

Appeal No. VA92/3/028

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

Fruit of the Loom International Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Factory and Grounds at Map Ref: 1FGx, Townland of Ballymacarry Lower, E.D. Buncrana
Urban, Urban District of Buncrana, Co. Donegal
Ratio - Buncrana and Quantum

B E F O R E

Henry Abbott

S.C. Chairman

Mary Devins

Solicitor

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF DECEMBER, 1993

By Notice of Appeal dated the 27th day of May, 1992 the appellant appealed against the determination of the Commissioner of Valuation in fixing a Rateable Valuation of £3,000 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:

"The Grounds of Appeal at Tribunal stage are:-

- (a) The valuation is excessive and inequitable.
- (b) The valuation is bad in law.
- (c) No account is taken of the Net Annual Value in determining the Rateable Valuation assessment of this hereditament.
- (d) The Respondent erred in law in fixing and determining the said valuation in that he

failed to have any or any proper regard to the provisions of the Valuation Acts and in particular Section 5 of the 1986 Act.

- (e) The valuation is bad in law as the fraction of 0.63% being applied to the annual value is excessive and does not comply with the requirements of Section 5 of the Valuation Act 1986.
- (f) The valuation is bad in law as a different fraction is being applied to the Urban District of Buncrana relative to the rest of the County.
- (g) The valuation is bad in law as a different fraction is being applied to the Urban District of Buncrana relative to other rating authorities in the Country. Such differences in treatment run counter to the spirit of the Valuation Acts and in particular run counter to the preamble to the Valuation (Ireland) Act of 1852.
- (h) The valuation is excessive, inequitable and bad in law having regard to the particular location of the hereditament the subject matter of this appeal and the difficulties associated therewith.

Result of First Appeal

As a result of the First Appeal the valuation was reduced from £3275 to £3000."

Valuation History

The property was last assessed for rating purposes under VA/90/1/009 when the Tribunal determined a rateable valuation of £2,200. In 1990 Buncrana Urban District Council listed the property for revision of valuation in order to value ongoing developments. As a result of this request the valuation was increased to £3,275. The appellant was aggrieved by this decision and appealed to the Commissioner of Valuation. Mr. John Colfer was deputed to inspect the premises and report. Having considered the report by Mr. Colfer, the Commissioner of Valuation reduced the valuation to £3,000.

The Property

The property is situated in the townland of Ballymacarry Lower approximately one mile south east of Buncrana and comprises part of a large industrial complex. The buildings are of modern design and construction and comprise warehousing, factory and office accommodation. The external floor areas were agreed between parties.

Written Submissions

Written submissions were received from the respondent and the appellant on the 3rd and 4th March, 1993 respectively, the said submissions are annexed hereto and Numbered 1 and 2.

Oral Hearing

The oral hearing took place in Letterkenny on the 11th day of March, 1993 and again in Buncrana on the 9th day of July, 1993 and the 21st day of September, 1993 with an inspection of the premises on the 8th day of July, 1993.

The appellant was represented by Tom Mallon, Barrister-at-Law instructed by Dockrell Farrell Solicitors and the respondent was represented by Aindrias O'Caoimh, Barrister-at-Law instructed by the Chief State Solicitor. Also present were Mr. Patrick McCarroll, Valuer, who gave evidence on behalf of the appellant and Mr. John Colfer of the Valuation Office on behalf of the respondent.

From the outset the appellant, through the evidence of Mr. McCarroll and the submissions of Mr. Mallon, challenged strongly the valuation of the premises as set out in Section 6 of Mr. Colfer's submission. A challenge was also made to the rentals used by the Tribunal in its earlier determination in July, 1991, in respect of the larger part of the premises. The application of the ratio of .63% was challenged on the basis of inconsistency with recent valuations in the town of Buncrana. The entitlement of the appellant to a quantum allowance regardless of the basis for determination of N.A.V. on a square footage or area basis was strongly pressed. Mr. O'Caoimh argued strongly against the quantum allowance. Some comparisons were considered and canvassed by both sides. Mr. McCarroll submitted in evidence a summary of N.A.V.s in Buncrana U.D.C. on a sheet annexed hereto and marked Appendix 3, and the 1992 data were analysed and debated in relation to the percentage on the second last column adduced by Mr. McCarroll. Taking them consecutively the arguments were as follows:-

- (a) In relation to 47b Upper Main Street, Mr. Colfer argued that the rent of £16.00 per square foot was far in excess of the N.A.V. and thus distorted the ratio downwards.
- (b) In relation to 34, Upper Main Street, Mr. Colfer indicated that the owner was seeking £4,000 per year and thus the resultant ratio would increase.
- (c) In relation to 12a Lower Main Street, (Office) the premises had been valued on a nominal basis as it was unoccupied and that it would be listed for revision and would be treated in a new way.

- (d) In relation to 12b Lower Main Street, the passing rent did not represent a true N.A.V. as the Landlord was paying all outgoings and the ratio of .5% ought to be increased.

At this point Mr. Mallon challenged the respondent to produce exhaustive data in relation to recent valuations in Buncrana and the hearing was adjourned to enable this to be done. The parties exchanged details of lettings and valuations, and the respondent's submission is contained in the addendum received by the Tribunal on the 10th September, 1993.

Adjourned Hearing

Data contained in the respondent's addendum were challenged at length by the appellant. In particular the data for the 1989 revision was challenged. Having regard to the fact that same apparently pre-dated a directive given nationally in relation to the application of certain percentages, including the percentage of 0.63% to Buncrana. The analysis of the ratio in 1989 was hampered by the lack of any real letting market due to the owner occupation of most of the premises. Nevertheless, there was considerable debate in relation to what the level of the ratio should be and an issue has arisen in relation to same.

The parties discussed the comparisons. The quantum allowance was again canvassed. By this stage the Tribunal had the benefit of an inspection of the premises and found same to be of a very extensive nature.

Findings

The Tribunal finds that the attempt to establish a ratio from the analysis of the empirical data presented, especially that of 1989 and some of 1992 revisions as referred to, is not very helpful. It emerges that the data is very unreliable and the Tribunal finds that in the absence of a definite trend away from 0.63% that this ratio should continue to apply until a more definitive analysis based on full facts is presented. The Tribunal doubts if in the Buncrana retail situation such figures can be produced, as Mr. Colfer has indicated that all recent revisions have been carried out on the basis of the applicability of the 0.63% ratio. The Tribunal finds no reason to depart from the 0.63% ratio at this time. In relation to the more recent valuations used, the Tribunal finds that inconsistencies arising should not direct it in some other way if the 0.63% ratio was genuinely applied as Mr. Colfer said, to data supplied by occupiers which was shown subsequently to be inconsistent with the facts.

Valuation

The Tribunal has considered the earlier judgement of the Tribunal and finds that having regard to the state of the art nature of the premises, even in relation to adapted buildings, and the superiority of the location in socio-economic terms, the general basis of valuation ought to remain the same. However, the Tribunal considers that the sheer extent of the space available in the subject would constitute a tremendous overhang of commercial space in the Market in Buncrana if the same were to be put up for letting on a vacant possession basis. The Tribunal has heard evidence of the difficulty in obtaining a new occupant for the Saehan Media Ireland Limited premises in Sligo - a premises offered as a comparison and of the provincial location of the premises of the subject hereditament and bears these factors in mind in relation to the quantum allowance. A quantum allowance of some extent beyond that conceded by Mr. Colfer should be allowed. In so deciding the quantum allowance, the Tribunal states that such quantum allowance is to be determined in each case having regard to the actual market situation pertaining or likely to pertain and not in a mechanical way.

Mr. Mallon on behalf of the appellant referred to certain arguments made in the Tribunal hearing in relation to the premises determined in July, 1991, regarding the influence of cost of construction and/or acquisition involving an arrangement with the I.D.A.. The Tribunal does not consider that these arguments were the determinant of the appeal on the last occasion and insofar as that was reflected in the appeal decision the Tribunal does not consider them to be of any additional help in the present appeal. While the office complex on inspection did appear to be more lavish in fitout and internal construction than described in the 1991 judgement, the Tribunal does concede that the argument on the quantum allowance would probably apply as strongly to such a complex.

Having regard to the foregoing the Tribunal determines the valuation of the subject to be £2,700 in respect of buildings with land at £8.35 remaining the same, giving a total valuation of £2,708.35.