

Appeal No. VA09/1/022

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

Lifestyle Sports Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 5001815, Shop at Unit 19/20 City West Shopping Centre, City West Road, Fortunestown, County Dublin.

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Joseph Murray - B.L.

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF JULY, 2009

By Notice of Appeal dated the 30th day of March, 2009 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €154,800 on the above-described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:
"The valuation is excessive and inequitable."

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 27th day of May, 2009. Ms. Dawn Holland-O'Donovan, B.Sc. (Hons), MIAVI, of GVA Donal O Buachalla, represented the appellant and Mr. Terry Dineen, B. Agr. Sc., a District Valuer with the Valuation Office, represented the respondent. At the oral hearing, both parties, having taken the oath, adopted their précis as their evidence-in-chief.

The Property Concerned

The subject property, Lifestyle Sports Ltd., is located in Citywest Shopping Centre in South County Dublin between the N7 and N82, but closer to the N7. Dunnes Stores is the anchor tenant at the centre. The subject is a rectangular shaped unit with double frontage, glazed façade, dropped ceilings and tiled floors. The total area is 343 sq. metres approximately. The surface car park has space for 250 cars and the underground car park has space for 350 cars. This is a revision matter and the property was valued on a “zoning basis.”

Preliminary issue raised by Ms. Holland

Ms. Holland-O'Donovan raised a preliminary question as regards Mr. Dineen's evidence. She said that he did not give any comparisons with reference to the tone of the list and accordingly did not comply with section 49 of the Valuation Act, 2001. This is a revision matter and he is obliged to refer to the values on the list (the “tone of the list”) of other comparable properties and instead he gave evidence of passing rents at the shopping centre. It is not that the rents are not important, but that reference to the tone of the list is primary evidence for revision and the passing rents can be used as supporting evidence. Ms. Holland-O'Donovan said that she had two comparisons with reference to the tone of the list, one at Kilnamanagh Shopping Centre and the other at Knocklyon Shopping Centre. Ms. Holland-O'Donovan further stated that the rents would be used as secondary evidence. Section 48 of the Act applies to revaluation and section 49 to revision. Revaluation was carried out in South County Dublin following a valuation order in 2005. However, the subject property was not in “beneficial occupation” at the revaluation date. It was valued subsequently and as such is a revision matter.

Further Submissions

The appellant gave comparative and rental evidence with regard to the subject property within Citywest Shopping Centre. Ms. Holland-O'Donovan said the subject property was on

a 25-year lease, reviewed every 5 years. The floor area for Zones A, B, C and remainder were agreed. The average rent over a five year period was €121,607, with no rent payable in the first year. The average rent of €121,607 with Zone A area of 172.04 sq. metres devalues at €706 per sq. metre (ITZA). This Zone A level was derived primarily from the tone of the list and the appellant said she used rental evidence to support this. It follows that the subject property being valued at a Zone A level of €900 per sq. metre is not equitable. The Citywest centre is located equidistant between the N7 and N82.

Unit 10 in Kilnarnagh (Timepiece Café) and units 11 and 12 in Knocklyon (Xtra Vision) are the most comparable to the subject property. A Zone A level of €700 per sq. metre is applied to both comparisons.

The appellant said that in the Kilkenny case **VA09/1/001 – The Health Store** the tone in the centre was set by reference to another shopping centre in Kilkenny, not on rental evidence, such as that offered by Mr. Dineen.

Appellant's comparative evidence based on the tone of the list

Comparison No. 1 at Kilnarnagh

Kilnarnagh Shopping Centre is older than the subject but was redeveloped in 2007. It is located close to the N82 and the Naas Road. Unit 10 is the first comparison based on the tone of the list. The anchor unit is Dunnes Stores. Unit 10 is the Timepiece Café. The property is held in freehold. The total area is around 170 square metres.

Zone A:	34.77 sq. metres	@ €700 per sq. metre	€24,339.00
Zone B:	64.05 sq. metres	@ €350 per sq. metre	€22,417.50
Zone C:	67.61 sq. metres	@ €175 per sq. metre	€11,831.75
Zone C (Shadow):	3.36 sq. metres	@ €300 per sq. metre	<u>€ 1,008.00</u>
Net Annual Value			€9,596.25
Say	€9,700.00		

As regards the bookshop, unit 8, Kilnarnagh, the appellant gave rental evidence. The unit is under a 25 year lease reviewed every 5 years. The average rent is €1,150 per annum factoring in the rent free period. Two other units at the Kilnarnagh, units 9 and 12, were vacant and the asking rent was €4,200 and €4,100 respectively.

Comparison No 2 at Knocklyon

Xtra Vision, Units 11 and 12 - NAV of €62,900 - Area 90 square metres, (ITZA) - Zone A NAV of €700 per sq. metre. This assessment is based on the tone of the list. The anchor tenant at the centre is Superquinn. It is located near the M50. Rental evidence was given in relation to Units 11 and 12. These units are identical in size. Taken together the current rent is €57,000. Zone A rent is €633 per sq. metre, NAV €62,900.

Rental evidence - EBS Citywest Shopping Centre

While the EBS was not used as a comparison, it has an NAV of €57,100. There is an annual rent of €50,321 per 20 year lease with 5 yearly rent reviews. There is a Zone A valuation level of €764 per sq. metre compared to the subject premises valued at €900 Zone A. Other Zone A levels in shopping centres in South County Dublin vary between €15 and €800 per sq. metre.

Cross examination

Mr. Dineen said that a unit in Kilnamanagh is occupied by the post office and is rent free and has been so for the past 15 years. He asked if it is rent free should it have an NAV. Ms. Holland-O'Donovan replied that it is up to the Valuation Office to decide that. As far as she is concerned it is the subject property which is in issue. The appellant was also asked if it was fair to value the subject at €700 per sq. metre when all the other units in Citywest shopping centre were valued at €900. The appellant replied that any value should be primarily based on the tone of the list.

It was put to Ms. Holland-O'Donovan that the rating hypothesis for valuers is that property should be considered vacant and to let. Ms. Holland-O'Donovan agreed that this was correct. Mr. Dineen then asked, if this was so did she consider that rents were irrelevant. Ms. Holland-O'Donovan said rents were secondary evidence in this case, not that they were unimportant.

Submissions of the Respondent

The tone for the units in the centre was derived from an analysis of all available rents. The passing rent *simpliciter* is not the NAV in any single situation, especially where there is an abundance of contemporaneous rents available locally for analysis.

The rating hypothesis is that the property is to be considered “vacant and to let” for rating purposes. This is the hypothetical requirement of the Act.

The starting point for valuations is rental evidence. Ryde on Rating states this. And this applies in all circumstances.

The valuation is the end we are seeking. There are various means to achieve this end. It is the end that is more important than the means.

If the Tribunal is of the view that the respondent offered no comparisons that would be a misrepresentation. The comparisons he offered are in the list.

In **The Health Centre** case in Kilkenny in 2009 the unit in the shopping centre was valued with reference to the NAVs going back to 1988. Mr. Dineen said with reference to that case that there is a well established local tone and there is no need to look beyond that. The same applies to Citywest Shopping Centre and it is in the list now.

The comparisons of the appellant are in what Mr. Dineen referred to as the “neighbourhood shopping centres” group. The subject property is in the “district shopping centres” group. Both Kilnarnagh and Knocklyon shopping centres are older than the subject. In the 90s many units at Kilnarnagh were vacant and were taken over by the anchor tenant. Knocklyon is in an obscure location and about 11 kilometres from the subject. Both of these comparisons are irrelevant to the subject property.

There are 48 shopping centres in South County Dublin. The appellant picks only 2 comparisons. Is this a fair method of comparison?

Uniformity, equity and justice are what are required when valuing property. To reduce the value from €900 Zone A would lead to lack of uniformity.

Mr. Dineen said he was prepared to give evidence of actual rents paid at the centre.

Findings

1. It is agreed among the parties that this is a revision case. The parties have agreed on the areas concerned.
2. There are different laws applicable to revaluation and revision under sections 48 and 49 of the Valuation Act, 2001.
3. The Tribunal appreciates the difficulties attached to this case and how simple it is to confuse revaluation and revision matters. Both are concerned with the same ends, namely valuation of relevant property. For the law on this we look to Part 5 of the Act for revaluation and Part 6 for revision. A valuation order was made in November, 2005 under section 19 to revalue the properties in South County Dublin by reference to September 2005. This was completed by July, 2008. However at the material date, or date of valuation, the subject property was not in “beneficial occupation” as the building was not completed or did not exist. Therefore it could not be valued at the time. It missed out on revaluation and therefore when it came into existence with beneficial occupation its value had to be revised as a material change of circumstances had occurred. The base date for valuations is September, 2005 for South County Dublin as the new list replaced the previous list for the area.
4. Mr. Dineen said that as far as the book Ryde on Rating is concerned, the starting point for valuations is rental evidence. And this applies in all circumstances. To an extent this is true but not completely as far as Ireland is concerned. Revaluation is based on rental evidence under section 48(1). When a revaluation is complete the Commissioner shall cause the valuation list to be published (section 23).

A period of not less than 5 and not more than 10 years should elapse before the next valuation list is published. This means the cycle of revaluation should occur again.

However, *and this is very important*, if between the revaluation cycles a material change of circumstances (MCC) takes place, then the property concerned must be valued, not by rental evidence, but by reference to the values appearing in the list (Section 49). This is what guides the Tribunal in this case. If the revision officer finds that an MCC has occurred he may value the property and put it in the list (Section 28(4)). And when this happens section 49 is mandatory and states that such a determination “shall” be made by reference to values on the list. This being the case we can only consider evidence taken from the list. Rental evidence is not of much value to us in these circumstances.

5. The Tribunal finds the appellant has complied with section 49 of the Valuation Act, 2001 and that the respondent has not complied with the said section. If neither party complied with section 49 we would find it very awkward to adjudicate on this matter.
6. Mr. Dineen has given us rental evidence to support his valuation of €900 per sq. metre Zone A. We also note at the Appendix at Page 8 of Mr. Dineen's précis of evidence page 8, the list of 15 units in Citywest shopping centre, some of them unoccupied, and the rate per sq. metre in terms of Zone A. Unfortunately, Mr. Dineen has not given any comparisons from the list and so, accordingly, we cannot give weight to this evidence in these circumstances. We told him that this evidence is insufficient for the Tribunal. The respondent then offered to furnish us with comparisons from the list if the Tribunal would adjourn the matter. We informed him that it was too late for that. Tribunal Rule 17 requires that evidence should be filed with the Tribunal at least 14 days before the hearing.
7. Section 49: If the Tribunal did not refer to values on the list of comparable properties, but purely relied on rental evidence then we would be acting with "prejudice" to section 49. This we cannot do as section 48 (1) is "without prejudice" to section 49. See section 48 (2).

The "Hypothetical tenant"

8. Mr. Dineen stated that the rating hypothesis was "vacant possession to let". This may be so, but the Tribunal is entitled, as far as valuations are concerned, to consider the position of the hypothetical tenant (section 48(3)) and the rent he or she might pay for the unit in its "actual state" one year with another. In **Harper Stores Limited v The Commissioner of Valuation** [1968] IR 166 Henchy J said the words actual state "*connote all the existing factors that go to make up the premises as they are currently occupied and used or "all that would affect the rent that would be paid by the hypothetical tenant" (the judge referred to Lord Ashbourne in the Armstrong case [1905] IR and also Lord Parmoor in the Great Western and Metropolitan Railway case [1916] AC)*. It was admitted in evidence that in fact a few units at the centre were vacant. This would certainly have an influence on the hypothetical tenant and the amount of rent he would pay. We do not believe the hypothetical tenant would pay €900 per sq. metre Zone A.
9. The comparisons given by the appellant are not irrelevant. They were selected by the appellant as her most comparable properties, which she is fully entitled to do. We have considered the comparative evidence, unit 10 Kilnamanagh, and Xtra Vision unit 11/12 at Knocklyon, furnished by the appellant. Both are older than Citywest, allowing for the

development of Kilnamanagh in 2007. Both are close to Tallaght village and not far from the subject. Unit 10 has a Zone A level of €700 per sq. metre. At Knocklyon unit 11/12 also has a Zone A level of €700 per sq. metre. We are of the view that the subject would carry a higher Zone A rate than these comparisons, basically because it is a more modern complex.

10. We take note that the EBS unit at Citywest, although not given as a comparison, at €764 per sq. metre (ITZA) is considerably lower than what is sought for the subject at €900 per sq. metre. We also note that Zone A levels of valuation at other shopping centres in the area, as per the details supplied by Ms Holland O'Donovan, range from €15 per sq. metre to €800 per sq. metre. Again, considerably lower than the subject.

Determination

Having considered all of the evidence and submissions, it is the comparative evidence with reference to the list which carries the most weight. We have also given consideration to what the hypothetical tenant would pay for the subject property in its actual state. Moreover we appreciate that Citywest is a modern shopping complex and the subject unit has double frontage. Bearing in mind the aforesaid, we have come to the conclusion that a Zone A level of €830 per sq. metre on the subject property is fair and reasonable. The Tribunal therefore determines the valuation of the property concerned to be €142,800 calculated as follows:

Zone A 94.2 sq. metres	@ €830 per sq. metre	= €78,186
Zone B 94.2 sq. metres	@ €415 per sq. metre	= €39,093
Zone C 90.5 sq. metres	@ €207.5 per sq. metre	= €18,778.75
Remainder 65 sq. metres	@ €103.75 per sq. metre	= <u>€6,743.75</u>
Total NAV		€142,801.50
Say NAV	€142,800	

And the Tribunal so determines.