

Appeal No. VA91/3/019

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

Xtra-Vision Plc

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. 1ijk/Unit 2 Palmerstown Shopping Centre, Palmerstown Co. Dublin
Quantum - Uniformity, equity, comparisons

B E F O R E
Mary Devins

Solicitor (Acting Chairman)

Paul Butler

S.C.

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF JANUARY, 1992

By notice of appeal dated 10th day of October, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £135.00 on the above described hereditament.

The Notice of Appeal was submitted by Mr. Martin Kelly, M.I.A.V.I., Auctioneer, Estate Agent on behalf of the appellants. The grounds of appeal as set out in the Notice of Appeal are that "the valuation is excessive and inequitable. Rateable Valuation of £100.00 was determined on 1989 first appeal by the Commissioner. In 1990 the Commissioner increased the Rateable Valuation to £145.00.

THE PROPERTY

The subject property comprises a retail unit in the Palmerstown Shopping Centre which is situated on the western side of Kennelsfort Road Upper which joins the Ballyfermot Road to the Lucan Road. The Shopping Centre was completed in 1988. All main services are connected to the property. The subject property, Unit 2 is an end of terrace unit comprising circa. 1,600 square feet.

VALUATION HISTORY

The subject property was first valued in the 1989 revision at which stage a rateable valuation of £100.00 was placed on it. It was appealed to the Commissioner of Valuation on first appeal and no change was made. The Shopping Centre was again listed for revision in 1990 and was revalued at £145.00. This was appealed to the Commissioner of Valuation and at first appeal the rateable valuation was reduced to £135.00. It is against this determination that the appeal now lies with the Tribunal.

WRITTEN SUBMISSIONS

A written submission was received on the 1st January, 1992 from Mr. Tony Brooks, B.Agr.S.C., M.I.A.V.I. of Tony Brooks and Company on behalf of the Appellant. In this precis Mr. Brooks said that no change took place in the Centre to warrant the increase from £100 to £135. He said that the Centre had deteriorated between the relevant dates for a number of reasons including the opening of The Square Town Centre, Shopping Centre, Tallaght in September 1990; the opening and conversion of other Shopping Centres in the region and the fact that the Super Valu chain of supermarkets in the subject Shopping Centre could not be perceived as a major anchor tenant drawing potential customers in the same way as Dunnes or Quinnsworth. Mr. Brooks then outlined his estimation of what, in his opinion, the rateable valuation should be as follows:-

"I would estimate a fair rental value to be in the region of £20,000, i.e., 1,600 square feet X £12.50 P.S.F. This compares favourably with the agreed N.A.V. for the smaller units of 700 square feet as £13.50 P.S.F., allowing for size etc.

Alternatively:-

Zone A 600 square feet	@	£20P.S.F.	=	£12,000
Zone B 600 square feet	@	£10P.S.F.	=	£ 6,000
Zone C 400 square feet	@	£ 5P.S.F.	=	<u>£ 2,000</u>
				£20,000

Accordingly I would estimate a fair R.V. to be £100.00, i.e., £20,000 X 0.5% = £100.00"

A written submission was received on the 23rd December, 1991 from Mr. Colman Forkin, M.A. BSc (Surveying) A.R.I.C.S., a Chartered Valuation Surveyor from the Valuation Office on behalf of the Respondent. In this precis Mr. Forkin outlined the details of the subject premises and the valuation history. Mr. Forkin said that the subject property was purchased in 1989 for £135,000 and that no details were available regarding the fitting out costs. Mr. Forkin then set out his calculation of how the rateable valuation of £135.00 was arrived at as follows:-

<u>Unit 2</u>	<u>Zone A</u>	- 640 square feet @ £19.00 psf = £12,160
	<u>Zone B</u>	- 640 square feet @ £ 9.00 psf = £ 5,760
	<u>Zone C</u>	- 392 square feet @ £ 9.00 psf = <u>£ 3,528</u>
		£21,448
		<u>Say £21,500</u>

Est. N.A.V. £21,500 X 0.63% = £135.45

Say £135.00

ORAL HEARING

At the oral hearing which took place on Friday, 10th January, 1992 the Appellant was represented by Mr. Brian Sherry, Solicitor and Mr. Tony Brooks, Valuer. Mr. Colman Forkin, M.A., BSc appeared on behalf of the Respondent.

Mr. Sherry pointed out that between 1989 and 1990 the R.V. of the Appellant's premises had increased by 35% whereas the N.A.V. of the premises, which is the statutory basis for valuation purposes, had not increased.

Referring to the judgment of Mr. Justice Barron in I.M.I. case (VA88/101), Mr. Sherry said that while that judgment recognised the importance of inflation in the setting of N.A.V.'s, in the instant case, there had been no increase in inflation between 1989 and 1990.

He stated further that the best comparisons for the subject, in accordance with Section 5(2) of the Valuation Act, 1986, were, firstly, the 1989 revision figure and secondly the other units in the same shopping centre which had been the subject of the Valuation Tribunal Judgment of 8th January, 1992, Ref: VA/91/3/6.

Mr. Brooks referred the Tribunal to his written submission and stated that a N.A.V. of £20,000 had now been agreed by both parties to the appeal.

Mr. Forkin elaborated on his written submission and produced further comparative evidence in relation to another Xtra-vision Unit in Monastery Shopping Centre, Clondalkin, which is appended hereto.

Cross-examined by Mr. Sherry, Mr. Forkin explained that the agreed N.A.V. of £18,900 for the comparative Xtra-vision Unit in Clondalkin had been adjusted by the application of the so-called "Rates Impact Factor". He agreed that the R.V. of £110.00 for these premises represented approximately .5% of the pre-adjusted figure for N.A.V..

In reply to questions from the Tribunal, Mr. Forkin confirmed that the decision of the Commissioner of Valuation on the 1st Appeal of the 1989 Revision issued on the 2nd July, 1990 and that the 1990 Revision of the subject premises issued on 10th May, 1990.

LAW

Section 5 (SS 1 & 2) Valuation Act, 1986.

FINDINGS

In the opinion of the Tribunal no evidence has been shown in support of the applicability of .63% as a percentage of N.A.V.. The Tribunal notes that in the case of the only relevant comparison offered by the Respondent, eg. the Xtra-Vision Unit in Monastery Shopping Centre, Clondalkin, the .63% fraction is applied to a notionally adjusted N.A.V. whereas in the case of the other two comparisons in the same centre, the .63% fraction is applied to the actual rent passing.

It is also noteworthy that the Revision date for 1990 actually pre-dated the date of the Commissioner's decision on the 1st Appeal of the 1989 Revision.

The uniformity which is the apparent aim of Section 5 (SS 1 & 2) of the Valuation Act, 1986 should not be achieved by the use of what might seem artificial concepts and certainly not at the expense of what is reasonable and equitable.

The Tribunal accepts the Appellant's argument that the most convincing and suitable comparison is the 1989 Revision figure.

While decisions of the Tribunal are not binding, on itself, they are, nonetheless, persuasive, particularly where recent and dealing with similar and comparable premises.

In all the circumstances, the Tribunal is of the opinion that the correct R.V. of the subject premises is £100.00 and so determines.