

Appeal No. VA09/4/008

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

Meadows & Byrne

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2199184, Shop, Restaurant/Café, Store at Lot No. Unit 1, CHQ Building, North Dock C, North Dock, County Borough of Dublin.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF MAY, 2010

By Notice of Appeal dated the 16th day of November, 2009, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,575.00 on the above-described relevant property.

The grounds of Appeal are set out in a letter attached to the Notice of Appeal, which is attached at the Appendix to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 18th day of January 2010. At the hearing the appellant was represented by Mr. Robert Reardon, Director and Mr. Michael O'Brien, Financial Controller of Meadows & Byrne. The respondent was represented by Mr. Frank Twomey, a valuer in the Valuation Office.

Location

The subject property is located within a new retail development known as CHQ in the Irish Financial Services Centre (IFSC), adjacent to Georges Dock. The development is bound on the north side by Mayor Street and on the south side by Custom House Quay. The subject property is located at the northern end of the building, next to the entrance to Mayor Street.

The Property Concerned

The property concerned is a ground floor retail unit, with frontage onto the CHQ mall. There is a separate store at mezzanine level. There are two concessions operating within the subject property - a furniture shop, known as *Environment Furniture*, and a café, operating under the *Insomnia* franchise. The café has seating outside the unit within the mall. The appellant is responsible for the entirety of the unit and it is to be rated as a single entity.

The accommodation is agreed as follows:

Ground floor	1,295 sq. metres
Mezzanine store	384 sq. metres

Tenure

The property is held under a 25 year lease from November 2007 with 5 yearly rent reviews. The reserved rent is €278,780 per annum, subject to an initial 3 year 9 month rent free period.

Rating History

The CHQ building was developed as a shopping mall and a revision officer was appointed in November 2008 to value the units within the mall. A valuation certificate in respect of the property was issued on 27th February 2009, proposing a rateable valuation (RV) of €1,800. No representations were received and a final certificate was issued on 3rd April 2009. The appellant appealed against the valuation to the Commissioner and following consideration of the appeal, the RV of the subject property was amended to €1,575 and an amended valuation

certificate was issued on 11th November 2009. The appellant appealed this valuation to the Valuation Tribunal by means of a notice of appeal dated 16th November 2009.

The Issue

Quantum

The Appellant's Evidence

Mr. Michael O'Brien, having taken the oath, adopted the documents he submitted to the Tribunal as his evidence-in-chief. Mr. O'Brien submitted that the RV of the subject property as fixed by the respondent was excessive and inequitable, that the subject property was inferior to City Centre retail centres and that its footfall was not comparable to such centres. Mr. O'Brien referred to the *Retail Excellence Ireland Annual Shopping Centre Productivity Review 2009*. He stated that when this review was conducted in March 2009, the CHQ centre was ranked in the bottom 10% of retail centres throughout the country, but that since then further analysis had been carried out and the centre was now at the bottom in terms of footfall. Mr. O'Brien stated that there was a less than 50% occupancy rate in the centre with a corresponding effect on trading and that four traders had closed down prior to Christmas 2009, with further closures inevitable.

According to Mr. O'Brien, there was a lack of demand for retail units within the CHQ centre, in spite of the landlord being prepared to offer significant rent free periods to attract new traders. He stated that existing tenants were currently re-negotiating and reducing their lease obligations. Mr. O'Brien pointed out that unlike most city centre retail outlets, trade in the CHQ Building was confined to weekday lunchtimes and after work and that there was little or no trade at the weekends. Mr. O'Brien also stated that there was no anchor convenience store in the centre to attract shoppers.

Mr. O'Brien stated that both *Environment Furniture* and *Insomnia* were concessions operating within the subject property and that the rates were the sole responsibility of the appellant. He also stated that the appellant did not receive the Valuation Certificate until 3rd April 2009, hence the reason for the failure to make representations at representation stage.

Mr. O'Brien referred to the appellant's other store in Dublin in Northern Cross on the Malahide Road as a comparison. He stated that that store had a total area of 21,000 sq. ft,

compared to the subject property's total area of 14,000 sq. ft. and the RV on that property was €41. Mr. O'Brien stated that the turnover of the subject property was 60.48% of the turnover of Northern Cross for the year up to 31st October 2009. Accordingly, he contended that the RV of the subject property should be 60.48% of the RV of Northern Cross, or €69.

Cross-Examination

Under cross-examination Mr. O'Brien accepted that the respondent, when valuing property, does not use turnover and that retail units are not valued on footfall. However, he refused to accept that his contention for RV was flawed, as he stated that the subject property was clearly inferior to the Northern Cross store and that the rates charged on the subject property should be lower than those charged on that property. Mr. O'Brien contended that the appellant had come up with what it thought was a fair valuation of the subject property. He stated that if the respondent had compared the total area of the Northern Cross store (21,000 sq. ft.) with the total area of the subject property (14,000 sq. ft.), it would have arrived at the same RV the appellant was contending for, namely €69.

Mr. O'Brien refused to accept that all trade in the general IFSC area was confined to lunchtime and after work but contended that it depended on the type of business involved, e.g. he stated that a convenience store could have trade prior to work or during coffee breaks. Mr. O'Brien also stated that the issues affecting the subject property in terms of trade were not necessarily due to the economic climate, as even when the CHQ centre first opened the footfall was poor.

Respondent's Evidence

Mr. Frank Twomey, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as being his evidence-in-chief. Mr. Twomey stated that there was no dispute between the parties about the location and size of the subject property.

Mr. Twomey contended for a RV of €1,800 calculated as follows:

Ground Floor

Meadows & Byrne	825 sq. metres @ €200 per sq. metre	€165,000.00
Environment Furniture	303 sq. metres @ €220 per sq. metre	€66,660.00

Insomnia Cafe	167 sq. metres @ €20 per sq. metre	€36,740.00
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Mezzanine Floor

Store	384 sq. metres @ €4.65 per sq. metre	<u>€20,895.60</u>
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Total NAV = €289,385.60

RV @ 0.63% = €1,823.13

Say RV €1,800

Mr. Twomey referred to four comparisons in support of his contention of RV, all of which he stated were located quite close to the subject property, albeit on the main street within the IFSC. Comparison no. 1, Spar, a supermarket/convenience store, is valued at a rate of €73.25 per sq. metre in respect of the supermarket and €8.34 per sq. metre in respect of the mezzanine store. Comparison no. 2, Mace, is another supermarket/convenience store with a basement store. The supermarket is valued at €20 per sq. metre and the store is valued at €0 per sq. metre. Mr. Twomey stated that this property is considered to be in an inferior location compared to comparison no. 1. The third comparison, Bizmart is located in the same area as comparison no. 2 and is valued at €25 per sq. metre. The final comparison, Marks & Spencer is valued at a rate of €55 per sq. metre in respect of the supermarket and €0 per sq. metre in respect of the basement store.

Mr. Twomey stated that these comparisons show that the minimum tone of the list in the area is €20 per sq. metre and the maximum is €73.25 per sq. metre. He stated that he valued the main area of the subject property at €200 per sq. metre and the concessions at €20 per sq. metre and emphasised that when valuing retail units one does not have regard to turnover.

In response to a question from the Tribunal, Mr. Twomey stated that he did not consider that supermarkets were of a similar purpose to the subject property, but that they were retail units. In response to a further question as to whether or not he considered that his comparisons would benefit more from the type of trade likely in the IFSC than the subject property, Mr. Twomey stated that this would affect turnover, but not valuation. He stated that from memory he believed that comparison nos. 2 and 4 were appealed to first appeal stage. However, he contended that if a property appears on the valuation list, the valuation is correct whether or not it has been appealed.

Mr. Twomey was also asked by the Tribunal to provide figures showing the rate at which the RV of €1,575 fixed by the respondent after first appeal stage and appearing on the valuation list devalued. He provided the following figures:

Ground Floor	1,295 sq. metres @ €10 per sq. metre	€271,950
Mezzanine Store	384 sq. metres @ €50 per sq. metre	<u>€ 19,200</u>
Total NAV		€291,150
Allowance for single large take		Say €250,000
RV @ 0.63%		RV € 1,575

Mr. Twomey was asked whether he saw any grounds to offer a quantum allowance and he replied that when valuing the property, he had gone below all his comparisons and so felt that he had thereby included such an allowance. Mr. Twomey stated that when he valued the property, he split it into three separate units, as he had not received any information from the appellant as to the tenure of the property. However, he now accepted that Environment Furniture could be valued at the same rate as Meadows & Byrne, but felt that Insomnia café should attract a higher value, as it had direct access onto the shopping mall and was *de facto* a separate unit. Mr. Twomey was also asked what tone of the list he had looked at when valuing the cafe and he stated that he did not have that information to hand, but that from memory he believed that other cafés within the IFSC were valued at least at the level he valued the café in the subject property and, indeed, were probably valued at a far higher level.

Cross-Examination by the Appellant

The appellant attempted to raise an issue at the cross-examination stage, i.e. the fact that it did not receive the respondent's submissions until 5th January 2010, one day after the deadline for exchange of submissions. However, the Tribunal found that if the appellant had a concern in this regard, it should have raised it in advance of the hearing and that no prejudice had been suffered by the appellant due to the fact that the submissions were furnished a day late.

It was put to Mr. Twomey under cross-examination that the subject property had no retail window frontage onto Mayor Street, but Mr. Twomey stated that he thought that there was one window, albeit a small one. Mr. Twomey did accept, however, that the property could not obtain retail frontage as it was a protected structure. He agreed that the CHQ Building

was not located within a traditional retail location, but stated that the whole IFSC area was one which had only recently been regenerated. When asked whether or not he was aware of the vacancy rates within the centre when valuing the units therein, Mr. Twomey responded that he had valued about 16 or 17 of the 33 units and that the rest were empty.

Mr. Twomey accepted that a property's area was one factor to be taken into account when valuing that property, but stated that there were other factors that also had to be considered. It was put to Mr. Twomey that none of his comparisons were relevant to the subject property in terms of use or size and nor were they located within the CHQ Building. Mr. Twomey replied that the use to which a retail unit was put was irrelevant and that when he valued the CHQ Building there were no valuations on any of the units in the building and accordingly it was reasonable to look at units close to the subject property to establish the level that should apply. He confirmed that he had valued the property on a "tone of the list" basis, derived from comparisons within the IFSC area.

In response to questions from the Tribunal, Mr. Twomey agreed that his first three comparisons front onto Mayor Street and that the subject property was located within the CHQ mall, without street frontage, although he contended that the subject property had a logo or sign outside the property.

Summary by Appellant

Mr. Robert Reardon, having taken the oath, provided the appellant's closing submissions. He argued that the appellant was the anchor tenant of the CHQ Building and that same had been acknowledged during negotiations with the landlord. He stated that the average rent per annum over the first five years of the lease would amount to €9,695, taking into account the initial rent free period of 3 years 9 months. Mr. Reardon submitted that the respondent had failed to take into account the rent when valuing the subject property and furthermore had failed to consider the occupancy rate of the CHQ Building, which had never been greater than 50% and was now substantially less, with the appellant accounting for most of the occupancy. He stated that footfall figures also suggested that the centre was in the bottom 10% of retail centres nationwide and that even though the landlord was offering inducements to attract new tenants, it was to no avail. Finally, Mr. Reardon submitted that the concessions should be valued at the same rate as the rest of the property, as there was internal access between the

concessions and the main store. The fact that the concessions had their own access onto the mall was, in his opinion, irrelevant.

Summary by Respondent

Mr. Twomey submitted on behalf of the respondent that the subject property was valued at the same time as all the other units within the CHQ Building and that it was valued in accordance with the Valuation Act, 2001 on a "tone of the list" basis. He stated that he set the tone from looking at the prevailing tone within the IFSC area, which was a reasonable approach. Mr. Twomey concluded that his was the only valuation evidence presented to the Tribunal and that the Tribunal would have to affirm his valuation.

Findings

1. The onus of showing that the valuation of the property concerned appearing in the Valuation List is incorrect is on the appellant.
2. The Tribunal notes that on behalf of the respondent, Mr. Twomey contended for a rateable valuation (RV) of €1,800, despite the rateable valuation having been reduced by the respondent at first appeal stage to €1,575. Mr. Twomey, as an officer of the Commissioner of Valuation was exercising the powers delegated to him by the Commissioner. The Commissioner amended the initial Valuation Certificate proposing a RV of €1,800 and issued a new Valuation Certificate with the amended RV of €1,575. This amended RV of €1,575 is the valuation that appears on the Valuation List, as evidenced from the Certified Extract from the Valuation Lists provided by Mr. Twomey in his précis dated 4th January 2010. Under section 63(1) of the Valuation Act 2001, "*The statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act.*" Therefore, the evidence that Mr. Twomey provided to the Tribunal in respect of the valuation of the subject property was not a correct statement of that property's value. The Tribunal wishes to express its regret and dissatisfaction that a representative of the Commissioner of Valuation would appear before it and give evidence under oath contending for an RV at variance with that appearing on the Valuation List and, furthermore, fail to provide details of the correct statement of the property's value within his précis of evidence. These details were only provided after a specific request by the Chairperson of the Tribunal.

3. There was no dispute between the parties as to the description of the subject property, the location or the total accommodation.
4. In arriving at its decision, the Tribunal has had regard to the comparisons provided by both parties. Unfortunately, the sole comparison referred to by the appellant, namely its other store located in Northern Cross, Malahide Road, is not relevant due to its distance from the subject property. However, neither are the four comparisons provided by the respondent - consisting of three convenience stores/supermarkets and one stationery shop - directly comparable to the subject property. The first three comparisons, which have the benefit of own door access onto Mayor Street, command a higher profile than the subject property, which must be accessed through the CHQ Shopping Mall.
5. The tone of the list used by the respondent to value the subject property was too narrow and did not consist of properties directly comparable to the subject property.
6. The entirety of the ground floor accommodation, including both concessions located within the subject property - Environment Furniture and Insomnia café, should be valued at the same rate. The two concessions are linked to the rest of the subject property internally and the property is treated as a single unit for rating purposes. There are no grounds for applying a premium to the café when same was not applied by the Commissioner at first appeal stage.
7. Having regard to the inferior location of the subject property within the IFSC, located as it is within a shopping centre, with no direct access or retail frontage onto the main thoroughfare within the IFSC, the Tribunal is of the view that the level as fixed by the Commissioner for the ground floor accommodation at €110 per sq. metre is excessive and that a rate of €200 per sq. metre is appropriate.
8. The rate of €50 per sq. metre as fixed by the Commissioner of Valuation in respect of the mezzanine store is fair and reasonable and no justification for adjustment of this rate was provided.

Determination

Having regard to all the evidence adduced and to the foregoing findings, the Tribunal determines the RV of the subject property to be €1,490, calculated as follows:

Ground Floor	1,295 sq. metres @ €200 per sq. metre	= €259,000
Mezzanine Store	384 sq. metres @ €50 per sq. metre	= <u>€ 19,200</u>
		Total NAV €278,200

