

Appeal No. VA93/2/012

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

Vincenzo & Francesca Di Cioccio

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: House and Restaurant at Map Ref: 323, Clontarf Road, Ward: Clontarf East, County
Borough of Dublin
Quantum

B E F O R E
Henry Abbott

S.C. Chairman

Veronica Gates

Barrister

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF SEPTEMBER, 1993

By Notice of Appeal dated the 10th day of May, 1993 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £95 on the above described hereditament.

The grounds of appeal are:-

"as already submitted, that the demands are excessive in the extreme and if upheld would force another business to close. After all £800 in 1991 and up to £2,408 in 1992, i.e., 300% for No. 323 and from £1,006 in 1991 for No. 328 to £1,407 in 1992, i.e., 50%. Daylight robbery don't you think?"

The Property:

The subject property is situated in Clontarf close to the junction of the Clontarf Road and the Bull Wall and North Bull Island.

It is an end of terrace restaurant and take-away shop known as Cafe Capri, with domestic accommodation to the rear and overhead. To the side and rear there is a yard, and also buildings containing cold store, food preparation area, toilets, domestic stores and motor house. The tenure of the property is freehold.

The ground floor consists of sittingroom, livingroom and kitchen and the first floor consists of three double bedrooms and boxroom, bathroom with bath, w.c., and wash hand basin. There is gas-fired central heating throughout the house and restaurant.

Written Submissions:

A written submission was received on the 2nd September, 1993 from Mr. Peter Igoe of Northside Estates, representing the appellant. In his submission Mr. Igoe described the property in question as being an end of terrace retail outlet with living accommodation overhead where the family reside, with a drive-in yard to the side and a utility shed.

He said that in 1985 the appellant applied for planning permission for two rooms overhead but didn't go ahead as there was a shortage of funds. He also stated that in 1985 the appellant applied for a new kitchen but again it was left undone as finances did not permit. In 1989 a new front was constructed to the shop to try to improve matters.

Mr. Igoe also states that a 5% to 10% increase might be manageable but an increase of 125% is out of the question. Mr. Igoe's submission included a copy of a letter to Mr. Thomas O'Flynn of the Valuation Office dated the 5th February, 1993 in which Mr. Igoe suggested that the letting figure for November 1988 would be £10,000 per annum of which £7,500 would be for the shop and restaurant and £2,500 per annum for the residential portion. He said that based on that figure a true rateable valuation would be £63 with £15.75 for the residential portion and £47.25 for the shop. He also stated in this letter that the business is of a seasonal nature, July to August, which over the last four years had dwindled beyond recognition.

Mr. Igoe stated in this letter that Mr. Cioccio also claims that the corporation no longer clean outside his shop, that his water is metered, that he has to pay to have his own garbage collected twice weekly and that he is now being asked to pay more for less service.

A written submission was also received on the 3rd September, 1993 from Mr. Thomas O'Flynn, a Valuer with 13 years experience in the Valuation Office, on behalf of the respondent. In his submission, Mr. O'Flynn described the property and its location and he stated that the property appears to be in good condition throughout.

Commenting on the appellants grounds of appeal, Mr. O'Flynn stated that the increase referred to, took place as a result of routine revision of rateable valuations. Increases or decreases in valuations should not *per se* be called into question, so long as the valuations themselves remain equitable. The revision of a rateable valuation, he said, should take account of the actual property and its value.

In his submission Mr. O'Flynn set out the breakdown of the rateable valuation of £95 as follows:-

Net Annual Value (as at November, 1988):

Shop/Restaurant	489 sq.ft. @ £21.00 =	£10,269.00
Food Preparation Area	116 sq.ft. @ £ 5.00 =	£ 580.00
Cold Store	55 sq.ft. @ £ 5.00 =	£ 275.00
Store	113 sq.ft. @ £ 1.00 =	£ 113.00
Domestic	£75.00 per week =	<u>£ 3,900.00</u>
		£15,137.00

Rateable Valuation:

£15,137.00 @ 0.63% = £95.36

Say **£95.00**

Attached to the submission were details of three comparative properties in the Clontarf area and these are annexed to this judgment as Appendix A.

A location map and photograph were also attached to the submission.

Oral Hearing:

The oral hearing took place in Dublin on the 6th September, 1993. Mr. Peter Igoe of Northside Estates appeared on behalf of the appellant with Mr. Vincenzo Di Cioccio, appellant. Mr. Thomas O'Flynn appeared for the respondent.

While Mr. Igoe argued that Mr. Di Cioccio found that it was difficult to survive in business and that the comparisons offered by the respondent were in a better location, the Tribunal was forced to consider the passing rent of the premises also on appeal Map Ref: 328 part, Clontarf Road, known as Seaview Minimarket. The valuation of this premises was conceded by Mr. Igoe as not being unreasonable. This premises was owned by the appellants. Mr. Di Cioccio claimed that he purchased same not for the purpose of making a profit from it but for the purpose of excluding a business such as a Chinese Take-away which would have disastrous consequences on his business. Nevertheless the premises was let in March 1988 at passing rent of £7,500.

Mr. Igoe argued that the minimarket had not produced a stable occupant and that any premium on the lease was for the purpose of securing some type of constancy of tenure on the part of tenants by giving them a stake in the premises rather than to represent any type of profit rent. The minimarket had changed hands on an assignment and there was a sum which changed hands between the original lessee and the assignee. Mr. Igoe argued that such sum did not constitute an equity arising from the rental of the premises, but rather constituted a small sum towards the minimal goodwill built up by the original lessee. The present lessee is reluctant to engage in a rent review having regard to the fact that rates have increased by reason of the pending revision and appeal procedure.

The Tribunal is satisfied that there should be some allowance made for the inferior location of the premises relative to Clontarf and Vernon Avenue comparisons, and also due to the instability of the tenure of the other premises owned in the block by the appellants. The Tribunal, therefore, considers that having regard to all the circumstances of the case, a valuation of £80 is appropriate for the subject House and restaurant, and so determines.

