

Appeal No. VA95/5/009

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

Ardkeen Sales Limited t/a Freshway Superstores

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Supermarket at Lot No: 2c/5a, Townland: Ticor, Ward: South Ward, Ticor North, County
Borough of Waterford
Quantum - Passing rent

B E F O R E

Fred Devlin

FRICS.ACI Arb. (Acting Chairman)

Patrick Riney

FSCS.FRICS.MIAVI

Rita Tynan

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF FEBRUARY, 1997

By Notice of Appeal dated the 12th day of October 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £100 on the above described hereditament.

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

"The assessment is excessive and is not in accordance with other decisions of the Commissioner based on rent paid and its relationship to the rateable valuation."

The appeal proceeded by way of an oral hearing which took place in the Circuit Courthouse, Waterford on the 4th day of December 1996. At the oral hearing the appellant was represented by Mr. Desmond O'Toole FRICS FSCS of O'Shea O'Toole & Partners, Auctioneers, Valuation Surveyors & Property Consultants. The respondent was represented by Mr. Desmond Feehan, B.Agr.Sc, a Valuer in the Valuation Office.

Having taken the oath, both Valuers adopted as their evidence in chief their written submissions which had previously been exchanged between them. In accordance with his written submission, Mr. O'Toole stated that the property was located on Cleaboy Road in a neighbourhood shopping centre on the western side of the city. He said the centre was developed in 1988 and comprised the subject premises, five retail units, a licensed premises, hairdressing salon and gym. He described the subject premises as a lock-up ground floor retail unit in an end-of-terrace one and two storey building, constructed of brick and concrete block walls, concrete floors with PVC tile finish, plastered internal walls, acoustic tiled ceiling, under a pitched interlocking concrete tiled roof. He said that the accommodation was agreed as were the floor areas as follows:-

"Ground floor: Main Retail Area	2,734 sq.ft.
Stores	934 sq.ft.
Toilets/Cloakroom	206 sq.ft.
First floor: Office	<u>268 sq.ft.</u>
Total	<u>4,142 sq.ft."</u>

He said that the property was held by Ardkeen Sales Limited under a full repairing and insuring lease for a term of 35 years from the 12th day of December 1989. Details of the terms of the lease were provided as follows:-

"12th December 1989 to 11th December 1990 = IR£ 8,000
 12th December 1990 to 11th December 1991 = IR£ 16,000
 12th December 1991 to 11th December 1992 = IR£ 20,000

12th December 1992 to 11th December 1993 = IR£ 20,000

12th December 1993 to 11th December 1994 = IR£ 25,000."

In view of the trading position since the commencement of the lease agreement, the initial rent schedule was abandoned and the parties agreed to a revised rent of IR£10,000 pa. Their rent was not reviewed or increased on the 12th day of December 1994.

Mr. O'Toole also stated that 50% of the freehold interest was owned by John & Mary Santry and that the remaining 50% was now owned by Ardkeen Superstores Limited. The property was originally developed by John & Mary Santry, who sold half of their interest to Ardkeen Superstores Limited in December, 1989 for the sum of £70,000. In commenting on the respondents comparisons he made the following points:-

- Comparison No. 1 - Mr. O'Toole stated this was not a suitable comparison as it was in a much longer established area and built approximately 30 years ago. The size was about twice that of the subject property at ground floor level.
- Comparison No. 2 - This was a much smaller premises and had closed down.
- Comparison No. 3 - Whilst this property was directly across the road from the subject, it had the major attraction of a filling station, in enabling it obtain customers.
- Comparison No. 4 - He stated that this was not relevant as it was at first floor level and the rent had not been paid for about 18 months.
- Comparison No. 5 - He also stated that this was not relevant as it was far smaller than the subject and also at first floor level. He stated that this property was in a totally different area with most of the residents near by not having cars and would most likely do their main shopping there. It also had a post office and was making a profit.

Trading accounts were provided which indicated that the premises were trading at a loss since the commencement of business in December 1989. Based on this evidence and on the

evidence of the rent payable, Mr. O'Toole contended that the net annual value was represented by the current rent being paid and that the rateable valuation should be based on this figure as follows:-

"Net annual value - £10,000 x 0.63% = £63 RV."

Mr. Feehan said that the subject property was the only supermarket in the area and in addition to groceries sold newspapers, wines and beers. Mr. Feehan said that the net annual value based on the rent as proposed by the appellant was not supported by the tone of the list in the area. He assessed the rateable valuation of the subject premises as follows:-

"Supermarket	2,734 sq.ft. @ £5 = £13,670
Ground floor & First floor Stores	1,408 sq.ft. @ £2 = <u>£ 2,816</u>
	<u>£16,486"</u>

RV @ 0.63% = Say £100.

Mr. Feehan supported this assessment with six comparisons in the area summarised below.

1. **Besco Stores**

Ballybricken Green

Area:

Shop 5,911 sq.ft.

Stores 1,386 sq.ft.

NAV = £39,928. RV = £250.

Rateable valuation agreed September 1993.

2. **Ashley Stores**

Area:

Shop 645 sq.ft.

NAV = £5,482 + Domestic. RV = £55.

Shop closed about 3 years ago.

3. Crohans Shop and Filling Station*Area:*

Shop 958 sq.ft.

Store 269 sq.ft.

NAV = £7,513 Shop & Stores

£4,500 Filling Station. RV = £75.

Agreed June 1992.

4. First floor unit used as fitness gym*Area:* 758 sq.ft.

NAV = £4,548. RV = £28.

5. Hairdressing Salon over subject premises*Area:* 498 sq.ft.

NAV = £3,237. RV = £20.

6. Off Cork Road in Local Authority Housing Estate*Area:*

Shop 4,266 sq.ft.

Stores 928 sq.ft.

NAV = £19,000. RV = £120.

Oral Hearing:

Mr. Des Feehan referred to the 35 year lease dated 12th December, 1989 which provided that the rent for the first five years would increase from £8,000 pa on year one to £25,000 pa on year 5. He stated that there was no stamped amendment to this lease and queried whether the rent was ever paid as stated. He also pointed out that a rent of £10,000 pa, represented a ground floor rental of about £2.40 psf.

Mr. Feehan questioned Mr. O'Toole as to whether he had any comparisons to support a rent in the region of £2.40 psf or whether he had any other comparisons for supermarkets or shops let at less than c. £5 psf. In both cases Mr. O'Toole did not have any further evidence to add to his submissions.

Mr. Gerald Jefferson, a Management Accountant in private practice and a Fellow of the Institute of Taxation in Ireland and a Certified Accountant, took the oath and stated that his family had been in the supermarket business for about 28 years in Waterford. An opportunity to expand arose in 1989 when the Santry family approached them with a view to entering into a joint arrangement whereby the Ardkeen parent company would be 50% owners of the property and who would then grant a 35 year lease to Ardkeen Sales Limited. Due to trading difficulties experienced in the first two years or so Ardkeen approached the Santrys and as a consequence the rent payable under the lease was fixed at £10,000 pa for the first five years instead of the payments as set down in the lease. Mr. Jefferson said that the granting of a reduced rent is quite common in a number of areas in Waterford and indeed a 25% reduction was not unusual.

Around the 13th December, 1989, his company took over the premises and shortly afterwards Waterford Crystal let staff go and the general business climate deteriorated. Quinnsnorth also renamed their premises nearby as Crazy Prices. This had a damaging effect on his business as well. Other major stores which have opened in Waterford in recent years included Roches Stores, Dunnes Stores and other major multiples. Mr. Jefferson stated that in his opinion a rent of £10,000 to £12,000 pa would be the market rent. Since the supermarket was opened the parent group has subsidised its activities by granting an interest free intercompany loan, supplying goods at a special rate and not charging any management fees.

Mr. Feehan stated that comparison no. 2, that is, Ashley Stores had to close because it could not cope with the competition from Ardkeen Stores. Whilst he accepted that comparisons 4 & 5 which were at first floor level, were not very relevant, it was clear from the rents

achieved, that they were at a higher rent per square foot, then the rate applied by him to the subject property.

In cross examining Mr. Des O'Toole asked Mr. Feehan a number of questions as follows:-

1. Did he accept that the turnover reflects what rent a tenant can pay? Mr. Feehan did not and stated that rents were normally made first.
2. What was the purpose of the Valuation Office asking for certified turnover figures? Mr. Feehan stated that these were standard forms issued for all appeals. However the NAV was normally based on comparable letting values in the area.

Determination:

The Tribunal has considered all of the details in the submissions and the evidence adduced during the oral hearing and makes the following findings.

The appellant's submission relied solely on the reduced rent now being paid i.e. £10,000 pa, despite the fact that there is a 35 year lease in existence from the 12th December, 1989 at a rent increasing from £8,000 pa to £25,000 pa. No evidence of a revised letting agreement was introduced. In fact a rent of £10,000 pa exclusive, when applied to the ground floor area alone breaks down at c. £3.65 psf which is substantially less than the rents achieved for first floor accommodation, in comparisons 4 & 5 i.e. £6 and £6.50 psf respectively.

In contrast, the respondent's submission refers in detail to six comparisons in the general area and he has in our opinion adopted a fair approach in order to arrive at the most suitable rateable valuation on the subject property.

Having considered all the evidence and in view of the points, the Tribunal determines the correct rateable valuation to be £100.

