

Appeal No. VA06/3/025

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

B & Q Ireland Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Retail Warehouse at Lot No. 2Aa/Unit 1, Jigginstown, Naas Rural, Naas 1, County Kildare

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

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

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF JANUARY, 2007

By Notice of Appeal dated the 24th day of July, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,855.00 on the above described relevant property.

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

"The RV is excessive as the revision officer has not had full regard to the tone of the list for all of the retail warehouses in Co. Kildare. The Woodies comparison cited by the revision officer is flawed."

This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 7th day of November, 2006. At the hearing the appellant was represented by Mr. Joseph Bardon, F.S.C.S., F.R.I.C.S, and the respondent by Mr. Denis Maher, M.R.I.C.S., a Valuer Grade 1 in the Valuation Office.

Valuation History

The rateable valuation was initially assessed on 7th November, 2005 at €1,866.00 effective from 1st January, 2006. Representations were submitted to the Valuation Office by Mr. Joseph Bardon on the 5th December, 2005. The rateable valuation was issued unchanged on the 8th December, 2005.

An appeal was submitted to the Commissioner on 15th January, 2006. The floor area was agreed at the appeal. The rateable valuation was reduced to €1,855.00 on 29th June, 2006.

An appeal was lodged by the appellant to the Valuation Tribunal on the 24th July, 2006.

Location

The property is located in Newhall Retail Park, Newbridge Road, Naas, Co. Kildare. This is a new development of retail warehouses situate on the Naas to Newbridge road approximately two miles south west of Naas and close to the Newhall junction of the M7 Motorway.

This is one of two new Retail Park developments adjacent to the M7 Motorway, the other being the Globe Retail Park, located just north of Naas at the Dublin Road interchange. When completed, the Newhall Retail Park will comprise 10 units with car park spaces for 7 cars.

The Property

The property comprises a modern free standing single storey retail warehouse and is the main anchor unit in the Park.

It is an open plan retail warehouse with administrative office space along with an attached garden centre, part with canopy over and an enclosed storage yard at the rear.

It is a double bay steel framed structure with concrete block rising and partition walls, under full height, insulated steel cladding and with similar roof. The floors are concrete. All mains services are attached to the property.

Tenure

Held under lease for 20 years from 1st September, 2005 at an initial annual rent of €500,000 with 5-year rent reviews.

Area

The areas have been agreed and will be set out fully in the Findings herein.

The Appellant's Evidence

Mr. Joseph Bardon having taken the oath adopted his précis, which had previously been received by the Tribunal and the respondent, as his evidence-in-chief.

He first of all gave a detailed description of where Newhall Retail Park is situate. He said it was on the old road between Naas and Newbridge in an area called Newhall.

He referred to the map enclosed in his précis. He said you come off the M7 Motorway at the Portlaoise roundabout leading to Newhall and to Naas. At the second roundabout called the Newhall Roundabout you turn off into Newhall Retail Park – entering into the Park by a long approach road which runs parallel to the Park. The subject property is visible from the roundabout but it is the furthest from the access road. The Park had c.677 car parking spaces. It is c. 2 km south west of the town of Naas. Naas is the largest town in Co. Kildare with a population of over 18,000 people. There are 10 units in the Park. The property comprises an end of terrace retail warehouse located towards the rear of the Park. The accommodation includes the entrance lobby, the retail warehouse and a reception office to the front. The loading bay and main offices are to the rear and there is a garden centre to the side and a service yard to the rear. The construction is as set out above and is agreed.

When the lease was taken in September, 2005 a rent free period of 9 months was given and the landlord allowed a reverse premium of €500,000 to B&Q, leaving the rental at €325,000 per annum. This was given to attract B&Q into the Park.

The rateable valuation was originally assessed in September, 2005 at €1,866 effective from January, 2006. Representations were submitted by Mr. Bardon to the Valuation Office. No discussions took place. An appeal application was lodged with the Valuation Office on 15th January, 2006. The areas were agreed but no meaningful discussions took place. The rateable valuation was however reduced to €1,855.

When questioned by the Chairperson as to why no discussion took place Mr. Bardon said that since the new Act (2001) was passed the ability to discuss appeals with the Valuation Office has diminished considerably, to his mind because of internal Valuation Office policy.

Mr. Maher said that the Appeal Officer went on the description of the property furnished to him but had not seen the property. Areas were agreed.

Mr. Bardon then referred to his two comparisons, Atlantic Homecare and Woodies. He said that there were only three warehouses valued in County Kildare at the relevant date, Arramount Furniture, Atlantic Homecare and Woodies. These had rateable valuations of €23.78, €78 and €1,200 respectively. He said that he would ignore Arramount Furniture as it was less than one fifth the size of the subject property and was therefore not comparable.

Atlantic Homecare is in Newbridge Retail Park, a small estate off the inner Newbridge Town Bypass and close to the town centre. Woodies is located beside Tesco (which is a premier unit) on the Kildare Road and close to the town centre. He considered these as superior locations to the Newhall Retail Park. Both Woodies and Atlantic Homecare have garden centres. He said that B&Q was larger in floor area than Atlantic Homecare and Woodies but no allowance had been made for quantum.

Mr. Bardon stated that he acted for Woodies in 2003. Woodies were not satisfied as to the rateable valuation placed on their premises and intended to appeal to the Valuation Tribunal. The Valuation Certificate was sent to his clients directly and no notification was given to him. He received the Valuation Certificate copy the day after the closing date for lodgement with the Tribunal.

He submitted therefore that the valuation of €1,200 placed on Woodies was a distortion of the facts and should not be accepted as the correct rateable valuation.

He agreed that the Valuation Office now forward a copy of the Valuation Certificate to the agent as representing the client.

He gave his opinion of a fair rateable valuation on the subject property at €1,520 calculated as set out in his précis.

Mr. Bardon referred to Page 9, Paragraph 4 of Mr. Maher's précis wherein Mr. Maher had referred to newer, recently revised properties. He said that none of the premises mentioned therein were on the Valuation List at the date of valuation which was the 8th December, 2005 and that in fact some of these premises had not been valued yet. The only 2 premises which were on the list at that time were Arramount Furniture and Atlantic Homecare. Smyths Toystore is the subject of a Valuation Tribunal appeal. Woodies in the Globe Retail Park was not relevant as it was not on the List on 8th December, 2005.

Cross-examined by Mr. Maher, Mr. Bardon said Newbridge Retail Park was a better location than Newhall Retail Park because:

1. It is in the middle of Newbridge.
2. It is on the inner Bypass Road.
3. It is a couple of hundred yards from Newbridge town centre.
4. It backs on to the Newbridge Shopping Centre which is anchored by Tesco and has 25 other units.
5. It has ample car parking and
6. In his view, it has a far better location than the subject property.

In further reply to Mr. Maher, Mr. Bardon agreed that of the total area of B&Q, 1,100 sq. metres was an open garden centre leaving 4,698 sq. metres of building.

There is a garden centre in Woodies of 743 sq. metres thus reducing the gross area.

Mr. Maher then asked Mr. Bardon if the discussions with the Revision Officer, Mr. Heery, in the Woodies case were "without prejudice", Mr. Bardon agreed that this was so.

He said that at the relevant time he considered all retail warehouses in Kildare and that he got this information from the Valuation Office website. There were only three and they did not

include DID Electrical in the Newbridge Retail Park, which was Mr. Maher's comparison No. 2. It did not come up on the website. He said that even if it had he would have discounted it as it is very small – 606.8 sq. metres.

Mr. Bardon stated that he valued the retail warehouse in his valuation at €1.51 per sq. metre. He said he felt that it was slightly better than Atlantic Homecare on the basis that it was a new building and that it was therefore appropriate in these circumstances. In reply to further questions he said that the subject premises was inferior to Woodies on the Kildare Road, Newbridge for four reasons:

1. Newhall had an inferior location.
2. Woodies was beside Tesco which is one of the biggest retail outlets in the country and they share the same entrance.
3. It is c.200 yards from the town centre.
4. Woodies is smaller than B&Q.

Respondent's Evidence

Mr. Maher having taken the oath adopted his précis, which had previously been received by the Tribunal and the appellant, as his evidence-in-chief.

He said that he was satisfied with all of the main descriptions, etc. but would dispute location.

In relation to location he pointed out the location of the Globe Retail Park was about equal distance from the town centre as the Newhall Retail Park and on the junction of the Dublin Road and the N7.

Most retail parks, he said, are built on the edge of towns and they have excellent access and parking. People decide to go to these parks because of parking – they drive there. Parking in Newbridge town centre is restricted with traffic jams, etc. Retail parks are also convenient for loading and delivering.

He said that he disagreed with Mr. Bardon when he said that the Newbridge Retail Park had a better location than Newhall Retail Park. He said he had valued both the Globe and Newhall Retail Parks and regarded them as very similar.

He said it is very common to find the anchor tenant at the back of retail parks. The anchor tenant in this case had visibility from the roundabout and, anyway, people get to know that they are there. The fact that you have to drive around the park is of no consequence and is irrelevant, he said.

He valued the subject property at NAV €75 per sq. metre.

In relation to Page 9, Paragraph 4 of his précis, referred to by Mr. Bardon earlier, he said he did not use those properties as comparisons. They were mentioned to show the Tribunal all of the information available in relation to the valuation of retail warehouses in County Kildare.

He said that Atlantic Homecare was one of the first retail warehouses to be valued at the time of its valuation and there was nothing else in County Kildare to compare it with. It was valued on a gross external basis and was reduced on appeal. Other retail parks elsewhere were looked at at the time and they would have been valued on a gross internal basis. Atlantic Homecare is now the odd one out in relation to the valuations on Woodies, DID Electrical, etc.

DID Electrical has been on the list for 3 or 4 years but was not on the website for some unknown reason. He insisted that he could not ignore the Woodies valuation. He relied on it as the main comparison and not on Atlantic Homecare.

Cross-examined by Mr. Bardon, Mr. Maher said that parking in Newbridge Retail Park is restricted – Dunnes Stores car park is a private car park although access can be gained to it from Newbridge Retail Park. All parking in the area is free, he said.

He accepted that Tesco is one of the biggest retail outlets in the country and Woodies are situate beside it. Woodies would have to stand alone as Woodies' business does not complement Tesco's in anyway.

Findings

The Tribunal, having carefully considered all of the evidence, submissions and arguments adduced by the parties, make the following findings:

1. The subject property in Newhall Retail Park has an inferior location to Woodies.
2. Woodies is located beside Tesco which is one of the biggest retail outlets in the country, and would benefit from this. Woodies is also c.200 yards from the town centre which is within easy walking distance.
3. Woodies is smaller than the subject property.
4. The Tribunal accepts Woodies as a fair comparison in preference to Atlantic Homecare which appears to be the “odd one out” in the valuations.
5. The offices in Woodies are valued at €55.00 per sq. metre whereas the Valuation Office values the offices in the subject property at €75.00 per sq. metre. The Tribunal accept the valuation made in the Woodies valuation as fair and equitable and accordingly applies the same valuation of €55.00 per sq. metre on the offices in the subject property.
6. The Tribunal have noted the evidence as given by Mr. Bardon that no meaningful discussion took place between the Appeal Officer and himself and that when questioned by the Chairperson as to the reason for this, Mr. Bardon stated that since the 2001 Act came into force the ability to discuss appeals with the Valuation Office had diminished considerably, to his mind because of internal Valuation Office policy. Whilst the Tribunal is fully aware of the provisions of the Valuation Act, 2001 in relation to appeals, it seems strange to the Tribunal that the parties involved do not discuss the matter at hand particularly in view of the fact that, for the most part, conversations are “without prejudice” and cannot and should not be opened to the Tribunal on Appeal. This is of course is a matter entirely for Appeal Officers and the Commissioner of Valuation. Such discussions might in some cases render it unnecessary to proceed to Appeal to the Tribunal.

Having regard to the above the Tribunal has determined the NAV and RV of the property as follows:

Retail warehouse	4,358 sq. metres	@ €70 per sq. metre	= €305,060
Offices	280 sq. metres	@ €55 per sq. metre	= €15,400

Offices	31 sq. metres	@ €5 per sq. metre	= €1,705
Offices/Switch/Cleaners	29 sq. metres	@ €50 per sq. metre	= €1,450
Garden Centre	1,100 sq. metres	@ €10 per sq. metre	= €11,000
Canopy area	246 sq. metres	@ €10 per sq. metre	= €2,460
Storage Yard	1,401 sq. metres	@ €3.50 per sq. metre	= <u>€4,904</u>
Total NAV			= €341,979
RV @ 0.5%			= €1,710

And the Tribunal so determines