

Appeal No. VA99/2/006

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

Reid Furniture (Ireland) Ltd.,

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Reference Unit 2 Stillorgan Plaza, Stillorgan South, Stillorgan Merville,
Dunlaoghaire-Rathdown, County Dublin

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Barry Smyth - FRICS.FSCS

Member

George McDonnell - F.C.A.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF MARCH, 2000

By Notice of Appeal dated the 19th day of April, 1999, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £857 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal were that "the valuation assessed on first appeal is inequitable and excessive having regard to the established tone in the immediate vicinity for properties revised under the NAV system since 1988"

The appeal proceeded by way of an oral hearing which took place on the 22nd day of September, 1999, at the offices of the Valuation Tribunal, Dublin. Having heard certain evidence, the hearing was adjourned to facilitate the attendance of other witnesses and reconvened on the 15th of October, 1999, again at the offices of the Valuation Tribunal, Dublin. The appellant was represented by Mr. Owen Hickey BL instructed by Park Nelson Ireland, Mr. Michael Coyle F.R.I.C.S., F.S.C.S., A.C.I. Arb. of Palmer McCormack Chartered Surveyors gave evidence on behalf of the appellant. The respondent was represented by Mr. Eamon Marray BL instructed by the Chief State Solicitor, Mr. Damien Curran, A.R.I.C.S., A.S.C.S., B. Sc (surv.), a district valuer with 19 years experience in the Valuation Office gave evidence. Evidence was also given by Mr. Desmond Killen of GVA Donal O Buachalla and Mr. Aidan McDaid, District Valuer in the Valuation Office and Mr. Ray Sweeney also of the Valuation Office.

Having taken the oath each valuer adopted as his evidence in chief his written submission which had previously been exchanged with the other valuer and submitted to the Tribunal.

Material facts agreed or found by the Tribunal:

Valuation History

In the 1997/4 revision, the property was valued as part of the extensive reconstruction and enlargement of the Stillorgan Plaza commercial complex and an RV of £870 was fixed. This was appealed. In the 1997/4 first appeal the rateable valuation was reduced to £857 without the agreement of the occupant. This figure has now been appealed to the Tribunal.

Situation

The property is portion of the Stillorgan Plaza, a modern redevelopment of cinema, retail and offices on the south side of lower Kilmacud Road, directly opposite the established Stillorgan shopping centre.

The Property

The property comprises part of the ground floor of the Stillorgan Plaza complex which comprises a bank, three retail units, a cinema complex, offices and car parking at ground floor and

basement level. The subject premises has frontage to lower Kilmacud Road and return frontage to the access road leading into the car park.

Accommodation

1,264.87m² (13,615sq.ft.)

Frontage to lower Kilmacud Road 14.22m (46' 8") overall dept 50.43m (165' 4")

Title

Premises are held on lease for a term of 25 years from the 5th of June, 1997, at a commencing rent of £186,000 per annum. The lease contains the usual provisions including rent reviews at five year intervals. A rent free period of five months was granted and the lease contains a break option in favour of the tenant at year fifteen.

The appellant's Case

Mr. Coyle stated in his evidence:

1. Stillorgan Shopping centre is the dominant retail presence in the locality because of the wide range of shop units and its car parking and overflow car park
2. Access to the car park in the Stillorgan Plaza complex is via a single poor quality narrow entrance from lower Kilmacud Road.
3. The subject premises is irregular in shape, has 14 structural columns within the floor area and varying ceiling height ranging from a maximum of 13' to a minimum of 10'6".
4. The subject unit is comparable with retail warehouse units of 5,000-10,000sq.ft.

Mr. Coyle assessed the NAV as follows -

1,264.86m² @ £75.35 per sq.m. (13,615 sq.ft @ £7 per sq.ft.)
 = £95,305 say £95,000 @ .63 % = £598.50 say RV £600

Mr. Coyle provided comparisons, two of which related both to open market rental values and NAV/RV's and in addition provided information on both the open market rental value and the net

annual value of five units at Blanchardstown shopping centre retail warehouse park. The information supplied is as follows;-

Comparison No 1

Lease Renewals under Landlord and Tenant Act

Quinnsworth Unit, Stillorgan shopping centre -35 year lease from March, 1988

Ground floor retail 13,647 sq.ft. @ £6.75 per sq.ft.

First floor store 7,589 sq.ft. @ £2 per sq.ft.

Rent reviewed March 1998

Ground floor shop 13,647 sq.ft. @ £15 per sq.ft.

First floor store 7,589 sq.ft. @ £5 per sq.ft.

NAV/RV Assessment

R.V. £775 equates to NAV of £122,914

Analysis:

Ground floor shop 13,647 @ £8 per sq.ft.

First floor store 7,589 sq.ft. @ £2 per sq.ft.

Comparison No 2

Lease Renewals in Landlord and Tenant Act

Dunnes Stores Unit, Stillorgan shopping centre - 35 year lease from December 1987

£95,000 per annum

Ground floor retail 8,075 sq.ft. @ £7.90 per sq.ft.

First floor retail (with some storage) 7,944 sq.ft. @ £3.95 per sq.ft.

Rent review December 1997

Ground floor 8,075 sq.ft. @ £15.50 per sq.ft.

First floor 7,944 sq.ft. @ £10 per sq.ft.

NAV/RV Assessment

Rateable Valuation £645 equates to NAV £102,197

Analysis:

Ground Floor 8,075 sq.ft. @ £8.28 per sq.ft.

First floor retail 7,944 sq.ft. @ £4.14 per sq.ft.

Comparison No 3

Unit 2 Leopardstown retail park - Clery's Home Furnishings - R.V. £485 - NAV £77,000

Analysis:

Retail 9,120 sq.ft. @ £7 per sq.ft
 Stores & WC 1,610 sq.ft. @ £4.50 per sq.ft.
 First floor office & canteen & stores 1,250 sq.ft. @ £4.50 per sq.ft.

Comparison No 4

Unit 3, Leopardstown retail park - Compustore Ltd - 35 year lease from September, 1993
 £84,000 per annum - R.V. £370 - NAV £58,700

Analysis:

Retail 7,051 sq.ft. @ £7 per sq.ft.
 Stores 2,079 sq.ft. @ £4.50 per sq.ft.

Comparison No. 5

Royal Liver Retail Park, Naas Road - Reid Furniture
 R.V. £555 - NAV £87,296

Analysis:

Retail Warehouse 12,800 sq.ft. @ £6.82 per sq.ft.

Comparison No 6

Blanchardstown Shopping Centre Retail Warehouse Park

<u>Unit Size</u>	<u>Lease Rent per sq.ft.</u>	<u>NAV per sq.ft.</u>
20,639 sq.ft.	July 97 @ £13.34	£8.17
30,000 sq.ft.	1998	£8.17
10,017 sq.ft.	July 1997 @ £14.47	£8.80
5,096 sq.ft.	October 1997 @ £16.35	£9.80
5,027	October 1997 @ £17.90	£9.80

Mr. Coyle confirmed that the Dunnes and Quinns worth leases were created over 20 years after the shopping centre had opened and therefore there was no discount for anchor use reflected in

the rent. He expressed the view that the Stillorgan shopping centre was 30 - 50% better than the Plaza. Sports Division unit in Blanchardstown was the closest in size to the subject but Blanchardstown is a better location and therefore more valuable property and this is confirmed by the open market rent in Blanchardstown being higher than for the subject premises, Sports Division rent being £14.47 verses £12.82 for the subject, yet the NAV is £8.80 per sq.ft. on the Sports Division as opposed to a proposed £9 on the subject.

Commenting on the comparisons in the respondent's précis, Mr. Coyle stated that in relation to unit number 4 - The Carpet Showroom, there was no lease in place but a licence and that the premises have recently been vacated. Also these premises are 2,000 sq.ft. as opposed to 13,000 sq.ft. in the subject.

In relation to the AIB unit 1A, this figure was not agreed by AIB's consultants who have now applied for a revision.

In cross examination, Mr. Coyle stated that he had not used the adjoining comparisons of the Carpet Shop and AIB because the basis of the valuation in each case was the opinion of NAV of the Valuation Office and there was no indication that other premises had being looked at to establish the value or the tone and that the carpet shop was unreliable on the basis of quantum, the figure was not agreed with a consultant and the tenant was not on a lease and even allowing for these factors the proposed quantum adjustment is not sufficient.

Accepting that the premises were better quality than retail warehousing generally, he indicated that the difference in value, however was historic as the examples of Blanchardstown Retail Park *vis a vis* the subject indicated. He accepted that the best comparisons came from the local area.

The Respondent's Case

Mr. Curran in his evidence stated that:

1. This is a well finished modern retail unit in good condition with frontage both onto lower Kilmacud Road and to the side of the development.
2. The subject premises has a high profile and is therefore not inferior to Stillorgan shopping centre.

3. In the subject case any quantum reduction is offset by the location with direct access off lower Kilmacud Road and that a hypothetical tenant would be more concerned with location than with size.
4. That while a number of the appellant's comparisons are good examples of retail warehouses, they are not comparable with the subject which is a retail unit with main road profile.
5. That the comparisons utilised by Mr. Coyle in Stillorgan shopping centre are of supermarket units.
6. That the best comparisons are the neighbouring properties

Mr. Curran assessed the rateable valuation as follows:

Shop 13,615 sq.ft. @ £10 per sq.ft. (£107.64 per m²) =£136,150 NAV
 £136,150 @ .63% = £857.74 say £857RV

Mr. Curran provided two comparisons, Number 4, Stillorgan Plaza and Unit 1A, Stillorgan Plaza.

In summary, the analysis of each is as follows:

Unit 4 Carpet Shop

2,133 sq.ft. @ £12.65 per sq.ft.(£136.16 per m²)
 =£26,982 NAV @ .63% = £169.98 say £170 RV

Unit 1A, Stillorgan Plaza - AIB

Ground Floor 5,181 sq.ft. @ £16. per sq.ft.(£172.22 per m²)
 Basement 2,448 sq.ft. @ £7 per sq.ft. (£75.34 per m²)
 Car spaces 16 @ £400 each
 Total NAV £106,432 @.63% =£670.52 say £670

In cross examination Mr. Curran stated that the subject premises was too big to use the zoning method and that in any event adjoining units on lower Kilmacud Road are not comparable, that the four shops in the Plaza were valued by looking at a combination of rental values and NAV's in the Stillorgan area; that there is little direct evidence for reductions to be made for quantum

and that in his opinion a figure of twenty to thirty percent was appropriate in this case; supermarkets are valued in relation to other supermarkets in the Dublin area rather than with the standard units in the Stillorgan shopping centre and that the rents reflect the preferential treatment of supermarket tenants. However in this instance there was no evidence to support this. He accepted that the difference in rental value between Blanchardstown shopping centre and retail park units was the characteristic difference in such cases but did not accept that it was appropriate to have this type of difference in relation to the subject premises because it has a retail shopping profile and is not a retail warehouse; the subject has a NAV of £10 per sq.ft. applied as opposed to the £8.80 applied in the Blanchardstown retail warehouse park because the subject buildings are superior and not comparable with retail warehouse premises. He confirmed that the carpet shop was not let at the time of the fixing of the R.V. on it.

On re-examination by Mr. Marray, Mr. Curran confirmed that comparison number 2 - AIB, was not appealed and that it is in the list at £670 but is now on the list for revision. Comparison number 1 was valued by comparison with other recently revised premises that were comparable including two of the units in the plaza with passing rents adjusted to 1988 by application of the Jones Lang LaSalle index. He confirmed that this rateable valuation was not agreed with the consultant referred to.

Other Evidence

Mr. Aidan McDaid, district valuer in the Valuation Office, took the oath and confirmed that he was the district valuer involved in the valuations of the four retail units and the cinemas in this complex. His evidence was confined to the AIB unit and the carpet centre. He confirmed that he based his valuation on the rent passing adjusted to 1988 and thus assessed the NAV. The AIB premises had no passing rent but was based on suitable comparisons but he did not have his file and could not recollect what these were.

Mr. Ray Sweeney took the oath and confirmed that he had dealt with the assessment of the Dunnes Stores unit in Stillorgan Shopping centre and that the R.V. had been agreed with Mr. Killen of GVA Donal O Buachalla. Mr. Sweeney say that he understood that they had agreed the breakdown but on reading a letter from Mr. Killen to the effect that the breakdown was not discussed or agreed, he felt that he could not say with certainty that the breakdown had been

agreed. He did comment that the breakdown would not have concerned the Commissioner. The breakdown by O Buachalla's is not correct in his opinion. The escalator from the ground to the first floor is up only and only 18" wide and 23% of the space on the first floor is in storage use. He never saw the figures referred to in the letter of £8.28 and £4.14. There is an element of subjectivity and opinion of valuers as regards analysis but he was prepared to stand by his figure of £10 and £3. On cross examination he said that it was implied or assumed that the analysis was agreed but it was not a condition of the agreement. In response to a question from the Tribunal he confirmed that the passing rent adjusted to reflect the difference in time from its commencement date to November 1988 was the basis of the agreed NAV/RV.

Mr. Killen took the oath. He stated that in relation to the Dunnes Stores premises the NAV and RV were agreed and nothing else. He did not recall discussing the breakdown of the valuation with Mr. Sweeney. The discussions concentrated on the passing rent. Analysis was not a condition. Under cross examination he accepted that each valuer carried out an analysis but was unaware of the basis of Mr. Sweeney's analysis. The NAV was agreed at £102,600 which represented an 8% increase on the passing rent.

Summing Up

Mr. Hickey stated that there was unique circumstances in this case and referred to *VA95/1/055 Irish Shell* which referred to the weight to be applied to the evidence of premises on revision or under appeal. He stated that neither of the comparisons relied upon by the respondent was agreed or tested on appeal. They are therefore flawed in law and the Tribunal must follow Mr. Coyles evidence. A valuer cannot value fairly if the only comparisons relied upon are not agreed and were valued on the same basis as the hereditament under appeal. A fair minded valuer should have looked further.

In the event that the Tribunal did not agree with that line of thinking, then on the following points the comparison should be rejected:

1. The carpet showroom was only one seventh the size of the subject and the location is seventy yards from the road frontage and therefore quite different and its usefulness as a comparison is remote.
2. In relation to AIB, the Valuation Office tends to compare banks with banks except where they are identical with the neighbouring shops. Therefore the AIB was not valued by comparison with the adjoining units.

On the basis of the above, Mr. Coyle's valuation and comparisons are the only ones.

Mr. Marray rejected Mr. Hickey's claim that the Tribunal should only rely upon rateable valuations agreed or tested. It must be accepted that the trader or occupant may have agreed to rateable valuations in the list. He made reference to Section 5 of the 1986 Act.

Mr. Marray stated that Mr. Coyle's comparisons rely upon supermarkets which have an allowance built in for the advantage they give to a shopping centre and the retail warehouse comparisons are far removed from the subject premises. He stated that there is no reason why a valuer cannot rely on comparisons within the same development.

Determination

The Tribunal does not support Mr. Hickey's reasoning that it cannot in principle accept as comparisons rateable valuations that have not been appealed or tested before the Tribunal. This would be to imply that the Valuation Office invariably got the valuations wrong and there is no evidence to support this contention.

The Tribunal has concern however about the comparisons produced by the respondent in this case in that no evidence was offered by either Mr. Curran or Mr. McDaid as to the basis of the valuations in each of the comparisons. In addition, the carpet premises is a little more than one seventh of the size of the subject premises so the quantum reduction applied seems inadequate. Mr. McDaid was unable to elaborate on what comparisons were utilised in accessing the valuation on the AIB premises in the plaza.

Under the circumstances therefore the appellant's comparisons seem more appropriate. In the neighbouring but acknowledged superior Stillorgan shopping centre there is evidence of both open market rent and net annual values for large space users and in the case of the Dunnes Stores unit it was confirmed that the NAV was based on the passing rent which was agreed only one year before the relevant November 1988 date. The retail warehouse units while some distance removed physically from the subject premises, are in many cases of a similar user and therefore as comparisons are of some relevance.

The Tribunal determines the rateable valuation as follows:

1,264.86m² @ £75.35 per sq.m.(13,615 sq.ft. @ £7 per sq.ft.)

£95,305 NAV @ .63% = £600 RV.

And the Tribunal so determines.