Appeal No. VA 14/5/983

AN BINSE LUACHÁLA

THE VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Kevin Good	**APPELLANT**
and	
Commissioner of Valuation	**RESPONDENT**

RE: Property No. 776332: Unit 12, Sundrive Shopping Centre, Sundrive Road, County Borough of Dublin.

BEFORE:

Niall O'Hanlon – BL	**Deputy Chairperson**
Michael Connellan – Solicitor	**Member**
Mairead Hughes – Hotelier	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF SEPTEMBER 2016

Introduction

A Notice of Appeal in respect of this matter was received by the Tribunal on the 8th of September, 2014. The grounds of appeal were stated to be:

"Valuation excessive – measurement wrong and rental zones not reflective of shop layout"

This is an appeal against a revaluation, the Valuation Date being the 7th of April, 2011. Hearings in respect of the appeal took place in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 1st of October, 2015 and on the 29th of

June, 2016, the Respondent having sought and been granted an adjournment on the 9th of June, 2016, due to the non-availability of the valuer dealing with the matter on his behalf. Mr. Kevin Good represented himself whilst Mr. Tomás Cassidy, Valuer, appeared on behalf of the Respondent.

The Appellant appealed against the valuation as determined at appeal to the Respondent in the amount of €23,300. In his Notice of Appeal, and initially in his evidence, the Appellant argued for a valuation in the amount of €14,000; however, at the resumed hearing on the 29th of June, 2016, the Appellant sought a valuation of €8,000.

The property the subject of the appeal (hereafter, "the Subject Property") is located in the Sundrive Shopping Centre, which is situated on Sundrive Road in Dublin 12. The Subject Property is a single storey retail premises currently in use as a pharmacy. It has two entrances. The net internal area was agreed at joint inspection with the occupier as being 99.9 square metres. Previously, the Subject Property had been recorded as having an area of 98.36 square metres.

The Subject Property was held leasehold as at the Valuation Date. The lease, which commenced in September, 1994 and was for a term of 20 years, had an upward only rent review clause. The passing rent of €30,000 was set at the 2009 rent review. The Tribunal was informed that negotiations were on-going in respect of the lease of the property beyond 2014.

In advancing his case for a valuation of €8,000 the Appellant relied on licence arrangements entered into in respect of two properties in the same shopping centre. In a letter to the Tribunal, dated the 1st of September, 2015, which formed part of his précis of evidence, and which he amended in his oral evidence to the Tribunal on the 29th of June, 2016, the Appellant asserted that Units 3/4 in the Centre were subject to a licence arrangement from in or about the 1st of March 2010 and that the net licence fee applying at that time amounted to €11,689 per annum. The Appellant asserted that a second licence arrangement was entered into in respect of Units 3/4 in or about the 30th of January 2014 and it was agreed between the parties that the net licence fee applying was €5,045 per annum. The Appellant, in oral evidence given on the 29th of June, 2016, stated that a licence was also entered into in respect of Units 10/11 in the Centre on the 1st of May, 2013, and that the net amount paid thereunder amounted to €9,095.

The Respondent did not take issue with the figures advanced by the Appellant in respect of the licence arrangements but took the view that less weight should be placed on such arrangements as they were licences and did not meet the criteria set down in section 48 (3) of the Valuation Act 2001 for arriving at a net annual value for a property. In cross-examination by Mr. Good, Mr. Cassidy did not accept the proposition that a licence arrangement would give rise to a higher return for a landlord as compared to a lease.

Apart from evidence in respect of the Subject Property, the Respondent relied on four key rental transactions, two of which related to properties located in the same shopping centre as the Subject Property. The first of these two key rental transactions concerned Unit 8A where the Respondent had calculated a net effective rent for Zone A of €418.79 per square metre and for Zone B of €209.39 per square metre. These figures, which were not challenged by the Appellant, had been calculated in respect of a lease that had been entered into on the 29th of November, 1985 and in respect of which there had been a rent review implemented in May, 2009.

The second of these two key rental transactions concerned Unit 4B where the Respondent had calculated a net effective rent for Zone A of €397.22 per square metre and for Zone B of €198.61 per square metre. These figures, which again were not challenged by the Appellant, had been calculated in respect of a lease that had been entered into on the 1st of April, 1982 and in respect of which there had been a rent review implemented in May, 2009. In each case the calculation was of the net effective rent as at the valuation date of the 7th of April, 2011.

The Tribunal noted in the first hearing, on the 1st of October, 2015, that the calculation, by the Respondent, of the net effective rent of the Subject Property as at the Valuation Date amounted to €22,060 (giving rise to a net effective rent for Zone A of €327.63 per square metre and for Zone B of €163.81 per square metre) whereas the net annual value being sought by the Respondent amounted to €23,300.

The first hearing was adjourned for the purpose of allowing the Respondent to adduce further evidence to clarify this matter for the Tribunal. A supplementary précis of evidence was prepared on behalf of the Respondent and at the resumed hearing on the 29th of June, 2016, Mr. Cassidy explained that the net effective rent had initially been calculated by reference to the 2009 rent review in respect of the property and time adjusted from that date, thus giving rise to the amount of €22,060.

Mr. Cassidy in his supplementary précis presented a second calculation of the net effective rent as at the Valuation Date, this time calculated by reference to the rent review in respect of the property in 2004 and time adjusted from that earlier date to give a net effective rent at the 7th of April, 2011, of €24,298.47 (giving rise to a net effective rent for Zone A of €360.88 per square metre and for Zone B of €180.44 per square metre). He stated that in his opinion the variation between the net effective rent and the net annual value was due to the presence of an upwards only rent review clause in the lease in respect of the Subject Property.

The Tribunal notes that prior to the hearing the parties agreed the measurement of the Subject Property. Although this resulted in a figure greater than that presented on appeal to the Respondent the Tribunal notes that the Respondent continued to argue for a net annual value of €23,300. The Tribunal further notes that, at the hearing, the Appellant did not pursue the issue of the rental zones not being reflective of the shop layout.

The Tribunal accepts the evidence of Mr. Cassidy that the licence arrangements entered into in respect of certain of the units in the shopping centre in which the Subject Property is located do not reflect the criteria set down for arriving at a net annual value pursuant to section 48 (3) of the Valuation Act 2001. The Tribunal also accepts the evidence of Mr. Cassidy that the presence of the upwards only rent review clause will cause the net effective rent to vary from the net annual value calculated pursuant to section 48 (3) of the Act. The Tribunal notes that Mr. Cassidy's assertions in relation to the impact of the rent review clause were not challenged by the Appellant.

Determination

Accordingly, the Tribunal affirms the net annual valuation of the Subject Property to be €23,300 as at the valuation date of the 7th of April, 2011.