

Appeal No. VA88/0/165

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

Ebeltoft Limited
t/a "Hunters" Licensed Premises

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Premises "Hunter's" licensed premises, Setanta Centre, 32, South Frederick Street, Dublin
2. County Borough of Dublin

B E F O R E

Hugh J O'Flaherty

S.C. Chairman

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF MAY, 1989

By notice of appeal dated 22nd August, 1988, the appellants appealed against the determination of the respondent fixing the Rateable valuation of the above described hereditaments at £900.

Mr Thomas F. Davenport, ARICS, a chartered surveyor in general practice with Messrs Druker Fanning and Partners, 19/22 Dame Street, Dublin 2 presented a written submission to the Tribunal on 12th October, 1988. Mr Patrick J. Kyne, a civil engineer and district valuer in the

Valuation Office with over thirty three years experience in rating work presented his written submission on behalf of the respondent on 4th October, 1988.

The valuation history of the hereditaments is as follows:

The hereditaments were first valued in 1976 as part of a major office development. The rateable valuation was fixed at £1,300. This valuation was appealed. At 1st Appeal the valuation was fixed at £1,000. It was then appealed to the Circuit Court. At Circuit Court the valuation was agreed at £900.

In 1976 this property was held under a 35 year lease from 1975 at a rent of £15,000 p.a. with reviews of rent every seven years. Between 1975 and 1976 the tenant spent £130,000 - fitting and altering the premises.

At 1976 Appeal Messrs Hennigan, Nerney & Co. Ltd. "Valuation Consultants and Auctioneers" acted for the occupier and agreed the valuation.

On 30th January, 1987, Mr Davenport made an application to have the subject premises included in the 1987 Annual Revision of Valuation List on the grounds that the existing valuation was excessive and inequitable. The results of the 1987 Annual Revision of Valuation Lists were published on the 1st November, 1987, and the valuation remained unchanged at £900. Mr. Davenport lodged an appeal against this valuation on the 26th November, 1987, on the grounds that the existing valuation was excessive and inequitable having regard to the provisions of the Valuation Acts and "on other grounds also". It appears that when Mr. Davenport was asked to elaborate upon this, by letter dated 18th February, 1988, he set out that he thought the valuation should be struck out "on the basis that the premises are under reconstruction and are incapable of beneficial occupation at the present time". In the course of further debate between Mr. Davenport and the Valuation Office it appears that Mr. Davenport came to accept that the

decision of the High Court in **Harper's Stores Limited v. Commissioner of Valuation** (1968) I.R. 166 governed his clients situation and, therefore, the point that the premises were incapable of being valued at all because they were undergoing reconstruction was not pursued.

In the course of the oral hearing on the 17th October, 1988, however, Mr. Kyne complained that the appellants were now pursuing a ground of appeal which had not been made before the Commissioner and he referred to sections 19 and 20 of the Valuation (Ireland) Act, 1852. The Tribunal is of the view that there can only be an appeal to it on a ground that has been put before the Commissioner but Mr. Kyne, on being asked whether he was taking the point or felt embarrassed by it, conceded that the original appeal was probably sufficiently wide to embrace the points that Mr. Davenport now wanted to make at the hearing of this appeal and that he was not in any way embarrassed and that the respondent would wish the Tribunal to give its verdict on the merits of the appellants' case.

The Tribunal would wish to point out, however, that there is an obligation on appellants to set out clearly in their grounds of appeal what exactly the case is that they wish to make and it must be understood that they cannot make a case to the Tribunal other than what was urged before the Commissioner.

Mr. Davenport, in his written submission which he elaborated upon at the oral hearing, set forth a summary of the hereditaments in question as follows:-

a. Situation

The premises are situated on the east side of South Frederick Street at the corner with Setanta Place.

The subject premises are located within the Molesworth Building being part of the Setanta Centre and other occupiers within the building include the Department of Industry and Commerce, the Department of Tourism and Transport and Jones Lang Wootton Auctioneers. The surrounding area is almost entirely office in character with a limited number of retail outlets. Other occupiers on South Frederick Street include Molesworth House, a multi-tenanted office building, Motor Insurers Bureau of Ireland and New Ireland Assurance Plc.

Occupiers on Setanta Place include B.P. House and the Confederation of Irish Industry.

South Frederick Street connects Molesworth Street with Nassau Street. Traffic flow is one-way in a northerly direction and on-street car parking facilities are severely restricted. Setanta Place connects South Frederick Street with Kildare Street and here again traffic flow is one-way in an easterly direction. On-street car parking facilities on Setanta Place are also severely restricted.

b. Description:

The premises comprise a portion of the ground floor and basement of a modern four storey and basement office building known as "Molesworth Building", forming part of Setanta Centre.

The building is constructed with reinforced concrete frame work, concrete block infill walls, brick faced externally, plastered and painted internally, mainly concrete floor, aluminium framed windows and part slated part flat asphalt covered roof.

The subject premises are set out as bar/lounge areas with ancillary stores, toilets, offices on the ground floor, function rooms, kitchen and offices at mezzanine level and bar/discotheque, toilet and stores at basement level. The premises can be entered either from South Frederick Street or Setanta Place.

c. Accommodation:

The following is a brief description of the current accommodation provided:

Entrance Lobby (from South Frederick Street)	9.0 sq metres
Entrance Lobby (from Setanta Lane)	8.2 sq metres
Lounge/Bar Area	137.0 sq metres
Rear Lounge	33.9 sq metres
Offices	15.6 sq metres
Stores	10.7 sq metres
Ladies/Gents Toilets	25.8 sq metres
Total Floor Area at Ground Floor Level	240.2 sq metres
<u>Mezzanine</u>	
Function Rooms	107.9 sq metres
Kitchen	12.5 sq metres
Offices	20.0 sq metres
Total floor area at Mezzanine Level	140.4 sq metres
<u>Basement</u>	
Bar/Discotheque	155.6 sq metres
Stores	87.0 sq metres
Toilets	25.5 sq metres
Total area at basement level	268.1 sq metres
Total overall area	648.7 sq metres

d. Services:

All principal services including mains water and drainage, electricity and telephone are supplied and connected to the premises.

e. Town planning:

In accordance with the 1980 Dublin City Development Plan, these premises are situated in an area zoned Objective B1 i.e. "to protect, improve or renew the existing civic design character and to provide for residential and such office use as is compatible with conservation and renewal requirements".

In the 1987 Dublin City Draft Development Plan the property is included in an area zoned Objective D i.e. "to provide for and improve city centre activities".

TITLE

a. Tenure:

These premises are held under Indenture of Lease for a term of 35 years with effect from the 1st September 1976 subject to a current rent of IR£38,000 per annum exclusive.

In accordance with the terms of the lease the lessee is responsible for the payment of rates, internal repairs, reimbursing to the lessor a proportionate part of the fire insurance premium for the entire building and to use the premises as a licensed premises and/or restaurant in connection with its business.

The lease incorporates reviews of rent at the expiration of each fifth year of the term and the rent was reviewed on the 1st September 1986.

In the event of disagreement between the parties as to the level of reviewed rent there is provision for the matter to be referred to an independent chartered surveyor acting as expert.

Mr Davenport highlighted the following factors as affecting rateable valuation:-

a. Situation:

The premises are located in an area which is predominated by office blocks. There is minimal retail activity on South Frederick Street and no retail activity on Setanta Lane. The subject premises therefore is completely isolated from any retail activity and the alternative uses therefore for the subject property are severely limited.

The current use of the property as a licensed premises is greatly affected by the fact that outside of normal office hours this area is dead from a commercial point of view. His clients business therefore is dependent almost entirely on a lunch time trade together with a mainly weekend night trade in connection with the basement discotheque.

b. Design and layout:

The subject property suffers greatly from the fact that there are a number of different levels on the ground floor and also on the mezzanine floor. The ground floor lounge area has four separate mezzanine sections which are not intercommunicating. The layout of the food preparation area and general stores at basement level is extremely poor.

He said that in accordance with Section 5 of the Valuation Act 1986, he would suggest that the rateable valuation of IR£900 in respect of the subject property which represents 2.36% of the net annual value was exorbitantly high and totally out of line with the relationship that exists between the rateable valuation and net annual value of similar type properties which have

recently been revised by the respondent. The liability for rates for 1988 in the sum of £22,680 equates to almost 60% of the rent payable for the property.

The current rent of the premises is £38,000. This equates to £5.50 per sq. ft. overall. The rent was reviewed on 1st September 1986 and agreed between Druker Fanning & Partners acting on behalf of the lessee and Jones Lang Wootton acting on behalf of the lessor.

Mr Davenport informed the Tribunal that when the rent came to be reviewed next it would be on the basis of a 'shell' building; in other words, the lessee would get the credit for the improvements but that meant, he said, that they had to pay a somewhat higher rent than they might otherwise have to do.

Mr Davenport also put in evidence a letter from a firm of accountants to verify the fact that the original lessees had incurred substantial trading losses.

Mr Davenport submitted that the appellants' principal trading hours would be during lunchtime Monday to Friday during which time "pub lunches" are served. He said that the profit margins on such was extremely small and was merely a way of enticing customers into the premises. Trade on Saturdays was extremely poor and non-existent on Sundays.

The basement section which is used as the Pink Elephant Night Club by its very nature is mainly limited weekend night trade, he said. Any success that this night club might have is due mainly to the management expertise of the appellants gained in their involvement with different night clubs throughout the city in the past number of years. Its business is due mainly to personal goodwill rather than the location of the property. Night club business is, of course, very susceptible to changing fashions and this year's "in place" could be regarded as being "out dated" next year.

In suggesting a rateable value of £380 he set out how the rateable valuation devalued as follows:

Ground floor

Entrances	17.2 sq metres at 50p per sq metre =	IR£ 8.60
Lounge area	137.0 sq metres at 70p per sq metre =	£ 95.90
Rear lounge	33.9 sq metres at 60p per sq metre =	£ 20.34
Toilets	25.8 sq metres at 30p per sq metre =	£ 7.74
Stores	10.7 sq metres at 30p per sq metre =	£ 3.21
Offices	15.6 sq metres at 40p per sq metre =	£ 6.24

Mezzanine level

Function rooms	107.9 sq metres at 50p per sq metre =	£ 53.95
Kitchens	12.5 sq metres at 20p per sq metre =	£ 2.50
Offices	20.0 sq metres at 20p per sq metre =	£ 4.00

Basement

Discotheque/

Bar area	155.6 sq metres at 50p per sq metre =	£ 77.80
Toilets	25.5 sq metres at 20p per sq metre =	£ 5.10
Stores	87.0 sq metres at 15p per sq metre =	<u>£ 13.05</u>

Total		IR£298.43
	Say	£300.00
Licence		<u>£ 80.00</u>
	Say	IR£380.00

He furnished the Tribunal with a schedule of comparisons, ten in number, which are attached as Appendix A to this judgment.

Mr Kyne, in the course of his submissions, having dealt with the point that was not pursued at this appeal at all, viz., the reconstruction, thought that by the time the rent came up for renewal in 1991 that the premises might command a rent of £90,000 more realistically than the amount currently being paid.

He joined issue with Mr Davenport on his comparisons and set forth his comparables including especially the Berni Inn recently, as it happens, sold by Druker Fanning & Partners on behalf of clients. Because both sides place great importance on this particular comparison, a brochure prepared by Mr Davenport's firm prior to the sale of the premises recently, is attached as Appendix B to this judgment.

It was at the heart of the appellant's case and Mr Davenport reserved his greatest eloquence for this that all the comparables were in "high street" locations whereas the appealed premises were, in contrast, away from the centre of the city's business and social activity, especially at the weekend.

It is clear that the following matters were established:

- (a) The premises are located in the area which was dominated by office blocks and had none of the bustle that pervades in Grafton Street, Dawson Street and Nassau Street at the weekends. The premises were confined to a weekday business subject to what business might come to the night club at the weekend.

- (b) The rateable valuation of £900 represented 2.36% of the net annual value and the Tribunal is accustomed to hearing a figure in the region of 1% of net annual value as a

general rule being more appropriate and this would seem to result from a consideration of the comparables, too.

- (c) The actual amount paid in rates equates to almost 60% of the rent payable for the property and this, too, does not synchronise with the comparables.

What is less clear, and on which there must be conjecture, is the likely rent that will have to be paid for the premises at the next review. Mr Davenport has said that he negotiated a clause out of the existing lease whereby the tenant would get the benefit of any improvements. On the balance of probabilities, the Tribunal has come to the conclusion that the rent of the next review will be nearer the rent being paid at the present time than the possible £90,000 adumbrated by Mr Kyne.

The Tribunal accepts that there were substantial trading losses by the previous occupiers but it does not take this into account in reaching its conclusions because the fact that there had been a trading loss by a previous trader is equivocal - it may be due to many factors aside from location - and is not considered of assistance to the Tribunal in arriving at a determination of the matters in issue in this appeal.

Mr Kyne laid stress on the fact that the valuation had stood since 1976 when it was agreed between the parties at the Circuit Court; he said that a licensed premises is capable of generating business wherever it is situated depending on its reputation and ambience while he accepted that it had not the "high street" location of many of the comparables it was not too far removed from the centre of activity.

Mr Davenport's rejoinder was to say that what prevailed in 1976 should not govern for today and he again emphasised the discrepancy with his comparables and his clients premises having regard to rateable valuation as a percentage of net annual value.

The Tribunal accepts that due to recent developments and imaginative planning - the pedestrianisation of Grafton Street for example - as well as changed shopping hours, Grafton Street, Dawson Street and Nassau Street have now a unique attraction in the capital city for people of all ages. This centre does attract much business at the weekend. It is a volatile centre. Ten or eleven years ago things were more staid. Many new retail outlets have been established in the area.

The Tribunal would wish to emphasise that it is not bound by the rule of thumb that 1% or thereabouts of net annual value is binding on it although it does appear to have got widespread acceptance on both sides but, what is often at issue, is what the net annual value is.

Sect. 11 of the Valuation (Ireland) Act, 1852, lays down that in the case of houses and buildings the valuation shall be made upon an estimate of the net annual value thereof, and the net annual value is defined by the section as being "the rent for which, one year with another, the same might in its actual state be reasonably expected to let from year to year, the probable average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the hereditament in its actual state, and all rates, taxes, and public charges, if any (except tithe rentcharge) being paid by the tenant".

This section has, now, of course to be read in conjunction with Section 5 of the Valuation Act, 1986 which requires the Tribunal insofar as is reasonably practicable to have regard to "the valuations of tenements and rateable hereditaments which are comparable and of similar function and whose valuations have been made or revised within a recent period".

As a result of a request made by the Tribunal the appellants furnished the group accounts for their company on the 20 February, 1989. However, the Tribunal has not derived much assistance from these accounts by virtue of the fact that they relate to the group as a whole. As in other cases, the Tribunal would not propose to refer to these accounts except to say that they have not proved of any great assistance.

The Tribunal also finds that the nightclub aspect of the hereditament probably has a greater role than has been conceded for on behalf of the appellants. If it were otherwise, the Tribunal might have reached the conclusion that the valuation which it would now propose should be lower but taking all circumstances into account the Tribunal has reached the conclusion that the correct rateable valuation for these premises should be £750.