

Appeal No. VA95/3/010

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

The Gallery Restaurant (Wilton Securities Management)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Restaurant at Map Ref: 25.26, Wilton Shopping Centre, Ward: Bishopstown, County
Borough of Cork

Quantum - Passing rent, unit in S.C.

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Brid Mimmagh

Solicitor

Marie Connellan

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF MAY, 1996

By Notice of Appeal dated the 24th day of August 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £143 on the above described hereditament.

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

"The notional rental assessed by the Valuation Office does not have any justification based on market criteria or based on the trading history of the complex. The assessment is excessive and inequitable."

The Property:

The property comprises units 25 and 26, the Gallery Restaurant, located in the Wilton Shopping Centre. The main competing shopping centres are Douglas Court (1979) and Douglas Village (1972) which latter was substantially upgraded in 1993. Other centres are Merchant's Quay in the city centre and Ballyvolane (much smaller) on the North side. A recent competitor is Dunnes Stores, Bishopstown, which as yet does not have units attached. The centre is located at an important junction in Bishopstown Ward on the south-western side of the city, across from Cork Regional Hospital. It has two anchor tenants, one at each end of the shopping centre. The standard unit when the centre opened was 950 sq.ft. approximately and this remains the situation for units 1 to 11. However, those units linking the two long malls (units 15 to 24) are now generally subdivided.

Since the centre opened changes have been minimal. Some new units were created. The Bank of Ireland moved out of the centre proper into a free standing building near the eastern entrance. A garden centre was put in the car park, access from Wilton Road was changed, toilets and offices were relocated, creating two new units, entrances were highlighted with large illuminated signs. In Wilton customer numbers are 75,000 per week while in Douglas and Douglas Court numbers are 50,000 to 55,000. The car park surrounding the centre has 725 spaces. All units in the centre except for the management offices, are held on lease, usually 35/5 FRI from 1/10/1979 - for shell units. To date the oldest units have been reviewed on three occasions, 1984, 1989 and 1994. The 1984 and 1989 rent reviews went to an expert for determination. The results were:

1984 result + 80% on 1979

1989 result + 80% on 1984

1994 result + 6% on 1989 (by agreement).

Valuation History:

The entire centre was revised in 1994/4 revision and was also issued on the 10/11/1994. The revision was done on the arithmetical basis of 25% off passing rents to allow for rates correction factor and reduction to November 1988 levels.

1994/4 First Appeal

There were 51 appeals with eight units not appealing. There were generalised reductions on appeal on two bases:

1. initially within-centre adjustments were made to RV's (reductions only) where units of similar size were too disparately valued.
2. secondly an across the board reduction of 5% was made to these adjusted figures.

From the 51 first appeals 14 units have advanced to Tribunal stage.

Written Submissions:

A written submission was received on the 11th day of March 1996 from Mr. Frank P. Ryan, Chartered Surveyor of Colliers Jackson Stops on behalf of the appellant.

Mr. Ryan said that the subject comprised 983.5 sq.ft. He said that the shop was held under 25 years lease from 1/10/89 with 5 yearly reviews.. He said that the RV assessed by the Valuation Office at £143 was equivalent to a deemed rental at November 1988 of £22,600 or £22.98 psf.

Mr. Ryan said that he proposed a rental of £19.78 psf or RV £135 on the subject premises.

A written submission was received on the 28th day of February 1996 from Mr. Terry Dineen, District Valuer with twenty years rating experience in the Cork area on behalf of the respondent.

Mr. Dineen said that the subject premises comprised 983.5 sq.ft. with a long frontage of 54 ft and a short frontage of 18 ft. The restaurant seats 80 people, 64 inside and 16 in the mall. It is held on a 35/5 FRI lease from 1/10/79. Mr. Dineen said that the 1984 rent was £20,695 and the 1989 rent was £35,000. He said that the subject was originally two separate units. He submitted that the leasehold interest/goodwill was purchased for £110,000 in 1994.

Mr. Dineen set his calculation of rateable valuation as follows:

Valuation

1989 rent passing	£35,000	
On revision deduct 25%	<u>£ 8,750</u>	
	<u>£26,250</u>	RV £165
On appeal deduct £2,400		
for 'excessive' rent	<u>£ 2,400</u>	

	£23,850
Deduct 'standard' 5%	<u>£ 1,192</u>
	£22,658
RV £22,658 x 0.63%	£142.74.

Say RV £143.

NOTE:

1. By the £2,400 allowance (£15 RV) this unit was treated more favourably than many other units.
2. On a time apportionment basis between 1984 and 1989 rents, the 1988 rent would be £32,139.
3. The actual 1989 rent is 54% higher than 1988 NAV.

Mr. Dineen in conclusion said that the assessment of net annual value was based on information arising from within the centre. The 1989 rents passing were the starting points in these calculations - being the closest in time to 1988.

Oral Hearing:

The oral hearing took place in Cork on the 20th day of March 1996. Mr. Frank Ryan of Messrs. Colliers Jackson Stops, Chartered Surveyors appeared on behalf of the appellant. Mr. Terry Dineen of the Valuation Office appeared on behalf of the respondent.

Mr. Dineen gave evidence in relation to the rental value of the subject as of 1988. He pointed out that the 1989 passing rent had been the starting point for the computation and that he had made extremely generous deductions in order to arrive at his assessment of 1988 rent. He confirmed that he had not allowed for any differential by reason of a unit's location within the centre and pointed out that while rateable valuations might not always be based on rent passing in this shopping centre the rateable valuation should be so based because of the wealth of evidence in relation to passing rents. Mr. Dineen submitted that the pattern of rents within the centre must have made sense to the arbitrator at rent review and concluded by saying that all conceivable allowances had already been made by him in assessing the rateable valuation of the subject.

Mr. Ryan referred to his written submission and submitted that allowances should be made in respect of different units within the centre by reason of location, size, frontage and pedestrian circulation.

Mr. Ryan agreed that the rents achieved at the rent reviews of 1989 were unusually successful but he submitted that it was his intention to bring consistency to the rateable valuations of units of similar trading strength.

Determination:

The Tribunal accepts Mr. Dineen's evidence in relation to rental values, not only of the subject premises but of the entire centre.

It notes that of 51 appeals within the centre 36 were agreed at first appeal, presumably on the basis of rental evidence.

The Tribunal accepts Mr. Dineen's submission that if one is to use rental evidence for the majority of units within a shopping centre the rateable valuation of the remaining few units should also be decided on the same basis. While it does appear that certain extraneous factors may have affected the 1989 rent review nonetheless the evidence has been that the Wilton

Shopping Centre is well established and has proved to be successful. In the circumstances therefore, and in light of all of the evidence adduced the Tribunal affirms the decision of the Commissioner.