

Appeal No. VA92/1/023

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

John Taylor, Swords Hardware Stores Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop, Stores & yard (including 16,17 Bridge Street), at Lot No. 1.2a (Local No. 4), Main Street, Townland of Swords, E.D. Swords Village, District of Dublin - Fingal, Co. Dublin
Preliminary Issue - Agreement / New grounds appeal

B E F O R E

Paul Butler

S.C. (Acting Chairman)

Mary Devins

Solicitor

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF MAY, 1992

By notice of appeal dated the 6th day of February, 1992, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £230 on the above described hereditament.

The property was revised during the course of the 1988 revision and the rateable valuation was increased from £75 to £155. Following a first appeal the same was reduced to £135. In the summer of 1990 the property was inspected and revised as part of a comprehensive revision of all commercial property in the town of Swords.

On the 10th of August of that year a revised valuation issued and the rateable valuation was fixed at £285. The appellant appealed the same on the 20th August, 1990, the premises were inspected in December, 1990. During the course of 1991 various discussions and negotiations took place between the parties and letters which were argued on behalf of the Commissioner to be letters of agreement were received on the 20th and 21st of November, 1991. On the 13th January, 1992 the Commissioner issued his decision reducing the rateable valuation to £230.

The appellant's grounds of appeal at first appeal stage were;-

- (1) Assessment excessive and inequitable.
- (2) Valuation does not conform with the principles of uniformity.
- (3) Excessive when taking into account the previous levels applied to these and similar shops before the introduction of the 1986 Valuation Act. Under Section 5 of this Act, regard must be had to these levels.
- (4) The rental value of this and other retail outlets will drop significantly if large increases in the rateable valuations remain in place.
- (5) There is no justification for applying the fraction of 0.63% in outlying towns of Co. Dublin.

The appellant's grounds of appeal to the Tribunal were as follows;-

- (1) It is unfair, inequitable, unduly harsh and ignorant of commercial realities to impose upon the appellants an increase in rateable valuation of over 70% since the last Revision in 1988 (i.e. an increase from an RV of £135 to £230 when:
 - (a) the last revision of rateable valuation took place no more than two years previously;
 - (b) the figures agreed between the appellant and the respondent in respect of the net annual letting value of the property do not reflect such an increase.

- (2) The increase in rateable valuation, it appears to the appellants, can only have been arrived at by applying a reducing fraction of 0.63% to the NAV in purported compliance with the provisions of Section 5 Subsections 1 & 2 of the Valuation Act, 1986.

The calculation of this fraction has not been made in compliance with the provisions of Section 5 of the said Act and, if it were, its application is being enforced in such an artificial and mechanistic way as to cause undue hardship to the appellants.

- (3) Such further and other reasons as may be adduced or as may emerge from the evidence of the parties to be given before the Tribunal.

WRITTEN SUBMISSIONS

In a written submission on behalf of the appellant dated 27th April, 1992 Mr. Joseph Bardon of Messrs Spain Courtney Doyle, submitted that the rateable valuation of £135 should be restored in accordance with the principles established in the North Kerry Milk Products case (VA/89/24). The figure of £230 was agreed with the appeal valuer in November, 1991 but subject to Mr. Bardon's reservation that if favourable decisions ensued from a number of cases which at that time were before the Valuation Tribunal in Palmerstown Shopping Centre such decisions would be applied in this instance also.

Mr. Bardon submitted that the result of the first Palmerstown case (Shear Success Palmer (VA/91/3/26)) was issued on 8th January, 1992 and the decision of the Valuation Tribunal was to reduce the rateable valuation from £63 to £50 with the judgment placing great reliance on the North Kerry Milk Products case. Mr. Bardon submitted that subsequent Palmerstown cases confirmed this position.

Mr. Bardon submitted that he was not involved in the Palmerstown appeals and was not aware of how the same would be argued at the Valuation Tribunal, but he submitted that it was clear from his correspondence dated 21st November, 1991 that he wished to place his client in the position whereby he would benefit from any precedent which was established. Mr. Bardon submitted that it was also clear that he did not intend to contest the appeal on a quantum basis at the Valuation Tribunal. While he accepted that his reservation related to the fraction and that the precedent established relates to a slightly different point, nevertheless he felt that the general principle of his reservation should be relied upon, as his client is in a similar position to those appellants in Palmerstown in that the premises remained unchanged between the revisions which took place between 1988 and 1990, yet the rateable valuation was increased by over 70% in the same period.

Mr. Bardon further submitted that if one applies the agreed NAV of £9,500 per annum in the Palmerstown case to the reduced rateable valuation of £50 the fraction normally applying of .63% is reduced to c.52% and in that sense one could argue that his reservation on the position of the fraction is relevant.

In a written submission dated 28th April, 1992 Mr. Bernard Stewart a District Valuer with 21 years experience in the Valuation Office submitted as follows;-

"A. **First Appeal Stage**

- (1) Following the reduction agreed at First Appeal stage, the valuation is no longer excessive in relation to the valuations agreed on comparable shops, of similar function which were also revised in this same 1990 Revision. He attached a list of comparisons in Section 7 of his submission.
- (2) Valuation now conforms with the principles of uniformity.

- (3) In any comprehensive revision of a town or county the Commissioner can not be bound by historic levels of valuation in one particular location if he is to achieve a uniformity in rateable valuations throughout that town or county. The town of Swords itself and surrounds has undergone significant change, development-wise, in recent years. This in turn has increased both the Capital and Rental Values of property there. The town of Swords itself is only part of the overall Local Authority/rating area of County Dublin, and if the Commissioner is to achieve a uniformity in the rateable valuation system within that county, he is obliged to value comparable properties of similar function on the same basis. This he has done in the instance of the subject premises under appeal and also all of the other Swords properties revised in the 1990 comprehensive Revision.

The appellants agent, Mr. Bardon of Spain Courtney Doyle, in his clarification letter of 21st November, 1991 (attached Appendix B13) concedes that there can only be one "fraction" applied to Dublin County Council cases. And since his eight letters of agreement (Appendix B4 - 11) cover different categories of property e.g. (shops, betting office, first floor offices) he accepts that the same fraction should apply to the different categories of property.

- (4) To allow for the possibility that an increased rate might depress the rent that one might pay for this shop, the N.A.V. has been reduced, using a rent/rates equation allowance appropriate to the 0.63% fraction applied to this and other Swords properties. In any event the N.A.V. has been agreed in this instance.

- (5) There were approximately 220 commercial properties revised/issued in the 1990 comprehensive revision of Swords area. The valuations in all cases were fixed on the basis of 0.63% of Net Annual Value. There were 161 appeals lodged and were processed on behalf of occupiers by at least 12 different rating consultants. By the end of February 1992 approximately 133 of the 161 appeals had been agreed with the various consultants/agents on the basis of 0.63% of N.A.V. and the valuations had been published by the Commissioner i.e. approximately 83% of original number appealed. There now remain only 14 appeals (less than 9% of those appealed and 6% of total number revised) to be determined, with negotiations still unfinished (for a variety of reasons) and so far this appears to be the second Swords case to come before the Tribunal (See Section 7, Comparison 7). Despite the stated grounds of appeal, appellant's agent, Mr. Bardon, also effectively accepts the equity of the ratio of 0.63% of N.A.V. to determine the valuation in this instance - otherwise he would have advised appealing the entire block of eight valuations to the Tribunal.

In any event, having regard to Mr. Bardon's letter of agreement of 20th November, 1991 (Appendix B4) and his letter of clarification of 21st November, 1991 (Appendix B13 & 14)- since the Tribunal did not determine any specific fraction as being more appropriate for Co. Dublin, in the Palmerstown case VA/91/3/26 (Appendix G1-3) - it is the Commissioner's witness contention that there is an agreement at £230.00 between appellant's agent, Mr. Bardon, and Commissioner's witness, in the subject appeal.

B. At Tribunal Stage

- (1) It is the Commissioner's witness submission that grounds no. 1 of appeal to Tribunal constitutes a new and further ground of appeal which was not put before the Commissioner at First Appeal stage -namely Revision and change within two years of a previous Revision.

The Commissioner's witness wishes to refer to the judgment of the Valuation Tribunal in Appeal No. VA/88/165 Hunters - copy of relevant pages (Appendix C1 - 2), to quote:-

"The Tribunal would wish to point out, however, that there is an obligation of appellants to set out clearly in their grounds of appeal what exactly the case is that they wish to make, and it must be understood that they cannot make a case to the Tribunal other than what was urged before the Commissioner".

The very fact that appellant's agent, Mr. Bardon's letter of agreement of 20th November, 1991, in this case, and his subsequent letter of clarification of 21st November, 1991, treat this property in identical fashion to the other seven, is further proof that there was no special pleading made in this case and in fact is an indication that Mr. Bardon thought that no distinction should be made between any property revised in the 1990 Revision. There is also the added fact that there is an identical letter of agreement relating to Xtra Vision Plc - Ref. J.B./SC/700/063 (Appendix B8). The valuation on this shop was fixed in 1987 at £40 and has now been agreed with Mr. Bardon at £85 R.V. in settlement of a concurrent 1990 First Appeal to the Commissioner, on an identical basis to

agreement on subject appeal (0.63% of N.A.V., both issued 13/1/92). Yet Mr. Bardon has apparently not advised the appealing of this one also to the Tribunal, and this latter valuation on Xtra Vision now stands - despite there being only one year in difference since previously revised, 1987 vis 1988 for subject appeal. Without prejudice to the submission that ground No. 1 of appeal to Tribunal is a new and further ground - it is also in breach of the agreement as set out in Mr. Bardon's letter of 20th November, 1991 and subsequent letter of clarification of 21st November, 1991, which reserve only the position on the fraction, and say nothing about length since previous revision or amount of increase since that revision.

Appellants would appear to be in hindsight "latching on" to another outcome from the Palmerstown case VA/91/3/26 (Appendix G1 - 3), which had got to do with revision within one year of a previous revision and where in any event a case was made by appellants that there was a decline in trade from previous year due to the opening of the Tallaght Town Centre (not analogous with the subject appeal).

The decision in this Palmerstown case had regard to the judgment of the Tribunal in the North Kerry Milk Products case, and appellants would appear to be now, in this new and further ground of appeal, seeking to have subject valuation reduced through now invoking the North Kerry Milk Products case VA/89/24 and the paragraph:

"The Tribunal accepts the force of this qualification and would express the wish that valuations now fixed (mostly by agreement) should remain in place for an appreciable length of time, which it would regard as not less than five years. Of course, if circumstances change - if there are new

buildings or installations, for example, the situation could obviously be different".

With regard to the subject appeal, the circumstances with regard to the fixing of the rateable valuation had changed between 1988 and 1990, in that there was a comprehensive revision of all commercial property in Town of Swords in 1990, and the valuation on the subject property was revised in line with the new valuations fixed on comparable shops in the town. The circumstances of the subject appeal, are not the same as those of North Kerry Milk Products case, which was a property revised in each of the years 1986, 1987 and 1988 with changes in its valuation each year, in circumstances where there was not at the same time a comprehensive revision of comparable or surrounding property. If, following the 1990 comprehensive revision in Swords, the subject property, (or any other Swords property) had its valuation altered in isolation, without any change in its circumstances or in levels of valuation of its comparables, it is only then that the wish expressed in the North Kerry Milk Products case would have been disregarded. I foresee no reason why the present valuation on subject property will be changed again in foreseeable future bar a change in its circumstances e.g. additional buildings etc.

It is the Commissioner's witness submission that to now reduce the present valuation below its current level of £230, would in fact be creating a new anomaly in the Town of Swords and would be doing an injustice to all other commercial ratepayers who have accepted the 1990 revised valuations on their properties, including an approximate over 70 of these who also had their valuations revised within the previous 5 years and had

their valuations again revised in 1990 on their unchanged premises, in the comprehensive revision. Furthermore, not all valuations revised within the 5 years previous to 1990 had their valuations increased, some were reduced (see Section 7, comparison No. 5). Would appellant's agent suggest that at the 1990 Revision, the previous higher valuations should remain in place, pending the expiry of a five year term, say after a 1988 revision, which would be the logical corollary to suggesting that the subject valuation should be reduced to its 1988 level for 5 years duration. It is the submission of Commissioner's witness that it would be impossible for the Commissioner to carry out a comprehensive revision/updating of the valuations in any area, if he was debarred from simultaneously revising/updating also, valuations revised in previous 5 years. In this Swords instance he would not have been able to revise the approximate 70 hereditaments already referred to.

- (2) The question re. the fraction is dealt with under ground 5 First Appeal stage (above) and also under ground 1 to Tribunal preceding this above.
- (3) This third ground to Tribunal is further evidence that appellant's agent, Mr. Bardon, is not abiding by the specific agreement outlined in his letters of 20th November and 21st November, 1991.

ORAL HEARING

The oral hearing took place in Dublin on the 4th May, 1992. Mr. Brian Sherry, Solicitor, appeared on behalf of the appellant and Mr. Aindrias O'Caoimh, instructed by the Chief State Solicitor appeared on behalf of the respondent.

The Tribunal initially heard preliminary objections from Mr. O'Caomh on behalf of the Commissioner. The first was in relation to the contention that there had been agreement between the parties. The second was on the basis that the grounds of appeal to the Tribunal differed from those at first appeal stage.

In relation to the first objection the Tribunal is satisfied that the letter in question (that dated 21st November, 1991) from Mr. Bardon to the appeal valuer contains sufficient reservation or, at least, inconsistency not to bind the appellant with the reported agreement in the events that subsequently occurred.

In relation to the second objection the Tribunal is satisfied, having obtained assurance from Mr. Sherry that the only point at issue would be the application of the 0.63% to N.A.V. that the appeal lay and could proceed.

No evidence other than what was contained in the written submissions was adduced before the Tribunal.

Mr. Sherry argued that the 70% increase in a two year period could only be brought about by the application of the 0.63%. This same was clearly unjust and inequitable. The agreed Net Annual Value was £36,500 (adjusted). Mr. Sherry pointed out that rates have increased by over £3,000 per annum which is completely disproportionate to any increase in Net Annual Value. He referred to the Xtra Vision case (VA/91/3/19) where, in dealing with the application of a fraction of 0.63%, the Tribunal held that "the uniformity which is the apparent aim of Section 5 (subsections 1 & 2) of the Valuation Act, 1986 should not be achieved by the use of what might seem artificial concepts and certainly not at the expense of what is reasonable and equitable".

Mr. O'Caoimh argued that the .5% referred to at page 4 of the appellants submission did not apply. That was determined on a square meter basis which threw up a huge range of fractions. Mr. O'Caoimh said that the requirement was that the list should be proportionate and uniform; what the Commissioner was trying to do is establish equity. In this regard Mr. O'Caoimh laid emphasis on the 14 comparisons offered on behalf of the respondent. Many of the same were of comparable function and were recently revised and the same showed a relationship of Net Annual Value to Rateable Valuation at 0.63%.

In previous appeals the Tribunal has refused to apply a fraction of 0.63% on the basis that the Commissioner had failed to adduce evidence of suitable comparative premises where that fraction applied.

In the present appeal the Commissioner has adduced this evidence and it has not been contested on behalf of the appellant. On the contrary, the appellant has adduced no comparative evidence. While a large increase in rateable valuation is clearly very harsh, the Tribunal is satisfied that justice and equity require that, where comparative evidence is available, rateable valuation should be proportionate and uniform. Were the appellant premises not to be valued on the same basis as the comparisons offered, those 14 premises in Swords would have a very reasonable grievance.

On the basis of the foregoing the Tribunal upholds the decision of the Commissioner.