

Appeal No. VA02/4/011

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

Gerrard P. Crosbie

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Reference: Unit 4, Cows Lane Music Hall, Ward: Royal Exchange A, Temple Bar, County Borough of Dublin

B E F O R E

Tim Cotter - Valuer

Deputy Chairperson

Brian Larkin - Barrister

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF APRIL, 2003

By Notice of Appeal dated 14th November 2002, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €54.00 on the relevant property above described.

The Grounds of Appeal as set out in the Notice of Appeal are: " excessive; inequitable, bad in law, not designated, poor location, quantum allowance."

The oral hearing took place in Dublin on the 10th February, 2003. Mr. Gerrard Crosbie, Managing Director of Whichcraft presented the case on behalf of Whichcraft Gallery in Cows Lane, Dublin 8. He was accompanied by Ms. Foley, General Manager of Whichcraft who gave evidence on behalf of the appellant. Mr. Raymond Sweeney District Valuer who holds an Economics Degree from the N.U.I. appeared for the Respondent.

The Evidence

The appellant affirmed his précis. The appellant referred to his précis which included photographs of his property at Unit 4, Music Hall, Cows Lane, Dublin 8. From the outset he was critical of the comparisons included in the Respondent's précis. He indicated that Unit 5 Castlegate, Lord Edward Street chosen by him for comparison purposes was a much fairer basis than the Units in Music Hall and Scarlet Row proffered in support of the respondent's case. Specifically, he said, that it was inequitable to value Unit 4, Cows Lane with a floor area of 55sq metres at the level of €54, while Unit 5 Castlegate, Lord Edward Street, which has a floor area of 44sq. metres has a rateable valuation of £54 (€68.57). Lord Edward Street he said was on a main thoroughfare leading from the N7 into the city and on the main tourist trail taking in a number of historic cathedrals, the Digital Hub, The Guinness Hop Store and St. James Gate Brewery. It benefited from huge footfall all day long whereas Cows Lane had minimal passing trade. The only reason that he was persisting with Cows Lane he said was that they had a store in Lord Edward Street where staff alerted customers to the Gallery in Cows Lane.

Mr. Crosbie outlined to the Tribunal how Whichcraft opened on 1 November, 2000 and the street was launched in March, 2001 with great expectations. It was a futuristic project but the dream was not being realised. He referred to declining fortunes on the State and private sides. The State run Viking Centre had deteriorated leaving only a booking office now and Cuan Hanley had gone out of business leaving huge debts in its wake. The problems he said were compounded now by the presence of layabouts and drug addicts sleeping rough in doorways opposite his premises. This he said, apart from the security hazard posed for his staff, was totally off-putting to would-be clients.

The above evidence was advanced by the appellant in support of his grounds of appeal that the R.V. of the subject was excessive and inequitable in the light of its poor location. In relation to designation Mr. Crosbie stated that it was his clear understanding at the outset that the premises

would enjoy an exemption from rates for ten years. This he said was central to his taking the lease in the subject in preference to anywhere else in the City. Now, he was advised that the west side of Cows Lane did not qualify for rates exemption even though he signed up before the 31st December 1999. This he said exposed him to a significant unbudgeted expense.

Mr. Crosbie's final point was that the valuation was based on a rental level of €12,700 which was full commercial rent in a new development with no trading history and with a very poor identity as evidenced by the lack of footfall and the failure of a number of businesses to sustain themselves on the street which could not even be classified as secondary. This basis of Valuation was bad in law he said. He said that Temple Bar Properties had reneged on its promise to provide adequate signage or identity for Cows Lane at the top of the street. This resulted in people who had 'discovered' the street on the internet wandering about directionless in the absence of map referencing or signage. Even an expenditure of €50,000 in marketing had failed to solve the identity problem.

Mr. Crosbie was cross examined by Mr. Sweeney and he conceded that there was some improvement in the sense that there was a pedestrian crossing at the top of the street now but he submitted that there was little else. He said that in essence the area suffered from under-description in the sense that it did not feature on any Ordnance Survey map or other City map and was misdescribed in the box map references in the Temple Bar Area. Mr. Crosbie added that they, along with other traders, had invested in signage for the street and indeed had a battle with Dublin City Council but to no avail. He then proceeded to spell out the business failures among the Units since he took out a lease there. He cited Insight Opticians as a classic example. In response to Mr. Sweeney's assertion that four of the five tenants in Music Hall were still trading, Mr. Crosbie rejected this out of hand referring in detail to each of the units. He said appearances were deceptive. The reality he said was that the traders were either losing money or "hanging in" at close to breakeven point in the hope that some day the Music Hall Development would 'take off'. Such a prospect, Mr. Crosbie said was a long way off the horizon at the moment. Most of the units were 'going under' with the combination of crippling overheads and insufficient turnover.

Ms. Foley, General Manager of Whichcraft in her evidence endorsed what Mr. Crosbie said and elaborated in some areas. She placed great emphasis on the fact that the Development was not finished off to mark entry despite the commitment given by Temple Bar Properties Ltd. The

lack of identity was a serious hindrance to progress she said. People stood at the top of the street, spectator fashion, looked into it but did not venture down it. The feedback she had was that visitors felt the area was residential rather than a business location. Ms. Foley stated that in that regard the attitude of Dublin City Council was extremely unhelpful in refusing to allow street furniture. As a result the place was in terminal decline due to lack of identity. An initiative undertaken by the traders themselves she said, with no assistance from Dublin City Council,

by way of introduction of flower sellers was a big success, Ms. Foley felt that the Cows Lane Development had long term potential but given the business failure rate among the tenants to date the surviving traders needed all the incentives they could get, including rates exemption, in the short term. In general, she felt that Temple Bar Properties Ltd. did not respond to its tenants needs like any good landlord and questioned their agenda for the project.

Mr. Sweeney gave evidence in accordance with his précis. He stood by its contents and was satisfied that the Commissioner's valuation was fair and reasonable. He was happy to rely on the comparisons quoted. Cows Lane was, he said, a new 'stand alone' development which would find its own niche in the market. The relatively new Parliament Hotel close by was inviting and would attract people to the area. The subject he said retailed very expensive goods and consequently had a light customer base. The development was not long in being, but was improving and he was confident it would 'take off'. The units he said were not valued on the basis that they would be an immediate success. The fact that the Ordnance Survey map in 2004 would include the street, he said, would be a huge plus. The reduced rate of €127 at ground floor level reflected a discount on the general rate of €63.80 per sq. metre to allow for the mezzanine level which while increasing the overall floor area presented an obstruction and reduced ground floor head room. The rate of €127 per sq. metre he said compared very favourably with the €265.40 per sq. metre applied to 5 Castlegate, Lord Edward Street. He concluded that the limited number of appeals by tenants in Cows Lane indicated satisfaction with the rate charged for what was in effect a "designer street".

Under cross-examination by Mr. Crosbie he conceded that the photographs while they did not display significant footfall, may have been selective in that they did not highlight the presence of drug addicts. It was put to him that the reason for the limited appeals was due to the traders' reluctance to expend "good money after bad", quoting in particular Insight Opticians who

accumulated massive debts. In rebuttal of Mr. Sweeney's contention that those shopping for "speciality items" such as the goods on sale in the subject would travel anywhere to purchase them, Mr. Crosbie said that argument fell flat on its face in the light of the Cuan Hanley experience where there was also a distinct product.

A debate ensued as to the factual incidence of failure. "Insight" and the "Plant Store" were cited by Mr. Crosbie as the tip of the iceberg. The continued occupation by other tenants should not be confused with the stark economic reality which was that the Units were on a financial "life support" existence. In analogous terms he suggested that it would not be long before the switch would be turned off. He challenged the failure rate propounded by Mr. Sweeney and said it was well in excess of 50% and possibly as much as 80% if proper consideration is given to part time operations and trading well below capacity viz. 4 or 5 day week openings. Success as manifested in the area in general by high demand for 'office space' should not deflect from the difficulties experienced by the retailers in the development. It was even possible to speculate, taking the Development overall, that the failure rate on one side of the street varied hugely from the side opposite by as much as 60% viz 80% rather than the 20% quoted by the Respondent. Mr. Crosbie was echoing the views of many of his co-tenants, he said, by concluding that the prospect of off-loading leases and relocating elsewhere was so daunting that many of the traders were frozen into inertia. They adopted the line of least resistance instead of jumping ship which the economics of the situation dictated.

Findings of Fact

1. The Tribunal accepted that the appellant's case was soundly based. In terms of comparisons it accepted that the assessment of 5 Castlegate, Lord Edward Street and No 4 Music Hall at RV €68.57 and €54.00 respectively did not adequately reflect the considerable differences in trading potential in the two locations. The Tribunal did not accept the Respondents claim that the rate invoked in Music Hall and Scarlet Row was a credible benchmark.
2. The Tribunal agreed with the Appellant that the rate applied in Cows Lane assumed Dublin could support a 'designer street', a proposition which the experience of the Appellant in the subject suggested it could not.
3. The Tribunal accepted the unique nature of the Cows Lane Development. It is not comparable to Temple Bar. It is located on the western side of the City, not on any street

map and does not benefit from significant footfall or passing trade. It noted furthermore that Cows Lane was not on any Ordnance Survey map and that suggestions of behalf of the Respondent that the street would feature on the 2004 City map were ludicrous given the pressing economic need for an urgent response.

4. The Tribunal agreed that the Development was unique to such an extent that even the 'rock bottom' rate of €163.8 (£12 per sq. ft.) as adjusted for mezzanine levels was excessive and required a material downward adjustment.
5. The Tribunal accepted the Appellants arguments that the trading difficulties in Cows Lane must be reflected in the net annual value of the premises seeking to survive on the street.
6. Although the parties debated the relevant failure statistics the Tribunal accepted that the reality was that the existing net annual values as established by the Commissioner of Valuation, were not reflected in the trading realities on the street and that the entire Development would be history unless action was taken.
7. No significant data in relation to passing rents was canvassed before the Tribunal.
8. The Tribunal in the circumstances will allow a 50% reduction in the net annual value per square metre in the subject premises, and determines the net annual value as follows:

Ground Floor Shop	53sq. m.	@ €63.50	=	€3365
Mezzanine	28.3sq.m.	@ €32.00	=	€906
				€4,271
		4271 x 0.63%	= RV	€27

The Tribunal therefore determines the rateable valuation to be €27.