

Appeal No. VA97/6/070

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

Donnachadh Ó'Mordha

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop (P.O.) at Map Reference Unit 60B Omni Park Shopping Centre, Townland:
Swords Road, Ward: Whitehall C, County Borough of Dublin
Quantum - Passing rent, comparisons

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Barry Smyth - FRICS.FSCS

Member

Finian Brannigan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF JULY, 1999

By Notice of Appeal dated the 20th day of October 1997 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £40 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; "the valuation is excessive having regard to the location of the property within the centre and the level of rent payable".

The relevant valuation history is that the subject property (Unit 60B) is a sub-division of a large unit (old Lot 60) and this division was made in the 1996/4 revision programme. The subject lot 60B was then fixed with a rateable valuation of £40.00. On appeal the Commissioner left the rateable valuation unchanged at £40.00.

A written submission prepared by Mr. Conor O’Cleirigh M.I.A.V.I., A.R.I.C.S., A.S.C.S. of Conor O’Cleirigh & Company, Chartered Valuation Surveyors on behalf of the appellant was received by the Tribunal on 22nd day of April 1998.

Mr. O’Cleirigh’s written submission calculated the rateable valuation of the subject hereditament as follows:

$$\begin{aligned} 505 \text{ sq.ft. @ } \pounds 8.20 \text{ p.s.f.} &= \pounds 4,141 \\ \text{Say} &= \pounds 4,000 \\ \text{@ } 0.63\% &= \pounds 25 \text{ R.V.} \end{aligned}$$

The written submission contained one comparison, Unit 48 Omni Park Shopping Centre. The subject is located in the same shopping centre as this comparison.

The written submission outlined the appellant’s approach to the valuation of the subject using the comparison of Unit 48.

Unit 48 Omni Park which is a superior unit has a 1995 open market rent of £11,000 representing £13.64 p.s.f. and Unit 60B has a 1995 open market rent of £5,150 representing £10.19 p.s.f.

This differential of 33.85% in the 1995 rents reflected in his opinion due allowance for the inferior location of Unit 60B and accordingly he said it should be reflected in the assessment of rateable valuation as follows:-

Unit 48 – Net Annual Value of £10,000 p.a. or	£12.40 p.s.f.
Less differential of 33.85%	_____
	= £8.20 p.s.f.

The rent of £8.20 p.s.f. has been applied to Unit 60B.

A written submission prepared by Mr. Patrick Conroy on behalf of the respondent was received by the Tribunal on 27th day of April 1998. Mr. Conroy is a District Valuer in the Valuation Office with 23 years experience.

Mr. Conroy's written submission contained four comparisons, which are annexed to this judgment as Appendix A.

The oral hearing took place at the Tribunal's offices in Dublin on 11th May 1998. Mr. O'Cleirigh represented the appellant and Mr. Conroy represented the respondent.

In his sworn testimony Mr. O'Cleirigh adopted his written submission as his evidence to the Tribunal. Mr. O'Cleirigh said that the subject property was an external unit of the shopping centre with an agreed net internal floor area of 505 sq.ft. Mr. O'Cleirigh said the subject had an inferior location at the shopping centre. It was located on an external mall some distance from the main mall in the shopping centre and was therefore isolated.

Mr. O'Cleirigh pointed to the photographs in his written submission, which showed the subject and its adjoining units as being lower than the adjacent car park. Mr. O'Cleirigh said this diminished the visibility of the subject property.

In further testimony Mr. O'Cleirigh said that the difficult situation and location of the subject would give rise to a lower rent and in consequence of this there should be a lower rateable valuation on the property.

Mr. O'Cleirigh referred to his comparison Unit 48. He said this unit was located on the other external mall of the shopping centre and he considered this mall to be a better location than the mall in which the subject was located.

This unit was held on a thirty-five years lease commencing on 1st January 1993 at £9,000 per annum. The N.A.V. for the unit was £10,000, which equates to £12.40 p.s.f. The subject property had an inferior location in Mr. O'Cleirigh's opinion and he had therefore scaled back the rate per square foot for it and he had arrived at a figure of £8.20 p.s.f. This rate produced an N.A.V. of £4,000.

Under cross-examination by Mr. Conroy Mr. O’Cleirigh agreed that the steps from the car park lead directly to the front of the appellant’s property. Mr. O’Cleirigh also agreed that Toy Crazy and Atlantic Homecare were located on the same mall as the subject. Mr. Conroy put it to Mr. O’Cleirigh that these units would attract a substantial flow of customers.

Under further cross-examination Mr. O’Cleirigh stated the other external mall of the shopping centre was a more attractive location as it contained 10/12 small units and a restaurant.

Mr. Conroy asked Mr. O’Cleirigh how his assessment of £8.20 p.s.f. for 505 sq.ft. in the subject compared generally with assessments in other shopping centres. Mr. O’Cleirigh agreed it was a low assessment but this was due to the subject’s inferior location.

Mr. Conroy put it to Mr. O’Cleirigh that his comparison Unit 48 was used as a solicitor’s office and was 55% bigger than the subject. In reply Mr. O’Cleirigh stated that the lease for his comparison described it as a shop and it was rentalised as a shop. Again Mr. O’Cleirigh said he had chosen the comparison because it was on an external mall.

Under further cross examination Mr. O’Cleirigh stated that he had not used the rental evidence on Mr. Conroy’s first comparison (Unit 60A) because it was a short-term letting.

Finally under cross-examination Mr. O’Cleirigh stated that the subject was used as a post office and that in planning terms it was subject to the same regulations as retail space.

Mr. Donnachadh O’Mordha gave sworn testimony. He said he negotiated the lease for the subject property. He had not received any concessions on the rent, which the landlord presented to him.

He did receive one concession from the landlord. If he gave up the position of postmaster he need give only three months notice of termination of the lease similar to the notice period he was obliged to give to the postal authorities.

In his sworn testimony Mr. O'Mordha said that the shopping centre management wanted him to operate to the centre's opening times. He said that he was obliged to conform to the postal authorities opening times which were shorter.

Mr. Conroy in his sworn testimony adopted his written submission as his evidence to the Tribunal. Mr. Conroy said a number of matters were agreed with the appellant such as the area of the property.

There was disagreement in connection with the interpretation and the importance of the rent for the subject and also about the issue of the location of the subject.

On the issue of the rent the rate p.s.f. in November 1995 was £10.89 and the N.A.V. at November 1988 gave a figure of £12.50 p.s.f.

The reasons for this discrepancy were two-fold (a) the tone of the list had been established for the main body of the shopping centre when this assessment had been carried out and (b) the rent agreed was not an open market rent as the rent had been artificially deflated because the user of the subject had been confined to post office use.

Mr. Conroy said that post office use is similar to retail use in planning terms. These premises could be used for a variety of purposes more valuable than use as a post office. In arriving at an N.A.V. a valuer should, he said ignore the restrictions on user imposed by the owner on the occupier of the premises.

Mr. Conroy referred to his comparisons. He had produced four comparisons in the same shopping centre and in each of them the rate per square foot was higher than that on the subject property.

Finally Mr. Conroy said that £40 R.V. was the minimum value for the subject. It was located in a highly successful shopping centre with rental growth of 60% over five years.

Under cross-examination by Mr. O'Cleirigh Mr. Conroy agreed that Unit 48 (a comparison produced by both sides) had its lease details correctly described in Mr. O'Cleirigh's written submission.

The Tribunal has considered the written submissions of the appellant and the respondent and the evidence offered by the appellant and the respondent.

The Tribunal finds that the comparisons offered both by the appellant and the respondent are inappropriate in arriving at a rateable valuation based on the following evidence.

The comparison offered by the appellant has a different use and is substantially larger than the subject.

The first comparison offered by the respondent is the subject of a short term letting unlike the property under appeal. The other three comparisons offered by the respondent are located on the other external mall of the shopping centre. This mall has a substantially different configuration to the external mall on which the subject is located.

The most relevant evidence left for the Tribunal to determine the rateable valuation is the passing rent for the subject at £5,150. The monetary details of this lease are not in dispute. There is no evidence available to the Tribunal to bring this rent back to November 1988 and the Tribunal therefore does not propose to embark on this exercise

Accordingly the Tribunal determines the rateable valuation of the subject hereditament as follows:

Passing rent = £5,150
@ 0.63% = £32.45
Say = £32.00

The Tribunal therefore determines the rateable valuation of the subject hereditament to be £32.00.