

Appeal No. VA09/3/004

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

Mullaney Brothers

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2196632, Shop, Store at Lot No. Unit 4, floor 0 & 1, Johnston Court Shopping Centre, Knappagh Beg, Sligo West, Sligo Borough, County Sligo.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Damian Wallace - QFA, MIPAV, Valuer

Member

Aidan McNulty - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF DECEMBER, 2009

By Notice of Appeal dated the 7th day of July, 2009, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €10.00 on the above-described relevant property.

The Grounds of Appeal are set out in a letter attached to the Notice of Appeal, which is attached at Appendix 1 to this judgment.

1. This appeal proceeded by the way of an oral hearing held in offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 30th day of October, 2009.
2. At the oral hearing the appellant was represented by Mr. Patrick McCarroll, MRICS, ASCS, Chartered Valuation Surveyor. Mr. Brian Ó'Floinn, a District Valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation.

The Property Concerned

3. The property concerned in this appeal is a retail unit (No.4) in Johnston Court, Sligo. Johnston Court is an enclosed retail mall running from O'Connell Street to what is known as the Wine Street car-park. Johnston Court, which forms part of a mixed development with apartments at two levels overhead, provides a total of 28 retail units, 2 of which have frontage onto O'Connell Street. The mall is so designed as to provide accommodation at 2 levels. The accommodation on the upper level is not directly accessed from the mall, but in some instances occupiers have provided as part of the fit-out an internal staircase linking the two levels. The mall is well finished and by virtue of its two level design provides an attractive shopping environment with unit sizes ranging from circa 37 sq. metres to 334 sq. metres.
4. The property concerned in this appeal is located approximately one third along the length of the mall from the O'Connell Street entrance and has an agreed internal area of circa 60.75 sq. metres at mall level and 45.91 sq. metres at the upper level. Unit 4, which trades as a ladies fashion outlet, is intercommunicating at the rear of the ground floor with other premises occupied by Mullaney Brothers which have frontage onto O'Connell Street.
5. The agreed area measured on a net internal basis area basis as follows:

Mall level (retail):	60.75 sq. metres
Upper level stores:	37.91 sq. metres
Window Display area:	8.00 sq. metres

Tenure

6. The property concerned is occupied under a ground-lease type of arrangement from the 21st October, 2007 for a term of 500 years at an initial yearly rent of €1 per annum subject to be reviewed at 5-yearly intervals.

Valuation History

7. The property concerned, together with that of several other units in the mall, was first valued in 2008 and on the 8th September the Revision Officer issued a Valuation Certificate to the effect that it was proposed to value the property concerned at a rateable valuation of €10. Following representations by the appellant, a valuation certificate in final form was issued on the 6th November, 2008 confirming the rateable valuation at €10. The appellant lodged an appeal against this assessment under section 30 of the Valuation Act, 2001 and, having considered the grounds of appeal made by the appellant, the Commissioner of Valuation disallowed the appeal and affirmed the rateable valuation of €10, as determined by the Revision Officer. The appellant, being dissatisfied with the Commissioner's decision, lodged a further appeal to this Tribunal under section 34 of the Act.

The Appellant's Evidence

8. Mr. McCarroll, having taken the oath, adopted his detailed and well-presented précis, which had previously been received by the Tribunal and the respondent, as being his evidence-in-chief. In his evidence Mr. McCarroll contended for a rateable valuation of €79 calculated as set out below:

Mall level retail space	60.75 sq. metres	@ €220 per sq. metre	= €13,365.00
First floor stores	37.91 sq. metres	@ € 50 per sq. metre	= € 1,895.50
Window display area	8 sq. metres	@ € 75 per sq. metre	= € <u>600.00</u>
Total			= €15,860.00
Net Annual Value Say €15,800			
Rateable Valuation @ 0.5% = €79			

Note: It should be noted that the above valuation of €79 is different from that contained in Mr. McCarroll's original précis which indicated a figure of €70. The change in valuation was occasioned by an alteration of his area of the accommodation at ground floor level agreed during the course of the oral hearing.

10. In support of his opinion of net annual value Mr. McCarroll introduced six comparisons, details of which are set out in Appendix 2 attached to this judgment.

11. In his evidence Mr. McCarroll described the pedestrianised O'Connell Street as the premier retailing street in Sligo, the most convenient access for car-parking to it being the Wine Street car-park. Pedestrian access from O'Connell to the car-park is either through Johnston Court or the Tesco Mall.
12. Mr. McCarroll said that Johnston Court was intended to be an integral part of a large-scale development scheme prepared for the area between O'Connell Street and Adelaide Street, as provided for under the National Building Agency's Centre Block Masterplan for Sligo. At the relevant valuation date the rest of the proposed development was only at the planning stage and, as a consequence, Johnston Court will not achieve its full potential for several years. This fact, Mr. McCarroll said, was borne out by the absence of a key tenant, high level of vacant units, poor trading in the mall and low level of foot-fall. In recognition of these adverse factors the landlord had granted to the traders in the mall a 50% reduction in rent in order to encourage them to keep trading. All of this, Mr. McCarroll said, was in sharp contrast to the Quayside Shopping Centre development in Wine Street which was trading successfully with all units being occupied and with a very strong tenant mix. This centre, he said, benefited greatly from having parking for 375 cars in an enclosed multi-storey car-park which was an integral part of the Quayside development.
13. Mr. McCarroll contended that when arriving at the net annual value of the property concerned, regard must be given to the fact that the development of Johnston Court was premature, to the lack of key tenant, high vacancy rate and the to lack of adequate car parking in the vicinity. In his opinion, Quayside was a much more successful retail development than Johnston Court and this should be reflected in the valuation of the property concerned.
14. Under examination Mr. McCarroll said the prime retail street in Sligo was O'Connell Street, and that Wine Street was, at best, secondary. He further agreed that Wine Street was not a retailing location as such, and that several properties on both sides of the street were either in commercial/office use or, in many cases, residential use. When asked about the Tesco mall Mr. McCarroll agreed that Johnston Court was a more attractive development from a shopping point of view but argued that whilst this might be so, the Tesco mall was much better from a business point of view and the traders in this mall benefited greatly from the proximity to the supermarket. In regard to unit 7 (comparison No. 1 in his précis) Mr. McCarroll agreed that his devaluation was on an overall basis. He agreed that on a zoning

basis this would equate to a Zone A rate of €316.44, but said he was of the view that units in Johnston Court and Tesco mall should not be valued on a zoning basis.

The Respondent's Evidence

15. Mr. O'Floinn, having taken the oath, adopted his written précis and valuation which had previously been received by the Tribunal, as being his evidence-in-chief. In his evidence Mr. Ó'Floinn contended for a rateable valuation of €10 calculated as set out below:

Ground Floor

Shop floor (Zone A):	50.34 sq. metres	@ €340 per sq. metre	= €17,115.60
Shop floor (Zone B):	10.41 sq. metres	@ €170 per sq. metre	= € 1,769.70
Shop Display (Floor 1):	8.00 sq. metres	@ €15 per sq. metre	= € 920.00
Store (Floor 1):	37.91 sq. metres	@ € 50 per sq. metre	= <u>€ 1,895.50</u>
Total			= €21,700.80

Rateable Valuation @ 0.5% = Say €10

16. In support of his opinion for rateable valuation Mr. Ó'Floinn introduced four comparisons, details of which are set out in Appendix 3 attached to this judgment.
17. In his evidence Mr. Ó'Floinn said that when arriving at his valuation of the property concerned, he had regard to the assessments of retail units on O'Connell Street at Quayside Shopping Centre. Mr. Ó'Floinn emphasised that O'Connell Street was the prime retail location in Sligo and the average prevailing Zone A rate on the street was €410 per sq. metre, although some individual units were assessed at levels in excess of this figure. Johnston Court, he said, was a well-designed and attractive mall development linking O'Connell Street and the Wine Street car-park, which serves Tesco, Pennys and Dunnes Stores. From a location point of view Johnston Court, he said, was similar to the Tesco arcade but other than that there was no similarity between the two in terms of scale, design specification and the range of retail units available. Having regard to the established Zone A levels on O'Connell Street and the Quayside Shopping Centre, Mr. Ó'Floinn said that he considered a Zone A rate of €340 per sq. metre was appropriate in the property concerned having regard to its size.
18. Under examination Mr. Ó'Floinn said that his opinion of value fairly represented the location and nature of the Johnston Court development. He agreed that in describing the development

he had used some of the phraseology contained in the developer's advertising material but said that any material used by him was factual. In his opinion Johnston Court was a well designed and well-finished development and was much more attractive than the Tesco arcade, which was dated in appearance and contained a number of small, kiosk-type units. This was in sharp contrast to the number and size of the units available in the Johnston Court development.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced and finds as set out below. It should be said that in arriving at its determination the Tribunal was greatly assisted by the written and oral presentations made by Mr. McCarroll and Mr. Ó'Floinn, both of whom presented their evidence and arguments in a most professional manner.

1. This appeal came before the Tribunal as a result of a request for a revision of valuation pursuant to Section 28 of the Valuation Act, 2001.
2. The method for valuing property under section 28(4) is set down in Section 49(1) of the Act which states *"If the value of a relevant property (in subsection (2) referred to as the "first-mentioned property") falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property"* – In other words the value of the property concerned is to be determined by reference to "the tone of the list".
3. The property concerned in this appeal is a retail unit in Johnston Court which is a new enclosed mall-type development running from O'Connell Street to the Wine Street car-park.
4. It is common case that O'Connell Street is the premier retailing street in Sligo.
5. The Tribunal accepts Mr. Ó'Floinn's evidence that a Zone A rate of €410 per sq. metre represents the "Tone of the list" for retail premises on O'Connell Street in the vicinity of Johnston Court.
6. It is common case that under the National Building Agency's Centre Block Masterplan for Sligo the area between O'Connell Street and Adelaide Street has been identified for integrated retail developments, to include a town centre block and multi-storey car-park at its core. Johnston Court is an integral part of this overall scheme.

7. A short distance north of Johnston Court is a Tesco Supermarket which is accessed off O'Connell Street by an arcade containing a number of small retail outlets and kiosk-type units. Unit No. 7 (Mr. McCarroll's comparison No. 1) is one of the outlets which is located close to the main entrance to the Tesco store, convenient to the Wine Street car-park.
8. In his written précis Mr. McCarroll had devalued the net annual value of Unit No. 7 on an overall basis as being €271.97 per sq. metre. During the course of the oral hearing he and Mr. Ó Floinn agreed that, on a zoning basis, the Zone A rate was €316.44 per sq. metre.
9. It is common case that Johnson Court is designed and constructed to a higher specification and finish to the Tesco Arcade and that it provides a total of 28 units of sizes from c37 sq. metres to 334 sq. metres. It is accepted that a number of units were vacant at the date of assessment and that 10 or 11 units are still currently unoccupied.
10. The Quayside Shopping Centre is located on the north side of Wine Street some distance from Johnston Court, but convenient to the Dunnes Stores complex. Quayside, which opened in 2005, is a mixed-use development with 40 retail units, office and residential accommodation, together with a 375 space multi-storey car-park. The retail element is dedicated primarily to fashion and ancillary uses and, in common with Johnston Court, does not contain a food supermarket. Two major anchor stores are included and they are occupied by Next and T.K. Maxx.
11. It is common case that Quayside is not located in a prime retail area, but Mr. McCarroll contended that any locational disadvantages by comparison with Johnston Court are offset by the provision of two anchor stores and on-site car-parking at a reasonable price. This, he said, was borne out by its tenant mix which was much superior to that in Johnston Court, which contained a number of vacant units.
12. Having regard to the area, configuration, size and location of the property concerned the Tribunal prefers Mr. Ó Floinn's valuation approach, i.e. that the retail area at mall level be zoned. The valuers have valued the storage space at first floor level at a common rate of €50 per sq. metre. Mr. McCarroll valued the window display area at this level at €75 per sq. metre whilst Mr. Ó Floinn applied a figure of €15 per sq. metre to this space. The Tribunal considers €100 per sq. metre to be appropriate for this space.
13. On balance, the Tribunal has come to the conclusion that the most relevant comparison is Unit 7 in the Tesco Arcade, which is similar in size and configuration to the property concerned. Notwithstanding Mr. McCarroll's argument, the Tribunal is of the view that the property concerned should be valued at a higher Zone A rate than Unit 7 to reflect the

better physical attributes of Johnston Court, there being no discernable locational differences between the two properties. The Tribunal accepts that the Zone A rate of €273.35 per sq. metre applied to retail units in Quayside reflects the difference between a Wine Street location and an O'Connell Street location which by common consent is the prime retail pitch in Sligo.

Determination

Having regard to the above the Tribunal determines the rateable valuation of the property concerned to be as follows:

Ground Floor retail (Zone A):	50.34 sq. metres	@ €310 per sq. metre	= €15,605
Ground Floor retail (Zone B):	10.41 sq. metres	@ €155 per sq. metre	= € 1,614
First Floor Display:	8.00 sq. metres	@ €100 per sq. metre	= € 800
First Floor Stores:	37.91 sq. metres	@ € 50 per sq. metre	= <u>€ 1,895</u>
Net Annual Value			= €19,914
NAV Say	€20,000		
RV @ 0.5%	€100		

And the Tribunal so determines.