

Appeal No. VA12/2/013

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

Tadhg Buckley

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2210214, School (Music) at Lot No. 5AB/19, 20a (First Floor), Park, Killarney Urban, Killarney UD, County Kerry.

B E F O R E

Maurice Ahern - Valuer, IPAV

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF NOVEMBER, 2012

By Notice of Appeal received by the Tribunal on the 17th day of May, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €35 on the above described relevant property.

The grounds of appeal are set out on a sheet attached to the Notice of Appeal, copies of both of which are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 17th day of July 2012. At the hearing the appellant, Mr. Tadhg Buckley, represented himself. The respondent was represented by Mr. David Molony, BSc, MRICS, a District 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 hearings, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given at the hearing, 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 first floor commercial suite, in use as an Irish music school. The property is contained within a newly built three-storey property. The building is of conventional construction with concrete block walls, with smooth cement plaster rendering and a pitched slate roof. Access to the upper floors is via a stairwell at the rear of the property.

Location

The property is located in a new development adjacent to the junction with Park Road, and a secondary road that leads to both Tesco supermarket/petrol station and Deerpark Retail Park. The development is located approximately a quarter of a mile east of Killarney town centre.

Tenure

The property is held under a commercial lease.

Accommodation/ Floor Areas

First commercial floor suite: 129.12 sq. metres.

Valuation History

- 12th July, 2011: Valuation Certificate issued. RV €35.
- 4th August ,2011: Representations submitted by GVA Donal O Buchalla on behalf of the appellant
- 14th September 2011: RV remained unchanged at €35.
- 25th October, 2011: Appeal lodged with the Commissioner of Valuation.
- 19th April, 2012: RV remained unchanged at €35.
- 17th May, 2012: Appellant lodged an appeal with the Valuation Tribunal.

Appellant's Case

Mr. Buckley, having taken the oath, adopted his précis as his evidence-in-chief. Mr. Buckley stated that there were several schools of music operating in Killarney and throughout Kerry and that many of these music schools were paying no rates. He stated that it must be understood that a music school is not a profitable enterprise in nature and cannot afford high rates, if any. Many music schools rely on charity to keep afloat. He further stated that music schools must compete with music teachers who operate from their homes or community halls. He stated that their school has followed all the regulations such as having the appropriate planning permission, fire certification, child protection policy, insurance, registration for tax etc. Mr. Buckley further stated that because 95% of their students are children, they can only operate after 3pm, when regular school closes, and they must be finished classes by 8pm. Their working period over the year is only 34 weeks and they have no demand for classes during the summer months.

Mr. Buckley stated that the original valuation was based on comparisons to properties that are all vacant now due to business failure. These were Property Nos. 2172281 (Kip McGrath Education Centre) and 2112223 (Air Mail Limited). Mr. Buckley asserted that a fair comparison for rating purposes should be based on other music schools in the region.

Cross-Examination

When questioned by Mr. Molony, Mr. Buckley stated that the RV in his opinion should be less than €15. He stated that the fit-out cost was approx. €40,000. The rent is €13,000 per

annum, which they are finding very difficult to pay. The short term lease commenced in 2010. He further stated, taking all of this into account, that in his opinion an RV of €15 could be an affordable figure.

The Respondent's Case

Mr. Molony took the oath and adopted his written précis and valuation, which had been received by the Tribunal and the appellant, as his evidence-in-chief. Mr. Molony contended for an RV of €35. Mr. Molony then outlined the location, description, accommodation, condition and tenure of the subject property. Prior to outlining the details of his comparisons, Mr. Molony corrected errors in his précis of evidence concerning his comparison No.1, where the floor area should be stated as having an NAV of €4,027 and the RV should be €20. He then outlined his two comparisons as follows:

(1) Property No. 2183522 - Park Road, Killarney, Co.Kerry.

Occupier: Vacant
 Description: Offices
 Valuation Assessment: 2006 Revision
 Rateable Valuation: €20

Valuation Assessment:

First Floor offices: 73.69 sq. metres @ €54.65 per sq.metre = €4,027

Estimated NAV €4,027 @ 0.50% = €20.13

RV Say, €20

Note:

The property is located on Park Road in a neighbourhood shopping centre adjacent to same roundabout as the subject property which leads to the Tesco supermarket and service station.

(2) Property No: 2172281 - Tralee Road, Killarney, Co.Kerry.

Occupier: Kip McGrath Education Centre
 Description: Training Centre
 Valuation Assessment: 2004 Revision
 Rateable Valuation: €16

Valuation Assessment:

First floor commercial suite: 64.46 sq. metres @ €54.65 per sq. metre = €3,522.74

Estimated NAV @ €3,522.74 @ 0.50% = €17.61

RV Say €16.00

Note:

- This property is located on the main Tralee/Killarney road adjacent to the Tralee Court Hotel. Access to this property is similar to the subject and is accessed via an external stairwell.
- The property is located in a mixed development comprising a Texaco service station, two ground floor retail units with three first floor commercial office suites.

Cross-Examination

When questioned by Mr. Buckley, Mr. Molony stated that he personally valued comparisons Bos. 1 and 2. Comparison No.1 was vacant when he valued it and comparison No.2 also appeared to be vacant. He further stated that he was not aware of any individuals operating as music teachers in the Killarney region who are not paying rates.

In summarising, Mr. Buckley thanked the Tribunal for giving him the opportunity to present his case. He further stated that music schools are different from other businesses.

Findings

The Tribunal thanks the parties for the submissions made and evidence give during the hearing and finds as follows:

1. The instant appeal falls to be determined under Section 49(1) of the Valuation Act, 2001 which provides 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 situate in, of other properties comparable to that property. (In other words the valuation of the property concerned is to be determined in accordance with what is known as the “tone of the list”, although this expression is not explicitly referred to in the Act.)
2. In accordance with rating law and practice the onus of proving that a valuation of a property appearing on the valuation list is incorrect lies with the appellant. In the

instant case, the Tribunal notes that the appellant submitted no relevant comparative evidence to support his opinion of the rateable valuation of the subject property.

3. The Tribunal accepts the comparative evidence put forward by the respondent.
4. The valuation of the subject property must be based on the valuations of properties comparable to that property. The business carried on at those properties is not a factor to be taken into consideration by the Tribunal.
5. The economic circumstances of the occupier of a property the subject of an appeal cannot be taken into consideration by the Tribunal.

Having considered all the evidence and arguments adduced by both parties and having regard to the above findings, the Tribunal upholds the determination of the respondent and affirms the rateable valuation of the property concerned at €35.

And the Tribunal so determines.