

Appeal No. VA91/2/079

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

McKenna Electrical, Dundrum

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No: 8, Dundrum, Dundrum - Sweetmount, Co. Dublin
Quantum - Rates impact factor

B E F O R E

Padraig Connellan

Solicitor (Acting Chairman)

Paul Butler

Solicitor

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF MARCH, 1992

By notice of appeal dated 24th day of July, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £130 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that the revised valuation is excessive and inequitable.

Property

The Dundrum Shopping Centre is located in Dundrum Village on the western side of the Main Street. This is a district level planned shopping centre, completed in 1971 as an adjunct to Dundrum Village, in order to serve an expanding residential suburb. The centre is located approximately 4 miles south east of Dublin city centre. The shopping centre includes retail shops at ground floor level and at first floor level. A number of shops have basements. There is car parking for about 350 cars. The subject premises is located at the ground floor level and has a basement.

Valuation History

The Rateable Valuation of the subject unit was revised from £72 Rateable Valuation to £120 in May 1990 and was further revised upwards to £130 following first appeal.

Written Submissions

A written submission was received on the 10th September, 1991 from Mr. Sean D. Mc Cormack, BSc (Surv), Dip. Prop. Econ., M.I.A.V.I., of the Phelan Partnership on behalf of the Appellants.

In this Mr. Mc Cormack outlines the approximate net floor areas of the premises as follows:

Accommodation

	<u>Approximate Net Floor Area</u>	
	Sq.ft	Sq.m
Ground Floor Shop	840	78.0
Basement	<u>800</u>	<u>74.3</u>
TOTAL	<u>1640</u>	<u>152.3</u>

Mall Frontage c. 17'6"
Shop Depth c. 51'3"

He said that the subject unit is held leasehold under the terms of a 35 year full repairing and insuring lease from the 18th November, 1971. He said that the lease incorporates provision for 7 yearly rent reviews. The current rent fixed at the last review effective from the 18th November, 1985 is £17,700 per annum. Mr. Mc Cormack included five comparisons taken from the Dundrum Shopping Centre ground floor and details of these comparisons are attached to this judgment as Appendix "A". Mr. Mc Cormack said that his first 3 comparisons indicate that the going rate per square foot for rental purposes from 1985 to 1987 was £18 per square foot on the basis of a 5 yearly rent review pattern. He said that comparisons 4 and 5 illustrate rental growth showing rental levels at £22 - £24 per square foot for late 1989 on the basis of 5 yearly rent reviews. Mr. Mc Cormack said that in trying to identify an appropriate rental value for November 1988 that he selected the rentals pertaining as at 1985 to 1987 as being more realistic and equitable than those towards the end of 1989. He therefore selected a figure of £19 per square foot as a fair rental on the ground floor portion of the unit as at November 1988. He selected a figure of £4 per square foot in respect of the basement area. Mr. Mc Cormack said that in his recent experience it has been the policy of the Commissioner of Valuation to make allowance for the increased pressure on retailers and their ability to pay rent by virtue of the huge increase in outgoings on rates occasioned by the May 1990 revision. Mr. Mc Cormack than outlined calculation of what in his opinion the Rateable Valuation should be as follows: (This takes into account a correction of an error which appeared in Mr. Mc Cormacks submission and which he alluded to at the oral hearing).

(i) **Net Annual Value**

Shop 840 Sq.ft @ IR£19.00 per sq ft =	15,960
Basement Store 800 sq.ft. @ IR£4.00 per sq ft =	<u>3,200</u>
	£19,160pa
	R.V. £120

(ii) **Adjusted Net Annual Value =** £17,858.75

(iii) **Rateable Valuation**

OR

<u>Zoning:</u>	Zone A	355 ft ² @ £32 = £11,360
	Zone B	355 ft ² @ £16 = £ 5,680
	Balance	155 ft ² @ £8 = <u>£ 1,240</u>
		£18,280

With regard to the basement Mr. Hicks said that the 1985 reviewed rent on the basement was £2,200 and for 1988 he estimates a rent of £2,380. Mr. Hicks said that this devalues at £2.75 per square foot. Mr. Hicks then made out his calculation of the rateable valuation for the subject premises as follows:

Zone A	355 ft ² @ £32	=	£11,360
Zone B	355 ft ² @ £16	=	£ 5,680
Balance	155 ft ² @ £8	=	£ 1,240
Basement		=	<u>£ 2,380</u>
			<u>£20,660</u>

N.A.V. £20,660 @ 0.63% = R.V. £130

Mr. Hicks offered as a comparison "Prescotts" which he said was an identical unit to the above, first valued in 1990 at first appeal stage at £130 rateable valuation and he said that this was not currently the subject of a revision or appeal.

Oral Hearing

At the oral hearing which took place on the 16th September, 1991 Mr. Sean D. Mc Cormack represented the Appellant and Mr. Christopher Hicks represented the Respondent. Mr. Mc Cormack gave evidence as outlined in his precis of evidence and said that before taking account of any "Rates Impact Factor" his Net Annual Value of £19,160 would yield a Rateable Valuation

of £120.70. However, Mr. Mc Cormack said that while there was little between himself and Mr. Hicks in terms of Net Annual Value, the case for an adjustment to take account of the impact of the increased rates on the rent, was a valid one for Dundrum Shopping Centre as it had already been applied in Blackrock, Stillorgan, North Side and Nutgrove Shopping Centres and that it formed the basis of reductions obtained there for retailers. Mr. Christopher Hicks questioned Mr. Mc Cormack on the method by which one was to arrive at the rental value in November 1988. Mr. Hicks queried Mr. Mc Cormack as to whether his approach of taking the rental as the mid point between 1984 and 1989 would be correct. Mr. Mc Cormack said that, based on the rent of £15,500 per annum in his comparisons which span effective dates from 1985 to 1987, he would not agree with the approach outlined by Mr. Hicks, as in his opinion the market accelerated in 1989 and produced a reviewed rent in the "Ashley Reeves" unit which would have been out of step at November 1988. He said that the emphasis in terms of rental values indicates that an average, if it were to be taken, should be taken closer to 1985/1987 review date. He disagreed with Mr. Hicks that there was rental growth during 1988 but said that he had allowed for some growth in working from £17.71 to £19.00 per square foot. With regard to the "Village One" comparison Mr. Hicks said there is a relatively small Zone A area, because the frontage of "Village One" property is only two-thirds the frontage of the other units. Mr. Mc Cormack was unable to give Mr. Hicks any information as regard the letting of the basement by the Appellant company.

Mr. Hicks gave evidence as outlined in his precis of evidence and said that everything indicated that the rent at the relevant date for the basic unit would be no less than £20,000. He said that, in effect, he had given an allowance by using a figure of £18,250 for Net Annual Value purposes. Mr. Hicks said that there was evidence of some profit rent in the units in Dundrum. He said, in summary, that he relied on the "Ashley Reeves" case and that in his opinion the "Greenmay" case also supports rents nearer to £24 - £25 per square foot. Mr. Hicks then outlined his comparisons.

Determination

The Tribunal has considered all the evidence and has come to the conclusion that the approach taken by Mr. Hicks in reaching a Net Annual Value as at November 1988 is the correct approach. This leaves the Tribunal to deal with the question of an allowance for the impact that the increase in rates might have on the ability of the Appellants to pay their rent. The Tribunal has reservations about the application of techniques which have no foundation in law. However, at the same time it is aware that the Commissioner has applied this "Rates Impact Factor" in other shopping centres. The Tribunal feels that if such an allowance is to have any validity it would clearly be in a situation where the rents were recently agreed and no increase in rates was anticipated. The Tribunal has concluded that there is no case to be made for the application of such an allowance in this case as the rents were agreed as far back as 1985 and in effect 6 years inflation would provide a cushion against the shock of the increase. The Tribunal therefore determines that the Rateable Valuation of £130 should be upheld.