

Appeal No. VA12/2/006

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

Grant's Pharmacy Gorey Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2210288, Shop at Lot No. 12b/Block A, Ground Floor, The Avenue,
Gorey, Gorey Urban, Gorey, County Wexford.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Frank Walsh - QFA, Valuer

Member

Rory Hanniffy - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF OCTOBER, 2012

By Notice of Appeal received on the 23rd day of April, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €124 on the above described relevant property.

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

"On the basis that the RV as assessed is excessive & inequitable for this property at this off centre location in Gorey."

"Given the property's actual location away from the prime main street it is over assessed in terms of its relative value given the established tone in the town of Gorey."

This appeal proceeded by way of an oral hearing heard in the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 20th day of June 2012. At the hearing the appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), ASCS, MRICS, MIAVI of Eamonn Halpin & Co. Ltd. Chartered Valuation Surveyors and Estate Agents. Ms. Orla Lambe BSc. (Surveying), MIAVI a Valuer in the Valuation Office appeared on behalf of the respondent the Commissioner of Valuation.

Prior to the commencement of the oral hearing and in accordance with the rules of the Tribunal each party submitted to the Tribunal and exchanged a précis of the evidence they proposed to adduce under oath at the oral hearing. From the evidence so tendered – most of which is factual and not in dispute – and from additional evidence received orally at the hearing, the following facts material and relevant to the appeal were agreed or are so found.

The Issue

The only issue in dispute was the value of the subject property determined in accordance with Section 49(1) of the Valuation Act, 2001, arising out of a request for a revision pursuant to the provisions of Section 28 of the Act.

The Property Concerned

The property concerned is a retail unit in a newly constructed mixed-use development known as the Palms Centre with retail units at ground floor level and offices and apartments overhead. The Palms Centre is located on the west side of The Avenue, close to the junction with Main Street, Gorey. While The Avenue (also known as the Old Wexford Road) would not be considered to be a retailing location as such, it is noted that the Gorey Shopping Centre which contains a Dunnes Stores and several retail units is accessed off The Avenue at a roundabout some 500m south of Main Street. It is agreed that there is on-street car parking at the front and additional car parking facilities at the rear of the subject property.

The subject property which trades as Grant's Pharmacy is a larger than typical mid-terrace unit with a frontage of 12.3 metres onto the avenue. The area measured on a Net Internal Area basis is agreed to be as follows:

Shop 170.86 sq. metres

It is agreed that the area measured on a zoning basis is as follows:

Retail zone A	71.04 sq. metres
Retail Zone B	65.58 sq. metres
Retail Zone C	<u>34.24</u> sq. metres
Total Area	170.86 sq. metres

Rating History

On the 7th July 2011 the appellant was advised that it was proposed to enter the valuation of the subject property on the Valuation List in the sum of €136. Following representations the rateable valuation of the property was entered on the Valuation List at €124. No change was made by the Commissioner of Valuation on foot of an appeal made under section 30 of the Act and in due course a further appeal was lodged to this Tribunal in accordance with Section 34 of the Valuation Act, 2001.

Appellant's Evidence

Mr. Halpin in evidence contended that the proper rateable valuation of the property concerned in accordance with Section 49(1) of the Valuation Act, 2001 was as set out below.

Shop Zone A	71.04 sq. metres @ €109.36 per sq. metre	=	€ 7,769
Shop Zone B	65.58 sq. metres @ €54.68 per sq. metre	=	€ 3,586
Shop Zone C	34.24 sq. metres @ €27.34 per sq. metre	=	<u>€ 936</u>
Net Annual Value		=	€12,291

Rateable Valuation @ 0.5% = €61.45

RV Say €60

Alternatively:

Shop	170.86 sq. metres @ €68.34 per sq. metre	=	€11,676
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Rateable Valuation @ 0.5% = €58.38

RV Say €58

In support of his opinion of net annual value, Mr. Halpin introduced 5 comparisons, details of which are contained in Appendix 1 to this judgment.

In his evidence Mr. Halpin said The Avenue was not a recognised retail location and compared unfavourably with the Main Street and Esmonde Street which in his opinion was a secondary retail street. This being so the property concerned would not be attractive to a hypothetical tenant who in all probability would prefer a location on Main Street or Esmonde Street in close proximity to the Tesco and Aldi outlets. Mr. Halpin said that in his opinion the respondent did not appear to appreciate the inferior location of the subject property from a retailing point of view and the fact that a hypothetical tenant would only rent the subject property if it were offered on highly competitive terms.

Mr. Halpin said that the valuation of the property concerned being put forward by the respondent on an overall basis of €136 per sq. metre did not fairly reflect the inferior location from a retailing point of view nor the fact that it was a larger than typical retail unit. From an analysis of assessments on Main Street, Mr. Halpin concluded that shops on Main Street were valued at Zone A rates ranging from €219 per sq. metre to €260 per sq. metre depending on their location on the street. However, when further analysed on an overall rate per sq. metre basis there was a clear correlation between size and rate per sq. metre - 20.3 sq. metres @ €246 per sq. metre (No. 66a), 76 sq. metres @ €150.37 per sq. metre (No. 57), 160 sq. metres @ €109.36 per sq. metre (No. 23), 364 sq. metres @ €68.35 per sq. metre.

Having regard to this lateral analysis it would appear therefore that the appropriate rate per square metre, Mr. Halpin said, for a shop of the size of the subject property would be in the order of €105 per sq. metre. Having regard to the differential in location between Main Street and the Avenue Mr. Halpin suggested that a downward adjustment of approximately 35% would be appropriate thus giving a figure of €68.25 per sq. metre for the property concerned.

Mr. Halpin said that he was of the opinion that little weight should be attached to the respondent's comparisons 4, 5, 6, 7 & 8 as these were units in the same development as the property concerned and share a common valuation date. To that extent they could not be representative of the tone of the list at the date upon which the valuation of the property concerned was made.

Under cross-examination by Ms. Lambe, Mr. Halpin agreed that the Palms Centre was just around the corner from Main Street and benefited from ample on and off-street car parking. He did not agree with the proposition put to him that the Palms benefited to any significant

extent from its proximity to the Gorey Shopping Centre as most of the visitors tended to drive rather than walk to that centre, where there was a comprehensive range of retail outlets and onsite car parking facilities.

When questioned about Esmonde Street where his comparisons 1 & 2 are located Mr. Halpin agreed that it was a secondary retailing location but opined that it was nonetheless superior to The Avenue from a trading point of view. Mr. Halpin further commented that in his opinion the rate per sq. metre applied to the retail units in the Palms development should be lower than those included on Esmonde Street which his comparisons indicated were in the order of €82 per sq. metre on an overall basis.

In relation to his comparison no 3 Mr. Halpin agreed that it was located at the Arklow end of Main Street and traded as a motorcycle sales outlet and lacked a conventional shop front. Comparison no 4, he agreed, was one of the best shops on Main Street but stressed that when valued on an overall basis it gave an overall rate per square metre of €80.29 i.e. some 42% lower than that attributed to the subject property by the respondent. Mr. Halpin said that in his opinion the subject property concerned should be valued at an overall rate per square metre at least 25% less to reflect the difference in the locations between the two premises.

When Ms. Lambe pointed out that his analysis of the Esquires Coffee Unit of the Gorey Shopping Centre was incorrect and was indeed valued at €130 per sq. metre on an overall basis, Mr. Halpin said that he agreed the facts as put forward by Ms. Lambe but nevertheless said that this restaurant occupied a much better location than the subject property.

The Respondent's Evidence

Ms. Lambe, having taken the oath adopted her précis as being her evidence-in-chief, wherein she contended that the proper rateable valuation of the property concerned was as follows:

Shop	170.86 sq. metres @ €136 per sq. metre	= €23,236.96
Rateable valuation @ 0.5%		= €116.18
RV Say		€116

Ms. Lambe pointed out that the rateable valuation currently appearing on the Valuation List was €124 and the figure of €116 put forward by her was due to a reduction in the area following an agreement made with Mr. Halpin.

In support of her opinion of net annual value, Ms. Lambe introduced 8 comparisons, details of which are set out in Appendix 2 to this judgment

In evidence Ms. Lambe said that the Palms Centre was constructed and finished to a high standard and located just off Main Street on the Avenue which is one of the principal streets in the town.

The Avenue was, she said, the main pedestrian route to Gorey Shopping Centre thus providing a good pedestrian flow past the Palms Development from and to the Main Street.

In reference to her comparative evidence Ms. Lambe said that her comparisons 1, 2 & 3 were all located in close proximity and that the values of these properties supported the valuation of the property concerned.

Under cross-examination Ms. Lambe agreed that her comparisons 4 to 8 were located in the Palms Centre and were valued at the same time as the property which is the subject of this appeal. Ms. Lambe pointed out that the valuations of these units were on the Valuation List and in fact had not been subject to challenge at either representations stage or Section 30 Appeal stage and felt that they were valid comparisons. In support of her opinion in this regard Ms. Lambe referred to the judgment of the Tribunal in the appeal **Xtra-vision Limited v Commissioner of Valuation (VA06/1/001)** where at Finding No. 3 the Tribunal stated as follows:

“(3) The Tribunal is of the opinion that Ms. Ryan was entitled to submit her comparisons (Nos. 5 to 9 inclusive) for the consideration of the Tribunal. Nonetheless, given the fact that the properties were valued at the same time as the property under appeal, this evidence must be treated with some degree of caution and critically examined to see if it fits in with the prevailing patterns of values for other units in the Potato Market, Hanover Square and Hanover Court.”

Ms. Lambe in response to a further question from Mr. Halpin agreed that the property concerned was a larger than standard unit and said that this was fully recognised by valuing it at €136 per sq. metre as against €150 per sq. metre used when valuing other units within the centre.

When questioned about her comparisons nos. 1 & 2, Ms. Lambe said that they were highly relevant in that they were both located on The Avenue directly opposite the Palms Centre. She agreed that neither were, strictly speaking, in retail use and were considerably smaller than the subject property. Ms. Lambe said that she had taken these elements into account when valuing the property concerned which is a modern purpose-built retail unit in a mixed-use development. In relation to comparison no 3 Ms. Lambe contended that it was a valid comparison in so much that it was located on Main Street close to the junction with the Avenue, in what she considered to be a relatively poor position on the street. This property, she said, was valued at a Zone A rate of €246 per sq. metre and the resultant figure devalued on an overall basis was €157.71 per sq. metre. This figure, Ms. Lambe said, compared favourably to the €136 per sq. metre used to value the property concerned having regard to the differences in location and the differences in size, layout and finishes between the two properties.

Under further examination in relation to the Gorey Shopping Centre Ms. Lambe agreed that she had no evidence of footfall at the subject property or to what extent if any it benefited from business generated at the centre.

Findings

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

1. The statutory basis for valuing properties on foot of a request for a revision is contained in Section 49 of the Valuation Act 2001 which states as follows:

“49.—(1) If the value of a relevant property (in subsection (2) referred to as the ‘first-mentioned property’) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same

rating authority area as that property is situated in, of other properties comparable to that property.

(2) For the purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then—

(a) in case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20,

(b) in case an existing valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988, but the amount estimated by those means to be the property's net annual value shall, in so far as it is reasonably practicable, be adjusted so that the amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act."

2. In rating law and practice the onus of proving that the valuation appearing on the Valuation List is incorrect lies with the appellant.
3. It is common case that the property concerned is one of six retail units at ground floor level in the Palms Centre which is a modern mixed-use development located on the Avenue close to the junction with Main Street.
4. It is agreed that Esmonde Street is a good secondary retailing location whereas the retailing and associated activities on the Avenue is restricted to that section just around the corner from Main Street.

5. The Tribunal accepts Mr. Halpin's contention that the business activity at the Palms Centre is not affected to a material extent by visitors using the Gorey Shopping Centre the majority of whom are car-borne.
6. The comparative evidence introduced by both parties indicates a lack of a consistent tone in respect of retail units in Gorey. In the circumstances the Tribunal attaches most weight to Ms. Lambe's comparisons 1, 2 & 3 all of which are located close to the property concerned. The Tribunal acknowledges that they are smaller than the property concerned and are not purpose-built for their current use.
7. In regard to Ms. Lambe's comparisons 4 to 8 all of which are located within the Palms Centre and valued at the same time as the property concerned, the Tribunal notes the findings in **VA06/1/001 - Xtra-vision Limited** and concurs with the opinions expressed therein. The fact that no representations or appeals were made in respect of these assessments is of some significance and cannot be ignored.
8. As stated in Finding 6 above the lack of a consistent tone or indeed a consistent method of valuation renders the Tribunal's task far from easy. Nonetheless the Tribunal in this instance has come to the conclusion, firstly, that the preferred method of valuation is the overall basis and secondly, that most weight should be accorded to the values of those properties located close to the property concerned. The Tribunal in arriving at its determination has also had regard to the fact that the Palms Centre is just off Main Street and provides, by common consent, good, well-finished retail outlets in a parade which has the benefit of on and off street car parking. Furthermore, the Tribunal in this instance is of the view that due regard must be given to the assessment of other retail units in the Palms Centre which were neither the subject of representations nor Section 30 appeals. To that extent, therefore, they are valid and admissible comparisons at this stage in the appeal process.

Determination

Having regard to the foregoing the Tribunal determines that the proper rateable valuation for the property concerned is as set out below:

Shop 170.86 sq. metres @ €120 per sq. metre = €20,503.20

Rateable Valuation @ 0.5% = €102.52

RV Say €102

And the Tribunal so determines.