

Appeal No. VA95/3/014,
VA95/3/016, VA95/3/017,
VA95/3/018, VA95/3/020

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

Damian Grehan
Jim & Finola Byrne
Mary Nuala McCarthy
Kathleen O'Riordan, Comfort n Style
John O'Sullivan

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Shops at Map Ref: Units 13.14/D, 13.14/A, 7, 13.14/C, 12A respectively, Wilton Shopping Centre, Ward: Bishopstown, County Borough of Cork
Quantum - Units in a shopping centre

B E F O R E

Fred Devlin

FRICS.ACI Arb. (Acting Chairman)

Brid Mimmagh

Solicitor

Marie Connellan

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF MAY, 1996

By Notices of Appeal dated the 29th and 30th days of August 1995 the appellants appealed against the determinations of the Commissioner of Valuation in fixing rateable valuations of £43, £48, £119, £48 and £54 respectively on the above described hereditaments.

The grounds of appeal as set out in the Notices of Appeal are summarised below:

| Appeal No: | Unit No: | Occupier | R.V. | Grounds of Appeal |
|-------------------|-----------------|---------------------|-------------|---|
| VA95/3/014 | 13.14/D | Damian Grehan | £43.00 | In view Wilton is by passed by a main road. In view less parking spaces being available now than before rent increase. Units in Cork city are of lower valuation and create an unfair trading situation. |
| VA95/3/016 | 13.14/A | Jim & Finola Byrne | £48.00 | Valuation is excessive in relation to similar units within Cork city and county. Trade within the Wilton Centres has decreased because of additional shopping centres within the area. Wilton is now by passed by a major road network and it is no longer on the main route. |
| VA95/3/017 | 7 | Mary Nuala McCarthy | £119.00 | Number of parking spaces in centre reduced owing to alterations. As magazines and newspapers are at set prices increase in rates cannot be recouped. With new ring road business has been diverted to new Dunnes Stores Shopping Centre. |
| VA95/3/018 | 13.14/C | Kathleen O'Riordan | £48.00 | The increase in rateable valuation increased by about 250%. This figure seems very excessive. The deduction of £2 in the valuation is negligible. |
| VA95/3/020 | 12A | John O'Sullivan | £54.00 | Recent refurbishment in the Wilton Centre, less car parking is available to customers. The new by pass road and the valuation of shops in Cork in relation to this unit. |

This judgment is in respect of appeals against the valuations for rating purposes of the five units in Wilton Shopping Centre, Cork listed above.

The Property:

Wilton Shopping Centre is located at the junction of Bishopstown Road and Sarsfield Road at Leslie's Cross about two miles south west of Cork city centre. Cork Regional Hospital is on the opposite side of Bishopstown Road and close by is a Roman Catholic Church.

The Wilton Shopping Centre is an enclosed shopping centre opened in 1979 and has two anchor tenants, Quinnsworth and Roches Stores and over 50 shop units including the subjects of these appeals. Generally speaking the units are occupied under standard lease arrangements for a period of 35 years with provisions for upward only rent reviews at five yearly intervals. Whilst some of the units, for example Units 13.14/A, B and C, were created after the centre was opened, in all instances the leases have a common commencement date of the 1st October 1979.

In accordance with the rent review provisions contained in the various leases the rents were reviewed in October 1984, 1989 and again in 1994.

Oral Hearing:

At a preliminary meeting the appellants and the representative of the Commissioner of Valuation agreed that these five appeals be dealt with simultaneously at an oral hearing held in the Court House, Cork on the 21st day of March 1996.

At the oral hearing the appellants appeared and gave evidence on their own behalf and the Commissioner of Valuation was represented by Mr. Terry Dineen, a District Valuer in the Valuation Office with over 20 years experience.

Prior to the oral hearing each appellant and Mr. Dineen forwarded a written submission to the Tribunal. At the oral hearing the parties mutually agreed that these be adopted as their evidence in chief given under oath.

The appellants' contentions:

1. Since the centre opened rents have increased by a factor of 3.5 and rates by a factor of 7 to 8 both of which are considerably in excess of the movement in the Consumer Price Index over the same period.
2. Over the past several years turnover and profits have not grown at the same rate as property outgoings. As a consequence profit margins have been squeezed and this latest increase in rates is going to cause hardship.

3. Car parking in the centre has been reduced in recent years and since car parking charges were introduced in the nearby hospital, visitors now park in the centre car park. So too do users of the Bank of Ireland and the nearby church. As a consequence the number of car parking spaces available during the trading hours is greatly reduced and this makes the centre less attractive for shoppers.
4. The size of the individual car parking bays is below standard so that the actual number of cars that can park is considerably less than the stated number of spaces.
5. Within the past 10 years two new shopping centres have opened in the Cork area i.e. Douglas Court and Merchants Quay and this increased competition has adversely affected trading in Wilton Shopping Centre.
6. Sunday trading by Dunnes Stores has also resulted in the loss of customers. Traders in Wilton have limited trading hours only i.e. restricted to 60 hours per week.
7. Over the years one of the entrance routes to the car park has been subject to flooding from time to time and nothing has been done to address this problem. Last year the entrance was closed for over 20 days.
8. Whilst only a number of traders have lodged appeals to the Tribunal this should not be interpreted as an indication that those who have not appealed consider the new assessments to be fair and reasonable. Those who have appealed did so following a meeting of the traders association at which it was decided that some traders should appeal to see what the outcome would be.
9. Most of the units in the centre are family businesses which find it difficult to compete with the major stores which now sell an increasing range of merchandise. Not only that but a number of units are in direct competition with each other and for example there are now five restaurants in Wilton which is too many for a centre of its size.
10. In 1989 a number of the units were first valued and as a result of the 1994 revision these assessments have now been more than doubled. For example unit 13.14/C has been increased from £18 to £48. An increase of this magnitude in a relatively short period is hard to comprehend.
11. Competition from other centres and within the centre itself has greatly increased in recent years and as a consequence the family traders are coming under pressure and find it difficult to meet outgoings. In a number of instances profit margins are already tight and with the increase in rates these will be severely affected.

The respondent's contentions:

1. For the respondent Mr. Dineen did not dispute the existence of the matters about which the appellants complained although he indicated he considered that some were not so severe in effect as the appellants indicated.
2. Wilton Shopping Centre attracts 75,000 shoppers per week as against 50,000 and 55,000 per week in the Douglas Shopping Centre and Douglas Court Centre respectively.
3. The centre has 725 car parking spaces and seems to be always nearly full. Whilst he accepted that a substantial number of spaces were occupied by staff within the centre and visitors to the hospital the shortage of parking spaces was an indication of the business activity within the centre.
4. In arriving at the valuations of the subject units he had regard to the rents following the 1989 review and had applied a reduction factor of some 29% in each instance to arrive at a net annual value as at November 1988. In some instances the figure so determined was lower than the rent passing at that time.

Determination:

Subject to the general rule of *rebus sic stantibus* the net annual value of a hereditament is to be determined in accordance with Section 11 of the Valuation Act 1852 as amended by Section 5 of the Valuation Act 1986. This is the statutory basis upon which the Commissioner of Valuation values those hereditaments listed for quarterly revision and first appeal. It is also the basis for decisions handed down by this Tribunal.

Following the introduction of the 1986 Act the Valuation Office carried out extensive research in order to establish the relationship between net annual value and rateable valuation. As a result of the exercise carried out in the cork County Borough area the conclusion was that rateable valuation was equivalent to 0.63% of net annual value as at November 1988. Based on this finding a number of valuations have since been carried out and a tone of the list established which now permits those properties which are subject to revision to be valued on a uniform basis as envisaged in the Valuation Acts. Obviously there may exist within the Valuation List anomalies as between those properties which have been subject to recent revision and those which have not. Unfortunately, there is little that can be done to remedy this anomalous situation short of a general revaluation. Nonetheless no matter how imperfect the system may now be it is immeasurably more equitable than that which pertained prior to the introduction of the 1986 Act.

This Tribunal considers it important to state the situation that exists at present in the rating system and the statutory framework within which the Tribunal must operate and arrive at its decisions. In regard to these particular appeals it is apparent that the Local Authority listed the entire of Wilton Shopping Centre for revision and the revising valuer valued each unit in accordance with his interpretation of Section 11 of the 1852 Act as amended by Section 5 of the 1986 Act. At first appeal stage Mr. Dineen applied a 5% reduction right across the board and it is against these determinations that the appeals before the Tribunal now lie.

Each of the appellants presented their cases in a full, fair and honest manner and in a way much appreciated by the Tribunal and so too did Mr. Dineen. The Tribunal has carefully considered all the evidence and argument adduced by the parties and makes the following findings:

1. Mr. Dineen in arriving at his opinion of net annual value in accordance with the provisions of Section 11 of the 1852 Act as amended by Section 5 of the 1986 Act employed proper valuation procedures in looking first at the rents payable in each instance.
2. Mr. Dineen in applying a reduction of some 29% to the 1989 rents in order to arrive at net annual value as at November 1988 was fair and equitable in his approach. No evidence was adduced to indicate that the figures so determined were contrary to the tone of the list in the Cork area established by revisions carried out after the implementation of the 1986 Valuation Act.
3. Having arrived at the net annual value of each of the five hereditaments Mr. Dineen was correct in taking 0.63% of the figures so determined as being the proper rateable valuation in each instance.

The function of this Tribunal is an appellate one and is one governed by the Valuation Acts. Whilst the appellants presented their cases in an admirable fashion, they did not adduce any evidence to show that Mr. Dineen had not applied proper valuation procedures or that the individual assessments were not determined in accordance with the Valuation Acts.

Accordingly, therefore, the Tribunal affirms the valuation of each of the hereditaments as they presently appear in the Valuation List.

