

Appeal No. VA08/5/013

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

Tom Maher & Co. Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 464502, Auctioneer at Main Street, Tallaght, County Dublin

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

Tony Taaffe - Solicitor

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF DECEMBER, 2008

By Notice of Appeal dated the 25th day of June, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €39,000.00 on the above described relevant property.

The grounds of Appeal are set out in the Notice of appeal and letters attached thereto, copies of which are contained at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 6th day of November, 2008. At the hearing the appellant, Mr. Tom Maher, MIAVI, MIREF, represented himself. The respondent was represented by Mr. Seamus Connolly, BSc Surveying, a Managing Valuer in the Valuation Office.

Location

The subject property is located on Main Street in Tallaght Village, Dublin 24, opposite the old Greenhills Road.

The Property Concerned

The property concerned is a two storey corner retail unit, which is being used as an auctioneer's office. The ground floor accommodation consists of an open plan office and sales area and the first floor consists of a staff kitchen and a further area which could be used as offices, although is not currently being so used. The property has a shop frontage of 7.2 metres.

The total agreed accommodation is 119.54 sq. metres. The property is divided into different blocks as set out in the Block Plan at Appendix 2 hereto.

The accommodation is broken down as follows and is agreed by the parties:

Ground Floor

Blocks 1-3	Retail Zone A	35.53 sq. metres
Block 4	Retail Zone B	19.17 sq. metres
Block 5	Retail Zone C	2.78 sq. metres
Block 6	Office (no natural light)	<u>8.56 sq. metres</u>
Total Ground Floor:		66.04 sq. metres

First Floor

Blocks 7-9	Kitchen & Offices	53.50 sq. metres
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Total Overall Area **119.54 sq. metres**

Rating History

On 5th June 2007, the Valuation Office issued a draft Valuation Certificate valuing the property at €42,800. After representations stage, a final certificate was issued on 12th December, 2007, with a reduced valuation of €40,600. At first appeal stage to the Commissioner of Valuation, the valuation was reduced to €39,000. The appellant being dissatisfied with that decision, appealed to the Valuation Tribunal and the valuation was further reduced to €38,100 by the respondent prior to the hearing. This valuation was not accepted by the appellant.

The Appellant's Evidence

Mr. Tom Maher having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the respondent, as being his evidence-in-chief. In his evidence Mr. Maher stated that the subject property is a former two storey cottage, constructed circa 1975, which has been refurbished and added to. It is a plain building, rendered white externally, but as a result of problems with graffiti has been faced in granite. Mr. Maher stated that the premises is a long, narrow structure. The front office at Block 1 has been partitioned to create two rooms, Blocks 2 to 5 are very narrow, Block 6 is essentially a passageway, rather than an office. There is a tea station in this area along with stairs to Blocks 7 to 9 on the first floor. Previously, Mr. Maher stated, there was a skylight on the first floor, but this had to be removed as the property was being broken into, as a consequence of which there is very little natural light upstairs.

It was submitted by Mr. Maher that the subject premises is located in a poor location, situated immediately next door to a bookmakers, with a pizza takeaway the next premises thereafter. Mr. Maher stated that there is no other retail business in this particular area other than a charity shop. Mr. Maher also stated that he has experienced significant problems by virtue of graffiti and vandalism to his premises. The sign over his premises has been defaced, the front upper window was recently broken and railings to the side of the premises have been damaged. He has also experienced problems with littering and loitering outside the subject property. Furthermore, there are a number of laneways behind the premises which allow for access to the subject property. Mr. Maher had to put palisade fencing and razor wire on the wall at the rear of the premises and across the roof to prevent people entering the premises.

In Mr. Maher's view the problems he has been experiencing have been highlighted by the closure of the old Greenhills Road, immediately opposite his premises, five years ago. In his opinion, people did not assemble to the same degree in front of his premises prior to that. As the Ulster Bank beside Mr. Maher's premises is recessed, this has created an alcove where people congregate. Furthermore, Mr. Maher stated that the footpaths outside his premises have not been maintained properly, since the area is no longer fronting on to a major road.

In Mr. Maher's opinion, the respondent's valuation of the subject property is very high, considering its location. He disputed that the property is in a high profile area and submitted that the low tone of the area should be taken into account in the valuation. The neighbouring properties are in the main takeaways with the rest of the street mainly government-run service industries. Mr. Maher submitted that the vandalism problems he is experiencing should affect the valuation of the subject property, as if it was being let on the open market, this would affect the rental value it would achieve. Mr. Maher further stated that there was little demand for retail premises such as the subject property in this area. A number of premises nearby are vacant and others have been available for lease for a number of years. He contrasted the location of his property with other properties further up the street, such as those in the Village Green and the High Street, which have been restructured on a designated basis and are new retail businesses.

Mr. Maher contended for a valuation of no more than €31,000. In support of his opinion of rateable valuation, Mr. Maher introduced six comparisons, details of which are set out in Appendix 3 attached to this judgment. Mr. Maher broke down the overall valuations on all of his comparisons, except Unicare Pharmacy, to give an overall value per sq. metre/per sq. foot. Mr. Maher then compared this against the overall value per sq. foot of the subject premises. It was his opinion that when compared to the comparables the value per sq. foot on his premises was excessive.

In his evidence Mr. Maher submitted that the first three comparisons, Unicare Pharmacy, TP Auctioneers and Money Matters and Rochfords Solicitors are more modern premises and are in more high profile locations than the subject property. Mr. Maher also queried why the valuation on the first floor offices in his property was higher than that for John O'Leary & Co. Solicitors, which are modern offices with an own door entrance. Mr. Maher stated that there is no own door entrance for the first floor offices in his premises and none could be

created due to the layout of the premises. He also stated that the first floor area in his premises had previously included an auction room, but this had not been used for a number of years and that the area now consisted of a full kitchen, a rest room and a storage area.

Mr. Maher submitted that the measurements as set out in the respondent's précis in relation to his sixth comparison, Tom Flood Bookmakers, were incorrect and the property had been substantially under-measured. The respondent did not dispute the measurements contended for by Mr. Maher.

Under cross-examination Mr. Maher agreed that the subject property is similar in structure to other nearby commercial units, but disputed that it is similar in terms of security. Mr. Maher also accepted that it is the commercial property which is being valued rather than the business and that one could not compare the valuation of one commercial property against another on an overall square foot or sq. metre basis without regard to use, retail space, number of floors, frontage, etc.

In response to a question by the Tribunal Mr. Maher stated that the first floor accommodation was not being used as offices anymore. It had been an auction room, but is now being used purely as a store. The appellant further stated that the area marked Block 6 on the property plan is a walkway to the back door and upstairs and is not being used as an office.

In summary Mr. Maher stated that he would have great difficulty in letting the premises on the open market. He also contended that the valuation placed on John L. Mulvey & Co. Solicitors, a comparison cited by the respondent, was akin to what his premises should have been valued at. Mr. Maher further argued that too large an area of the subject property was valued at a Zone A rate and that there was no natural light in Block 4 of the premises.

The Respondent's Evidence

Mr. Seamus Connolly, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as being his evidence-in-chief. In his evidence, Mr. Connolly contended for a valuation of €38,100, calculated as follows:

Ground Floor

Blocks 1-3	Retail Zone A	35.53 sq. metres @ €80 per sq. metre =	€20,607.40
Block 4	Retail Zone B	19.17 sq. metres @ €290 per sq. metre =	€ 5,559.30

Block 5	Retail Zone C	2.78 sq. metres @ €145 per sq. metre =	€ 403.10
Block 6	Office	8.56 sq. metres @ €100 per sq. metre =	€ 856.00

First Floor

Blocks 7-9	Kitchen & Offices	53.50 sq. m. @ €200 per sq. metre =	€10,700.00
Total NAV (Rounded)			= €38,100.00

In support of his valuation, Mr. Connolly introduced nine comparisons in respect of retail properties and eleven comparisons in respect of first floor offices, details of which are set out in Appendix 4 to this judgment.

In his evidence Mr. Connolly stated that the subject property is located in quite a high profile area, it is a corner location with return frontage. He stated that the small office at Block 6 was in use as an office when he inspected the premises.

Mr. Connolly stated that the valuation of the property was determined by reference to comparable properties on the valuation list and that the valuation levels in the area were derived from an analysis of available market information of retail type commercial premises or premises that could be so used. He further stated that as with the revaluation of all retail properties, the property was valued on a zoning basis.

Mr. Connolly stated that eight of his retail comparisons were valued at a Zone A rate of €80 sq. metre, which was the rate applied to the subject property. The ninth comparison, John L. Mulvey & Co. Solicitors, was valued at an overall rate of €400 per sq. metre on the ground floor, as it is not a retail premises and is laid out in a series of rooms with structural walls throughout. Mr. Connolly pointed out that on an overall basis, the ground floor of the subject property devalues at a rate of €115 per sq. metre and that it is a better premises than John L. Mulvey & Co. Solicitors and has better frontage. Mr. Connolly gave details of eleven comparisons of house properties in the area in use as offices, which were all valued at €400 per sq. metre ground floor and €200 per sq. metre first floor, which is the same value as was applied to the first floor offices in the subject property. These comparisons are all held as one take and have no separate access to the first floor offices.

Under cross examination Mr. Connolly disputed the appellant's approach to valuing the subject property and comparables on an overall per sq. metre/sq. foot basis. Mr. Connolly

did not accept that the premises should be valued at a lower level because of the anti-social problems and stated that the property was valued on a similar basis to every other retail commercial property in the area at €80 per sq. metre Zone A. It was Mr. Connolly's opinion that in terms of security and location the subject property was quite comparable to the adjoining premises.

Findings

1. The statutory basis of valuation is set down in section 48 of the Valuation Act, 2001, wherein at section 48(3), the net annual value of a property is defined as being, "*the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant*".
2. The onus of showing that the valuation of the property concerned, appearing in the valuation list is incorrect is on the appellant.
3. In arriving at its decision the Tribunal relies on the comparisons put forward by the parties. The Tribunal accepts the respondent's evidence that valuation levels in the area were derived from an analysis of available market information of retail type commercial premises or premises that could be so used, that all retail properties in the revaluation were valued on a zoning basis and that the subject property was valued similarly to every other retail commercial property in the area at a value of €80 per sq. metre Zone A. The appellant did not put forward any evidence that this value was not in line with market information.
4. The Tribunal while sympathetic to the anti-social problems being experienced by the appellant, accepts the respondent's evidence that it is the commercial property which is being valued and not the business itself and that no allowance should be made for anti-social behaviour when valuing the property. The Tribunal finds, on the basis of the respondent's evidence, that for the purpose of valuing the premises, the subject property is comparable to the adjoining premises in terms of security and location, which premises were all valued at a Zone A rate of €80 per sq. m.

5. The Tribunal finds that the value of €100 per sq. metre placed on the Office in Block 6 is excessive, in light of the fact that there is no natural light in this area and on foot of the appellant's evidence that this area contains a tea station and is in effect being used as a walkway to the back door and upstairs. The Tribunal had particular regard to Comparison 6 in the respondent's précis, Irish Nationwide Building Society, where a ground floor office, slightly bigger than Block 6 in the subject property was valued at €72.50 per sq. metre. Accordingly the value on this area should be reduced to €72.50 per sq. metre.
6. The Tribunal also finds that the value of the first floor accommodation at Blocks 7 – 9 is excessive. The Tribunal accepts the appellant's evidence that this area is currently being used as stores and a kitchen and that there is no own door access. The Tribunal finds that this area is not comparable to the first floor office comparisons cited by the respondent, which are valued at €200 per sq. metre, and that a lower valuation of €150 per sq. metre should apply to this area.

Determination

Having carefully considered all the evidence adduced and with regard to the foregoing findings, the Tribunal determines the NAV of the property concerned to be €35,215, calculated as set out below:

Ground Floor

Blocks 1-3	Retail Zone A	35.53 sq. metres @ €80 per sq. metre = €20,607.40
Block 4	Retail Zone B	19.17 sq. metres @ €290 per sq. metre = € 5,559.30
Block 5	Retail Zone C	2.78 sq. metres @ €145 per sq. metre = € 403.10
Block 6	Office	8.56 sq. metres @ €72.50 per sq. metre = € 620.60

First Floor

Blocks 7-9	Kitchen & Offices	53.50 sq. metres @ €150 per sq. metre = <u>€8,025.00</u>
Total NAV		= €35,215.40
Say		= €35,215.00

And the Tribunal so determines.