

Appeal No. VA92/6/023

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

Liam Cashman

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Betting office at Lot No: 1/3A, Cross Road, Townland: Douglas, E.D. Douglas, Co. Cork
Quantum

B E F O R E
Henry Abbott

S.C. Chairman

Joe Carey

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

Paddy Farry

Solicitor

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

By Notice of Appeal dated 29th day of October, 1992 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £40 on the above described hereditament.

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

"The valuation is grossly excessive. We did not get a fair hearing from the Appeal Valuer. He did not enter into the normal process of negotiation nor take account of comparable evidence. He did not even answer letters."

The Property:

The property comprises a licensed betting shop with plot of ground at front and rear. The property is located on Cross Road formerly known as Church Street, close to the junction with Passage Road which is the main street in the Village of Douglas close to all the retail activity including two major shopping centres Douglas Court and Douglas Shopping Centre and adjacent to two public houses.

Valuation History:

The property was first valued in 1941 as a shop with small garden attached with a rateable valuation of £5.

In 1969 this was increased to £10 and description amended to include betting shop. At this time the betting activity was confined to an annexe to the side of the shop.

In 1991 the valuation was again revised at the request of Cork County Council to take account of improvements. Following this revision the valuation was increased to £40. An appeal was lodged against this assessment but no change was made at First Appeal by the Commissioner of Valuation.

Tenure:

The property is held on a 35 year lease, with 5 year reviews, from October 1989 at annual rent of £4,000 p.a.. In addition to the annual rent a capital payment of £21,000 was also made.

Written Submissions:

A written submission was received, on behalf of the appellant, from Mr. David J. Daly of David J. Daly (Property Sales) Limited, 33, Grand Parade, Cork, on the 1st June, 1993. In the written submission Mr. Daly described the premises and accommodation and said that the internal floor area comprised 441 square feet and in addition there was a rear garden which measures 35' x 35'. This garden was not utilised. He said that the premises consisted of a single storey lock-up shop situated in the Village of Douglas, in a secondary location off the Main Street and a predominantly residential location.

He said that his firm had acted on behalf of Liam Cashman in negotiating the purchase of the Goodwill and Licence to Trade attaching to this premises for the sum of £21,000. In addition they had negotiated a lease on behalf of the client for a term of 35 years from the 4th November,

1988 at £4,000 per annum with 5-yearly rent reviews. He confirmed that this was deemed to be the current rental value attaching to the premises as at the 4th November, 1988. Accordingly, Mr. Daly stated that the rateable valuation for the above premises should be £25 which represents the current rental value as at November 1988 by the agreed multiplier.

Mr. Daly offered four comparisons:-

1. Betting Office at Sullivans Quay, Cork occupied by Cashman Bookmakers. Internal Floor Area - 482 square feet.
Rateable Valuation: **£26.00.**
2. Betting Office at 11, Shear Street, Cork. Internal Floor Area - 258 square feet. Rateable Valuation: **£12.00.**
3. Betting Shop at Ballyhooley Road, Cork occupied by Cashman Bookmakers. Internal Floor Area - 470 square feet.
Rateable Valuation: **£22.00.**
4. The Carpet Shop, Magazine Road, Cork. Internal Floor Area - 853 square feet. Rateable Valuation: **£33.00.**

A written submission was received on the 4th June, 1993 from Mr. Peter Conroy, a District Valuer with 23 years experience in the Valuation Office, on behalf of the respondent. In the written submission Mr. Conroy set out details of the property, location, tenure and the valuation history as set out above.

Commenting on the grounds of appeal Mr. Conroy said that the valuation was not excessive and had been assessed in accordance with the requirements of the Valuation Acts and in particular Section 5, subsection 1 and 2 of the Valuation Act, 1986 in that it is comparable with recently revised hereditaments of a similar function. Mr. Conroy said that on appeal the property had been inspected and surveyed by the Appeal Valuer, that the matter had been discussed with the appellants agent on two separate occasions in the office in Grand Parade and every effort had been made to explain to the appellants agent the basis of the valuation. Mr. Conroy said that negotiations had been entered into in the course of which an offer to settle had been made but this had been rejected. He also said that comparable evidence had been taken into account and these were set out in his written submission.

Mr. Conroy set out his calculation of the rateable valuation on the subject premises as follows:-

Valuation:

Nett Area 452 sq.feet @ £14 = £6,328

N.A.V. £6,300 @ .63% = £39.69

Say £40

Mr. Conroy stated that the rent passing at October 1989 did not equate to the Net Annual Value because:-

1. Capital payment of £20,000 had to be taken into account when assessing true rental value.
2. Expenditure of £31,000 on improvements had also to be taken into account.
3. Net Annual Value at November 1988 cannot be treated as a point frozen in time. He said that since then the retail levels in the Village of Douglas had changed enormously with the opening of Douglas Court Shopping Centre, the refurbishment and extension of the old Douglas Shopping Centre and general increase in demand for retail space in the Village.
4. Rental evidence from other lettings in 1988/89 would indicate that rent passing was below normal and not acceptable as Net Annual Value.

Mr. Conroy offered 4 comparisons as follows:-

1. Lot 1/5 Passage Road - Occupier: Joseph O'Donovan - 1990 First Appeal Decision - N.A.V. £15,000 @ .63% = £94.50 Say £95
2. Lot 1/6a Passage Road - 1990 First Appeal Decision - Occupier: Irish Nationwide Building Society
N.A.V. £7,100 @ .63% = £45

3. Lot 1/6c Passage Road - Occupier: Joseph O'Donovan - 1990 First Appeal Decision - N.A.V. £5,500 @ .63% = £34.65 Say £35
4. Lot 1/8a Passage Road - Occupier: E.C. Buckley & Co. Ltd. - 1992 Revision - N.A.V. £8,500 @ .63% = £53.55 Say £55
5. Lot 1/40 Passage Road - Occupier: Oakvale Tavern Limited - 1992 Revision - N.A.V. £9,800 @ .63% = £61.74 Say £62
6. Lot 1/39a Passage Road - Occupier: Final Touch Boutique - 1992 Revision - N.A.V. £10,000 @ .63% = £63
7. Lot 1/38 Passage Road - Occupier: Susan Cogan - 1991 First Appeal N.A.V. £5,000 @ .63% = £30

Oral Hearing:

An oral hearing took place on the 15th June, 1993 in Cork. The appellant was represented by Mr. David J. Daly, M.I.A.V.I., and the respondent was represented by Mr. Peter Conroy of the Valuation Office. The precis of evidence submitted by Mr. Daly on behalf of the appellant was opened and considered by the Tribunal. Mr. Daly, in extending his submissions, argued that the subject premises was located in a secondary location off the Main Street. He argued that East Douglas was the main shopping area and that the subject premises was located in Church Street. He stated that the subject premises was the only commercial premises located on Church Street except for a premises located at the very end of the street. He indicated that council housing was located immediately adjacent to the subject premises. He indicated that he had remeasured the premises and that the total square footage was 445 square feet. Mr. Conroy, for the respondent, indicated that he was prepared to accept this measurement.

Mr. Daly advised the Tribunal that the subject premises was offered for sale in July 1988. He indicated that he was involved in negotiation of the purchase of the premises on behalf of the present owner, Mr. Liam Cashman. He indicated that the payment of £21,000 referred solely to the value of the goodwill and the value of the Certificate of Suitability of the premises and did not relate in any way to the rent of the premises which was based on the current rental value in 1988 and was arrived at on a valuation of £9 per square foot amounting to £4,000 per annum.

Mr. Daly handed in a copy Indenture of the 9th day of February, 1989 between Delia Moynihan and Deirdre O'Halloran of the one part and William Cashman of the other part. On examination of this document the consideration of £21,000 does not appear to have been attributable to the goodwill, or the benefit of the Certificate of Fitness attaching to the premises, but the Tribunal accepts that the consideration of £21,000 did reflect a certain figure in respect of the purchase of the existing goodwill, and the Certificate of Fitness attaching to the premises.

The subject premises is located adjacent to two public houses. Mr. Daly indicated that he did not accept that there was expenditure of £31,000 on improvements, although he accepted that this figure was submitted by him to Mr. Conroy. He indicated that when he returned to query the figures with Mr. Cashman, Mr. Cashman advised that these figures were incorrect and he, Mr. Daly, was now suggesting that perhaps Mr. Cashman had taken into consideration the purchase money of £21,000 when arriving at the figure of £31,000. Mr. Conroy indicated that these were figures which were given to him by Mr. Daly and that he did not know what the condition of the premises was when it was purchased by the applicant and accordingly was not in a position to say whether or not this amount of money was expended in repairs or renovations.

Mr. Daly argued that his comparisons in relation to the Betting Office at Sullivans Quay, Cork occupied by Cashman Bookmakers was a valid comparison as was the Carpet Shop, Magazine Road.

The precis of evidence submitted by Mr. Conroy was opened and considered by the Tribunal. Mr. Conroy referring to the Carpet Shop at Magazine Road indicated that the freehold of this premises was bought by the existing tenant for the price of £19,000. He argued that this comparison bore no resemblance to the subject property. He stated that the Carpet Shop was a disaster. It was a retail space effectively being used as a showroom or storeroom for carpets. He indicated that the Betting Office at Sullivans Quay, Cork was last reviewed in 1979.

Mr. Conroy indicated that the subject premises was only a gable wall away from the Main Street of Douglas Village. At the rear of the premises was a Supermarket. He indicated that the subject premises was as near to the High Street as one could get. He indicated that he had not valued the premises on the same basis as the premises in the High Street and that his valuation fairly reflected the secondary location of the premises.

He argued that the Betting Act of 1931 did not prevent a person from applying for a Certificate of Suitability. He indicated that there were only two Bookmaker Shops in the locality and he did

not think that an application for a third would be unreasonable. He stated that Ladbrokes occupied the other Bookies Office in Douglas. He stated that this premises had not been valued since 1982 and that its value was based on a previous user and not as a Bookmaker's Shop.

He referred the Tribunal to the various comparisons set out in his precis and in particular stated that Numbers 5, 6 and 7 were the most recently let premises in the location. He indicated that No. 5 was a Coffee Shop paying a rent of £13,000 per annum, No. 6 was a Boutique paying a rent of £15,000 per annum and No. 7 was paying a rent of £6,000 per annum. Mr. Conroy argued that the present rent of £4,000 in respect of the subject premises did not reflect the N.A.V., and may have been a sweetheart deal.

Mr. Daly, in rebuttal, argued that Mr. Conroy's comparisons were not relevant nor really comparable. He indicated that the comparison at No. 2 related to the Irish Nationwide Building Society was not relevant as the Irish Nationwide Building Society would not touch or be interested at all in the subject premises. He indicated that it was the location that was important and not the use of the premises. He indicated that, in his view, location had to do with pedestrian traffic flow. He argued that just to the north of the subject premises was the entrance to the Douglas Shopping Centre. He argued that nobody (implying pedestrian traffic) came down Church Street as there was no need to do so. He argued that the central shopping area was valued by Mr. Conroy at £16.50 per square foot and he would expect a reduction of one third in view of the subject premise's secondary location. When questioned by the Tribunal he indicated that he would be prepared to accept a valuation based on a rent of £11 per square foot.

Mr. Daly further argued that there was a case to be made for zoning the subject premises on a Zone A and B basis. He indicated that even on Mr. Conroy's figures assuming that you zoned the main area of 300 square feet on Mr. Conroy's figures and 145 square feet at half of the £14 mentioned by Mr. Conroy, that you would arrive at a figure of £5,200 for N.A.V..

Determination:

The Tribunal having regard to the evidence adduced by Mr. Daly and Mr. Conroy, is satisfied that a certain element if not all of the consideration of £21,000 referred to the purchase of the goodwill of the existing business, and to the Certificate of Fitness that existed in respect of the subject premises. Having regard to the submissions made by Mr. Daly and Mr. Conroy, the Tribunal is satisfied that the R.V. should be £34 and so determines.

