

Appeal No. VA12/3/031

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

Fiore Macari / Mancini's Family Diner

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2211509, Restaurant/Cafe at Lot No. 4B/Unit 16-17, Ashbourne Retail Park, Cookstown, Kilbrew, Dunshaughlin, County Meath.

B E F O R E

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

Deputy Chairperson

Thomas Collins - PC, FIPAV, NAEA, MCEI, CFO

Member

Rory Hanniffy - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF FEBRUARY, 2013

By Notice of Appeal received the 27th day of August, 2012, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €188 on the above described relevant property.

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

"The valuation is excessive and inequitable." 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 31st day of October, 2012. The appellant was represented by Mr Terry Devlin, BSc, MSCSI, MRICS, MIAVI of REA O'Donnell Property Consultants and the respondent was represented by Mr Dean Robinson, BSc(Hons) Property Economics, 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 area and upper floor area (described as a mezzanine by the respondent). The appellant operates a restaurant/diner from a portion of the ground floor area, which is divided from the remainder of the ground floor by means of a timber partition.

Location

The property is located at Ashbourne Retail Park, Ashbourne, Co. Meath, which is on the outskirts of the town of Ashbourne.

Tenure

The subject unit is a leasehold property held under a 20 year lease, which commenced in July 2010 and which is subject to an initial three-year rent-free period.

Floor Areas

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

Ground Floor Retail	611.41sq metres
Upper Floor/Mezzanine	44.53sq metres

Valuation History

28th August 2011 Property inspected

10 th November 2011	Draft Valuation Certificate issued with a RV of €160
23 rd January 2011	Appeal submitted to the Commissioner of Valuation
25 th April 2012	Valuation Certificate issued with a RV of €188
27 th August 2012	Appeal lodged with the Valuation Tribunal

Appellant's Case

Mr. Devlin adopted his précis (without amendment) as evidence-in-chief.

Mr Devlin then commenced his evidence. He indicated that while he had no difficulty with a rate of €8 per square metre being applied to the portion of the ground floor utilised as a restaurant, he proposed that a 50% reduction be applied to the remainder of the ground floor, which has not yet been fitted out and which, he argued, could not at present be used as a restaurant.

Mr Devlin submitted that the portion of the property, which he referred to as the roof space, is effectively only suitable for ducting and as such has no real value. He further submitted that the roof space head height does not exceed 2 metres at any point. Mr Devlin indicated that he was unsure whether the roof space portion of the property had been included in the original lease.

Valuation by the Appellant

Mr. Devlin contended for a rateable valuation of €148 for the subject property, calculated as follows:

Ground Floor

Restaurant/Diner	413.86 sq. metres @ €8.00 per sq. metre	=	€24,003
Unfinished Area	197.55 sq. metres @ €29.00 per sq. metre	=	<u>€ 5,729</u>
Total NAV			€29,732
@ 0.5%	= 148.66		
RV say	€148		

Appellant's Comparison Properties

In support of his opinion of rateable valuation, Mr Devlin put forward three comparison properties, (the third comparison was comprised of three separate units within the same industrial estate) as follows:

Comparison No. 1

Property: Byrne Stenson Electrical, Unit 14, Ashbourne Manufacturing Park,
Ashbourne, Co. Meath.

Property No: 2165888

RV: €37.00

Warehouse 217.66 sq. metres @ €30.74 per sq. metre = €6,690.86

Office 20.00 sq. metres @ €34.28 per sq. metre = € 685.60

Total NAV €7,376.46

@ 0.5% = €36.38

RV say €37

Comparison No. 2

Property: RAM Technologies Ltd, Unit 5, The Court, Ashbourne Industrial Park,
Ashbourne, Co. Meath.

Property No: 2145130

RV: €2.53

Industrial/Office @ €30.74 per sq. metre = €16,506.00

@ 0.5% = €2.53

Comparison No. 3

Property: Kelly Timber, Raystown Industrial Estate, Ashbourne, Co. Meath.

Property No: 2163779

RV: €90.00

Property: Breffni Plant Hire, Raystown Industrial Estate, Ashbourne, Co. Meath.

Property No: 2188053

RV: €63.00

Property: Royal Transport, Raystown Industrial Estate, Ashbourne, Co. Meath
Property No: 2188054
RV: €160.00

Above units valued at €21.90 per sq. metre and €17.80 per sq. metre.

While addressing the Tribunal upon the comparison properties, Mr Devlin indicated that he was relying upon industrial units only, as it was his contention that such rates should be applied to the portion of the ground floor which has not been fitted out. Furthermore, he suggested that there was no point in using comparable retail properties as he takes no issue with the rate applied to the fitted-out restaurant/diner portion of the subject property.

Cross-examination of the Appellant

In response to questions raised by Mr Robinson and the Valuation Tribunal, Mr Devlin advised/accepted as follows:-

1. The portion of the ground floor which has not been fitted out should be distinguished from the restaurant/diner portion of the property.
2. "Retail Warehouse" is an appropriate description of the entire subject property.
3. The alternative fit-out contained within the respondent's comparison property number 6 is not comparable to the subject property.
4. The appellant had sought the release of information concerning the respondent's comparison properties including the photographs now relied upon by the respondent; however, the respondent had requested €250 in respect of each report.
5. The entire subject property could have been used as a retail warehouse from the commencement of the lease.
6. Regarding a previous Tribunal decision (**VA88/0/106 –Craig Gardner & Company**, issued on the 6th day of June, 1989) relied upon by him, Mr Devlin accepted that the subject property in that appeal was an office block. However, he submitted that the appellant continued to rely upon the principle established in the case.
7. His opinion was that no value should attach to the upper floor/mezzanine portion of the subject property as he considered it to be unusable for commercial purposes. However, under cross-examination, he acknowledged that a nominal value, citing €4 per sq. metre, might be reasonable.

8. He acknowledged that mezzanine areas are ordinarily included for rating purposes.
9. He also acknowledged that the current appeal is governed by the provisions of Section 49 of the Valuation Act, 2001.

Respondent's Case

Mr. Robinson adopted his précis (without amendment) as evidence-in-chief.

Mr Robinson then commenced his evidence. He stated that the respondent's six comparison properties, all of which are situated within the Ashbourne Retail Park, had been valued at €8.00 per sq metre regardless of their differing fit-outs. He confirmed that the comparison properties had been finished to a shell and core standard.

Mr Robinson acknowledged that in calculating his initial valuation, he had applied, by error, an alternative rate per sq. metre to the storage areas on the ground floor. He indicated that the subsequent increase in RV from €160 to €188 occurred on foot of "new evidence" pertaining to the basis on which his comparable properties had been measured vis á vis the subject property.

Mr Robinson stated that the mezzanine level was capable of beneficial occupation and should be included for rating purposes.

Valuation by the Respondent

Though the subject property has been entered on the Valuation List with a RV of €188, following a joint inspection of the property by Messrs Robinson and Devlin and an agreement concerning areas, Mr. Robinson amended his opinion of rateable valuation to €182 for the subject property, calculated as follows:

Retail	611.41 sq. metres @ 58.00 per sq. metre	=	€35,661.78
Mezzanine	44.53 sq. metres @ €20.50 per sq. metre	=	<u>€ 912.87</u>
Total NAV			€36,374.65
@ 0.5%			= €181.87
RV say	€182		

Respondent's Comparison Properties

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

Comparison No. 1

Property: Renaissance Tiling, Unit 2, Ashbourne Retail Park, Ashbourne, Co. Meath.

Property No: 2197088

RV: €208

Retails	702 sq. metres @ €58.00 per sq. metre	=	€40,716.00
Mezzanine	44.52 sq. metres @ €20.50 per sq. metre	=	<u>€ 912.66</u>
Total NAV			€1,628.66
@ 0.5%	=		€208.14
RV say			€208

Comparison No. 2

Property: East Coast Lighting, Unit 6, Ashbourne Retail Park, Ashbourne, Co. Meath.

Property No: 2194441

RV: €254

Retail	676.75 sq. metres @ €58.00 per sq. metre	=	€40,411.50 [sic]
Mezzanine	502.35 sq. metres @ 20.50 per sq. metre	=	<u>€4,283.37</u> [sic]
Total NAV			€50,709.67 [sic]
@ 0.5%	=		€253.54
RV say			€254

Comparison No. 3

Property: Argos Distributors Ireland Limited, Unit 7, Ashbourne Retail Park, Ashbourne, Co. Meath.

Property No: 2197089

RV: €320

Retail	815.10 sq. metres @ €58.00 per sq. metre	=	€47,275.80
Mezzanine	815.10 sq. metres @ €20.50 per sq. metre	=	<u>€6,709.55</u>
Total NAV			€63,985.35
@ 0.5%	=		€319.92

RV say €20

Comparison No. 4

Property: Equipet Limited, Unit 5, Ashbourne Retail Park, Ashbourne, Co.Meath.

Property No: 2197090

RV: €12

Retail	702 sq. metres @ €8.00 per sq. metre	=	€40,716.00
Mezzanine	86.6 sq. metres @ €20.50 per sq. metre	=	<u>€ 1,775.30</u>
Total NAV			€42,491.30

@ 0.5% = €12.45

RV say €12

Comparison No. 5

Property: Mark Briscoe, Unit 3, Ashbourne Retail Park, Ashbourne, Co.Meath.

Property No: 2197091

RV: €20

Retail	702.00 sq. metres @ €8.00 per sq. metre	=	€40,716.00
Mezzanine	181.80 sq. metres @ €20.50 per sq. metre	=	<u>€ 3,726.00</u>
Total NAV			€44,442.90

@ 0.5% = €20.21

RV say €20

Comparison No. 6

Property: Fun Galaxy, Unit 10, Ashbourne Retail Park, Ashbourne, Co.Meath.

Property No: 2211508

RV: €455

Retail	1,433.50 sq. metres @ €8.00 per sq. metre	=	€8,3143.00
Mezzanine	411.65 sq. metres @ €20.50 per sq. metre	=	<u>€ 8,438.82</u>
Total NAV			€1,581.82

@ 0.5% = €457.19 [sic]

RV say €455

Cross-examination of the Respondent

In response to questions raised by Mr Devlin and the Valuation Tribunal, Mr Robinson advised/accepted as follows:-

1. The public enjoy access to the mezzanine level of the two comparison properties which Mr Robinson visited.
2. The public's access to the aforementioned mezzanine levels is not restricted by ducting or conduits.
3. The subject property has not been valued as a restaurant.
4. The area covered by the timber partition (visible in photographs at page 11 of the appellant's précis) was ignored in preparing the valuation in accordance with the code of measurement.
5. The comparison properties were not inspected when preparing the valuation.
6. The principal determinant in altering the initial rateable valuation of €160 to the current valuation of €188 was the application of a rate of €8 per sq. metre to the portion of the ground floor which has not been fitted out.
7. He had no evidence to show how he had arrived at his initial lower valuation of the unfinished part of the ground floor of the subject property.

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 appellant accepts that the current appeal is governed by the provisions of Section 49 of the Valuation Act, 2001.
2. The appellant did not provide the Tribunal with suitable comparison properties despite having acknowledged that the ground floor should be valued as a retail warehouse unit.

3. The respondent provided the Tribunal with six comparison properties within the rating authority area, and indeed within the same development, which were all treated and rated as retail warehouses.
4. The respondent has demonstrated that the “tone of the list” for retail warehouses in the area of the subject property is €8 per sq. metre.
5. The appellant did not dispute the rate applied to retail warehouses in the development; similarly he did not object to the same rate being applied to the restaurant area of the subject property.
6. However, he considered that the unused area behind the restaurant should be valued at approximately 50% of the rate applied to the restaurant area, which was the approximate rate per sq. metre applied to his comparable properties, acknowledging that all were in use as industrial properties.
7. The Tribunal was not given supporting evidence to consider the foregoing contention.
8. The parties agreed that the premises, in common with others in the subject retail park, should be valued by reference to a shell and core condition.
9. The appellant did not provide supporting evidence to uphold his contention that the rear unfinished area of 197.55 sq. metres of the ground floor of the subject property could not be used as a retail warehouse.
10. The Tribunal is mindful of the provisions of the Valuation Act 2001 and, in particular, of Section 63 thereof.
11. The Tribunal does not consider that the argument made by the appellant aligns with the supporting cases cited, namely **VA88/0/106 – Craig Gardner & Company**, the judgment in respect of which issued on the 6th day of June, 1989; and **VA05/3/074 – Descon Ltd**, the judgment in respect of which issued on the 13th day of February, 2006, and, in particular, the findings therein.
12. The respondent acknowledged that the layout, nature, design and head heights of the upper floor area comprising 44.53 sq. metres is materially different to the mezzanine areas cited by him in five of his six comparison properties and, accordingly, the Tribunal considers such differences to warrant a reduction in the rate per sq. metre applying thereto.

Determination

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

Ground Floor	611.41 sq. metres @ €8.00 per sq. metre	=	€35,461.78
Upper Floor Showroom	44.53 sq. metres @ €9.00 per sq. metre	=	<u>€ 400.77</u>
Total NAV			€35,862.55

€35,862.55 @ 0.5% = €179.31

RV say €179

And the Tribunal so determines.