

Appeal No. VA95/3/012

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

First National Building Society

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices at Map Ref: 43, 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)

Fred Devlin

FRICS.ACI Arb.

Marie Connellan

Solicitor

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

By Notice of Appeal dated the 8th day of August 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £93 on the above described hereditament.

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

"The valuation is excessive and inequitable."

The Property:

The property comprises unit 43 in the Wilton Shopping Centre, Cork. Wilton is the premier peripheral shopping centre in Cork city built in 1979 and first valued in 1980. 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 14th March 1996 from Mr. Adrian Power-Kelly, ASCS ARICS of Harrington Bannon on behalf of the appellants.

In the written submission, Mr. Power-Kelly described the subject premises and its valuation history. He said that the subject property was located in the Wilton Shopping Centre, Bishopstown and enclosed a copy plan of the shopping centre, showing the approximate location of the subject property indicated in red thereon. Mr. Power-Kelly said that the subject unit comprised a ground floor unit currently in use as a building society branch office and extending to a total of approximately 60.8 sq.m. (655 sq.ft.) gross internal area. The unit has been subdivided to provide public, office and ancillary storage/safe areas. Finishes within the unit are of standard type he said, for First National Branch offices throughout the country with part carpeted, part ceramic tiled floors whilst walls are plastered and papered in corporate colours. There is an aluminium framed display frontage to the mall.

Title:

The property he said, is held under a lease for a term of 35 years from the 1st October 1979 at an initial rent of £6,380 per annum. The lease is on an internal repairing and insuring terms. The current rent payable he said, is £21,987 per annum.

Mr. Power-Kelly proposed a valuation on the subject premises as follows:-

Valuation

Nett Annual Value

655 sq.ft. @ £18.50 psf = £12,117 per annum

But Say £12,000 x 0.63% = £75.60 per annum

Say RV £75.

In support of his valuation, Mr. Power-Kelly cited five comparisons in Wilton Shopping Centre which are set out in tabular form in Appendix 1 of this judgment.

A written submission was received on 27th February 1996 from Mr. Terry Dineen, District Valuer with twenty years rating experience in the Cork area, on behalf of the respondent.

In his written submission, Mr. Dineen described the subject premises and its valuation history as set out above.

He said that the unit comprised 653.36 sq.ft. with a frontage of 36 feet. He said that it was held on a 35 year lease with 5 yearly reviews from 1/10/79. He cited the 1989 rent as £20,742 and 1984 rent as £10,500.

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

Valuation

1989 rent passing	£20,742	
On revision deduct 25%	<u>£ 5,185</u>	
	<u>£15,557</u>	RV £98
On appeal deduct 5%	<u>£ 778</u>	
	<u>£14,779</u>	
RV £14,779 x 0.63%	£ 93.10	

Say RV £93.

NOTE:

1. The unit was treated broadly as other units.
2. On a time apportionment basis between the 1984 and 1989 rents, the 1988 figure would be £18,694.
3. The actual 1989 rent is 40% higher than 1988 NAV.
4. No addition has been made for recent tenants improvements which involved a new front and subdivision of the unit into five rooms.
5. The unit can be considered a twin of unit 44 which is directly across the mall.

Mr. Dineen in summary 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 21st day of March 1996. Mr. Adrian Power-Kelly, ASCS ARICS appeared on behalf of the appellant and the respondent was represented by Mr. Terry Dineen, a District Valuer in the Valuation Office with over 20 years experience.

Prior to the oral hearing both parties forwarded written submissions to the Tribunal and by mutual consent these were adopted by them as their evidence in chief given under oath.

The appellant's contentions:

1. The design of Wilton Shopping Centre is somewhat dated and does not meet current market requirements.
2. Internally the centre suffers from a lack of natural lighting and does not have an identifiable concourse or plaza area. Overall the malls have a congested and claustrophobic appearance.
3. Pedestrian flow is mainly along the principal mall connecting the two anchor stores. Pedestrian flow in the shorter malls leading to the car park is much less.
4. The drawbacks referred to above should be reflected in the valuation of the subject hereditament which in his opinion should be £75 as against the assessment of £93 placed on it by the Commissioner of Valuation.

The respondent's contentions:

1. Mr. Dineen did not dispute Mr. Power-Kelly's contentions in relation to the design and other physical characteristics of the centre or that the traffic flow throughout the entire may vary from place to place.
2. Wilton Shopping Centre is a successful centre and attracts 75,000 shoppers per week as against 50,000 and 55,000 in Douglas Shopping Centre and Douglas Court respectively.
3. The centre has 725 car parking spaces and seems to be always nearly full. Whilst a substantial number of spaces were occupied by staff within the centre and visitors to the nearby hospital the shortage of parking spaces during the trading day was an indication of the business activity within the centre.
4. In arriving at the valuation of the subject unit he had regard to the rent following the 1989 review and had applied a reduction factor of some 29% to arrive at the net

annual values as at November 1988.

Determination:

Subject to the general rule of *rebus sic stantibus* the net annual value of a hereditament is to be determined in accordance with Section 11 of the Valuation Act 1852 as amended by Section 5 of the Valuation Act 1986. This is the statutory basis upon which the Commissioner of Valuation values those hereditaments listed for revision and first appeal. It is also the basis for decisions handed down by this Tribunal.

The Tribunal has carefully considered all the evidence and argument adduced by the parties at the oral hearing and makes the following findings of fact.

1. Mr. Dineen in arriving at his opinion of net annual value employed proper valuation procedures in looking first at the rent payable in accordance with the lease.
2. Mr. Dineen in applying a reduction factor of approximately 29% to the 1989 rent in order to arrive at net annual value as at November 1988 was fair and equitable in his approach.
3. Having arrived at his opinion of net annual value Mr. Dineen was correct in taking 0.63% of this figure in order to arrive at the proper rateable valuation in this case.
4. Mr. Power-Kelly's contention that pedestrian flow in the main mall between the two anchor stores may be correct but no evidence was adduced to support this contention.

The Tribunal is obliged to determine the proper rateable valuation of a hereditament in accordance with the Valuation Acts. Whilst Mr. Power-Kelly presented his case in a professional and competent manner he did not adduce any evidence to show that Mr. Dineen had not applied proper valuation procedures or that his valuation was not in accordance with the Valuation Acts. Accordingly, therefore, the Tribunal affirms the valuation of £93.