

Appeal No. VA08/4/014

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

Butlers Chocolates Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2194089, Shop at Lot No. G31A, Pavilion Shopping Centre, Miltonsfields, Swords Village, Swords, County Dublin.

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

Leonie Reynolds - Barrister

Member

Aidan McNulty - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19TH DAY OF MAY, 2009

By Notice of Appeal dated the 4th day of December, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €298.00 on the above-described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are as follows:
"The valuation is excessive, inequitable and bad in law."

The Appeal proceeded by way of an oral hearing which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 25th day of February 2009. The appellant was represented by Mr. Terry Devlin, B.Sc., ASCS, MRICS, MIAVI of O'Donnell Property Consultants. The respondent was represented by Ms. Ciara Marron, B.Sc. Property Management & Valuation, Dip. in Prop. Valuation & Management, MIAVI, a District Valuer with the Valuation Office.

At Issue

Quantum only. By emailed letter dated 5th January 2009 Mr. Devlin notified the Tribunal that he wished to withdraw the grounds of appeal that the valuation was "bad in law".

The Property Concerned

The subject property is a newly built, triangular shaped, open fronted unit located on the ground floor (with Store at first floor) opposite the entrance to Phase 2 of the Pavilions Shopping Centre, Swords, Co. Dublin. The unit is finished to a high standard throughout, with tiled floors, suspended ceilings and air conditioning and a modern finish and fit out.

Tenure

25-year lease commencing on the 1st of October 2007, subject to five year rent reviews and expiring on the 30th of September 2032.

Area

The floor areas have been agreed as follows:

Retail: 93.41 sq. metres

Store: 15.34 sq. metres

It is agreed that the unit is all Zone A.

Services

All main services are connected.

Valuation History

This is a first valuation of a new property. A Proposed Valuation Certificate issued on the 3rd of March 2008 with a valuation of €298. Representations were made to the Revision Officer and the Valuation Certificate issued unchanged on 24th April 2008. An appeal was

subsequently lodged with the Commissioner of Valuation and the result of the appeal was issued on the 28th of November 2008. The valuation remained unchanged. An appeal was thereafter filed with the Valuation Tribunal on the 18th December 2008.

Appellant's Case

Mr. Devlin took the oath, adopted his précis as his evidence-in-chief, and provided the Tribunal with a review of his submission. At the outset Mr. Devlin indicated that the floor areas had been agreed and further that the Zone A level applied to the entire unit. Whilst he accepted that the agreed Zone A level for the Pavilions Shopping Centre is €500.00 per sq. metre, in his view this level needed to be adjusted to reflect the fact that the unit is not a standard shaped unit. He described the unit as being triangular in shape and not suitable for any use other than a café/restaurant. It is the only unit of its type or shape in the said shopping centre.

Mr. Devlin compared the subject property with the Butlers Chocolates unit in Dundrum Town Centre and contended that the units were similar in size and shape. Similarly he contended that the Dundrum Town Centre unit was not a standard unit within Dundrum Town Centre and was the only unit of its type within the said shopping centre. He further contended that the valuation of the subject property should be reduced to reflect the fact that it is not a standard unit within the Pavilions Shopping Centre and an allowance should have been made in this regard, as had been the case in the Dundrum Town Centre unit. He argued that the subject property had been treated differently from other standard units in the centre, in circumstances where it had been let at a significant reduction from the standard units.

In all the circumstances, Mr. Devlin contended for a reduction of 30% in the Zone A level for the purpose of arriving at a fair NAV/RV.

Mr. Devlin contended for a valuation of €209 calculated as follows:

Retail	Zone A	93.42 sq. metres	@ €350 per sq. metre = €32,697.00
Store		15.34 sq. metres	@ €41 per sq. metre = €628.94
Total			= €33,325.94
RV @ 0.63%			€209.95
Say RV			€209

In cross examination, it was put to Mr. Devlin that his comparison unit in Dundrum Shopping Centre was in a different rating authority area and therefore not a valid comparison. Whilst Mr. Devlin agreed that the properties were clearly in two different rating authority areas, he argued that the same methodology should be adopted for the subject unit as was adopted on appeal in the Dundrum Town Centre unit. It was suggested to him that the subject unit was a better quality unit than the Dundrum Town Centre unit in circumstances where the subject unit had two definite walls and open frontage and was a proper retail unit which could be closed by shutter at night. It was suggested further that the unit at Dundrum Town Centre was more akin to a kiosk. Mr. Devlin disagreed and advised that in his view the units were almost identical, both having an unusual shape and were not standard units.

The Respondent's Case

Ms. Marron took the oath, formally adopted her précis as her evidence-in-chief and reviewed her submission. Ms. Marron argued firstly that the two units, being the subject property and the unit in Dundrum Town Centre, were not identical, in circumstances where the subject property had two definite walls with open frontage and was a proper retail unit. The unit at Dundrum Shopping Centre was, she contended, a property more akin to a kiosk, which unit consisted solely of a back wall and was open on all sides. Further, she argued that this comparison was in a different rating authority area and therefore was not a valid comparison.

Ms. Marron contended that the subject property was valued in line with the valuation levels determined by this Tribunal in 2002 in **VA 02/6/006 – Moffit Shoes**, whereby it was determined by the Tribunal that the Zone A level should be €500.00 per sq. metre. She stated that, following this decision, all subsequent properties in the centre had been valued using the levels determined by the Tribunal.

Ms. Marron contended for a valuation of €298 calculated as follows:

Retail Zone A	93.41 sq. metres	@ €500 per sq. metre = €46,705
Store (First Floor)	15.34 sq. metres	@ €41 per sq. metre = €628.94
		€47,333.94 @ 0.63% = 298.20

Valuation €298

Under examination Ms. Marron again reiterated that she did not agree that the subject property and the property in Dundrum Town Centre were identical or that the Dundrum unit was a useful comparison.

Findings:

1. The Tribunal is satisfied that the subject property is of irregular shape and is not a standard unit within the shopping centre. This is reflected in the fact that it has been let at a lower rent than the standard units therein.
2. The Tribunal finds that the unit is the only one of its type in the Pavilions Shopping Centre and therefore there are no other comparisons available within the shopping centre.
3. The Tribunal is satisfied that the approach and methodology applied in the Butlers Chocolates, Dundrum Town Centre should be similarly applied to the subject property herein.

Determination

Having regard to all of the foregoing and the provisions of the Valuation Act, 2001, the Tribunal determines that the valuation of the subject property should be €251 calculated as follows:

Retail Zone A	93.41 sq. metres	@ €420 per sq. metre	= €39,232.20
Store (First Floor)	15.34 sq. metres	@ €41 per sq. metre	= €628.94
Total NAV			= €39,861.14

RV @ 0.63% = €251.13

Say RV €251.00

And the Tribunal so determines.