

Appeal No. VA92/3/024

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

Tom Higgins & Company Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop and Yard at Lot No. 1a Howth Road, Sutton Cross, E.D. Howth, Co. Dublin
Quantum

B E F O R E
Mary Devins

Solicitor (Acting Chairman)

Brian O'Farrell

Valuer

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF DECEMBER, 1992

By notice of appeal dated 21st day of May, 1992, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £190 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that the "R.V. is excessive when compared to other properties nearby and by comparison with those of the Appellant's direct competitors."

The Property:

The subject property is situated at the Sutton Cross junction. It has 22.6 feet frontage to the Howth Road and a return frontage of 25 feet. The premises consist of a ground floor shop with preparation area, cold rooms, offices and toilets at rear.

Valuation History:

1978 Revision	Following on extension of the premises and a revision request to value the butcher shop separately, a valuation of £90 was placed on the ground floor Butcher's Shop.
1978 1st Appeal	The valuation was appealed to the Commissioner of Valuation. The Commissioner affirmed the valuation at £90.
1978 Circuit Court	On appeal to the Circuit Court the Valuation was reduced to £82.50.
1983 Revision	The premises was listed again for revision in 1983 and the valuation was increased from £82.50 to £90 to take account of an increase in the area of the shop.
1983 1st Appeal	Valuation of £90 affirmed by Commissioner.
1990 Revision	Following a revision of all commercial properties in the area in 1990, a valuation of £260 was placed on the property by the Commissioner.
1990 1st Appeal	Following an appeal to the Commissioner of Valuation the rateable valuation was reduced from £260 to £190.

Written Submission:

A written submission was received on the 14th August, 1992 from Tony Brooks and Company, B.Agr.Sc., M.I.A.V.I., Rating Consultant and Auctioneer, 106, Pembroke Road, Dublin 4 on behalf of the Appellant. In the written submission Mr. Brooks set out the valuation history of the property. He also set out a number of reasons why it is felt the rateable valuation on the property should be reduced. He stated that no structural alterations have been made to the premises for many years and that there is a lack of adequate car parking in the vicinity. He also stated that

business in the butcher trade has been on the decline for the last number of years. In the case of the subject premises business generally has been affected by the fact that the entrance to Superquinn which was formerly quite near Mr. Higgins's premises has been moved some 80 yards from its previous position. The meat counter which is operated by Superquinn has also had an impact on trade. He further stated that the adjoining occupier, Xtravision, does not complement the Appellants premises due to its different and later trading hours. Heavy traffic in Sutton Cross is a further deterrent to shoppers frequenting the premises.

In the written submission Mr. Brooks sets out an estimate of N.A.V.. (Errors in the calculation of N.A.V. were amended at oral hearing). On the basis of the figures quoted below an estimate of R.V. of £105 was suggested.

Retail Area Zone A	440 sq.ft. @ £30	= £13,200.00
Zone B	355 sq.ft. @ £15	= £ 5,325.00
Cold Store Area	629 sq.ft. @ £ 7.50	= £ 4,717.50
Balance	1126 sq.ft. @ £ 3.75	= <u>£ 4,147.50</u>
		£27,390.00

Rates Impact Factor

$$\frac{27,390 + (32.13 \times 90)}{1.202}$$

1.202

= N.A.V. £25,192

A written submission was received on the 14th August, 1992 from Mr. Jim Gormley, B.Agr.Sc., a District Valuer and Chartered Valuation Surveyor with eighteen years experience in the Valuation Office. A further written submission from Mr. Jim Gormley responding to the

Appellants submission was received on the 18th August, 1992. In the written submissions Mr. Gormley set out details of the subject property and commented on the Appellants grounds of appeal. The recent valuation history is set out. Mr. Gormley stated that the subject property was revised as part of a comprehensive revaluation of commercial property in the area in 1990. A total of 78 commercial properties were revised, including all commercial properties at Sutton Cross and Bayside Shopping Centre, Sutton. The valuations in all cases were fixed at 0.63% of Net Annual Value. The occupiers of 39 of these properties lodged appeals to the Commissioner of Valuation and to date twenty-two of these appeals have been agreed on the basis of 0.63% of an adjusted Net Annual Value - the same basis on which the subject premises has been assessed. Mr. Gormley stated that the Net Annual Value of the subject premises is based on analyses of the rent of comparable adjacent retail units. Mr. Gormley further stated that in common with all other appeals in the vicinity, the Net Annual Value assessed has been reduced by an agreed amount to allow for the possibility that an increased rate might depress the open market rental value. Mr. Gormley set out the manner in which the N.A.V. has been calculated:-

Valuation:

Street frontage 22.6 feet	
Zone A (1st 20 feet depth)	452ft ² @ £34 /ft ² = £15,368
Zone B (Next 20 feet depth)	544ft ² @ £17 /ft ² = £ 9,248
Zone C (Next 20 feet depth)	642ft ² @ £ 8.50/ft ² = £ 5,457
Remainder of premises	1,023ft ² @ £ 4.25/ft ² = £ 4,347
	<u>£34,420</u>

Net Annual Value £34,420

Adjustment of Net Annual to take account of possible impact of increased rates on letting value.

(Formula agreed with consultants)

N.A.V. + (Rate in £ x old valuation)

1.202

= £34,420 + (32.13 x £90) = £31,041

1.202

R.V. £31,041 x 0.63% = £195 say £190

The following comparisons were offered by Mr. Gormley:-

	<u>Floor Area</u>	<u>Frontage</u>	<u>N.A.V.</u> <u>Adjusted</u>	<u>Ratio</u> <u>Applied</u>	<u>R.V.</u>
Appellant	2661 sq.ft.	26.6' (+ 25' return frontage)	£31,041	0.63%	£ 90
Keogh	2115 sq.ft.	21.6'	£26,887	0.63%	£169

Analysis No. 1

Unit 5 - Keoghs Newsagency

Let 1/10/1990 35 years. 5 year reviews. Rent: £24,000 p.a.

Frontage 19.8 feet

Area 806 ft²

Zone A 396 ft² @ £40/sq.ft. = £15,840

Zone B 396 ft² @ £20/sq.ft. = £ 7,920

Balance 14 ft² @ £10/sq.ft. = £ 140

£23,900

Say £24,000

Analysis No. 2

Unit 4 - Robert Redmond, Bookshop

Let December 1990 35 years, 5 year reviews. Rent £23,000 p.a.

Frontage 19.8 feet

Area 841 ft²

Zone A396 ft ² @ £38	= £15,048
Zone B396 ft ² @ £19	= £ 7,524
Balance 54 ft ² @ £ 9.50	= <u>£ 513</u>
	£23,085

Say £23,000

Comparisons (Cont)

Valuations agreed at 1990 first appeal

Property	Ratio	R.V.	Agent
Keoghs 2a Howth Road (adjoining)	0.63%	£169	Martin Kelly
Jacinta Trading 1a/10 Sutton Cross	0.63%	£130	Martin Kelly
Arnold & Green 1a/11 Sutton Cross	0.63%	£105	Martin Kelly
Cafe Cairn 24a Harbour Road	0.63%	£ 70	Martin Kelly
Tom Higgins 1b Howth Road	0.63%	£ 33	Martin Kelly
Costello T.V. 1c Howth Road	0.63%	£ 30	Martin Kelly
Xtra-vision 2b Howth Road	0.63%	£ 23	Martin Kelly
Superquinn 4 - 9a Howth Road	0.63%	£ 14	O'Buachalla & Co.
Brian McMahon 15 Howth Road	0.63%	£70	Martin Kelly
Wardway Investments 182b Howth Road	0.63%	£ 40	Martin Kelly
K & M Cars 181a Howth Road	0.63%	£ 80	Martin Kelly
Noel Kavanagh	0.63%	£ 30	Martin Kelly
Joan McKiernan 36 - 37 Baldoyle Road	0.63%	£375	O'Buachalla & Co.
Supervalue Bayside Sutton	0.63%	£285	O'Kennedy & Co.
Francis Breslin 8 Bayside Sutton	0.63%	£ 63	O'Kennedy & Co.
Alan Donnelly 12 Bayside Sutton	0.63%	£ 45	O'Kennedy & Co.
Sutton House	0.63%	£585	O'Buachalla & Co.
12 Appeals			Martin Kelly
Baldoyle Shopping Centre	0.63%	Various	O'Donnell & Co.

In summary Mr. Gormley stated that the Net Annual Value is fairly based by reference to prevailing rental levels and particularly in relation to the adjoining premises the rent of which has been recently reviewed. He referred the Tribunal to the judgment in the case of **VA/92/1/23 - Swords Hardware Stores Limited V The Commissioner of Valuation**. In his further submission Mr. Gormley commented on the reasons put forward in Mr. Brooks submission as to why the R.V. should be reduced.

Further information provided by Mr. Gormley on the comparisons offered in his first submission and on cases agreed with Mr. Brooks in County Dublin are attached as Appendix A.

Oral Hearing:

At the oral hearing which took place in Dublin on 19th August, 1992 Mr. Tony Brooks of Messrs. Tony Brooks & Company, represented the Appellant. Mr. Jim Gormley of the Valuation Office appeared on behalf of the Respondent. Also present to give evidence on behalf of the Appellant were Mr. Martin Kelly, Valuer and Mr. & Mrs. Tom Higgins.

Mr. Brooks referred to his written submission dated 13th August, 1992 and stated that the difference between his calculation of area at 2530 sq.ft. and that of the Respondent at 2661 sq.ft. related to passages, which, he felt, should not be included for valuation purposes.

Mr. Brooks stressed the current disadvantages of the subject premises which made the increase in R.V. from £90 to £190 seem harsh and inequitable to the Appellant. In particular he mentioned the enlarged meat counter in the nearby, reconstructed Superquinn and the relocation of the new entrance to Superquinn to a point further away from the subject. He also pointed out that the premises immediately adjoining the Appellant's shop, being Xtravision and a bank, were not of the type to attract customers to a butchers business.

In relation to the immediately adjoining premises, namely, Xtravision, on which the Respondent's valuer had placed such reliance as a comparison, Mr. Brooks explained that this property had been occupied for many years by Keoghs Newsagents until 1990 when Keoghs moved to one of the new, smaller units built by Superquinn and sold their leasehold interest to Xtravision. In his opinion Xtravision seemed to pay higher rents than normal for its premises and accordingly the rent passing for such premises did not represent a true N.A.V..

In the course of the hearing Mr. Brooks accepted the Respondent's application of the .63% fraction to N.A.V. but stated that the essential difference between the parties was the estimate of N.A.V.. There was also agreement between the parties as to the application of the "rates impact factor".

Mr. Kelly gave evidence in relation to his agreement with the Respondent in relation to the adjoining premises, formerly Keoghs, now Xtravision. He stated that his clients had instructed him to accept the Respondent's figure for R.V. in spite of his advice to the contrary.

Mr. Higgins, in evidence, said that he had carried on his business in the subject premises for 20 years. Like his neighbours, Keoghs, he had recently attempted to move to one of the new Superquinn units, but his application had been unsuccessful. He explained that he had experienced a huge drop in retail business since the opening of the meat counter in Superquinn, and that his location at the exit from the supermarket was not good for business. Most potential customers would park their cars in the supermarket carpark and shop at the butcher's counter in Superquinn before driving out past his premises.

Mr. Gormley referred to the many agreed cases in the same area as the subject, all of which were set out in his written precis dated 11th August, 1992.

He dealt specifically with the adjoining retail premises occupied by Xtravision which, he said, had been agreed with Mr. Kelly at 1990 First Appeal. Mr. Gormley stated that this property was an excellent comparison, being immediately in the vicinity, in retail use and recently revised.

Recent revisions, particularly in shopping centres in the Dublin area, had often resulted in increases of 100% - 200% in R.V.'s but, he contended, these increases were necessary, as in the instant case, in order to have equity and uniformity in the system.

He pointed out that, in his opinion, the subject was a better property than Xtravision and said that the basis of assessment and calculation of areas were the same for both properties. Dealing with the question of the inclusion of passages in the calculation of area, Mr. Gormley stated that this method of calculation had been agreed by the Circuit Court in 1978.

Findings:

The Tribunal accepts that the evidence offered in relation to the adjoining premises is particularly compelling since the said premises fulfil all the relevant legislative criteria in relation to comparative properties.

It accepts too the Respondent's calculation of area and the agreed application of the rates impact factor and of the .63% of Net Annual Value.

The fundamental difference between the parties being their respective estimates of N.A.V., the Tribunal has been particularly mindful of what the hypothetical tenant would pay for the subject premises, taking into account the usual outgoings. It notes and accepts the Appellant's evidence in relation to the downturn in his butchers business but is of the opinion that the property should be valued "as a retail unit on the basis of what it would let for in the open market", as contended by the Respondent.

While there is no doubt that this property is located in an attractive and commercially successful area, the Tribunal is prepared to look behind the actual rent passing on the Xtravision premises and considers that this rent may not represent a true N.A.V..

In all the circumstances the Tribunal considers that the Net Annual Value of the subject property is in the region of £25,000 and that the correct Rateable Valuation is £150 and so determines.