

Appeal No. VA11/5/210

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

Liam Lonergan

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 400356, Retail (Shops) at 4 Old Dublin Road, Stillorgan, County Dublin.

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

Frank O'Donnell - FRICS, B Agr Sc, MIREF

Member

Patricia O'Connor - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 30th day of August, 2011 the appellant appealed against the determination of the Commission of Valuation in fixing a valuation of €7,700 on the above described relevant property.

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

The appeal proceeded by way of an oral hearing which took place at the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7 on the 2nd day of February 2012. At the hearing the appellant was represented by Mr. John Stewart, FSCSI, FRICS, MCI Arb, principal of John Stewart & Associates. The respondent was represented by Mr. Paul Ogbemor, BEng (Hons) Civil Engineering.

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 hearings, 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 at the hearings 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 is a ground floor retail unit contained within a two-storey semi-detached building in a parade of shops and offices with parking to the front of the property.

Location

The subject property is located at the Old Dublin Road, Stillorgan, Co. Dublin, at the junction of The Hill on the western side of the N11 with easy access to the M50. The area is served by Dublin Bus and there are free car parking facilities located approximately 300 metres away from the subject property.

Tenure

The property is held freehold by the appellant.

Floor Area

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

- Ground Floor retail Zone A 49.68 sq. metres
- Ground Floor retail Zone B 25.25 sq. metres
- Ground Floor retail Zone C 5.22 sq. metres
- Rear 40 sq. metres

Valuation History

The property is the subject of revaluation as one of all rateable properties in Dun Laoghaire Rathdown County Council area. The Valuation Order specifies the 30th September 2005 as the valuation date.

15 th June 2010	Valuation Certificate (proposed) was issued on the property with a rateable valuation of €79,700.
1 st July 2010	Representations were lodged by the appellant and the Valuation Certificate issued at €57,700.
4 th February 2011	An appeal was lodged with the Commissioner of Valuation by the appellant and the Valuation issued unchanged.
30 th August 2011	An appeal was lodged with the Valuation Tribunal by the appellant.

The Appellant's Case

Mr. John Stewart representing the appellant took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submissions. Mr. Stewart firstly advised that in the period since the respondent had valued the subject property, it has been sub-divided by the appellant into two separate properties for letting purposes. However, Mr. Stewart confirmed that the appellant wished to have the subject property valued as a single unit for valuation purposes.

Mr. Stewart made the point that the car park fronting the subject property was a health and safety risk because it was in very poor condition. Mr. Stewart confirmed that there was no management company in place in respect of the subject property and said that for that reason, there was no one prepared to take on the responsibility to repair. Mr. Stewart also stated that, in his opinion, the main problem was that of visibility and that the subject property did not have connectivity

with Stillorgan Shopping Centre. He explained that he meant that the row of shops in which the subject property was located had no visual contact with the Shopping centre and was in fact separated from it by a derelict site which now looks unlikely to be developed due to the present economic climate.

Mr. Stewart confirmed that he was in agreement with the zoned areas but disagreed with the rates used. He also pointed out that the area at the rear was not as valuable as Zones A and B and maintained that this area was a store and not offices because of the nature and presentation of the space and not the condition in which the space was maintained.

Mr. Stewart contended for an NAV of €33,800 broken down as follows;

• Zone A	49.68 sq. metres @ €500 per sq. metre =	€24,840.00
• Zone B	25.25 sq. metres @ €250 per sq. metre =	€ 6,312.50
• Zone C	5.22 sq. metres @ €125 per sq. metre =	€ 652.50
• Rear	40 sq. metres @ €50 per sq. metre =	<u>€ 2,000.00</u>
Total		€33,805.00

Say €33,800.00.

Comparisons

Mr. Stewart provided six comparisons in support of his contentions.

1. Comparison 1 – the subject property. NAV €40,000.

Mr. Stewart confirmed that the subject property was let for a two year period from May 2004 at €40,000 per annum. Mr. Stewart further pointed out that the property was vacant during the period that the property market was at its zenith and felt that this was telling in respect of the desirability of the property.

2. Comparison 2 - Nimble Fingers, 75 St. Laurence's Park, Stillorgan Road, Dublin. NAV €67,400.

This property is located across from the entrance to Stillorgan Shopping Centre. Mr. Stewart confirmed that this property had direct visual contact with the shopping centre

and stated that the rate of €800 per sq. metre was much higher than that which would apply to the subject property.

3. Comparison 3 – Joseph Kramer, 74 St. Laurence’s Park. NAV €66,400.

This comparison is similarly located and a rate of €800 per sq. metre applies.

4. Comparison 4 – Blueprint, 73 St. Laurence’s Park. NAV €50,800.

This property is subject to a 35 year lease from the 1st May 1999 which was reviewed to €5,000 in May 2004.

5. Comparison 5 – Treasure Chinese Take Away, 2 The Hill, Stillorgan, Co Dublin. NAV €24,600.

This property is subject to a 35 year lease from the 27th August 1992 reviewed to €28,000 in July 2005. Mr. Stewart argued that this established a slight trend whereby the NAV of the property is coming out below the market rent.

6. Comparison 6 – Apache Pizza Take Away, 8 The Hill, Stillorgan. NAV €23,600. This property is subject to a 22 year lease reviewed to €28,000 on the 3rd October 2006. Mr. Stewart pointed out that the NAV here was also below the market rent.

Mr. Stewart stated that comparisons 5 and 6 were both rated at €600 per sq. metre and alluded to the fact that both properties were out of the line of sight of the shopping centre, leading to deterioration in rent. However, he stated that both properties were takeaways and had the benefit of a particular planning permission. Mr. Stewart agreed on questioning from the Tribunal that comparisons 5 and 6 were quite significantly smaller than the subject property but stated that the respondent had applied a zoning method for these properties. Mr. Stewart confirmed that neither property had its own parking and that there were double yellow lines outside both properties. Mr. Stewart was of the opinion that both properties were better located than the subject property and that The Hill consistently attracted a higher level of occupancy. Mr. Stewart pointed out that the former AIB Bank located in the mall where the subject property was located had re-opened as an off-licence which, he said, would be a business which traditionally would have done well but

even this enterprise had failed in this location. Mr. Stewart was of the opinion that the Old Dublin Road was a far inferior location to St. Laurence's Park and The Hill.

Cross-Examination

On cross-examination Mr. Stewart confirmed that there had been alterations to the subject property in that the yard at the rear had been cleared but it was his opinion that this had no bearing on the valuation of the property. Mr. Stewart stated that comparison no. 1 (the subject property) was probably the most significant comparison. Mr. Stewart agreed that comparisons nos. 5 and 6 were cottages which had been converted to retail use and that they did not have a standard retail frontage but reiterated his belief that the respondent had used the zoning method to value these properties. Mr. Stewart did not believe that comparisons 5 and 6 were suitable for zoning but insisted that whatever mathematical function was used to value the properties, a figure of €600 per sq. metre was arrived at. Mr. Stewart confirmed that unlike comparisons 5 and 6 the subject property had car parking. Mr. Stewart disagreed with the suggestion that the subject property was in a better location vis-à-vis The Hill and he repeated that The Hill had traditionally had complete occupancy. Mr. Stewart further disagreed with the respondent's contention that the entrance to St. Laurence's Park was off the Old Dublin Road, making it less valuable than the subject property.

Respondent's Case

Mr. Ogbebor adopted his précis as his evidence-in-chief. He contended for a rateable valuation of €4,800 broken down as follows:

• Ground floor Zone A	49.68 sq. metres	€800 per sq. metre =	€39,744
• Ground floor Zone B	25.25 sq. metres	@ €400 per sq. metre =	€10,100
• Ground floor Zone C	5.22 sq. metres	@ €200 per sq. metre =	€ 1,044
• Ground floor office	40.00 sq. metres	@ €200 per sq. metre =	€ 8,000
Less frontage to depth allowance 8%		=	<u>€ 4,071.04</u>
Total			€4,816.04
Say	€4,800.		

NOTE: The valuation contended for by Mr Ogbebor is lower than the valuation currently in the valuation list. This is due to Mr Ogbebor's submission of a revised valuation resulting from an agreement reached with the appellant on floor areas.

Mr. Ogbebor provided four comparisons in support of his contention:

1. 73 St. Laurence's Park – (Blueprint) – NAV €50,800
2. 72 St. Laurence's Park – (Ruiqing Wang) – NAV €54,400
3. Maple House, Kilmacud Road Lower (Xtra-Vision) – NAV €107,200
4. Lower Kilmacud Road (Osage Limited) – NAV €68,400

Mr. Ogbebor confirmed that it had only just come to his attention at this hearing that there had been a two year lease on the subject property in 2004 at €40,000 per annum. Mr. Ogbebor did not feel that this information was particularly helpful in attempting to assess the NAV of the property because of the short duration of the lease. However, he did state that it would generally be his expectation that where a lease was of a longer duration, then the rent would be less as a rule. Mr. Ogbebor did not believe that the condition of the car park at the subject property would detract from its value. Mr. Ogbebor accepted that there was some obstruction to a clear view of the subject property from Stillorgan Shopping Centre, unlike St. Laurence's Park. However, he did not accept that the site between the shopping centre and the subject property was derelict; instead insisting that it was used for storage. He also pointed out that the respondent's comparison number 3 (Kilmacud Road Lower) clearly showed a Zone A value of €1,250 per sq. metre and he felt in the circumstances that a valuation of €800 per sq. metre for the Old Dublin Road was reasonable.

Mr. Ogbebor did not accept Mr. Stewart's contention that the space at the rear of the subject property was a corridor or store as opposed to an office space as he said that it had the benefits of natural light, its own electricity supply and a WC, with no access to the rear yard. Mr. Ogbebor was unable to assist the Tribunal in explaining how the rear space, originally valued at €50 per sq. metre, was increased to €200 per sq. metre at Representations stage.

Mr. Stewart cited Tribunal appeal no. VA11/5/100 – Ruiqing Wang in respect of 72 St. Laurence’s Park which had issued from the Tribunal on the 26th January 2012. Mr. Ogbemor accepted that the Tribunal had determined a Zone A rate of €700 per sq. metre in respect of that property but strenuously refuted Mr. Stewart’s contention that Section 40 of the Valuation Act 2001 meant that all Zone A rates at St. Laurence’s Park should be reduced across the board.

Summary

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

Findings

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

1. The Tribunal notes the floor areas are agreed as follows:
 - a. Ground Floor retail Zone A 49.68 sq. metres
 - b. Ground Floor retail Zone B 25.25 sq. metres
 - c. Ground Floor retail Zone C 5.22 sq. metres
 - d. Rear 40 sq. metres
2. The Tribunal notes Tribunal appeal no. VA11/5/100 cited by the appellant whereby a Zone A rate of €700 per sq. metre was determined in respect of 72 St. Laurence’s Park.
3. The Tribunal further notes that of the four comparisons provided by the respondent, two of these are situated in St. Laurence’s Park. The Tribunal is of the view that the respondent’s comparison no. 3, situated at Kilmacud Road Lower, is not a realistic comparison given the disparity both in location and accommodation between this and the subject property.

4. Similarly, the Tribunal notes that four of the six comparisons provided by the appellant are located in St. Laurence's Park. The Tribunal accepts the appellant's contention that St. Laurence's Park has the advantage of visibility from and proximity to Stillorgan Shopping Centre. The appellant's other two comparisons, nos. 5 and 6, are located at The Hill, Stillorgan. Both these properties are considerably smaller than the subject property and as such are subject to a relatively higher rent, although they do have the benefit of planning permission for takeaway premises.
5. In considering the three locations, being St. Laurence's Park, the area in which the subject property is located and The Hill, the Tribunal is of the view, for the reasons set out above, that St. Laurence's Park is a superior location to the subject property while The Hill is an inferior location.
6. The rental evidence provided by the appellant must be taken into account with the proviso that this was a short term letting.
7. The Tribunal is not satisfied that the appellant has proved his case that the area at the rear of the subject property constitutes storage space as opposed to office space as contended by the respondent.

Accordingly, the Tribunal considers that a fair and reasonable valuation on the subject property should be calculated as follows:

Zone A	49.68 sq. metres @ €500 per sq. metre =	€24,840.00
Zone B	25.25 sq. metres @ €250 per sq. metre =	€6,312.50
Zone C	5.22 sq. metres @ €125 per sq. metre =	€ 652.50
Rear	40 sq. metres @ €125 per sq. metre =	<u>€5,000.00</u>
Total		€36,805.00

Say €36,800.00

And the Tribunal so determines.