

Appeal No. VA04/2/055

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

Carbery Nurseries

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Garden Centre at Lot No. 1ab, Corkagh, Dublin, Clondalkin Village, Clondalkin,
County Dublin

B E F O R E

Frank Malone

Deputy Chairperson

Michael McWey - Valuer

Member

Patrick Riney - FSCS FRICS FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 7TH DAY OF MARCH, 2005

By Notice of Appeal dated the 27th day of May, 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €34.00 on the above described relevant property.

The grounds of Appeal are as set out in the Notice of Appeal a copy of which is contained in Appendix 1 to this Judgment.

The appeal proceeded by way of an oral hearing which was held on the 13th day of September 2004 in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin. The appellant, Mr. Finlay Colley, attended and was represented by Mr. Conor O’Cleirigh of Conor O’Cleirigh & Co.. The respondent was represented by Mr. Denis Maher, MRICS, a Grade 1 Valuer in the Valuation Office.

The Property

The property is described as a small garden centre / nursery containing a covered display yard, store / potting shed and a converted farm building used as a plant store.

Location

The property is located in the Naas Road Horticultural Park on the North side of the Naas Road approximately 1 mile from Newlands Cross and close to Clondalkin.

Tenure

The property is understood to be freehold.

Valuation History

The subject premises was first assessed in December 2003 and the RV was fixed at €34. At first appeal in May 2004, the RV showed no change.

Appellant’s Evidence

Mr. O’Cleirigh apologised for his late introduction to the case and stated that the Valuation Office had no objection to his late appearance on the appellant’s behalf. He stated that due to his late introduction to the case he had not had time to prepare a report but could offer photographic evidence to which the Valuation Office had no objection. He stated that the thrust of the issue is essentially that the subject is a nursery and as such should not be rated as it falls under Schedule 4, Paragraph 2 of the Valuation Act, 2001 as “*land developed for horticulture*”, which is defined in Section 3 of the Act to mean “*land used for market gardening, nurseries, allotments or orchards, other than land or buildings, or parts of buildings, used for the sale or processing of horticultural produce*”.

Mr. Maher objected to the introduction of this ground of appeal stating that it was not one of the grounds as set out in the Notice of Appeal. Mr. O’Cleirigh claimed that, in the appellant’s précis of evidence, it was clearly stated that rates should not be imposed because the property was a nursery and not a garden centre. He also referred to the statement at 6(b) of the Notice of Appeal that the Valuation Certificate was incorrect in describing the property as a Garden Centre.

The Tribunal adjourned briefly to consider whether this ground was admissible.

The Tribunal, having conferred, concluded that the grounds for exemption under Schedule 4, Paragraph 2 were not included in the Notice of Appeal and should not be allowed.

Mr. O’Cleirigh asked if it was too late to seek an adjournment of the hearing on the grounds that the appellant was not professionally advised when he submitted the appeal and the adjournment would allow him to expand on his grounds of appeal. The Tribunal, while making no formal decision on the matter, indicated that they were not sympathetic to Mr. O’Cleirigh’s application and Mr. O’Cleirigh did not pursue the application. Mr. O’Cleirigh then asked if he could raise the issue of quantum to which Mr. Maher commented that the issue of quantum was not in the Notice of Appeal but to be helpful to the Tribunal and the Appellant he would not object to its being raised.

The Tribunal, having considered the matter, decided that the issue of quantum should be heard.

Mr. O’Cleirigh then proposed to give evidence to which proposal Mr Maher objected saying that it had been agreed between the parties that Mr. O’Cleirigh could act in an advocacy role but would not give sworn evidence. The proposal was a divergence from what had been agreed. Mr. O’Cleirigh said that agreement was in relation to the exemption issue and not in relation to the quantum issue.

The Chairperson stated that the Tribunal appreciated Mr Maher's position but that in the interests of justice and in view of the late notice given to Mr O' Cleirigh in the matter he would be allowed to give evidence.

Mr Maher then suggested that the hearing could be adjourned to allow Mr O' Cleirigh more time. The Chairperson said that the Tribunal is subject to the time constraints imposed by the Valuation Act 2001 which mean that a decision must be reached in this appeal by 30th November 2004. The Tribunal would hear Mr O' Cleirigh's evidence, give it the value it merits and Mr Maher would have his opportunity to cross-examine.

Mr. O' Cleirigh, having made his affirmation, introduced photographs as evidence. Referring to the appellant's submission to the Tribunal, he stressed the difficulties experienced by the appellant in conducting his business as a result of the restricted entrance, the isolation of the property, the lack of convenient access to the public and the basic and quite limited nature of the buildings. Mr. O' Cleirigh also said that the property is subject to vandalism and pollution.

He further stated that it is difficult to find suitable comparisons in relation to this property and that the Valuation Office had not produced satisfactory comparisons either. Referring to the Valuation Office report relating to the RV on the buildings, Mr. O' Cleirigh said that whilst he agreed with the figure of €13.67 per sq. metre for the Potting Shed he would propose an NAV of €1,613 with an RV of €8 per sq. metre on the Store which has an area of 199.97 sq. metres and an NAV of €500 for the Display Yard giving an RV of €0.80 per sq. metre which would produce a total NAV in the region of €3,300, giving an RV of €21.00.

The Chairperson asked Mr Maher if he needed an adjournment to consider Mr O' Cleirigh's evidence. Mr. Maher replied that he felt at a slight disadvantage as he had not thought that quantum would be an issue but he nevertheless was happy to continue with the hearing and did not need an adjournment. He then commenced his cross-examination of Mr O' Cleirigh. He questioned Mr O' Cleirigh's comments with regard to access saying that two other properties use the same access and that the subject was accessible and easy to find. Mr O' Cleirigh replied that the property was

difficult to find, it was off the Naas Road where there are roadworks and access is via a long narrow laneway. The property could not be accessed by forty-foot trucks and some deliveries had to be made by forklift. In reply to further questions from Mr Maher he accepted that if the display yard were attached to a garden centre at Newlands Cross it would attract a higher level than the €0.80 per m² he proposed; he said the same did not apply to the store which was comprised of rough walls with no windows or doors and its equivalent would not be found in any garden centre.

The Chairperson asked Mr O’Cleirigh if he was using Section 49(1) of the Valuation Act 2001 regarding the introduction of other properties comparable to the subject to which Mr. O’Cleirigh replied that while there are garden centres in the area the subject property was well below their standard in terms of the quality of buildings; that neither valuer had produced comparisons and both were bringing forward NAV based on their experience. In reply to the Chairperson’s question as to how the Tribunal should value the property Mr O’Cleirigh said the Tribunal should weigh up the respective valuers’ evidence.

Mr O’Cleirigh then called Mr. Finlay Colley of Carbery Nurseries. Mr Colley, having taken the oath, described his property as a large garden of 2 acres in which he produced plants generally for the wholesale trade with 20% of sales to the general public. He maintained that the turnover was very low with no profit margin and that this was primarily because of vandalism, pollution and restricted access to the property. The shared right-of-way to the property was too narrow for trucks and could only accommodate transit vans. He stated that the buildings were not satisfactory, none had been purpose built, they had no artificial lighting and were structures that would not be used in a conventional garden centre.

Under cross-examination by Mr Maher, Mr Colley stated that access by trucks would be required about three times a year in which instances material would have to be transported by forklift; he accepted that the problems of vandalism and pollution affected the eastern boundary of the area which was not part of the subject property but said that pollution by oil did affect the subject property.

In reply to the Chairperson Mr Colley, still under oath, confirmed that everything contained in his written submissions and photographs was correct. The Chairperson then referred Mr Colley to the statement in page 4 of the respondent's précis that "*The gardens and old gun powder factory which are open to the public do not comprise part of this valuation*" which Mr Colley agreed was correct.

The Chairperson then referred to the accounts submitted by Mr Colley and asked him why they had not been certified and Mr Colley replied that he did not know.

Respondent's Evidence

Mr. Maher, having taken the oath, adopted his précis of evidence as being his evidence-in-chief and acknowledged that the main issue now was that of quantum. When carrying out his valuation he took into account all aspects, including location and condition of the buildings, access and visibility. He did not consider accounts for a garden centre in determining his valuation. Mr. Maher said that he could not find similar properties at these levels as a normal garden centre would be valued 3-4 times higher and he consequently reduced the level of valuation of the subject property accordingly. He mentioned that he saw no evidence of vandalism or pollution in the subject property.

Mr Maher contended for the following valuation:

Potting shed / store	87.5 sq.mt.	@RV €13.67	- NAV €1,196.13
Store	199.97 sq.mt.	@ RV €2.00	- NAV €2,399.65
Display area	625 sq.mt.	@ RV €2.75	- NAV <u>€1,718.75</u>
Total			€5,314.53
RV @0.63%			€ 33.48
Say			€ 34.00

Under cross-examination by Mr O'Cleirigh, Mr Maher said that, in his opinion, a forty-foot truck could gain access but might having difficulty getting back out; he accepted, however, that there were access difficulties; he had not seen any pollution in the property or in the lake; he would not accept that the location was isolated as it was on the edge of Dublin city; he did not consider the accounts in valuing the property;

he accepted that the buildings were not purpose-built but that buildings in garden centres vary quite a lot; the property was valued at the lowest end of the scale.

The Chairperson asked both valuers if they were relying on comparisons under section 49 of the 2001 Act. Mr Maher said he had looked at some comparable properties and then adjusted downwards for the subject property. Mr O’Cleirigh said it was very difficult to find anything comparable.

To a question from the Chairperson as to why the Valuation Office does not take accounts into consideration when valuing garden centres, Mr. Maher replied that it was not the Valuation Office’s usual policy to value garden centres on turnover. They might do so where these would determine market value but most commercial properties are valued on a rental basis.

The Chairperson stated that it was difficult for the Tribunal to arrive at an NAV without comparisons and requested that agreed comparisons, preferably with photographs, be furnished by the parties within two weeks for consideration by the Tribunal before reaching its determination.

Findings

The Tribunal, having reconvened, has carefully considered all the evidence adduced by the parties before and at hearing, the comparison evidence furnished as requested and seen by both parties subsequent to the hearing, the further comparison information relating to Clondalkin Nurseries sought by the Tribunal and seen by both parties and makes the following findings:

- 1) The Tribunal having been presented with the case of the subject property being a property not rateable under Schedule 4, paragraph 2 of the Valuation Act, 2001, disallowed this ground of appeal as it was not in the Notice of Appeal.
- 2) The Tribunal accepts the appellant’s evidence as to the poor location of the property, having a restricted entrance, which is a deterrent to the general public in gaining access thereby having a detrimental effect on sales.

- 3) The Tribunal accepts the appellant's evidence including photographic evidence of the poor and limited quality of the buildings which is of a standard not acceptable to a conventional garden centre.
- 4) The subject property is affected by oil pollution but is not affected by vandalism.
- 5) The comparisons offered by the Valuation Office (details at Appendix 2 to this judgment) namely (1) Newlands Nurseries Ltd (2) Oldcourt Garden Centre are not suitable comparisons and are therefore of no assistance to the Tribunal when trying to determine the valuation of the subject property. The comparison Clondalkin Nurseries, also cited by the Valuation Office, is of limited assistance as it is currently under appeal to the Tribunal on the question of rateability only and the appellant who was not professionally represented did not raise the issue of quantum. The size of the buildings in Clondalkin Nurseries is smaller than in the subject.

Determination

The Tribunal therefore determines the Net Annual Value and the RV of the subject relevant property as follows :-

Potting shed / store	87.5 m ² @ €13.67 per m ²	- NAV €1,196.13
Store	199.97 m ² @ €8.00 per m ²	- NAV €1,599.76
Display yard	625 m ² @ €0.80 per m ²	- NAV <u>€ 500.00</u>
Total NAV		€3,295.89

@0.63%		RV € 20.76
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Say		RV € 21.00
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The Tribunal therefore determines the Rateable Valuation of the subject relevant property to be €21.