

Appeal No. VA07/2/040

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

Carphone Warehouse

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. 5A/Unit 13, Ardshanavooly, Killarney Urban, Killarney UD, County Kerry

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Aidan McNulty - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 2ND DAY OF OCTOBER, 2007

By Notice of Appeal dated the 8th day of May, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €65.00 on the above described relevant property.

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

The appeal proceeded by way of an oral hearing in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 2nd day of July, 2007. Ms. Kate Curran, B.Sc, (Surv), MRICS, ASCS, MIAVI, Dip Arb Law, represented the appellant and Mr. David Molony, a District Valuer in the Valuation Office, represented the Respondent. At the hearing both parties having taken the oath, adopted their respective précis as being their evidence-in-chief.

Valuation History

The property was valued as a retail warehouse at €45 and a Certificate of Valuation was issued on 8th May, 2006.

On 17th July, 2006 Ms. Curran's firm made representations to the Revision Officer and in September, 2006 the Revision Officer issued his decision to amend the description of the subject premises to Shop and increase the rateable valuation to €65. On 16th October, 2006 Ms. Curran lodged an appeal to the Commissioner of Valuation. On 13th April, 2007 the Appeal Officer issued his decision making no change in the valuation of €65. On 8th May, 2007 the appellant lodged an appeal to the Valuation Tribunal.

The Property

Location

The subject property, Unit 13, Deerpark Retail Park, Killarney, Co. Kerry forms part of a new mixed use commercial development situate off Park Road approximately 2km east of Killarney Town centre and within close proximity of the N22 (Tralee/Cork National Primary Road), Killarney By Pass.

Access to the property is via a secondary residential road known as Deerpark Road. It has no main road frontage as it is situate to the rear of Tesco supermarket. The supermarket includes a Tesco branded filling station to the front of the site. These premises obscure the subject unit from view and the subject is also accessed via a narrow entrance from the Tesco carpark.

There are a number of large retail warehouses and also a number of small retail shop units in the Park. Six of the retail shop units are still vacant.

Killarney itself is the second largest town in Kerry with a population of 13,246 and in the County Kerry Development Plan 2003 retail hierarchy it is described as a “secondary town centre” behind Tralee which is described as the “primary town centre”. Killarney is renowned as a national tourist centre with estimated visitors exceeding 1.5 million persons per annum.

The Park opened in summer 2006 and comprises 14 retail units, 5 of these are warehouse units, the remainder are small open use neighbourhood units.

Description

The subject is a modern double height, single storey unit finished externally with insulated cladding, a glass canopy overhead and display windows. Internally it is fitted with laminated timber flooring, a suspended acoustic tiled ceiling, reflective fluorescent strip lighting and air conditioning. To date 6 of the 9 smaller units are vacant.

Accommodation

The floor area is agreed at 91.41 sq. metres.

Services

All the main services are available and connected.

Tenure

The property is held under lease for 25 years subject to a stepped annual rent. The average annual rent for the first 5 years is €39,445 per annum.

Appellant's Evidence

Ms. Kate Curran having taken the oath adopted her written précis and valuation which had been received by the Tribunal as being her evidence-in-chief.

She said that Deerpark Retail Park was 2km east of Killarney Town. It is accessed by a secondary residential road off Park Road which is a main access road to the Town. The development has no main road frontage and would be described in valuation terms as “backland area”. Tesco and the filling station were established before the Park was built. One year after the opening of the Park there are still 6 vacant units.

Ms. Curran first said that in terms of scale and design the Park lacked critical mass and was poorly designed and this might account for the fact that 6 vacant units still remain almost 1 year after completion. She said that the fact that it was in an area that was not commercially feasible might also account for the vacant units.

She emphasised that there is a very good occupancy in the town centre and that the upper floors in the town centre are all occupied. This, she said, is to be expected in Killarney. In nearly every back street there are shops of various descriptions – every property is fully occupied.

She pointed out that Unit 1 was occupied by Dorothy Perkins and was c. 10,000 sq. feet, Unit 2 was occupied by New Look and was c. 6,500 sq. feet. The Toy Shop was nearly 8,000 sq. feet and the anchor tenant, Homebase was c. 10,000 sq. feet. These were the big warehouse units.

She considered the assessment of €65 as excessive and inequitable. She also said that there were reasons why it could be deemed bad in law. It was originally assessed at €45. The basis of assessment was to compare it with arguably the best Shopping Centre and Retail Warehousing Park in Munster, namely Manor West Retail Park in Tralee. She considered this assessment as incorrect and contrary to good valuation practice.

She also considered the increase to an RV of €65 from the original assessment of €45 as unfair to her client and also said that it undermined the integrity of the system.

In Mr. Molony's original report he stated that the basis of NAV was the "tone of the list". This, she said, was incorrect as he did not provide any evidence of tone of the list.

She maintained that the subject property should not be compared with Manor West Retail Park in Tralee as it was not in the same rating authority area and also that the two towns of Tralee and Killarney were not comparable. Tralee is the biggest town in Munster with a population of over 20,000 whereas Killarney has a population of just over 13,000.

Deerpark Retail Park is a relatively small mixed user commercial development in Killarney comprising 5 large retail warehouses, and 9 retail units, 6 of which are not let to date. The

Park is accessed by a secondary residential road and is at the rear of Tesco Supermarket and filling station. It has no prominence or visibility from a main road whatsoever.

She gave two comparisons in support of her submission. No. 1 is World of Wonder, situate at 43, New Street in the Town Centre. The RV of these premises was assessed at €125. This property has a net retail ground floor area of 1,500 sq. feet with a further 1,500 sq. feet of retail accommodation at first floor and offices at second floor level.

No 2 Carrig Donn, at Main Street in the Town Centre was assessed at an RV of €208.24. These premises have an internal ground floor retail area of 2,465 sq. feet at ground floor level with a further 370 sq. feet of storage.

Both of these prime Town Centre premises were superior in location to the subject premises.

She argued for an RV of €26.25 on the subject premises.

Cross examined by Mr. Molony.

Ms. Curran said that retailers such as New Look and Dorothy Perkins and the subject property were prejudiced by the fact that Homebase was mainly weekend business. The Town Centre was full of people all the time and the premises in the town proper benefited from this.

She said that one of the reasons why the 6 retail units were not let was the fact that there was not sufficient footfall in the area of the Park. The units unlet were too small to be let to businesses like New Look, Dorothy Perkins or Argos.

She agreed that Tesco was a good attraction but said that unfortunately the subject premises was behind Tesco. The parking for Tesco was removed from the subject premises.

She further agreed that the Revision Officer has the power to increase the valuation pursuant to the provisions of Section 29(3) of the Valuation Act, 2001. She also said that she did not agree with this situation but admitted that she must accept it.

Respondent's Evidence

Mr. David Molony said that he accepted and agreed with the description of the premises and location as already given in the précis and evidence given by Ms. Curran and that the floor area was 91.41 sq. metres.

He referred to a coloured brochure and plan exhibited in his précis (Appendix 2 hereto). This showed the warehouses on the left of the plan with the retail units on the right and the carparking in the centre.

He adopted a rate of €143.45 per sq. metre. That represented 35% roughly of the property's open market rental.

He said that the unit in question has been subdivided from the original unit. Joe Hickey Butchers had one part of the unit and the appellant the other.

On the location map (Appendix 3 hereto) he set out the location and situation of his 2 comparisons. They are in the Countess Centre, a neighbourhood centre. This is a small commercial development fronting onto the Park Road with return frontage to the Countess Road. Access is from Park Road. It has a large Spar Supermarket, a Post Office and a Credit Union.

Comparison No. 1, Ridgewood Designs, is a kitchen showroom at the rear of the Countess Centre. It has no frontage to Park Road but has to Countess Road. This is a large road facing a housing estate on one side, wasteland on the other and a railway line at the rear. This has 151.16 sq. metres of floor area with an adopted rate of €136.62 per sq. metre. It has, he said, a very limited profile onto a road leading out to the countryside.

Comparison No.2, JLT Tiles, is a tile showroom and has no frontage to any public road. It overlooks a carpark and waste ground. The floor area of the shop is 199 sq. metres and again the rate per sq. metre is €136.62. The rate adopted on the appellant's property is €143.45 per sq. metre. This property in his opinion has a draw, be it at the weekend or otherwise.

Cross Examined by Ms. Curran

Mr. Molony said that Deerpark Retail Park is adjacent to Tesco Supermarket and filling station. He agreed that when he first valued the appellant's property in May 2006 he described it as a Retail Warehouse. At the time he said that he made the valuation from the measurements on the plans of the Park as he could not get into the property as the gates were obstructed. He said that he could see the development at the time even though it was only in its early stages of construction.

He pointed out that it was only at the representations stage that he realised that the unit had been subdivided. He said that the original valuation of €45 was too low and conservative. He agreed that the appellant's unit was in a secondary location and confirmed that he accepted this from day one.

He said that suburban developments were more popular nowadays, what with difficulty in parking in town centres, the cost of such parking, congestion, one way streets, etc.

Findings

The Tribunal having carefully considered all the evidence and arguments adduced by the parties makes the following findings:

- (1) The subject property is of modern construction finished to a good standard.
- (2) Access to the development is off a secondary road with a narrow entrance from Tesco carpark.
- (3) It is situate behind Tesco Supermarket and filling station and is hidden from public view by these buildings.
- (4) The Park has Homebase and Argos but for some reason 6 retail units have not been let to date even though it opened in July, 2006.
- (5) The Countess Centre is long established (15 years) and has a Post Office, Credit Union and a Spar Supermarket. It is more of a neighbourhood shopping centre with large housing developments alongside Countess Road. It also has good access from Park Road which is a main artery to the town.

Determination

Having regard to the foregoing the Tribunal determines the rateable valuation of the property concerned to be as follows:

Shop 91.41 sq. metres @ €130 per sq. metre = €11,883.30

NAV €11,883.30 @ 0.5% = €59.42

RV Say €9

And the Tribunal so determines.