

Appeal No. VA09/4/020

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

Bijou Catering Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 806934, Restaurant/Café at Lot No. 46-47 Highfield Road, Rathfarnham, Rathfarnham, County Borough of Dublin

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF JUNE, 2010

By Notice of Appeal received on the 18th day of December, 2009, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €246.00 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 and does not maintain the tone of the list".

1. This appeal proceeded by way of an oral hearing held on 25th February, 2010 at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. At the oral hearing the appellant was represented by Ms. Lorraine Healy, BSc. (Hons), GVA Donal O Buachalla, Property & Rating Consultants. Mr. Viorel Gogu, a Valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation.

The Property Concerned

2. The property concerned in this appeal is a recently reconstructed two-storey terraced building on Highfield Road, Rathgar, close to the junction of Highfield Road and Orwell Road.
3. Rathgar is a long-established suburban district located at the convergence of Rathgar Road, Rathgar Avenue, Terenure Road East, Orwell Road and Highfield Road. Generally speaking, Rathgar is residential in character with a cluster of retail and commercial properties at the road junctions, which together form a small neighbourhood shopping precinct.
4. The property concerned, which trades as “The Bijou Bistro” is on two levels with bar, restaurant and kitchen, together with ancillary storage accommodation at ground floor level. At first floor level there is additional restaurant accommodation and a covered smoking terrace. It is common case that the property is well fitted out and provides a pleasant and comfortable environment.

Accommodation

5. The accommodation and agreed areas measured on net internal area basis are as set out below:-

Ground Floor

Restaurant/Bar - Zone A:	50.11 sq. metres
Zone B:	61.00 sq. metres
Zone C:	18.60 sq. metres
Store:	5.40 sq. metres
Rear Store:	5.60 sq. metres
Kitchen:	54.00 sq. metres

First Floor

Restaurant:	97.74 sq. metres
Covered Smoking Area:	43.41 sq. metres

Rating History

6. Following a request for a revision of valuation, a draft Valuation Certificate was issued by the Revision Officer on 6th January, 2009 to the effect that it was proposed to value the property concerned at a rateable valuation of €257. Following representations on behalf of the appellant a Valuation Certificate was issued on 15th April, 2009 stating that the rateable valuation of the property concerned had been assessed at €246.00. No change was made on foot of an appeal to the Commissioner of Valuation under section 30 of the Valuation Act, 2001 and it is against this decision of the Commissioner that the appeal to this Tribunal lies.

The Appellant's Evidence

7. Ms. Healy, having taken the oath, adopted her written submissions and valuation, which had previously been forwarded to the Tribunal and the respondent, as being her evidence-in-chief.
8. In her evidence, Ms. Healy contended for a rateable valuation of €178, calculated as set out below:-

Zone A:	50.11 sq. metres @ €168.00 per sq. metre	= €8,418.46
Zone B:	61.00 sq. metres @ € 84.00 per sq. metre	= €5,124.00
Zone C:	18.60 sq. metres @ € 42.00 per sq. metre	= € 781.20
Store:	11.00 sq. metres @ € 41.00 per sq. metre	= € 451.00
Kitchen:	54.00 sq. metres @ € 95.69 per sq. metre	= € 5,167.26
First Floor Restaurant:	97.74 sq. metres @ € 76.18 per sq. metre	= € 7,445.83
Smoking Area:	43.41 sq. metres @ € 20.50 per sq. metre	<u>= € 889.90</u>
Total		= €28,277.45

NAV €28,277.45 @ 0.63% = RV €178

9. In support of her opinion of net annual value, Ms. Healy put forward three comparisons, details of which are set out in Appendix 1 attached to this judgment. All of Ms. Healy's comparisons are located in Rathgar, close to the property concerned.

10. In her evidence, Ms. Healy said that car-parking was a major issue in Rathgar and this obviously had a detrimental effect on business activity. In her opinion, such business activity as there was in the area tended to be on Orwell Road and this was a factor she had regard to in arriving at her valuation of the property concerned. Accordingly, she considered her comparisons numbers 1 and 2 to be more relevant than her comparison number 3.
11. In relation to the comparisons put forward by the Valuation Office during the course of discussions at representation and section 30 appeal stages, Ms. Healy said she was strongly of the opinion that those properties located in Terenure were of little assistance as Terenure was a much better business location than Rathgar.
12. Under cross-examination, Ms. Healy agreed that the valuations of her comparisons numbers 1 and 2 were determined prior to the introduction of the Valuation Act, 1988 but did not agree with Mr. Gogu that they could not therefore be considered relevant in arriving at the appropriate valuation of the property concerned under the 2001 Act. Ms. Healy said that all valuations in the Valuation List were deemed to be correct under section 63 of the Valuation Act, 2001. In the circumstances, they were valid comparisons and could not be set aside without good reason.
13. When questioned about car-parking in Rathgar, Ms. Healy acknowledged that there was an “off street” car-park on Orwell Road and that on street car-parking restrictions did not operate after 7pm. Nonetheless, Ms. Healy said car-parking was a problem in the area and that the lifting of restrictions after 7pm did not alleviate the underlying situation to any great extent.

The Respondent’s Evidence

14. Mr. Gogu, having taken the oath, adopted his written submission and valuation, which he had previously forwarded to the Tribunal, as being his evidence-in-chief.
15. In his evidence, Mr. Gogu contended for a rateable valuation of €246, calculated as set out below:-

Zone A:	50.11 sq. metres	@ €285.00	= €14,281.35
Zone B:	61.00 sq. metres	@ €142.50	= € 8,692.50
Zone C:	18.60 sq. metres	@ € 71.25	= € 1,325.25

Store:	5.40 sq. metres	@ € 95.69	= € 516.88
Kitchen:	54.00 sq. metres	@ € 95.69	= € 5,167.26
Store (rear)	5.60 sq. metres	@ € 41.00	= € 229.60
First Floor Restaurant:	97.74 sq. metres	@ € 82.00	= € 8,014.68
Covered Smoking Area:	43.41 sq. metres	@ € 20.50	= € <u>890.00</u>
Total			= €39,118.53
NAV €39,118.53 @ 0.63% = RV €246.45			
Say RV €246			

16. In support of his valuation, Mr. Gogu introduced six comparisons, details of which are set out in Appendix 2 attached to this judgment.
17. In his evidence, Mr. Gogu said all his comparisons were of equal relevance and comparisons 1 and 2 were included because they were in the same use and category as the property concerned. In his opinion, Rathgar was as good a business location as Terenure. Mr. Gogu pointed out that comparison number three was immediately next door to the property concerned. In regard to Ms. Healy's comparison number three (1A Orwell Road), the Zone A rate of €272 per sq. metre was representative of the basic fit-out in this property.
18. Under cross-examination, Mr. Gogu agreed that he had not relied on his comparison number three during the course of negotiations at representation stage. On this occasion, he said, he was more concerned with valuing like with like and hence placed more reliance on his comparisons numbers 1 and 2, which are in restaurant use and occupied similar locations to the property concerned. Mr. Gogu said he did not, at representation stage, consider Ms. Healy's comparison number 2 (Howards Way Restaurant on Orwell Road) as being a relevant comparison as it was a pre-1988 Act valuation.
19. Under cross-examination, Mr. Gogu accepted the fact that there were a greater number of retail outlets and other business premises in Terenure than in Rathgar. Whilst this may be the case, he did not accept the argument that Terenure was a better business location than Rathgar and, as far as he was concerned, there already existed in Rathgar a tone of the list to which he had regard in valuing the property concerned.

20. Under further examination, it became clear that the purported facts put forward by Mr. Gogu in relation to comparisons nos. 5 and 6 did not stand up to scrutiny and hence could not be relied upon. When asked if he had made any specific allowances for the fit-out of the property concerned, Mr. Gogu said his Zone A rate of €285 per sq. metre was an all-inclusive figure.

Findings

Having regard to the evidence and arguments adduced by both parties, the Tribunal finds as follows:-

1. The statutory basis for valuing a property on foot of a request for a revision of valuation is set down in section 49(1) of the Valuation Act 2001, which states,

If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.

In other words, the valuation of the property concerned is to be determined in accordance with what is known as the “tone of the list”, although this expression is not explicitly referred to in the Act.

2. Section 63 of the Act of 2001 states:

(1) 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.

(2) The omission from a valuation list of any matter or particular required by this Act to be entered therein or the presence of any inaccuracy in such a list shall not, of itself, deprive of its effect for the purposes of this Act, or any other enactment, any other matter or particular entered in that list.

(3) The fact that a valuation certificate or new valuation certificate, or a draft of such a certificate proposed to be issued to the person concerned—

- (a) has not been issued, as required by this Act, to the person concerned, or*
- (b) has been issued in accordance with this Act to that person but has not been received by him or her,*

shall not deprive of its effect for the purposes of this Act, or any other enactment, any matter or particular entered in the relevant valuation list.

“Value” is defined in section 3 of the Act, as:

- (a) in relation to property specified in Schedule 3 (other than property specified in paragraph 1(o) of that Schedule or falling within section 15(4)), the value by reference to which a rate made in respect of the property has effect,*
- (b) in relation to property specified in the said paragraph 1(o), the value of the property for such purposes as stand designated for the time being by or under any enactment,*
- (c) in relation to property falling within section 15(4), the value by reference to which a rate is struck on the property under section 55 of the Fisheries (Consolidation) Act, 1959,*

and references to a valuation or revaluation carried out or made in relation to a property shall be construed accordingly.

Accordingly, therefore, the value of a property appearing in the Valuation List shall be considered a true statement of valuation of that property for the levying of rates until such time that it is either altered on foot of a revision of valuation carried out in accordance with Section 28, or a Valuation Order made under Section 29.

3. When the valuation of a property concerned fails to be determined under section 49(1) the value of that property must be made by reference to the values of other comparable properties in the Valuation List. When it comes to considering which properties are truly comparable it is essential that greater weight be attached to those which are similar in location, mode of use, size and other relevant factors which would have a bearing on letting value. In the situation where a Valuation List has not been subject to a revaluation for a considerable period of time such as the Dublin City Council area, it is inevitable that a number of entries are of long standing. In such a situation, greater weight is attached to those valuations which were determined after the introduction of the 1988 Act, which amended Section 11 of the

Valuation (Ireland) Act, 1852 and which introduced for the first time into the Irish Rating Code the concept of “Tone of the List” valuations.

4. Of all the comparisons introduced by both valuers the Tribunal places most reliance on Mr. Gogu’s comparisons nos. 3 and 4 and Ms. Healy’s comparison no. 3. Mr. Gogu’s comparisons nos 1 and 2 are also of assistance, whilst no weight is attached to his comparisons nos. 5 and 6 by virtue of the fact that the information relating to these properties is unclear and cannot be relied upon. Similarly, little weight is attached to Ms. Healy’s comparisons no’s 1 & 2, since these assessments were determined some time ago prior to the introduction of the 1988 amendment Act. Having regard to the above and taking into account the location of the property concerned and the quality of the fit-out, the Tribunal has come to the opinion that the Zone A rate of €285 per sq. metre put forward by Mr. Gogu is fair and reasonable and in line with the prevailing tone of the list. That said, however, we see no good reason why the two stores at ground floor level should not be valued at the same rate per sq. metre. We have also come to the conclusion that Mr. Gogu’s valuation of the restaurants at first floor level is slightly on the full side.

Determination

Having regard to the above findings the Tribunal determines the rateable valuation of the property concerned as follows:

Ground Floor

Restaurant Zone A:	50.11 sq. metres	@ €285.00 per sq. metre	= €14,281.35
Zone B:	61.00 sq. metres	@ €142.50 per sq. metre	= € 8,692.50
Zone C:	18.60 sq. metres	@ € 71.25 per sq. metre	= € 1,325.25
Kitchen (agreed):	54.00 sq. metres	@ € 95.69 per sq. metre	= € 5,167.26
Stores (two):	11.00 sq. metres	@ € 41.00 per sq. metre	= € 451.00

First Floor

Restaurant:	97.74 sq. metres	@ € 80.00 per sq. metre	= € 7,819.20
Covered Smoking Area (Agreed):	43.41 sq. metres	@ € 20.50 per sq. metre	= € <u>889.90</u>
Total			€38,626.46

NAV Say €38,000

RV @ 0.63% = Say €240

And the Tribunal so determines.