

Appeal No. VA05/1/013

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

Pauline & Stacey Hannon

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. 5A/Unit 4, Grove Island Shop Centre, Park, Abbey A, Abbey & Singland,
County Borough of Limerick

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

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

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF JULY, 2005

By Notice of Appeal dated the 25th day of January, 2005 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €109.00 on the above described relevant property.

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

"On the basis that the RV as assessed is excessive, inequitable and bad in law."

This appeal came before the Tribunal by way of an oral hearing held on the 8th March, 2005 at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. At the hearing the appellant was represented by Mr. Eamonn Halpin B.Sc.(Surveying), A.S.C.S, A.R.I.C.S, M.I.A.V.I and the respondent by Mr. David Molony B.Sc., M.R.I.C.S, a district valuer in the Valuation Office.

The Grove Island Centre is a mixed-use development located about 1 km from Limerick city in a predominantly residential area. The centre, which is still in the course of development, is presently accessed by a roundabout at the junction of Athlunkard Street and Corbally Road. Construction of a new link road connecting the Corbally Road and the main Limerick to Dublin road has commenced and it appears that it will not be completed until 2006 or thereabouts.

The Grove Island Centre when completed will provide a wide range of activities including a supermarket, shopping parade, swimming pool, gymnasium, multi-purpose hall, student accommodation and apartments, together with a multi-storey car park. The Supermarket and Shopping Parade are located in the three-storey block with offices at first and second floor levels overhead.

The Property

The property concerned which trades as a hairdressing salon is located in a parade of shops adjoining the SuperValu supermarket and the pedestrian entrance to the multi-storey car park. In all there are 10 retail units in the shopping parade – 8 standard and 2 double sized units. At the relevant valuation date not all the units were occupied, but those that were included a restaurant, an Xtra-vision outlet, a chemist, bookmaker, dry cleaner and a coffee shop.

The property concerned is occupied under a 25 year full repairing and insuring lease from 2004, at an initial yearly rent at €25,000 per annum, rising on an incremental annual basis each year to €31,750 at the end of the fourth year. The agreed area of the property concerned measured on a nett internal area basis is 93.96 sq. metres.

Valuation History

In July, 2004 the Valuation Office issued a draft Certificate to the effect that it proposed to value the property concerned at a rateable valuation of €15.00. Following representation by the appellant the rateable valuation was confirmed at €15.00. On foot of an appeal under Section 30 of the Valuation Act, 2001, the rateable valuation was reduced to €109.00 and it is against this decision by the Commissioner of Valuation that the appeal to this Tribunal now lies.

Appellant's Evidence

Mr. Halpin having taken the oath adopted his written précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief. In his evidence Mr. Halpin contended for a rateable valuation of €58.00 calculated as set out below:

94 sq. metres @ €23.40 per sq. metre = €1,600 @ 0.5% = RV €58.00

In support of his opinion of Net Annual Value Mr. Halpin introduced five comparisons, four of which are located in the Parkway Shopping Centre. Details of Mr. Halpin's comparisons are set out in Appendix 1 attached to this judgment. In his evidence Mr. Halpin described the retail element of the Grove Island development as a small neighbourhood centre in what is only a moderate retail location, catering for purely local needs. By comparison with the Parkway Centre, Grove Island was vastly inferior in terms of location, scale and tenant mix and this was borne out by the differences in rental values. Mr. Halpin said that the current rental value of standard size units in Parkway was approximately €33.48 per sq. metre as against an average rent of €300 per sq. metre in the Grove Island development. Mr. Halpin said that in his opinion, the level of Net Annual Values in Grove Island and Parkway should reflect the pattern of the market rental values, which they currently did not.

Mr. Halpin referred to the determination of this Tribunal in an earlier appeal in respect of another unit in the Grove Island development. (**VA04/2/060 – Mr. Conor Nestor v The Commissioner of Valuation**). Mr. Halpin said that the Tribunal in the **Nestor** case had come to the conclusion that the Grove Island units should be valued at 25% less per sq. metre than the levels prevailing at the Parkway Shopping Centre. Mr. Halpin said that the Tribunal had come to this conclusion

on the basis of Mr. Molony's evidence which was not supported by a comparative analysis of the rental values at each centre. Now that the Tribunal had evidence before it of actual rents it was open to the Tribunal to come to a different conclusion than that arrived at in the **Nestor** case.

Under cross-examination Mr. Halpin agreed that the reduction factor in respect of his comparisons was 0.5% against the normal 0.63% and that this distorted the situation to some degree. Mr. Halpin further agreed that the major proportion of units in the Parkway Centre were on a 0.63% reduction factor which was standard practice in the Limerick area.

The Respondent's Evidence

Mr. Molony having taken the oath adopted his written précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief.

In his evidence Mr. Molony contended for a rateable valuation of €109.00 calculated as set out below:

Estimated Net Annual Value:

Shop: 93.96 sq. metres @ €84.00 per sq. metre = €7,288.64

Rateable Valuation @ 0.63% Say = €109.00

In support of his opinion of Net Annual Value Mr. Molony introduced three comparisons, details of which are set out in Appendix 2 attached to this judgment.

In his oral evidence Mr. Molony said that in arriving at his opinion of Net Annual Value he had taken into account all material factors that would have a bearing on the letting value of the property concerned. Among the factors taken into account were the location of the property, the unfinished state of the development and the link road. Mr. Molony said that he also had regard to the findings of the Tribunal in the **Nestor** case, at which he had appeared on behalf of the Commissioner of Valuation. Mr. Molony said that in his opinion the determination of the

Tribunal in the **Nestor** appeal had established the appropriate valuation level for units at the Grove Island Centre. Accordingly therefore, he had valued the property concerned at the same rate per sq. metre as that determined by the Tribunal in that appeal.

Under examination Mr. Molony agreed that the evidence he gave in the **Nestor** appeal to the effect that a downward adjustment of between 20% to 25% to the sq. metre rate applied to units in Parkway Shopping Centre be applied to units in Grove Island to reflect the relative merits of the two centres was not based on a detailed analysis of prevailing rental levels in the two centres, but was merely his opinion of what adjustment would be necessary in order to maintain the prevailing tone of the list in the Limerick area. His opinion in this regard, he said, was based on his knowledge and experience of valuation levels in Limerick going back over several years.

Findings

The Tribunal has carefully considered all the evidence both written and oral adduced by the parties and makes the following findings:

1. It is common case that the Grove Island Development is not yet completed and that the proposed link road at the relevant date was in an unfinished state.
2. It is common case that the retail element of the Grove Island development suffers from a lack of profile, limited passing trade and relies mainly upon local based custom. However it would be true to say that trading will probably improve with the completion of the development works and the opening of the link road.
3. The relevant valuation date in this appeal is July, 2004. Consequently the net annual value of the property concerned is to be determined in accordance with the relevant provisions of the Valuation Act, 2001. Section 49(1) of the Act states that the value of a relevant property at revision or subsequent appeal stage should be made “ by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”

4. Mr. Molony in arriving at his opinion of the Net Annual Value of the property concerned relied principally on the findings of this Tribunal in the case **VA04/2/060 – Mr. Conor Nestor v The Commissioner of Valuation**. In this appeal the Tribunal reached its determination on the basis of Mr. Molony's evidence that a downward adjustment of 20/25% to the level of assessments in the Parkway Shopping Centre was appropriate in order to reflect the relative merits of the Grove Island and Parkway Shopping Centres. The Tribunal was aware that Mr. Molony's evidence in this regard was based on his experience and knowledge of values in the Limerick area and not on a comparative analysis of prevailing rental levels at the two centres. No contrary expert valuation evidence was adduced by the appellant on this occasion.
5. Mr. Halpin, on the other hand, carried out an examination of rental values in Parkway and Grove Island which indicated that rental values in Grove Island are approximately 57% of those in Parkway. Mr. Halpin argued that this relationship should be replicated in the levels of assessments for rating purposes.
6. An examination of Mr. Halpin's evidence in relation to Parkway, which was not disputed by Mr. Molony, indicates that a sq. metre rate of €205.00 was established at the 1989 First Appeal stage for units ranging in size from 106 sq. metres (comparison 2) to 211 sq. metres (comparison 3). Mr. Halpin agreed that the smaller units (54 sq. metres to 70 sq. metres) were generally valued at €246.00 per sq. metre at the 1989 and 1990 First Appeal stages.
7. This Tribunal must determine the net annual value of the property concerned on the basis of the evidence adduced having regard to the provisions of the Valuation Act, 2001. The Tribunal is acutely aware that Mr. Molony's valuation is based upon an earlier decision of this Tribunal (i.e. the **Nestor** case already referred to). Whilst the Tribunal is not necessarily bound by the decision of another division in relation to matters of quantum it should not lightly set aside or disregard an earlier decision without good reason. In the circumstances of this appeal the Tribunal has come to the view that the decision in the

Nestor case would have been different if the expert valuation evidence adduced at this appeal had been available.

8. The Tribunal in this appeal is faced with a divergence in opinion as to what downward adjustment to apply to the prevailing levels of assessment in Parkway. Mr. Molony's opinion is 25% and Mr. Halpin's is in the order of 43% based upon an analysis of rental values in the two centres at or about the relevant valuation date.

9. On balance the Tribunal prefers evidence based upon actual rental levels over opinion based evidence no matter how well respected that opinion may be. In this regard the comments of **Scott L J** in the case **Roberson Bros (Brewers) Ltd. v Houghton & Chester-le-Street Assessment Committee** are apposite.

“Where the particular hereditament is let at what is plainly a rack rent or where similar hereditaments were economic sites or so let, so that they are truly comparable, that evidence is the best evidence and for that reason is alone admissible: indirect evidence is excluded not because it is not logically relevant to the economic enquiry but because it is not the best evidence. Where such evidence is not available, for example if the rents of other premises are shown to be not truly comparable, resort must necessarily be had to indirect evidence from which it is possible to estimate the probable rent which the hypothetical tenant would pay.”

10. In the **Nestor** case, Mr. Molony arrived at his valuation by having regard to the valuation of Unit 10 in the Parkway Shopping Centre which was valued as follows at the 1990 First Appeal stage:

Net Annual Value of Shop 68.4 sq. metres @ €245.92 per sq. metre = €16,820

Mr. Molony then applied a 20% reduction to this level of assessment which the Tribunal increased to 25%.

11. Evidence adduced at this appeal shows that the established level of assessments in Parkway is €205.00 per square metre for units varying in size from 106 sq. metres to 211 sq. metres. Smaller units are assessed at just under €246 per square metre.

Determination

12. Having regard to the above findings the Tribunal has come to the conclusion that the appropriate downward adjustment at Grove Island should be 40% to the level prevailing at Parkway. Accordingly therefore the rateable valuation of the property concerned is determined to be €87 calculated as set out below:

Net Annual Value

Shop 94 sq. metres @ €147.60 per sq. metre = €13,874.40

(i.e. €246 @ 60%)

Rateable Valuation @ 0.63% = €87.40

Say €87

And the Tribunal so determines.

Recommendation

Section 40(1) of the Valuation Act, 2001 states:

“(1) If the Commissioner amends under Section 38 a valuation list in relation to a particular property, he or she may also amend, in a manner consonant with the relevant decision, that or any other valuation list in relation to each other property appearing on that list that he or she considers is similarly circumstanced to the said property.”

The Tribunal is aware that a decision of the Tribunal does not come within the definition of “material change of circumstances” as defined in Section 3 of the Valuation Act, 2001. In the circumstances and in the light of this determination and of the decision of the Tribunal in the Nestor case, this Tribunal would respectfully recommend the Commissioner of Valuation to exercise his discretionary powers under Section 40 in respect of other retail units in the Grove Island development which are similarly circumstanced in order to ensure a consistent level of assessment and equity between affected rate payers.