

Appeal No. VA92/1/021

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Luke Griffin

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. 43 Donaghmede Shopping Centre, Grange C Ward, County Borough of Dublin

Quantum - Passing rent

B E F O R E

Padraig Connellan

Solicitor (Acting Chairman)

Paul Butler

S.C.

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF MAY, 1992

By notice of appeal received on the 13th day of February, 1992, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £55 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that the determination was too high and on general grounds.

THE PROPERTY

The subject property consists of a shop on the first floor of Donaghmede Shopping Centre which is similar to the other 65 units in the complex. The subject property "Books Unlimited" was first valued in 1978 when a rateable valuation of £55 was placed on the premises. This remained until the current revision when the rateable valuation was increased to £65. However, at first appeal the older valuation of £55 was restored by the Commissioner of Valuation. It is against this amount that the appeal lies with the Tribunal.

WRITTEN SUBMISSIONS

A written submission dated the 24th April, 1992 was received from the appellant. In this Mr. Griffin said that the rent on which the valuation is based is not realistic. He said that the unit is of no value and may now have a considerable negative value. Mr. Griffin said that the level of trade has deteriorated considerably in the last ten years particularly on a "passing the door" basis. He said that with the amount of units now closed upstairs he feels that it could not be considered to be a complete retail area. Mr. Griffin said that access to the first floor is totally inadequate. He said that recent lettings on the first floor have been of short term duration and that the units are too large giving rise to higher rents. He said that the exclusivity of trading from a premises is interfered with by the Casual Trading Act 1980. Mr. Griffin said that it is not possible to achieve a reduction in rent under the lease.

A written submission was received on the 23rd April, 1992 from Mr. Philip Colgan, District Valuer in the Valuation Office on behalf of the Respondent. In this Mr. Colgan commented on the appellants grounds of appeal and said that Mr. Adrian Kelly of Harrington & Bannon were agents for the appellant at first appeal and as a result of discussions between Mr. Colgan and Mr. Kelly it was agreed that the rateable valuation on the subject be reduced from £65 to the old valuation of £55. He said that it is obvious that Mr. Griffin is not happy with this agreement. He said that in the current appeal programme he dealt with 30 appeals in Donaghmede Shopping

Centre all of which were represented by a number of professional agents including Harrington & Bannon. He said that following protracted negotiations concerning this Shopping Centre and neighbouring Shopping Centres in Kilbarrack, Edenmore and Northside Shopping Centre with the agents it was agreed that the ratio of rateable valuation to net annual value would be .63%. He said that in the case of the subject he agreed a Net Annual Value of £8,800 based on a passing rent of £8,800 per annum. He said that in the case of all the other units in the Shopping Centre Net Annual Values based on the passing rents were agreed. Mr. Colgan set out his calculation of rateable valuation as follows:-

Net Area of Shop	1364 ft ²	
Annual Rent Passing	£8,873 p.a. from 1986	
	5 year rent reviews	
N.A.V. 1364 ft ² @ £6.50 per ft ²	=	£8,800
	@ .63%	= <u>R.V. £55.44</u>
		<u>R.V. Say £55.00</u>

Mr. Colgan attached a list of comparisons in which he analysed all the other shopping units in the Centre showing the agreements reached with the various consulting agents. He said that all of these agreements have been accepted by the occupiers. He said the Net Annual Value in this case is similar to the passing rent which was last reviewed in 1986.

ORAL HEARING

The oral hearing took place in Dublin on the 24th April, 1992. The appellant Mr. Luke Griffin appeared on his own behalf and Mr. Philip Colgan represented the respondent.

Mr. Griffin said that the rent on which the valuation is based is unrealistic and that because of its location on the first floor may well have a negative value. He stressed that trade has deteriorated over the past ten years to the extent that it is now abysmal. He also said that the upper floor is not now a trading area, that the access is poor and that the customers are not prepared to tolerate inferior conditions. He stated that the rent was fixed by the lease of 1974 and that the landlords cannot be forced to reduce it and that he is therefore bound by the terms and conditions of the lease. In referring to the deterioration of the centre generally he said that because an improvement clause is not contained in the lease, the tenant cannot compel the landlord to improve either the unit or the Centre generally. He also indicated that because of the high rent payable it is not possible to assign or sublet. He also said that the first floor is not in demand, it is largely unoccupied and rents are seriously in arrears. He argued that if the N.A.V. could be established in any way other than on rent the R.V. would be substantially reduced. He stressed that 40% to 50% of the first floor is unoccupied, rents have not been reviewed in accordance with the terms of the lease; three units have closed in the recent past and the landlords will not accept a surrender of any lease.

Mr. Colgan argued that he had agreed the N.A.V. of £8,000 with Mr. A. Kelly of Messrs Harrington & Bannon who represented Mr. Griffin and the other tenants in the Centre; that the passing rent between landlord and tenant is the appropriate guide to ascertaining the N.A.V. being the best guide to the market and that Mr. Kelly when agreeing the N.A.V. in respect of all the other units did not make a point on the rent payable being too high.

FINDINGS

The Tribunal has considered all the evidence both oral and written and has had regard to Section 5 of the Valuation Act, 1986 which requires the Tribunal to have regard to valuations which are comparable, of similar function and whose valuations have been made or revised within a recent period. The Tribunal accepts the submission of the appellant with great sympathy but is satisfied

that a case has not been made to warrant a reduction in R.V.. The Tribunal is bound by the rent and the comparisons within the shopping centre which have recently been revised and must therefore affirm the R.V. of £55.00