

Appeal No. VA99/2/032

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Protea Pine Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Reference Unit 3, Stillorgan Plaza, Stillorgan South, Stillorgan Merville, Co. Dublin.

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Barry Smyth - FRICS.FSCS

Member

George McDonnell - F.C.A.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF MARCH, 2000

By Notice of Appeal dated the 28th day of April 1999, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £485 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal were that "the assessment is excessive and inequitable having regard to the provisions of the Valuation Acts and on other grounds also.

The appeal proceeded by way of an oral hearing that took place on the 22nd day of September, 1999, at the office of the Valuation Tribunal, Dublin.

The appellant was represented by Mr. Desmond A. Byrne FRICS, FSCS, Dip.Arb.Law of Messrs Druker Fanning & Partners. The respondent was represented by Mr. Damien Curran ARICS, ASCS., B.Sc.Surveying, a District valuer with 19 years experience in the Valuation Office. On a preliminary issue Mr. Byrne raised the point of the lot numbering in relation to these premises but as this was an additional ground of appeal not previously argued before the Commissioner of Valuation, and not referred to in his written submission, the Tribunal determined that it could not be raised as a ground of appeal at this stage.

Having taken the oath each valuer adopted as his evidence in chief his written submission which had previously been exchanged with the other valuer and submitted to the Tribunal.

Material facts agreed or found by the Tribunal:

1. Valuation History

The property was valued in the 1997/4 revision as part of an extensive reconstruction and enlargement of the Stillorgan Plaza commercial complex and an RV of £485 was fixed. This was appealed and no change was made on appeal.

2. Situation

The property comprises is part of the Stillorgan Plaza a retail development on lower Kilmacud Road, Stillorgan, County Dublin directly opposite the long established Stillorgan Shopping Centre.

3. The Property

The Stillorgan Plaza Development comprises a Bank, three retail units, a Cinema complex, offices and car parking at the ground floor rear and basement levels. Only the bank and the largest of the retail outlets has frontage to lower Kilmacud Road, the other retail units have frontage to the ground floor car park. The subject unit is approximately 52 metres back from the lower Kilmacud Road frontage and pedestrian access is by a relatively standard width pavement.

4. Accommodation

793.1 sq. m (8537 sq.ft.)

5. Title

The premises are held on lease for a term of 25 years from the 1st September, 1997, subject to a rent of £96,000 per annum in year one and £105,000 per annum in years two to five. The lease contains rent reviews at five year intervals. The tenant was initially given a three month rent free period and has the option to terminate the lease at the expiration of the first five years of the term subject to six months written notice and payment of three months rent as penalty.

The Appellant's Case:

Mr. Byrne in his evidence stated:

1. Stillorgan Plaza has a bad retail trading history and has never traded to expectations.
2. The subject property is located within the rear part of the complex some 52 metres back from the road frontage.
3. Access to and egress from the car parking is difficult. The car parking is principally at basement level. Many of the spaces are occupied by the office tenants during business hours.
4. The mix of tenants is poor and of four units, one is vacant.
5. The development is similar to a retail park but without the benefit of a large car park.
6. The presence of a break clause in the lease in year five indicates doubts in the tenant's mind about the viability of the centre.

Mr. Byrne proposed a Rateable Valuation on the premises of £323, calculated as follows:

793.1 m² @ £64.58 (8,537 sq.ft. @ £6 per sq.ft.)

£51,200 NAV @ .63% = RV £323.

Mr. Byrne provided five comparisons, two of which related to both open market rental value and rateable value/net annual value. The comparisons are as follows:

1. *Quinnsworth Unit, Stillorgan Shopping Centre* - 35 year lease from the 1st of March 1988, at £103,600 per annum. This analyses as follows:

Analysis: Ground Floor Retail: 13,467 sq.ft. @ £6.57 per sq.ft.

First Floor Storage: 7,589 sq.ft. @ £2 per sq.ft.

RV £775

NAV £123,000

Analysis: Ground Floor 13,467 sq.ft. @ £8 per sq.ft.

First Floor 7589 sq.ft. @ £2 per sq.ft

2. *Dunnes Stores Unit, Stillorgan Shopping Centre* - 35 year lease from the 1st of December, 1987, at £95,000 per annum.

Analysis: Ground Floor 8,075 sq.ft @ £8.30 per sq.ft.

First Floor 7944 sq.ft. @ £3.50 per sq.ft. or total 16,019 sq.ft. @ £5.93 per sq.ft.

RV £645

NAV £102,281

Analysis: Ground Floor 8,075 sq.ft. @ £8.28 per sq.ft.

First Floor 7,944 sq.ft. @ £4.14 per sq.ft.

In this unit the first floor is retail space and not storage space as in the previous comparison.

3. *Unit 2, Leopardstown retail park (Clerys).*

RV 1994/ 4 £485

NAV £76,710

Analysis: Ground Floor Retail 9,120 sq.ft @ £7 per sq.ft.

Ground Floor Store/Toilets 1610 sq.ft. @ £4.50 per sq.ft.

4. *Unit 3, Leopardstown Retail Park, Compustore Premises*

RV £370

NAV£58,712

Analysis: Ground Floor Retail 7,051 sq.ft @ £7 per sq.ft.

Stores 2079 sq.ft. @ £4.50 per sq.ft

5. Unit 2, Royal Liver Retail Park, Nass Road (Reid Furniture).

RV £555

NAV £87,296

Analysis: Retail Warehouse 12,800 sq.ft. @ £6.82 per sq.ft..

Under cross examination Mr. Byrne accepted that the Quinnsworth unit was a Supermarket and significantly larger than the premises under appeal. He also agreed that at the date of the lease and the assessment of the Rateable Valuation of the Dunnes Stores unit it had a significant supermarket content. He did not accept that the subject premises were better than the premises in retail parks because of the poor accessibility and the car parking of the subject *vis a vis* a retail park.

The Respondent's Case

Mr. Curran stated :-

1. This is a newly developed retail unit, part of a mixed commercial complex
2. It is located directly opposite the Stillorgan Shopping Centre
3. He did not disagree in practical terms with Mr. Byrne's evidence.
4. He proposed a Rateable Valuation of £485, calculated as follows:

793.1m² @ £96.87 per square metre (8,537 sq.ft. @ £9 per sq.ft.)

NAV £76,833 @ .63% = £484.04 say £485.

He based his valuation on two agreed Rateable Valuations in the Stillorgan Plaza development, the details of which are as follows:

1. **Unit 4**, Carpet Shop RV £170 1997/4 first appeal.

Shop 198.2m² @ £136.16 per square metres (2,133 sq.ft @ £12.65 per sq.ft.)

= £26,982 NAV @ .63%

= £169.98 say £170.

As this accommodation is less than 25% of the subject premises, he reduced the rate per sq.ft from £12.65 to £9. per sq.ft. to allow for quantum.

2. **Unit 18, Stillorgan Plaza, AIB** - RV £670 1997/4 revision

Analysis: Ground Floor 481.3 m² @ £172.22 per square metre (5,181 sq.ft. @ £16 per sq.ft.)

Basement 231.1 m² @ £75.34 per square metre (2,448 sq.ft. @ £7 per sq.ft.)

16 cars @ £400 each

Total NAV £106,432 @ .63% = £670.52 say £670

Mr. Curran submitted extracts from the Valuation Office files in relation to Mr. Byrne's comparison of the Dunnes Stores unit, showing an analysis of £10 per sq.ft. on the ground floor and £3 on the first floor and on the Quinnsworth unit @ £8 on the ground floor and £2 on the first floor.

In cross examination, Mr. Curran accepted that:

- the premises were at the rear of the development and 52m back from the street frontage;
- that 43 car parking spaces are at ground floor with the balance at the basement level;
- that the original RV of £485 was based on a floor area of 8,745 sq.ft. but it is now agreed that the area is 8,537 sq.ft.. In his view the reduction in floor area was not significant and did not affect the NAV.
- he was unaware as to whether or not the carpet shop in his comparison No.1, that is unit 4, was occupied under a licence or a lease;
- he accepted that the AIB premises was listed for revision in 1999 and that its location was superior to the subject premises.

Summing Up

Mr. Byrne stated that his estimate of the Rateable Valuation was fair and reasonable and his comparisons within the Stillorgan Shopping Centre and the Leopardstown Retail Park sustained his case. The carpet shop in the Plaza Centre was held under a licence and not a lease and if its

Rateable Valuation was based on a rent passing at the time, the Rateable Valuation was not relevant.

In relation to the analysis of the two other agreed settlements, he expressed the view that from a consultants point of view, the actual reduction in RV was what mattered rather than the analysis of the NAV. In relation to the carpet showroom premises in the plaza development, the occupier did not appeal the Rateable Valuation but rather it was done by the developer and the consultant had difficulty obtaining appropriate instructions.

Mr. Curran stated that Mr. Byrne's comparisons are not directly comparable because they are supermarkets and retail warehouses rather than straightforward retail units. His comparisons of two units within the subject development are more relevant.

Determination

In the view of the Tribunal the respondent's comparisons must be treated with caution in relation to the subject premises. The carpet showroom premises is only 25% of the size of the subject premises and while it must be accepted that the Rateable Valuation of £170 is in the list, there appears to be some problem in relation to the landlord's side of the appeal in this case. The AIB premises has street frontage to Lower Kilmacud Road which the subject does not. It is also noted that it is currently listed for appeal although the existing Rateable Valuation of £670 is undoubtedly in the list.

Mr. Byrne's comparisons in relation to the two units in Stillorgan Shopping Centre are useful in that direct correlation can be seen between passing rents and NAV/RV. The Retail Park comparisons are some distance removed from the subject but are nonetheless of some assistance in relation to the subject premises in that they do not have high street type shop frontage and the user is similar to what would be found in a retail park. The poor trading history of the Stillorgan Plaza and the poor location of these premises within the development is acknowledged by the Tribunal.

The Tribunal determines the Rateable Valuation as follows:

793.1 m² @ £75.35 per square metre (8,535 sq.ft. @ £7 per sq.ft.)

The subject premises is not as well located as the units in Stillorgan Shopping Centre used as comparisons.

$$= \quad \text{£59,760 NAV @ .63\%} = \text{£376 RV.}$$