

Appeal No. VA02/4/044

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

Joseph Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Reference Unit 17,18, Townland: Ballybuggy, Rathdowney, County Laois

B E F O R E

Frank Malone - Solicitor

Deputy Chairperson

Joseph Murray - Barrister

Member

Patrick Riney - FSCS FRICS MIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF MAY, 2003

By Notice of Appeal dated 15th November 2002, the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €215 on the relevant property above described.

The Grounds of Appeal as set out in the Notice of Appeal are - that the valuation is incorrect "on the basis that the RV is excessive, inequitable and bad in law."

The Appeal proceeded by way of oral hearing held at the Valuation Tribunal office, Ormond House, Ormond Quay Upper, Dublin 7, on the 29th of January 2003.

The Appellant was represented by Mr. Eamonn Halpin B.Sc.(Surveying) ASCS, ARICS, MIAVI and the Respondent by Mr. Denis Maher, of the Valuation Office. Prior to the hearing the valuers exchanged written submissions and valuations which were forwarded to the Tribunal and subsequently received in evidence under oath at the oral hearing.

The Property

The Brand Centre is located near Rathdowney, Co. Laois and is approximately 25 miles from Portlaoise and 90 miles from Dublin. It is a new concept of retail shopping in Ireland where designer brands can be sold for up to 70% discount. The development has approximately 40 units of which over 50% are occupied.

The Appellant, Joseph Ltd, have a 4 year and 9 month lease at the centre from the 3rd of September 2001. Base rent €139, 224 per annum.

The Issues in the appeal were the quantum of the valuation and notification prior to revision as required by Section 3(4)(a) of the Valuation Act 1988.

However, it was agreed at the hearing that the question of pre- revision notice would not be raised at this hearing pending determination of a test case on this issue. The Appellant did reserve the right to pursue this matter further following the outcome of these cases.

The area was agreed between the parties at the oral hearing at 346.86 sq. metres

Appellant's Case

The Appellant stated that the Brand Centre was a great disappointment from the beginning. Occupiers occupied unit from 1st September 2001, on the understanding that it had great commercial potential. However, there was a drop off in footfall from 70,000 to 12,000 in January 2003.

Trade was generally not good. Over 50% of units occupied and from a developer's point of view it was difficult to get more people in. The occupiers are thinking of vacating the unit.

Comparisons were given.

Lease agreement from September 2001, for a period of 4 years and 9 months. Base rent was €139,224 with a percentage of turnover to be added when the turnover exceeded a certain amount. This system was never applied as minimum figures had not been reached. Appellant also stated that there was an agreement that the base rent would be reduced by 50% until a certain number of the units were occupied. Accordingly, at the date of valuation, the reduced rent and not the base rent should have been used as a basis for NAV. The Appellant did not produce any evidence of this agreement.

Appellant's assessment of Net Annual Value as set out in his précis of evidence was as follows:

“1988 tone

Retail area 13.6 x 19.2 = 261.12sq.m

Retail stock area 13.9 x 5.65 = 78.53sq.m

(including wc)

Total = 339.65sq.m @ €68.34 = €23,211

RV @ .5% = €16.05 say €16

Or

339.65sq.m @ €23/sq.m = €1,777

Less 50% to reflect trading difficulties and actual passing rent = €20,888

RV @ .5% = €104.44 say €104”

Respondent's Case

The Respondent agreed that the area was 346.86 sq. metres. He said that as the Brand centre was a new concept of trading in Ireland, there were no suitable comparisons. He had used the passing rent as per lease agreement dated 3rd September 2001 in the amount of €139,224 as the basis for assessing the NAV. This was the only evidence available at the valuation date on 1st May 2002. Time was too short to make any allowances for a drop in trade relating to the period when the lease commenced to the valuation date. Respondent posed the hypothetical question as to whether the Commissioner would have the right to revalue property if rents went up 200% after the valuation date. He added that one cannot value property with the benefit of hindsight, but only as matters exist on the date of valuation. Only where there is a “material change” in circumstances could he revise again. The NAV represents approximately 31% of the passing rent as per lease agreement. This was a reasonable allowance between the years 2001 and 1988.

Valuation Office assessment of NAV as set out in his précis of evidence

Shop 352. 81 Sq Metres @ €123

= €43,403

Say €43,000

RV @ .5% = €215

The Tribunal adjourned to a later date consideration of the issues in relation to pre-revision notification and the agreement for a reduced rent.

The adjourned hearing took place on the 2nd May 2003. Mr. Halpin, on behalf of the Appellant, stated that he had been mistaken in fact, as it was the base rent which applied at the date of valuation and not the reduced rent as he had thought. As regards pre-revision notification to the occupier under section 3(4)(a) of the Valuation Act 1988, Mr. Halpin said that his client was in occupation before the revision issued and that the revising valuer had visited the centre and was aware that there were multiple occupiers.

Relevant dates in relation to the matter were as follows:

- 29 June 2001 property listed for revision
- 10 July, notice sent to developer, unit not yet occupied.
- 1st September 2001 unit occupied.
- Revision date, 1st May 2002

He said that on this basis his client should have received a pre-revision notification. He referred to two Tribunal decision in support of his submission that the rating authority did not comply with section 3(4)(a) of the Valuation Act. These decisions were Ambrose Cuddy VA97/2/030 and Murnane Nolan VA97/3/001.

Mr. Maher on behalf of the Respondent, replied that he had no notice of these cases and was not sure that they covered similar circumstances to the present case. He argued that the owner of the development was notified at the time at which the property was listed for revision and that the occupier was not in occupation at that date. He said that in the circumstances the local authority had fully complied with the requirements of the 1988 Valuation Act.

Findings and Determination

QUANTUM

The Tribunal considered the base rent too high as seen from the point of view of the hypothetical tenant as the centre is not performing well. Turnover threshold does not apply. Furthermore, the Tribunal is not certain as to how the Commissioner arrived at the figure of 31% of the passing rent to bring values back to 1988. Therefore, to arrive at a reasonable NAV, the Tribunal considered several factors, which would affect demand and what the hypothetical tenant might pay for the unit.

- While over 50% of the units at the centre were occupied at the time of the valuation, there was a low level of trade generally throughout the centre.
- Location. The Brand Centre at Rathdowney is some 90 miles from Dublin.
- Remoteness. Access is limited by a maze of minor roads off the N7, Dublin –Limerick road, and the N 8, Cork – Dublin road. Accordingly the centre could miss much passing trade.

The Brand Centre is a new concept of retailing in Ireland and a difficult one to find suitable comparisons for. This notwithstanding, the Tribunal found it necessary to use comparative evidence, although the comparisons are generally outside the rating authority area. Two comparisons in particular are considered to be of particular assistance. Portlaoise, not far from subject property, in relation to which the appellant gave evidence that various retail units in the town were agreed at €68.34 per sq metre in recent years. Evidence was also given of a retail warehouse of 910.82 sq metres at the Liffey Valley Retail Park, Dublin, with a net annual value of €21.01 per sq.m. These comparative rates are less than those applied to the subject property.

- On this basis the Tribunal determine the Net Annual Value as follows:
 Shop Area = 346.86 sq. metres @ €81/sq.m
 NAV = €28,095
 RV x.5% say €141

PRE-REVISION NOTIFICATION - SECTION 3(4)(a) OF THE 1988 ACT.

The Appellant submitted that that he was not served with the necessary pre-revision notice in accordance with section 3(4)(a). The Tribunal conclude that there was adequate compliance by the rating authority with the section on the following grounds:

- The obligation to notify the owner and occupier under the section is not absolute, but qualified with the words “if known”. At the relevant date the occupier was not known as he was not in occupation, and notice was sent to the developer.
- The relevant date in this matter was the time the property was listed for revision on 29th June 2001. The primary time for identifying the owner/ occupier is at or close or approximate to the time at which the property is listed for revision.
- In the subject case notice was sent on the 10th of July, close or approximate to the time at which the property was listed for revision at which time the occupier was not in occupation.
- In this regard the Tribunal rely on the Judgment of the Tribunal in the appeals VA 95/1/ 030 and 031 Blueflite Logistics.
- The Tribunal also rely on the determination in the Blueflite appeals in relation to the existence or not of a continuing obligation to identify occupiers until publication of the revision list. In that context, at paragraph 13(d) of the judgment, the Tribunal stated as follows:
 - “ It is both questionable and debatable whether it could be successfully argued that, there is a continuing obligation on the rating authority at all times up to the publication of the revision list to try and identify who, at any given time is the actual occupier and then to notify that person of the fact that the property is listed for revision”.