

Appeal No. VA89/0/147

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

Tennis Village Cork Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Tennis Village and grounds at 1F, Ballygoggin, Bishopstown, Co. Cork
Quantum - Profits method, comparisons

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Brian O'Farrell

Valuer

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF NOVEMBER, 1990

By notice of appeal dated the 14th day of August 1989, the appellants appealed against the determination of the Commissioner of Valuation in setting a rateable valuation of £600 on the above described hereditament.

The grounds of appeal as set out in the notice of appeal are that the valuation is excessive and inequitable.

The premises comprise six indoor tennis courts, restaurant and bar, tennis boutique shop, toilets, showers and changing rooms. There are other outdoor courts which are not part of this appeal. It is located on the Model Farm Road outside Cork city.

Both parties have in advance of the hearing agreed the areas of the subject property as follows:

Entrance	151 sq. ft.
Reception & Office	699 sq. ft.
Shop	226 sq. ft.
Changing Rooms	2,281 sq. ft.
Bar & Restaurant	2,744 sq. ft.
Kitchen	226 sq. ft.
Stores	775 sq. ft.
	215 sq. ft.
Tennis Courts	42,782 sq. ft.

Valuation History

The subject property was first listed in the 1988 revision and a rateable valuation of £700 was fixed. This was appealed to the Commissioner of Valuation and on this appeal he reduced the valuation to £600. It is against this determination that the appeal lies with the Tribunal.

Written Submissions

Written submissions were received from both parties prior to the hearing of the appeal. On behalf of the appellant a written submission was received dated the 26th October, 1990 from Mr Desmond M Killen F.R.I.C.S., A.R.V.A., a Director of Donal O'Buachalla & Co. Ltd. In this Mr Killen described the property and valuation history. He said that in arriving at an estimate of rateable valuation he was guided by the judgment of Mr Justice Barron in the High Court of the 9th March, 1990 in the I.M.I. v. Commissioner of Valuation case. He provided comparisons as follows:-

1. Neptune Basketball Centre

2. St Finbar's Hurling and Football Club
3. Delany's Hurling and Football Club.

On the basis of these comparisons he estimated that the correct rateable valuation for the subject premises would be £350. Using the profits method and the contractors method of determining rateable valuation Mr Killen estimated that the rateable valuation would be £250.

A copy of his written submission is attached as Appendix "A". However in line with previous Tribunal practice details of the accounts of companies are not made available generally.

A written submission was received on the 2nd November, 1990 from Mr Philip Colgan on behalf of the respondent. In his submission he outlined the details of the appeal and commented on the grounds of appeal and said in relation to the comparisons supplied by the appellant that like was not being compared with like. Mr Colgan said that he calculated the rateable valuation as follows:-

Total area of complex (50,000 s.f.) at £1.50 p.s.f.	=	£75,000 p.a
Add for actual rent on bar	=	<u>£12,000</u>
		£87,000 p.a

Applying a percentage of .7 to the N.A.V. the rateable valuation would be £600.

Mr Colgan outlined how the rateable valuation could be justified on a comparative basis and attached a list of comparisons. With regard to the profits method Mr Colgan said that the one year's accounts as supplied by the appellants are insufficient evidence to properly apply this method. Mr Colgan's submission with the omission of any financial data is attached as Appendix "B".

Oral Hearing

At the oral hearing which took place in Cork on the 8th November, 1990 Mr Des Killen appeared on behalf of the appellants and Mr Philip Colgan appeared on behalf of the respondent. Also present were Mr Charles Stock, Director of Tennis Village Cork Ltd. and Mr John Gilmartin, Partner in Touche Ross, Accountants.

Mr Killen gave evidence as outlined in his written submission.

Mr Stock explained that the building materials used for the premises were brought in sections from the U.S.A. He stated that the building was tailor-made and the materials computerised according to the exact requirements of the customer. This is a cost-cutting exercise as only the exact amount of steel required is furnished. The criteria for its building were (a) to provide shelter, (b) to withstand wind strengths of 120 mph and (c) to ensure that the beam would not obstruct sight lines for the purpose of tennis.

The light materials used needed only a thin strip of foundation which could not take heavy machinery. He pointed out that when the tennis carpet needed to be replaced a fork lift truck would be brought in and as a result thereof the underlying tarmacadam would have to be dug up and replaced. He pointed out that because of the light steel used, fire regulations prevented any seating on the courts and allowed a maximum of 100 people at any one time.

He said that to convert the floor into a load bearing one suitable for industrial machinery the entire foundation would need to be altered.

Mr Killen emphasised that the property is to be valued only as it is, viz: a tennis village and referred to the "rebus sic stantibus" rule as expounded by "Ryde on Rating" 13th edition chapter 24 pp. 449, 451 and 455.

He referred particularly to the Neptune Centre as being the most relevant of his comparisons in that it was used for many commercial ventures.

Mr Killen elaborated on the Profits Method and Contractors Method of achieving an estimated R.V. as set out in his precis. He stated that his estimate of market value of the subject premises for the relevant date was £550,000.

Mr Colgan pointed out that the accounts furnished by the appellant were for such a short period that they could not be considered relevant. He referred to the Rosses Point Hotel Company Ltd v. Commissioner of Valuation IR [1987] p. 143, where Mr Justice Barron stated that "profit earning ability" is what would motivate the hypothetical tenant and not "profits".

He disagreed with Mr Killen's estimate of market value and suggested that it would be worth considerably more. He pointed out that on an analysis of Mr Killen's estimate of market value the property would devalue at £11 p.s.f. which, in his view, was unrealistic.

Mr Colgan referred to the sports complex attached to the Silver Springs Hotel, Cork and stated that this was a suitable comparison in that it included indoor tennis courts, bar and squash court. The R.V. on this complex was agreed in 1989 on 1st appeal at £900 which devalued at 4,621 sq. m. at 21p per sq. m. He pointed out that all of Mr Killen's comparisons were voluntary clubs while the subject property was strictly commercial.

Determination

The Tribunal accepts the audited accounts of Messrs Touche Ross, and the comprehensive evidence of Mr Gilmartin in relation to the profits of the subject premises. In view of the relatively short period in which the Tennis Village has been in operation, however, the

Tribunal feels that the importance of these accounts and hence the application of the profits method are somewhat restricted.

The subject property is not an industrial warehouse, regardless of its outward appearance. It is however, a commercial enterprise and the fact that it is a sport which is carried on therein does not detract from the business nature of the venture.

The Neptune Centre is in essence a voluntary club and therefore differs from the subject property, even when commercial activities are carried on therein.

The Silver Springs sports complex, while it appears comparable, enjoys the benefits of B.E.S. and has the added facilities of a swimming pool, whirlpool and beauty parlour.

The Tribunal feels that Mr Killen's estimate of market value of £550,000, devaluing at approximately £11 p.s.f. is somewhat conservative.

Taking all of the above factors into consideration, the Tribunal feels that a fair and reasonable N.A.V. for the property is £68,000 approximately and applying the agreed fraction of 0.63% between N.A.V. and R.V., determines that the correct rateable valuation of the property is £430.