

Appeal No. VA10/5/028

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

Kay Lennox

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 288052, Retail (Shops), Unit 3 Sutton Cross S.C, Sutton Cross, County Dublin.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Damian Wallace - QFA, MIPAV, Valuer

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 11th day of July, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €41,100 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 13th day of October, 2010. The appellant, Ms. Kay Lennox represented herself and Mr. John O'Connor, a Valuer in the Valuation Office represented the respondent, the Commissioner of Valuation. Each representative, having taken the oath, adopted his/her précis and valuation, which had previously been received by the Tribunal and exchanged with the other party, as his/her evidence-in-chief.

At Issue

Quantum.

The Property

The subject property is a mid-terraced single-storey retail unit located at Sutton Cross Shopping Centre. It is one of eight retail units at the centre. The subject property has a net internal area of 59.8 sq. metres and shop frontage of 5.2 metres

Location

The property is located in the Sutton Cross Centre, Sutton Cross, Dublin 13, on a crossroads linking the Greenfield road with the Howth road. Sutton Cross is located approximately 11 km north east of Dublin city centre.

Services

All usual required services are available and connected to the unit.

Tenure

Freehold

Valuation History

The property was revalued as part of the revaluation of the Fingal County Council area.

June 2009:	A proposed Valuation Certificate issued with a valuation of €41,100.
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Representations were submitted by O'Donnell Property Consultants on behalf of the appellant. The valuation issued unchanged at €41,100.

February 2010: An appeal was lodged by the appellant to the Commissioner of Valuation. The valuation issued unchanged after the First Appeal.

August 2010: Notice of Appeal received by the Tribunal.

Appellant's Case

Ms. Kay Lennox took the oath and provided the Tribunal with her views and opinions with respect to the proposed valuation figure of €41,100. She opened her case by remarking that she was seeking an answer to what had happened in relation to the valuation as, during the process, Mr. O'Connor had contacted her and suggested a valuation of €36,600 and that she had accepted that figure. Ms Lennox stated that she had then had a telephone call from Mr. O'Connor in July advising her that the figure of €36,600 was not acceptable, indicating that the Appeal Manager, on behalf of the Commissioner of Valuation, felt that, if allowed, it would not be fair to those who did not appeal.

Ms. Lennox referred to the other units in the Sutton Cross Centre and indicated that there are only two actual retail units in the centre. She stated that the tree immediately outside her property has a significant detrimental effect on the visual aspect of her shop-front and she also noted that the reflection of the light on her window makes it difficult to see the shop-front display. She said that despite repeated attempts with various experts she has not been able to resolve this issue. Ms. Lennox confirmed that there is no dedicated parking for the unit and that any of the shared parking spaces are generally taken up early in the morning by the staff of the other adjacent units. She compared her unit with Choices boutique across the road which she said is a bigger unit, better located being in the Superquinn shopping arcade and offers full visibility, and yet she stated, that there is no significant difference in the valuation. Ms. Lennox then produced photographs to support her belief that Choices is a superior property.

Ms Lennox asked the Tribunal to deal with the fact that an experienced valuer in the Valuation Office had told her that €36,600 would be a fair valuation on the property and then subsequently increased this valuation.

Responding to queries from the Chairperson, Ms Lennox confirmed that she did not have anything in writing from Mr. O'Connor offering the valuation of €36,600, but added that she had had three telephone calls from him and that she had confirmed by email to him that she would accept €36,600 as the valuation. She said that the units in the Sutton Cross Centre do not all face the same way and are accessed from Howth Road and Greenfield Road and she also advised that generally the parking in the centre is used by staff of the businesses. Ms. Lennox confirmed that she is contending for a valuation of €36,600, based on the recommendation of Mr. O'Connor. Finally, Ms Lennox confirmed to the Tribunal that she was not familiar with the Valuation Act, 2001.

Cross-Examination

Mr. O'Connor asked Ms. Lennox whether it was correct to say that the subject property is the same as Peter Marks and JB Kelly and Ms. Lennox said that she did not believe so, as they are both service providers and not retailers.

Respondent's Evidence

Mr. O'Connor was sworn in and adopted his précis as his evidence-in-chief. He confirmed the location of the property at Sutton Cross and indicated that it is approximately 11 km north east of Dublin City Centre. He said that the subject property consisted of a single-storey retail unit, being one of eight such ground floor retail units in the Sutton Cross Centre, and added that some of the neighbouring units are occupied by Peter Marks Hair Salon, JB Kelly Auctioneer and EBS. Mr. O'Connor advised that the areas were agreed at 59.8 sq. metres. He then introduced his comparisons, details of which are attached at Appendix 2 to this judgment. All 3 comparisons are in the Sutton Cross area, as follows;

- Peter Mark, Unit 2 Sutton Cross Centre
- Property Team J.B. Kelly, Unit 4 Sutton Cross Centre
- Unit 8 Sutton Cross Shopping Centre

Mr. O'Connor advised the Tribunal that all of the above comparables had a Zone A rating of €900 per sq. metre. He then set out the basis of his valuation, confirming that in the revaluation of the Fingal Rating Authority valuation levels were derived from the analysis of available market information of comparable properties and applied to the subject property.

The valuation of this property, on appeal to the Commissioner of Valuation, was determined by reference to the values of the comparable properties stated in the Valuation List in which the property appears.

Mr. O'Connor contended that, with the support of the foregoing evidence and all matters considered, the rate per sq. metre applied to the subject of €900 produced a fair and equitable valuation of €41,100, as follows:

Retail Zone A:	31.72 sq. metres	@ €900 per sq. metre	€28,548
Retail Zone B:	28.08 sq. metres	@ €450 per sq. metre	<u>€12,636</u>
Total NAV			€41,184
		Rounded to	€41,100

In response to questions from the Chairperson regarding the suggestion of a valuation of €36,300 and whether this was on a without prejudice basis, Mr. O'Connor confirmed that he had advised Ms. Lennox that he could only make a recommendation on the valuation and it was a matter for the Appeal Officer to decide on the final valuation and that he had confirmed to her that it was up to the Appeal Officer to make the final decision and that any discussions that he, Mr. O'Connor, had at first appeal stage were on a without prejudice basis.

Mr. O'Connor said that the subject has a glass frontage which is not different to all retail units, that he did not measure the unit as it was measured by another valuer and previous employee in the Valuation Office but, that he had visited the premises. He confirmed that when measuring a building of this nature he would use the IAVI/SCS Measuring Practice Guidelines, taking the centre-point and going back 6.1 metres.

Mr. O'Connor advised that Unit No. 8 and No. 2 may have two doors but that it is his opinion that they are fire exit doors and would not have a bearing on the valuation. He also confirmed that the fact that the property was freehold did not influence the valuation, as such properties are valued on a rental basis. Mr. O'Connor was asked by the Tribunal to confirm the reason for changing his mind on the valuation and he indicated that, at the time of the valuation, he was given rental information which subsequently proved to be incorrect when he received a copy of the lease and on this basis he felt justified in changing his mind.

Cross-Examination

In response to questions from Ms. Lennox, Mr. O'Connor confirmed that he had parked his car in the car park when visiting the unit, but acknowledged that he was not aware that persons including customers were using the side door of Peter Mark for ingress and egress. He confirmed also that the Appeal Officer had taken a decision that all units in Sutton Cross should be valued at a Zone A rate of €900 per sq. metre. Mr. O'Connor acknowledged that he had advised Ms. Lennox that the NAV of €36,600 was in line with valuations of properties in the area, and he had asked her to send in a written confirmation that she would accept this valuation, but he stated that he had also confirmed to the appellant that such a valuation figure was subject to the Appeal Manager's decision. He noted the issue with the glass frontage but advised that all glass frontages tend to have a reflection issue and concluded by stating that all retail units in Sutton Cross, with the exception of AIB, were valued at a Zone A rate of €900 per sq. metre.

Summaries

In summing up her case, Ms Lennox said that she is fighting for her commercial life in these hard times and feels very hard done by. She stated that she would like to be able to keep on all her staff. She stated, however, that she now needs to look at all costs and is not sure that she will be able to cope with the rates bill next year. She said that she believes she is being charged the wrong level for her shop as there is no real passing trade available to her.

Mr. O'Connor stated that he cannot see any difference between the subject and the units on either side of the subject property.

Findings

The Tribunal has carefully considered all the evidence and arguments submitted and adduced by the parties and finds as follows:

1. The Tribunal notes the confirmation from Mr. O'Connor that he feels the NAV should have been €36,600 based on his assessment of the facts as Revision Officer.
2. The Tribunal also notes that the foregoing opinion was expressed by him to the appellant on a without prejudice basis, and subject to the approval of his superiors; a matter acknowledged by the appellant.

3. The evidence adduced and submitted by the appellant did not provide sufficient information to inform the Tribunal of what might be, in her view, a reasonable valuation for the other relevant retail properties in the Sutton Cross area.
4. The appellant provided the Tribunal with very helpful facts with respect to the physical layout, orientation and features of her premises and others in the Sutton Cross area.
5. The Tribunal notes the absence of kerb side and dedicated shop front parking at the subject property, together with the absence of any formal cross walks to facilitate patrons who may wish to visit the premises from the Superquinn side of Howth Road.
6. It is common practice for valuers to take heed of features serving premises such as side doors, rear exits, side corridors and convenience to parking.
7. It would appear from the evidence tendered that the valuation of the subject and those of the three comparable properties submitted by the respondent did not consider the influence of the foregoing features in so far as a universal Zone A was applied.
8. The Tribunal was not furnished with copy materials to support the claim made by the Respondent that an adjustment on the valuation figure was warranted following receipt and inspection of lease rental details.

Determination

In view of the foregoing, the Tribunal believes that an adjustment should be made in favour of the appellant and to this end the Tribunal concludes that the initial assessment of the Revision Officer in this particular case was fair and reasonable.

Accordingly the Tribunal determines that the NAV should be calculated as follows:

Retail Zone A:	31.72 sq. metres	@	€800 per sq. metre	€25,376
Retail Zone B:	28.08 sq. metres	@	€400 per sq. metre	<u>€11,232</u>
Total NAV				€36,608
Say	€6,600			

And the Tribunal so determines.