

Appeal No. VA12/3/009

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

Red FM

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2210784, Kiosk at Unit K11, Ballinure Road, Mahon B, Mahon, County Borough of Cork.

B E F O R E

Maurice Ahern - Valuer, IPAV

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Patricia O'Connor - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF JANUARY, 2013

By Notice of Appeal, received on the 18th day of July, 2012, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €8 on the above described property.

The Grounds of Appeal as set out in the said Notice of Appeal are:

"Valuation is excessive, inequitable and bad in law."

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal on the third floor of Holbrook House, Holles Street, Dublin 2, on the 12th day of September, 2012. At the hearing the appellant was represented by Mr. Gerard O'Callaghan, BSc (Surv), Dip Property Economics, MSCSI, agent of RE/MAX Cork & County, and the respondent was represented by Dr. Viorel Gogu, a Revision Officer 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

Red FM Radio, Broadcasting Pod, Unit K11, Mahon Point Shopping Centre, Mahon, Cork.

Location

The property is situated on the first floor landing on Mahon Point Shopping Centre in the suburb of Mahon in close proximity to the N25 South Ring Road.

Description

The property comprises a PVC glass kiosk structure.

Floor Areas

The subject property comprises approximately 5 sq. metres.

Valuation History

- 17th October 2011- Valuation Certificate (Proposed) issued; RV €8
- Representations not submitted.
- 21st November 2011 Valuation Certificate issued;
- 21st December 2011- Appeal submitted
- 21st June 2012- Final Certificate issued at RV €8
- This decision has now been appealed to the Valuation Tribunal

Appellant's Case

Mr. O'Callaghan stated that the subject property is a radio broadcasting pod which is situated on a landing between the ground floor and the first floor. He said that it was made of PVC glass and had been specially constructed for such use. Mr. O'Callaghan was of the view that it could not be utilised for any other purpose. He stated that the location of the subject property was not a location which had any retail activity and pointed out that the licence agreement under which the subject property was held excluded use for retail purposes.

Valuation by the Appellant

Mr. O'Callaghan contended for a rateable valuation of €9.50 for the subject property, calculated as follows:

Circa 5 sq. metres @ €300 per sq. metre = €1,500 per annum x 0.63% = €9.45

Appellant's Comparison Properties

In support of his opinion of ratable valuation, Mr. O'Callaghan put forward three comparison properties, as follows:

1. RTE Radio Studio, Unit 5, Level 5, Dundrum Town Centre, Dublin 16. This was re-valued on the 7th May 2012 at a valuation of €18,580.
2. Boston Barbers & Beauty Salon, Unit KK, Mahon Point Shopping Centre, Mahon, Cork. This is the nearest adjoining unit to the subject property with a rateable valuation of €65. This valuation devalues at approximately 53 sq. metres @ €195 per sq. metre.

3. Conference Centre, Unit M2 Mahon Point Shopping Centre. This is an office / meeting room located at Mahon Point Shopping Centre. (This is the only information which was furnished in relation to this comparison.)

Mr. O'Callaghan stated that he had been unable to find a definition of a kiosk but in his view it was small, often portable and used for commercial or retail activity. He confirmed that the subject property could not be moved. He stated the subject property had no facility whereby you could engage with a customer and he felt that if it were to be used for retail purposes it would pose a safety issue as it would block up the whole landing area. Mr. O'Callaghan confirmed that it was not a condition of the Planning Permission for the shopping centre that the subject property be used specifically for radio broadcasting. He stated that he had no option but to go outside the rating area to find a suitable comparison.

Cross-examination of the Appellant

There was no cross examination.

Respondent's Case

Dr. Viorel Gogu gave evidence on behalf of the respondent. Dr. Gogu was of the view that the subject property benefited from high visibility and would be suitable in terms of size and location for purposes such as the sale of lottery tickets, mobile phone repairs, key cutting, etc.

Valuation by the Respondent

Dr. Gogu contended for a rateable valuation of €8 for the subject property, calculated as follows:

Kiosk 5 sq. metres valued at €9,200 * 0.0063 = €57.96 say RV: €8

Respondent's Comparison Properties

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

1. The Sweet Company Limited trading as the Sweet Factory, Unit K2, Mahon Point Shopping Centre. This is located on the upper ground floor. Rateable Valuation €8.
2. Fusion Floral Design Limited, Unit K4, Mahon Point Shopping Centre. This is located on the lower ground floor. Rateable Valuation €8.
3. Muskerry Systems trading as Sky Digital, Unit K6, Mahon Point Shopping Centre. This is located on the upper ground floor. Rateable Valuation €8.
4. Silverwood Jewellery, Unit K8, Mahon Point Shopping Centre. This is located on the upper ground floor. Rateable Valuation €8.
5. Kids Kabs Limited, Unit K10, Mahon Point Shopping Centre. This is located on the lower ground floor. Rateable Valuation €8.
6. Joe Hegarty trading as Heavens Cakes, Unit K11, Mahon Point Shopping Centre. This is located on the lower ground floor. Rateable Valuation of €8.
7. Mario trading as J & M Bags shop, Unit K12, Mahon Point Shopping Centre. This is located on the lower ground floor. Rateable Valuation of €8.
8. Chantal O'Connor trading as Amandine French, Unit K13, Mahon Point Shopping Centre. This is located on the lower ground floor. Rateable Valuation €8.

Cross-examination of the Respondent

Dr. Gogu was of the opinion that for activities such as key cutting, lottery sales, etc. all that would be needed for public access was a window and that it would be very easy to remove some glass panelling from the subject property to open it to the public. Dr. Gogu similarly felt that such an activity would not interfere with footfall as there would be room enough between the kiosk and the wall for pedestrian traffic. He also pointed out that activities such as key cutting or phone repairs would not disturb the pedestrian traffic. He said that he did not have a definition of a kiosk but he defined it himself as “a small structure situated in a busy area in a mall or shopping centre, usually held on a short term licence or agreement”. He did not agree that commercial activities necessitated interaction with customers citing Kids Kabs (which sells from the information desk) and Sky Digital as examples. He pointed out that the role of the respondent was to value the kiosk, not the business. He disagreed with Mr. O’Callaghan’s contention that the subject property should be rated as an

office due to its size and height. He reiterated his opinion that the subject property could be used as a retail premises as it was very visible.

Dr. Gogu confirmed that the respondent had arrived at a NAV of €9,200 for the subject property by comparing this unit with the tone of the list. He stated that all kiosks were valued at a RV of €8 and suggested that size and location did not matter. With regard to his comparisons he stated that the rateable valuation for Comparisons Nos. 1 and 4 had been rounded up to €8. When it was put to him that the figures actually devalued to €5 and €2 respectively, Dr. Gogu accepted that it was possible that his calculations may have been wrong. However, having said that, he reiterated that all the kiosks in Mahon Point were valued at a RV of €8.

When queried on this point, Mr. O'Callaghan confirmed that he would accept the figures provided by the respondent.

Dr. Gogu confirmed that the respondent decided to apply a rateable valuation of €8 on all the kiosks regardless of size and location. The Tribunal queried whether it was safe to rely on this figure in those circumstances. Dr. Gogu stated that a rateable valuation of €8 had been accepted by the occupiers in that none of them had appealed the valuation.

Summaries

Both parties made brief closing submissions. Mr. O'Callaghan reiterated his view that the subject property should be rated as an office rather than a kiosk, given its size, structure and location as well as its permitted use.

Dr. Gogu was of the opinion that the subject property was large enough to be used for retail purposes and pointed out again that a RV of €8 had already been established in Mahon Point for kiosks which he stated was both fair and reasonable.

Findings

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at hearing, 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. Section 49(1) provides as follows:
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.
2. The subject property is a kiosk, not an office, and therefore cannot be assessed for valuation purposes as an office as contended for by the appellant.
3. The respondent provided 8 comparison properties, all of which are kiosks located in the same development as the subject property. However, four of these are located on the lower ground floor of the subject development, with the remaining four being located on the upper ground floor. None is in a similar location to the subject property, which is located on a landing between two travellers serving the lower ground and upper ground floors.
4. The only property located at the same level in the shopping centre as the subject property is the appellant’s comparison no. 2 – Boston Barbers, which is a conventional retail unit.
5. The Tribunal is of the view that kiosks generally have an advantage over conventional retail units in that they enjoy direct and continuous access to pedestrian footfall.
6. Notwithstanding the previous finding, the Tribunal is of the view that the location of the subject property, being on a landing between two travellers, has the status of a transit area, and is not a retail floor proper. This puts the location of the subject property at a significant disadvantage to other locations within the subject development. The Tribunal considers that

this factor would considerably reduce the desirability of the subject property to the hypothetical tenant.

Determination

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

Kiosk: 5 sq. metres @ €414.70 per sq. metre = €2,073.50

NAV €2,073.50 @ 0.63% = €13.06

Less 25% allowance for location issues = €9.79

RV say €10

And the Tribunal so determines.