

Appeal No. VA14/5/543

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

Matthew Power

APPELLANT

And

Commissioner of Valuation

RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 1946491, Retail (Shops), Main Street, Ardmore, County Waterford.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19TH DAY OF SEPTEMBER, 2016

BEFORE:

Niall O Hanlon – BL

Deputy Chairperson

Aidan McNulty – Solicitor

Member

Frank Walsh – QFA, Valuer

Member

By Notice of Appeal received on the 4th day of September, 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €12,180 on the above specified property. In the Notice of Appeal, under grounds of appeal, reference was made to an accompanying letter. In that letter, dated the 1st of September, 2014, the Appellant stated that the fact that his business was only open for a quarter of the year should be reflected in his rates. In essence the Appellant argued that he was entitled to a reduction in the net annual value of the subject property by virtue of the seasonality of the business that he carried on therein.

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal on the third floor of Holbrook House, Holles Street, Dublin 2, on the 29th September 2015. The Appellant Mr Mathew Power represented himself. The Respondent was represented by valuer Ms. Gillian Beale.

In accordance with the Rules of the Tribunal, the parties exchanged their respective précis of evidence prior to the commencement of the hearing and had submitted same to this Tribunal. At the oral hearing, both parties took the oath and adopted their respective précis as their evidence-in-chief. This evidence was supplemented by additional evidence given to affirm undisputed floor areas together with evidence either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At Issue

Quantum.

The Property

The subject property comprises a mid-terrace two story building with the ground floor divided into two retail areas namely an art gallery and a café and fast food take away.

Location

The property is situated on the main street, Ardmore, Co. Waterford. It is a small seaside village with a very small residential population (80% of the houses are holiday homes) and it is located off the N25 on the Waterford to Cork Road, approx. 70km from Waterford City and 20 km from Dungarvan. The subject property is located in the centre of Ardmore Village and in close proximity to Ardmore beach.

Services

The subject property has the usual services including gas, electricity and water.

Floor Areas

When the matter initially came on for hearing before the Tribunal it became apparent that there were discrepancies in relation to the measurement of the subject property. The Tribunal

were presented with three different measurements of area for the subject property from the Respondent:

In particular, it appeared to be the case that the Respondent was of the view at First Appeal to the Commissioner stage that the area of the property was 174.25m² whilst immediately before the hearing before the Tribunal the Respondent evidence was that the area of the property was 150.70m² at Tribunal stage.

The Tribunal directed that this discrepancy should be resolved and on the 13th of October, 2015, a revised measurement of 161.31m² was submitted on behalf of the Respondent. The Take Away area was measured at 77.31 m² and the Art Gallery/Cafe at 84 m². (See Appendix 1). These revised measurements were agreed as between the parties.

Notwithstanding the upward revision in the area of the subject property the Respondent continued to contend for a valuation of €11,892.42 rounded down to €11,890.

Valuation History

31/05/2013 Proposed Valuation Certificate Issued €8,110

25/06/2013 Representations Lodged.

16/12/2013 Final Certificate Issued

07/02/2014 Appeal submitted to Commissioner of Valuation

06/08/2014 Appeal Disallowed Valuation Certificate Issued for €12,180

04/09/2014 Notice of Appeal to Valuation Tribunal

Before the Tribunal the Respondent contended for a valuation of €11,890. The difference between the amount that the Respondent argued for before the Tribunal and the amount per the Valuation Certificate arose because of a revision to the floor areas made following a full inspection of the subject property in March 2015.

Grounds of Appeal are as set out in the Notice of Appeal. The Appellant stated that he considered that the valuation of the property was incorrect because the increase was “massive”, took no account of trading hours and yearly trading conditions and that the rates struck were unfair and unreasonable.

Appellant's Case

The Appellant had, prior to the hearing, furnished with his covering letter four written documents which described the location, condition and history of the use of the subject property and also furnished invoices and profit and loss accounts together with rental details of the property. At the commencement of the hearing he took the oath and expanded as to his position as outlined in the submitted documentation. In his evidence he accepted that everyone should pay their just taxes but did not accept the Waterford County Council letter that stated, quote "their revaluation is to bring more equity, fairness and transparency into the local authority rating system." Mr Power went on to say that he had difficulty accepting the revaluation outcome for his property and the basis on which the Respondent had arrived at the valuation of the subject property. The Appellant is of the belief that the Respondent sought out the highest price references to ensure that the revaluation will be upward, rather than rebalance the existing rate base.

The Appellant went on to say that his business consists of an Art Gallery/Coffee Shop which is rented and a Take-Away Chip Shop. He stated that the business is totally dependent on the tourist season and the season at the beach in Ardmore is extremely short. He also stated that the village home market and population is small and even more so when the children return to school. This in turn is reflected in the few hours available to conduct the business.

He stated that this results in the business being only open full time for 10 weeks. He gave evidence that the business is open from Easter for 4 to 5 hours on Saturdays and Sundays; from mid-June through to August it is open daily from 13.00 to 24.00. In September the business goes back to weekend trading and come the end of September until the following Easter Saturday it remains closed. The trading year is heavily dependent on tourism and school holidays and is weather dependent.

The Appellant argued that due to the fact that his trading business is only open for a quarter of the year his rates should reflect this. He stated that he gives part time employment to four/five people in the village and that he incurs approximately €5,000.00 in annual business expenses. The Appellant has consistently argued for seasonality allowance and has been rejected. He states that the system should apply the principle of fairness as previously quoted and should make allowance for it.

The Appellant stated that based on the present rental value in the area of 2 commercial properties, namely a pharmacy which has three times the rent of other businesses such as Lloyds in Dungarvan or Easons book store in Dungarvan, and his Art Gallery-Coffee Shop was not comparing like with like. He stated that this distorted the basis needed to achieve a fair valuation and that the subject property should only be compared with similar properties in terms of annual usage and rental income. The Appellant pointed out that rents in similar areas in the country have declined, as could be seen in the price for current new commercial properties for rental. The village pharmacy has the benefit of year-round trade and also caters for the surrounding areas. The second being a new Art Gallery that opened in the village in Easter 2015 and closes in September is operated by an artist selling her own art works and making picture frames.

The Appellant reiterated the claim that the NAV for retail zoning in the village of Ardmore is too high at €130 per sq. m. He stated that the NAV of the subject property should be a direct comparison with annual rental values of similar properties in the area. He also stated that if you use rent paid by a pharmacy to calculate NAV for Ardmore then you must discount that rent to calculate an accurate market rent in the area. Furthermore, he stated that the allocation of retail zoning A to the Take Away premises is too large. Almost 70% (33sq. m. out of 55 sq. m.) of the take away has been designated Zone A retail. The customers only have access to less than 10 sq. m. space in this unit. The rest of the space is allocated to cooking and food preparation activities with no retail function.

In cross examination by Ms. Beale, Mr Power did confirm the gallery rental income to be €10,383 p.a. He further confirmed that he accepted that the 10 comparisons put forward on main street were at €130 per sq. m. and the 4 other comparable properties put forward were also at €130 per sq. m.

The Tribunal accepts the uncontested evidence of Mr. Powers passing rent of €10,383.00 per annum for the Art Gallery/Cafe portion of the subject property. The Tribunal notes the schedule provided by the Respondent making adjustments to the rent to arrive at a net effective rent of €7,465.58 as at the valuation date. This net effect rent applies to the Art Gallery/Cafe area only, being 84 per sq. m. of the total area of 161.31 per sq. m.

Valuation by the Appellant

Rate €12,180 /2 = €6,090.00 p.a. due to closure for 6 months (plus) therefore he seeks seek 50% reduction.

Appellant's Comparison Properties

1. 28 North Main Street, Youghal, Co Cork
2. Quintins Way, Pearse Street, Nenagh, Co Tipperary
3. Inish Carraig Business Centre, Golden Island, Athlone, Co Westmeath.

All of the above comparisons were of little value as they were outside the Rating Authority area and provided no information on Zoning Rates.

Respondent's Case

Ms. Beale took the oath and adopted her written precis which had previously been received by the Tribunal as her evidence-in-chief. In evidence she confirmed that she had carried out the inspection of the subject property. She stated that she had meet with Mr Power and that at the meeting she gave him as much information as she could and left her card with him should he wish to get back to her for any further information at any time.

Ms. Beale stated that 1970/80 was the last revaluation and all property had witnessed some increase. She stated that retails have gone up, offices remained stable and industrial property had experienced some reduction. She also stated that all the property on the Main Street in Ardmore was valued at the same level at €130 per sq. m. She further stated that it is not her function to comment or judge on the success or otherwise of a business which is carried out in the subject property.

The valuation of the subject property is conducted according to the provisions of the Valuation Act 2001. The Net Annual Value (NAV) of the property is to be estimated in accordance with Section 48 of that Act. The estimate is based on a hypothetical tenant paying a rent for exclusive occupation, one year with another, for a property in its actual state on the assumption that the probable annual costs of repair, insurance and any other expenses necessary to maintain the property in that state, including rates and other taxes, are borne by the tenant.

The actual rent for any individual property may be material in deriving that estimate, but is not in itself conclusive of the Net Annual Value (NAV) in the context of Section 48. The estimate of value is what a hypothetical tenant would pay by way of rent in accordance with section 48, not necessarily what any particular tenant is paying. Ms. Beale stated that a number or basket of market rents assists in deriving the estimate of net annual value and that of the 8 properties on Main Street, Ardmore, set at €130 per sq. m., the one appeal is that of the subject property. She stated that there is no provision or authority granted to the Commissioner under the Valuation Act 2001 to make any exceptions or allowances for seasonality. In conclusion she requested that a valuation of €11,890 be entered in the Valuation List as representing the Net Annual Value for the subject property in accordance with section 48 of the Valuation Act 2001.

Respondent's Comparison Properties

In support of her opinion of rateable valuation Ms. Beale put forward 4 comparisons and also 2 items of market information all are located in Ardmore and all with a Zone A Rate of €130.00 per sq. m.

Comparisons:

1. Christine Power, Main Street, Ardmore, Co Waterford – Zone A Rate of €130 per sq. m.
2. John Quinn, 36 Main Street, Ardmore, Co Waterford – Zone A Rate of €130 per sq. m.
3. Gillian Dwyer, Ardmore, Co Waterford – Zone A Rate of €130 per sq. m.
4. Mary Elizabeth French, Main St, Ardmore, Co Waterford – Zone A Rate of €130 per sq. m.

Market information:

1. Mr Akram Hanna, T/A Marl Mina, Ardmore, Co Waterford – Zone A Rate of €130.00 per sq. m.
2. The Gallery, Main Street, Ardmore, Co Waterford - Zone A Rate of €130.00 per sq. m.

Note: This is part of the subject property.

Submissions

Mr. Power stated that he has been 30 years in business and that he has seen a doubling of his rates. Ms. Beale stated that she had acted in compliance with Section 48 of the Valuation Act 2001

Conclusion

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence adduced before us by the parties to the appeal,

DETERMINES

That it will affirm the net annual value of €11,890 advanced by the Respondent.

The reasons being

1. The Appellant adduced no comparative evidence to contradict the NAV advanced by the Respondent.
2. The Tribunal notes that the Respondent adduced evidence of four comparisons in the vicinity of the subject property valued at €130 per sq. m., Zone A.
3. The Tribunal notes that Ms. Beale, on behalf of the Respondent, asserted that there is no provision or authority granted to the Respondent under the Valuation Act 2001 to make any exceptions or allowances for seasonality. The Tribunal further notes that this assertion was not challenged by the Appellant.
4. The Tribunal is satisfied that all relevant material facts were considered in arriving at the Net Annual Value (NAV) of the subject property, in accordance with Section 48 of the Act.

And the Tribunal so determines.