

Appeal No. VA13/3/003

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

RSG Ireland Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 5002974, Café at Unit RC1, Millfield Shopping Centre, Balbriggan, County Dublin.

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Frank O'Donnell - FRICS, B Agr Sc, MIREF

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF JANUARY, 2014

By Notice of Appeal received on the 29th day of July, 2013, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €90,900 on the above described relevant property.

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

"The assessment is excessive having regard to the development and location of the property within the centre."

"The assessment should have regard to the physical changes in the locality."

This appeal against a revision proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 27th day of September 2013 and was adjourned to the 18th day of October 2013. A second adjournment was required at that stage and the hearing resumed on the 7th day of November 2013. At the hearings the appellant was represented by Mr Conor Ó Cléirigh FSCSI, FRICS, of Conor Ó Cléirigh & Co., Chartered Valuation Surveyors, Unit G5, The Steelworks, Foley Street, Dublin 1, while Mr Viorel Gogu, PhD, MSc, a valuer at the Valuation Office, represented the respondent.

The Issue

Quantum.

Valuation History

The subject property was first assessed on 11th November 2011 and a proposed Valuation Certificate issued with a Net Annual Value (NAV) of €103,200. Representations were submitted by the appellant to the Commissioner of Valuation on 8th December 2011. On 16th December 2011 a Valuation Certificate issued affirming the NAV at €103,200. A First Appeal was subsequently lodged with the Commissioner of Valuation on 25th January 2012 and following consideration of this appeal the NAV reduced to €90,900. A Final Valuation Certificate issued on 8th July 2013 and this was followed by an appeal to the Valuation Tribunal on 25th July 2013.

The valuation was assessed as follows:

Café/Restaurant	202.13 sq. metres @ €450.00 per sq. metre	=	€90,958.50
Total NAV			€90,958.50
			(Say €90,900)

The Property

The subject property, formerly occupied by RSG Ireland Limited, t/a BB's Coffee & Muffins, is located on the upper floor of the Millfield Shopping Centre which is situated on the Naul Road beside Balbriggan Town Centre in north County Dublin. The unit is open plan and forms part of a food court, with laminated floors, a fitted counter and a selection of tables and chairs. Balbriggan has a population of about 20,000 people and is situated on the main Dublin to Belfast railway line. The M1 Dublin to Belfast motorway passes close by. Millfield Shopping Centre is a new purpose-built facility extending to 17,000 sq. metres and

consists of an anchor Tesco supermarket as well as 30 retail units and 952 car park spaces. A number of units are still vacant at the centre.

All mains services are supplied and the property is in good condition. An annual service charge is payable by the occupiers for the upkeep and maintenance of the common areas. The subject property is now vacant and available for rent.

Accommodation

The property has a total area of 202.13 sq. metres.

The Appellant's Case

Mr Conor Ó Cléirigh, for the appellant, took the oath and adopted his précis as his evidence-in-chief. He described the layout of the subject unit to the Tribunal as set out above. He said that the property was let under a 25 year lease from 11th April 2011 and was subject to 5-yearly rent reviews with an initial headline rent of €84,766.50 *per annum*. This rent was then decreased by way of a side letter agreement to 10% of turnover, with the effective rent for 2012 being €16,437. Mr Ó Cléirigh produced evidence of turnover for 2012 as well as monthly rent invoices from a commercial property consultant that collected the rent on behalf of the landlord. He said that only one food outlet remained open for business at the shopping centre and that the occupier of the subject property vacated the subject premises during July 2013.

Mr Ó Cléirigh argued that rents for premises similar to the subject and located in the food court were lower than rents charged for the other standard units in the subject shopping centre and were different to other units. When asked which of his four comparisons most resembled the subject property, Mr Ó Cléirigh said that his comparison 4 was the best comparison.

Valuation by the Appellant

Mr Ó Cléirigh contended for a net annual value of €50,500 for the subject property, calculated as follows:

202 sq. metres @ €250 per sq. metre = €50,500

Separately, Mr Gogu was asked if either of his two comparisons was on the list at the time that the subject property was initially assessed and he said that both were under appeal at that time and therefore not on the list.

The hearing was then adjourned to aid both the appellant and the respondent in offering more suitable comparisons consistent with the obligations imposed on the Tribunal by the provisions of the Valuation Act, 2001.

18th October, 2013

New documentation was presented to the Tribunal on the morning of the resumption of the hearing on 18th October 2013. However, a second adjournment was necessitated in order for the Tribunal members to read this new evidence.

7th November, 2013

The hearing resumed for a second time on 7th November 2013. Mr Ó Cléirigh confirmed to the Tribunal that the revision date for the subject property was 11th November 2011. In support of his evidence, Mr Ó Cléirigh introduced six comparisons, details of which are attached at Appendix 1 to this judgment.

Appellant's Comparison Properties

Comparison 1

Unit 4, Millfield Shopping Centre, Balbriggan

This property, whilst smaller than the subject property, is a standard shop unit with a rate applied to Zone A, at 47.28 sq. metres, of €675 per sq. metre and to Zone B, at 26.35 sq. metres, of €337.50 per sq. metre, with an overall rate of €386.25 per sq. metre taking into account a one year rent-free period.

Comparison 2

Unit 5, Millfield Shopping Centre, Balbriggan

This property trades as a butcher's shop and is zoned. Zone A consists of 56.49 sq. metres @ €675 per sq. metre, while Zone B consists of 99.22 sq. metres @ €337.50 per sq. metre, with an overall rate of €278.40 per sq. metre taking into account a one year rent-free period.

Comparison 3**Unit RC1, Millfield Shopping Centre, Balbriggan**

This property is the subject property (now closed). An analysis of the effective rent payable by way of a side letter agreement shows an effective rate, for a floor area of 202 sq. metres, of €81.37 per sq. metre, amounting to an annual rent of €16,437.

Comparison 4**Fei Xueu, Castle Mill Shopping Centre Balbriggan**

This property is Mr Ó Cléirigh's best comparison. The unit is located on the 1st floor and trades as a restaurant. It comprises 191.85 sq. metres and is valued at €250 per sq. metre.

Comparison 5**Unit 14, Castle Mill Shopping Centre, Balbriggan**

This property trades as Godfather Pizza, consists of 93.9 sq. metres and has a NAV of €34,900 p.a., which equates approximately to €371.63 per sq. metre.

Comparison 6**Unit 12, Castle Mill Shopping Centre, Balbriggan**

This property trades as Castle Mill Meats Butchers, consists of 94.9 sq. metres and has a NAV of €38,800 p.a., which equates to €408.85 per sq. metre.

Mr Ó Cléirigh argued that the subject property occupies an inferior trading location to all these comparisons and that, owing to this circumstance, as well as to the restriction on trading hours, an allowance should be made in arriving at net annual value.

Under cross-examination, Mr Ó Cléirigh said that because there were no other food courts in Balbriggan, he relied on his comparison 4 as the best comparison because, even though it is not in a food court in a shopping centre, it is nevertheless a restaurant and is in the same rating area. He also said that he was of the opinion that the Valuation Office over-relied on other food court units that were all valued at the same time as the subject and particularly when they were under appeal. Mr Ó Cléirigh concluded his evidence by saying that the levels applied to the subject premises were excessive, that there were restrictions associated with trading such as the open plan nature of the food court and the poor trading levels experienced there and that he was contending for a valuation of €250 per sq. metre.

The Respondent's Case

Mr Viorel Gogu, valuer at the Valuation Office for the respondent, took the oath and adopted his précis as his evidence-in-chief. He described the layout of the subject unit as already mentioned above. In support of his evidence, Mr Gogu introduced nine comparisons, details of which are attached at Appendix 2 to this judgment.

Valuation by the Respondent

Mr Gogu contended for a net annual value of €90,900 for the subject property, as set out at page 2 of this judgment.

Respondent's Comparison Properties

Comparison No. 1 – Unit RC2, Graham O'Sullivan, Millfield Shopping Centre, Balbriggan

This unit forms one of four open plan food court outlets, and has a valuation of €450 per sq. metre with an area of 260.90 sq. metres.

Comparison 2 – Unit RC3- O'Brien's, Millfield Shopping Centre, Balbriggan, is another of the food outlets in the subject shopping centre and is valued at €450 per sq. metre with a floor area of 130 sq. metres.

Comparison 3 – The Bagel Factory, Charlestown Shopping Centre, Finglas, is a small open plan food unit with a floor area of 96.20 sq. metres, valued at €800 per sq. metre.

Comparison 4 – Pulse Accessories Limited, Charlestown Shopping Centre, Finglas

This unit has a floor area of 57.51 sq. metres, is zoned and has an overall valuation of €727 per sq. metre.

Comparison 5 – Lifestyle Sports Ltd, Charlestown Shopping Centre, Finglas

This large ground floor unit, with a total zoned area of 609.15 sq. meters, is valued overall at €374 per sq. metre.

Comparison 6 –Esprit International, Charlestown Shopping Centre, Finglas

This standard retail unit has a total zoned floor space of 177.29 sq. metres and is valued overall at €459 per sq. metre.

Comparison 7 – Godfather Pizza, Castle Mill Shopping Centre, Balbriggan

This standard retail unit has a total zoned floor space of 93.91 sq. metres and is valued overall at €372 per sq. metre.

Comparison 8 – Castle Mill Meats Ltd, Castle Mill Shopping Centre, Balbriggan

This standard retail unit has a total zoned floor space of 94.89 sq. metres and is valued overall at €409 per sq. metre.

Comparison 9 – Restaurant, Castle Mill Shopping Centre, Balbriggan

Fei Xueu is a first floor restaurant with lift access and has a total floor space of 191.85 sq. metres and is valued at €250 per sq. metre.

Under cross-examination, Mr Gogu said that he valued the subject according to Section 49(1) of the Valuation Act, 2001. He put forward his comparisons 1 and 2 as his best comparisons. Under cross-examination, it was suggested by the appellant that these comparisons (units RC1 and RC2) would not have been on the list on the valuation date. However, in the circumstances, Mr Gogu said that he reduced his valuation at first appeal stage. He further stated that the valuation for the subject is €90,000 whereas the market rent at the date of valuation was €85,000, that he was not interested in the side letter agreement of some €16,000 in annual rent put forward by the appellant and that the subject was valued by relevance to the ‘tone of the list’.

Mr Gogu concluded his evidence by saying that he considered his method of valuation in this case to be fair and equitable.

Findings and Conclusion

1. The Tribunal notes that of the nine comparisons presented by the Commissioner of Valuation, comparisons 3-9 were available to him at the time of the revision of the subject property.
2. The Tribunal notes that the appellant’s comparisons 4, 5 and 6 are the same as the respondent’s comparisons 9, 7 and 8.
3. Of all the comparisons referred to by the Valuation Office in its Valuation Report, the Tribunal finds those that refer to restaurants to be of most assistance.

4. The Tribunal prefers the respondent's Balbriggan restaurant comparisons over the Charlestown Shopping Centre restaurant comparison in circumstances where there are significant differences as between the Charlestown Shopping Centre comparison 3 (The Bagel Factory), valued overall at €800 per sq. metre, and the Castle Mill Shopping Centre comparison 7 (Godfather Pizza), valued at €372 per sq. metre and comparison 9 (first floor restaurant Fei Xueu), valued at €250 per sq. metre. In the circumstances, the Tribunal notes that the subject is also located in Balbriggan.
5. The Tribunal notes that comparisons 7 (Godfather Pizza) and 9 (Fei Xueu) are not restricted to certain opening and closing hours, unlike the subject.

All the foregoing considered, the Tribunal determines the net annual value of the property concerned to be €70,750, calculated as set out below:

Restaurant/café	202.13 sq. metres @ €350 per sq. metre	=	€70,745.50
		Say NAV	€70,750.00

And the Tribunal so determines.