

Appeal No. VA11/5/257 & 258

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

**Myrmidon CMBS (Propco) Ltd. &
Myrmidon CMBS (Propco) Ltd.**

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 400421, Retail (Shops) at Unit 0 (First Floor), Stillorgan Shopping Centre, Kilmacud Road Lower, Stillorgan, County Dublin AND Property No. 400415, Retail (Shops) at Unit G (First Floor), Stillorgan Shopping Centre, Stillorgan, County Dublin

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb

Deputy Chairperson

Mairead Hughes - Hotelier

Member

James Browne - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF FEBRUARY, 2012

By Notices of Appeal received on the 31st day of August, 2011 the appellants appealed against the decision of the Commissioner of Valuation in fixing valuations of €18,020 (VA11/5/257) and €4,590 (VA11/5/258) respectively on the above described relevant properties.

The Grounds of Appeal as set out in the Notices of Appeal as are follows:

"The valuation is excessive and inequitable."

And re VA11/5/258 only:

"Section 48 of the Valuation Act, 2001 has not been correctly implemented by the Commissioner of Valuation. The principal of 'rebus sic stantibus' should apply and the property should be valued in its actual state. The subject property is a vacant office unit."

The appeals proceeded by way of an oral hearing held in the offices of the Valuation

Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 6th day of January, 2012. At the hearing the appellant was represented by Mr Donal O'Donoghue, BSc (Hons) Estate Mgmt, DipVals, AssocSCSI, MIAVI, Director in the firm OMK Property Advisors & Rating Consultants. The respondent was represented by Mr Paul Ogbemor, BEng (Hons) Civil Engineering, a valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to these appeals, which with the consent of the parties were held contemporaneously.

At Issue

Quantum.

The Properties

The subject relevant properties comprise two first floor retail units, accessed by way of three stairwells and a lift in a shopping centre.

Location

The subject properties are located within Stillorgan Shopping Centre which includes over 50 retail units, first floor offices, storage units, a post office and a crèche. The Centre's anchor tenants are Tesco and Dunnes Stores. The Shopping Centre is located at the junction of Kilmacud Road Lower and the Old Dublin Road, on the western side of the Stillorgan Dual Carriageway (N11), with easy access from the M50. Free car parking is provided on site and also on Kilmacud Road Lower. The transport network has been improved with the introduction of the quality bus corridor to Cornelscourt and the link from the N11 to the South-eastern motorway. Nearby large retail units include the aforementioned Stillorgan Shopping Centre, Stillorgan Plaza, Lenehans Parade and Leisureplex.

Services

The subject relevant properties are served with mains power, water, telephone, storm and foul sewer.

Tenure

The properties are understood to be held freehold by the appellant.

Floor Areas

The agreed floor areas, measured on a Net Internal Area (NIA) basis, are as follows:-

Unit O – Property No. 400421 (VA11/5/257)

Block	Level	Use	Area Sq. Metres
1	1	Retail Zone A	21.6
1 - 2	1	Retail Zone B	26.97
2	1	Retail Zone C	26.52
		Total:	75.09

Total area – Unit O: 75.09 Sq. Metres

Unit G – Property No. 400415 (VA11/5/258)

Block	Level	Use	Area Sq. Metres
1	1	Retail Zone A	28.9
1	1	Retail Zone B	15.17
		Total:	44.07

Total area – Unit G: 44.07 Sq. Metres

Valuation History – Unit O

June 2010: A Valuation Certificate (proposed) was issued with an RV of €18,990.

July 2010: Representations were lodged by OMK Property Advisors on behalf of the appellant and the valuation was reduced to

€18,020 due to an amendment to the schedule of areas.

February 2011: An Appeal was lodged with the Commissioner of Valuation by the appellant's Agent. The valuation remained unchanged.

August 2011: An Appeal was lodged with the Valuation Tribunal on 31st August, 2011.

Valuation History – Unit G

September 2010: A Valuation Certificate (proposed) was issued with an RV of €14,590. No representations were lodged and the valuation remained unchanged.

February 2011: An Appeal was lodged with the Commissioner of Valuation by OMK Property Advisors on behalf of the appellant. The valuation remained unchanged.

August 2011: An Appeal was lodged with the Valuation Tribunal on 31st August, 2011.

Appellant's Case

Mr. Donal O'Donoghue took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. The appellant made the following points:-

- Referring to both properties, the Consultant Valuer noted their common location on the first floor and proximity to other occupiers there including a chiropractor, an optician's outlet, beauty salon, hairdressers and a restaurant.
- He summarised:-
 - a) The history of the representations and appeals made to date on the two properties.
 - b) The history of OMK Advisors representing appellants on the Revaluation of many units within the Stillorgan Shopping Centre.
 - c) The reduction negotiated by his firm on the valuation of a large number of the valuations assessed on retail ground floor premises within the Centre.
- He then proceeded to seek a proportionate reduction in the value of these two first floor units, indicating that the relativity between the valuation of both floors had been

disturbed as the upper floor and had not been adjusted to reflect the omnibus agreement reached with the Commissioner of Valuation on Zone A rating levels on the ground floor units. He explained that whereas the Zone A of the units in the first floor of the Centre had formerly been calculated at a level equivalent to 20% of those set on the ground floor, the subject properties are now at an average of 27.12%. He added that the pertinent two properties have no profile to the ground floor and the services purveyed from those units are more typically “appointment driven” rather than impulse retailing.

- Mr. O’Donoghue also concluded that the valuation of Unit O appeared to carry an 8% frontage-to-depth ratio loading, which he disputed.

Appellant’s Comparison Properties

Comparison No. 1

Property: Unit F, Stillorgan Shopping Centre
 Occupier: Dr. Eimear Monaghan
 Property No: 400414

Comparison No. 2

Property: Unit H, Stillorgan Shopping Centre
 Occupier: Cahill Chiropodist Ltd.
 Property No: 400416

Comparison No. 3

Property: Unit J, Stillorgan Shopping Centre
 Occupier: Lorcan’s Barber Shop
 Property No: 400418

Comparison No. 4

Property: Unit 6, Stillorgan Shopping Centre
 Occupier: Fenelons Butchers
 Property No: 400371

Comparison No. 5

Property: Unit 14, Stillorgan Shopping Centre
 Occupier: Dubray Books

Property No: 400377

Mr. O'Donoghue analysed the relationship of rental levels as at *circa* 2001 for his comparison properties between the first three at first floor and the latter two located on the ground floor. This analysis produced Zone A levels on the first floor ranging from approximately €17 per Sq. Metre to €412 per Sq. Metre, comparing with ground floor equivalents of approximately €2,040 per sq. metre and €1,960 per sq. metre. He sought to demonstrate that this exercise would support an argument that rents on the first floor should be not greater than 21% of the now settled Zone A of the ground floor retail units at €1,475 per sq. metre.

Based on the foregoing criteria, Mr. O'Donoghue concluded that the value of the subject properties should be determined as follows:-

Unit O (VA11/5/257)

Block	Level	Use	Area Sq. Metres	€per Sq. Metres	NAV
1	1	Retail Zone A	21.6	280	€6,048.00
1 - 2	1	Retail Zone B	26.97	140	€3,775.80
2	1	Retail Zone C	26.52	70	€1,856.40
				Total	€11,680.20

NAV say €1,700

Unit G (VA11/5/258)

Block	Level	Use	Area (Sq. Metres)	€per Sq. Metres	NAV
1	1	Retail Zone A	28.9	280	€8,092.00
1	1	Retail Zone B	15.17	140	€2,123.80
				Total	€10,215.80

NAV say €10,000

Cross-examination of the Appellant

In response to questions put by Mr. Ogbebor and the Tribunal, Mr. O'Donoghue stated that:-

- i. The subject units are not conventional retail units but should be considered as "retail / services" units to reflect the true mix of tenants on the first floor of the Stillorgan Shopping Centre. He added that the previous occupier of Unit O was a picture framing firm and other first floor occupiers such as Peter Mark, The Barber and Sunway Travel Agency, are typically considered as service providers, as distinct from retailers..
- ii. He acknowledged that the ideal retail frontage-to-depth ratio is 1:3 and noted that the SCSI Retail Zoning Guidance Notes of May 2009 suggests that surveyors should consider applying a discount of approx 10% on premises displaying a front-to-depth ratio of less than 1:2.

Respondent's Case

Mr Paul Ogbebor, having taken the oath adopted his written précis as his evidence-in-chief.

The location, description, accommodation, floor areas and tenure details provided by the respondent were common case to those provided above by the appellant. Mr. Ogbebor added that both properties were occupied when he carried out his inspections.

Respondent's Comparison Properties

Comparison No. 1

Property: Unit E (First Floor), Stillorgan Shopping Centre

Occupier: The Retreat Express Ltd.

NAV: €18,770

Comparison No. 2

Property: Unit F (First Floor), Stillorgan Shopping Centre

Occupier: Dr. Eimear Monaghan

NAV: €18,870

Comparison No. 3

Property: Unit H (First Floor), Stillorgan Shopping Centre

Occupier: Cahill Chiropodist Ltd.

NAV: €18,610

Comparison No. 4

Property: Unit J (First Floor), Stillorgan Shopping Centre

Occupier: Lorcan's Barber Shop

NAV: €24,100

The respondent noted that with the exception of representations made to the Valuation Manager on his Comparison Property No. 4 above, no other Representations were made, or Section 30 Appeals filed, on Units E, F, H or J. In addition to providing a confirmation that each of the first floor comparisons were assessed at a Zone A level of €400 per sq. metre, he also provided rental analyses ranging from approximately €30 per sq. metre Zone A in 2002, €17 per sq. metre Zone A in 2001, €27 per sq. metre Zone A in 2001 and €12 per sq. metre Zone A in 2002 for each of his comparison properties above, respectively.

Valuation by the Respondent

The following represents the valuation details of the subject properties computed by the respondent, as submitted by Mr. Ogbemor during the course of the hearing:-

Unit O (VA11/5/257)

Block	Level	Use	Area (Sq. Metres)	€per Sq. Metre	NAV
1	1	Retail Zone A	21.6	400	€8,640
1 - 2	1	Retail Zone B	26.97	200	€5,394
2	1	Retail Zone C	26.52	100	€2,652
8% loading due to frontage to depth ration lf 1: 4.91					€1,334.88
				Total	€18,020.88

NAV (Rounded to) €18,020

Unit G (VA11/5/258)

Block	Level	Use	Area (Sq. Metre)	€per Sq. Metre	NAV
1	1	Retail Zone A	28.9	400	€1,560.00
1	1	Retail Zone B	15.17	200	€3,034.40
				Total	€14,594.40

NAV (Rounded to) €14,590

Cross-examination of the Respondent

In reply to various questions asked by the Tribunal and the appellant, Mr. Ogbebor responded that:-

- 1) His comparisons 1, 2 and 3 featured only two zones, namely A and B, but as they did not feature a front-to-depth ratio of less than 1:3, it accordingly did not follow, from his point of view, that their Zone A levels should be discounted.
- 2) He did not accept the thesis that a relationship should necessarily prevail between Zone A level rates per Sq. Metre assessed for rating purposes between the ground and first floor but argued that relativity should be reflected by the “tone-of-the-list”.
- 3) The floor area within the “shadow line” at the rear of Unit O should possibly have qualified for a discount in the specific case.
- 4) Mr. Ogbebor also acknowledged that the rental evidence cited in his précis reflected passing rents during 2001 and/or 2002, which may or may not fully represent market rental values as at the Valuation Date.

Summations

Both the appellant and the respondent availed of the opportunity to provide summation statements which were a synopsis of the foregoing arguments and positions employed by them in both their précis of evidence and adduced at hearing.

Findings

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at hearing.

1. The Tribunal acknowledges the arguments made in favour of and against the employment of a relativity measure between the levels per sq. metre applicable to the ground floor retail Zone A areas of the subject Stillorgan Shopping Centre and the retail units overhead on the first floor.
2. The Tribunal notes that the parties following negotiation, agreed a reduction of approximately 27% on the rate per sq. metre initially applied by the Commissioner to Zone A levels on the ground floor retail units.
3. The Tribunal was not convinced by the appellant consultant that a similar reduction factor should apply to the retail and/or service units on the first floor of the subject Centre and dismisses the argument made for a reduction or a proportionate reduction, on such grounds only.
4. The evidence furnished by the respondent pertained exclusively to passing rents, on long leasehold interests held by occupiers of the first floor.
5. The Tribunal finds that the rental information provided on the foregoing units falls short of the provisions set out in Section 48(3) Valuation Act, 2001, insofar as those rents may not reflect open market terms and conditions.
6. The Tribunal also notes the parties disputed the manner in which the subject two units should be described or classified, with the appellant taking the view that they are retail / service units and the respondent that they are retail units.
7. The four comparison units cited by the respondent in his précis appeared more akin to the provision of professional services as distinct from retail services, but the Tribunal was not guided by such as no evidence was proffered by the appellant to suggest that such services were restricted by Planning Permission or Centre trading conditions or practices.
8. The Tribunal notes that the NAV on the comparison properties relied upon by the respondent had not been subjected to the test of 1st Appeal and with the exception of the representations made on Comparison No. 4 the occupiers of those comparison properties were not represented by professional Rating advisors.

9. The Tribunal acknowledges the agreement of the respondent during the course of the hearing that an allowance could be provided for the area behind the return wall in the subject Unit O.
10. The Tribunal does not share the view with the respondent that the NAV of the subject Unit O should be loaded by a factor of 8% to reflect its frontage-to-depth ratio in the instant case.

Determination

Mindful of the foregoing, together with all the evidence submitted and adduced at hearing, the Tribunal considers that fair and reasonable valuations on the subject units should be as follows:

Unit O (VA11/5/257)

Block	Level			
1	1	Retail Zone A -	21.6 sq. metres @ €300 per sq. metre	= € 6,480.00
1 – 2	1	Retail Zone B -	26.97 sq. metres @ €150 per sq. metre	= € 4,045.50
2	1	Retail Zone C -	26.52 sq. metres @ €75 per sq. metres	= <u>€ 1,989.00</u>
Total				= €12,514.50

NAV Say €12,500

Unit G (VA11/5/258)

Block	Level			
1	1	Retail Zone A -	28.9 sq. metres @ €300 per sq. metre	= € 8,670.00
1	1	Retail Zone B -	15.17 sq. metres @ €150 per sq. metre	= <u>€ 2,275.50</u>
Total				= €10,945.50

NAV Say €10,900

And the Tribunal so determines.