

Appeal No. VA95/1/065

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

James V. Walsh

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices at Map Ref: 18ab/1, Patrick Street, Townland: Fermoy (pt of), Ward: Fermoy Urban, UD: Fermoy, Co. Cork
Quantum - Controlled tenant, lease

B E F O R E

Henry Abbott

S.C. Chairman

Paddy Farry

Solicitor

Patrick Riney

FRICS.MIAVI

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF NOVEMBER, 1995

By Notice of Appeal dated the 24th day of April 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £60 on the above described hereditament.

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

- "1) the valuation is excessive and does not take into account:
- (a) other valuations in the area for premises of similar area.
 - (b) the special difficulty on the property arising out of a right of access to the top floor through the centre of the building.
 - (c) the letting value of the building as at 1988."

The Property:

The property comprises a three storey terrace dashed/concrete, rubble masonry and slate building in Patrick Street, Fermoy. The hereditament under appeal comprises the ground and first floors used as solicitor's offices.

Tenure:

The property was let to the appellant from 1987 to 1990. The actual rent paid for the year on the 30th June 1988 was £4,669 for the entire building. In 1990 the property was purchased for £40,000 by the appellant.

Valuation History:

Since 1937 the building has had two valuations. In 1959 the subject was revised and amended to:-

18a	House (part of), shop and yard	£13.00
18b	House (part of), and yard	£12.50.

This valuation was reduced to £10 on appeal.

In 1965 there was a further revision of 18b which resulted in:-

Description:	Offices (gr. fl, 1st fl.) and yard	£12.50.
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The divide between lots 18a and 18b was a vertical spilt of the building so that each hereditament had ground floor, first floor and second floor space. Both lots were listed for revision in 1994. They were amalgamated and a valuation of £30 was placed on the ground and first floor with £5 on the second floor flat. The first figure was appealed and increased to £60 on the basis of an NAV increase from £6,000 to £12,000. It is against this determination of the Commissioner of Valuation that an appeal lies to the Tribunal.

Written Submissions:

A written submission was received on the 27th day of September 1995 from Mr. James Walsh, the appellant.

In his written submission, Mr. Walsh set out the law relating to valuations. He described Fermoy town in terms of its industrial base and recent developments. He described the

valuation history and made the following comments in relation to the rent of the subject premises in 1987. Mr. Walsh said that the advice of Mr. Brendan O'Meara, Auctioneer had been obtained in relation to the rental value of the subject premises. He said a figure between £4,500 and £5,000 had been assessed and that the latter figure had been paid for 1987 and following years. He said that this particular figure had had no reference to the access problems. Mr. Walsh described the access problems as the following:-

- (1) No access whatsoever to the rear of the building and any repairs or developments are both disruptive and expensive.
- (2) There is a tenancy on the top floor of the office building at a rent of 0.50p per week.

Efforts to remove the right to reside or indeed to raise the rent have proved unsuccessful, he said. He said that this access situation had created major difficulties in terms of occupation of the premises, security and the requirement to close and lock each night and each lunch time six internal doors and three external doors. He said the lettability of the premises with these restrictions must be seriously in doubt. Based on the above points, Mr. Walsh argued that the fact that £5 had been put on the top floor led to the inescapable conclusion that the ground and first floor should be rated at a figure not greater than £14.50. Mr. Walsh offered comparisons of adjacent premises which are summarised below:-

- (1) **Slattery Chemist**
 Pearse Square, Fermoy, Co. Cork.
 968 sq.ft. on the ground floor
 450 sq.ft. on the first floor
 450 sq.ft. on the second floor
 450 sq.ft. on the third floor

Rent was set by a fully contested hearing of the Circuit Court 14/10/82 at £80 per week gross of any tenants improvements with rates on entire premises. A rent review of the subject property was due at the 14/10/87 but it was considered that no alteration to the rent would be allowed by the Circuit Court at that time and accordingly, no application for a review was made until December 1991 when rent was fixed by agreement without determination by the Court.

- (2) **Kevin Fahy's Supermarket**
 Pearse Square, Fermoy, Co. Cork.
 1,100 sq.ft. on the ground floor

Rent was set by fully contested hearing of the Circuit Court in 1982 and appealed to the High Court some time later with same results namely £50 with rates.

(3) Patrick Gould, Victualler

Patrick Street, Fermoy, Co. Cork. Situate on the north side of Patrick Street.

Rent set by a fully contested hearing of the Circuit Court at Kanturk in late 1981 at £50 per week plus rates.

(4) Cavanagh's Office Building

For years between 1985 and 1989 office space advertised and available at McCurtain Street, Fermoy and was not let.

(5) Royal Liver Building

Vacated two years ago by an insurance company and building has remained vacant though available to let.

(6) Noel Henley Filling Station

Tallow, Co. Waterford.

Rent set by the Circuit Court in 1982 at £50 per week.

(7) 59 Patrick Street, Fermoy, Co. Cork

Premises comprising a bar (500 sq.ft.), restaurant (60 persons) and night-club (220 persons) with upstairs living accommodation was let at a figure of £10,000.

A written submission was received on the 28th day of September 1995 from Mr. Terry Dineen, District Valuer with 20 years experience in the Valuation Office on behalf of the respondent.

In his written submission he described the premises, its valuation history and tenure. Commenting on the grounds of appeal Mr. Dineen said that the net annual value on which the rateable valuation was based was calculated with regard to all the circumstances pertaining to the property and with appropriate weighting given to the rental value of comparisons. Mr. Dineen set out his calculation of the rateable valuation on the subject premises as follows:-

Valuation - Method A

Ground floor	850 sq.ft. @ £11	= £ 9,350
First floor	500 sq.ft. @ £ 5.50	= <u>£ 2,750</u>
		£12,100

Method B or using Zoning System

Ground floor	Zone A	490 sq.ft. @ £14.00 = £ 6,860
	Zone B	360 sq.ft. @ £ 7.00 = £ 2,520
First floor		500 sq.ft. @ £ 5.50 = <u>£ 2,750</u>
		£12,130

Mr. Dineen said that location is central to value, especially in the retail context where it is of paramount importance. He said that this property is in the prime retail area. Zone A levels in most Cork towns go from £14 psf to £20 psf and the Fermoy level from £14 to £16. Mr. Dineen offered six comparisons which are summarised below:-

(1) No 3b O'Rahilly Row

First floor accountants office
Held on a 2 year, 9 month lease from 1/7/1984

522 sq.ft. @ £5.64 = £3,120 per annum.

(2) No. 44 Patrick Street

Second floor insurance office
2 year, 9 month lease from 4/89 at £3,400 per annum

Average 507 sq.ft. @ £6.50.

(3) No. 42 Patrick Street

First and second floors accountants office
Held on a 2 year, 9 month lease from 9/8/86 at £4,596 per annum

Average 738 sq.ft. @ £6.22.

(4) 3AC1 Mill Road

This is a converted 3 storey mill building, away from the town centre - without a lift. Held on a 1 year lease from November 1989 at £78,750 per annum. The measured size of this from basement to fourth floor is 9,706 sq.ft. giving a rent of £8.11 psf including car parking.

(5) Local No. 23, VO No. 61

Shop 1,200 sq.ft. rented on a 35/5 lease from 1994 at £12,000 per annum

Average rent £10 psf
Zone A rent £20.80 psf.

(6) Video Shop

6, 7, 8, 9 McCurtain Street, Cork

Held on a 2 year, 9 month lease from April 1990 @ £8,000 per annum

Average 786 sq.ft. @ £10.60 or
Zone A @ £16 psf.

Mr. Dineen also offered comparisons of sale prices as follows:-

No. 19 Patrick Street, Credit Union

VO Lot: 59

Purchased for £85,000 October 1991

No. 21, 23 Patrick Street, Mansfields

VO Lot: 60, 61

Purchased for £190,000 on 23/5/80

No. 25 Patrick Street

VO Lot: 62

House purchased for £92,000 on 10/6/92.

Mr. Dineen said that these three properties were demolished and rebuilt - in other words the prices represent site value before cost of demolition.

Oral Hearing:

The oral hearing took place in Cork on the 22nd day of November 1995. Mr. James V. Walsh appeared with Ms. Kate Creedon for the appellant and Mr. Terry Dineen appeared for the respondent.

The oral evidence mirrored the vast chasm between the parties in relation to the valuation and the Tribunal was moved to resolve the conflict by noting the following main strands of argument.

- 1) While Mr. Dineen took the approach of introducing retail type rents for Zone A type space on the ground floor, the premises as now occupied was not retail. As the retail element has been abandoned for a number of years, it would now be necessary to obtain planning permission to return to it. The premises should therefore, be valued in its present state of occupation.
- 2) Mr. Dineen argued that he had comparisons for first floor premises which indicated

a rent per square foot on passing rent which greatly exceeded the average rent which Mr. Walsh had imputed in his valuation of the premises. While Mr. Walsh took issue with the longevity of some of the first floor leases nevertheless, the Tribunal considered that this was a factor which would lead to the Tribunal to consider moving away from the arrangement arrived at between the appellant and the widow of his deceased partner regarding rent.

- 3) While Mr. Walsh was able to distinguish to some extent the difference between the subject and premises for which higher capital values were obtained on the same, the Tribunal does consider that the figure of £40,000 for which Mr. Walsh obtained title to the premises may not represent the full capital value of the premises.
- 4) The fact that there exists a deadlocked situation regarding a controlled tenant and her early middle aged son on the top floor who also use the common areas stairs on the first and second floor without any adequate arrangements for maintenance, leaves the occupation of the premises unsatisfactory for the appellant. This has to have a moderating influence on any valuation placed on property.
- 5) The number of recently fixed valuations in the area seems to be very small and the appellant in this case may have the dubious distinction of being somewhat of a test case and a benchmark for future valuations.
- 6) The parties have agreed a fraction of 0.5%.

Conclusion:

The Tribunal accepts Mr. Dineen's arguments that the passing rent should not be taken as a guide in this case. This is an exceptional occurrence for the Tribunal having regard to its general practice. However, the Tribunal finds it very difficult to accept that any more than £7,000 per annum would be paid for the premises in its actual state by a solicitor in occupation or by the equivalent type of service or professional person allowable by the current planning status of the property with abandoned retail use. The Tribunal is conscious of the good location of the property. However, this points to potential rather than actual realisable occupational benefit and this should not be a consideration in valuation of the premises. The determination of the Tribunal is therefore, not to be taken as a guide regarding other premises having a retail use or modernised "stand alone" first and second floor office space with proper arrangements for regulation of other occupiers and facilities for maintenance of common areas.

Accordingly, the Tribunal determines and fixes the valuation at £35.