

Appeal No. VA99/2/021

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

Ormonde Cinema (Mr. A. O'Gorman)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Cinema at Map Reference Unit 1 Ormonde Cinema, Stillorgan Plaza, Townland: Stillorgan South, E.D. Stillorgan Merville, Co. Dublin

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Ann Hargaden - FRICS.FSCS

Member

Rita Tynan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF JUNE, 2000

By Notice of Appeal dated the 29th day of April 1999, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £730 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that "the valuation is excessive, inequitable and bad in law".

The relevant valuation history is that the subject hereditament was revised at 1997/4 revision following reconstruction of the premises. A rateable valuation of £730 was fixed thereon.

Following the 1997/4 first appeal the Commissioner of Valuation issued his decision leaving the rateable valuation unchanged.

Property Details

The Ormonde Cinema is situated at the rear of the Stillorgan Plaza on the south side of Lower Kilmacud Road at the junction with the Stillorgan Road and directly opposite Stillorgan Shopping Centre. The cinema is situated to the rear of the Retail Plaza and is accessed via a narrow roadway to the side. The accommodation is on four levels but mainly at ground floor and basement and consists of seven cinemas with a total of 1028 seats. There are limited car parking facilities at ground floor level and the balance of the car parking is underground with a total of 190 spaces available for public car parking. Floor areas and accommodation are agreed as follows:

Ground Floor Reception and Cinema	7,623 sq. ft.
Basement Cinema and Corridor	7,696 sq. ft.
First Floor Offices	970 sq. ft.
First Floor Projection Area	1,330 sq. ft.
Mezzanine Projection Area	1,249 sq. ft.

There are a total of 1,028 seats, which are distributed as follows:

Cinema 1	268
Cinema 2	115
Cinema 3	220
Cinema 4	146
Cinema 5	112
Cinema 6	83
Cinema 7	84

A written submission prepared by Mr. Frank O'Donnell B.Agr.Sc., F.I.A.V.I., M.I.R.E.F., on behalf of the appellant was received by the Tribunal on 23rd day of August 1999. Mr. O'Donnell is a former district valuer in the Valuation Office with over thirty years experience in the practice of valuation.

The written submission stated there were two issues in this appeal:

- (a) Rateability
- (b) Quantum

The contention as to the first issue was that the subject was valued on an incorrect lot number. Therefore the rateable valuation of £730 should be struck out and the pre-revision valuation of £145 be restored.

On the issue of quantum the submission stated that a fair rateable valuation would be £550. Mr. O'Donnell calculated the valuation on the agreed areas as follows.

Details	Area (Sq. ft.)	Rate (Sq. ft.)	N.A.V.
<i>Ground Floor</i>			
Reception & Cinema	7,623	£6.00	£45,738
<i>Basement</i>			
Cinema & Corridor	7,696	£4.50	£34,632
<i>First Floor</i>			
Offices	970	£5.00	£ 4,850
Projection rooms	1,330	£1.00	£ 1,330
<i>Mezzanine</i>			
Projection rooms (low ceiling)	1,249	£1.00	<u>£ 1,249</u>
		N.A.V.	£87,799
		R.V. @ 0.63%	£553.13

The written submission set out a schedule of five comparisons. This schedule is annexed to this judgment at **Appendix A**.

A further written submission prepared by Mr. O'Donnell was received by the Tribunal on 16th day of September 1999. This written submission was made pursuant to a decision of the Tribunal made at the initial hearing of this matter on 1st September 1999.

This written submission stated that of the total area of the subject hereditament namely 18,868 sq. ft. only 366 sq. ft. was located on the Lot No. 1/1b, which was listed by the Valuation Office. The balance in area of the property was located in Lot No. 2A, which had not been listed by the Valuation Office.

Therefore the written submission contended that the appropriate rateable valuation was:

Cinema & Toilets (basement)	366 sq. ft.	@ £4.50 psf	= £1,647 N.A.V.
	R.V.	@ 0.63%	= £10.38
		Say	= £10.00

A written submission prepared by Mr. Damien Curran, ARICS, ASCS, BSc (Surv) on behalf of the respondent was received by the Tribunal on 24th day of August 1999. Mr. Curran is a District Valuer with nineteen years experience in the Valuation Office.

The written submission set out the basis of the rateable valuation as follows:

Ground Floor	7,623 sq. ft. @ £7.80 psf (£83.95/m ²)=	£59,459
Basement	7,696 sq. ft. @ £6.00 psf (£64.58/m ²)=	£46,176
First Floor		
Offices	970 sq. ft. @ £7.80 psf (£83.95/m ²)=	£ 7,566
Projection area	1,330 sq. ft. @ £1.00 psf (£10.76/m ²)=	£ 1,330
Mezzanine		
Projection area	1,249 sq. ft. @ £1.00 psf (£10.76/m ²)=	<u>£ 1,249</u>
		£115,780
	@ 0.63%	= £729.41
	Say	= £730.00

The written submission contained details of two comparisons. The details of these two comparisons are annexed to this judgment as **Appendix B**.

A further written submission prepared by Mr. Curran was received by the Tribunal on 15th day of November 1999. This written submission was made pursuant to a decision of the Tribunal made at the initial hearing of this matter on 1st September 1999.

This written submission stated that the Valuation Office was not aware of any obligation to describe a property, the valuation of which is to be revised, by reference to Lot Numbers. Once it can be ascertained from the list sent to the Commissioner that the hereditament in question is included within a request for revision then that is sufficient.

Attached to this written submission was a copy letter dated 17th day of September 1997 from Rhode (Ireland) Ltd., the developer of the property which is the subject matter of this appeal, to the local authority. This letter stated *inter alia* that “*the demise of the premises is greatly altered from the units presently rated.*”

The oral hearing of the appeal took place at the Tribunal’s offices in Dublin on 1st day of September 1999. Mr. O’Donnell represented the appellant and Mr. Curran represented the respondent.

Mr. O’Donnell made an application to the Tribunal that additional grounds of appeal be admitted for hearing by the Tribunal.

Mr. O’Donnell said that only 2% of the subject hereditament was included in the correct number, namely 1/1b. The balance of the property was contained on lot number 2A and this lot had not been listed for revision.

This matter had not been raised by Mr. O’Donnell at the appeal stage because he had been relying on the Valuation Office map. When he was preparing his submission for the Tribunal he had obtained a more up-to-date map from Spain Courtney Doyle, the agents, for the developer of

the site in which the subject hereditament was located. This up-to-date map had been prepared by the Ordnance Survey.

In support of his submission that the Tribunal should admit additional grounds of appeal Mr. O'Donnell quoted from *John Pettitt & Son Limited –v- Commissioner of Valuation – VA95/5/015*. At paragraph ten of the judgment it was stated that in “*exceptional circumstances where the interest of justice requires, this Tribunal will permit the raising of a ground, the reception into evidence and the reliance on a point of law none of which have previously been so raised or so adduced*”.

Mr. O'Donnell said there was an exceptional case here as 98% of the subject property was physically located on a Lot number, which had not been listed. Therefore the Valuation Office had no authority to value a property on a Lot number, which had not been listed.

Mr. O'Donnell also mentioned the *Mount Carmel Hospital Case – VA95/1/009*. There the appellant had listed the grounds of appeal to the Tribunal with respect to the valuation as being “excessive, inequitable and bad in law”. The issue of exemption had been raised at the hearing before the Tribunal and it had decided that the grounds of appeal as listed were sufficient to encompass the exemption issue.

Mr. O'Donnell then referred to the case of *Galtee Wood Products – VA98/1/015*. In that case an extension to a factory had been built on a Lot not listed for revision. This matter had come to the attention of the appellant at the stage of preparing submissions to the Tribunal. Mr. O'Donnell said he had been acting for the appellant and he had brought this matter to the attention of the appeal valuer. In the event two days before the hearing at the Tribunal the Valuation Office struck out the new valuation and restored the old valuation. Mr. O'Donnell referred to a letter he had written to the Tribunal dated 5th May 1999, which described an “agreement” he had reached with the Valuation Office about the *Galtee Wood Products Ltd.* case.

In further submissions Mr. O'Donnell stated that the basic unit in valuation is the Lot number. This was the position from 1852 onwards and this practice had not been changed since.

Finally Mr. O'Donnell said that the owner of Lot 2A had not been informed by the Local Authority of the revision in accordance with Section 3(4)(a) of the 1988 Valuation Act.

In reply Mr. Curran said he was objecting to the rateability issue being added to the grounds of appeal at this stage. He said there were a number of Tribunal decisions which stated that grounds of appeal not raised at first appeal stage could not be raised as grounds of appeal before the Tribunal. The issue of rateability had not been raised at the appeal stage and he had no opportunity to investigate the matter.

Mr. Curran said that the Ordnance Survey map he had used was the map currently used by the Valuation Office. He did accept that the area in which the subject was located needed new maps.

In reply to a question from the Tribunal, Mr. O'Donnell said that the occupier of Lot 2A was Kilmacud Glenalbyn Community.

The Tribunal then retired to consider the submissions of Mr. O'Donnell and Mr. Curran.

The Tribunal then made a finding that the submissions made by Mr. O'Donnell showed that exceptional circumstances existed whereby an additional ground of appeal should be added to the grounds of appeal already before the Tribunal. This ground of appeal was that 98% of the subject was not rateable as that physical proportion of the property was situated on a Lot number not listed by the local authority for revision.

The Tribunal did not make any finding on the issue of notice to the occupier of Lot 2A in accordance with Section 3(4)(a) of the Valuation Act 1988. Mr. O'Donnell had made no specific factual or other legal submissions to support the admission of this matter as an additional ground of appeal before the Tribunal.

The Tribunal then adjourned the hearing to allow the appellant and respondent to adduce additional submissions on the rateability issue.

The hearing resumed on the 17th day of December 1999. Mr. O'Donnell gave sworn testimony. He said he had agreed with the respondent the apportionment of the subject hereditament between the two lot numbers, namely lot 1/1b Stillorgan and lot 2A Stillorgan. There was 4,528 sq. ft. amounting to 24% of the subject hereditament on the listed lot number 1/1b, Stillorgan South. The balance of property amounting to 14,340 sq. ft. and 76% of its total area was situated on the unlisted Lot No. 2A. Mr. O'Donnell said that the difference between the agreed areas disposition on the two lot numbers and the disposition of the property on the two lot numbers which he had outlined at the initial hearing was due to the fact that he had previously been working with photocopied and reduced maps.

Mr. O'Donnell said that in his thirty five years of valuation practice, fifteen years of which was in the Valuation Office, where a property was valued on a wrong lot number it had been subsequently struck out by the Valuation Office. Furthermore he presumed this had been the practice for 150 years. Mr. O'Donnell said that the Valuation Office had a form 13A, which was used in those circumstances.

Mr. O'Donnell again referred to the Galtee Wood Products case and he reminded the Tribunal of a letter with respect to that case, which he had written to it, dated 27th day of April 1999.

In further testimony Mr. O'Donnell said he was not aware of any legislation which provided that a valuation should be struck out when it had an incorrect lot number. On the other hand he did not know of any legislation altering what he had described as 150 years of practice at the Valuation Office. Mr. O'Donnell further contended that if lot numbers were dispensed with it would make for inaccurate identification of rateable hereditaments.

Finally Mr. O'Donnell applied to the Tribunal to strike out the rateable valuation of 76% of the subject hereditament which was on the unlisted lot number 2A.

Mr. Curran then gave sworn testimony. He said that the Valuation Office had listed the Ormonde Cinema correctly in its original situation. Furthermore the Stillorgan Plaza development was listed in its entirety and the cinema was validly listed to cover any changes in

the demise of its boundaries. One lot number had been omitted in the revision request but the valuation of the cinema had not thereby been nullified.

Mr. Curran then re-iterated the point that the Valuation Office is under no obligation to describe a property which is to be revised by reference to lot numbers.

Mr. Curran then quoted paragraphs 19, 20, 22 and 23 of *John Pettitt & Son Limited –v- Commissioner of Valuation – VA95/5/015* to support that proposition.

With reference to the Galtee Wood Products case, Mr. Curran said the property was covered by two bad maps and it was difficult to define the boundaries of the lot numbers at the time of valuation. Mr. Curran said that he was of the opinion that the Valuation Office would not agree at the present time to strike out a valuation similar to the Galtee Wood Products case.

Mr. O'Donnell then sought an adjournment to obtain legal advice to deal with the legal issues raised by the Pettitt case.

The Tribunal then retired to consider this request. On resumption of the hearing the Tribunal granted Mr. O'Donnell's request for an adjournment having being informed by Mr. Curran that he had no objection to an adjournment.

The hearing resumed on 9th day of May 2000. Mr. O'Donnell said that he had sought legal advice and was informed that the Pettitt case was on appeal to the High Court. It was therefore, inadmissible as a precedent to be used in the present case. In the circumstances he had decided not to employ a lawyer for the hearing, as this would be exposing his client to unnecessary expense.

Mr. O'Donnell did not produce any legal arguments whatsoever to challenge the *ratio decidendi* of the Pettitt case as to lot numbers at paragraph 20 of that judgment or indeed to any of the other legal issues determined in the judgment.

In conclusion Mr. O'Donnell applied to the Tribunal to strike out the valuation contained in the lot number, which had not been listed. He said that in the event of the Tribunal deciding against him on this point he would then deal with the quantum of valuation.

In reply Mr. Curran said he was relying on the Pettitt judgment. He said that the portion of the judgment dealing with lot numbers had not been appealed to the High Court.

Mr. Curran said he could not agree with Mr. O'Donnell's statement as to 150 years practice in dealing with incorrect lot numbers in the Valuation Office.

Finally Mr. Curran said there had been a clear intention to value the subject hereditament in the revision request and this brought the matter fully within the jurisdiction of the Commissioner to value it.

The Tribunal retired to consider Mr. O'Donnell's application to strike out the rateable valuation contained on the lot number, which had not been listed.

The Tribunal rejected Mr. O'Donnell's application. This decision was based on the finding that the subject hereditament had been adequately identified in the request for revision.

Furthermore the Tribunal finds that the decision in the Pettitt case, which determined that the incorrect use of lot numbers in a request for revision does not invalidate a valuation by the Commissioner where the hereditament has been adequately identified, is applicable to this case.

This finding of the Tribunal in the Pettitt case, apart from its merits in this case, is further validated in as much that the appellant did not advance any legal arguments to contest the *ratio decidendi* of the Pettitt case. The fact that a Tribunal judgment is on appeal to the High Court does not prior to the delivery of judgment by the High Court constitute legal grounds to invalidate that judgment of the Tribunal.

Mr Frank O'Donnell then dealt with his evidence regarding quantum. He stated that the property was accessed via a narrow laneway circa 9ft 4 ins wide and that it had no street frontage and only limited car parking facilities at ground level. The balance of the car parking underground was difficult to exit from, as it is only 8ft 9ins wide. He said that following a series of negotiations with the owners of the Stillorgan Plaza Complex, O'Gorman Cinemas purchased 13,000 sq. ft. of additional space for a figure of £1.4m and developed the cinema into a seven screen multiplex.

He stated that the cinema does not have the benefit of the high profile that many of the other purpose built cinema complexes have and is run by a small independent operator, rather than a large conglomerate. He submitted several comparisons (see attached), in Wexford, Waterford, Athlone, Galway and one in Dublin, being the Stella in Rathmines. He submitted that the fair NAV should be £550, as outlined earlier in this judgement.

Mr Damien Curran, then dealt with his evidence regarding quantum. He stated that this was a well-finished modern cinema complex, in good condition, and that the standard of reconstruction compares with the new multiplex cinemas in the Dublin area. The complex is located in a strategic and pivotal area of South Dublin surrounded by densely populated affluent urban areas including Stillorgan, Blackrock, Mount Merrion, Foxrock, Deansgrange, Dundrum etc. There has been a major shift away from city centre cinemas in recent years to suburban multiplexes, because of accessibility and ample free car parking both day and night. He said that the Plaza enjoyed the considerable advantage of no comparable competition in the south Dublin region, the nearest competitors being the UCI in Tallaght, the Virgin Complex in the North Inner City Centre and two North City multiplexes at UCI Coolock and Omniplex in Santry. He submitted that the latter two premises were the most relevant in that they were in a similar size catchment area but in an inferior location. They were almost double the size of the subject properties but had more competition in close proximity than the subject. He submitted that the RV should be £730 as outlined earlier in this judgement and taking into account the only real comparable evidence in Dublin.

TRIBUNAL FINDINGS ON QUANTUM

In the Tribunal's view, the evidence submitted by Mr O' Donnell is of cinemas around the country with one located in Dublin, the Stella in Rathmines. It emerged in evidence that this is an old cinema which has been converted into a two screen cinema and requires complete refurbishment. It has no car parking and the Tribunal finds that this and the other comparisons are not relevant and that comparisons submitted by the respondent are far more relevant in that they are located in Dublin, are purpose built in densely populated areas with carparking.

The Tribunal therefore affirms the decision of the Commissioner of Valuation and determines the rateable valuation of the subject hereditament to be £730.