

Appeal No. VA91/3/002

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

Irish Shell Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Filling Station, Shop and Yard at Lot No. 10C/6 Brookvale Road, Rathmines East 'B'
Ward, County Borough of Dublin
Quantum - Relevant comparisons

B E F O R E

Paul Butler

S.C. (Acting Chairman)

Padraig Connellan

Solicitor

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF APRIL, 1992

By notice of appeal dated 23rd day of September, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £470 on the above described hereditament.

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

Written Submissions:

Mr. Desmond M. Killen, F.R.I.C.S., I.R.R.V. of the firm of Donal O'Buachalla & Company Limited presented a written submission dated the 7th January, 1992 on behalf of the Appellant and the same is annexed to this judgment as Appendix A. Mr. Terence Dineen, District Valuer with 17 years experience in the Valuation Office, presented a written submission on behalf of the Respondent dated the 7th January, 1992 and is annexed to this judgment as Appendix B.

Valuation History:

Prior to the 1990/1 Revision there was a single hereditament.

V.O. Lot: 10C

Description: 'Garages, Showroom, Offices, Petrol Tanks and Yard'.

R.V.: £230.

Irish Shell Limited purchased part of the site of the above hereditament for £615,000 in 1987 and expended £485,000 on the construction and development of the subject premises.

The 1990/1 Revision, published in February 1990, deleted the R.V. £230 and the following hereditaments were valued.

V.O. Lot:	10C/1	Offices, Garage & Workshop	RV £125.00
	10C/2A	Offices and Workshop	RV £115.00
	10C/2B	Offices and Yard	RV £35.00
	10C/3	Workshop	RV £110.00
	10C/4	Workshop	RV £65.00
	10C/5	Stores	RV £20.00
	10C/6	Petrol Filling Station	
		Shop and Yard	RV £300.00

A First Appeal dated 7th March, 1990, was lodged with the Dublin Corporation.

Submissions by the Appellant and discussions between the parties at First Appeal stage were inconclusive. No agreement was reached.

When the Appeal results were published, the valuation was increased from R.V. £300.00 to R.V.£470.00.

Oral Hearing:

The oral hearing took place in Dublin on the 13th January, 1992 and was resumed on the 20th January, 1992, the 27th January, 1992, 3rd February, 1992 and for the purposes for submissions, on the 10th February, 1992. Mr. Marcus Daly S.C., instructed by Messrs. McKeever & Sons Solicitors, appeared on behalf of the Appellant and Mr. Aindrias O'Caomh Barrister at Law, instructed by the Chief State Solicitor appeared on behalf of the Respondent. Mr. Killen and Mr. Declan Fallon gave evidence on behalf of the Appellant and Mr. Dineen gave evidence on behalf of the Respondent.

Having opened the case in some detail, Mr. Daly called Mr. Killen to give evidence. Mr. Killen first referred to the plans supplied by the Appellant and a copy of the current Ordnance Survey Map including valuation lots and boundaries. He then referred to the photographs which he supplied with his written submission. Mr. Killen then relied on his written submission. He gave the occupiers of the various new lots as follows:

- 10C/1 - United Car Company = £125.00 R.V.
- 10C/2A - D.C. Exhausts = £115.00 R.V.
- 10C/2B - D.C. Exhausts = £ 35.00 R.V.
- 10C/3 - Ever Ready Car Care = £110.00 R.V.
- 10C/4 - V. Motors = £ 65.00 R.V.
- 10C/5 - Kellys Garden Sheds = £ 20.00 R.V.
- 10C/6 - Subject - Irish Shell.

He said that Lots 10C/1 to 5 are approximately twice the size but have the same total Rateable Valuation as the subject. Mr. Killen said that the area is not in dispute. He gave the capacity of the tanks as 3 x 40,000 litres and 2 x 20,000. Mr. Killen referred to his four comparisons and said that his estimate of Rateable Valuation for the subject was arrived at by averaging the throughput and accommodation figures of the comparisons and applying these directly to the subject. He said that his comparisons are recently revised and correctly entered in the Valuation List and that throughput would determine what rent a hypothetical tenant would pay. Mr. Killen then referred to page 12 of his precis i.e. Actual Rental based on income and expenditure.

Mr. Killen said that what is envisaged by Section 11 is what the tenant will pay, not what the landlord seeks. From the evidence Mr. Killen gave he requested that the Tribunal should reduce the Rateable Valuation to somewhere in the region of £150 to £230.

Mr. Daly, dealing with Mr. Dineen's precis, asked Mr. Killen to make a direct comparison with the subject using the figures from The Blue Lagoon, Sutton. Mr. Killen gave the following figures:

3.168m litres @ .33p	=	10,450
Shop 520 sq. ft. @ £12	=	6,240
1st Floor office/store 403 @ 5.50	=	<u>2,210</u>
		18,910.
Say £19,000 = R.V. £120 approximately.		

Mr. Killen agreed with the Respondent's description of the site but disagreed that it has the most affluent rush hour traffic flow in the country. He referred to page 423 of Rees on Highways and Traffic Volume:

"Obviously the valuer must have regard to factors which might affect traffic volume, and therefore trade, such as road alterations and the possible development of new stations or the improvement of existing stations. When judging potential sales from records of past sales he should try to relate prices charged at the subject station in the past to prices charged at competitive stations on the same route or in the same vicinity. He should study the other stations in terms of their distance from the subject station, their size and their design. Visibility and easy access are important but the factors conditioning sales as between one station and another are manifold and any situation deserves the closest study. The normal speed of passing traffic conditions sales in the sense that very fast roads tend to show lower petrol sales, unless visibility in terms of stopping distance or advance warning signs is especially good; the motorist has to have time to think, decide and then slow down. The near side for departing traffic on the outskirts of a town is still the best position for a station, particularly if it also collects bypass traffic. Heavy traffic on dual or triple carriageways reduces sales."

He said that the subject was on the wrong side of the road and that throughput speaks for itself. He did not accept that people would readily cross the road to buy petrol.

Mr. Killen contested Mr. Dineen's calculation of the £470 Rateable Valuation on the subject, saying that he supplied no evidence to support his price on shop and stores, that the car wash is rateable or should be valued, or that 750,000 gallons should be valued at 7p/gallon. He

said that the subject shop fronts onto the petrol station whereas Mr. Dineen's comparisons front onto the street. Mr. Killen disagreed that retail margins should be taken into account when arriving at the rent or N.A.V. of a retail letting station. He explained that Irish Shell have distribution depots on which rent and rates have to be paid. He suggested that there would be an element of double valuation, in both in the depot and the retail station if retail margins were taken into account.

Regarding Mr. Dineen's submissions on Tied and Free rent Mr. Killen said that it is the premises that has to be valued. In regard to the Ushers Island comparison Mr. Killen agreed with Mr. Dineen's rent of £35,000 but pointed out that the estimate of N.A.V. of Ushers Island for November 1988 made by the Commissioner was £30,000 p.a. yielding an R.V. of £190. He said that there are no other rental comparisons available.

Mr. O'Caoimh cross-examined Mr. Killen stating that the property was owned and occupied by Irish Shell. Mr Killen agreed but stated that it is managed by Donnybrook Self Service Limited. Mr. O'Caoimh said that his case is that Irish Shell is the hypothetical tenant.

Mr. O'Caoimh referred to Section 5 of the 1986 Act and to the Appellant's comparisons and said that .63% method only came into operation in 1989. He said that, at the time that Mr. Killen's comparisons were valued, the method used was price per gallon and that these could not be regarded as valid comparisons.

Mr. Declan Fallon, Corporate Services Manager of the Respondent said in evidence that the property came on the market by sealed tender. Irish Shell who had no site on the inward way to Dublin, paid £615,000 for the property and spent £485,000 thereon. He said that Donnybrook Self Service Limited is a management company and that the intention was to keep the company at arms-length, and that it was intended that a standard agency agreement would be signed by the company. This was not in fact done but a blank copy of the agreement was produced in evidence. He said that the agreement was similar to that in the Fortfield case (VA/91/2/1). Mr. Fallon said that the shop rent would have been negotiated between the manager and Donnybrook Self Service Limited. In relation to the car wash facility, Mr. Fallon said there was an agreement between Osprey Ltd. and Irish Shell. Osprey Limited own the equipment and take 49% of the revenue.

Under cross-examination Mr. Fallon said that 1987 was the year of tender. He said that the turnover is good with about six other stations having the same turnover. He agreed that the

subject premises would be in the top 10 Shell filling stations in the Dublin area. He said that there was no licensee. He did not have turnover figures for the Stillorgan Road station but said that the same were approximately 3m litres. He did not know what the projected turnover was when this enterprise was started and said that it is not growing significantly. He said that it is the only station operated by Irish Shell without a licensee.

Mr. Dineen in the course of his evidence referred to his written submission. He said that the subject premises was the finest petrol station in the country. He referred to page 2 of his precis and said that the capacity of the tanks are agreed as were the price of the property and the amount spent on improvements. He said that he was not relying on other stations as comparisons but was relying on actual rents on properties and capital values. He went on to explain his views on gallonage and throughput as referred to at page 4 of his precis and gave his valuation as at page 5 thereof. He said that the Rateable Valuation is arrived at on an 8% yield.

Mr. Dineen said that the Ushers Island rent was £35,000 in May 1990 which he said was less than Net Annual Value. In regard to the shop, Mr. Dineen said that the performance of the filling station would determine the performance of the shop. Comparable shops rented at £30 per square foot. He said that the £30 per square foot on the subject premises might be a bit too high as it was isolated from the street. Mr. Dineen objected to Mr. Killen's method at arriving at rent on other filling stations. He said that the .63% method was circularised on the 4th October, 1989 and that this fraction was not used to value filling stations in 1988.

Mr Dineen agreed that he had not inspected any of the Appellant's comparisons. He said that the .63% supercedes other comparable properties and where there are no rents, capital values have been used.

Under cross-examination on the resumption of the hearing on the 27th January, 1992 Mr Dineen agreed that the Net Annual Value of the Blue Lagoon station is £30,000 and using a .45% factor yielded a Rateable Valuation of £135. He said that the £135 was arrived at on a square metre basis.

Mr. Dineen said that Mr. Killen's breakdown in the Blue Lagoon station is not unreasonable. He agreed that by applying Mr. Killen's Fortfield Road comparison to this subject a Rateable Valuation of £230 would be arrived at. Mr. Dineen said that the only comparable station is the Ushers Island as it was the only one with a passing rent.

In his closing submissions Mr. O'Caomh referred to the following:-

- 1) Valuation (Ireland) Act, 1852 Section 11
- 2) Valuation Act, 1986 Section 5
- 3) Roadstone Limited V The Commissioner of Valuation, 1961 IR 239
- 4) Irish Management Institute VA/88/101
- 5) Rosses Point Hotel Company Limited IR 1987
- 6) Robinson Brothers (Brewers) Limited V The County of Durham Assessment Committee 1938 AC 32

In the course of his closing submissions Mr. Daly referred to the following:-

- 1) Valuation Act, 1986 Section 5
- 2) Irish Management Institute VA/88/101
- 3) Irish Shell Limited V The Commissioner of Valuation (VA/91/2/1)

Determination

It is the striking feature of this case that not only is there a large difference between the parties on quantum but that difference reflects the difference between the 2 valuations which emerged from the office of the Respondent.

Having considered all the evidence and submissions the Tribunal is satisfied that the Appellants have produced comparisons which are:

- A) Comparable
- B) Related to tenements and hereditaments of similar function and
- C) Have been made or revised within a recent period

In particular, the Tribunal finds the petrol filling station at Fortfield Road to be a good comparison. There is, however, no doubt that the premises which are the subject matter of this appeal are in a vastly superior location to those of the Fortfield Road premises and that the premises could be adapted to a greater variety of lucrative uses than could the Fortfield Road premises. Taking this factor into consideration and making an allowance for the carwash area (as opposed to the machinery thereon) the Tribunal determines a fair Net Annual Value to be £45,000.

The parties having agreed the application of .63% to Net Annual Value, the Tribunal therefore determines Rateable Valuation at £283.50, say £284.

