

Appeal No. VA01/3/098

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

Sureslim Wellness Clinic

APPELLANT

And

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Reference 58E/ Shop 3, Rathfarnham Gate Mall, Rathfarnham Village, Co. Dublin.

B E F O R E

Henry Abbott - Senior Counsel

Chairman

Frank O'Donnell - B.Agr.Sc. FIAVI.

Member

Finian Brannigan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF JANUARY, 2002

By Notice of Appeal dated the 17th day of October 2001, the appellant appealed against the determination of the Commissioner of Valuation in fixing a Rateable Valuation of £55 (€69.84) on the above described hereditament. The grounds of appeal were set out in the Notice of Appeal as follows:

"That the valuation is excessive, inequitable and bad in law."

The oral hearing took place on the 21st day of January 2002, in Dublin. Mr. Eamonn S. Halpin B.Sc. (Surveying) M.R.I.C.S. M.I.A.V.I. appeared for the appellant and Mr. John Smiley appeared for the Respondent. Mr. Halpin affirmed his extensive précis of evidence and clarified that the subject premises being off Main Street, were at best, quasi retail. He stated that the tone of the list had been set in the early nineties when most of the comparisons on Main Street were valued. The tone of the list as determined by him in his comparisons would according to Mr. Halpin indicate a lower valuation for the subject premises, notwithstanding the rent passing. Mr. Halpin was not in a position to say, what the passing rent on Main Street would have been in 2000 for open market lettings. He argued that in applying the Jones Lang Wooten Retail Index, the Respondent applied the incorrect index and that a more favourable result for the Appellant would have been the implication for the Office Index.

When cross-examined by Mr. Smiley, he conceded that the year 2000 was the appropriate date of valuation but only provided that there was a reasonably clear tone of the list evident for such time. In answer to Mr. Smiley's case that he should have taken the current economic climate and gross prospects that existed in 2000, together with the comparables as the three other premises in the mall. He argued that while the valuation of the three other premises stood for the time being, there had now been requests for revision in all three. He conceded that the lease entered into, in respect of the subject premises, was freely negotiated, although he opined that the lessee did not have professional advice when she negotiated same. In answer to a question from the Tribunal, Mr. Halpin indicated that his office comparison, No. 6, on page seven of his précis was the one on which he would most rely.

Evidence was given on behalf of the Respondent by Mr. Smiley and he affirmed in evidence the contents of the précis prepared by him. He requested permission to amend the detail of his précis in relation to the tenure of the lease of the subject dating from July 2000 instead of June 2000, as stated in the précis. This correction was noted by the Tribunal and Mr. Smiley's apology for the small error was accepted.

Mr. Smiley clarified that he was influenced by, (a) the rent passing and (b) the same method of valuation in respect of the three units and that he was confident that the Jones Lang Wooten Retail Index was appropriate and was perhaps over discounting when applied to an outlying area such as Rathfarnham. The reason advanced by Mr. Smiley for such over discounting was the fact that this Retail Index was compiled from prime city centre retail properties with a greater level of growth than property in Rathfarnham. In cross-examination by Mr. Halpin, he said that he was not in a position to understand the basis on which Mr. Halpin claimed that he had already granted a 7% discount on his proposed method in valuing the premises. In response to the Tribunal he conceded that he would have expected the units on Main Street to command a higher rent than the subject. He insisted that the Valuation Act compelled him to take the most recently revised comparables as his guide and that they consisted of the three other premises in respect of which the valuation was allowed to stand in the same mall. He stated that the passing rent for unit no1, the Beauty Saloon was in the region of £17,000 (€21,585.55).

Findings

1. There is evidence of passing rent in this case.
2. There is no evidence that the passing rent was not a proper commercial rent such as would not reflect the market at the relevant time.
3. The most recently revised comparables are the three adjoining premises in the mall in the absence of any premises revised around the same time on Main Street.

While both valuers conceded that they would expect the rent to be higher on Main Street, there was no evidence whatsoever of a recent passing rent for the year 2000 or any earlier year for Main Street.

It is open to the Tribunal to consider evidence based on valuations and net annual value for premises in Main Street when considering the valuation of the subject premises.

The Tribunal accepts that the subject premises probably falls into the lower level of retail category.

The application of Indicés such as the Jones Lang Wooten Index is an appropriate method of establishing net annual value in the absence of other appropriate evidence.

The absence of evidence of any passing rents or of valuations more recent than 1994 for comparable but perhaps slightly more superior premises on the main street,

compels the Tribunal to follow the approach of Mr. Smiley in relation to the valuation method.

Accordingly, the Tribunal finds that there ought to be no change in the valuation of the subject on appeal.

Determination

The Tribunal determines that the valuation of the subject be as stated in the certificate of Valuation €69.84. It is noted that the Valuation Certificate has the pound sign on this figure and the Tribunal amends the certificate by deleting the pound sign and substituting therefore, the euro sign in the horizontal column of the certificate relating to rateable valuation.

While it is the desire of the Tribunal to facilitate parties dealing with the transition from the old system of measurement to the metric system and from the Irish Currency to the Euro, the Tribunal considers that précis and evidence should deal insofar as is possible in metric measurements and Euro valuations and that where the older measurements of area and value are used or relied upon, that parallel information would be given in précis and evidence in the converted metric and euro versions thereof. Failure to deal with appeals in this manner could hamper preparation, negotiation and hearing of appeals in the Tribunal and in extreme cases might cause the necessity of adjournments or costs penalties.