

Appeal No. VA98/2/040

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

David Allen Holdings Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Advertising station at Lot No. 29, Rathmines East D Ward, County Borough of Dublin
Quantum - Method of Valuation for advertising signs

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Barry Smyth - FRICS.FSCS

Member

Ann Hargaden - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF JUNE, 1999

By Notice of Appeal dated the 30th day of April 1998 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £52.00 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; "the R.V. of £52.00 is excessive, inequitable, unwarranted and bad in law".

The appeal proceeded by way of an oral hearing, that took place in the offices of the Valuation Tribunal on the 25th January 1999. Mr. Joseph Bardon FSCS. FRICS of Bardon &

Co., Rating Consultants appeared on behalf of the Appellant. Mr. Frank O'Connor, District Valuer with eighteen years experience in the Valuation Office, appeared on behalf of the Respondent. In accordance with good practice and, as required by the rules of this Tribunal, the parties had prior to the commencement of the hearing exchanged précis of evidence and submitted same to the Tribunal.

Having taken the Oath, each Valuer adopted as his evidence in chief his précis. From the evidence so tendered, the following facts either agreed or so found are considered by the Tribunal to be relevant to this appeal.

1. Valuation History

The advertising station was first valued in the 1997/2 revision and a valuation of £68.00 was assessed. Notice of the first appeal was lodged with Dublin Corporation on the 5th June 1997. Following submissions to the Appeal Valuer appointed by the Commissioner of Valuation the RV of £68.00 was reduced to £52.00. This reduction proved unacceptable and a notice of appeal to the Valuation Tribunal was lodged on the 30th April 1998.

2. Property Situation

The sign is located at first floor level on the gable wall above the "Centra" Supermarket at the triangle in Ranelagh Village approximately two miles south of Dublin city centre.

3. Property

The property consists of a prismatic advertising sign mounted on an illuminated frame of metal construction. It incorporates three display panels, which rotate to give three different adverts in a sequence, at intervals of between 30 seconds and 90 seconds.

4. Tenure

The site of the advertising sign is held under a ten-year agreement with Musgraves Limited from the 16th August 1996 at the current passing rent of £7,000 per annum.

There is provision in the agreement that the rent be reviewed after 5 years. The sign was previously held under a two-year agreement with Derrington Limited from August 1994 at £6,000 per annum.

Appellant's case;

Mr. Bardon in his evidence made the following points:

He initially outlined the background to the Appeal and mentioned the case of appeal number VA95/1/038 where four cases on advertising stations were heard simultaneously. In the course of their findings in these cases, the Valuation Tribunal stated;

“where there is evidence of a passing rent negotiated on an arms length basis the same should be treated as prima facie evidence of net annual value putting a heavy onus on any party who wishes to upset the same whether upwards or downwards.

The Tribunal accepts Ms. Nerney's submission that it must have regard to matters other than the rental value because the same does not take into consideration matters such as costs of erection and preparation of site etc. Here the evidence is very sparse. In these circumstances the Tribunal proposes to add 20% of the rental value to take these matters into account. In so doing the Tribunal addresses that this is a figure arrived at having regard to the very general nature of the evidence given. It is open in other cases to produce more detailed evidence if the same achieved a different result”.

As a result of these decisions the Commissioner of Valuation produced guidance notes 6/96 wherein recommendations were laid down for the valuers as a guide to value in arriving at the rateable valuation of advertising signs. In these guidelines five categories of signs were identified and a formula was presented as a “guide” in each category.

Mr. Bardon then argued two points;

The decision of the Commissioner to lay down the various percentages to be applied in the guidance notes referred to was made without any consultation with either the companies involved directly or their agents.

The creeping “tone of the list” which exists as a consequence of this interpretation of the Tribunal decision by the Commissioner has led to an inequitable valuation being applied to advertising signs.

In relation to the first point Mr. Bardon accepted the decision of the Tribunal to apply a premium of 20% of the fair rent in order to arrive at a rateable valuation. He indicated that this premium reflects the costs incurred in the erection of the sign and the preparation of the site etc. However he argued that the application of the premium of 60% in the case of prismatic signs was exorbitant. While prismatic signs are more expensive to erect they also carry a significantly higher rental value and therefore the same percentage laid down by the Tribunal of 20% should be sufficient to cover the cost of the erection of the sign and the preparation of the site. In his précis Mr. Bardon gave an analysis of the cost differences in the purchases and installation of the standard sheet timber panel sign compared with the cost of a prismatic sign. In 1998 he arrived at a capital cost of £175 per annum for a standard sheet timber panel sign as opposed to £1,050 per annum for a prismatic sign. He then stated that on an average 1998 rental value the ratio of annual capital cost to rental value on the standard sign was 10% and on the prismatic sign was 11.8%.

Mr. Bardon then commented on the creeping tone of the list. He indicated that evidence of rents passing are sought and where this is considered fair the Jones Lang Wootten ERV indices are applied in order to arrive at an estimated rental value for 1988. Mr. Bardon indicated that this index had reference to commercial, industrial and retail properties whose markets bore no resemblance to rental markets for advertising signs. Consequently the application of this index to 1998 rental values of prismatic panels produces 1988 rental values which are distorted, especially when the application of a premium of 60% is then applied to reflect costs and installation etc.

Finally, Mr. Bardon argued that the guidance notes issued by the Commissioner unduly penalises his clients and other advertising companies and requested that the premium of 20% which already applies to the standard 1x48 sheet timber panels was more than adequate for prismatic advertising signs. He also argued that a different approach to the adoption of the Jones Lang Wootten index should now be used when valuing advertising signs and that in his opinion the rateable valuation, which should apply to the sign, is £19.00 analysed as follows:

Estimated 1988 Rent	£2,500
Add 20%	<u>£500</u>
Total	£3,000
@ .63%	£19.00

Mr. Frank O'Connor then cross-examined Mr. Bardon and the following facts emerged: -

Mr. Bardon indicated that the rent of £7,000 per annum in 1996 was freely entered into by David Allen Holdings. He confirmed that the cost of purchase and installation over ten years of the standard issue panel sign was approximately £175.00 and that the prismatic sign costs approximately six times that of the standard board. Mr. O'Connor then asked if 60% appeared reasonably fair relative to this factor and Mr. Bardon stated that his argument related to the ratio between the cost and rent.

Mr. Bardon then accepted that the Valuation Office had used the Jones Lang Wootten index in the past. He confirmed that there was no index relating to the valuation of advertising boards. He also confirmed that rental values have increased over the ten years between 1988 and 1998 and that present economic conditions should be taken into account, but not to the extent proposed of six or seven times the passing rent in 1988. He indicated that the present system applied does not reflect escalating rentals of advertising signs, as there was no consistency in rents throughout the industry. He confirmed that he felt that this system was not perfect and that a separate index should probably apply to refer back to 1988 for advertising signs. He stated that the percentage applied at the moment led to a distortion, whereas the ratio of rent to capital cost in all signs is about the same.

The Respondent's case;

Mr. Frank O'Connor then gave evidence and made the following points in relation to this case: -

He indicated that Mr. Bardon had specific points at first appeal as follows:

David Allen Holdings Limited were paying an excessive rent of £7,000 per annum for this site and the "true rent" is less.

Mr. O'Connor argued that it was inconceivable to suggest that David Allen Holdings Limited would pay an excessive rent in view of their knowledge and dominance of this particular market. Furthermore he stated that in VA95/1/38 the Tribunal stated that a passing rent should be treated as *prima facie* evidence of net annual value putting a heavy onus on any party who wishes to upset the same upwards or downwards.

Mr. Bardon contends that the percentage addition for structure/site enhancement was never agreed by him.

Mr. O'Connor argued that by agreeing various RV's at first appeal over the past few years Mr. Bardon had by implication consented to the use of these additions. He stated that he must adopt a consistent approach and can not now withdraw from his former position.

Mr. O'Connor argued that the subject site fell into category five of the guidelines issued by the Commissioner of Valuation and it was to be valued as follows: -

Valuation is the greater of A or B

A

Fair site rent plus 50% plus £2.00 RV

Adjust £7,000 rent in 1996 to 1988 by JLW (estimated rental value) index.

$\pounds 7,000 \times 341/465 = \pounds 5,133 =$ fair site rent in 1988

$\pounds 5,133 + 50\% = \text{NAV } \pounds 7,700 \times .63\% = \pounds 48.51$

+ £ 2.00

£50.51

RV £51.00

OR

B

Fair Site Rent plus 60%

$\pounds 5,133 + 60\% = \text{NAV} = \pounds 8,213 @ .63\% = \pounds 51.74$

RV £52.00

In support of his method, Mr. O'Connor submitted comparative evidence, which had been agreed with Mr. Bardon on the basis of the formula used in the guidelines (see appendix).

Mr. Bardon then cross examined Mr. O'Connor and indicated that he had not agreed the basis of the analysis on comparison number 3 submitted by Mr. O'Connor, Lot, 77 Middle Abbey Street. He then asked if Mr. O'Connor had any other comparisons of other properties, which showed the same increases. Mr. O'Connor said he would not speak about hypothetical properties but commented that maximum office rents in 1988 were at £10.00 p.s.f., however NAV's of £14.00 p.s.f. were being accepted because of stronger economic conditions today. Mr. Bardon then asked if the factor applied to reflect the cost of development had any relationship to the rental value. Mr. O'Connor indicated that he believed the Commissioner's approach was correct.

Findings of the Tribunal

It appears that the subject premises forms part of a property sector where no Consistency applies to rentals and each advertising station is unique. The guidelines drawn up by the Commissioner following appeal number VA95/1/038 appear to have worked well and have been accepted in some cases by the Appellants valuer.

The Appellants valuer gave evidence in relation to only one prismatic sign in place in 1988 which was at North Strand/Leinster Avenue where the passing rent was then £1,500 per annum. He then indicated that even as late as 1991 only six prismatic signs were in place and the average rental value of these signs was £3,825 per annum. The passing rent in 1997 takes into account the prismatic sign capacity as opposed to a standard sign capacity, but the average passing rent on the similar sign produced in 1988 cannot be ignored.

Whilst the principal of capital costs having a relationship to the rental value is acceptable to the Tribunal there should be a variation in the percentages applied on basic signs versus up-to-date signs. The variations in the percentages applied at present seem wide relative to the rental value and are producing distortions.

Mr. Bardon sought guidance from the Tribunal on the proper approach on the percentage applied. In order for the Tribunal to apply a fair percentage, the actual cost of installation, in

current day terms of each sign on a case by case basis, relative to the passing rent if available, should be submitted. He tendered evidence to suggest that the difference on average in the variation was between 10% and 11.8% on an average rent (see page 4) whilst the range of variations on prismatic signs as between capital cost and rent was somewhere between 5.8% and 35%. He then suggested that the Commissioner's minimum percentage of 20% should apply.

In relation to the passing rent, whilst the Tribunal must take into account the passing rent as at the date of the revision, one cannot disregard evidence of actual passing rents in 1988 which can be adjusted to reflect better economic conditions. The application of the Jones Lang Wootten Index is obviously a tool used by both Appellant and Respondent, which was reasonably successful in assisting and arriving at net annual value of commercial property in recent times. However it is based on estimated rental values of totally different types of property and is not relevant in this case. The Tribunal has considered the evidence of the passing rent in 1996/1997, the average passing rents of prismatic signs in 1991 and the rent of one prismatic sign in 1987. An adjustment has then been applied to reflect the economic conditions as at the date of the Revision and the determination of the rateable value of the subject premises is as follows:-

Estimated 1988 Rent	£4,000	
Plus 30%	<u>£1,200</u>	
	£5,210	
@ .63%	=	£ 32.76 say £33.00 R.V.

