

Appeal No. VA11/5/255

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

Brambles Deli Cafe Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2175753, Retail (Shops) at Unit A, Ravens Court, Sandyford, County Dublin.

B E F O R E

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

Deputy Chairperson

Mairead Hughes - Hotelier

Member

James Browne - BL

Member

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

By Notice of Appeal received on the 31st day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €71,300 on the above described relevant property.

The grounds of appeal as stated in the Notice of Appeal are:

"The valuation is excessive and inequitable." "Section 48 of the Valuation Act 2001 has not been correctly implemented by the Commissioner of Valuation. The principle of "rebus sic stantibus" should apply and the property should be valued in it's [sic] actual state. The subject property is a restaurant."

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 20th day of January 2012. At the hearing the appellant was represented by Mr. Donal O'Donoghue, BSc (Hons) Estate Management, DipVals, AssocSCSI, MIAVI, a Director in OMK Property Advisors. Mr. Dean Robinson, BSc (Hons) Surveying a Valuer in the Valuation Office, represented the respondent.

Both parties, having taken the oath, adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence tendered, the following emerged as being the facts relevant and material to the appeal

The Issue

The issue between the parties was quantum, the appellant maintaining that the rateable valuation of €71,300 was excessive.

Valuation History

The property was the subject of a Revaluation as one of all rateable properties in the Dun Laoghaire Rathdown County Council Area. A Valuation Certificate (proposed) was issued on 15th June 2010 for €85,400. Representations were lodged by OMK on behalf of the appellant in July 2010 that resulted in a reduction of valuation to €71,200. An appeal was lodged to the Commissioner of Valuation on 8th February 2011 and following consideration of this appeal the Commissioner increased the valuation to €71,300. On 31st August 2011 a Notice of Appeal was lodged with the Valuation Tribunal.

The NAV was assessed as follows:

Retail Ground Floor	110.06 sq. metres @ €500.00 per sq. metres	€55,030
Retail Mezzanine	65.43 sq. metres @ €250.00 per sq. metres	€16,357
NAV (rounded to)		€71,300

The Property

The subject property is a Restaurant/Café, and comprises a detached two-storey circular building which forms part of the Ravens Court scheme located at the end of the Three Rock

Road in a cul-de-sac within the Sandyford Industrial Estate in South Dublin. Ravens Court is an office development built in 2003 of about 5,500 sq. metres. The subject relevant property is held on a 25 year lease which commenced in January 2003 at a rent of €65,000 p.a.

Accommodation

The areas are measured on a net internal basis, and agreed by the parties, as follows:-

Ground Floor	110.06 sq. metres
Mezzanine	65.43 sq. metres

The Appellant's Case

Mr. O'Donoghue took the oath and adopted his précis of evidence as his evidence-in-chief. Mr. O'Donoghue argued that the location of the subject property is very moderate, as it is at the end of a cul-de-sac, with little passing trade, no dedicated parking available and a limited number of metered car park spaces on the Tree Rock Road. Local developments feature low density terraced industrial/distribution units and some offices. There is no residential development nearby, and trade activity in the restaurant is confined to office hours Monday to Friday.

He described the subject property as a purpose-built restaurant of circular design and construction. He stated that when planning permission was sought, permission was granted specifically for a restaurant. He said that the subject restaurant should be valued in its actual state and on an overall basis, be compared with properties that are truly comparable with it and in line with other restaurants in the locality. It was his opinion that the Commissioner of Valuation should not have categorised the subject property as retail for rating purposes. He contended that a valuation assessed at a level of €500 per sq. metre on the ground floor and €250 per sq. metre for the Mezzanine on the subject was incorrect and did not conform with section 48(3) of the Valuation Act, 2001.

He sought to support his arguments by referring to section 48(3) of the Valuation Act, 2001, and referred to the principle of *rebus sic stantibus*, and in particular the two Tribunal judgments in the appeals VA08/5/125 - Marks & Spencer and VA10/5/027 - James Cassin.

He noted that section 48(3) states that ““*net annual value*” means, in relation to a property,

the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant”.

Mr. O’Donoghue repeated that the subject premises should be valued according to the principle of *rebus sic stantibus* which he advised may be defined as “*the rent is to be estimated for a particular hereditament as it stands with all its privileges, opportunities and disabilities, created or imposed by its natural position*”.

He said that it was not sustainable to suggest that the hypothetical tenant would pay more for the subject property as opposed to a restaurant unit in nearby, and better located, Dundrum Town Centre that has a Zone A rate of €500 per sq. metre, or even the Central Park in Leopardstown that accommodates a first floor restaurant assessed on an overall rate of €280 per sq. metre.

Mr. O’Donoghue continued his evidence by again referring to VA08/5/125 - Marks & Spencer which comments that “*the Tribunal must consider and evaluate the evidence then put before it, be it the actual rents of other properties of a size, use and location similar to the property concerned, and last, but by no means least, the assessment of properties that are truly comparable in all respects to the property concerned*”.

Whilst Mr. O’Donoghue admitted that he did not have any rental evidence to support his arguments, (and was not able to produce evidence that supported his statement of the subject enjoying a rent-free period of 12 months), he preferred to rely on the emerging ‘tone of the list’. He also referred to the James Cassin judgment where it was stated that section 48(3) of the Valuation Act, 2001 sets out the basis of valuation and NAV of the property, and should be assessed having regard to various matters including the “*actual state*” of the property.

In support of his estimate of valuation Mr. O’Donoghue introduced five comparison properties, details of which were set out in his précis.

His comparison no. 1, Mao Restaurant, is located in the Dundrum Town Centre, and while in

his opinion in a much more valuable location than the subject, is a similar type of unit to the subject. He stated that an overall level of value has been established there by the Valuation Office at €500 per sq. metre. Comparison no. 2, Dunne & Crescenzi, Dundrum Town Centre he added is similarly valued at €500 per sq. metre overall. Comparison no. 3, Pinot's Café Bar, Beacon South Quarter (currently vacant), he noted is valued on the ground floor at €400 per sq. metre, and the lower ground and Mezzanine is valued at €300 per sq. metre. Comparison no. 4 is the Baan Thai restaurant, Central Park, Leopardstown, and this unit he stated is valued also on an overall basis of €280 per sq. metre. This comparison is also under the management of the appellant. The final comparison is another of the appellant's restaurants (Brambles Café) and is much better located within the Stillorgan Shopping Centre, and again valued overall at €280 per sq. metre. The latter two properties were Mr. O'Donoghue's primary comparisons, and though no. 4 is an irregularly shaped first floor unit, it is situated in a fully rented scheme, was agreed at representation, and is situated in a better catchment area than the subject.

Mr. O'Donoghue summarised by stating that the subject is a restaurant/café and not a retail unit, is located in a cul-de-sac, its initial rent was aspirational in nature, and the property should be valued for rating purposes on an overall basis in line with other similar restaurants locally.

Basis of Valuation by the Appellant

Based on the foregoing, Mr. O'Donoghue concluded that the subject property should be valued as follows:-

Ground Floor: 110.06 sq. metres @ €280 per sq. metre	= €30,816.80
Mezzanine: 65.43 sq. metres @ €140 per sq metre	= <u>€ 9,160.20</u>
Total:	€39,977.00

Cross-examination of the Appellant

In response to questions put by Mr. Robinson and the Tribunal, Mr. O'Donoghue stated that:-

- The business conducted in the subject premises is unique in restaurant terms in his view, as it trades on commercial hours only, Monday to Friday.
- He received details of the lease just days prior to the hearing and advised that

he believes that the terms of which provided the tenant with rental relief for the first 12 months but requested that such a provision should be disregarded for the purpose of determining the net annual value of the subject as to do so would be to rely upon hearsay evidence.

- The unit was let on a 'shell & core' basis at a rack rent of €65,000 per annum, which would devalue to an equivalent overall ground floor level of approximately €450 per sq. metre and €777.50 per sq. metre on the mezzanine.
- If the rent-free period were to be amortized over the initial term of five years, the net effective rent would reduce to €64.25 per sq. metre on the ground floor and €82.13 per sq. metre on the mezzanine.
- He acknowledged that these figures would be calculated by reference to the shell without fit-out and that the latter costs were likely in the range of €250,000.
- He accepted that the property, for the purpose of this rating exercise, should be valued in its actual state.
- He indicated that the design of the building should warrant a value reduction in the range of 20 – 25% per sq. metre, and a further reduction for the extensive curtain glazing surrounding the premises.
- He acknowledged that restaurants are typically valued for rating purposes by reference to other restaurants and retail establishments and that the comparisons cited in his précis of evidence generally conform in terms of similar use and location, to the subject.
- He confirmed that the planning granted on the subject did not include an express restriction on specific use in contrast to that provided for in the aforementioned Cassin case.
- He opined that the two comparison properties in his précis located within the Dundrum Town Centre development compete with all of approximately 16 other restaurants in that scheme and not the 92 retail units therein, while accepting that about 60% of the floor area of his comparison no. 1 property is located on an upper floor.
- He accepted that the value attributed to the mezzanine floor of his third

comparison property is set at a level of 75% of the value of that premises' ground floor, unlike the subject which is assessed at 50% of its equivalent value.

- With respect to his comparisons 4 and 5, while acknowledging that both are first floor restaurants, he would not agree that they should be considered compatible in value terms per sq. metre with the first floor of the subject and explained that the information he provided on those premises was to indicate that both were valued on an overall basis equivalent to €280 per sq. metre.

Respondent's Evidence

Mr. Dean Robinson took the oath and adopted his précis of evidence as his evidence-in-chief. He requested one amendment on page 5 of his précis to correct the rental value, which lease commenced in November 2003 at €55,000 p.a. and not at €60,000 as noted therein.

He outlined the valuation history of the subject relevant property as already detailed herein. and confirmed that the subject property was valued in accordance with section 48(3) of the Valuation Act.

In support of his opinion of net annual value, Mr. Robinson introduced two comparisons, details of which are set out in his précis.

Both comparisons are located at Carmanhall Road in Sandyford (close to the subject) and are similarly valued at €810 per sq. metre Zone A. While his comparison no. 1 is a Centra supermarket, he contended that his second comparison (Café Togo) is very similar to the subject property and valued at €900 per sq. metre Zone A with a 10% allowance given for a front-to- depth ratio of 1:1.14, thus reducing the Zone A level to €810 per sq. metre.

When asked by the Tribunal why he set a level of €500 per sq. metre for the ground floor of the subject property he explained that the reasons are threefold: the premises is circular in design, is located in a cul-de-sac and has limited parking to the front.

Basis of Valuation by the Respondent

Based on the foregoing, the following represents the valuation details of the subject properties computed by the respondent:-

Block	Use	Area sq. m	Rate	Total
Ground Floor	Retail	110.06	€500	€55,030
Mezzanine	Retail	65.43	€250	€16,357
Total				€71,387

Valuation Office estimate of NAV (rounded to) €71,300

Cross-examination of the Respondent

Under cross-examination by the appellant, Mr. Robinson was asked why he did not make any allowance for the partly undeveloped state of the surrounding area, to which he replied that he did not consider this as a reason for providing a reduction on the value of the subject. He said that all of the retail units in the Sandyford area were comparable to the subject, but agreed that his two comparison properties were in better located areas.

He also accepted that access to the subject property was somewhat difficult having regard to its cul-de-sac situation, while acknowledging that his comparison properties were not so disadvantaged. He acknowledged that he made an allowance of €200 / sq. metre on the value of the subject to reflect the foregoing and the circular configuration of the building, had valued it as a retail unit bearing reference to its rental value as at September 2005, whereas he would not accept that his comparison properties were valued at the highest level in the area.

He acknowledged that there were a number of other restaurants and cafés in the area of Sandyford, but considered his comparisons to be most appropriate. Mr. Robinson accepted that the other comparisons enjoyed better profile and concluded that an analysis of the rent paid in 2003, excluding the fit-out, as advised earlier by the appellant, would devalue at a higher level than anticipated.

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.

Mr. O'Donoghue repeated his request that the Tribunal take heed of the poor location of the subject with respect to all comparisons cited by both parties and bear in mind that the design of the building limits its purpose to the specific use as a restaurant and not likely interchangeable with any other commercial purpose.

Mr. Robinson emphasised again that the respondent had carried out his task in accordance with the provisions of the Valuation Act, 2001, and possibly had been somewhat conservative as it was just recently disclosed to him that the initial rental was €5,000 higher p.a. than initially advised.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and finds as follows:

1. The location of the subject property, based on the evidence of both parties, is less desirable than those of the comparable properties cited by the respondent.
2. The Tribunal acknowledges that in the rating hypothesis, retail units may include use as a restaurant/café, and conversely unless a condition of planning granted on the property expressly restricts its use to a singular purpose.
3. The subject property, based on the evidence adduced, appears to have been purpose designed and fitted to trade as a Restaurant.
4. The subject property may have very limited retail options.
5. The respondent's comparison properties are located on a thoroughfare, front the street and are served with set back dedicated parking, and both together and individually share the benefit of a considerable frontage and profile.
6. Mindful of the specific design of the subject property, it would have been helpful in the instant case if the respondent had submitted comparison properties valued on an overall basis.

7. The comparisons cited by the appellant were of limited assistance having regard to their locations and distance from the subject, particularly as three of them are located within shopping centres, and the remainder in mixed-use developments.
8. The subject property is a stand-alone premises, without dedicated parking, set back from the adjoining cul-de-sac, Three Rock Road, and difficulty of access acknowledged by both parties.
9. It was not provided with any evidence to support a thesis that the hypothetical tenant might assess either a premium or conversely a loading on the value of the subject premises with respect to the provision of a mezzanine floor offered to him in the subject when considering renting the property as a single take.

Determination

Mindful of the foregoing, together with all the evidence submitted and advanced at hearing, the Tribunal considers that a fair and reasonable valuation on the subject should be set as follows:

Retail Ground Floor	110.06 sq. metre	@ €400 per sq. metre =	€44,024
Retail Mezzanine	65.43 sq. metre	@ €200 per sq. metre =	<u>€13,086</u>
Total		=	€57,110

NAV say €57,100

And the Tribunal so determines.