

Appeal No. VA95/3/019

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

Joseph O'Donovan

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Ref: 8Bd/1, Wilton Road, Ward: Bishopstown, County Borough of Cork
Quantum - Zoning method, quantum allowance

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Fred Devlin

FRICS.ACI Arb.

Marie Connellan

Solicitor

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

By Notice of Appeal dated the 31st day of August, 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £125 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the valuation is excessive and inequitable and bad in law."

The Property:

The subject premises comprises a delicatessen and off licence, a newspaper shop and an in-store bakery and lotto agency. The building was renovated in 1993 and is finished with tiled floor, suspended acoustic ceiling and automatic sliding door. It is brick fronted with double glazed aluminium windows, roller shutter door as main central door and inside a small lobby and automatic sliding door. Gross frontage is 26 feet and retail area is 1,660 square feet net. Behind the retail area is a kitchen, store and office and behind that is a rough corrugated iron roofed store. Over the kitchen office, via a narrow stairway access, is a small 212 square foot storage area. The premises is located beside the traffic lights at a major junction in Bishopstown called Looney's Cross. There is pull-up parking space in front for three to five cars.

Tenure:

The property is held freehold to Joseph O'Donovan.

Valuation History:

The combined properties were previously valued at £30 rateable valuation since 1976 revision. With the current conversion factor of net annual value/rateable valuation of .63% this corresponded to £1.00 per square foot. At 1994 revision premises was valued:

Subject -	V.O. Lot 8Bd/1	-	Shop	-	RV £125
	V.O. Lot 8Bd/2	-	Restaurant	-	RV £60

No change was made to the revision figure of £125 by the Commissioner of Valuation at First Appeal (determination given on the 31st July, 1995). It is against this determination of the Commissioner of Valuation in fixing the rateable valuation of £125 that an appeal lies to the Tribunal.

Written Submissions:

A written submission was received on the 8th March, 1996 from Mr. Des Killen, FRICS FSCS IRRV, a Fellow of the Chartered Surveyors in the Republic of Ireland and a Director of Donal O'Buachalla & Company Limited on behalf of the appellant.

Mr. Killen said that the subject premises is rectangular with a frontage of 7.6 metres and depth of 20.35 metres, floor area 154.66 metres squared (1,665 square feet). To the rear of the shop is a small store/office 14.91 square metres (161 square feet) and a covered yard of 18.94 square metres (204 square feet).

Mr. Killen assessed rateable valuation as follows:-

"Shop	1,665 sq.ft.	@	£7.50psf	=	£12,488
Stores	161 sq.ft.	@	£2.00psf	=	£ 322
	204 sq.ft.	@	£1.00psf	=	£ 201
<u>Lofted Store</u>				=	<u>£ 212</u>
			N.A.V.:	=	£13,223
			R.V:	=	£83.00"

Mr. Killen gave details of two comparisons which are set out below:-

1. V.O. Lot 8Bd/2

Rateable Valuation £60. 1994 phase 4 Appeal.

Adjoining premises. Net Annual Value £9,500.

Devalues:

950 sq.ft. @ £10psf

2. V.O. Lot 5a, Carragheen Road, Cork.

Rateable Valuation £48 (£33 commercial and £15 domestic).

1991 phase 4 First Appeal.

Shop	590 sq.ft.	@	£8.00psf	£4,720
Store	184 sq.ft.	@	£2.00psf	<u>£ 368</u>
			N.A.V.:	£5,008
			R.V.:	£33

A written submission was received on the 27th February, 1996 from Mr. Terry Dineen, District Valuer in the Valuation Office with over 20 years experience in the Cork area on behalf of the respondent.

In the written submission, Mr. Dineen described the subject premises, its location and tenure as set out above.

He set out his calculation of the rateable valuation on the subject premises as follows:-

"Shop:	Zone A:	516 sq.ft.	@	£20.00 =	£10,320
	Zone B:	516 sq.ft.	@	£10.00 =	£ 5,160
Remainder:	Zone C:	628 sq.ft.	@	£ 5.00 =	£ 3,140
Kitchen/Office, Store:		410 sq.ft.	@	£ 3.00 =	£ 1,230
First Floor (height 1.4m)		212 sq.ft.	@	£ 1.00 =	<u>£ 212</u>
				N.A.V.:	= £20,062
				R.V. @ .63%	= £126.00
				Say	= £125.00"

Mr. Dineen submitted two premises as comparisons in this subject appeal.

1. The adjoining restaurant rented by Joseph O'Donovan to Eugene Buckley t/a Bully's Restaurant. It is taken on a 35 year F.R.I. lease with 5-yearly rent reviews from early 1995 at £20,000 per annum with a twelve month rent free period to allow for

capital expenditure on fit out of shell unit. This rent seems to have superseded an earlier 2 year 9 month lease from 1st November, 1994 at £15,000 per annum. The size of the unit is 950 square feet with gross frontage of 14.5 feet.

2. **Abrakebabra, High Street, Wilton, Cork.** Held on a 20 year F.R.I. lease with 5-yearly rent reviews from December, 1994 at £27,000 per annum for 1,366 square feet (£20.00 per square foot). For 1988, less 20% - £21,600.

Devalues:

Zone A:	396 sq.ft.	@	£30.00	=	11,880]	
Zone B:	396 sq.ft.	@	£15.00	=	5,940]	£22,125
Remainder:	574 sq.ft.	@	£7.50	=	4,305]	

This rent is for a shell unit, i.e. before any fit out.

Mr. Dineen said that the existence of an off licence in the subject premises was not added for in the calculations. He said that it would add a premium for the following reasons:-

1. Supreme Court case *O'Rourke & Flanagan v. Grittar* reported in the Irish Times of 15th May, 1995. Extract attached to the written submission. This decision overturned existing practice where on extinguishing two on-licences an off licence was awarded even in a different locality. If this situation continues the number of off licences in existence cannot increase and values will explode, as happened with taxi licences in Dublin.
2. Previously to acquire off licences two on-licences had to be purchased, an example of the cost of these is two bought for the Cobh area in 1992 for £13,000 and £14,000 respectively. To these would be added, legal and acquisition costs, costs of court case to transfer licences and cost of fitting building to meet required standards.

3. Mr. Dineen said that the off licence business experienced strong demand during 1995 because of changing lifestyle patterns and drinking habits. Ref: Gunne's 1995 Review.

In summary, Mr. Dineen said that the rent on the adjoining unit, comparison 1, when reduced by 20% for 1988 gave a Zone A level of £30 per square foot. The restaurant rent in High Street, Wilton, comparison 2, when reduced by 20% for 1988 also gave a Zone A level of £30 per square foot. The net annual value applied to the subject is £20 per square foot for Zone A. This is before any addition for fit-out or off licence. On the evidence, Mr. Dineen concluded that a rateable valuation up to £175 could be supported on the subject.

Oral Hearing:

The oral hearing took place in Cork on the 21st day of March 1996. The appellant was represented by Mr. Desmond Killen, FRICS FSCS and the respondent was represented by Mr. Terry Dineen, a District Valuer with over 20 years experience in the Valuation Office.

Prior to the oral hearing Mr. Killen and Mr. Dineen forwarded written submissions to the Tribunal and by mutual consent these submissions were adopted by them as their evidence in chief given under oath.

At the outset of the hearing, Mr. Killen handed to the Tribunal photographs showing the subject property and the adjoining property Lot No. 8Bd2. In further oral evidence Mr. Killen traced the history of the hereditament and made the following observations.

1. The use of the zoning method was not appropriate in this instance.
2. Whilst the subject property had an off licence a hypothetical tenant would have regard to the fact that a number of other premises in the vicinity also had off licences viz. Wilton Shopping Centre, Dunnes Stores and Supervalu. Due to the proliferation of off licences no premium should be attached to it.
3. The subject hereditament is located at Looney's Cross which is a dangerous junction

subject to congestion throughout the working day. This makes parking difficult and the off street parking for 3 cars at the subject hereditament is inadequate.

4. Shops in non high street locations are usually valued on an overall rate per square foot basis with an allowance for quantum.
5. In arriving at his opinion of net annual value he had valued the subject property on an overall rate per square foot basis and in so doing had regard to the assessment on the adjoining property Lot No. 8Bd2 and Lot No. 5a Carrageen Road which was agreed by him at the 1991 First Appeal stage.

Mr. Dineen referred briefly to his written submission and made the following further observations by way of oral evidence.

1. The premises occupy an excellent location and is well placed to service passing traffic and pedestrians coming into Cork from the Curaheen Road and Bishopstown Road.
2. The zoning method of valuation is now generally used in urban locations and is more appropriate in this instance.
3. In arriving at his opinion of net annual value he had relied upon the rent and assessment of the adjoining premises and the Abrakebabra premises at High Street, Wilton. He agreed that the assessment in respect of the Abrakebabra premises was under appeal and said that the evidence in relation to this property was solely in regard to rent. He also agreed that he had been the appeal valuer in respect of the adjoining restaurant premises.

Determination:

In this appeal both valuers have relied principally upon the same comparison i.e. Lot No. 8Bd2 but yet arrive at markedly different opinions of net annual value i.e. £83 and £125 respectively. The Tribunal notes that there are some minor differences in the areas submitted and once again directs valuers to agree matters of fact well in advance of the oral hearing. The Tribunal also considers it timely to say that where there is a dispute between valuers as to the proper valuation method to be employed i.e. the zoning method or the overall rate per

square foot method, it would be helpful if both valuers prepared the valuation on both bases so as to enable the Tribunal to better compare the relative merits of the evidence.

The Tribunal notes once again that the zoning method used by the Valuation Office does not accord with that contained in the Code of Measuring Practice published jointly by the Society of Chartered Surveyors and the Irish Auctioneers and Valuers Institute. It would be helpful to the Tribunal if representatives of the Valuation Office and these professional bodies could come to a common understanding as to which method is the more appropriate for rating valuation purposes.

Having carefully considered all of the evidence and argument adduced the Tribunal makes the following findings.

1. The most helpful comparison is that of the adjoining premises and notes that both valuers are of a similar view.
2. The remaining evidence adduced is of limited assistance and the Tribunal attaches little weight to it.
3. As a general rule valuations carried out on a zoning basis or on an overall rate per square foot basis should not produce markedly different results unless the properties so valued differed substantially in size and configuration. In this instance both properties have similar depths but the subject property has a much larger frontage.
4. Mr. Killen in valuing the subject hereditament on an overall rate per square foot basis was not correct in making a 25% allowance for quantum by comparison to the adjoining restaurant premises.
5. Mr. Dineen in applying a Zone A rate of £20 to the subject property was incorrect in so doing particularly since the adjoining property was valued at a Zone A rate of approximately £19 according to his own evidence.

Having regard to the above the Tribunal determines the rateable value of the subject hereditament to be £113 calculated as set out hereunder.

Valuation A

Overall rate per square foot basis:

Adjoining premises valued at £10 psf

Shop area - 1,665 sq.ft. @ £10 = £16,650

Remainder of accommodation say: = £ 1,000

Net annual value **£17,650**

Valuation B

Zoning Method:

The Tribunal has used the areas submitted by Mr. Killen in preference to those submitted by Mr. Dineen as Mr. Killen sets down in his submission the mathematical calculations as to how he arrived at the area of each zone.

Zone A 491 sq.ft. @ £19 = £ 9,329

Zone B 491 sq.ft. @ £9.50 = £ 4,665

Remainder 683 sq.ft. @ £4.75 = £ 3,244

Remainder of area say = £ 1,000

£18,238

Average figure say = £18,000

Rateable valuation @ 0.63% = **£113.**