

Appeal No. VA10/2/022

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

Allways Outdoors Company Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2201616, Shop at Lot No. Unit 2, 3 Inish Carraig, Irishtown, Athlone East Urban, Athlone UD, County Westmeath.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Patrick Riney - FSCS FRICS FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF NOVEMBER, 2010

By Notice of Appeal dated the 5th day of May, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €138 on the above described subject property.

The Grounds of Appeal as set out in the Notice of Appeal are

“The valuation is excessive and inequitable having regard to the Valuation Act, 2001. The reliance on zoning as the basis of calculating the valuation; economic conditions and their impact on property.”

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin, on the 22nd day of June, 2010. At the hearing the appellant was represented by Mr. Andrew Carberry, BSc (Hons), MSCS, MRICS, MIAVI, Carberry Chartered Surveyors, Athlone. The respondent was represented by Mr. Patrick McMorrow, MSCS, MIAVI, a valuer in the Valuation Office.

The Tribunal was furnished with submissions in writing on behalf of both parties. These submissions were detailed and to the point. Both parties, having taken the oath, adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

The Issue

Quantum

The Property

Location

The premises are located at Inish Carraig, Golden Island, in the general vicinity of the Golden Island Shopping Centre, Athlone, Co. Westmeath. Inish Carraig is one of five relatively new mixed-use developments in the area.

Description

The property comprises a double-fronted ground floor shop unit in Inish Carraig Business Centre at Golden Island, Athlone. This centre is known locally as the “Titanic Building” and is a four-storey over basement retail/office development with underground car-parking. It is understood that it was built circa 2005. The retail area is well fitted out with suspended acoustic tiled ceilings, recessed fluorescent lighting and the shop has a bright open aspect with double shop front/display windows. The agreed net internal floor area is 189.45 sq. metres.

Appellant’s Evidence

Mr. Andrew Carberry gave his evidence under oath and confirmed the agreed floor areas as noted above.

He referred in detail to his submission and stated the valuation certificate was issued on 2nd September, 2009 at an original value of €140 which was subsequently reduced by the Valuation Office to €138. He confirmed the Grounds of Appeal before the Tribunal were:

1. The excessive and inequitable nature of the valuation.
2. The reliance on zoning as the basis of calculating the valuation.
3. Economic conditions and their impact on property.

Mr. Carberry's opinion was that the proposed valuation was unfair and inequitable and he highlighted some of the anomalies in zoning which raise questions about the reliance on zoning to calculate the RV on the subject property. He also highlighted the impact of the economic crisis and recession on property local to the subject and rental levels in particular.

Appellant's Comparisons

The appellant provided five comparison properties in his précis of evidence with details summarised as follows:-

1. **Comparison No. 1 – O'Brien's Wines** - Property reference 2186791, which is the adjoining property. In Mr. Carberry's view this property is in a superior location to the subject property by reason of its corner profile and return/dual frontage. This property was the subject of an appeal to the Valuation Tribunal, reference **VA07/3/008 - O'Brien's Wine Off Licence**. In Mr. Carberry's opinion the Valuation Office routinely loads a Zone A rate up to 20% to reflect the benefit of return/dual frontage. He contended that the Zone A rate applied to this property had not been loaded to reflect the poor location. In his opinion the Zone A rate applied to the subject property, which does not have the benefit of the return/dual frontage, must therefore also reflect this.
2. **Comparison No. 2 – Boyle Sports** - Property reference 2186789, Mr. Carberry stated, is in a similar location to the subject, but enjoys significant return/dual frontage to Seán Costello Street which increases the profile of this unit significantly. In Mr. Carberry's opinion, when the Zone A rate is analysed it devalues at a significantly lower rate to that applied to the subject property and this is reduced further if a loading to the Zone A rate for the return/dual frontage is taken into account, to allow comparison on a like-for-like basis.

3. **Comparison No. 3 – Replay** - Property reference 2150246 is located on Payne’s Lane. Mr. Carberry stated that this is a much smaller property than the subject but displays similar characteristics in terms of configuration of the unit. He argued that Payne’s Lane is a superior location to the subject property, yet the analysis of a Zone A rate suggests a lower rate to that applied to the subject property.
4. **Comparison No. 4 – Giovanna Hairstyling** - Property reference 2186378. This property, Mr. Carberry claimed, in a superior location to the subject. He stated that it was a smaller property but had the benefit of return/dual frontage. When he analysed the Zone A rate devalued at a significantly lower rate to that applied to the subject property and this is further reduced if an allowance for the return/dual frontage is taken into account.
5. **Comparison No. 5 - vacant** - Property reference 2150239. In Mr. Carberry’s opinion this was in a far superior location to the subject property and was, arguably, one of the best-located retail units in Athlone. Despite this, the analysis of the shop in terms of Zone A suggests a Zone A rate that is only marginally higher than that applied to the subject property.

Mr. Carberry’s opinion was that the subject relevant property is located in a secondary retail area of Athlone and one which would be considered to be at the lower end of the scale in terms of secondary locations, and he referred the Tribunal specifically to the Retail Core Map of his précis (attached at the Appendix to this judgment).

Mr. Carberry also argued that the calculation of the rateable valuation by the Valuation Office was flawed and discriminated against Zone A intensive non-prime properties in particular. He continued by stating that the reliance on zoning to calculate the NAV creates a disproportionate result in respect of the RV of the property when compared to other properties of very similar size in the same general location. An example of the discrepancies that can arise with zoning was outlined in his précis. Mr. Carberry also stated that the method of zoning used by the Valuation Office varied from the SCS zoning guidance note, which was referred to in Appendix 5 of his précis and dated May 2009.

The appellant sought a reduction in the RV, having regard to all of his evidence submitted and adduced at hearing. He suggested that the “tone-of-the-list” for retail properties in

Athlone should be carefully considered and corrected to, in his opinion, allow for a fairer assessment of commercial rates.

Mr. Carberry requested that the RV be reduced from €137 to €101. However, did not submit any detailed calculations to arrive at such an RV figure.

Referring to the current recession, he declared that its effects are the most severe on the Irish economy since the foundation of the State and that current economic conditions have been particularly difficult for retailers, as disposable incomes have reduced very considerably.

Cross-Examination

Under cross-examination by Mr. McMorrow, the appellant acknowledged that none of the valuations assessed on the comparison properties adduced by him had been appealed to the Commissioner of Valuation.

Respondent's Evidence

Mr. Patrick McMorrow, having adopted his submission as his evidence-in-chief, referred to it in some detail and in particular referred to the comparisons mentioned by the appellant which in his view were significantly different in area from the subject property. He stated that none of the valuations on these properties had been appealed to the Commissioner of Valuation. He explained that he had confined his assessment to dealing with comparable properties in the same area as the subject and applied the appropriate "tone-of-the-list" rates per sq. metre. He also stated that he was contending for an (adjusted) rateable valuation of €137, calculated as set out below:

Zone A: 87.84 sq. metres @ €203.20 per sq. metre = €17,849.09

Zone B: 87.84 sq. metres @ €101.60 per sq. metre = €8,924.54

Zone C: 13.77 sq. metres @ ~~€~~50.80 per sq. metre = €699.52

Total €27,473.15

NAV €27,473.15 @ 0.5% €137.37

Say RV €137

Respondent's Comparison Properties

In dealing with his four comparisons Mr. McMorrow made the following comments:

1. **Comparison No. 1: Unit 3, Inish House, Helena Harte, t/a Kotzello Hair & Beauty** Property No. 2186787. This is a retail unit in use as a hair and beauty salon with a total area of 168.1 sq. metres and a frontage of 7.4 metres. It is located directly opposite the subject and adjoins comparison No. 2. The Zone A rate applied in this case = €203.20 per sq. metre.
2. **Comparison No. 2: Unit 2, Inish House, Kaunas, (formerly Jennifer Johnson)** Property No. 2186788. This is a retail unit with a total area of 98.6 sq. metres and a frontage of 5.84 metres. It is also located directly opposite the subject and adjoining comparison No. 1. The Zone A rate applied in this case = €203.20 per sq. metre.
3. **Comparison No. 3: Unit 6, Inish Carrig, t/a Coffee Haven** Property No. 2186793. This is a retail unit with a total area of 121.6 sq. metres and a frontage of 7.9 metres. It is also located within the Inish Carraig development and just beside the subject. The Zone A rate applied in this case = €203.20 per sq. metre.
4. **Comparison No. 4: Unit 4, Inish Carrig, O'Brien's Wine** Property No. 2186791. This is a retail unit with a total area of 178.28 sq. metres consisting of a shop, storage and a small office area. It is also located within the Inish Carraig development and adjoins the subject. Mr. McMorrow noted that the valuation of this unit had been appealed to the Tribunal in 2007 and the levels adopted are in line with the general "tone" for this area of Athlone. The Zone A rate applied in this case = €203.20 per sq. metre.

Mr. McMorrow demonstrated a similar "tone-of-the-list" rate per sq. metre for each of the zones A, B & C of his comparisons. He repeated that the established tone for Zone A was €203.32 per sq. metre.

Cross-Examination

In reply to a question from the Tribunal, Mr. McMorrow expressed the view that no allowance should be made in the Zone A rate per sq. metre used in valuing the subject property, i.e. €203.32 per sq. metre, noting that a similar rate per sq. metre had been applied on a local corner retail unit, i.e. his comparison No. 4. Mr. McMorrow would not concede, under cross-examination by Mr. Carberry, that the raised landscaped bed fronting O'Brien's Wines and the subject Allways Outdoors, as evident in the top image set out on page 12 of

the respondent's précis, necessarily obstructs or impairs the view or shop front elevation of the subject relevant property.

Under further cross-examination by Mr. Carberry, Mr. McMorrow expressed his view that it was irrelevant as to who had fitted out the subject unit. He had valued the subject premises *rebus sic stantibus*. When asked if people going to the Shopping Centre would see this property, he replied by characterising Allways Outdoors as a destination retail unit.

A lengthy debate ensued between the parties on the practice and methodology employed to zone retail premises in Athlone. The practice of loading was queried and the SCS Guidelines were again referred to. Several questions were raised and addressed with respect to the propinquity of the subject to the Golden Island Shopping Centre, the direction and flow of traffic to that Centre, and the nature and quality of various streetscapes in the precinct of the subject relevant property.

Both parties referred to and confirmed their acceptance of the contents of an e-mail issued by Ms. Olivia Bellamy to the Tribunal Registrar, at 8.51am on 16th June, 2010, which set out details of the zoned areas of the subject and the minor adjustment of the RV down to a figure of €137.

Findings

The Tribunal acknowledges the efforts of the parties and thanks them for the quality of their submissions and arguments made at hearing. It has carefully considered all the evidence both written and oral and the arguments adduced by the parties and finds as follows:

1. Section 49 provides that the valuation of the property concerned which is subject to a revision under section 28 of the Valuation Act, 2001 be determined "*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.*"
2. The Tribunal accepts Mr. McMorrow's evidence that the prevailing "tone-of-the-list" for retail units in this area is clearly indicated in his Comparisons 1, 2, 3 and 4 of his précis of evidence.

3. The Tribunal, however, is of the opinion that an allowance should be made to take account of the fact that the subject relevant property is not at a corner location and has to endure trading disadvantages associated with the raised and railed footpath to the front of the premises.
4. The Tribunal acknowledges that both parties agreed the subject property is considered a destination location which would by definition require vehicular access. However, the street to the front prohibits parking directly adjoining the railing or on the opposite side of the street, as both sides are yellow-lined.
5. The raised landscaped bed area fronting the subject property appears, on evidence, to be in a poor state of maintenance and upkeep, which may have a negative impact on the profile of the street in general and on the subject relevant property in particular.

Determination

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

Zone A: 87.84 sq. metres @ €203.20 per sq. metre =	€17,849.09
Zone B: 87.84 sq. metres @ €101.60 per sq. metre =	€8,924.54
Zone C: 13.77 sq. metres @ €50.80 per sq. metre =	<u>€699.52</u>
Total	€27,473.15
€27,473.15 @ 0.5%	€137.37
Say	€137.00
Less allowance of 7.5%	<u>€10.28</u>
Net RV €126.72	Say €127.00

And the Tribunal so determines.