

Appeal No. VA95/5/006

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

Abbey Cinema Group

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Cinema and Car Park at Map Ref: 1b Redmond Place, Wexford Ward 3, U.D. Wexford
(No. 3), Co. Wexford

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Marie Connellan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF OCTOBER, 1997

By Notice of Appeal dated the 6th October 1995, the Appellant Company appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £500 on the above described hereditament. The grounds of appeal, as set out in the said Notice were that "The Rateable Valuation of the property is excessive, inequitable and bad in law and excessive by comparison with other similar cinemas".

This appeal proceeded by way of an oral hearing at which both the Appellant and the Respondent were represented by Solicitor and Counsel and also by Valuation Experts. As is required by the Rules of the Tribunal and as is the practice and custom, précis of evidence intended to be given were, prior to the hearing, exchanged between the parties and submitted to us. From these and the rest of the evidence so adduced the following are the material facts, as agreed or so found, which are relevant for the purposes of this Judgment.

The hereditament in question, is described as a cinema and car park and is part of a large two storey commercial development at Redmond Place in the town of Wexford. This development, which was undertaken in 1992, includes, as part thereof, this said cinema which, is a new, modern, well constructed building conforming to all relevant legislative provisions including planning, building and fire safety. The rest of the overall complex includes offices, restaurants, a variety of shop units and an adjoining car park with a facility to accommodate about 250 cars. The centre, in its entirety, is located within a designated area.

The cinema itself which opened for business on the 25th September 1992, has three screening areas with a total seat capacity of about 620 seats. Cinema No.1 - 300 seats, cinema No.2 - 196 and the third - 127. Each cinema is located at ground floor level with a projection room, plant room and lobby positioned overhead on the first floor. There is one showing per day, which increases to three at the weekends and four in the months of July and August. It is the only cinema in Wexford town.

The total area, which is agreed, is 11,308 sq. feet with 9,130 sq. foot thereof on the ground floor and the balance of 2,178 being on the first floor.

The total cost, was £1.159m, though the acquisition of the property itself was paid for by way of £400,000 in cash plus the Old Abbey Cinema. Being the only cinema in Wexford, the same is not as such subject to any local or direct competition and it also has the advantage of being located within a tourist area which increases its customer base.

In May 1994, the property was revised at a figure of £550 . Following an appeal to the Commissioner of Valuation it was agreed by the Appeal Valuer and the Retained Valuer that the car park was public in nature and therefore ought not to have had a separate valuation attached to it. A reduction of £50 was achieved in this regard but otherwise the valuation remained intact. On the 18th September 1995, the Commissioner therefore issued his list showing an RV of £500. Being still dissatisfied with this level of valuation, the Appellant company on the 9th October 1995 appealed to this Tribunal.

On behalf of that company, Mr. Frank O'Donnell suggested that the ascertainment of the correct N.A.V. could be obtained in this case by adopting a price per seat basis or alternatively by invoking the rental method. On the former basis he suggested a R.V. of 50 pence per seat giving a total R.V. of £310. On the latter he placed £5 per sq. ft. on the ground floor and £3 per sq. ft. on the first floor. That, by applying the conversion rate of .5% gave a R.V. of £260. As can be seen, even within this evidence the results show a £50 discrepancy between method number one and method number two. In support of his rental method, he referred to a number of comparisons, a table of which is set out as an Appendix to the judgment.

The Appeal Valuer, Mr. Colgan, strongly urged upon us that the correct approach was one based on capital value and certainly not one based on a price per seat. In the utilisation of this suggested preference, a figure of £1.159,300 was taken as the capital value. At a return of 11% that gave a figure of £128,811. He suggested a reduction of 20% to obtain the November 1988 base figure. That results in the sum of £103,050 being available as rent. This converts to a R.V. of £500. As a secondary method of valuation he suggested that £10 per sq. ft. should be placed on the ground floor and £5 per sq. ft. on the first floor. Both of these figures gave an N.A.V. of £102,190. Say £100,000 and an R.V. of £500. His only cinema comparison was the United Cinema International Complex located at The Square in Tallaght, Co. Dublin.

Section 11 of the Valuation (Ireland) Act, 1852, insofar as it is relevant, reads as follows:

"..... and such valuation in regard to house and buildings shall be made upon an estimate of the nett annual value thereof: that is to say, the rent for which, one year with another, the same might in its actual state be reasonably expected to let from year to year the probable average annual cost of repairs, insurance and other expenses (if any) necessary to maintain the hereditament in its actual state, and all rates, taxes and public charges, if anybeing paid by the tenant".

There is no doubt but that this Section remains the single most important statutory provision governing the ascertainment of R.V. with regard to houses and buildings. That Section must of course now be read in the light of and in conjunction with Section 5 of the Valuation Act, 1986. Section 5 reads:-

- (1) "Notwithstanding Section 11 of the Act of 1852, in making or revising a valuation of a tenement or rateable valuation of a tenement or rateable hereditament, the amount of the valuation which, apart from this Section, would be made may be reduced by such amount as is necessary to ensure insofar as it is reasonably practicable, that the amount of the valuation bears the same relationship to the valuations of other tenements and rateable hereditaments as the nett annual value of the tenement or rateable hereditament bears to the nett annual values of the other tenements and rateable hereditaments.
- (2) Without prejudice to the foregoing for the purposes of ensuring such a relationship regard shall be had, insofar as it is reasonably practicable, to the valuations of tenements and rateable hereditaments which are comparable and of similar function and whose valuations have been made or revised within a recent period".

This last mentioned Section was considered by Barron J., in the case of *Irish Management Institute v. Commissioner of Valuation [1990] 21.R. page 409*. At page 413, the learned Judge said -

"The Section does not alter the fundamental basis upon which valuations are made, that is what the hypothetical tenant will offer on the basis of taking one year with another. What it does is to recognise inflation and to seek to keep a proportion between valuations and annual values after taking inflation into account. Sub-section 1 provides The sub-section is seeking to establish an overall ratio between annual letting values and valuation. This overall ratio will alter with inflation since annual letting values will alter with inflation while valuations remain the same. It was the gap caused by failure to provide the satisfactory mechanism for these circumstances in earlier legislation which Section 5 of the Act of 1986 was intended to fill. Notwithstanding this general intention, sub-section 2 recognises that the overall ratio may differ as between rateable hereditaments of different function for example as between offices on the one hand and say, shops on the other.

Sub-section 2 is not a provision standing on its own. What is being sought is an overall proportion between hypothetical rents and valuations. This must be borne in mind when applying its provisions. What must be considered are valuations which:-

- (a) are comparable;*
- (b) relate to tenements and hereditaments of similar function and*
- (c) have been made or revised within a recent period.*

Where there is evidence under each of these headings sufficient to obtain the relevant proportions then the valuations can be determined by reference to the sub-section alone. Where the evidence is insufficient, then the overall proportions predicted by sub-section 1 must be adopted. In each case, the sufficiency of the evidence is a matter for the Tribunal".

As can be seen therefore from the above the task which must be undertaken is reasonably clear. It is to ascertain what the hypothetical tenant will pay as rent, for the subject premises, *rebus sic stantibus* taking one year with another. Having ascertained this, the rest of the undertaking is relatively simple and straightforward. This is because, it is generally accepted and in this case specifically accepted by both parties that once the rent can be related to November 1988 then, for the purposes for applying Section 5 of the 1986 Act, and for the purposes of converting that rent into an R.V., the fraction of 0.5% is adopted. The major problem however remains, that is to ascertain the rent. As was pointed out by the Court in *Roadstone Limited v. Commissioner of Valuation [1961] 1. I.R. 239* there is, in many instances, no one ideal way in which that rent can be calculated. It is of course a question in fact. It must be determined as part of the underlying exercise. But, as the nature of the unit of valuation and the circumstances surrounding such a unit are almost infinite in extent, it is not possible to establish in many cases as a matter of principle, what is the correct and most appropriate method of ascertaining a nett annual value. Hence, both as a matter of legal and valuation practice, there is available sufficient flexibility in the decision making body to adopt what the circumstances dictate as being the most appropriate and most helpful approach in any given case.

It is therefore not surprising to see different methods adopted in different cases. In the case of *Rank Organisation Limited v Billet [1958] 4 R.R.C. 15* the Lands Tribunal when valuing a cinema took the view that a hypothetical tenant would be much more influenced by the accounts of the actual cinema rather than by having information about the rents or assessments of other cinemas. A similar approach was adopted in *Rank Organisation Limited -v- Priest [1996] 14 R.R.C. 1*. On the other hand in *Provincial Cinematograph Theatres Limited v Holyoak, [1969] 15 R.R.C. 198*, the Tribunal approached the method on a price per seat basis.

In this jurisdiction we also have a number of cases dealing with cinemas, theatres and places of public entertainment. In *Firkin Crane Development Co. Ltd. v Commissioner of Valuation (VA92/5/15)*, the Valuation Tribunal was considering what should be the correct nett annual value for a hereditament which formally comprised the Butterley Exchange

Building, located in Shandon on the north side of Cork City. As of 1992, its then use was as a cultural centre for dance, theatre, music and other forms of live entertainment. The building had been completely refurbished from a state of total dereliction. It then had facilities for a variety of uses mainly in the field of the performing arts. On behalf of the Commissioner the Appeal Valuer gave evidence of three alternative methods. The first was based on the capital value approach, the second on a price per sq. ft., and the third on a price per seat basis. The resulting valuation in all instances was about £400. The Tribunal took the view that since the subject property was in a designated area and was exempt from rates until the year 2000, it was not necessary for it, the Tribunal, to make any decision with definition, on what the correct approach might be. It was satisfied to conclude as follows:

"While the Tribunal would not hesitate to resolve such a difficult situation normally, it is of the opinion that the valuation can be affirmed in this case without being in any way a precedent but for the purposes of clearing the way to have another opportunity for revision whenever the facts are clarified with arrangements to apply for a subsequent exemption on the emergence of the pattern of user and potential of the premises pointing to a likely N.A.V".

It seems to us therefore that whatever indications the Tribunal may have given of a preference for approaching the valuation of that property, nevertheless we could not take the same as establishing any precedent which would apply in the instant case.

The second decision of the Tribunal, which we wish to refer to, is that of the *Everyman Palace Theatre v The Commissioner of Valuation (VA93/4/029)*. Again this was a Cork case with the Theatre in question being located at McCurtin Street near the Metropole Hotel which is about five minutes from the city centre. From a consideration of the Tribunal's judgment it would appear that, on behalf of the Commissioner, it was argued that the correct approach was to adopt a price per seat basis. The Capital Cinema, also in the City, was offered as the most appropriate comparison. That apparently had a R.V. based on 48 pence per seat. Having heard the evidence and having considered the submissions, the Tribunal concluded that the Commissioner's approach of allowing a reduction of about 50% from the

price per seat attaching to the Capital Cinema was insufficient. That cinema was fully refurbished, was fully operational as a six unit cinema and was fully commercial. It felt that the correct R.V., for the Everyman Theatre should be 20 pence per seat.

The third and most recent judgment is the *United Cinemas International v The Commissioner of Valuation (VA96/2/040)*. That case dealt with a major purpose built ten screen cinema development on the Malahide Road, at Coolock in the County of Dublin. Having set out what the alternative approaches might be and having stressed the importance of the IMI case, the Tribunal was satisfied that the correct approach was not one based on a price per seat basis or on adopting a capital value basis but rather by using a price per sq. ft. basis.

As can therefore be seen the method of approach has indeed differed quite significantly in a substantial number of cases. This is not in any way surprising. The reasons are those set forth above. In addition, for the last decade or more, cinemas have been constructed, built and laid out to the highest standards complying with all modern requirements. These cinemas are sometimes capable of more than one use and almost always have ancillary facilities attaching to or available nearby. They tend to be located in suburban centres either close to or in the midst of large population areas. There is generally an abundance of car parking facilities available as well as a range of other retail outlets. As was said in the *United Cinemas International* case, the cinema industry, in short, had gone through and perhaps is still going through a major change which has profound implications for the owners and operators thereof and for the cinema going members of the public. Gone or close to gone are the days of the single cinema catering for a small limited and specialised market.

Bearing in mind that what one is valuing is not the business carried on therein but the building itself it is our view that to adopt a price per seat basis would be capable of creating and resulting in a great number of analogies not always apparent in individual cases but discoverable only by a detailed analysis, largely spread over time and geographical area. Equally so, we cannot agree that the capital value method can be elevated from its accepted status as being a method of last resort. In our opinion therefore we should approach this case

by ascertaining what the correct price per sq. ft., is in relation to subject matter. Certainly when there is sufficient evidence available this is the proper approach in particular when the subject property is comparable. Certainly this is in our view the preferred method of valuation.

In so approaching this case we have considered the various comparisons adduced by both Mr. O'Donnell and Mr. Colgan. We cannot agree that the United Cinema Complex in Tallaght is in any way comparable. Cost alone is given as £8m in comparison to £1.1m or £1.2m in Wexford. The local population is enormously different. The customer base likewise. The number of screens, the number of showings, the ancillary services and the outlets by third parties are also fundamentally different. Even with adjustments it would not be possible to arrive at a situation whereby one could compare like with like. In our opinion the most appropriate comparisons are the *Regent in Waterford* and the *Omniplex in Galway*. The Coliseum in Carlow is presently the subject matter of an appeal. Accordingly in the absence of quite detailed evidence it is not possible to place any reliance on the R.V. presently attached to that property (**See Irish Shell Limited (Oriol Oil Company) v Commissioner of Valuation**)VA95/1/055. The complex in Waterford has 987 seats, has a total area of about 22,000 sq. ft., at a cost of £2m and has five screens. The overall rent per sq. ft. as suggested namely £3.97 has been calculated however on a gross external basis. With regard to Galway, the number of seats is 2.5 times the number in Wexford as is its total area of almost 29,000 sq. ft. The R.V. is £850 as fixed at 1994 revision. The capital cost was £1.4m. The suggested rent per sq. ft. of £5 on ground floor and £3 on first floor is calculated on the gross internal area with much of the first floor being used for storage purposes only.

Making due adjustments for the difference in location, population in the immediate environs, seating capacity and total area, it is our view that the rate of £7 should apply to the ground floor accommodation of 9,130 sq. ft. and the rate of £4 per sq. ft. to the 2,178 sq. ft. on the first floor. That results in a N.A.V. of £72,622, which when converted gives an R.V. of £363, but say £360.

This Tribunal so determines.

