

Appeal No. VA12/3/015

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

Kevin Shelly

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 5003069, Creche (Purpose Built) at 1 The Water Rill, Waterside Estate, Swords Road, Malahide, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Aidan McNulty - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF JANUARY, 2013

By Notice of Appeal received on the 23rd day of July, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €36,500 on the above described relevant property.

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

"Estate is unfinished. Roads are unfinished. Council will not take possession of roads etc.

Large areas of estate boarded up."

"Local Authority rates should not apply on unfinished estates. Cannot use other crèches as comparables in completed estates."

This 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 1st day of October, 2012.

At the hearing the appellant, Mr. Kevin Shelly, the co-owner/operator of Waterside Crèche and Montessori, appeared on his own behalf. Mr. Viorel Gogu, valuer at the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation.

Prior to the hearing and in accordance with the rules of the Valuation Tribunal each party was requested to forward to the Tribunal and the other party a précis of evidence that they proposed to adduce at the oral hearing. Mr Shelly did not avail of this opportunity but chose to rely on the grounds of appeal put forward by him at the section 30 appeal stage and as set down in paragraph 6(a)(1) of the Notice of Appeal form forwarded to the Tribunal and dated the 21st July, 2012. Mr. Gogu, on the other hand, did comply with the Tribunal's request and forwarded a précis which was subsequently received into evidence under oath at the oral hearing.

From the evidence tendered and additional oral testimony received at the hearing the following facts material and relevant to the appeal were agreed or are so found.

The Property Concerned

The subject property is a crèche and Montessori premises located at ground floor level in a 3/2 storey terrace building within the Waterside Development which is located on the southside of the R106 (Swords to Malahide) on the immediate outskirts of Swords. Waterside is a large residential development scheme providing for 551 units of occupation of various types and sizes. To date some 450 units have been completed of which some 70 are vacant. Waterside has been identified as "a non-finished housing development" and has been graded on the National Unfinished Housing Development Database as being Category 1 i.e. a development which is "*still being actively completed by the developer*". It is agreed that large sections of the estate are in a non-finished and unkempt state, that a substantial number of properties have been boarded up awaiting completion and that the estate roads and common areas have not yet been taken in charge by the local authority.

The property concerned occupies a corner location close to the main entrance off the Swords to Malahide road where there are also three retail units occupying. Only two of these units are currently occupied. It would appear that within the original planning permission there is provision for a second crèche premises to be built in the Waterside Development but to date this has not yet been provided for similar corner type locations.

Accommodation

The area of the property for rateable valuation purposes is agreed to be 215.29 sq. metres. It would appear that there are also four dedicated car parking spaces allocated to the property

Tenure

The property is occupied under the terms and conditions of a short term 5 year lease arrangement at an annual rent of €15,800.

Rating History

The valuation of the property was first assessed at €38,700. This figure was subsequently reduced to €36,500 following representations by the appellant. No change was made on foot of an appeal to the Commissioner of Valuation pursuant to section 30 of the Valuation Act 2001 and in due course the appellant lodged a further appeal with this Tribunal in accordance with section 34 of the Act.

The Appellant's Evidence

Mr. Shelly having taken the oath said that he and his wife were the proprietors and operators of the crèche and Montessori premises which are the subject of this appeal. Mr. Shelly said that the fact that the Waterside Development was unfinished was having an adverse effect in attracting customers to the crèche and this situation was exacerbated by the lack of adequate car parking in the immediate vicinity of the property. Moreover a further drawback was the internal layout of the property which resulted in a situation whereby the crèche could only cater for 55 children whilst the norm in a purpose-built crèche with a similar area of 215 sq. metres would be in the order of 65 children. Mr Shelly said that the number of attendees was currently 45 children in the crèche and Montessori facility and three availing of after-school services. The former figure, representing an approximate rate of 82%, was below the industry norm of 90% whereas the latter figure was very low and was due to a number of factors

including the age profile within the estate, where most custom was derived from, and adverse economic circumstances.

Mr. Shelly said that the rent being paid represented the current market rent for a crèche in this area and that in his opinion the valuation of the property for rating purposes should not exceed €20,000.

Mr. Shelly said that he was surprised when he received Mr.Gogu's précis of evidence to see that the comparisons contained therein were different from those put forward originally by Mr.Gogu at the revision and representation stages. This, he said, put him somewhat at a disadvantage as it left him little time to examine these additional comparisons. Nonetheless, Mr. Shelly said they were either better located than the subject property or were purpose-built and hence more efficient in use. To that extent, therefore, they were not truly comparable. For the benefit of the Tribunal Mr. Shelly provided a comprehensive portfolio of photographs of the comparisons originally put forward by Mr.Gogu but said that he was not in a position to do so in regard to the four most recent comparisons.

The Respondent's Evidence

Mr.Gogu having taken the oath adopted his précis and valuation which had been received by the Tribunal and the appellant as being his evidence-in-chief.

In his evidence Mr.Gogu contended that the proper valuation of the property concerned in accordance with Section 49(1) of the Valuation Act, 2001 was €36,500, calculated as set below:

Ground floor crèche 215.29 sq. metres @ €170 per sq. metre = €36,599.30

NAV say €36,500.

In support of his opinion of net annual value Mr.Gogu introduced four comparisons details of which are set out in appendix 1 attached to this judgment.

Mr.Gogu said that he was the revision officer recently appointed to carry out the revision of valuation in accordance with section 28 of the Valuation Act 2001. In arriving at his opinion

of value he had regard to the unfinished state of the Waterside Development. He acknowledged that the comparisons contained in his précis were different from those cited by him at the revision stage. Nonetheless, Mr. Gogu said the comparisons now being put forward by him were all located in the greater Swords area close to the subject property and fairly represented the tone of the list for such properties in the area. Mr. Gogu said he was conscious of the arguments for a reduction put forward by Mr. Shelly but, in his opinion, the valuation of the property was fair and reasonable and well supported by the comparisons put forward by him at both the revision and appeal stages.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced by the parties including that in relation to the comparisons and finds as follows.

1. This appeal arises at the request for a revision of valuation in accordance with the provisions of section 28 of the Valuation Act 2001.
2. The statutory basis for arriving at the value of the property concerned under the provisions of Section 28 are set down in Section 49 of the Act 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."

In other words, the valuation of the property concerned is to be determined by reference to the tone of the list.

3. The Tribunal having considered all the comparison evidence introduced, including those used by Mr. Gogu at the original revision stage, has come to the conclusion that €170 per sq. metre is not unreasonable for a crèche of the size and location of the property concerned. However, having regard to the unfinished state of the Waterside Development and the actual number of properties currently in occupation at the time of the revision (380 of a planned 551) a modest reduction is justified. An additional factor to be taken into account is the less than ideal layout of the space which Mr. Shelly contended had the effect of limiting the number of children that could be catered for in the property.
4. The Tribunal does not consider the limited car parking available in the area to be a major consideration in that what is needed is a "drop-off" facility and not parking as such. The Tribunal also notes that the original intention was to have two crèches in the Waterside Development so that the number of current units in occupation would appear to be adequate to support a crèche of the size and nature of the property concerned whatever about the after-school attendees.

Determination

Having regard to the above findings, the Tribunal determines that the value of the property concerned in accordance with Section 49 of the Valuation Act, 2001 to be as set out below:

Crèche 215.29 sq. metres @ €160 per sq. metre = €34,446.40

Net Annual Value €34,400

And the Tribunal so determines.