

Appeal No. VA08/3/035

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

John & Paul Sinnott

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2191494, Amusement Centre at Lot No. 6E/2, Bollarney North, Wicklow Rural, Rathdrum, County Wicklow.

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

James Browne - BL

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF JANUARY, 2009

By Notice of Appeal dated the 5th day of August 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €479 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. The proposed level of NAV fails to take into account the actual location, size and relative value of the property together with the established tone".

The appeal proceeded by way of an oral hearing which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 21st day of November, 2008. The appellant was represented by Mr. Eamonn Halpin, BSc, ASCS, MRICS, MIAVI. Mr. John Sinnott gave evidence on behalf of the appellant. The respondent was represented by Ms. Orla Lambe, BSc, a Valuer in the Valuation Office. Both parties adopted their written submissions, which had previously been exchanged between them and submitted to the Tribunal, as being their evidence-in-chief given under oath.

The Property

The property concerned, a bowling and leisure centre, is constructed of steel portal frame with double skin cladding roofing and walls. There is extensive use of glazed cladding allowing good light penetration to the interior. It is finished internally to a good standard and it accommodates a 12-lane bowling alley along with other recreational facilities on the ground floor and a large play area for children on the mezzanine level. Parking is available for customers with up to 200 spaces available.

Location

The property is located about 3km north of Wicklow town on the R750 on the Wicklow to Rathnew Road. It forms part of a recent development. The neighbouring buildings, which also form part of the development, include car sales showrooms and a veterinary surgery. There is residential accommodation, a department store and a supermarket in the general area of the development although they do not form part of it. The property has a profile onto the main road on which it is located. The areas were agreed as follows:

Mezzanine Area	1,320 sq. metres
Ground Floor Area	1,345 sq. metres
Total Floor Area	2,665 sq. metres

Tenure

The property is held freehold.

Rating Authority

The rating authority is Wicklow County Council.

The Appellant's Case

Mr. Halpin, having taken the oath, adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief. He confirmed that the floor areas were agreed.

In his evidence, Mr. Halpin stated that the property was a new, purpose built property; it was a sparsely fitted-out, functional building; the ceiling was exposed with only the cladding used and beams exposed. He said it was done to an extremely basic finish. He stated that the first floor was a very large area and not really rentable. He felt that the value of the first floor should be at least half that of the ground floor. He pointed out that Wicklow Town was not the main town in County Wicklow; that there was no significant modern development in the town and there was limited development near the subject property; and that commercial development has been limited by the town's population. He stated that it served as a dormitory town for Dublin. He felt values were significantly lower in Wicklow Town than in Bray. He observed that there were no other bowling facilities in the Wicklow County Council rating area. He stated that while there was some merit in looking at comparisons in Bray and Portlaoise, there was no getting away from local comparisons. Waterford City was stated to have a population of 50,000. He was of the view that the comparison properties were too far from the subject property to be of significance in appropriately assessing the valuation of the subject property. Mr. Halpin took the view that the subject property's neighbouring properties were more appropriate for comparison purposes. These neighbouring properties included car showrooms. He accepted they were different to the subject property but that the only difference was in terms of fit-out.

He stated that the business was not currently breaking even and that it was developed at a time of projected growth.

Mr. Halpin then introduced his comparisons (details at Appendix 1 hereto) as follows:

1. Sinnott Autos, which is a car dealership two doors away from the subject property. The front showroom, which is 99.69 sq. metres in area, is valued at €50 per sq. metre with the balance of the showroom, which is 300 sq. metres in area, valued at €35 per sq. metre. The total area of the showroom is 399.69 sq. metres with various other levels on different parts of the property. The rateable valuation of the total property is €160.

2. Peppard Motors, which is a car dealership in the same development as the subject property. The front showroom is valued at €50 per sq. metre with the balance of the showroom, including offices, valued at €35 per sq. metre with ancillary at €27 per sq. metre and the workshop at €25 per sq. metre. This is a common comparison.
3. Egans Rowl & Bowl, which is a new bowling alley and activity centre based in Portlaoise in an industrial estate, in an industrial type building and is significantly smaller than the subject property.
4. Bray Bowl, which was stated to be a very fine purpose-built bowling alley beside Bray DART station & seafront. It was stated to be vastly superior in location and population base to the subject property. It was stated that this bowling alley was valued by reference to Stillorgan and Dundrum bowling alleys with Bray bowling alley being valued at approximately 20% less than Stillorgan and 37% less than Dundrum on an overall basis. This is a common comparison.
5. Stillorgan Bowling Alley, which was stated to be the premier bowling centre in Ireland for many years and that there was no comparison with Wicklow town, where values are a fraction of those in Stillorgan.

Cross examination of Mr. Halpin

In cross examination, Ms. Lambe questioned Mr. Halpin as to how many car spaces there were in Bray Bowl. Mr. Halpin stated that there were approximately 80 and agreed that these had been valued but added that in the early years these had been used by commuters. He also agreed that he had valued Peppard Motors and used other car showrooms in valuing same, but added that Sinnott's car showroom was the only other available comparator at the time. He agreed that the subject property was purpose-built.

Mr. Halpin contended for a valuation of €265 calculated as follows:

Estm. Nav 1988 Basis:

Entrance Porch	25 sq. metres
Bowling & amusement areas	1,024 sq. metres @ €27.34 per sq. metre = €27,996

Offices Gr. Fl.

WCs store & office 98 sq. metres @ €30.75 per sq. metre = €3,013

Stores/Workshop (3m eaves) 198 sq. metres @ €20.50 per sq. metre = €4,059

Including service area

First floor area

Play & activity area

Including WCs 1,320 sq. metres @ €13.67 per sq. metre = €18,058

Total NAV = €53,126

RV @ 0.5% = €265.65

Say RV €265

Mr. John Sinnott

Mr. Sinnott gave evidence that when he set about starting his business the town was growing rapidly and that there were a lot of plans to develop the town with expected residential growth. He believed that this would continue. He stated that planning was subject to a number of conditions including car parking spaces and levies sought. He stated that the extent of contributions and rates sought made it very difficult to succeed in his business and that trade had dropped significantly since August. He said he would make no profit this year.

Cross examination of Mr. Sinnott

In cross examination, Ms. Lambe questioned Mr. Sinnott about peak seasons in his business, whether he expected profits to be low at the start of his business and whether the population had increased over the last few years.

Respondent's Evidence

Ms. Lambe having taken the oath adopted her written précis of evidence which had previously been received by the Tribunal as being her evidence-in-chief. She agreed with Mr. Halpin on the location and general description of the subject property and the areas. She said there may be up to 200 car parking spaces.

Ms. Lambe valued the property as follows:

Ground floor leisure 1,345 sq. metres @ €47.84 per sq. metre = €64,345

Mezzanine level 1,320 sq. metres @ €23.92 per sq. metre = €31,574
 Total NAV = €95,919
 Rateable Valuation @ 0.5% = €479.59
 Say RV €479.00

Ms. Lambe then introduced her comparisons (see Appendix 2 hereto) as follows:

1. Flanagan's Wharf: this is located at Courtown Lower Square, Gorey, County Wexford. This premises was stated to be inferior to the subject premises in terms of profile to passing traffic, and is basic in design and facilities offered. The ground floor was valued at €41.00 per sq. metre and the first floor was valued at €27.33 per sq. metre.
2. Waterford Kidzone & Fun Factory Ltd: this is located at Unit 2 Ardkeen Business Park, Williamstown, Waterford. The premises was stated to be similar in structure to the subject property and to be located in a high residential density area on the outskirts of Waterford. The ground floor was valued at €59.45 per sq. metre and the first floor was valued at €29.72 per sq. metre.
3. Daisy Gold Manufacturing: this common comparison is located at Bray, County Wicklow. The premises was stated to be similar in structure to the subject property and located in a high density residential area in the town of Bray. The ground floor was valued at €43.73 per sq. metre and the first floor was valued at €21.86 per sq. metre with the second floor valued at €10.93 per sq. metre and car parking spaces valued at €63.50 each.
4. Bollarney Limited t/a Peppards Wicklow: this common comparison is located next to the subject property and is not in similar use, as it is a car showroom.

All of the comparisons were valued on a net internal area basis, whereas the subject property was valued on a gross internal area basis. The parties later re-submitted the Bray Bowl common comparison with measurements calculated on a gross internal area basis at the request of the Chairperson. This was duly considered by the Tribunal.

Cross Examination of Ms. Lambe

In cross examination Mr. Halpin asked Ms. Lambe whether she agreed that the subject property was functionally built. She disagreed. She agreed that the hypothetical tenant would take the size of the town into account. Mr. Halpin produced photographs of Bray Bowl and put it to Ms. Lambe that there was no comparison to the subject property, which was steel frame. He put it to her that Bray Bowl did not look like a “warehouse” as she described it in her evidence. He put it to her that the subject property was more similar to a warehouse. She stated that there were no loading doors and the premises would need to be significantly altered to be a warehouse. Ms. Lambe accepted that the finish was plain. She accepted that the parking spaces in Bray were worth a significant amount of money, but said that those spaces were valued separately. Ms. Lambe did not find the car showrooms next door to the subject property to be suitable comparators and thus went outside the rating area.

Findings

The Tribunal has carefully considered all of the oral and written evidence produced by the parties and the arguments adduced at the hearing and make the following findings:

1. The subject property is a recent construction and forms part of a mixed use development.
2. The Tribunal notes that the location, general description of the property and its size are agreed.
3. The Tribunal has considered the comparisons offered by both parties and notes that it must make any findings in accordance with Section 49 (1) of the Act.
4. The Tribunal notes the location of the subject property and accepts that there are a number of neighbouring properties of similar construction but of different use and finish in the same development.
5. In assessing comparable evidence the Tribunal concerns itself with the concept of “comparable” within the meaning of the 2001 Act. The Tribunal understands “comparable” to include the following elements and parameters: properties are similar as regards use, function, size, construction, quality, location and other factors which may affect their value. When these elements are concerned with respect to two or more properties, the properties are said to be comparable.
6. The Tribunal accepts that the word “use” is an important ingredient in the concept of “comparable” within section 49 of the Act of 2001. While not specifically mentioned in

the 2001 Act, as it was in Section 5 of the Valuation Act, 1986 which refers to hereditaments “*which are comparable and of similar function*”, yet this does not mean that it is not implied in Section 49. The Tribunal is of the view that it is implied in the concept and the law of the Tribunal supports this.

7. In its judgment of the 1st day of September 2004 in Appeal **VA04/1/024 - Gerri Cobbe & Mary McGibney** the Valuation Tribunal stated in paragraph 3 of the decision: “*In the absence of any definition in the Act as to what is a comparable the word must be interpreted in its normal sense and mean equivalence, likeness or sameness. That being the case, comparable must be interpreted as being similar in use, location and nature of construction or any other factor which will have a bearing on value.*”
8. As the subject property was built, designed and used as a bowling alley, the Tribunal is of the view that it should be valued as a bowling alley and distinguished from the other units in the area.
9. The Tribunal notes that there is no similar use property in the rating area and the subject premises is the only bowling alley in the rating area that is valued for rating purposes. This creates a situation of no comparable properties in the same rating area. This clearly makes valuing the property more difficult than is normal.
10. In these circumstances the parties are entitled to go outside the rating authority area of the subject property under section 49(2)(b) of the Act as there are no comparable properties within the said area and also section 49(2) further applies as we are dealing with an existing valuation list.
11. In this respect the Tribunal is of the view that the common comparison, Bray Bowl (otherwise known as Daisy Gold Manufacturing), located in the Bray Town Council rating area, is of the greatest assistance in determining a fair and reasonable valuation.

Determination

In reaching its determination the Tribunal has been required to consider only the evidence submitted and adduced. Having heard all the oral evidence and submissions, and having considered the préces lodged herein, the Tribunal has made the foregoing findings and in the light of those findings determines that the valuation of the respondent is too high and that a suitable allowance should be made for the fit-out and finish of the subject property and its location. In the circumstances the Tribunal determines that the following valuation is a more fair and reasonable valuation:

Ground floor leisure 1,345 sq. metres @ €40.00 per sq. metre = €53,800

Mezzanine level 1,320 sq. metres @ €21.00 per sq. metre = €27,720

Total NAV = €81,520

Rateable Valuation @ 0.5% = €407.60

Say RV €407.00

And the Tribunal so determines.