

Appeal No. VA02/2/007

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

Distribution & Exhibition Transport Ltd.,

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map ref: FL.0 (disused) 7/8 Eden Quay, Ward: North City, County Borough of Dublin

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Tim Cotter - Valuer

Deputy Chairperson

Patrick Riney - FSCS. MIAVI

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF OCTOBER, 2002**

By Notice of Appeal dated the 11th day of April, 2002, the appellant appealed against the determination of the Commissioner of Valuation which fixed a rateable valuation of €28.55 on the relevant property above described.

The grounds of appeal are that:

"The valuation is excessive inequitable and bad in law."

The appellant also contends that the description of the premises in question should be altered. The valuation certificate describes the premises in question as "shop".

The said appeal proceeded by way of an oral hearing which took place on the 20th September 2002 before the Valuation Tribunal sitting in the Arbitration Centre, Distillery Building, Dublin. Mr Martin O'Donnell BA MIAVI partner of Frank O'Donnell & Co. Valuation, Rating and Property Consultants appeared on behalf of the appellant. Mr David Walsh, District Valuer appeared on behalf of the respondent. Both valuers prepared written summaries of their evidence which they exchanged with each other and gave to the Tribunal in advance of the hearing. Both valuers adopted their summaries as their evidence in the course of the hearing also.

The Property

The property is located at 7/8 Eden Quay, Dublin. Formerly it was the Astor Cinema. It consists of a ground floor together with a basement. It is approximately 70 metres from O'Connell Street fronting to Eden Quay and overlooking the River Liffey. The property has approximately 11 metres frontage to Eden Quay. It extends back approximately 28 metres to Harbour Court. The entrance is a glass door which is protected by a roller shutter. The floor level at entrance is three steps up from street pavement level. Approximately 6 metres from the entrance the floor slopes gently to the main area. There is access and egress to Harbour Court. The area of the basement is approximately 280 sq. m, however access to it is extremely poor. In addition the headroom available would only be 2.2 metres.

The Astor Cinema ceased operating as a cinema in 1984. The premises were purchased in 1987. In 1988 the premises were operated as a video shop. It continued to be operated as a video shop from 1988 to 1996. However the property has remained vacant from 1996 to date.

Valuation History

In 1988 at First Appeal the description of the property was changed from "cinema" to "video shop (ground floor) and basement (disused)". The rateable valuation was assessed at £220. The value of the property was revised again in 1990 when the rateable valuation was reduced from £220 to £180. The description of the property remained unaltered. In 2001 a revision was carried out.

The revision issued in November of 2001 and made no change either to the rateable valuation of £180 or the description. An appeal was subsequently lodged. The result of the first appeal was issued on the 26th March 2002. Rateable valuation was issued unchanged at €228.55 (£180). The description was altered to “shop (ground floor) basement (disused)”.

The Appellant’s Evidence

Mr. Martin O’Donnell gave evidence on behalf of the appellant. He outlined the operational history of the premises in question and the valuation history also. His view was that the two issues for resolution by the Tribunal were:

1. The description of the premises in the Valuation Certificate.
2. Quantum of valuation.

He noted that no planning permission had been sought for the change of use of the premises from cinema to a video shop. He said that the entire premises had originally been constructed, designed and laid out as a cinema. He gave evidence of comparators being the Odeon Cinema (which was close to the subject premises) and the Stella Cinema. He also observed that the entire site (of which the premises in question is part) is due to be demolished and indeed has been handed over to the demolition contractors as of the 16th September 2002. Under cross-examination by Mr. Walsh, he accepted that £25,000-£30,000 had been spent in converting and refurbishing the premises in order to make it usable as a video shop. However in his view the premises having been left vacant was now back in its “pre-refurbishment” condition, except that it had not been converted back for cinema use. He agreed that the valuation in 1990 had been agreed; there had been no appeal. In relation to the description of the premises in 1990 as being “video shop (ground floor) basement (disused)”, his view was that the main auditorium of the cinema was still as it was, though he accepted that all of the seating had been taken out and that the floor in the area in question was now a flat floor rather than a sloping floor. He accepted it could be used for a wide variety of uses, subject to planning permission.

In response to questions from the Tribunal he agreed that the premises in question were lettable in their present state, though he indicated that some money would need to be spent to refurbish the premises. He was of the view that this area is primarily an entertainment area rather than a retail/trading area. He also agreed that no attempt had been made by Dublin City Council to prevent its use as a video shop.

The Respondent's Evidence

Mr. David Walsh gave evidence on behalf of the respondent. The premises had been used as a video shop from 1988 – 1996. A valuation of the premises had been agreed in 1990. There have been no substantial changes to the premises since. In his view the property had no serious problems. It did not appear to have changed much over the years since 1990. His view was that the premises in question were in a very good location and would be suitable for lots of uses. He was of the opinion that the premises could even be used as a gardening centre.

In his view the Valuation Acts require that the property be valued as it stands.

Accordingly future possible developments of the property or future changes in its circumstances should not be taken into account. Also, just because an occupier ceases to do business in the premises does not mean that the premises could not be used as a shop, as it had previously been. He accepted that the basement had poor access and poor headroom though he was of the view that it was sound and dry.

He was cross-examined by Mr. Martin O'Donnell. He accepted that the basement was of extremely limited use even as a storage facility. He accepted that large-sized goods could not be manoeuvred up and down from the basement, or stored there having regard to the access and headroom. He was unclear as to whether the basement had been given a nil value in 1990 and was unable to answer a suggestion by Mr. O'Donnell that it had been excluded from the valuation at the time of the 1990 agreement. Mr. O'Donnell had acted on behalf of the appellant at the time that the 1990 valuation was agreed. He accepted that there was not much retail use in the vicinity although it was clear that a large newsagents was operating very close to the premises in question.

He also felt that despite the absence of planning permission for the change of use from cinema to shop, it would be safe to advise a hypothetical tenant to take it as a retail unit. He did not believe that the property was similarly circumstanced to the Odeon Cinema; that premises was a cinema which still had its seating and a tilted floor. When cross-examined in relation to comparisons offered by him he accepted that the Talbot Street premises was of little use as a comparator having regard to the nature of Talbot Street as a retail area. He remained of the view that the premises would be suitable for a wide variety of uses as it was a flat rectangular building.

In response to questions from the Tribunal he agreed that the use of the basement would be extremely limited and would really depend on the type of item which one wanted to store there. He also expressed the view that having regard to the zoning of the property it is likely that permission for change of use to retail (even if such separate permission were required which is not entirely clear) would be granted without difficulty. It was put to him the reason Dublin City Council had not sought to prevent use as a video shop was because this was a use related to the property's original use as a cinema. However he did not believe that this was a likely reason for the non-action by Dublin City Council in this regard.

Both sides then made closing submissions.

Determination

(i) The Description of the premises

The property last operated as a cinema in 1984. If the property had been vacant and unused since 1984 it might well merit the description "cinema (disused)". However, the premises have been altered considerably since that date. The area which was once the auditorium has had all the seating removed. In addition the floor is now a flat floor. Approximately £30,000 (€38,092) has been spent in the past fitting out the premises as a shop. It has been used as a shop for some 8 years. It is clearly lettable and usable as a shop although it would require some refurbishments. It is likely however that the refurbishment required this time is due to the fact that the premises has been left idle for some six years, rather than because of its former use as a cinema.

In the view of the Tribunal it would be somewhat unreal to describe the premises now as a disused cinema. The premises have long since ceased to function as a cinema and have been adapted for use as a retail unit. The fact that planning permission was not obtained for the change of use is irrelevant to the description of the user in question. While it has been vacant for some six years it has clearly been lettable as a retail unit. The Tribunal sees no reason to vary or amend the description given of the premises on the Valuation Certificate.

(ii) Valuation

Under the Valuation Act the valuer is required to value a relevant property *rebus sic stantibus*. In these circumstances the fact that future development of the property is about to take place is not a matter to be taken into account in arriving at the rateable valuation. The option/opportunity to let the premises in its present condition did exist at the date of the valuation the subject matter of this appeal.

It does seem to the Tribunal that a hypothetical tenant would have been prepared to rent the premises as a retail unit. The tenant might have some concerns in relation to the absence of planning permission. However there is no hard evidence that planning permission is required for a change of user from cinema to retail unit. It does appear that the change of user occurred without any objection either by Dublin City Council or by other retailers in the area. The premises appeared to trade as a retail unit for some eight years. It is unclear why the unit was not re-let after 1996 but it may be that the owner, aware that the entire area was due to be re-developed, was not willing to let it on a short-term basis. However this would be mere speculation.

The Tribunal do not feel that the comparisons in Talbot Street are of assistance having regard to the different nature of Talbot Street as a retail area. Nevertheless the rateable valuation of the premises known as 1.2 Eden Quay of €222 is of interest. The appeal valuer dealing with that premises noted that average pricing on the ground floor was at €41.98 per sq. m.

But the area in question there is considerably bigger than the area of the subject premises. The suggested valuation of the ground floor in the subject premises at €140.04 per sq. m. is not unreasonable in the circumstances.

There remains the issue of the basement. Both parties agree the best thing that can be said about it is that it is dry and secure. However access and headroom are extremely limited and its usefulness as a storage facility is also extremely limited. It is clear from the evidence that only small items could be stored in the basement in question. It would be difficult to manoeuvre larger sized goods into or out of the basement. In the circumstances it is the view of the Tribunal that the basement adds little or no value (even as a storage facility) to the property. Accordingly the Tribunal proposes to exclude the area of the basement from its valuation.

Having regard to the foregoing therefore the Tribunal determines the value of the premises to be

€34,170 @ 0.63% = €215.27 say €215

The Tribunal therefore determines the rateable valuation of the premises in question to be €215 and accordingly varies the determination of the respondent to this effect.