

Appeal No. VA13/3/001

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

Durrington Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2164618, Restaurant/Cafe at Lot No. 124/Unit 2 (Gd Fl and Pt FF), Strand Road, Bray, Bray No. 2, Bray UD, County Wicklow.

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

Rory Hanniffy - BL

Member

Frank Walsh - QFA, Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF JANUARY, 2014

By Notice of Appeal received on the 11th day of July, 2013, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €294 on the above described relevant property.

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

"On the basis that the RV as assessed is excessive & inequitable & not keeping with the established tone for comparable property."

"Very large premises in moderate location with seasonal business."

The appeal proceeded by way of an oral hearing, which took place at the offices of the Valuation Tribunal on the 12th day of September, 2013. The appellant was represented by Mr Eamonn Halpin, B.Sc. (Surveying), MRICS, MSCSI, of Eamonn Halpin & Co. Ltd., Chartered Valuation Surveyors and Estate Agents, and the respondent was represented by Ms Claire Callan, B.Sc. (Surveying), M.Sc. in Planning and Development, a valuer at the Valuation Office.

In accordance with the Rules of the Tribunal, the parties exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to the Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This was supplemented by additional evidence given directly and via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At Issue

Quantum.

The Property

The subject property comprises a large, mainly first-floor restaurant, with two meeting rooms, kitchen area and ancillary areas. There is also a ground floor reception and coffee dock area.

Location

The property is located on Strand Road, Bray, in the county of Wicklow.

Tenure

The subject property is held freehold.

Floor Areas

The subject property was measured on a Gross Internal Area (GIA) basis. While the parties agreed upon the overall floor area, there was disagreement regarding the classification of the various areas.

The appellant submitted areas as follows:

Ground Floor Reception and coffee dock	110.32 sq. metres
Ground Floor Store	13.60 sq. metres
External Store (Basic)	35.46 sq. metres
First-Floor Restaurant	306.04 sq. metres
Meeting Rooms and Ancillary	112.36 sq. metres
Office and Disused Area	60.00 sq. metres
Kitchens Prep Areas and Stores	156.50 sq. metres

The respondent submitted areas as follows:

Ground Floor (Restaurant)	110.32 sq. metres
Ground Floor (Stores)	49.06 sq. metres
First-Floor (Restaurant)	478.40 sq. metres
First-Floor (Kitchen etc.)	156.50 sq. metres

Valuation History

October 2011	Property inspected
17 th October 2011	Draft Valuation Certificate issued with an RV of €294
10 th November 2011	Representations submitted to the Commissioner of Valuation on behalf of the appellant
8 th February 2012	Valuation Certificate issued unchanged at RV €294
15 th March 2012	Appeal submitted to the Commissioner of Valuation
14 th June 2013	Valuation Certificate issued with an RV of €294
11 th July 2013	Appeal lodged with the Valuation Tribunal

Appellant's Case

Mr. Halpin adopted his précis as his evidence-in-chief. He confirmed that the matters at issue between the parties were the breakdown of the area of the subject property, the description of the various areas and the appropriate rates per sq. metre to be applied in respect of each. He outlined that the first-floor included a restaurant area, meeting rooms, office, kitchen and a

disused area. He confirmed that both parties agreed upon the area and rate per sq. metre to be applied in respect of the ground floor restaurant.

Valuation by the Appellant

Mr. Halpin contended for a rateable valuation of €168 for the subject property, calculated as follows:

	Area	€ per sq. m.	NAV
Ground Floor Reception and coffee dock	110.32 sq. m.	88.84	€ 9,801
Ground Floor Store	13.60 sq. m.	34.17	€ 465
External Store (Basic)	35.46 sq. m.	20.50	€ 727
First Floor Restaurant	306.04 sq. m.	54.00	€16,526
Meeting Rooms and Ancillary	112.36 sq. m.	41.00	€ 4,607
Office and Disused Area	60.00 sq. m.	34.17	€ 2,050
Kitchens Prep Areas and Stores	156.50 sq. m.	34.17	€ 5,348
			€39,524
	Allowed 15% for quantum and seasonality		€ 5,929
			€33,595
		@ 0.5%	€ 167.98
			SAY RV €168

He argued that the rate to be applied to a first floor should be 30-50% less than that applied to the ground floor. He confirmed that the rate which he was proposing in respect of the first floor restaurant reflected a 40% reduction on that proposed in respect of the ground floor. He also referred the Tribunal to the respondent's comparison property number 2 wherein the first-floor area was valued at 45% of the ground floor area.

Mr Halpin indicated that his proposed €20.50 per sq. metre rate in respect of the external store was based upon general levels for storage areas, but conceded that he had no comparison evidence before the Tribunal.

In support of his proposed €34.17 per sq. metre in respect of the first-floor kitchen, Mr Halpin argued that;

- the Tribunal should have regard to the size of the kitchen *viz-a-viz* the rest of the property and, furthermore, to the fact that most of the kitchen is neither utilised nor required;
- the Tribunal should have regard to the appellant's comparison property number 2 (Bray Bowl) wherein the ground floor kitchen was subsumed into the general ground floor rate of €41.14 per sq. metre. He argued that because the kitchen in the subject property was situate on the first floor, a lower rate should apply;
- the Tribunal should note, in regard to the appellant's comparison property number 3 (Pizzas & Cream), that the kitchen is subsumed into the overall ground floor restaurant rate of €109.36 per sq. metre. In that case, the kitchen is situate in a retail area and therefore cannot be distinguished. However, in the case of the subject property, the kitchen area can and ought to be distinguished.

In respect of the remainder of the first floor, Mr Halpin outlined that while the part of the first floor utilised as a restaurant was the most valuable, the office and disused areas are completely separate and are accessed via a corridor.

Appellant's Comparison Properties

In support of his opinion of rateable valuation, Mr Halpin put forward six comparison properties, as follows:

Comparison No. 1

Property: First Floor Offices in the Boulevard Centre, Quinnsboro Road, Bray, Co. Wicklow (opposite Dunnes Stores).

RV: €101.58

Offices	572 sq. metres	@ €35.54 per sq. m.
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Mr Halpin made the following submissions in respect of Comparison No. 1:

- The premises enjoys a good location.
- The premises is reasonably modern.
- The rate of €35.54 per sq. metre reflects the size of the building.

Comparison No. 2

Property: Bray Bowl, adjacent to the Dart Station and seafront, Bray, Co. Wicklow.

Property No: 714104

RV: €533.29

Ground Floor Restaurant and Amusement Area	503 sq. metres	@ €41.14 per sq. m.
Ground Floor Bowling Area	1,191.50 sq. metres	@ €41.14 per sq. m.
First Floor Snooker and Children's Activity Centre	1,584.50 sq. metres	@ €20.57 per sq. m.
2nd Floor	46 sq. metres	@ €10.93 per sq. m.
80 Car Spaces at €63.50 each		

Mr Halpin made the following submissions in respect of Comparison No. 2:

- The rate per sq. metre applied to the first floor is half that applied to the ground floor.
- The premises is situate beside the train station and enjoys its own car park.

Comparison No. 3

Property: Pizzas & Cream, Albert Walk, Bray, Co Wicklow.

Property No: 655036

RV: €57.15

Ground Floor Restaurant	77 sq. metres	@ €109.36 per sq. m.
First Floor Restaurant	39.70 sq. metres	@ €54.68 per sq. m.
First Floor Stores	43.80 sq. metres	@ €27.34 per sq. m.

Mr Halpin submitted, in respect of Comparison No. 3, that the rate applied to the first floor restaurant is 50% of that of the ground floor area.

Comparison No. 4

Property: First Floor Offices, 4 Fitzwilliam Terrace, Bray, Co Wicklow.

Property No: 655419

RV: €12.70

First Floor Offices	45 sq. metres	@ €54.68 per sq. m.
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Comparison No. 5

Property: Winston's, Main Street, Bray, Co Wicklow.

Property No: 658415

RV: €228.55

Ground Floor Retail and Store	618.30 sq. metres	@ €69.35 per sq. m.
First Floor Restaurant	51.80 sq. metres	@ €54.68 per sq. m.

Mr Halpin submitted, in respect of Comparison No. 5, that it is bizarre that the rate per sq. metre applied in respect of the subject first floor restaurant (€75.17) is higher than the rate per sq. metre applied to this ground floor prime retail unit.

Comparison No. 6

Property: The National Aquarium (now Sea Life), Bray, Co Wicklow.

Property No: 656983

RV: €126.97

Ground Floor Retail and Store	916 sq. metres	@ €27.69 per sq. m.
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At the conclusion of his direct evidence, Mr Halpin requested that the Tribunal have regard to the size of the property and to the fact that the business situated therein has struggled since its inception. He submitted that the hypothetical tenant would be required to cover the costs of a very large premises. He pointed out that the property was in a secondary location which impedes the operation of a restaurant on a 12 month basis. Finally, he outlined that there is paid parking in the vicinity of the premises.

Cross-examination of the Appellant

Ms. Callan did not cross-examine Mr. Halpin.

Respondent's Case

Ms. Callan adopted her précis as her evidence-in-chief.

Valuation by the Respondent

Ms Callan contended for a rateable valuation of €280 for the subject property, calculated as follows:

	Area	€ per sq. metre	NAV
Ground Floor (Restaurant)	110.32sq. metres	88.84	€ 9,800.82
Ground Floor (Stores)	49.06 sq. metres	34.17	€ 1,676.38
First Floor (Restaurant)	478.40 sq. metres	75.17	€35,961.33
First Floor (Kitchen etc.)	156.50 sq. metres	54.68	€ 8,557.42
Total			€55,995.95
		@ 0.5%	€ 279.98
			SAY RV €280

Respondent's Comparison Properties

In support of her opinion of rateable valuation, Ms Callan put forward four comparison properties, as follows:

Comparison No. 1

Property: Lot 124 Strand Road, Bray, Co. Wicklow [the subject property]

Property No: 2164618

RV: €294

Comparison No. 2

Property: Lot 97 Strand Road, Bray, Co. Wicklow.

Property No: 656972

RV: €57

Ground Floor	47.40 sq. metres	@ €143.51 per sq. metre
First Floor	64.87 sq. metres	@ € 64.92 per sq. metre
Second Floor	11.05 sq. metres	@ € 27.34 per sq. metre

Ms Callan made the following submissions in respect of Comparison No. 2:

- The property is situate on the same road as the subject property. The ground floor rate per sq. metre is higher than that of the subject property due to the fact that this comparison property is smaller.
- The first floor rate per sq. metre is lower than that of the subject property because this property is not serviced with a lift.

Comparison No. 3

Property: Lot No. 51, Bray, Co Wicklow.

Property No: 655744

RV: €141

Ground Floor Restaurant	143.00 sq. metres	@ €170.00 per sq. metre
Ground Floor Kitchen	27.10 sq. metres	@ €100.00 per sq. metre
External Stores	11.10 sq. metres	@ € 30.00 per sq. metre

Ms Callan submitted, in respect of Comparison No. 3, that the rate per sq. metre applied in respect of the ground floor area takes account of the fact that the property is situate in a better location on the main street.

Comparison No. 4

Property: Lot No. 73b (Floors 1 &2), Bray, Co Wicklow.

Property No: 2189043

RV: €96

First Floor Restaurant	112.96 sq. metres	@ €125.00 per sq. metre
Second Floor Restaurant	67.15 sq. metres	@ € 82.00 per sq. metre
Second Floor Stores	9.30 sq. metres	@ € 27.00 per sq. metre

Ms Callan submitted, in respect of Comparison No. 4, that the rate per sq. metre applied in respect of the first floor area takes account of the fact that the property is situate on the main street and is a smaller premises than the subject property.

Addressing Mr Halpin's submission that the rate per sq. metre applied to the first floor of the subject property should be 30-50% less than that applied to the ground floor, Ms Callan stated

that in her experience a reduction of 20-30% would ordinarily apply. However, she accepted that the rate per sq. metre applied to the first floor of her comparison property 2 was 45.5% of the rate applied to the ground floor and, furthermore, that the rate per sq. metre applied to the second floor of her comparison property 4 was 65.6% of the rate applied to the first floor.

Addressing Mr Halpin's submission that a 15% reduction should be applied on the grounds of seasonality and quantum, Ms Callan stated that the hypothetical tenant would take the location and seasonality into account when renting the premises. She also indicated that she had never observed seasonality as a reason for providing a discount.

Ms Callan submitted that the first floor meeting rooms and ancillary areas were separated by partition walls which could be removed. She also submitted that the disused area could be used.

In support of the rate per sq. metre applied to the first floor restaurant, Ms Callan relied upon comparison property 4 which had a rate per sq. metre of €125. She indicated that this rate is higher than that applied in the subject property due to the superior location of comparison property 4.

Cross-examination of the Respondent

In response to questions raised by Mr Halpin and the Valuation Tribunal, Ms Callan indicated that:-

1. The rate per sq. metre applied to the first floor of the respondent's comparison property 2 is 45% of that applied to the ground floor.
2. When comparing the respondent's comparison property 2 a quantum allowance should be applied in respect of the subject property due to its size.
3. The respondent's comparison property 2 is the only comparison on Strand Road.
4. There is a disparity between the ground floor/first floor rates per sq. metre applied in respect of the subject property and the respondent's comparison property 2.
5. The restaurant contained within the subject property is quite large for a town the size of Bray.
6. The trade enjoyed by the restaurant situate in the subject property is seasonal.

Summaries

Both the appellant and the respondent availed of the opportunity to provide summation statements which were a synopsis of the foregoing arguments and positions adopted by them in both their précis of evidence and at hearing.

Findings

The Tribunal finds:-

1. The parties are in agreement in respect of the floor area and rate per sq. metre to be applied in respect of the ground floor restaurant area, that being 110.32 sq. metres @ €88.84 per sq. metre.
2. It is not appropriate to distinguish the area described by the appellant as the ground floor store from the area described as the external store, in circumstances where the external store is easily accessible from the ground floor.
3. The subdivision of the first floor area into office and meeting room spaces is moot in circumstances where the Tribunal is of the view that the same rate should apply across the whole first floor (save for the kitchen area).
4. Insofar as the appropriate rate is concerned, the Tribunal is of the view that the figure of €54 per sq. metre advanced on behalf of the appellant is the appropriate rate. It is noted that this rate approximates to 60% of the agreed ground floor rate. It is further noted that in comparisons put forward by the respondent, in particular comparison property 2, the first floor rate was approximately 45% of the ground floor rate, whilst in comparison property 4 the second floor rate was approximately 65% of the first floor rate. The Tribunal finds the aforementioned comparisons of the respondent to be of particular assistance given that they are also restaurants.
5. Insofar as the first floor kitchen area is concerned, the appropriate rate is €39.42 per sq. metre. The Tribunal notes that this figure gives a relationship of approximately 73% to the rate applied to the remainder of the first-floor restaurant. In arriving at this rate, the Tribunal has been influenced by the fact that the respondent in his submissions argued for a rate of €54.68 per sq. metre for the first floor kitchen as compared to €75.17 per sq. metre for the first floor restaurant, representing 73% of the rate argued for the first floor restaurant.

Determination

In view of the foregoing, the Tribunal determines that the RV on the subject property should be calculated as follows:-

Ground Floor (restaurant)	110.32 sq. metres @ €88.84 per sq. metre	=	€ 9,800.83
Ground Floor (stores)	49.06 sq. metres @ €34.17 per sq. metre	=	€ 1,676.38
First-Floor (restaurant)	478.40 sq. metres @ €54.00 per sq. metre	=	€25,833.60
First-Floor (kitchen)	156.50 sq. metres @ €39.42 per sq. metre	=	€ 6,169.23
Total NAV			€43,480.04

€43,480.04 @ 0.5% = €217.40

RV say €217

And the Tribunal so determines.