

Appeal No. VA11/1/022

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

John Crowe

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2205868, Licensed Shop at Lot No. 1, St. Vincent Street, West, Kilmainham C, Kilmainham, County Borough of Dublin.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

James Browne - BL

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 19TH DAY OF JULY, 2011

By Notice of Appeal received on the 8th day of March, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €175 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are attached at the Appendix to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 12th May 2011. At the hearing the appellant represented himself and the respondent was represented by Mr. Alan Sweeney, BSc (Property Valuation & Management), a Valuer in the Valuation Office.

Location

The subject property is located in Inchicore village, approximately 100 metres east of the junction of Emmet Road and Tyrconnell Road. Inchicore village is approximately 5km west of Dublin city centre.

The Property Concerned

The subject property is a licensed premises, which is located within a new mixed-use, corner site development. It comprises a ground floor bar and off-licence, with toilets to the rear and basement stores. Total accommodation is as follows:

Ground Floor Bar & Off-Licence	160.83 sq. metres
Ground Floor Toilets	27.50 sq. metres
Basement Stores	59.06 sq. metres

Tenure

The property is held freehold.

Rating History

The proposed valuation certificate was issued with a rateable valuation (RV) of €190 on 11th June 2010. Following representations the RV was reduced to €175. The address as stated on the original Valuation Certificate, 124 Emmet Road, was incorrect and this was also amended at representation stage to 1 St. Vincent Street West. At first appeal stage to the Commissioner of Valuation, the RV remained unchanged. The appellant appealed against that decision to the Valuation Tribunal by Notice of Appeal received by the Tribunal on 8th March 2011.

The Issue

Quantum.

The Appellant's Evidence

Mr. John Crowe, having taken the oath, stated that his appeal was based on the fact that the rating system was unjust and had driven people out of business. He stated that the subject property was a brand new premises, on which he had lost more money than on any other project he had been involved in. In his opinion the property has no value.

Mr. Crowe outlined the rating history of the subject property. He stated that the Valuation Office issued him with a certificate for a property located at 124 Emmet Road, Inchicore, Dublin 8. He stated that he does not own such a property and therefore sent the certificate back to the Valuation Office, asking them to correct the address on it. Mr. Crowe stated that the subject property is on a corner site, but that its postal address and the address in the Land Registry is 1 St. Vincent's Street West. Mr. Crowe claimed that he was forced to appeal the valuation in order that the address on the certificate be amended, in the process incurring costs. He voiced his dissatisfaction at this turn of events and the subsequent actions of Dublin City Council in seeking rates on foot of a valuation certificate in respect of a property which he did not own. Mr Crowe stated that eventually, after a number of months, the valuation certificate was amended and a new one issued. He further stated that at a meeting with the Valuation Office regarding the address on the certificate,— the Valuation Office had concerning what they had said was an appeal to rectify the address on the certificate, the Valuation Office told him that he had to indicate whether or not he was happy with the RV. He refused and stated that the Valuation Office told him that if he did not indicate his unhappiness with the RV, he could not lodge another appeal.

Mr. Crowe provided details of the planning history of the property. He stated that he had bought the property, which was previously an old pub, for the purposes of a re-development, including apartments. However, he stated that the local authority informed him that they would only grant planning permission for a small hotel. Mr. Crowe duly applied for planning permission, but there was an objection to the hotel and the matter went to An Bord Pleanála, where he was successful. However, he had difficulties obtaining finance and therefore had to apply again for planning permission for the building to be used as a public house, bookmakers' premises and apartments.

Dealing with the grounds of his appeal, Mr. Crowe stated that it was his contention that the valuation system in Ireland no longer works and that the legislation does not serve its

purpose. He contended that the Tribunal has a duty under the Constitution to serve the citizen and the Constitution. Mr. Crowe further stated that he had bought the subject property as Dublin City Council had indicated at a press conference its intention to redevelop the nearby St. Michael's Estate, but that nothing had been done so far in this regard and he felt misled. In addition, he stated that he was charged €180,000 in contributions by the Council to build the property. Finally, Mr. Crowe stated that he cannot pay money in rates which he does not have. He stated that his pub charged €3.30 all day for a pint, which gave a gross profit margin of 47.8% and that it was a good local pub, which catered for older people. He stated that his choice was to either pay his Sky Television subscription of €120 per week or his rates.

Mr. Crowe referred to the comparisons cited by the Valuation Office in their Consideration of Appeal. The first, The Black Lion, Mr. Crowe stated was bought in 1954 for IR£55,000 and had traded through the best of times. He stated that this property was of no relevance to the subject property, which was bought for €4.8 million. The second, The Village Inn, Mr Crowe said was a leasehold property, which had changed hands at least twice in the past 7 years. Mr Crowe stated that the rent on this property was less than €2,000 per week. The third, McDowell's, had according to Mr. Crowe, been leased to about 10 different parties over the past 25 years. Mr. Crowe stated that all these premises were very old properties. The fourth, Horse & Jockey, went on fire and in Mr. Crowe's opinion was not relevant as it was a building site. Mr. Crowe stated that both the fifth and sixth comparisons, Tom Tavey's and Coffey's, operated until late at night and, accordingly, one could not put the same value on his premises as on those. The final comparison property, Donoghue's, was nearly half a mile from the subject property and was irrelevant in Mr. Crowe's view.

Mr. Crowe contended that the tone of the list was of no relevance whatsoever. He stated that nobody is interested in renting a pub and that any rent he may obtain, would not pay the mortgage on the premises. He stated that he was only sustaining the pub, as he had another business. Mr. Crowe argued that the 1988 valuation date is completely irrelevant and has nothing whatsoever to do with 2011 and the value of his property. Furthermore, Mr. Crowe claimed that it was not known how to value the impact of the smoking ban, which he said had reduced the turnover in KCR House, a pub which he has rented out, by 32%. Mr. Crowe also stated that a fundamental fault of the rating system was its focus on turnover, as it was profit that counted. Finally, Mr. Crowe claimed that the Valuation Office had based their valuation

on the average values of other properties, but had failed to take into account the investment that he made in the subject property.

Cross-Examination

Under cross-examination, Mr. Crowe clarified that the subject property was brand new, although he was required under the planning consent to retain part of the exterior of the old building. However, the interior of the property was all new. Mr. Crowe agreed that there was access to the pub from Emmet Road.

Respondent's Evidence

Mr. Alan Sweeney, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as his evidence-in-chief. Mr. Sweeney stated that the subject property was redeveloped in 2008 and that the old public house on the site was now a bookmakers' premises. He stated that the property was in good condition throughout, but did not have the benefit of an outside smoking area. He stated that the total frontage onto Emmet Road was circa 19 metres, of which circa 6 metres comprises access to the upper floors of the development. Mr. Sweeney stated that Mr. Crowe was correct about the address of the subject property and that it had been amended.

Mr. Sweeney stated that when he had inspected the subject property on 3rd August, 2010, ~~but~~ the proposed valuation certificate with the incorrect address had already been issued ~~at that stage~~. He stated that an amended certificate was issued on 21st September, 2010 with the correct address and a reduced RV of €175. However, he stated that the Lot Number was not amended on the certificate. On the certificate of 21st September, 2010, the Lot Number is stated to be 124(0,1). Mr. Sweeney indicated that this is the number used in the Valuation Office to identify the property and that it is usually a number in the locality used to identify the property. The Lot Number was changed to 1 on the final certificate, which issued on 18th February, 2011.

Mr. Sweeney referred to Section 49(1) of the Valuation Act, 2001 as the basis for valuation and stated that the subject property had been valued by reference to the "tone of the list" in accordance with that section. He also referred to a recent determination of the Tribunal in **VA10/4/002 - Mia Taverns** in support. Mr. Sweeney indicated that no turnover figures had been supplied to him in respect of the business occupying the subject property, despite having requested same. He contended for a rateable valuation of €175 calculated as follows:

Ground Floor Bar & Off-Licence 160.83 sq. metres @ €175 per sq. metre = €28,145

Total NAV = €28,145 @ 0.63% = RV €177.32

Say RV €175

In support of his opinion of rateable valuation, Mr. Sweeney put forward 3 comparisons, namely McDowell's, which comprises a total area of 226.40 sq. metres and devalues at a rate of €185.14 per sq. metres, Tom Tavey's, comprising an area of 86.95 sq. metres, which devalues at €208.62 per sq. metres and The Black Lion, which has a total ground floor area of 336.40 sq. metres, which devalues at €170.92 per sq. metre and a first floor lounge of 164.43 sq. metres, which devalues at a rate of €85.46 per sq. metre. Mr. Sweeney stated that he had tried his best to reflect in his valuation the fact that these were older properties than the subject.

The Tribunal asked Mr. Sweeney whether the comparisons had been valued on a square metre basis or on a turnover basis. He stated that they were primarily valued on a square metre basis, but that turnover was also examined as a back-up in order to arrive at a RV. However, he indicated that McDowell's was valued only on the basis of turnover. Mr. Sweeney also stated that he was not aware of any of the comparisons having been appealed to the Tribunal. He was asked whether a quantum discount had been applied to The Black Lion, but was unable to confirm this. He did accept that The Black Lion was a much larger property than the subject. Finally, with regard to the off-licence, Mr. Sweeney stated that in valuing the off-licence, he had valued the floor area. He confirmed that there were no off-licences in the comparison properties he had put before the Tribunal, but that there was one in Coffey's (a comparison property cited at First Appeal), although he was not sure if it was still there.

Cross-Examination

Under cross-examination, Mr. Sweeney stated that the address of a property can be changed on the valuation certificate at representation stage for free and that it did not have to be appealed. He denied that he was aware that when Mr. Crowe contacted the Valuation Office, he was told that he had to lodge an appeal in order to change the address. He further denied knowledge of a letter allegedly sent to Mr. Crowe from the Valuation Office indicating that the valuation certificate had been amended, but enclosing a certificate, which continued to show the address as 124 Emmet Road. It was put to Mr. Sweeney that he had not enclosed all of the planning documents relating to the subject property, which had been provided to him

previously. Mr. Sweeney replied that he had included the 2009 Planner's Report with his précis and, to the best of his knowledge, had enclosed all of the planning details.

Mr. Sweeney confirmed that he did not place separate valuations on the off-licence and the bar, but rather had valued the entire property together. He was asked whether he had compared the price of a pint in The Black Lion versus the price in the subject property, but stated that he had not. He did not dispute the appellant's statement that the price of a pint in The Black Lion was €4.10.

Further questions were put to Mr. Sweeney by the Tribunal. He agreed that The Black Lion was one of the biggest landmarks in Inchicore. It was put to him that food was served in The Black Lion, which amounted to a large part of its business. Mr. Sweeney was unaware of the rent paid on any of the comparison properties, nor did he have the current turnover figures of any of these properties. He stated that he had applied Section 49 of the Valuation Act, 2001. He had looked at the comparables on the list and was satisfied that the levels applied to these were fair and equitable, and thus applied the "tone of the list" to the subject property.

Summary

The appellant submitted that he was seeking to challenge the injustice of the rating system. He stated that the RV of the subject property was not based on rental income, but that in a previous valuation appeal in respect of a property in Tallaght, he was asked for rental information. He contended that the Tribunal had a duty to uphold the Constitution and argued that the valuation of the subject property should be based on its value today, either using the last set of audited accounts furnished to the Revenue Commissioners or the likely rent for the property.

Mr. Sweeney stated that he sympathised with the appellant and acknowledged the decline in the pub trade. However, he stated that he was satisfied that he had applied Section 49(1) of the Valuation Act, 2001 appropriately and that his comparisons supported his valuation. He added that he had done his utmost to fix a fair valuation on the property.

Findings

1. The Valuation Tribunal is a creature of statute and its powers are prescribed by legislation, namely the Valuation Act, 2001. The Tribunal must exercise its powers in accordance with this Act. With regard to appeals before it, the Tribunal's powers are set out in Section 37(1), which provides that:

“The Tribunal shall consider an appeal made to it under section 34 and may, as it thinks appropriate—

(a) disallow the appeal and, accordingly, confirm the decision of the Commissioner, or

(b) allow the appeal, and, accordingly, do whichever of the following is appropriate—

(i) amend the value of, or any other detail in relation to, the property, the subject of the appeal, as stated in the valuation certificate issued under paragraph (b)(i) or (b)(ii) of section 33(2),

(ii) decide that the property, the subject of the appeal, ought to be included in, or, as the case may be, ought to be excluded from, the relevant valuation list and, in the case of a decision that the property ought to be so included, determine the value of the property,

(iii) amend any detail in relation to the property, the subject of the appeal, stated in the notification made under section 33(2)(b)(iii).”

The Tribunal has no power to declare the constitutionality or otherwise of the Valuation Act, 2001 or any part thereof and is not the appropriate forum where such claims should be advanced.

2. The method of valuing the subject property in this case is as laid down in Section 49(1) of the Valuation Act, 2001, which states:

“If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination 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.”

3. No comparable properties were advanced by the appellant, so the only comparisons before the Tribunal were the three properties provided by the respondent. The Tribunal is of the view that the subject property is in an inferior location to all of these properties. In addition, the respondent's third comparison, The Black Lion, is a much larger property and also contains a restaurant, which the subject property does not. It is therefore not strictly comparable.
4. The Tribunal attaches less weight to the respondent's first comparison, McDowell's, which was valued solely on a turnover basis, unlike the other two comparisons, which were primarily valued on a square metre basis. As no turnover figures were provided in respect of the subject property, it has been valued solely on a square metre basis.
5. The Tribunal finds that the respondent failed to make sufficient allowance for the inferior location of the subject property as compared to the comparisons and that the appropriate rate per square metre to be placed on the subject property is €165.

Determination

Having regard to the foregoing the Tribunal determines the rateable valuation to be calculated as follows:

Ground Floor Bar & Off-Licence 160.83 sq. metres @ €165 per sq. metre	= € 26,536.95
Total NAV €26,536.95 @ 0.63%	= RV €167.18
RV Say €165	

And the Tribunal so determines.