

Appeal No. VA11/5/173

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

Parkgrove Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 439861, Retail (Shops) at 6 Kilmacud Road Lower, Stillorgan, County Dublin.

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 24th day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €248,000 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal, are:

"Valuation excessive in comparison with valuation assessed on similar supermarket premises."

The appeal proceeded by way of an oral hearing held at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 24th January 2012. At the hearing the appellant was represented by Mr. Terry Devlin, BSc, MSCSI, MRICS of O'Donnell Property Consultants and the respondent was represented by Mr. Paul Ogbebor, B.Eng. (Hons) Civil Engineering, a Valuer in the Valuation Office.

Location

The subject property is located at 6 Kilmacud Road Lower, Stillorgan, County Dublin on the western side of the Stillorgan Dual Carriageway. It is situated at the end of a terrace of retail units, which are set back from the main road with communal car parking to the front and limited car parking to the rear.

The Property Concerned

The subject property comprises a ground floor retail unit, currently trading as a Spar supermarket, with ancillary storage/office accommodation.

The agreed accommodation, measured on a Net Internal Area (NIA) basis is as follows:

Retail	515.25 sq. metres
Stores/Office	84.57 sq. metres

The retail accommodation was zoned by the respondent as follows:

Zone A	108.70 sq. metres
Zone B	114.93 sq. metres
Zone C	116.39 sq. metres
Remainder	175.23 sq. metres

Tenure

The subject property is held freehold.

Rating History

The subject was listed for revaluation as part of the revaluation of all rateable properties in the Dun Laoghaire-Rathdown rating authority area. The relevant valuation date, as per the Valuation Order is 30th September 2005.

A proposed Valuation Certificate was issued on 15th June 2010, with a proposed valuation of €248,000. Following representations lodged on 7th October 2010, the valuation remained unchanged. An appeal was lodged by the appellant to the Commissioner of Valuation on 8th February 2011, which appeal was rejected and the valuation affirmed. The appellant appealed against that decision to the Tribunal by Notice of Appeal dated 24th August 2011.

The Issues

Quantum and valuation methodology.

The Appellant's Evidence

Mr. Devlin, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the respondent, as his evidence-in-chief. He set out a number of factors, which he asked the Tribunal to take into consideration when assessing the Net Annual Value (NAV) of the subject property:

1. Under the revaluation exercise for the Dun Laoghaire Rathdown rating authority area, supermarket units were categorised by the respondent according to their size. Units below 200 sq. metres were deemed convenience stores and units larger than this were split into three different categories, namely:
 - a) Supermarket 1 200 – 500 sq. metres
 - b) Supermarket 2 500 – 2,500 sq. metres
 - c) Supermarket 3 > 2,500 sq. metres

As the retail space in the subject property exceeded 500 sq. metres, it was Mr. Devlin's view that the property should be correctly categorised as a Supermarket Category 2, which units were valued on an overall basis by the respondent. He therefore contented that the subject should similarly be valued on an overall, rather than on a zoned basis.

2. In Mr. Devlin's opinion the subject property is situated in a secondary location, located at the end of a parade of smaller retail units, somewhat on the periphery of Stillorgan village. He stated that the Stillorgan Shopping Centre, anchored by Tesco and Dunnes Stores, generates major competition for other retail units in the vicinity. These stores have the advantages of ample car parking and a choice of other units within the centre and its immediate environs and in his view they are undoubtedly in the prime location

in this area. Mr. Devlin stated that there are approximately 20-30 parking spaces around the subject property, which are shared with the adjoining retail units.

3. Mr. Devlin further argued that the Stillorgan area has been adversely affected by the opening of the Dundrum Town Centre, with its array of retail units and anchor tenants and that units in Stillorgan Shopping Centre did not attract the rents or the quality of tenants of Dundrum.
4. He confirmed that he was not taking issue with the rate of €50 per sq. metre, which the respondent had placed on the store.

Mr. Devlin contended for a Net Annual Value of €122,700, calculated as follows:

Retail	515.25 sq. metre @ €230 per sq. metre =	€18,507.50
Stores/Office	84.57 sq. metre @ €50 per sq. metre =	<u>€ 4,228.50</u>
		€122,736.00

NAV Say €122,700.00

In support of his contention of NAV, Mr. Devlin submitted details of five comparisons, all valued on an overall basis at rates of between €230 per sq. metre and €250 per sq. metre. Three of the comparisons are located in Stillorgan, the two Tesco Units in Stillorgan Shopping Centre and Reid Furniture, situated in Stillorgan Plaza, which Mr. Devlin stated is now a Lidl supermarket. The other two comparisons are Category 2 Supermarkets, being a Eurospar in Killiney Shopping Centre, also operated by the same operator as the subject and a Lidl in Dundrum.

In Mr. Devlin's view the two Tesco Units, which are Category 2 Supermarkets, are superior to the subject property, situated in more prominent locations within the Shopping Centre. Comparison 2 (Unit 19/21) consists of retail accommodation over two levels totalling 1,495 sq. metres, which is valued on an overall basis of €250 per sq. metre. Comparison 3 (Unit 1) comprises ground floor retail accommodation of 1,164 sq. metres, which is also valued on an overall basis of €250 per sq. metre. Comparison 4 (Reid Furniture) is also in a superior location to the subject according to Mr. Devlin, in a parade of shops directly opposite the Shopping Centre. He also stated that it benefits from ample parking in the basement to the

rear of the Plaza. This property has retail accommodation of 1,185.70 sq. metres, which is valued on an overall basis at a rate of €240 per sq. metre.

Mr. Devlin submitted that the subject was a Category 2 supermarket and should be valued in line with other Category 2 supermarkets in the rating authority area on an overall basis. He stated that the respondent had not supplied any evidence of similarly circumstanced properties and had not compared with like with like.

Cross-Examination

Mr. Devlin accepted that under the zoning guidance notes of the Society of Chartered Surveyors, the upper size limit for zoning is circa 1,000 sq. metres for single level units and that units up to that size are permitted to be zoned. However, he contended that on the revaluation of Dun Laoghaire Rathdown the Valuation Office had applied a policy of categorising supermarkets based on size and had valued supermarkets larger than 500 sq. metres. on an overall basis. Thus, he stated the Valuation Office had not itself applied the guidelines. In any event Mr. Devlin stated that these were only guidance notes and not strict rules. In response to questioning from the Tribunal, Mr. Devlin indicated that there are 13 Category 2 Supermarkets in the rating authority area and as far as he is aware none of these are valued on a zoning basis, other than the subject.

Mr. Ogbebor raised an issue with Mr. Devlin under cross-examination with regard to the change in the proposed NAV in the Notice of Appeal to the Tribunal, which was €160,000 compared with the NAV contended for in Mr. Devlin's précis, namely €122,700. Mr. Devlin explained that there had been a change in the appellant's representation and that the Notice of Appeal was not prepared by his firm. He stated that the figure in his précis was his expert opinion of the correct NAV of the subject property.

Respondent's Evidence

Mr. Paul Ogbebor having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as his evidence-in-chief. Mr. Ogbebor contended for a NAV of €248,000, calculated as follows:

Retail Zone A 108.7 sq. metres	@ €1,250 per sq. metre =	€35,875.00
Retail Zone B 114.93 sq. metres	@ €625 per sq. metre =	€ 71,831.25

Retail Zone C	116.39 sq. metres	@ €312.50 per sq. metre	=	€ 36,371.88
Remainder	175.23 sq. metres	@ €156.25 per sq. metre	=	€ 27,379.69
Less 5% adjustment due to frontage to depth ratio			=	(€ 13,573.00)
Less 5% end allowance for quantum			=	(€ 13,573.00)
Store	84.57 sq. metres	@ €50 per sq. metre	=	<u>€ 4,228.50</u>
Total				€248,540.32

NAV Say €248,000

Mr. Ogbebor submitted five comparisons, all located on Kilmacud Road Lower and all valued at a Zone A rate of €1,250 per sq. metre. He stated that this was the rate applied to all the zoned properties on the road. The Tribunal notes that all of Mr. Ogbebor's comparisons are substantially smaller than the subject and none are in use as a supermarket. The Tribunal further notes that none of the properties were tested on appeal. Comparison 1, Jeeves Dry Cleaners Launderers Ltd., is located in the same parade of shops as the subject. Comparisons 2-4, T.C. Matthews Carpets Ltd, Ladbroke's (Ireland) Ltd. and Unicare Pharmacy are situated in a parade of shops on the Kilmacud Road Lower opposite the Stillorgan Shopping Centre with Comparison 5, Appletons Creative Frames, on the opposite side of the road, close to the Shopping Centre.

Mr. Ogbebor submitted that the onus is on the appellant to prove that the Valuation List is incorrect and that the appellant had not done so in this case, as he had not provided any rental evidence to support his opinion of Net Annual Value. He further argued that there had been a change in the appellant's grounds of appeal in that the opinion of valuation in the Notice of Appeal to the Tribunal was €160,000, whereas the NAV contended for before the Tribunal was €122,700.

Cross-Examination

Under cross-examination Mr. Ogbebor accepted that the subject is a Category 2 Supermarket in accordance with the Valuation Office's categorisation. However, he denied that it should therefore be valued on an overall basis similar to Mr. Devlin's comparisons, as the Society of Chartered Surveyors Guidance Notes indicated that retail units up to 1,000 sq. metres could be zoned. Mr. Ogbebor contended that there were other properties in the vicinity of the subject on the Valuation List with retail accommodation in excess of 500 sq. metres which

are zoned. He claimed that in the parade of shops where the subject is located there are some properties almost the same size as the subject, but he stated that he had not provided details of these properties as he had no rental evidence for them.

Mr. Ogbebor stated that the reason he did not refer to the two Tesco comparisons in Stillorgan Shopping Centre was because the rental evidence showed a different level or tone in the Shopping Centre in comparison with Kilmacud Road Lower. With regard to Reid Furniture, he stated that most of the units in the Plaza were valued on an overall basis as they sell bulky goods. He stated that ordinarily he would have categorised such properties as retail warehouses, but he could not do so with these properties as they were not located in a retail park.

Findings

1. The statutory basis of valuation for properties on revaluation is set down in Section 48 of the Valuation Act 2001, wherein at subs. 3, the Net Annual Value of a property is defined as, *“the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant”*.
2. The evidence adduced by Mr. Devlin, which was not disputed by Mr. Ogbebor, was that the respondent had adopted a policy on revaluation of classifying supermarkets based on size and that a Category 2 supermarket consisted of retail accommodation of between 500 sq. metres and 2,500 sq. metres and that such a property was valued on an overall as opposed to a zoned basis.
3. It was accepted by Mr. Ogbebor that the subject property is a Category 2 Supermarket and it is described as such on the Valuation Certificate. Accordingly, in the Tribunal’s view, in the interests of fairness and equity, the subject should be valued in accordance with all the other Category 2 Supermarkets on the Valuation List on an overall basis.
4. The Tribunal finds that the comparisons provided by the respondent, all of which are substantially smaller than the subject property and all of which are zoned, are of less assistance than the comparisons provided by the appellant.

5. The Tribunal is of the view that the most appropriate comparisons are the appellant's Comparisons 2-4, all located within Stillorgan village. It is noted that Comparisons 2 and 3, the two Tesco units in Stillorgan Shopping Centre are valued at a ground floor retail rate of €250 per sq. metre and Comparison 4, Reid Furniture, now operating as a Lidl supermarket, is valued at a rate of €240 per sq. metre.
6. Having considered the evidence, the Tribunal is of the view that the appropriate rate to apply to the subject property is €240 per sq. metre.
7. The valuation of the store at €50 per sq. metre was not in dispute between the parties and this is left unchanged.
8. Mr. Ogbemor raised an issue in relation to the differing Net Annual Values set out by the appellant in its Notice of Appeal and in its professional representative's précis of evidence. The reason for such change, as explained by Mr. Devlin was that there was a change in professional representation by the appellant between the lodging of the Notice of Appeal and the preparation of the précis. In any event, it is the Tribunal's view that a change in proposed NAV does not of itself constitute a change in the grounds of appeal, such grounds having always been that the valuation of the subject property was excessive.

Determination

Having regard to the foregoing the Tribunal determines that the Net Annual Value of the property is as follows:

Retail	515.25 sq. metres	@ €240 per sq. metre =	€123,660.00
Stores/Office	84.57 sq. metres	@ €50 per sq. metre =	<u>€ 4,228.50</u>
			€127,888.50
NAV Say €127,900			

And the Tribunal so determines.