

Appeal No. VA07/3/074

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

Aisling Creighton

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Surgery at Lot No. 40/Unit 13, Townparks, Carrick-on-Shannon, Carrick on Shannon 1, County Leitrim

B E F O R E

Maurice Ahern - Valuer

Chairperson

Joseph Murray - B.L.

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF JANUARY, 2008

By Notice of Appeal received on the 16th day of August, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €32.00 on the above described relevant property.

The grounds of Appeal are set out in the Notice of appeal and in a sheet attached thereto, a copy of which is contained in Appendix 1 to this judgment.

This appeal proceeded by way of an oral hearing that took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 14th day of November, 2007. At the hearing the appellant was represented by Mr. Conor Ó Cléirigh ASCS, MRICS, FIAVI, ACI Arb. Mr. Don Donovan B.Sc., a Valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation. At the hearing both parties adopted their précis as being their evidence-in-chief.

Location

The property is located in a new mixed-use development to the north of Carrick-on-Shannon Town Centre.

Description

The property occupies the ground floor of a three storey, modern structure which is of concrete block construction with a painted and rendered external elevation and pitched slate roof. The development provides for ground floor commercial units with two floors of separate overhead residential accommodation which is approached from the rear of the building. The ground floor is laid out in a number of rooms to accommodate its current use as a Physiotherapy Clinic. It has a timber-frame shop front and internally finished plastered and painted walls, carpet floor covering, and suspended ceiling with insert lighting.

The agreed floor area of the property is 67.73 sq. metres.

Valuation History

The proposed Valuation Certificate was issued on 17th November, 2006 with an RV of €32. On 14th December, 2006 representations were made to the Valuation Office and on 27th December, 2006 the Valuation Certificate was issued unchanged. On 22nd January, 2007 the valuation was appealed to the Commissioner and on 20th July, 2007 the Appeal decision was issued with the valuation unchanged at €32. On 16th August, 2007 an appeal was lodged with Valuation Tribunal.

Tenure

The property is currently held on a four year and nine months indenture lease from 1st August 2005 at a current rent passing of €12,000 p.a.

Appellant's Case

Mr. Conor Ó Cléirigh, having affirmed, adopted his written précis and valuation which had been received by the Tribunal as being his evidence-in-chief. He stated that the subject property is held under indenture lease between the landlord Mr. Colm Reynolds of the first part and Ms. Aisling Creighton, the tenant of the second part to provide for the following terms:

- The Term of the lease is for 4 years and 9 months, commencing on 1st August 2005 at a rent of €12,000 per annum.
- The tenant is responsible for rent, rates and maintenance of the interior of the property.

Mr. Ó Cléirigh said that in arriving at the net annual value of the subject property the following factors should be taken into account:

- (1) Park Lane is not a recognised retail location and has little or no pedestrian flow and limited passing vehicular traffic. The road plays no part in the normal traffic circulation of the town and would attract no tourist related business.
- (2) The poor location of the property is reflected in the level of rent payable and the fact that three of the units are still available to let since the units were built in 2005.

Mr. Ó Cléirigh stated that it is accepted practice that passing rents are important when assessing Net Annual Value. The achieved rent in the market place reflects the location and characteristics of a property and accordingly is a firm basis on which to assess the rateable valuation. The subject property has a passing rent of €12,000 per annum agreed on a new lease in 2005 to the current tenant. Unit 3, Park Lane is also the subject of a lease from September 2005 on similar terms at €12,000 per annum. He then referred to the Landmark Court development, which he said was similar to Park Lane but in a far superior location. He said he looked at the rents for Landmark Court and in particular Unit 5 occupied by Power Video, which had a rent review in September 2005 at €31,200 which is €346.66 per sq. metre. In Park Lane the passing rents are €12,000 or €77.17 per sq. metre which represents a differential of 1.95 which he felt must represent the differential in the Net Annual Value. He said that the prevailing tone of the list for Main Street shops in Carrick-on-Shannon varied from €14 to €36.7 per sq. metre depending on size, condition and location. As the

Landmark Court properties were valued at €37.78 per sq. metre, the Park Lane properties should be valued at €70.65 per sq. metre.

Having regard to the foregoing, Mr. Ó Cléirigh felt that in his opinion a fair valuation of the subject property would be as follows:

Retail	67.73 sq. metre	@ €70.65 per sq. metre	=	€4,785. 50
Total NAV				€4,785.50
RV @ 0.5 %		=		€23.90
Say	€4			

Cross-examination

Under cross-examination Mr. Ó Cléirigh agreed that as a rule he would accept the tone of the list as the fairest method of deciding the RV of any property but he felt that within every town, location has a very important part to play. He said that the Respondent's Comparison No. 1 - in the same development as the subject and on the basis of which the subject was valued - could have been incorrectly valued at €32. He felt that when valuing the remainder of the properties in the Park Lane development, the valuer was not bound to impose the same valuation on all the other properties if he took into account the issues outlined above. He said that the Landmark Court rents were generally at €46.66 per sq. metre and Park Lane at €77.17 per sq. metre. This represented a differential of 1.95 and he felt that this differential must be reflected in Net Annual Values also.

Respondent's Case

Mr. Don Donovan, having taken the oath, adopted his précis as being his evidence-in-chief. He stated that the property was listed for revision in 2006. At revision, the property was valued at a rate of €5.67 per sq. metre resulting in an RV of €32. Representations were received from Mr. Conor Ó Cléirigh on December 14th, 2006 in which he made reference to the principle of equivalence. However, Mr. Donovan stated that, despite requests, Mr. Ó Cléirigh did not supply rental evidence to support his claims. Mr. Donovan quoted an extract from his own Consideration of Representations form:

“When calculating the value of the subject, the agent places an emphasis on two comparables in Landmark Court. These are more suitable comparables than the others cited

as they are modern, purpose built units, and they are located off the traditional shopping streets. Landmark Court is a similar type of development in a better location than the subject. The agent uses the principle of equivalence to establish the relationship between the values of the two developments. The agent calculated the Park Lane development to be worth 45% of the rate which is placed on Landmark Court”.

However, on enquiring about two vacant units then to let, one in Landmark Court and one in Park Lane, Mr. Donovan achieved a different ratio regarding the then letting value i.e.

Landmark Court: 102 sq. metres - Rent €2,000 or €13.70 per sq. metre

Park Lane: 69.7 sq. metres – Rental €15,600 or €223.80 per sq. metre

This, he said, indicated that the Park Lane rents were then at 71% of the Landmark Court rents. He felt a fair valuation by reference to the values of comparable properties appearing in the valuation list for Carrick-on-Shannon to be:

Retail 67.73 sq. metre @ €5.67 per sq. metre = €6,479.73

Total NAV €6,479.73

RV @ 0.5% = €32.40

Say €32

In support of his estimate of Net Annual Value Mr. Donovan introduced three comparisons details of which are at Appendix 2 to this judgment. They are: Lots No. 12 and 14 in the same Park Lane development as the subject and valued at same rate of €5.67 per square metre as the subject giving an RV of €32 in each case; and a unit in Landmark Court development valued in 2005 at €137.78 per square metre which, he said, was the established tone for Landmark Court. He felt it was not correct to compare the subject with Landmark Court as a tone was already established in Park Lane.

Cross-examination

Mr. Donovan agreed with Mr. Ó Cléirigh that the subject property was located in a poorer location than Landmark Court. With regard to his Comparisons No.1 and No. 2 which were similar in size and construction to the subject he felt that they showed the established tone of the list for retail units in Park Lane to be €5.67 per sq. metre. He agreed with Mr. Ó Cléirigh that the principle of equivalence could be used to establish the ratio between the values of each development. However, he felt that in order to use that principle, you must

ensure that the lease details are comparable. His Comparison No. 3 – a unit in Landmark Court - provided the only passing rent known by the Valuation Office for a unit in that development. As this rental information was confidential in nature he had not identified the unit in question. The rent for this property was set in 2005 at €35,000 or €32.40 per sq. metre. The current rent for the subject property is €177.17 per sq. metre. This indicates that the properties in Park Lane are currently achieving over 76% of the rental level achieved in Landmark Court and therefore he felt that the level applied to the subject should be increased to €104.71 per sq. metre if one was to apply the principle of equivalence.

In reply to the Tribunal Mr. Donovan said that the tone he relied on was the tone in Park Lane established on the basis of his two comparisons in that development which were completed and occupied a year before the subject was revised.

In further reply to the Tribunal Mr. Donovan confirmed that neither of his comparisons had been the subject of an appeal.

Findings

1. The Tribunal is bound by the provisions of Section 49(1) of the Valuation Act, 2001 which requires that the valuation of a relevant property “*shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.*”
2. The Tribunal cannot therefore value the subject property on the basis proposed by the Appellant, namely on the basis of rental comparison between the Park Lane development and the Landmark Court development and applying the principle of equivalence.
3. The Tribunal is not satisfied that a reliable tone of the list is represented by the Respondent’s two comparisons in the same location as the subject property in the Park Lane development and valued a year prior to the subject. Tone of the list must be viewed in the context of a wide basket of comparable properties and not confined solely to properties within a specific estate in isolation.
4. The Tribunal also notes that neither comparison property was the subject of an appeal to the Tribunal or the Commissioner. In general, the Tribunal prefers comparison properties

which have gone through the rigours of the appeal process as they would carry greater weight.

5. It is common case that the location of the subject property is inferior to Landmark Court and the Tribunal finds that the Respondent made insufficient allowance for this locational disadvantage.

Determination

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

Retail 67.73 sq. metres	@ €89 per sq. metre	=	€6,027.97
Total NAV			€6,027.97
RV @ 0.5% =	€0.14		
Say	€30		

And the Tribunal so determines.