

Appeal No. VA11/2/018

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

Wine Street Bakeries Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No.2204267, Shop at Lot No. Unit 5, Briarhill Shopping Centre, Doughiska, East, Ballybaan, County Borough of Galway.

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb

Deputy Chairperson

Patrick Riney - FSCSI, FRICS, ACI Arb

Member

Joseph Murray - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF NOVEMBER, 2011

By Notice of Appeal dated the 18th May, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €147 on the above described relevany property.

The grounds of Appeal as set out in the Notice of Appeal are:

"The rateable valuation is excessive having regard to the location and layout of the centre and the tone of the list"

This appeal proceeded by way of an oral hearing, held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 7th day of September 2011. At the appeal, the appellant was represented by Mr. Conor Ó Cléirigh, IAVI, FSCSI, RICS, of Conor Ó Cléirigh & Company. The respondent was represented by Mr. Noel Rooney, (Dip. Env. Econ.), Valuer Grade 1 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 adopted their submissions as their evidence-in-chief at the oral hearing.

The Property

The subject property comprises a ground floor shop unit within the Briarhill Shopping Centre. This is a modern centre, built around 2007 and comprises a mainly retail development situated on the old Dublin to Galway Road, close to the Lynch Roundabout, on the N6, main Galway to Dublin Road and circa 5 minutes from Galway city centre. The property is also adjacent to the Briarhill Business Park, the Clayton Hotel, the Ballybrit Racecourse and Galway Technology Park. To the south and east are the large scale residential developments of Doughiska and Monivea Road and the Galway Clinic.

Description

The Briarhill Shopping Centre comprises a three-story over-basement development, with retail use at ground and first floor levels, offices and apartments at second floor levels, and car parking available at surface and basement levels. The anchor tenant is Dunnes Stores Supermarket and Department Store on two levels. There is a travelator from the basement to ground and first floor levels and a lift to all floors. There are 7 ground floor units comprising a bank, a pharmacy and beauty emporium, newsagents, a bakery and coffee shop (the subject property in this appeal), a betting office, a pet shop and a health food shop.

At level one there is an optician, a hair salon and a jeweller. There are still some vacant units at level one. All of the ground floor units are occupied.

The subject property is Unit 5, comprising a mid-terrace ground floor retail unit. The agreed floor area is 126.54 sq. metres. This unit is trading as O'Hehir's Café and Bakery and is fitted

with plastered and painted walls and an exposed concrete ceiling. The floor is tiled throughout and the unit is fitted with display counters and loose seating.

Rating History

The property was first valued in January 2010 and a valuation certificate issued with an RV of €163. Following representations on the subject and other units in the centre the valuation was reduced to €147 (in line with the agreed figures on the Ulster Bank property (i.e. the respondent's comparison no. 4). An appeal was lodged with the Commissioner of Valuation in October 2010 and a final valuation certificate issued in April 2011 with a decision of no change in the RV. It is against this decision of the Commissioner that the appeal to the Tribunal lies.

The Tribunal notes the agreement between the parties that the instant appeal be a test case for the other 5 units in the subject development which are under appeal to the Valuation Tribunal. The manner in which the determination by the Tribunal in the instant appeal will be applied to the other cases is set out in correspondence (email) of the 2nd June 2011 from Mr. Ó Cléirigh and Mr. Pascal Conboy, Appeal Officer in the Valuation Office, copies of which are attached at Appendix 1 to this judgment.

Appellant's Evidence

Mr. Ó Cléirigh took oath and adopted his précis as his evidence-in-chief.

In his opinion the overall design of this development, including the main entrance from the surface car parking and a separate travelator from the basement car park, mainly suits Dunnes Stores who are the anchor tenant. Mr. Ó Cléirigh pointed out this was a modern shopping centre with a carefully designed model which has at its heart the need for the weekly purchase of groceries and household products. A successful centre would be designed to ensure that the customers of the food store must walk by the unit shops thus generating pedestrian flow which translates into customer sales. He argued that the majority of shoppers do not necessarily pass the other retail units, as most people park on the surface car park opposite Dunnes Stores' main entrance.

Mr Ó Cléirigh also pointed out the public car park is on two levels (surface and basement) and that there is a large travelator/staircase and pillars to the front of the subject property,

which impedes the general visibility and potential pedestrian flow (photographs submitted on behalf of the appellant are attached at Appendix 2 to this judgment). He also stated that Briarhill Shopping Centre is on the very edge of the Galway city boundary, must compete with other shopping centres in the general area, and has no main retail/UK brands within the centre.

Mr Ó Cléirigh contended for a rateable valuation of €107 on the subject property, calculated as follows:

Retail Area: 126.54 sq. metres @ €35.00 per sq. metre = €7,080

RV = €7,080 x 0.63%

RV say €107

In support of his opinion of rateable valuation, Mr Ó Cléirigh put forward 4 comparisons and made the following points in relation to them:

1. Xtra-vision, Unit 27-28 Galway Shopping Centre Headford Road, Galway. This unit is 176.52 sq. metres and the NAV was assessed at €201 per sq. metre. He pointed out this was a long established shopping centre unit, with Tesco's, Penneys and 60 units on one level. It had a mix of national and UK brand names in the centre, with surface car parking for 700 cars. It is also close to a Cinema and other facilities including Atlantic Homecare and a bowling alley. The appeal had been settled in the 1997/4 revision.
2. Unit 1A, Galway Shopping Centre, Headford Road, Galway. (This comparison was withdrawn following queries from the respondent regarding the analysis of the NAV put forward on behalf of the appellant.)
3. Unit 11 Westside Shopping Centre, Seamus Quirke Road, Galway. The size is circa 83 sq. metres and it was assessed on appeal in 1984 at a rate of €109.27 per sq. metre. Mr Ó Cléirigh pointed out this property is in an established shopping centre with Dunnes Stores as the anchor tenant and 17 retail units, including McDonalds. It has longer established shopping patterns than the subject development, with surface car parking only. This unit has the same occupier as the subject property.

4. Unit at Terryland Shopping Centre Headford Road Galway. (Unit number not given.)
The size of this unit is circa 60 sq. metres and was assessed on appeal at a rate of €134.30 per sq. metre. This is also an established shopping centre with Dunnes Stores as the anchor tenant and surface car parking (5 unit shops). All shoppers must pass the retail units to access the supermarket and the unit is occupied by the same user as the subject property.

Mr. Ó Cléirigh also stated that he had considered evidence put forward by the respondent at Ballybaan Shopping Centre and Joyce's Shopping Centre. In his opinion, however, the rateable valuation of the subject property should be €107.

Examination by the Tribunal

When asked by the Tribunal as to what distance the subject property was from Galway Shopping Centre, Mr. Ó Cléirigh referred to Appendix 6 of the respondent's submission which shows the location of the Galway Shopping Centre being a considerable distance from the subject. He also pointed out the travelator/staircase, which was directly outside the subject property was of no help to footfall at the subject.

With regard to Comparisons Nos. 2 and 3, which were valued in 1984 and 1986 respectively, Mr. Ó Cléirigh stated these are in the valuation list, are in use similar to the use of the subject property and that these comparisons form a "tone of the list". He was of the opinion that new and old valuations can be taken into account but that more weight should be given to post-1988 valuations. However, he accepted that Section 49(1) of the Valuation Act, 2001 is the legislative provision pertinent to the instant appeal, with a tone of the list being created from comparables assessed since 2001, within the same rating authority area.

Cross-examination by the Respondent

Under cross-examination, Mr. Ó Cléirigh accepted the general description and location as stated in the respondent's submissions, including the fact that the subject property was on a main arterial route from the Galway Clinic.

When asked to clarify his point about the lack of footfall going the past the retail units, Mr. Ó Cléirigh stated he was not saying that people would not visit the bank, betting office and other retail units which were only 20 yards away. Rather, he was pointing out that the main

attraction within the Briarhill Shopping Centre is Dunnes Stores. He likened the subject development to the Dunnes Stores complex at Cornelscourt, Co. Dublin. He also pointed out there were no UK retailers present, though he accepted that the KFC and Ulster Bank units would be similar to the attraction of a McDonalds. Mr. Ó Cléirigh also pointed out that when this centre was completed around 2007 under the planning permission granted, there was a slowdown in overall development, which resulted in the major part of a proposed new housing development within the general area not being undertaken.

Mr Rooney pointed out that the analysis used in calculating the RV on the appellant's Comparison No 2 was incorrect and this was accepted.

In answering Mr. Rooney's queries in regard to Comparisons Nos. 2 and 3, the valuations for which are pre-1988, Mr. Ó Cléirigh stated that was aware of the Tribunal's decisions in a number of cases, including **VA08/3/044 – Tifco Ltd.**, wherein the Tribunal had determined that the said evidence should be dismissed. However, he was of the opinion that the Tribunal would treat the evidence submitted by him in an appropriate manner and give due weight to the more current comparables.

With regard to Comparison No.1 of the respondent, i.e. Joyce's Shopping Centre at Knocknacarra, Mr. Ó Cléirigh accepted that the anchor tenant is Joyce's itself and that there are only 5 retail units within the centre. However, he was of the opinion that it was a suitable comparison and was situated within a densely populated and developed area.

Respondent's Case

Mr. Rooney took the oath and adopted his précis as his evidence-in-chief.

Mr Rooney stated that he was of the opinion that the subject property was far superior to the Joyce's Shopping Centre location. He pointed out that when he first valued the Briarhill Shopping Centre, there were 8 retail units at ground floor level.

Mr Rooney contended for a rateable valuation of €147, calculated as follows:

Floor area: 126.54 sq. meters @ €184.54 per sq. metre = €23,351.69
 RV @ 0.63% = €147.17 Say €147

In support of his assessment of rateable valuation, Mr Rooney put forward 4 comparisons, in respect of which he made the following comments:

Comparison No.1: the pharmacy unit in Joyce's Shopping Centre, Knocknacarra. This is located on the south western side of Galway City, out towards Barna. It is a smaller centre with only 5 retail units along with the Joyce's supermarket. The size is 208 sq. metres and it is assessed at €160 per sq. metre, giving a rateable valuation of €209.51. This had been agreed at first appeal in 2000 with Hennigan & Company Rating Consultants.

Comparison No. 2: the Xtra-vision unit in Joyce's Shopping Centre comprising a retail area of circa 148.6 sq. metres and assessed at €177.70 per sq metre, giving a rateable valuation of €65.07. This had been agreed at revision with Bardon & Company in 2000.

Comparison No. 3: Xtra-vision, Unit 27-28 Galway Shopping Centre, comprising an external retail unit facing the car park. It comprises a retail area of circa 176.5 sq. metres and is assessed at €205 per sq. metre, giving a rateable valuation of €223.47. This was agreed with Bardon & Company at first appeal stage in 1997.

Comparison No.4: the corner unit at Briarhill Shopping Centre, which is occupied by Ulster Bank. It is divided into two floors. The ground floor area is 156 sq. metres assessed at €84.54 per sq. metre, and the first floor area is 88.2 sq. metres assessed at €2.77 per sq. metre, giving a rateable valuation of €39. This was agreed at representations stage in 2010 with GVA Donal O Buachalla.

In concluding his evidence, Mr. Rooney referred again to the other appendices in his submission, including the photographs and made the following points:

1. The subject property is a modern unit in a new shopping centre.
2. It is an excellent location, located just off the N6 motorway.
3. This is a better location than Joyce's Shopping Centre, while also not being in as good a location as Galway Shopping Centre.
4. Mr Rooney pointed out that his nearest comparison is the retail unit at Joyce's Shopping Centre which is assessed €177.70 per sq. metre.

Examination by the Tribunal

Under examination by the Tribunal Mr. Rooney stated:

1. The Ulster Bank corner unit is the only unit currently assessed for rating.
2. He accepts that the bank has a better location and frontage, than the subject unit.
3. In his opinion, the normal way of assessing a reasonable valuation for banks, would be similar to the method adopted for assessing RV's for retail units.

Cross-examination by the Appellant

In answering a number of questions from Mr. Ó Cléirigh, Mr. Rooney stated the following:

1. He accepted the visibility of shop units was an important feature. However, he pointed out that people would normally go to the overall shopping centre for goods, and not necessarily just to one unit.
2. While pointing out there was no visibility problem in the West Side Shopping Centre, he accepted that photo B on Page 2 of the appellant's submission, clearly shows the stairwell was a permanent fixture creating some restrictions.
3. Mr. Rooney also accepted that the subject property was no where near as visible as the Ulster Bank. He would make very little allowance between the two units, as he feels the double frontage advantage of the corner unit would be cancelled out by the larger size therein. In fact he stated that he would allow a 5% allowance for the corner unit but this would be offset by the larger size of the said unit.
4. With regard to his Comparison No. 3, he also confirmed the RV was €223.47, which was assessed at €201 per sq. metre.
5. In answering questions about his Comparison No. 4, i.e. the Ulster Bank in Briarhill Shopping Centre, Mr. Rooney pointed out the said unit of circa 240 sq. metres was nearly twice the size of the subject property.
6. With regard to Appendix 4 of his précis, the Consideration of Appeal report, Mr. Rooney stated that he had no comment to make as to whether the Appeal Officer had taken into account any other factors and that any further questions in relation to this should be addressed directly to the Appeal Officer. In his opinion, it was the duty of the valuer to value what had been built in relation to comparables within the same rating authority area. Mr. Rooney also pointed out that in relation to the Appeal Officer making no change, he had stated "*the valuation is not excessive and the valuation level employed by the Revision Officer conforms to the tone of the list for comparable properties in Galway City*".

Summing Up

In summing up Mr. Ó Cléirigh stated:

1. The subject property had restricted frontage.
2. The movement of shoppers is predicated towards Dunnes Stores and over 50% of the surface car parking would generally be taken up by their customers.
3. His Comparison No. 1 i.e. Unit 27-28 Galway Shopping Centre, Headford, Road Galway was valued at €201 per sq. metre. This was a superior centre to the Briarhill Shopping Centre, with Penneys, Tescos, 60 units on one level, a mix of national and UK brand names in the centre, surface car parking for several hundred cars and a cinema and other facilities close by. In his opinion he would put the Briarhill Shopping Centre at 30% less in value than the Galway Shopping Centre and would add a further 5% reduction to take account of the restricted visibility of the subject property.
4. He was always of the opinion that the valuation assessed was too high and that the two main comparisons were Joyce's Shopping Centre and Briarhill Shopping Centre.
5. In his opinion the appeal valuer didn't take into account the complete circumstances and the restrictions in relation to the subject unit at Briarhill Shopping Centre.
6. He was of the opinion that his assessed valuation of the €107 was fair and reasonable.

Mr. Rooney summed up his case and made the following points:

1. The subject property comprises a modern retail unit in a modern shopping centre.
2. This is a test case for a further 5 units within the shopping centre.
3. He had inspected the subject property and all comparables which were all suitable and within the same rating authority area.
4. In regard to the 4 comparisons submitted by the appellant, Comparisons No. 3 and No. 4 were out of date and Comparison No. 2 had now been withdrawn.
5. In his opinion, to base the appellant's case on one single comparison was not acceptable.
6. His was of the opinion that a fair and reasonable value to be applied to the subject unit was in between the level adopted by the Xtra Vision unit in Galway Shopping Centre and the Ulster Bank Unit in Briarhill Shopping Centre.
7. This location is probably one of the highest profile units in Galway City.
8. In his opinion the level adopted of €184.54 per sq. metre was fair and reasonable.

Findings

1. The Tribunal thanks the parties for the submissions made and evidence given during the hearing.
2. The method of valuing the subject property on foot of this revision is as provided for in Section 49(1) of the Valuation Act, 2001, which states that *“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 value of the property concerned is to be determined by reference to *“the tone of the list”*.
3. In considering the evidence put forward by both parties, and mindful of the withdrawal of the appellant’s Comparison No. 2, and the amended NAV of €201 per sq. metre in Comparison No. 3, the Xtra-vision unit at 27-28 Galway Shopping Centre, preferred by the respondent, the Tribunal considers the Xtra-vision comparison, which was common to both parties, together with the respondent’s Comparison No.4, to be of most assistance in this case.
4. The Tribunal is mindful of the information provided by the consultant valuer, that the common comparison property, i.e. the Xtra Vision unit at 27-28 Galway Shopping Centre, is situated within a development which comprises a large shopping centre with Tescos, Penneys, 60 retail units at one level, UK brand names in the centre, 700 surface car parking spaces, and is close to a Cinema and other facilities including Atlantic Homecare and a bowling alley. The Tribunal also notes that the said shopping centre is adjoining the well-travelled Headford Road, and enjoys extensive profile and optimum fenestration presentation to the surface car park.
5. The Tribunal is satisfied that the approach to a reasonable NAV to be applied to the subject property should consider the foregoing in the context of advantages over those retail units at Briarhill Shopping Centre.

Determination

Having regard to the above, the Tribunal determines that the rateable valuation of the property concerned should be reduced by 15% and, accordingly, the NAV is computed as follows:

Retail Area: 126.54 sq. metres @ 156.86 per sq. metre = €19,849.60

RV @ 0.63% = €125.05

RV say €125

And the Tribunal so determines.