

Appeal No. VA02/4/043

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

Austin & Noeleen Adams

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Supermarket at Map Reference Unit 5.6, The Anchorage, Betaghstown, Julianstown,
County Meath

B E F O R E

Tim Cotter - Valuer

Deputy Chairperson

Frank O'Donnell - B.Agr.Sc. FIAVI.

Member

William K. Nowlan

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF MAY, 2003

By Notice of Appeal dated the 13th November 2002, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €240 on the relevant property above described.

The Grounds of Appeal as set out in the said Notice of Appeal are that:

"The RV is excessive, inequitable and bad in law."

The appeal proceeded by way of an oral hearing which took place in the Tribunal offices in Ormond House on the 3rd day of February 2003 and again on the 24th day of April 2003. At the hearing the appellant was represented by Mr. Eamonn Halpin B. Sc. (Surveying) ASCS. ARICS. MIAVI. The respondent was represented by Mr. Philip Colgan a Valuer in the Valuation Office. Both valuers produced written summaries of their evidence which they exchanged with each other and supplied copies to the Tribunal and these were adopted as their evidence-in-chief given under oath at the oral hearing.

Appellants Case

Mr. Halpin at the oral hearing said that the premises are located in the seaside village of Bettystown, Co. Meath. The village is approx 5 miles from Drogheda and 28 miles from Dublin. The village, although having expanded in recent years under the Seaside Resorts Scheme, is still a very moderate commercial location.

In his view the unit is in excess of current trading needs in the village.

The overall development where the subject property is located is known as The Anchorage. This is mixed apartment and retail development in the centre of the village, undertaken by a Mr. John O'Connor. Unfortunately there appear to have been a number of weaknesses in the development team and inadequate supervision and development controls were in place during the construction phase. This in turn led to a number of very serious problems which impacted directly on the subject property.

The overall development is not built in accordance with the terms of the original planning permission and there were difficulties with certification due to many defects and the construction methods employed. He said that in his view the defects and ongoing difficulties with the developer in regard to completion would make the building a difficult proposition to market, available either for sale or to let.

He also said that have been a number of threatened High Court actions against the developer over these defects.

The physical defects such as the inadequate or omitted surface water draining system employed has resulted in the following problems for the subject property:

- Flooding on numerous occasions from the inadequate drainage serving the upper floor apartments.
- Flooding on the entrance area and outside, due to failure of the developer to install proper surface water draining to the council mains.
- Nuisance due to the failure of the developer to install the normal soundproofing between the ground floor and the upper floor apartment.

The above defects have meant that the development is now known in Co. Meath as a problem development. In addition these defects, such as flooding from the drain and surface water run off from the upper floors cause ongoing costs and disruption to the business. The above circumstances mean that the hypothetical tenant would only rent the subject property if a substantial discount in rent was offered as an inducement to offset the physical defects/disadvantages associated with the property.

Furthermore, he said, the size of the premises and its current under-utilisation due to the premises being in excess of the needs of the village area meant that any hypothetical tenant would only take on the property if it were offered on very attractive terms.

Mr Halpin said that the revising valuer also believed that the difficulties associated with the property warranted a reduction and he had adjusted his final calculation by approx. 5% to allow for these difficulties. It was the appellant's view that he was correct in this but that he had failed to adequately reflect the true extent of the problem and thus over-estimated the NAV of the property. They thus seek a greater allowance to more accurately reflect their actual situation. Mr. Halpin stated that he understood that five to six different architects worked on this project. It has been difficult to get certification on the property. He stated that his client had spent €1.1 million on the purchases of the supermarket and the off licence section.

Mr Halpin estimated the net annual value on the premises, using the NAV per sq metre method, as set out in his summary of evidence, at €36,480 giving a rateable valuation of €182.

Alternatively he adopted the net annual value as assessed by the revising value and made an additional allowance of 25% to cater for the defects of the premises and its location. This calculation produced an NAV of €37,860.75 and an RV of €189.

Mr. James Mansfield of Kavanagh Mansfield & Partners gave expert evidence before the Tribunal. He had prepared a report on the property, which was presented to the Tribunal by Mr. Halpin before the adjourned hearing.

He said Mr. Jim Greg of Londis Group had contracted him to carry out an inspection of the premises on behalf of Mr. Adams, the supermarket owner, as a result of which he had prepared a snag list on the property.

He said that the main problems were leakages at roof level and the footpath which was not level and which had been relayed. Mr. Mansfield said that it was better now than it was originally. He also said that the building was of a satisfactory structure. When cross-examined, Mr. Mansfield stated that he did not see water leakage in March 2003.

He accepted when questioned that ponding is a feature of flat roofs. Mr. Mansfield said that there were other tenants in this development and accepted that a completion certificate had been issued for the property. Mr. Mansfield accepted that his report referred mainly to problems external to the relevant property. He said the shop had been trading for three years and was trading reasonably well.

Mr. Adams, the owner of the relevant property also gave evidence. He said that with the benefit of hindsight he would not have purchased the property. He was shocked when the Bank of Scotland informed him that the insurance was cancelled and that he and another tenant had then obtained insurance from FBD. Mr. Adams said he had a supermarket in Coothill in Cavan and had been in business for 29 years. Mr. Adams agreed that the road surface was now excellent

but he was still unhappy with the footpaths. He accepted that the public could use the footpath for trollies.

Mr. Adams said that turnover was not what he had expected. He said they had lost a summer's trading because they had not opened on time. Mr. Adams did not carry out a survey on the area but he said that he could see the potential for business in Bettystown and he accepted that the location of his supermarket was a prime one. He had not subdivided a section internally for the off licence.

Respondent's Case

Mr. Philip Colgan on behalf of the respondent said that his principal comparison was his comparison No.1, the premises of Patrick Boshell "Pats Supermarket" located across the road from the subject property. This was agreed in 1999/04 First Appeal. He said that Bettystown benefited from excellent public transport compared to other towns. Mr. Colgan did not see any water leakages or sewage problems when he visited the property on a number of occasions but he had seen that the roads had been resurfaced and the footpath relayed.

Mr. Colgan said the appellant's complaints of upgrading of services; water and sewage repairs were a temporary inconvenience. Mr. Colgan said that the rapid expansion and increase in population in Bettystown would enhance the appellant's supermarket. In his view the subject is a new modern building requiring little or no major improvements for the foreseeable future. He assessed the rateable valuation as follows:

No.1.2.3	Supermarket	515.8	@	€1.00	=	€6309.37
No.4.5.7	Hardware, Meat , Supermarket	2830.06	@	€1.00	=	€14436.06
No. 10.11.12.13.20.21	Office, Kitchen, Stores	107.15	@	€30.00	=	€3214.5
No. 9	Safe	5.35	@	41.00	=	€ 226.73
No. 6.8.14.15	Office, Kitchen, Stores etc	52.03	@	€27.00	=	€1404.81
Nos 28.29	Container	21.94	@	€6.83	=	€ 149.85
Nos 16.17.18.19.22.23.24.25.26.27	Passage Toilets etc	71.75	@	€27.00	=	€1937.25

Total NAV = €47,678.57 RV. @ .5% = RV €240

Findings and Determination

1. Mr. Halpin for the appellant accepted that most of the units adjacent to the relevant property were either owner occupied or rented.
2. The Tribunal accepts the evidence of the expert witness Mr. James Mansfield that the building was of satisfactory structure and that on completion certificate had been issued.
3. The Tribunal does not accept that the defects identified by Mr. Halpin, in particular the leaking roof and the uneven footpaths and ponding outside the video shop and the planned entrance for the off licence, would have any serious impact on the appellant's business.
4. In relation to Mr. Halpin's main contention that the ponding occurred at the video shop and the planned off licence entrance, the Tribunal noted that the entrance to the relevant property was on the corner and therefore that such ponding as did occur would not in any way affect customers entering the supermarket.
5. In relation to water leakages in the roof the Tribunal accept the evidence of Mr. Mansfield, the expert witness, that he had not seen any water leakages in March 2003 and this was also confirmed by Mr. Colgan for the respondent.
6. Mr. Adams the owner, a man with 29 years business experience, stated that he saw the potential in the town and that was the reason he had purchased the property. He did not carryout a proper survey to ascertain if there was a demand for this type and size of supermarket in the area.
7. Mr. Adams is obviously a very astute businessman and based on his years of experience decided to purchase this property. Mr. Adams did not raise Mr. Halpin's contention that the size of the Supermarket was in excess of the current trading needs of the village.
8. Mr. Adams stated that turnover was not what he had expected but no projected figures were offered to the Tribunal as evidence of this contention and, as Mr. Adams is now trading for 3 years, no audited figures of turnover were produced either for the Tribunal's consideration.
9. The Tribunal is of the view that the most relevant comparison is the Respondent's principal comparison "Pat's Supermarket".

Determination

Having regard to the evidence adduced and the arguments proffered, the Tribunal considers that the rateable valuation as determined by the Commissioner of Valuation is fair and reasonable.

The Tribunal therefore disallows the appeal and affirms the valuation of €240.