill, Stillorgan, Co. Dublin.
 Occupier: Apache Pizza
 NAV: €23,600

He noted that Representations were made on behalf of the occupiers to the Valuation Manager on the first three of his comparisons, all of which are located on The Hill at Stillorgan and added that, though none of the four comparison properties had been the subject of an appeal to the Valuation Tribunal, his Comparison No. 1 was the subject of a First Appeal submitted to the Commissioner of Valuation.

The respondent's comparison properties nos. 1, 3 and 4 described as ground floor shops are valued at €600 per sq. metre and the office on the first floor of Comparison No. 2, which was common case with the appellant's submission, is valued at €230 per sq. metre.

Valuation by the Respondent

The following represents the valuation details of the subject property computed by the Respondent, as submitted by Mr. Ogbebor during the course of the hearing:-

Floor	Use	Area (sq. metres)	€ per sq. metre	NAV
Ground	Office	50.30	600	€30,180.00

Ground	Kitchen	1.61	600	€ 966.00
First	Office	50.27	230	€1,562.10
			Total NAV:	€2,708.10

Valuation Rounded to: €2,700

Cross-examination of the Respondent

In reply to various questions asked by the Tribunal and the appellant, Mr. Ogbebor responded that:

- 1) The majority area of the ground floor of the subject property is described in his précis pages 5, 6 and 11 as offices.
- 2) The street frontage dimensions of his comparison properties nos. 1, 2 and 3 are broadly similar to the subject.
- 3) His Comparison Property No. 3, located at No. 6, The Hill, Stillorgan, features a shop front, albeit significantly different to the subject.

Summations

Both the appellant and the respondent availed of the opportunity to provide summation statements which were a synopsis of the foregoing arguments and positions employed by them in both their précis of evidence and adduced at hearing.

Findings

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at hearing.

The Tribunal finds that:

1. The parties mutually agreed to the level set at €230 per sq. metre by the Commissioner of Valuation on the first floor office.

2. The main matter in dispute between the parties referred to the rating classification applied to the greater area of the ground floor of the subject property and in particular whether it should be considered as retail and/or office.
3. The respondent acknowledged during the hearing that he was relying upon the “Change of Use” Permission granted by the Planning Authority in 1991 to establish the permitted use on the subject as retail and office.
4. No further evidence other than that noted above was furnished by the parties with respect to use of the subject for either retail or office purpose/s.
5. The property does not include the provision of parking for customers or staff and by the agreement of the parties, lacks profile, footfall, a standardized shop front and/or a dedicated or separate entrance to the upper floor.
6. Though the “Change of Use” Permission was granted in 1991, the respondent did not dispute the appellant’s contention that the Local Authority would consider the office use prevailing throughout the property as at the inspection date as a “non-conforming established use”.
7. The respondent acknowledged that the premises were vacant when inspected but based on his review of the internal layout and finishes, it appeared to him that the ground floor had been used and occupied previously as an office as distinct from retail purposes.

Determination

Having regard to Sections 48(1) and (3) of the Valuation Act, 2001 and the acknowledgement by the respondent of the appearance and apparent previous use of the property when inspected by him, the Tribunal is obliged to consider, inter alia all other pertinent provisions of the aforementioned Act, the “actual state” of the property, and accordingly calculates the value of same, as follows:

Ground (Office) 50.30 sq. metres @ €50 per sq. metre	=	€17,605.00
Ground (Kitchen) 1.61 sq. metres @ €50 per sq. metre	=	€ 563.50
First Floor (Office) 50.27 sq. metre @ €230 per sq. metre	=	<u>€1,562.10</u>
Total NAV	=	€29,730.60

NAV Say €30,000

And the Tribunal so determines.