

Appeal No. VA91/3/011

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

Michael Kavanagh

APPELLANT

And

Commissioner of Valuation

RESPONDENT

RE: Shop (ground floor) at Lot No. 8Aa/10A, Tallaght Tymon, Tallaght Town Centre, Tallaght, Co. Dublin

Quantum - Units in SC, actual market conditions to be considered.

B E F O R E

Henry Abbott

Barrister Chairman

Paul Butler

S.C.

Veronica Gates

Barrister

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

By notice of appeal dated 3rd day of October, 1991, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £32 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 having regard to the Valuation Acts.

The Property

The Tallaght Town Centre is located on the eastern side of Greenhills Road approximately 50 yards north of the junction between Greenhills Road and Tallaght Road. The subject property consists of a ground floor lock-up retail unit having a total gross internal area of approximately 324 square feet with a double frontage of 18 foot and 20.5. The shop front onto The Mall is of single glazed aluminium framed tile. The ceiling is of aluminium frame incorporating acoustic tiles.

Valuation History

The subject was first valued in 1979 at an R.V. of £23. The property was again listed for revision in 1990 and in the revision lists published on the 10th May, 1990 a Rateable Valuation of £38 was placed on it. This was appealed on first appeal to the Commissioner of Valuation who reduced the Rateable Valuation to £32. It is against this amount that the appeal now lies with the Tribunal.

Written Submissions

A written submission was received from Mr. Adrian Power-Kelly, ARICS, of Harrington Bannon, Charter Valuation Surveyors, on the 26th November, 1991 on behalf of the Appellant. In this written submission Mr. Power-Kelly said that the property is held for a term of 500 years from the 29th September, 1977 at a rent of £10 per annum payable half-yearly in advance. With regard to the current tenancy he said that it is now occupied by M & L Shoes Ltd. under a lease of a term of 20 years from 1st July 1984 at an initial rent of £5,000 per annum. The lease provides that the lessee is responsible for internal repairs and must reimburse the landlord for the cost of effecting an insurance policy on the property. It also provides for upward only rent and on rent review on 1st July, 1988 it was increased to £6,000. Mr. Power-Kelly said that it is his understanding that the tenant has given notice of his intention to vacate. Mr. Power-Kelly said that the centre has seen a consistent decline in the occupancy rate and a collapse of rental values

over the past 12 months due to competition from other retail shopping centre developments in the immediate vicinity, particularly "The Square". He said that the centre dates from approximately 1977/1978 and the design of the centre is outdated. He said that in particular the centre suffers from a) narrow shopping malls, b) lack of environmental features, c) lack of central concourse, d) very poor natural light, e) no pedestrian flow. He said that virtually the entire first floor is now vacant and there are a total of 40 vacant units at ground floor level. He said that in total approximately 80% of the centre is now vacant. The centre does not have any anchor tenant which Mr. Power-Kelly says is essential for a viable shopping centre. Mr. Power-Kelly outlined details of the competing centres within the vicinity. He said that the largest shopping centre in the country "The Square" Town Centre to the west of Tallaght Village provides approximately 500,000 square feet of retail space comprising 5 major stores, 130 shop units, 12 cinemas, restaurants and over 2,000 car spaces and totally dominates shopping in the area. He also said that almost directly opposite the subject centre is the newly constructed "Super-Value" Supermarket comprising approximately 12,580 square foot of supermarket/retail space together with onsite carparking. He said that residents in the vicinity of Tallaght are drawn to these new developments. Mr. Power-Kelly said that the subject centre is outside the Tallaght designated area and that retailers are locating in other centres where they can avail of the rent, rates and capital allowances under the Urban Renewal Incentives. Mr. Power-Kelly concluded that the subject centre has failed over the past 3 years since the opening of the Super-Value Supermarket and in particular "The Square" Town-centre. He said that existing tenants are withdrawing from the subject centre and, as tenants have withdrawn, rent has collapsed. Mr. Power-Kelly said that in his opinion there would be no demand for the subject unit on the open market and consequently the Net Annual Value of the property is nil. He thus recommended that the Rateable Valuation should be nil.

A written submission was received on the 27th November, 1991 from Mr. Damien Curran, ARICS, a valuer in the Valuation Office with 11 years experience on behalf of the Respondent.

In this written submission Mr. Curran described the property and the valuation history and commented on the grounds of appeal. He said that the entire "Tallaght Town Centre" Shopping Centre was revised in 1990 on a Net Annual Value basis. He said that subsequently 36 units appealed the revised valuations and of these 31 have accepted the Commissioner of Valuation's determination at first appeal stage. He said that the determined valuations were based on a Rateable Valuation/NAV ratio of .63%. Mr. Curran then set out his calculation of the Rateable Valuation of the property as follows:

Estimate of NAV:

324 sq ft @ £16.00 = £5,184

Applying Rent/Rates equation = £4,954

Note: Actual rent passing

£5,200 set 1984

R.V./N.A.V. Ratio = 0.63%

£31.21

R.V. £32.00

Mr. Curran enclosed a schedule of a number of comparable units the valuations of which have been agreed at first appeal stage which he said represent a sample of the overall units in the centre. The details of these units are attached as Appendix A.

Oral Hearing

The oral hearing took place on the 2nd December, 1991 at which Mr. Adrian Power-Kelly of Harrington Bannon represented the Appellants and Mr. Damien Curran, Valuation Office represented the Respondent. Also present was Mr. Michael Kavanagh, the owner of the subject property, Mr. McCormack, occupier of the property and Mr. O'Shea, the occupier of Unit 8 also

in the subject centre. Mr. Power-Kelly gave evidence as set out in his precis of evidence summarised above and laid great emphasis on the poor condition of the centre and the effect of the "The Square" Town Centre in Tallaght. He said that the subject property must be looked at as it stands.

Mr. Michael Kavanagh gave evidence that he owns the 2 units, Unit 10A, the subject property which he has let to Mr. McCormack, a Footwear Retailer and Unit 8 which he has let to Mr. O'Shea who runs a T.V. Rental Company. Mr. Kavanagh said that the centre was never completely finished and that it was very poorly put together. He said that the majority of the units in the centre are 100 square feet and that it is not viable to make a living there. He said that over the year approximately 300 traders went out of business in the centre. Mr. Kavanagh said that it had been an extremely bad investment and that there was a major problem with the management of the centre. Mr. Kavanagh gave further evidence that orders were made under the Dangerous Building Act and repairs had to be carried out at the expense of the owners of the units. He said that the pillars had to be reinforced and the carpark strengthened. Permission was never given to reopen the carpark. He said that there were major cracks on the walls which had to be treated and the fire officer threatened to close the centre on two occasions in 1991. Mr. Kavanagh said that because of the effects of "The Square" and the lack of trading in the centre he has had to decrease the rent on his units. Mr. McCormack the tenant in the subject property gave evidence that it is his intention to terminate the lease.

Mr. Curran said that he was aware of the problems in the centre and that he would not disagree with anything that had been said. However, he said that he was being generous in his reduction from £38 to £32. Mr. Curran laid great emphasis on the fact that 31 out of the 36 units had accepted the Commissioner's determination at first appeal stage. This was rejected by the Appellants on the grounds that a significant number of units were vacant at the time and others have since become vacant. Nonetheless Mr. Curran suggested that the best way to deal with the

problem was to have the Centre again listed for revision and to take the current situation into consideration at that stage.

Findings

The Tribunal has come to the conclusion that this shopping centre has reached the end of its natural life and that the opening of "The Square" in Tallaght sounded its death knell. The photographs supplied by the Appellants suggest that there is little or no trading taking place in this centre. There was no disagreement between the parties on the present state of the centre.

There are two main points made by Mr. Curran as follows:

- a) that the majority had accepted the determination of the Commissioner of Valuation on first appeal and that it would be unfair to them were a reduction to be given in this case, and
- b) that the proper way of dealing with the present situation is to allow for another revision of the subject properties when the present situation can be taken into consideration.

With regard to Mr. Curran's first argument the Tribunal feels that because of the high vacancy level and the temporary nature of tenancies in general in the centre the point loses its validity. With regard to Mr. Curran's second argument the Tribunal has come to the conclusion that the decline in business and in the state of the premises was evident for some time and it feels that, as "The Square" Shopping Centre in Tallaght was opened and in operation prior to the relevant valuation date, the dire situation which now exists had at the relevant date manifested itself and this cannot be dismissed. Accordingly the Tribunal determines that the Rateable Valuation on this subject property be reduced to £7.

