

Appeal No. VA92/2/048

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

Reginald Tuthill, Tuthills (Kilnamanagh) Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. 3b/20 Kilnamanagh, E.D. Tallaght -Kilnamanagh, Dublin - Belgard, Co. Dublin

Quantum - Rates Impact Factor

B E F O R E

Paul Butler

S.C. (Acting Chairman)

Brian O'Farrell

Valuer

Joe Carey

P.C. M.I.A.V.I.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF JULY, 1992

By notice of appeal dated the 27th day of March, 1992, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £197 on the above described hereditament.

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

THE PROPERTY

The subject property consists of Unit 20 in the Kilnamanagh Shopping Centre on Mayberry Road which is located between Greenhills Road and Belgard Road. The Shopping Centre is generally rectangular in shape and mainly single storey in layout, fronting onto a tarmacaded car park. Access to the units is via the central mall. The Centre opened in 1978. Dunnes Stores are the anchor tenant and they also occupy a number of the units in the Centre. The subject property consists of a single storey L-shaped retail unit measuring 1924 sq ft with a net frontage of 19 feet. It is held under a 35 year lease since the 1st January, 1979 at a rent of £12,000 per annum subject to five yearly rent reviews. The reviewed rents were £21,000 in 1984 and £35,000 in 1989.

VALUATION HISTORY

The unit was first valued in 1978 as part of the valuation of the entire Shopping Centre, at which stage it was used only as storage space. It was subsequently valued in its own right as a retail outlet in 1980 at £143 rateable valuation. This remained unchanged until the 1990 revision at which stage it was increased to £197. This was appealed to the Commissioner of Valuation who made no change on appeal. It is against this determination of the Commissioner of Valuation that the appeal now lies with the Tribunal.

WRITTEN SUBMISSIONS

A written submission was received on the 20th May, 1992 from Mr. Patrick J. Nerney, Rateable Valuation Consultant, Valuer and Auctioneer on behalf of the appellant. In his submission Mr. Nerney gave details of the premises and its valuation history and said that having regard to the following facts it was his submission that the rent as reviewed in 1989 does not equate with the Net Annual Value as defined in the Valuation Acts. He said that the following matters were taken into consideration in estimating N.A.V:-

- (1) Lessees are tied to the lease in that personal guarantees have been given for the due performance of its terms.
- (2) The sale of toys is prohibited.
- (3) Lessees operate other newsagency/toy/gift shops in other Shopping Centres.
- (4) Accounts would indicate that profits have fallen.
- (5) Efforts to sell the premises have failed.
- (6) The subject unit is the largest in the Centre.

R.V. @ 0.63% = £197

Mr. Dervan supplied comparisons in Kilnamanagh Shopping Centre of Units 6, 15, 19A, 19 and 21.

ORAL HEARING

The oral hearing took place in Dublin on the 3rd June, 1992 at which Mr. Patrick J. Nerney represented the appellant and Mr. Stephen Dervan represented the respondent. Also present was Mr. Peter Patten, General Manager of the Appellant Company who also gave evidence. Mr. Nerney gave evidence as set out in his precis of evidence and said that for a number of reasons the rent of £35,000 is greater than the Net Annual Value of the subject property. He said that the subject property has a 19 foot frontage and a 40 foot depth. Mr. Peter Patten gave evidence of the background of the appellant company purchasing the subject property and said that it was initially intended as a clearing house for goods from the East. He said that they eventually had planned to sell toys in this area, which is what their other outlets concentrate on, but that they were not allowed to do so by Dunnes. Mr. Patten laid great emphasis on the fact that the turnover has been halved since "The Square" Shopping Centre opened in Tallaght. He said that it was a very poor location, and that they could do three-quarters of their business in one quarter of the area. He said that what is left in the subject centre is mainly butchers and general household provisions shops. He said that his company depended on a large throughput of people for its success. This was the case up until the opening of "The Square" Shopping Centre, as bus loads of people came from the surrounding counties to Kilnamanagh Shopping Centre. Mr. Dervan laid emphasis on the fact that the rent fixed in January 1989 was willingly entered into by the clients. With regard to this Mr. Patten said that this rent was agreed on the understanding that Dunnes Stores would not move into "The Square" Shopping Centre in Tallaght, and thereby keep a large throughput of people in the Kilnamanagh Centre. He said that this has proved not to be the case, and that the Centre has suffered substantially since that date. He said that the situation was exacerbated by the fact that Dublin Bus has also moved to "The Square". He said that they had written to Dunnes Stores demanding that the rent be reduced to £10,000.

Mr. Dervan laid great emphasis on the fact that all but two of the appeals in the Shopping Centre had been agreed with agents, and that while the increase in rateable valuation in this case was 38%, in other cases it averaged 61%. He said that Mr. Nerney had contended for a Net Annual Value of £28,000 at first appeal, but that he was now contending for a £22,000 Net Annual Value figure. Mr. Nerney queried the net annual values of the comparisons supplied by Mr. Dervan, and in particular Unit 19A, Intercontinental Travel, where he said that the Net Annual Value as

agreed between the parties was £8,250, which would indicate £29 per square foot on the unit as opposed to the £44 per square foot supplied by Mr. Dervan. Mr. Dervan agreed that the Net Annual Value was fixed by valuers at £9,240 and adjusted for the Rates Impact Factor to £8,406 yielding a rateable valuation of £52.

FINDINGS

The Tribunal have given consideration to the written submissions and the oral evidence given by Mr. Nerney, Mr. Dervan and Mr. Patten and they have come to the conclusion that the impact of "The Square" in Tallaght has been significant on the appellant, and that the understanding given by the anchor tenant, Dunnes Stores, to the appellant that they would not open in "The Square" was a significant factor in agreeing the passing rent in 1989. The Tribunal has also taken into consideration the evidence given regarding other units in the Centre. Taking everything into consideration the Tribunal has come to the conclusion that an appropriate Net Annual Value for the subject property is £25,000 and accordingly it determines that the Rateable Valuation on the subject property is £157.