

Appeal No. VA12/2/010

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

DDKJ Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2210034, Retail Warehouse at Lot No. Unit 1, North Point, Ballybaanbeg, Ballybrit, East, County Borough of Galway.

B E F O R E

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

Deputy Chairperson

Aidan McNulty - Solicitor

Member

Rory Hanniffy - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF NOVEMBER, 2012

By Notice of Appeal received on the 10th day of May, 2012, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €335 on the above described relevant property.

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

"On the basis that the RV as assessed is excessive in view of the relative value of this unit when viewed against the established tone of the list." "The proposed NAV is also excessive given the failed and incomplete nature of this development. The Commissioner has failed to make any allowances for these factors and has thus over assessed the subject."

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, located on the third floor of Holbrook House, Holles Street, Dublin 2, on the 23rd day of July, 2012. The appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI of Eamonn Halpin & Co. Ltd. and the respondent was represented by Mr. Daniel Donovan, BSc (Property Management & Valuation Surveying), Dip FM, MIAVI, a Valuer at 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 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 property is a retail warehouse facility. The property is comprised of a ground floor retail showroom and mezzanine showroom.

Location

The subject property is located at North Point Business Park, Tuam Road, Galway, which is on the outskirts of Galway City, approximately 4.2 km from the city centre.

Tenure

While the parties agreed that the property is held under a lease which commenced on the 1st day of May 2010, the appellant stated the lease was one of four years and nine months while the respondent stated the lease was one of two years' duration.

Floor Areas

The subject property was measured on a Gross Internal Area (GIA) basis. The agreed areas are as follows:

Ground Floor Showroom	810 sq. metres
Mezzanine Showroom	242 sq. metres

Valuation History

21 st April 2011	Property inspected
May 2011	Draft Valuation Certificate issued with an RV of €357
June 2011	Valuation Certificate issued with an RV of €357
21 st June 2011	Appeal submitted to the Commissioner of Valuation
13 th April 2012	Valuation Certificate issued with an RV of €335
10 th May 2012	Appeal Lodged with the Valuation Tribunal

Appellant's Case

Mr. Halpin adopted his précis as evidence-in-chief, with two amendments. The first amendment concerned page 6, paragraph 2, line 2, which states "*The subject property is the one of only two units currently assessed by the Commissioner.*" Mr. Halpin pointed out that a third unit had in fact also been assessed. The second amendment concerned page 6, paragraph 2, line 3 which states "*to the appellant's knowledge there is space for 8 retail units in the North Point development, of which 2 are currently occupied...*". Mr. Halpin pointed out there are in fact 10 retail units in the North Point development, of which two are currently occupied.

Mr. Halpin then commenced his evidence. He confirmed there was agreement between the parties concerning the floor areas of the subject property as outlined above. In respect of page 9 of his submissions, wherein he had outlined two alternative rateable valuations, Mr. Halpin confirmed he was withdrawing the first proposed rateable valuation (that being €205) and was pursuing the second proposed rateable valuation (that being €198).

Mr. Halpin then brought the Tribunal's attention to the photograph of the subject property contained in page 3 of the respondent's submissions. He stated the subject property is located

in a new retail/office development, which was completed circa 2008. He stated the development is comprised of five retail units on the ground floor (of which two are occupied) measuring 5,622 sq. metres, five retail units on the first floor measuring 7,340 sq. metres, while the second floor is comprised of office accommodation, which has not yet been fitted out. He pointed out that Irish Pride Bakeries operate an industrial enterprise to the rear of the development. He stated there was underground parking, which was partially flooded. Mr. Halpin stated the subject property had been previously occupied for a short period by Land of Leather.

Mr. Halpin stated that there was no further retail/office developments beyond the subject property on the Tuam Road and furthermore that the property is located just 1.3 km from the City/County boundary. Mr. Halpin then cited the six principal arguments in support of the appellant's case, as follows:

1. The Commissioner had failed to sufficiently reflect the relatively poor location of the subject property in his estimate of the NAV.
2. The subject property is situated in an incomplete retail and office development.
3. The rateable valuation applied to the subject property should be discounted from those applied to the appellant's comparison No.1 (Terryland Furniture Centre) at Terryland Retail Park - due to its location and developmental disadvantages and should in turn be set at levels similar to those employed in his comparisons No 2. (Sammons Home Furnishing) and No. 3. (R. O'Malley Ltd).
4. The subject property would be unattractive to the hypothetical tenant.
5. The levels suggested by the Commissioner for the subject property are at variance with the broad "*tone of the list*" for comparable properties and do not reflect the huge difficulties faced by occupiers in the subject development due to the largely vacant and incomplete nature of the development.
6. The appellant seeks a reduction in the rateable valuation so as to more fairly reflect the subject property's relative value taking into account its location and that of the North Point development.

Mr. Halpin then referred the Tribunal to a previous Tribunal decision **VA11/5/113 – O'Brien's Wine Off-Licence** (issued on the 27th day of January, 2012). Mr. Halpin accepted the decision was not binding, however he submitted the Tribunal had accepted that the

unfinished nature of a development was a relevant factor and he further submitted that in the within case, the Tribunal should similarly take into consideration the unfinished nature of the North Point development.

Valuation by the Appellant

Mr. Halpin contended for a rateable valuation of €198 for the subject property, calculated as follows:

	Area	€ per sq. metre	NAV
Ground floor showroom	810 sq. metres	45.00	€ 36,450
Mezzanine showroom	242 sq. metres	22.50	€ 5,445
			€ 41,895
Less 15% for location			€ - 6,284
Less 10% for incomplete/unoccupied nature of development			€ - 4,189
			€31,422
@ 0.63%			€ 197.98
			SAY RV €198

Appellant's Comparison Properties

In support of his opinion of rateable valuation, Mr. Halpin put forward four comparison properties, as follows:

Comparison No. 1

Property: Terryland Furniture Centre, Terryland Retail Park

Property No: 1153298

RV: €530

Ground Floor Front Showroom 278.24 sq. metres @ €54.68 per sq. metre

Ground Floor Rear Showroom 556.11 sq. metres @ €41.00 per sq. metre

Ground Floor Stores 400.00 sq. metres @ €30.75 per sq. metre

First Floor Retail 1,235.69 sq. metres @ €27.34 per sq. metre

Comparison No. 2

Property: Sammons Home Furnishing, Oldenway Business Park, Monivea Road

Property No: 2111211

RV: €68
Retail Warehouse 292 sq. metres @ €31.44 per sq. metre

Comparison No. 3

Property: R O'Malley Ltd, Monivea Road

Property No: 1545238

RV: €139.67

Offices & Showroom	110.74 sq. metres @ €47.84 per sq. metre
Store	36.60 sq. metres @ €27.34 per sq. metre
First Floor Offices	147.62 sq. metres @ €44.44 per sq. metre
Store	229.85 sq. metres @ €34.17 per sq. metre
Mezzanine	80.60 sq. metres @ €13.67 per sq. metre
Yard	135.00 sq. metres @ Nil

Comparison No. 4

Property: O'Connor's TV & Hi-Fi (now T/A Ritz Hair and Beauty), Dock Road

Property No: 1158587

RV: €76.18

Shop 218.15 sq. metres @ €54.68 per sq. metre

While addressing the Tribunal upon the comparison properties, Mr. Halpin pointed out that while the majority of both the appellant's and respondent's comparisons related to occupied premises, the subject property is situated in a largely unoccupied development.

Cross-examination of the Appellant

In response to questions raised by Mr. Donovan and the Valuation Tribunal, Mr. Halpin advised as follows:-

1. The O'Brien's Wine Off-Licence matter concerned Section 48 of the Valuation Act, 2001 whereas the within case was a Section 49(1) matter.
2. Comparison 1. (Terryland Furniture Centre) is the appellant's principal comparison property.
3. Rent is a factor which can be taken into consideration by the Tribunal in a Section 49 (1) revision case.

4. The appellant is entitled to refer to properties situated in the County Galway rating area.
5. The appellant's comparisons are older than the subject property, which is fit for purpose.
6. The subject property is a modern development, built to specification and is complete.

Respondent's Case

Mr. Donovan adopted his précis as evidence-in-chief, with two amendments. The first amendment concerned comparison property No. 3 on page 8, which Mr. Donovan stated had a rateable valuation of €278. The second amendment concerned comparison property No. 6 on page 11 in respect of which Mr. Donovan inserted the following information:

Retail Area	530.98 sq. metres @ €95.67 per sq. metre	€50,798.86
Store 1	100.80 sq. metres @ €41.00 per sq. metre	€ 4,132.80
Store 2	178.00 sq. metres @ €30.03 per sq. metre	€ 5,345.34
		€60,277.00
	RV = €60,277.00 x .63% = €379.74 Say RV = €380	

Mr. Donovan then commenced his evidence. He stated the subject property was a modern purpose-built property located next to the Tuam Road and was accessed by an internal road. Mr. Donovan stated the development was unfinished insofar as some areas had not yet been fitted out but that the entire development was completed to fit-out stage.

Mr. Donovan pointed out that his comparisons No. 1. (Door Depot), No. 2. (Pat McDonnell Paints) and No. 3. (Peter Curran Electrical) were all located in the same geographical area vis-à-vis Galway city. Comparisons No. 2 and No. 3 are located within business parks with greater occupancies than the North Point Development. However, Mr. Donovan attributed this to the fact that the North Point development came to the market later than comparisons No. 2 and No. 3.

Mr. Donovan stated that the principal factors considered when selecting comparison properties are location, construction, size and use. He submitted that one must ignore economic factors such as the financial downturn.

Valuation by the Respondent

Mr. Donovan contended for a rateable valuation of €335 for the subject property, calculated as follows:

	Area	€ per sq. metre	NAV
Ground floor	810 sq. metres	57.50	€ 46,575.00
Mezzanine	242 sq. metres	27.34	€ 6,616.28
			€ 53,191.28
@ 0.63%			€ 335.10
			SAY RV €335

Respondent's Comparison Properties

In support of his opinion of rateable valuation, Mr. Donovan put forward six comparison properties, as follows:

Comparison No. 1

Property: Door Depot, Unit 2 North Point, Tuam Road,

Property No: 2204323

RV: €358

Ground Floor Retail Warehouse @ €61.51 per sq. metre

Ground Floor Store @ €47.84 per sq. metre

(Overall ground floor rate of €57.50 per sq. metre)

Mezzanine @ €27.34 per sq. metre

Comparison No. 2

Property: Pat McDonnell Paints, Briar Hill Business Park, Galway.

Property No: 2187523

RV: €233

Ground Floor Showroom @ €68.34 per sq. metre

Ground Floor Store @ €54.67 per sq. metre

First-Floor Store @ €23.93 per sq. metre

First-Floor Office @ €41.00 per sq. metre

Comparison No. 3

Property: Peter Curran Electrical, 17, 18, 19 Glenrock Business Park, Galway.

Property No: 2187054

RV: €278

Ground Floor Showroom @ €54.67 per sq. metre

Ground Floor Office @ €47.84 per sq. metre

Ground Floor Warehouse @ €30.75 per sq. metre

Comparison No. 4

Property: Carpet Right, Wellpark Retail Centre, Galway.

Property No: 2180196

RV: €465

Ground Floor Retail @ €70.72 per sq. metre

First-Floor Store @ €34.17 per sq. metre

Comparison No. 5

Property: Johnstone's Paints, Tuam Road Retail Centre, Galway.

Property No: 1545366

RV: €186

Ground Floor Retail @ €88.83 per sq. metre

Ground Floor Store @ €61.51 per sq. metre

Comparison No. 6

Property: Smyth's Toys, Galway Retail Park, Galway.

Property No: 1154098

RV: €380

Ground Floor Retail 530.98 sq. metres @ €95.67 per sq. metre

Ground Floor Store 100.80 sq. metres @ €41.00 per sq. metre

Ground Floor Store 178.00 sq. metres @ €30.03 per sq. metre

Cross-examination of the Respondent

In response to questions raised by Mr. Halpin and the Valuation Tribunal, Mr. Donovan advised as follows:-

1. Comparison 1 (Door Depot) is the respondent's principal comparison property.
2. The rateable valuation applied to Comparison 1 (Door Depot) was not appealed.
3. Comparison 3 (Peter Curran Electrical) was reduced on appeal.
4. There are no set parameters for valuing mezzanine levels.
5. When examining properties one must ignore the economic factors/downturn and focus upon examining similar properties.
6. In respect of Comparison 3 the overall rate was €36.16 per sq. metre.
7. Comparison 4 (Carpet Right) is situated within a retail centre which enjoys a large main tenant. The development is largely occupied and is a successful development.
8. Comparison 5 (Johnstone's Paints) is situated within a retail centre which is largely occupied and enjoys good exposure to vehicular traffic on the Tuam Road.
9. Comparison 6 (Smyth's Toys) is similarly sized to the subject property but is considerably superior.
10. Mr. Donovan is unaware of the comparison properties relied upon in arriving at the rateable valuation for Comparison No. 1. He submitted that as the property was on the Valuation List (List) it was a suitable comparison.
11. During the initial valuation, Mr. Donovan calculated the rateable valuation of €357 on the subject property by applying €61.51 per sq. metre to the full retail area as the said figure was that applied to the retail area in Comparison No. 1 and he had taken the view that the full premises could be used as retail space. Upon appeal, he realised Comparison No.1 was exactly the same as the subject property and that the wall dividing the retail area from the store area was a partition wall. In the circumstances he felt the subject property should not be valued differently.
12. Mr. Donovan is unaware of any other retail development in Galway with similar vacancy levels to that in the North Point development.

Summaries

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 Tribunal appreciates the challenge faced by both parties to this appeal in identifying suitable comparable properties.
2. Both parties acknowledged the valuation is to be determined in accordance with Section 49 (1) of the Valuation Act, 2001 and that in such circumstances rent may be considered as a guide only and must be viewed cautiously as the focus must remain upon the tone of the list.
3. In conducting a revision exercise, such as in this case, it is not permissible to consider the economic cycle, as the “tone of the list” was devised to bring uniformity to valuations of all similar properties within the same rating authority area.
4. The Tribunal notes the uncertainty expressed by the respondent with respect to the manner in which the respondent’s Comparison No.1 was initially assessed and valued.
5. The appellant raised concerns regarding the consistency of approach in the valuation of retail warehouses and queried whether a number of such property valuations on the List for the Galway city area were determined initially by reference to varying rates per sq. metre applied to retail and rear storage areas, noting or disregarding the existence of solid or structural dividing walls.
6. The parties acknowledged that anomalies or differences of approach on the foregoing have been largely resolved since the adoption of agreed measurement and assessment protocols by the Rating Forum.
7. The Tribunal is satisfied that the primary and most suitable comparator submitted in evidence was that by the appellant, namely Comparison No.1 (Terryland Furniture Centre) and believes that when all arguments and submissions are considered the value of same in the context of its front and rear showroom comprising 834.35 sq. metres (€45.56 per sq. metre) is the most appropriate.
8. The Tribunal is satisfied the subject property's superior location and modern specification distinguishes it from Comparison No.1 and as such should be reflected in the rateable valuation.

Determination

In view of the foregoing, the Tribunal determines that the RV on the subject property should be calculated as follows:-

Ground Floor Showroom	810 sq. metres @ €52.62 per sq. metre	=	€42,622.20
Mezzanine Showroom	242 sq. metres @ €25.02 per sq. metre	=	<u>€ 6,055.22</u>
Total NAV			€48,677.42

€48.677.42 @ 0.63% = €306.67

RV say €307

And the Tribunal so determines.