

Appeal No. VA96/2/031

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

Kerlin Gallery

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Gallery (1st & 2nd Floor) at Map Ref: 38a, Dawson Street, Ward: Mansion House, County Borough of Dublin

Quantum - Passing rent

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Barry Smyth - FRICS.FSCS

Member

Brid Mimmagh - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF MAY, 1997

By Notice of Appeal dated the 22nd April, 1996 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £85 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the RV £85 is excessive, inequitable and bad in law, having regard to the Valuation Acts and on other grounds also".

The relevant valuation history is that the subject property was revised during the course of the 1995/3 revision and the rateable valuation was assessed at £85. An appeal was lodged by Hennigan & Company against this assessment on 5th September, 1995.

Following negotiations with the appeal valuer, the valuation remained unchanged, with the decision on the appeal being published on 25th March, 1996.

The property consists of a new purpose built picture gallery on the first and second floor of a mid terraced three storey building. The property is located on the east side of Anne's Lane, a cul-de-sac off South Anne Street. The first floor includes an office, workshop, store, kitchenette and toilets with an open plan gallery on the second floor.

The agreed accommodation comprises the following floor areas:-

First Floor	-	1,312 sq.ft.
Second Floor	-	1,502 sq.ft.

A written submission prepared by Mr. Joseph Bardon, Dip. Environ. Econ., ARICS ASCS, of Hennigan & Company on behalf of the appellant was received by the Tribunal on 25th October, 1996.

Mr. Bardon's written submission contained a list of factors which in his opinion had a negative impact on the rental value of the property:-

- (a) The property had an inferior location and was essentially a service laneway to properties adjoining it.
- (b) There was a problem with vehicles particularly commercial vehicles parking illegally on the laneway and obstructing it.
- (c) Again a number of restaurants which backed on to the laneway placed garbage for collection on the laneway and this presented an unattractive prospect in the environs of the gallery.
- (d) The building had no profile whatsoever and there is no passing pedestrian traffic.

(e) There is no lift servicing the upper floors and the gallery accommodation is accessed via a steep flight of steps leading to the first floor. This creates difficulties in bringing pictures for exhibition onto the premises.

Mr. Bardon presented a copy lease with respect to the subject property and a copy side letter referring to the lease with his written submission.

The copy lease executed on 17th October, 1996 describes "On the Wall Gallery (Dublin) Limited t/a The Kerlin Gallery" as the lessee. The rent reserved in the lease amounted to £20,000 per annum commencing on 1st October, 1994 for a period of twenty five years with five year reviews. The copy side letter from the landlord dated 5th September, 1996 refers to the aforesaid lease and states that rent payable from 1st November, 1994 to 31st October, 1999 will amount to £15,000 per annum and that the sum of £5,000 represents a repayment of the capital contribution.

In his written submission Mr. Bardon's opinion was that a fair rateable valuation would be £75. This was assessed as follows:-

First Floor:

Office	352 sq.ft.	@	£4.50 =	£1,584
Workshops, etc.	960 sq.ft.	@	£4.50 =	£4,320

Second Floor:

Gallery	1,502 sq.ft.	@	£4.00 =	£6,008
			NAV =	£11,912
				<u>x 0.63%</u>
				£75.05
		Say		£75.00

Mr. Bardon's written submission did not contain any schedule of comparisons.

A written submission prepared by Mr. Thomas Cuddihy on behalf of the respondent was received by the Tribunal on 23rd October, 1996. Mr. Cuddihy is a District Valuer with 29

years experience in the Valuation Office. The written submission contained *inter alia* a description of the property, details of the tenure and the valuation history.

In Mr. Cuddihy's opinion a fair rateable valuation was £85. The basis for the valuation was as follows:-

First Floor	1,312 sq.ft.	@	£5.00	=	£6,560
Second Floor	1,502 sq.ft.	@	£4.50	=	<u>£6,759</u>
			NAV	=	£13,319
			Say		£13,500
					<u>x 0.63%</u>
					£85.00

Mr. Cuddihy's written submission contained a schedule of two comparisons.

The oral hearing took place in Dublin on the 4th day of November, 1996.

Mr. Bardon in his sworn testimony to the Tribunal adopted his written submission as his evidence. In further evidence Mr. Bardon again referred to the negative factors affecting the rental value of the premises. Mr. Bardon referred to the side letter dated 5th September, 1996 and stated that the rent was £15,000 per annum and the payment of £5,000 was the repayment of a capital contribution of £50,000 to fitting out the premises incurred by the landlord. This had been agreed by the landlord and the tenant, as the latter could not afford the cost of conversion and fitting out the gallery. Mr. Bardon referred to the conflicting ways of valuing a gallery. Should it be valued as retail use, office use, or workshop use?

Mr. Bardon was asked in cross examination by Mr. Cuddihy how much of the £50,000 spent by the landlord in fitting out the property did he take into account in arriving at his rental value. Mr. Bardon stated he had not quantified this. He used the analogy of valuing a shop

where he stated that the Valuation Office did not take into account the fitting out of the shop in arriving at a valuation.

It was put to Mr. Bardon by Mr. Cuddihy that the fit-out here included timber floors, doors and stairs, dry lined and smooth plastered walls and ceilings, painting and decoration, installation of partitions, high specification lighting system, shelving and racking. Mr. Cuddihy also put to Mr. Bardon that the fit-out by the landlord included the provision of toilets. Mr. Cuddihy further put it to Mr. Bardon that the expenditure on fit-out by the landlord in accordance with the Valuation Office rules amounted to the provision of shelving and racking amounting to a few thousand pounds.

Mr. Bardon was cross examined as to what allowance he had made for time elapsed between 1988 and 1994 with respect to the rent payable under the lease. He stated that he had not used any standard index to arrive at this. There were many indices and he considered they produced conflicting results. He had used his professional opinion. He had taken one-third of the £15,000 rent and he had allowed £1,900 for the £50,000 capital expenditure in arriving at his opinion of the rental value for the property. Mr. Bardon then cited the Tribunal's decision in *VA94/2/036 - Diarmuid Brereton t/a Lorcan Brereton Limited v. Commissioner of Valuation* as authority for the proposition that the passing rent is the best evidence of NAV.

Mr. Cuddihy in his sworn testimony adopted his written submission as his evidence to the Tribunal. He contended that the passing rent for the property was £20,000 per annum. Mr. Cuddihy reiterated the point he had already put to Mr. Bardon that the overwhelming part of the expenditure of £50,000 by the landlord was with respect to an integral part of the property and that this expenditure enhanced the capital value of the property. He further pointed out that Section 3.30 of the lease specified that the landlord's fixtures in the nature of constructions should be yielded up by the tenant at the expiration of the lease.

Mr. Cuddihy stated that almost all the £5,000 capital repayment per annum by the tenant had to be allowed in arriving at rent for the property. He contended that the passing rent was

£20,000. In arriving at an NAV of £13,500 he had made an adjustment for time elapsed from 1994 back to 1988 of 30%. The Consumer Price Index for the same period was in the region of 19%.

Mr. Cuddihy stated that he had made allowance for the location of the subject property. He further stated that his comparisons were in the same locality. He stated that the nature of the building is the most important aspect of a gallery. Clients knew where galleries were located and what was required was a building to show off the paintings. This building had an exceptionally high display space in the upper floor which was ideal for the display of paintings. Mr. Cuddihy pointed out that Mr. Bardon in not providing comparisons had reduced the strength of the criticisms contained in the appellants case. He pointed out that his comparison, namely the Taylor Art Gallery had not got an ideal display height.

In the course of exchanges between Mr. Bardon and Mr. Cuddihy it emerged that at the first appeal stage a rent of £20,000 was treated by both the appellant and the respondent as the appropriate rent pertaining to the subject property. After the appeal the tenant had mentioned the arrangement contained in the side letter dated 5th September, 1996 to Mr. Bardon and he had proceeded to use that letter in the appeal to the Tribunal. Mr. Cuddihy did not raise any objection to the use by the appellant of a ground of appeal to the Tribunal which had not been used by the appellant at First Appeal stage. The Tribunal has decided in the Ebeltoft case, ***VA88/165 - Ebeltoft Limited t/a "Hunter's" Licensed Premises v. Commissioner of Valuation*** that a ground of appeal not advanced at first appeal stage cannot be used at an appeal to the Tribunal.

The Tribunal, for reasons which will be stated hereafter, considers it unnecessary to make any ruling as to the application of the Ebeltoft decision to this case.

The Tribunal considers that the arguments advanced by the respondent in support of a passing rent of £20,000 in October, 1994 are persuasive in as much that the capital expenditure of £50,000 by the landlord on the subject property was to a large extent essential to and integral

to the property. Therefore the £5,000 per annum capital repayment by the tenant must be treated as part of the passing rent.

The Tribunal also considers that the respondent's allowance of a 30% reduction for time elapsed between 1994 and 1988 with respect to the passing rent, given that the Consumer Price Index increased by 19% in the same period, is more than adequate. The Tribunal finds that the respondent's arguments about the relative unimportance of location with respect to art galleries and the particular suitability of the subject property for the display of paintings is persuasive. Finally the Tribunal finds the respondent's two comparisons useful and appropriate in determining the rateable valuation in this case, particularly given the fact that the appellant has provided no comparisons.

Accordingly, the Tribunal dismisses the appellants appeal herein and affirms the valuation of the Commissioner of Valuation.

The Tribunal therefore determines the rateable valuation of the subject property to be £85.