

Appeal No. VA11/5/101

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

Anovil Enterprises Ltd t/a Nimble Fingers

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 401133, Retail (Shops) at 1 Stillorgan Road, Stillorgan, County Dublin.

B E F O R E

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

Deputy Chairperson

Tony Taaffe - Solicitor

Member

Thomas Collins - PC, FIPAV, NAEA, MCEI, CFO

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF JANUARY, 2012

By Notice of Appeal dated 27th July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €67,400 on the above described property.

The grounds of Appeal as set out in the Notice of Appeal are:

"The Valuation is excessive and inequitable." "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. This point applies to the portion of the NAV attributable to the 1st floor accommodation."

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 7th day of December, 2011. The appellant was represented by Mr. Donal O'Donoghue, BSc (Hons) Estate Mgmt, DipVals, AssocSCSI., a Director in the firm of OMK Property Advisors & Rating Consultants, and the respondent was represented by Mr. John Purcell, BSc., MRICS., MSCSI, 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 at the hearing 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 relevant property comprises retail accommodation on the ground and storeroom and office accommodation on the first floor within a two-storey end of terrace building being one within a block of six retail units. The address of the subject property is No. 1 Stillorgan Road, Stillorgan, Co. Dublin. The property also features an external motor house used as a store. Limited parking is available fronting the foregoing retail units.

Location

The subject property is situated in the long established neighbourhood retail centre of St. Laurence's Park in Stillorgan. St. Laurence's Park is located on the eastern side of Stillorgan Shopping Centre, between the Old Dublin Road and the N11.

Services

The subject relevant property is served with mains power, water, telephone, storm and foul sewer.

Tenure

The property is understood to be held freehold.

Floor Areas

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

Block	Level	Use	Area sq. metres
1	0	Retail Zone A	38.46
1/2	0	Retail Zone B	38.58
2	0	Retail Zone C	17.15
3 - 7	1	Office	58.75
3A	0	External Store	18.70

Total Zoned Area: 94.19 sq. metres

Total Area: 171.64 sq. metres

Valuation History

June 2010: A Valuation Certificate (proposed) was issued with an RV of €67,400.

July 2010: Representations were lodged with the Commissioner of Valuation. The valuation remained unchanged.

February 2011: An appeal was lodged with the Commissioner of Valuation. Following consideration of grounds of appeal submitted, the valuation remained unchanged.

July 2011: An appeal was lodged with the Valuation Tribunal on 28th July, 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 following is a summary of the salient points made by the Consultant Valuer while referring to his précis:

- He confirmed the foregoing details with respect to the nature of the accommodation, the location of the relevant property, the tenure and then summarised the matters which, in his opinion, required consideration by the Valuation Tribunal and the factors which, in his view, influenced the Net Annual Value on the subject.
- Mr. O'Donoghue contended that the Valuation Office had erred in their analysis of rents paid at St. Laurence's Park neighbourhood shops by reference to 2003 and 2008 rent reviews at 72, St. Laurence's Park, **VA11/05/100 – Ruiqing Wang**. The appellant Consultant referred to three pieces of correspondence to the Valuation Office relating to that property dated 15th October, 2010, 4th July, 2011 and 27th October, 2011, copies provided at Appendix 1 hereto.
- He further contended that the Commissioner of Valuation had possibly overlooked the reduction in Zone A rental values from €2,000 sq. metres down to €1,475 sq. metres on foot of appeal negotiations which concluded on the retail units within the Stillorgan Shopping Centre situate across the old Dublin Road and opposite the subject.
- Mr. O'Donoghue contended that the first floor accommodation should be valued *rebus sic stantibus* and as used i.e. stores and ancillary accommodation. He made reference to Section 48 of the Valuation Act in support of his contention and quoted from **Robson Brothers (Brewers) Ltd. -v- Durham County AC (1938) (AC321)** as cited in **VA00/3/052- Harcourt Inn Ltd.** He also referred to a second Valuation Tribunal decision **VA10/5/027- James Cassin** and concluded his argument on this point by noting that the ancillary first floor storage areas in the nearby Stillorgan Shopping Centre is valued for rating purposes at €50 per sq. metre.

- He advanced the argument that the opening of the Dundrum Town Centre complex in 2005 materially changed the retailing environment of Dun Laoghaire Rathdown and cited extracts of the Local Authority's County Development Plan 2010 – 2016 in support of his opinions.
- Mr. O'Donoghue noted the two large unoccupied tracts of building land, namely the sites of the former Blake's & Esmond Motors, and recited the history and nature of those names when they traded successfully a number of years ago. He argued that their failure to continue trading represents the overall trend in the Stillorgan village area, which has been ongoing for a number of years, demonstrating a reduction in a wide range of retailing activities and exposure to commercial vulnerability resulting from the impact of the Dundrum Town Centre development.
- The appellant's valuer also drew attention to the fact that the Dublin Bus services of 46A, 63 and 145 no longer run through Stillorgan village.

The appellant put forward 5 comparison properties (details of which are attached at Appendix 2 to this judgment):

Comparison No. 1

Property: 11a Lakelands Road, Stillorgan, Co. Dublin.

Occupier: Des Delaney Victuallers

Comparison No. 2

Property: 11b Lakelands Road, Stillorgan, Co. Dublin.

Occupier: The Washing Line

Comparison No. 3

Property: 57, Deerpark Road, Mount Merrion, Do. Dublin

Occupier: Michael's Food & Wine

Comparison No. 4

Property: 70, St. Laurence's Park, Stillorgan, Co. Dublin

Occupier: EcoPipe

Comparison No. 5

Property: 72, St. Laurence's Park, Stillorgan, Co. Dublin

Occupier: Ruiqing Wang

Mr. O'Donoghue confirmed that he was familiar with the determination by the Valuation Tribunal on Appeal No. **VA08/5/125- Marks & Spencer (Ireland) Ltd.**, and in particular the contents and context of the section which reads as follows:-

“At the time of an appeal to the Tribunal under section 34 the situation will have moved on significantly, in that by far the greater percentage of entries in the list would have been accepted, agreed or determined at section 30 appeal stage and hence representative of an as yet emerging tone of the list. When an individual appeal comes before this Tribunal for determination the Tribunal must consider and evaluate the evidence then put before it, be it the actual rent of the property concerned, the rents of other properties of a size, use and location similar to the property concerned and last, but by no means least, the assessment of properties which are truly comparable in all respects to the property concerned and which are currently in the Valuation List and attach such weight to this evidence as is considered appropriate. Finally a stage will come – but only when all the appeal procedures under sections 30 and 34 are completed – when the tone of the list will finally become established and thereafter cannot be challenged. From this point onwards section 49 will come into play and rental evidence as such will be of lesser importance in the assessment process. Furthermore the valuation of each property currently in the list cannot be altered until the next revaluation under a new section 19 order is completed except in those instances where a revision of valuation under section 28 is carried out and it is found that a material change of circumstances as defined in section 3 has occurred.”

The foregoing considered, the Consultant Valuer sought a valuation on the subject relevant property, as follows:-

Block	Level	Use	Area (sq. metres)	NAV per sq. metres	Total
1	0	Retail Zone A	38.46	€600 per sq. metre	€23,076.00
1/2	0	Retail Zone B	38.58	€300 per sq. metre	€11,574.00
2	0	Retail Zone C	17.15	€150 per sq. metre	€ 2,572.50
3 - 7	1	Office	58.75	€100 per sq. metre	€ 5,875.00
3A	0	External Store	18.70	€50 per sq. metre	€ 935.00
				Total:	€44,032.50

NAV Say: €44,000

Cross-examination of the Appellant

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

- i. He considers St. Laurence's Park, notwithstanding its proximity to Stillorgan's Shopping Centre to be the weakest retail trading location in the Stillorgan area and included in that reference, the neighbourhood retail units on Lakelands Road, citing difficulty of vehicular access, dated infrastructure and buildings and restricted pedestrian access due to the absence of adequate and/or nearby controlled pedestrian crossings.
- ii. He considered the large surrounding residential community to Lakelands as a major contributor to trade at that location.
- iii. He stated the aforementioned erroneous analysis of rental data upon rent review at 72, St. Laurence's Park at 2003 and 2008 was based on the inclusion of the upper residential floor, which he suggested contributed to a Zone A rate of €900 per sq. metre there before adjustment.

- iv. He was satisfied that the negotiated reduction on the rate per sq. metre applied to retail Zone A in Stillorgan Shopping Centre followed the issue of the proposed Valuation Certificates on St. Laurence's Park and accordingly concluded that it was most improbable that the reduction had been considered in the context of the latter.
- v. He acknowledged the retail rental indices referred to by him in his précis of evidence are not based or segmented by reference to specific Local Authority areas but nevertheless he contended that they serve as a useful barometer to rents.

Respondent's Case

Mr. John Purcell took the oath and adopted his précis as his evidence-in-chief. The location, description and floor areas were common case.

Mr. Purcell outlined the basis of valuation of the subject indicating that in common with other properties valued for rating purposes under the Revaluation exercise carried out in Dun Laoghaire Rathdown Rating Authority Area, the valuation level was initially derived from the analysis of available open market rental information of comparable properties and then applied to the subject. He added that the valuation of this property, on appeal to the Commissioner of Valuation, was determined by reference to values of comparable properties stated in the Valuation List in which they appear.

Respondent's Comparison Properties

The respondent provided details on 6 comparison properties, listed hereunder (details attached at Appendix 3 to this judgment):

Comparison No. 1

Property:	73, St. Laurence's Park, Stillorgan, Co. Dublin.
Occupier:	Samuel P. Dunne Ltd., t/a Blueprint

Comparison No. 2

Property: Maple House, Kilmacud Road Lower, Stillorgan, Co. Dublin
 Occupier: Xtravision

Comparison No. 3

Property: Lower Kilmacud Road, Stillorgan, Co. Dublin
 Occupier: Osage Ltd., t/a Appletons Creative Framers

Comparison No. 4

Property: 8, The Hill, Stillorgan, Co. Dublin
 Occupier: D.S.Q. Group Ltd., t/a Apache Pizza

Comparison No. 5

Property: 2, The Hill, Stillorgan, Co. Dublin
 Occupier: Teddy Cheung t/a Treasure Chinese Take Away

Comparison No. 6

Property: First Floor, 70, St. Laurence's Park, Stillorgan, Co. Dublin
 Occupier: Frank Elmes Architect

Valuation by the Respondent

The following represents the agreed area and valuation details of the subject property computed by the Respondent, as submitted by Mr. Purcell during the course of the hearing:-

Block	Level	Use	Area (sq. metres)	NAV per sq metre	Total
1	0	Retail Zone A	38.46	€800 per sq. metre	€30,768
1/2	0	Retail Zone B	38.58	€400 per sq. metre	€15,432
2	0	Retail Zone C	17.15	€200 per sq. metre	€ 3,430

3 - 7	1	Office	58.75	€280 per sq. metre	€16,450
3A	0	External Store	18.70	€75 per sq. metre	€ 1,402
				Total:	€67,482

NAV Say: €67,400

During the course of the hearing Mr. Purcell noticed a typographical error on the foregoing schedule and acknowledged that the first floor offices should correctly have been valued at €230 per sq. metre which would result in a value of €13,512.50 on the first floor. The adjustment resulted in an NAV of **€64,544.50, rounded to €64,500.**

Cross-examination of the Respondent

Responding to various questions asked by the Tribunal and the appellant, Mr. Purcell responded as follows:

- 1) He did not know if a nearby retail complex trading as Bowman's in the same Old Dublin Road north of the subject had its Zone A retail rates reduced by negotiation from €800 to €600.
- 2) He agreed that his comparison properties Nos. 2 and 3 above are modern purpose built units at a location considered superior to the subject.
- 3) He noted that his Comparison No. 4 property was valued at €600 per sq. metre on an overall basis.
- 4) He confirmed that his Comparison No. 6 property on the first floor of No. 70, St. Laurence's Park, may be considered as a stand-alone property but he added that it should be compared with the level applied to the office/stores, as adjusted above to the level of €230 per sq. metre, within the subject relevant property, as both the subject and Comparison No. 6 first floors are deemed to be commercial accommodation in close proximity to each other.

Summation by the Appellant

Mr. O'Donoghue repeated that, in his view, the Zone A rate levels at St. Laurence's Park are clearly overstated and that the first floor should be valued only as part of a larger take and by reference to its current use.

Summation by the Respondent

Mr. Purcell stated that no evidence had been presented by the appellant to merit a reduction in the valuation of the subject, adding that there were no grounds to support any lower figure. He stated that retail units as indicated in evidence grouped as they are as St. Laurence's Park, are equally observed by passing trade and as that trade is shared with the adjoining district centre, St. Laurence's Park derives a considerable benefit from same.

Findings

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

The Tribunal finds as follows:

1. The Tribunal notes the respondent's reliance on both passing rents during 2005 on his comparison properties but further takes note that just one, namely Comparison Property No. 1, was offered to support the Zone A level of €800 per sq. metre sought by him for the subject.
2. Though the other comparisons cited by the respondent were useful to represent different thresholds of Zone A values either evolving or possibly established in the area of Stillorgan generally, the Tribunal is of the view that acceptance of such evidence without question, or full understanding of the facts underlying rental values which may have influenced the Zone A levels in the area, may possibly lead to an unsafe valuation result.
3. The Tribunal noted that the parties did not dispute the level of influence by a large developer in the area, not only in terms of the adjoining district retail centre, but also at St. Laurence's Park.

4. The Tribunal is not fully satisfied that leases entered into by the developer in a number of units at St. Laurence's Park and other retail outlets beyond the Stillorgan Shopping Centre provide or reflect market values as the interest of a special user, such as a developer, needs to be evaluated.
5. The Tribunal is also mindful of the significant reduction in Zone A rates in the Stillorgan Shopping Centre in the range of 26%, which on the face of the evidence appeared to have followed the decision which led to the publication of the value of the subject.
6. The Tribunal, in the instant case, does not concur with the interpretation offered by the Appellant's consultant on the proper application of the principle of *rebus sic stantibus*.

Determination

All of the foregoing considered, the Valuation Tribunal considers that the valuation of the subject property should be computed as follows:-

Retail Zone A	38.46	@	€700	per sq. metre	=	€26,922.00
Retail Zone B	38.58	@	€350	per sq. metre	=	€13,503.00
Retail Zone C	17.15	@	€175	per sq. metre	=	€ 3,001.25
Office / Stores	58.75	@	€200	per sq. metre	=	€11,750.00
External Store	18.70	@	€75	per sq. metre	=	<u>€ 1,402.50</u>
Total					=	€6,578.75

NAV Say €56,600

And the Tribunal so determines.