

Appeal No. VA11/5/160

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

Eoin Hodkinson - Lyknu Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 511073, Retail (Shops) at 1-2 Trimleston Avenue, Booterstown, County Dublin.

B E F O R E

Maurice Ahern - Valuer, IPAV

Deputy Chairperson

Patrick Riney - FSCSI, FRICS, ACI Arb

Member

Patricia O'Connor - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 22nd day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €34,600 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal and letter attached are at Appendix 1 to this judgment.

The appeal proceeded by way of oral hearings held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 17th day of January 2012. At the hearing the appellant was represented by Mr. Mervyn Feely, FSCS, FRICS, Chartered Surveyor in General Practice with the Firm of Mervyn Feely & Associates. The respondent was represented by Ms. Olga Harney, BSc (Hons) Property Studies, a 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 initial 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 either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to these appeals.

At Issue

Quantum

The Property

The subject property comprises a ground floor retail unit with offices overhead situated at No. 1 and 2 Trimleston Avenue close to the junction with Rock Road and approximately 6km from Dublin City centre.

Tenure

The tenure is leasehold, held under two separate 21-year leases from 1st February 1998 and 1st February 2008 respectively with a current combined passing rent of €24,500.

Floor Areas

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

Retail Zone A - 51.77 square metres

Retail Zone B - 17.94 square metres

Basis of Valuation

Pursuant to Section 19 of the Valuation Act 2001 the property was the subject of revaluation as one of all rateable properties in the Dun Laoghaire Rathdown Rating Authority area. The Valuation Order specifies the 30th September 2005 as the valuation date. Valuation levels were derived from the analysis of available open market rental information of comparable properties and applied to the subject property. 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

- 15th June 2010: A Valuation Certificate (proposed) was issued on the two properties together with a valuation of €36,400.
- 5th July 2011: Representations were lodged by the appellant's agent and the valuation was amended to €34,600.
- 8th February 2011: An Appeal was lodged with the Commissioner of Valuation by the appellant's agent. Following consideration of this, the valuation remained unchanged at €34,600.
- 22nd August 2011: An Appeal was lodged with the Valuation Tribunal.

Appellant's Case

Mr. Mervyn Feely adopted his précis as evidence-in-chief and reiterated that it was the wish of the appellant and Mrs. Carol Mitchell (the appellant's Landlord) that Numbers 1 and 2 Trimleston Avenue should be separately rated, Number 1 in the name of the appellant and Number 2 in the name of Mrs. Carol Mitchell.

Mr. Feely confirmed that the areas were agreed with the Valuation Office. In the event of the Tribunal treating the premises as two separate entities, Mr. Feely contended for an NAV of €14,500 in respect of Number 1 and €14,000 in respect of Number 2, treating the premises as two separate entities. In the event of the Tribunal ruling that the premises was a single entity, Mr. Feely contended for a NAV of €24,500 calculated as follows-

Zone	Type	Sq. Metre	Rate P er Sq.Metre	NAV €
A	Retail	51.77	€25	€22,002.25
B	Retail	17.94	€25	€ 3,812.25
Total				€25,814,50
Less 5% reduction for very poor location				<u>(€ 1,290.73)</u>
Total				€24,523.77
NAV Say				€24,500.00

Mr. Feely provided four comparisons in support of his contention as follows:

1. The subject premises, Units 1 and 2 Trimleston Avenue, Booterstown, Co Dublin. Mr. Feely stated that in his opinion, the 5% reduction allowed for location was completely arbitrary and unreasonable. It was his opinion that a 30% reduction was more appropriate.
2. 87C Booterstown Avenue, Booterstown, Co Dublin.
3. Ken Harris Hair Salon, Rock Road, Co Dublin.
4. Clarkes Newsagents, Careysfort Avenue, Blackrock.

Details of these are set out in Appendix 2 to this judgment.

Cross-Examination of Appellant

Mr. Feely agreed with Ms. Harney that the appellant had entered into two separate leases on Numbers 1 and 2 for periods up to 2019 and 2029 respectively. Ms Harney cited Section 17 of the Valuation Act 2001 and in particular Section 17 (2) (a) which she stated allowed any valuation falling to be made under the Act to be treated as a single relevant property even though the premises is held under different titles. Mr. Feely did not accept this interpretation of the Section and felt that it would cause untold legal issues if one or other of the parties holding separate titles disposed of their interest.

Mr. Feely agreed with Ms. Harney that his comparison number 4 (Clarkes), at €259 per sq. metre, was an anomaly and out of line with other NAVs. He felt that this served to show that it was not a viable comparison on which to set a tone of the list in the area. Mr. Feely also agreed with Ms. Harney that there were vacant and dilapidated buildings on Booterstown Avenue but he felt that these were isolated and did not imply that Booterstown Avenue is not

a desirable location. Ms. Harney pointed out that comparison 3 (Ken Harris Hair Salon) had no parking and that it was difficult for cars to pull in at that junction but Mr. Feely asserted that the subject property also suffered from parking problems as the car parking spaces outside the subject property were all taken early in the day and that parking on the road was completely restricted.

Respondent's Case

Ms. Harney adopted her précis as her evidence-in-chief. She confirmed that she had valued both properties as a single entity pursuant to Section 17 of the Valuation Act 2001. Ms. Harney said the premises were interconnected and one could pass easily between units. Ms. Harney also confirmed that the subject property had been given a 5% reduction due to its slightly poorer location. Ms. Harney contended for a NAV of €34,600, calculated as follows:

Retail Zone A-	51.77 sq. metres @ €600 per sq. metre	=	€1,062
Retail Zone B-	17.94 sq. metres @ €300 per sq. metre	=	€ 5,382
Less 5% allowance for location issues		=	<u>(€ 1,820)</u>
Total		=	€34,624
NAV Say	€34,600		

Ms. Harney provided the following comparisons:

1. 115A Rock Road. She agreed with Mr. Feely that this was a smaller unit which would be reflected in a higher rent.
2. 115B Rock Road (Ken Harris). This was an irregular shaped building containing what she described as “little nooks and crannies”. This was valued in June 2005 at €600 per metre square.
3. 5 Woodbine Park. This is situated in a parade of shops and is a better location than the subject property. This is valued at €800 per metre square.

Details of these are set out in Appendix 3 to this judgment.

Cross-Examination of Respondent

On cross-examination Mr. Feely took issue with Ms. Harney's description of the subject property as being "in good condition". Ms. Harney accepted that this may be a slight exaggeration. Ms. Harney agreed with Mr. Feely that the subject property could not be seen by cars going either north or south on Rock Road. Ms. Harney also accepted that the DART Station was located approximately half a kilometre from the subject property. Ms. Harney confirmed that she did not have any rental evidence in respect of her comparison number 1 (vacant). Ms. Harney also stated that comparisons number 1 and 3 (vacant and Alan Austin t/a The Orchard, respectively) were situated in better locations than the subject property but again reiterated that this was the reason for the 5% reduction allowance to the subject property. Ms. Harney accepted that one would have to make a conscious decision to exit the passing traffic in order to get to the subject property but felt that the subject property did have the advantage of free car parking spaces outside it.

Brief closing submissions were made by both parties. Mr. Feely again reiterated that the Applicant required the subject property to be treated separately if possible. Mr. Feely also felt that none of the respondent's comparisons compared like with like. Ms. Harney made the point that the appellant had not provided any rental information in respect of any of his comparisons. With regard to the question of separately rating, Ms. Harney's view was that if either property was let to different occupiers in the future then this could be dealt with by way of revision.

Findings

The Tribunal having carefully considered all the evidence and arguments produced by the parties makes the following findings;

1. Section 17 (1) of the Valuation Act, 2001 provides that "*where a valuation falls to be made under this Act of relevant properties, each separate relevant property shall be valued separately and entered as a separate item in the relevant Valuation list*".

However Section 17 (2) goes on to state that notwithstanding the provisions of Section 17 (1), "*an officer may, if he or she thinks it proper to do so having regard to the circumstances of the matter-*

- a. value or cause to be valued contiguous relevant properties that are occupied by one person as a single relevant property even though those properties are held under different titles, and*
- b. If a relevant property comprises 2 or more parts capable of being occupied separately, value or cause to be valued the several parts as separate relevant properties even though those parts are occupied by the one person*
- and where the officer so values or causes to be so valued relevant properties or parts of the relevant property, the relevant properties or parts shall be treated as a single relevant property or, as the case may be, separate relevant properties for all the other purposes of this Act.”*

The Tribunal notes that historically rates in respect of number 2 Trimleston Avenue were invoiced to the landlord, and not the tenant, and that the appellant and the landlord wish to continue this arrangement in order to have both properties separately rated.

It is the case that the appellant is the occupier of both properties. In the circumstances therefore the Tribunal relies on the provisions of Section 17 (2) (a) and deems that it is equitable to treat the properties as a single unit for the purposes of valuation.

2. The Tribunal accepts that Trimleston Avenue, when compared with Rock Road in terms of visibility and profile, is a poorer location. The Tribunal notes that this point was accepted by the respondent. In the circumstances, the Tribunal is of the view that a 5% reduction in respect of location allowance is completely inadequate and a reduction in the region of 30% would be more appropriate.

Determination

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

Retail Zone A	51.77 sq. metres @ €600 per sq. metre	=	€31,062.00
Retail Zone B	17.94 sq. metres @ €300 per sq. metre	=	<u>€ 5,382.00</u>
			€36,444.00
Less 30% allowance for location issues			<u>(€10,933.20)</u>
Total		=	€25,510.82

NAV Say €25,000

And the Tribunal so determines.