

Appeal No. VA06/2/009

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

Omniplex Cork Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Cinema at Lot No. Unit C, Ballinure Road, Mahon B, Mahon, County Borough of
Cork

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF JULY, 2006

By Notice of Appeal dated the 12th day of April, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €3,400.00 on the above described relevant property.

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

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

The appeal proceeded by way of an oral hearing held at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 7th June, 2006. At the hearing the appellant was represented by Mr. Martin O'Donnell, BA(Econ), FIAVI, Grad. Dip. (Planning & Development Econ.) and the respondent by Mr. Francis Twomey, a Valuer, Grade 1 with the Valuation Office.

The Issue

Quantum only.

Valuation History

The property was first valued in May, 2005 as a new rating unit. A proposed valuation certificate was issued on 16th June, 2005 proposing an RV of €3,750. Following representations a Valuation Certificate was issued on 29th August, 2005 at an RV of €3,400. This valuation was appealed to the Commissioner. The Commissioner, after consideration, made no change to the valuation.

The Property

The subject property is a 13 screen cinema situate within the Mahon Point Shopping Centre in a suburb to the south-east of Cork city centre (4 miles approx). It is adjacent to the South Link Ring Road which is the main arterial route around the city. Mahon Point Shopping Centre opened in February, 2005 with 50 retail outlets, three restaurants, 6 food court outlets and this cinema. The entrance to the cinema complex is at the upper ground floor level of the Centre, adjacent to the food court. The 13 screens and ticket sales/shop are located on this level with stores and offices located in the basement area. The projection room is located on the first floor level.

There is extensive surface car parking available in the Shopping Centre. Normal access from the car park to the cinema is through the northern entrance at the lower ground floor level, with immediate access to the foyer, booking office and shop by stairs or escalator.

Accommodation

This is agreed as follows:

Description	Area (sq. metres)
Cinema/foyer	4,074
Projection	647
Basement	<u>1,225</u>
Total Area	5,946
Number of seats	2,583

Tenure

The property is held on a 25 year lease with 5 year reviews from March 2005 at an initial rent of €761,842.84 per annum. There is a 10 year break option in the said lease. The property was leased in shell condition.

Appellant's case

Mr. Martin O'Donnell, having taken the oath, adopted his written précis and valuation which had previously been received by the Tribunal as his evidence-in-chief.

He said that there was a lot of vacant space in the basement which was of little or no value. The subject premises came in shell condition. The fixtures and fittings can be moved and taken away at any time, as can the heating and ventilation systems. The cinema was fitted out at a cost of €5.5 million.

There were 4 small office rooms and toilets in the basement. He said that there were two city centre cinemas, the Capitol and the Gate, in the same rating authority area. These were situate in valuable city centre locations. The Capitol is now closed. In his opinion they were a different type of cinema to the subject property which was a multiplex located in the suburbs. He pointed out that when comparing Cineworld in Dublin city with multiplexes in Dublin suburbs the rate per seat is significantly different. For this reason, he maintained that it was essential to look outside the rating area to find similarly circumstanced multiplex cinemas to assist in assessing a fair and reasonable rating valuation. He said that the Capitol Cinema was now closed for redevelopment other than as a cinema. He maintained that valuation of seats was the most favourable method of valuation to his clients. He said that in the Tribunal's decision in **VA95/5/006 - Abbey Cinema Group** the decision was given on a seating basis. He also pointed out that cinemas in Dublin city centre were valued much higher than in the suburbs. He gave 10 comparisons which are set out in Appendix 1 hereto.

All of them with the exception of No's 1 and 2, the Gate Cinema and the Capitol Cinema, are outside the rating authority area involved herein.

The Gate Cinema in Cork city (No.1) is in the city centre and demands higher rental values and has a greater captive audience than suburban cinemas. This cinema was built in a tax designated area and was valued in 1998.

The Capitol was first valued in 1990 and revalued in 1996.

At the outset of the hearing Mr. Twomey objected to Mr. O'Donnell giving any comparison outside the rating authority area concerned, relying on Section 49 of the Valuation Act, 2001.

In his précis Mr. O'Donnell gave 3 methods of valuation namely (a) rate per sq. metre (b) number of seats and (c) current rent, and maintained that the seating method was, in his opinion, the correct method to be adopted in this case. Mr. O'Donnell's opinion of rateable valuation is at Appendix 2 hereto.

Cross examined by Mr. Twomey, he said that the subject cinema was on the edge of a predominantly residential area and agreed that it had a huge catchment area.

He said that about 374 sq. metres of the basement area was void and should not be valued.

He agreed that cinemas with car parking are more valuable than cinemas in the city centre and that in the city centre patrons had to pay for parking. He also said that more screens in a cinema rendered it more profitable.

He further agreed that the design and scale of the subject cinema was "state of the art". He also said that most new cinemas were multiplex and accordingly were not comparable with older cinemas.

Mr. Twomey referred to the decision of Mr. Barron J. in **Irish Management Institute v Commissioner of Valuation [1989] No. 372 SS** wherein he stated that

"What must be considered are valuations which:-

- (a) are comparable;*
- (b) relate to tenements or hereditaments of similar function; and*
- (c) have been made or revised within a recent period.”*

He put it to Mr. O'Donnell that it was therefore perfectly in order for the Tribunal to accept the two city centre cinemas as acceptable comparisons as they were within the same rating authority area. Mr. O'Donnell would not accept this for the reasons already given by him.

Respondent's Case

Mr. Francis Twomey, having taken the oath, adopted his written précis and report which had previously been received by the Tribunal as his evidence-in-chief.

He said that the subject premises were much more valuable than cinemas in the city centre. He said that he felt constrained by Section 49 of the Valuation Act 2001 and must therefore deal with comparisons, in this case, that were city centre cinemas.

He also referred to the Tribunal's decision in **Abbey Cinema Group** wherein it is stated that the Tribunal was satisfied that the correct approach was not one based on a price per seat basis or on adopting a capital value basis but rather by using a price per sq. metre basis. This was the basis used by him and was as far as he was concerned the correct basis. He said that he did not know the rent payable and that he was not concerned with this in arriving at his valuation.

He made his valuation on a rate per sq. metre basis and confined himself to comparisons within the rating authority area, namely the Gate and Capitol Cinemas in the city centre (see Appendix 3 to this Judgment). He contended that any comparisons outside the rating authority area were not in compliance with Section 49 of the Valuation Act, 2001. His comparisons (with the exception of his No. 2 comparison, Reel Cinema, Blackpool Retail Park) complied in full with Mr. Barron J.'s decision in the **IMI** case referred to already in this judgment.

The Reel Cinema was valued in October, 2005, after the valuation in this case and, accordingly, he conceded that it could not be used as a comparison.

Mr. Twomey contended for the following valuation:

Cinema	4,074 sq. metres	@ €109.28 per sq. metre	€445,206
Projection Room	647 sq. metres	@ €54.65 per sq. metre	€35,358
Offices & stores	1,225 sq. metres	@ €54.65 per sq. metre	<u>€66,934</u>
Total			€47,498
NAV €47,498 @ 0.63% RV	€3,449	Say	€3,400

Cross examined by Mr. O'Donnell, Mr. Twomey stated that he valued on the tone of the list. He did not need to look at the rent in this case as he did not consider it relevant.

The subject cinema was, in his opinion, far superior to the city centre cinemas. He went with the tone of the list and drew his conclusions from comparisons having made the necessary adjustments. He agreed that the Reel Cinema, Blackpool, his No.2 comparison, was valued in October 2005 after the valuation of the subject property and was not therefore on the valuation list at the relevant date and should be excluded.

Findings and Determination

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

1. The subject property is in a large residential area on the main arterial ring road in Cork city. It is very easily accessible.
2. There are large car parks in and around Mahon Point Shopping Centre wherein the subject property is situate, unlike the city centre cinemas which have paid car parking only.
3. There are three restaurants and six food court outlets in the Mahon complex.
4. The multiplex is built to the highest standard and was equipped at a cost of €5.5 million. It has been described as a "state of the art" cinema. It is far superior and much more valuable than the city centre cinemas given as comparisons.
5. The more screens in a cinema the more profitable the cinema is. The subject cinema, having 13 screens, is therefore much more profitable than the Capitol or Gate cinemas in the city centre, which each have 6 screens.

6. The Tribunal accepts that the correct method of valuation is on a per sq. metre basis, the basis used by the Commissioner of Valuation (**VA95/5/006 - Abbey Cinema Group**).
7. The valuation must be carried out in compliance with the wording set out in Section 49 of the Valuation Act, 2001. The comparisons given by the Commissioner of Valuation of the Gate and Capitol cinemas in the city centre are within the same rating authority area as the subject cinema and accordingly are usable as comparisons. Mr. O'Donnell's comparisons No's 3 to 10 are outside the rating authority area and accordingly are not appropriate. (**Irish Management Institute**).
8. The Reel Cinema, Blackpool should be excluded as a comparison as agreed.
9. The Tribunal accepts that about one third of the basement area is unusable and is of "little or no value".

Having regard to the above the Tribunal has determined the net annual value of the property to be as follows:-

Cinema	4,074 sq. metres	@ €109.28 per sq. metre	€445,206
Projection room	647 sq. metres	@ €54.65 per sq. metre	€35,358
Office and stores	1,225 sq. metres	@ €30 per sq. metre	<u>€6,750</u>
Total			€17,314
NAV	€17,314	@ 0.63%	RV €3,259

And the Tribunal so determines.