

Appeal No. VA06/3/054

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

Gordon Fleming

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Department Store at Lot No. 2.3, Church Square, Roosky, Monaghan Urban, Monaghan UD, County Monaghan

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Brian Larkin - Barrister

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF FEBRUARY, 2007

By Notice of Appeal dated the 9th day of August, 2006, the appellant appealed against the determination on the Commissioner of Valuation in fixing a rateable valuation of €2,090 on the above described relevant property.

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

"Excessive, inequitable and bad in law. Tone of the list is not being fairly reflected. Comparables used by Commissioner enjoy, among other benefits, a superior location within Monaghan town, designation and superior access".

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 the 20th day of December 2006. The Appellant was represented by Mr. Owen Hickey, BL, instructed by Messrs John Keenan & Sons, Solicitors, Monaghan with Mr. Alan McMillan, ASCS, MRICS, MIAVI, a Director of GVA Donal O Buachalla, Property & Rating Consultants. The Appellant, Mr. Gordon Fleming, gave evidence on his own behalf. The respondent was represented by Mr. Colm MacEochaidh, BL, instructed by the Chief State Solicitor with Mr. Damien Curran, MRICS, ASCS, BSc (Surv), a Staff Valuer in the Valuation Office.

The Property Concerned:

1. The property concerned in this appeal is a department store situated in the centre of Monaghan Town with frontage on to Mill Street/Church Square.

The premises is an amalgam of:-

- (a) A building fronting Mill Street/Church Square with return section, of traditional stone and slate construction with solid floors at ground level and suspended timber flooring overhead.
- (b) An extension to the rear of (a) above of concrete block construction with suspended timber flooring overhead.
- (c) A recently constructed rear section of steel portal frame with solid floors and insulated metal decked roof and cladded walls.

2. The property occupies an irregularly shaped site and is an infill premises. Headroom on the ground floor averages 2.7m – 3.0m, while headroom on the first floor averages 2.5m – 3.05m.

3. Customer access is provided from Mill Street/Church Square via a lobby which contains a stairs to the first floor retail area.

Customer access is also available to the rear from the Glaslough Street car park where a travelator and stairs connect to the ground floor and a stairs and passenger lift to the first floor.

Internally, the ground floor connects to Eason's of Church Square and at first floor level to the former House of Fashion which enjoyed access from North Road.

A goods access is provided off North Road (N2) (one-way) restricted to accommodating one large delivery vehicle and there is a lift from the goods inwards bay to the stock rooms on the second floor.

The ground floor and major part of the first floor are used for retail business while staff areas are provided on the first floor.

Accommodation

4. The agreed accommodation measured on a gross internal area basis as set out below:-

Ground Floor: Retail	2,965.53 sq. metres
Miscellaneous	52.19 sq. metres
First Floor: Retail	2,417.04 sq. metres
Miscellaneous	402.80 sq. metres
Second Floor: Stock Rooms	1,921.16 sq. metres

Rating History

5. On the 8th December, 2005 a valuation certificate pursuant to Section 29(3) of the Valuation Act, 2001 was issued to the effect that the rateable valuation of the property concerned had been determined at €1,138. On foot of an appeal to the Commissioner of Valuation made by the appellant under Section 30 of the Act, a valuation certificate issued on the 14th July, 2006 whereby the rateable valuation was reduced to €2,090. It is against this decision by the Commissioner that the appeal to this Tribunal lies.

The Appellant's Evidence

6. (a) Mr. Gordon Fleming, the appellant, having taken the oath, gave evidence as follows:-

In his evidence Mr. Fleming provided the Tribunal with background information on the subject premises and that it was a family run business trading since 1949. Mr. Fleming

commented on the inferior location vis-à-vis Tesco and Dunnes Stores by reference to the photos and maps submitted with Mr. McMillan's précis. The advent of the Monaghan Shopping Centre (M.S.C) to the South of the traditional town centre, coinciding with designation had, he said, the effect of moving the retail centre of gravity southwards. Tesco is the anchor tenant in M.S.C, Mr. Fleming added, while Dunnes Stores is located on a prominent corner position at Dawson Street/Broad Road to the south of M.S.C.

The restricted signage on the approaches to the subject premises did little to attract new comers. On the other hand the massive signage at the traffic lights close to Tesco and Dunnes Stores, where motorists are obliged to stop, provides a huge marketing edge to those outlets.

Mr. Fleming also gave evidence on the access and parking drawbacks experienced by the subject and also commented on the downsides associated with trolley shopping in the premises and the one-way Glaslough Street system. By comparison, Mr. Fleming added, Tesco benefited from having private supervised free parking (2 hours) and 184 spaces in addition to the town's main adjoining free carpark while Dunnes Stores offered 2 hour free undercroft spaces. Mr. Fleming agreed with his Counsel Mr. Hickey that in the circumstances it would require phenomenal loyalty on the part of his customers to continue to shop in the subject premises when on many occasions they were forced to park in the Tesco car park where parking is more readily available.

In relation to the premises itself, Mr. Fleming stated that while its building was, on the surface, of new construction, 75% of the shop area was old. Furthermore, fifty columns interrupted the ground floor retail area frustrating the use of cost effective cleaning and pallet usage. In addition the low ceiling height was unsuitable for refrigeration piping installations.

In response to a question from Mr. Hickey, Mr. Fleming indicated that in his view, given a choice between the comparisons and the subject premises, a hypothetical tenant would opt for Tesco as the premises were purpose built, with ground floor storage, car parking on three sides and the added plus of traffic lights signage. In reply to a further question from Mr. Hickey, Mr. Fleming stated that he had in fact thought of relocating, given all the disadvantages, but was advised by the planning authorities that his application to an alternative site would be turned down.

Arising out of cross examination by Mr. MacEochaidh, Mr. Fleming stated that a lot of the subject's problems arose from having three separate buildings in a single structure. This, *inter alia*, created refrigeration inefficiencies in terms of piping layout as well as affecting other services. Mr. MacEochaidh also put it to Mr. Fleming that the one-way traffic system caused difficulties not alone for the subject but for the comparisons as well, a view Mr. Fleming did not fully accept.

(b) Mr. McMillan having taken the oath adopted his précis as his evidence-in-chief, subject to an amendment on page 2 in relation to population of 5,717 and 5,019 for 2,032 and 2,014 respectively and proceeded to summarise his submissions. In his evidence Mr. McMillan contended for a rateable valuation of €1,300 as set out below:

Ground Floor Retail:	2,965.53 sq. metres @ €4.64 per sq. metre	€162,036
Misc:	52.19 sq. metres @ €11.08 per sq. metre	€1,622
First Floor Retail:	2,417.04 sq. metres @ €27.32 per sq. metre	€66,036
Misc:	402.80 sq. metres @ €27.32 per sq. metre	€11,004
Second Floor Stockrooms:	1,921.16 sq. metres @ €10.25 per sq. metre	<u>€19,692</u>
Total/NAV		€260,390

R.V @ 0.5% = €1,302

Say €1,300.

In support of his opinion of rateable valuation Mr. McMillan introduced two comparisons, details of which are set out in Appendix 1 attached to this judgment.

Under examination by Mr. Hickey, on the subject of traffic movements, Mr. McMillan disagreed with the suggestion that the subject and the comparisons were equally disabled by the one-way system stating that the comparisons were in a position to use the Peter Lake car park.

As far as the building itself was concerned Mr. McMillan stated that it suffered from all the disadvantages associated with an old building. There was a slope on the ground floor and this

presented difficulties for the movement of trolleys. Furthermore, the greater part of the ground floor was of timber construction and this presented its own operational problems.

On the question of headroom, Mr. McMillan stated that the subject with measurements of 2.7 - 3.0 metres on the ground floor and 2.5m - 3.05m on the first floor compared very poorly with Tesco at 5.2m which benefited from better natural lighting as a result.

Under examination by Mr. Hickey in relation to the statement contained in the respondent's précis that the subject premises was superior in terms of construction, fit-out and access to both Tesco and Dunnes Stores, Mr. McMillan said he disagreed in the strongest terms with that view.

Cross examined by Mr. MacEochaidh in relation to the uniformity of shape of the subject and easily accessible car parking, Mr. McMillan rejected both of those assertions vehemently and argued that it was a serious misreading of the situation to hold those opinions.

The Respondent's Evidence

7. Mr. Curran took the oath and adopted his précis as his evidence-in-chief subject to the addition under the heading of "Description" of "The subject is designated".

In his evidence Mr. Curran contended for a rateable valuation of €2,090 calculated as set out below:

Valuation Assessment

Ground Floor Retail: 2,965.53 sq. metres @ ~~€~~2.00 per sq. metre = ~~€~~243,173.46

Ground Floor Stores: 52.19 sq. metres @ €34.16 per sq. metre = €1,782.81

First Floor Retail: 2,417.04 sq. metres @ €54.60 per sq. metre = €131,970.38

First Floor Misc: 402.80 sq. metres @ €35.78 per sq. metre = €15,137.22

Second Floor Stores: 1,921.16 sq. metres @ €13.67 per sq. metre = €26,262.26

Total NAV Nov 88 = €18,326.13

Measured Gross Internally

Rateable Valuation = Total NAV @ 0.5% = €2,091.63 say €2,090.

In support of his opinion of rateable valuation, Mr. Curran introduced two comparisons, (also Dunnes Stores and Tesco) details of which are set out in Appendix 2 attached to this judgement.

8. Under examination by Mr. MacEochaidh, Mr. Curran stated that designation applied to all three properties viz the subject and Tesco and Dunnes Stores. That status applied to all three properties for valuation purposes. Furthermore, Mr. Curran stated that the subject had the same advantages and disadvantages in relation to car parking as the comparisons.

Cross examined by Mr. Hickey regarding his allegation that the subjects premises was superior in construction, fit out and access, Mr. Curran replied that was his view at the time but acknowledged that he did not e.g. take on board the operational difficulties presented by the old building and the presence of pillars on the ground floor. He believed that Dunnes Stores' premises looked jaded and inferior compared to the subject which he argued was newly constructed. However, Mr. Curran submitted that he could not contradict the oral evidence already given by Mr. Fleming to the Tribunal on that score.

At all events, Mr. Curran concluded by informing the Tribunal that the rationale guiding him in the said valuation was based on the proposition that all three properties were equally valuable.

Findings

The Tribunal has carefully considered all the evidence including comparisons introduced by both parties and finds as follows:

1. The Tribunal accepts the evidence of the appellant, Mr. Gordon Fleming, supported by that of expert witness Mr. McMillan, that the comparisons proffered ie. Tesco and Dunnes Stores were purpose-built department stores and as such were functionally superior to the subject premises which evolved piecemeal.
2. The property concerned was an infill premises of irregular shape which presented inefficiencies at stock control level and store management in general. The presence of fifty columns is unideal in a ground floor retail context with customers and trolleys

struggling to compete with the pillars for limited floor space. This resulted in operational inefficiencies and frustration all round. This compared poorly with the comparisons which were of state of the art structure and design.

3. The Tribunal also accepts the evidence of the respondent that appearance-wise the subject presents as a newly constructed building albeit embracing much older buildings.
4. The location of the subject premises is inferior to the comparisons. The M.S.C development and the arrival of Dunnes Stores has caused the retail centre of gravity of Monaghan town to be moved southwards. As a result the profile of the old town centre round Church Square (where the subject premises are located) and the Diamond have been significantly undermined.
5. The comparisons benefit from superior visibility in terms of location and signage.
6. The one-way traffic system operating round the town centre impacts more negatively on trading in the subject premises than on the comparisons. It does not create equal difficulties for all.
7. Car parking facilities available to the subject fall far short of requirements and compare very badly with the private and public parking from which Tesco and Dunnes Stores benefit. This impacts acutely on trolley shopping and overall trade.
8. The subject premises suffers from access restrictions from the retail and goods storage perspective of such magnitude that the appellant was prompted to consider relocation to the town's edge as a more viable alternative.

Determination

Having regard to the above findings and applying its considered weighting to the relevant factors the Tribunal determines the rateable valuation of the property concerned to be €1,600, calculated as set out below:

Ground Floor Retail:	2,965.53 sq. metres @ €67.22 per sq. metre = €199,343
Ground Floor Misc:	52.19 sq. metres @ €32.66 per sq. metre = €1,704
First Floor Retail:	2,417.04 sq. metres @ €33.60 per sq. metre = €81,212
First Floor Misc:	402.80 sq. metres @ €33.60 per sq. metre = €13,534
Second Floor Stockrooms:	1,921.16 sq. metre @ €12.60 per sq. metre = <u>€24,207</u>

Total NAV = €320,000

RV @ 0.5% = €1,600

And the Tribunal so determines.