

Appeal No. VA10/5/083

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

Cumisky Myler Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 274562, Retail (Shops) at 1 High Street, Balbriggan, County Dublin.

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

Damian Wallace - QFA, MIPAV, Valuer

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 25th day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €32,300 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are attached at Appendix 1 to this judgment.

This 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, on 12th day of January 2011. The appellant was represented by Mr. John Cumisky and Mr. John O'Brien BSc (Hons) Real Estate Management, MIAVI, a District Valuer, appeared on behalf of the respondent, the Commissioner of Valuation. In accordance with the rules of the Tribunal, the parties had in advance of the hearing exchanged written submissions and submitted same to the Tribunal. At the oral hearing both parties adopted their written submissions as their evidence-in-chief given under oath.

Issue

The grounds of the appeal, as set out in the Notice of Appeal, are that of Quantum.

The Property

The subject property is located in No.1, High Street, Balbriggan, Co. Dublin. The property is situated at the junction of High Street/Hampton Street adjacent to George's Square, Balbriggan, Co. Dublin. High Street and Hampton Street are principally residential streets with little commercial activity. It is a tertiary location, two streets removed from the main street via George's Square.

The Square has recently been refurbished and has a number of retail units, the Town Hall, a library and a hotel situated on it. George's Square provides the civic centre for the town. Though the property has 2 frontages the profile is virtually non-existent to the town's central business district. Balbriggan is located approximately 3km from the M1 motorway to the north of Dublin city.

Accommodation

The building comprises of traditionally built two-storey office premises. The property was, historically, two separate town houses adapted to provide for office accommodation. Internally the walls are plastered and painted, floor coverings are carpeted and lighting is fluorescent tubes and standard centre point bulbs. The property provides an open plan front office incorporating reception desk, waiting area and two work stations together with two private offices and a toilet at ground floor level. The first floor comprises of three offices, a toilet and a tea room.

Areas

Areas, measured on a Net Internal Area (NIA) basis, were agreed by both parties, as follows:

| | |
|--------------------|------------------|
| Ground Floor Front | 36.56 sq. metres |
| Ground Floor Rear | 36.85 sq. metres |
| First Floor | 63.15 sq. metres |

Basis of Valuation

The property was the subject of a Revaluation of all rateable properties in the Fingal County Council Area, with 30th September, 2005 being the relevant valuation date. Valuation levels were derived from the analysis of available open market rental information of comparable properties and applied to the subject property. The valuation of this property, on appeal to the Commissioner of Valuation, was determined by reference to the values of comparable properties stated in the Valuation List in which they appear.

Valuation History

- A Valuation Certificate (proposed) was issued on 16th June 2009. The property had a valuation of €36,700.
- Representations were lodged to the Commissioner of Valuation on the 13th July 2009. The Zone A rate changed from €500 per sq. metre to €450 per sq. metre and the first floor rate changed from €100 per sq. metre to €150 per sq. metre. As a result, the valuation increased to €40,400.
- An appeal was lodged to the Commissioner of Valuation on the 5th February, 2010. The area of the first floor changed from 110.87 sq. metres to 63.1 sq. metres and the Zone A rate was reduced from €450 per sq. metre to €425 per sq. metre. As a result, the valuation decreased to €32,300.
- An appeal was lodged to the Valuation Tribunal on the 25th August, 2010.

Appellant's Case

Mr. Cumisky, having taken the oath, gave a brief outline of the location, description and accommodation of the subject property. Mr. Cumisky stated in his précis that, in July 1996,

“Fingal County Council granted permission for ‘change of use of portion of the ground floor from residential to commercial use, erection of an illuminated sign and minor alterations at 1 High street, The Square, Balbriggan, Co. Dublin.’ The grant was subsequently upheld on appeal to An Bord Pleanala with the final grant taking place in December 1996.

There had been a long established office use on the portion of the ground floor premises of 1 High Street and this grant of permission for commercial/office (not retail) use, established the commercial/office permission on the remainder of ground floor.

Therefore the land use classification up to 2004 expressly prohibited the use of the premises for retail and it is a commercial office for which permission was applied and granted.”

Mr. Cumisky outlined the Balbriggan market in September 2005;

“Balbriggan is a town in Fingal, Co. Dublin that reflects rural town characteristics, rather than a sophisticated urban centre with a multi faceted property market, capable of complex analysis on a street by street basis. The main street suffers from a number of unique characteristics that have served to hinder its development as a retail destination or commercial centre and many of the existing commercial or retail uses are adapted historic residential buildings and not built for purpose.

In September 2005, there were 8 public houses in Balbriggan, one situated at the harbour and the other 7 were, and still are, situated on the main street of Balbriggan. All of these premises occupy significant road frontages to the main street and have not encouraged retail/commercial developers and occupiers to the area.

The Fingal County Council Retail Strategy Report in October 2004 by DTZ Piedad Consulting, first identified an opportunity to develop a retail centre on lands along the Naul Road and adjacent to the inner Relief Road, with an occupiable floor area of between 10,000-20,000 sq. m. These lands were subsequently re-zoned in 2005 from agricultural use to commercial use to facilitate the centre being built.

At this time Fingal County Council engaged in a joint venture development with Howard Holdings to provide the Fingal Bay Business Park (an office and business park complex) on adjacent lands to the proposed new retail centre, which effectively ensured that all emphasis on new business and development was directed away from the historic centre of the town.

The result of this was to impact on rental levels in the town centre for a short period of time, whereby there was very little new development to provide additional retail/commercial floor space as the property market overheated. This in turn led to a virtual non-supply of modern built for purpose retail/commercial space, at a time of heightened demand, which has resulted in major discrepancies in rent patterns (almost establishing a two tier market) which is evidenced below by one example on Drogheda Street where two retail properties, situated in 3 doors from each other can be analysed as follows.

- *Balbriggan Pharmacy- 285sq.m (c.3,076 sq. feet)*
Zone A Rent = €1,250. 20 year lease from December 2005
- *Cyberzone – 80 sq.m (c.861 sq. feet)*
Zone A Rent = €270. 4 Year 9 month lease from August 2005”

Mr. Cumisky informed the Tribunal that a lesser rent had been agreed on Cyberzone in 2004.

Mr Cumisky then described the Balbriggan office market, post-September 2005:

“The result of the emphasis of commercial and retail space being directed towards a new commercial centre on the periphery of the town, has left a legacy that will take many years to rectify. There is no built for purpose office building in Balbriggan town centre, though there is an office park, situated on the periphery of the town, which, at the height of the market, reached occupancy levels of perhaps 70%. There is space available today in Fingal Bay Office Park that has never been leased.”

He went on to give an overview of the Balbriggan retail market post September 2007:

“The greatest example of the impact of the decision to provide a commercial centre outside the town centre retail streets can be evidenced by the redevelopment of the Super Valu Shopping Centre on Drogheda Street. Super Valu is the largest draw on the main street and eight new built for purpose retail units ranging in size from 100 sq. m. to 420 sq. m. were available for occupation from early 2007. The largest unit has had to be re-incorporated into Super Valu and only two other units are currently trading.”

Mr. Cumisky then proceeded to provide details on his 3 comparisons, as follows:

1. John's Barber Shop, George's Square

This unit measures approximately 20 sq. metres and the passing rent as September 2005 was €12,000 per annum. Analysis, €1,000 per month. The rent continues at this level today.

2. Doggy Doo, George's Square

This unit measures approximately 27 sq. metres with stores of a further 7.5 sq. metres at ground floor level. There is a large yard at 70 sq. metres to the rear of the property without which the property cannot be occupied by the tenant as it provides for exercise areas, kennels etc. The property was leased in October 2005 on a 4 year 9 month lease at rent of €12,000 per annum. Analysis, €1,000 per month.

3. 8a George's Square

This unit measure 25.5 sq. metres at ground floor level and 43 sq. metres at first floor level and was leased by Jim Glennon TD for two years from 1st November, 2005 at €12,000 per annum. Analysis, €1,000 per month.

This final comparison is the best comparison, in Mr. Cumisky's opinion, as the premises most resembles the subject property, being ground floor reception, waiting area and work station with overhead office accommodation and with the following rental history:

1st November 2005 - 2 year lease – 2 months free - €12,000 per annum

1st June 2009 - 3 year lease- 1 year break clause exercised - €12,000 per annum

1st October 2010 - 4 year lease- 1 month rent free - €12,000 per annum

Analysis, in each case €1,000 per month.

Mr. Cumisky stated that his three comparisons were three different premises in the same rating area, all having the same net annual value.

In conclusion, Mr. Cumisky set out the following points:

1. The Balbriggan market would sustain a rent of €24,000 per annum in September 2005 for the subject property. Analysis €2,000 per month.

2. Using 8a George's Square as the most comparable property for analysis at €160 per sq. metre (€1,000 per annum for 68.5 sq. metres) a figure of €21,840 per annum is arrived at. If a 10% differential is allowed or a slightly inferior location the figure reduces to €19,656 per annum.
3. Using the Fingal Bay Office Park analysis at the higher level of €80 per sq. metres a figure of €24,580 per annum is arrived at. If a 20% discount is allowed to reflect a modern, built for purpose office premises with ancillary benefits, 8 parking spaces, ease of access, identifiable location, no wasted space etc. the figure reduces to €19,665 per annum.

It is possible to make a case, Mr. Cumisky feels, for the subject premises on the basis of NAV of €18,000 per annum - €1,500 per month - but it is his contention that the subject premises should have had a rental value of €24,000 per annum, or €2,000 per month, as at September 2005.

Of the three comparisons put forward, Mr. Cumisky believes that comparison no.38a George's Quay is his best comparison. He also reiterated that planning permission on the subject was for commercial use only and not retail.

Cross-Examination

When questioned by Mr. O'Brien in connection with a planning application granted in January 2001, Mr. Cumisky stated that this was for minor alterations to the subject property and for a new timber surround to the front. Mr. Cumisky stated that the front of the building does have the essence of a shop front but as he had already stated, planning permission was granted for commercial use and not retail. When further questioned by Mr. O'Brien, Mr. Cumisky stated that the three comparisons he listed are located in a much higher and superior location than the subject property and if he had a choice he would relocate to any of these properties.

Respondent's Evidence

Mr. O'Brien adopted his précis as his evidence-in-chief and he dealt with the location, description and accommodation of the subject property which was agreed. He then dealt with page 6 of his précis which set out the block plan of the subject property. He said it was not to scale but part 1 of the layout, he stated, was zoned and the rest of the premises were offices.

He then dealt with his basis of the valuation, valuation history and valuation of the subject property.

The respondent contended for an net annual value of €2,300 as set out below:

| Blocks | Level | Use | Measurement | Area Sq. Metres | Rent per sq. metre |
|--------|-------|---------|-------------|-----------------|--------------------|
| 1 | 0 | Zone A | NIA | 36.56 | €425 |
| 2-4 | 0 | Offices | NIA | 36.85 | €200 |
| 5-8 | 1 | Offices | NIA | 63.16 | €150 |

Total Zoned Area 36.56 sq. metres

ITZA 36.56 sq. metres

Total Area 136.56 sq. metres

Total €2,380.50

Estimate of NAV (Rounded to) €2,300.00

Mr. O'Brien then dealt with his comparable evidence as follows:

Comparison No. 1

Property Address: 8 George's Square, Balbriggan, Co. Dublin

Occupier: Doggy Doo

Property Number: 274329

Use: Zone A - €450 per sq. metre

The Valuation Office estimated the above property's NAV to be €1,420. No representations were submitted on this property. An appeal was submitted to the Commissioner of Valuation on the property on the 5th February, 2010. The valuation remained unchanged at €1,420.

Comparison No. 2

Property Address: George's Square, Balbriggan, Co. Dublin

Occupier: Monument Works

Property Number: 274330

Use: Offices - €450 per sq. metre

The Valuation Office estimated the above property's NAV to be €17,120. Representations were submitted on this property on 13th September, 2009. The Valuation Office changed their valuation from €13,590 to €17,120. An appeal was submitted to the Commissioner of Valuation on the property on the 5th February, 2010. The valuation remained unchanged at €17,120.

Comparison No. 3

Property Address: George's Square, Balbriggan, Co. Dublin

Occupier: John's Barbers

Property Number: 274325

Use: Offices - €500 per sq. metres

No representations or appeals were submitted to the Commissioner of Valuation in relation this property. The valuation remained unchanged at €10,170.

Comparison No. 4

Property Address: 17 George's Square, Balbriggan, Co. Dublin

Occupier: Vacant

Property Number: 2186530

Use: Zone A - €550 per sq. metre

The Valuation Office estimated the above property's NAV to be €29,400. Representations were submitted on this property on 13th July, 2009. The valuation changed from €32,000 to €29,400. An appeal was submitted to the Commissioner of Valuation on the property on the 5th February, 2010. The valuation remained unchanged at €29,400.

Comparison No. 5

Property Address: 7 Bridge Street, Balbriggan, Co. Dublin

Occupier: Elegance

Property Number: 274643

Use: Zone A - €650 Rent per sq. metre

No representations or appeals were submitted to the Commissioner of Valuation in relation this property. Valuation €16,280.

Comparison No. 6

Property Address: 15 Dublin Street, Balbriggan, Co. Dublin

Occupier: House of Gifts

Property Number: 274335

Use: Zone A - €500 Rent per sq. metre

No representations or appeals were submitted to the Commissioner of Valuation in relation this property. The valuation remained unchanged at €18,800.

Comparison No. 7

Property Address: 19 Dublin Street, Balbriggan, Co. Dublin

Occupier: Talk to me Mobile Phones

Property Number: 274357

Use: Zone A - €500 Rent per sq. metre

No representations or appeals were submitted to the Commissioner of Valuation in relation this property. The valuation remained unchanged at €17,100.

Mr. O'Brien stated that there were five appeals from Dublin Street but that none of these valuations was changed from Representations Stage to Appeal Stage. With reference to page 21 of his précis (photographs of view from George's Square), Mr. O'Brien stated that the subject property had excellent view from George's Quay. He further stated that he gave an allowance of 15% because the property was located on a residential street. Mr. O'Brien said that to the best of his ability he was fair and equitable in arriving at the valuation of the subject property.

Cross-examination by Mr. Cumisky

Mr. Cumisky asked Mr. O'Brien if it was fair to use a main street in Balbriggan in comparison to a tertiary street in Balbriggan. Mr. O'Brien said that he had to take an overall

value, and that he must look at adjoining streets and properties to form a tone of the list. He stated that Zone A on Bridge Street is €550 and that Zone A on the subject property was €425. He further stated that the area where the subject property is located is in a high profile area of the town as is shown on page 21 of his précis. Mr. Cumisky asked Mr. O'Brien in relation to his comparison number 2 why, when originally valued in 2005, it was described as an office by the Valuation Office and in 2009 it was still being described of as an office at €30 per sq. metre. He questioned why it was then increased to €450 per sq. metre. Mr. O'Brien said that the reason for this was in the interest of fairness and equity. When Mr. O'Brien went to examine it again, it was agreed by the Valuation Office to treat the comparison the same as the property next door, i.e. Doogy Doo. His comparison number 2, Monument Works, was in his opinion the best comparison to the subject property.

When Mr. O'Brien was questioned by a member of the Tribunal as to whether there was a difference between zoned rent on commercial and zoned rent on retail, Mr. O'Brien stated there was. He stated that each property is different and the rent reflects same. When further questioned by the Tribunal on the planning decision on the subject property, where the planning stated that it was granted only for 'commercial use' and not 'retail', he was asked to explain how the Valuation Office could zone a portion of the property 'retail'. Mr. O'Brien stated that the shop window to the front of the subject property gave him the authority to zone it 'retail'.

Findings

1. As part of the review of rateable valuation in the Fingal County Council area, the subject property should be valued in accordance with Section 48(1) of the Valuation Act, 2001.
2. The subject property is used for the provision of professional services associated with the management and operation of an estate agency in accordance with the planning permission granted for the property.
3. There was no dispute between the parties as to the description, location or condition of the subject property.
4. The subject property is located on a residential street, off the Main Street in Balbriggan, Co. Dublin.

5. Mr. Cumisky's uncontested evidence was that the subject property has planning permission for commercial use and cannot be used as a retail unit.
6. Mr. O'Brien acknowledged that typically a property zoned 'commercial' would be valued at a lower level than a similar retail property.
7. The Valuation Office did not contest the use of the property as 'commercial' and not 'retail' use even though they zoned the front portion as 'retail'.

Determination

Having regard to all the evidence adduced and the foregoing, the Tribunal determines the valuation of the property concerned to be €29,000 calculated as set out below:

| | | | |
|--------------------|--|---|-------------------|
| Ground Floor Front | 36.56 sq. metres @ €340.00 per sq. metre | = | €12,430.40 |
| Ground Floor Rear | 36.85 sq. metres @ 200.00 per sq. metre | = | € 7,370.00 |
| First Floor | 63.15 sq. metres @ €150.00 per sq. metre | = | <u>€ 9,472.50</u> |
| Total: | | | €29,272.90 |

NAV say €29,000

And the Tribunal so determines.