

Appeal No. VA16/2/004

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

G. Aprille Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 440370, Retail (Shops) at 10 Kilmacud Road Lower, Stillorgan, County Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF MARCH, 2017

BEFORE:

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Michael Connellan Jr. - Solicitor

Member

Thomas Collins –PC, FIPAV, NAEA, MCEI, CFO

Member

By Notice of Appeal received on the 5th day of April, 2016 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €69,300 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

"The subject property's estimate of net annual value is excessive and inequitable. The Commissioner's approach to the area noted by him as 'office' and valued at €600/m² is completely inequitable. As a matter of fact, it is a storage and food prep area. It is also completely overvalued – the Commissioner is currently implying that an area behind a solid wall is worth more than it would be as open retail space. In addition, the closest take-away to the subject property was determined by the Valuation Tribunal in VA11/5/100 with its prep and store area at €50/m². The subject is currently being assessed at 12x this level."

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence on the 22nd day of November, 2016 adduced before us by Mr. Eamonn Halpin on behalf of the Appellant, who contended for a net annual value of €41,700, and Mr. John Doorly on behalf of the Respondent to the appeal,

DETERMINES

That the net annual value of the subject property be as set out below:

€41,700 (Forty-one thousand seven hundred euro - a decrease from €63,900).

1 st Area	Retail Zone A	29.86m ²	@	€1,200.00/m ²	€35,832
2 nd Area	Retail Zone B	7.54m ²	@	€600.00/m ²	€4,524
3 rd Area	Stores/preparation	50.22m ²	@	€50.00/m ²	€2,511
4 th Area	Basement	25.35m ²	@	€50.00/m ²	€1,268
	Less 6% front to depth allowance				-€2,471
					€41,663
				Say	€41,700

Background:

The appellant and the respondent agreed floor area and rates per square metre for all parts of the subject property except for the treatment of the third area 50.22m² referred to variously as offices at €600m² or stores/preparation at €50m².

Location:

The subject property is in a retail mall opposite Stillorgan Shopping Centre on the southern side of Kilmacud Road Lower, close to its junction with Stillorgan Road/N11.

Description:

The subject of this appeal to the Tribunal refers to the ground floor and basement of a two storey over basement end of terrace building. The first floor is separately valued under PN 2165559 and does not form part of this appeal. The ground floor comprises an extended area and includes a basement to the rear. The floor areas are agreed as follows, however the essence of the appeal refers to the designation of third ground floor area agreed at 50.22m²

Accommodation:

Calculated on an NIA basis.

Ground floor	Retail Zone A	29.86m ²
Ground floor	Retail Zone B	7.54m ²
Ground floor	Stores/preparation-Appellant Offices-respondent	50.22m ²
Basement	Basement	25.35m ²

Appellant's Case

The appellant's case was based on his contention that the third part of the subject property had been incorrectly categorised as offices by the Commissioner, whereas he contended that it should be described as stores/food preparation.

Mr. Halpin provided a sketch plan which showed the schematic layout of the premises and included retail areas Zone A and B-agreed and a large area to the rear access via a door in solid wall and comprising 50.22m² and referred to as stores and preparation. Areas off this section included staff toilet accommodation and a staircase to the basement neither of which raise any issues.

The Appellant maintained that this area should be valued in line with a similar case Comparison 1 in an adjacent retail parade VA11/5/100. This premises also comprised a take-away unit Aroma Chinese Restaurant like the subject property where the retail areas were valued on a zoning basis, albeit at a lower rate but the rear section was referred to as stores/prep and valued at €50/m².

Comparison 2 referred to PN 4403377 the EBS premises at 24 Kilmacud Road Lower where the retail areas were valued on a zoning basis at €1,250/m²-Zone A and €625/m² Zone B (not appealed but subsequently determined by the Tribunal at €1,200/m² and €600/m². The ground floor and first floor stores had been valued at €50/m².

The third comparison VA 11/5/110 referred to 24 Kilmacud Road Lower occupied by Dr. John Duignan -Stillorgan Medical Centre valued at €1,200/m² and €600/m² for Zone A & B respectively and reduced by a 6% allowance for frontage to depth.

Mr. Halpin also argued that if the remainder of the ground floor had been categorised as retail and valued on a Zoning basis rather than a separate office category as maintained by the Commissioner that the differential would have been reduced to €24,041 as distinct from the claimed €34,656. However, Mr. Halpin accepted that there was a solid wall between the retail area and the rear area but maintained that the position adopted by the Commissioner was untenable as the area to the rear of a solid wall was being valued by the Commissioner at a higher level than that which would have applied if no wall was present.

During cross-examination Mr. Halpin agreed that he had valued per the tone of the list per his comparisons. He agreed that the Magic Chef was the closest take away and the Aroma Chinese was not the closest to the subject property. He did not agree with the Commissioners assertion that the third area should be treated as offices and he did not accept the schematic provided with Mr. Dooley's submission. Mr. Halpin when queried by the Tribunal did not have a copy of the planning permission which related to the area in question.

Respondent's Case:

Mr Doorly referred to the legislative basis, context, onus of proof, entries on the list and method of determining property's value. He confirmed the location and description and provided photographic evidence which showed the area in question at Fig. 3 an internal view looking towards the door to the front of the retail area. He also provided a schedule of the floor areas which he confirmed was common to both parties however he described area three 50.22m² as offices. He included a sketch and measurement s of the various areas. He also provided details

of how the NAV of €69,300 was calculated and showed a comparable map which included some of the list comparables.

His first comparison referred to The Magic Chef 4 Kilmacud Road Lower PN 2180502 which he analysed as €1,250/m² and €625/m² for Zones A & B respectively, with €600/m² for shop and €50/m² for a store of 28m² and provided a reported value of €66,500. Mr. Doorly maintained that the shop area referred to was comparable to the office element of the subject property.

The second comparison was common with the appellant's third comparison PN 440376 VA 11/5/110 at €46,500 was occupied by Dr. John Duignan 22 Kilmacud Road Lower which was valued at €1,200/m² for Zone A and €600/m² for Surgery and had a rate of €230/m² on the first-floor offices. The Commissioner reduced the Zone A NAV and the Surgery NAV 6% allowance for ground floor frontage to depth. Mr Doorly maintained that the rate of €600/m² for the surgery was equivalent to the third area of the subject property.

The third comparison referred to Boyle Bookmakers Ltd premises at 12 Kilmacud Road Lower PN 440371 which had four retail zones A, at €1,250/m², B at €625/m², C at €312.50/m² & D at €156.52/m² and an office on the ground floor at €600/m² as well as a basement store at €50/m². Mr Doorly compared the office at €600/m² with the third area of the subject property.

Mr. Doorly concluded his direct evidence by submitting that the valuation of €69,300 was fair, reasonable, and equitable and reflective of the tone of the list supported by his comparisons. During cross-examination Mr. Doorly agreed that the Zone A rent was €600/m² and maintained that the Boylesports office 11.31m² was comparable to the subject property's area three. When queried as to why the area behind structural wall should have a higher rating than the equivalent retail value Mr Doorly maintained that this area in question was an office and should be valued accordingly. He did not accept Mr. Halpin's suggestion that an area behind a structural wall should have had a lower value than the equivalent retail Zone B/C if no such wall was in place.

Mr Doorly agreed that the area had a tiled floor and walls but argued that the suspended ceiling showed that it was of office quality.

Mr. Doorly agreed following a suggestion from Mr. Halpin that an allowance of 6% was appropriate to reflect the frontage to depth allowance. Finally, he did not agree that the store referred to in his first comparison was equivalent to the third area in the subject property. This concluded Mr. Doorly's evidence.

Mr Halpin summed up his case by restating his contention that the third area had been incorrectly valued by the Commissioner and maintained that the area in question 50.22m² should be valued at €50.0m² with a value of €2,511 rather than the Commissioner's value of €30,132.

Mr Doorly in his summary requested the Tribunal to maintain the existing NAV at €69,300 based on the tone of the list.

The Tribunal requested the parties to provide a copy of the relevant planning permission which referred to the extension of the original property as this would be of considerable assistance to them.

The reasoning being

The two cases had only one issue between them namely whether the third area was an office or a store/preparation area. Both valuers had referred to some of the list comparisons however in isolation none was compelling, however the photograph provided by the Commissioner Fig. 3 was particularly helpful and showed the usage as a store and food preparation area.

A copy of Planning Permission P/0108/98 which related to 10 Kilmacud Road Lower for the Development of a two storey over lower ground floor extension with pitched roof to rear to accommodate ground floor storage to replace existing and first floor extension with change of use from residential to coffee shop was granted permission on 21.01.1998 subject to five conditions which did not impact on the issue outstanding.

A divisional meeting of the Tribunal was convened on the 14th December 2016 to review the copy Planning Permission provided. The photograph Fig. 3 and the phrase from the planning application” ... **to rear to accommodate ground floor storage to replace existing**...” were compelling and having discussed it all three members agreed that the area referred to as Area 3 namely 50.22m² was a store/preparation area and not an office and accordingly amended the valuation from €600/m² to €50/m².

And the Tribunal so determines.