

Appeal No. VA98/3/092

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

Kilcarra Yarns Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Factory at Map Reference 7D8Ba, Townland: Kilcar, ED: Kilcar, RD: Glenties, Co.
Donegal
Quantum

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Marie Connellan - Solicitor

Member

Barry Smyth - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF OCTOBER, 1999

By Notice of Appeal dated 5 August 1998, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £320 on the above described hereditament.

Eight grounds of Appeal were set out in a note attached to the Notice of Appeal as follows:

"(a) The valuation is excessive and inequitable and/or;

(b) The valuation is bad in law and/or;

(c) No account has been taken of the Net Annual Value in determining the rateable valuation assessment of this hereditament and/or;

- (d) No account has been taken of the relevant factor which gives uniform rateable valuation which is applicable to this rating authority's functional area and/or;
- (e) Not valued in accordance with the Valuation Acts and related legislation and/or;
- (f) Section 3, subsection 3 of the Valuation Act 1988, has not been complied with and/or;
- (g) Section 3, subsection 4(a) of the Valuation Act 1988, has not been complied with and/or;
- (h) Section 3, subsection 4(b) of the Valuation Act 1988, has not been complied with.

A written submission prepared by Mr. Patrick McCarroll ARICS FIAVI ASCS on behalf of the appellant was received by the Tribunal on the 20th day of September 1999.

The written submission stated that the valuation of the subject was based on the passing rent, which was set out as follows;

1977 to 1987	-	£22,298 p.a.
1988 to 30/09/98	-	£20,745 p.a.
01/10/98 to 30/09/08	-	£32,298 p.a.

The reduction in the rent from £22,298 to £20,745 reflected the fact that the floor area occupied by Kilcarra Yarns Ltd. was reduced according to the written submission.

The written submission set out the valuation of the subject as follows;

Valuation

Office	3,400 sq.ft. @ £1.00	£ 3,400
Production/storage	17,789 sq.ft. @ £0.50	£ 8,894
Ground floor area under 1st flr.	11,600 sq.ft. @ £0.40	£ 4,640
1st Flr.	11,600 sq.ft. @ £0.30	<u>£ 3,480</u>
		£20,414
	Say	£20,745
	@ 0.5%	£103.72
	Say	£104.00
	Add for boiler	£ 12.50
	H.P.	£ 20.00
	Tanks	<u>£ 6.00</u>
	£142.50 <i>Say</i>	£143.00

A written submission prepared by Mr. Christopher Hicks on behalf of the respondent was received by the Tribunal on 14th day of September 1999.

The written submission set out the details of the valuation as follows;

Valuation		
Offices & factory shop	3,400 sq.ft. @ £2.00	£ 6,800
Grd. Flr. production /stores	29,389 sq.ft. @ £1.35	£39,675
1st Flr. production/stores	11,600 sq.ft @ £0.80	<u>£ 9,280</u>
	N.A.V.	£55,755
	R.V. @ 0.5%	£ 279
	5,000 lb per hour boiler @ £2.50 per 1,000	£ 13
	Motive Power (agreed)	£ 20
	Tank (agreed)	£ 6
	TOTAL	£ 318
	Say R.V.	£ 320

The Respondent's valuation was supported by four comparisons. Details of these comparisons are annexed to this judgment as **Appendix I**.

The oral hearing took place at the Courthouse, Letterkenny, on the 1st day of October 1999. Mr. Patrick McCarroll represented the appellant and Mr. Christopher Hicks, Appeal Valuer, represented the respondent.

In his sworn testimony Mr. McCarroll adopted his written submission as his evidence to the Tribunal.

Mr. McCarroll said that his client Mr. Brendan McShane was present and would be willing as a witness to clarify any issue.

In his testimony Mr. McCarroll described the subject property. It was located in a remote and rural area being part of an industrial estate managed by Udaras na Gaeltachta.

Mr. McCarroll then put in evidence an additional document, namely a fax message from Udaras na Gaeltachta to himself. Mr. Hicks did not object to this document being put in evidence. A copy of this document is annexed to this judgment as **Appendix II**. The effect

of this document was to amend the details of the rent paid by the appellant as set out in the appellant's written submission.

Mr. McCarroll said he was not altering his valuation of the subject on foot of the amended details of the rent paid. He said the passing rent was the best evidence for establishing an N.A.V. for the subject. Finally Mr. McCarroll said he was in agreement with the Valuation Office's assessment of the valuation for the boiler, motive power, and tank at the subject.

Under cross-examination by Mr. Hicks, Mr. McCarroll withdrew items "f", "g", and "h" in his grounds of appeal.

Under further cross examination Mr. McCarroll stated that the appeal was based on the contention that the valuation assessed by the respondent was excessive, as it does not reflect the N.A.V. as required by the valuation statutes.

In further replies Mr. McCarroll stated he had not informed the Valuation Office of the passing rent at the appeal stage even though he had been requested in a letter dated 27th day of January 1998 from Mr. Hicks to provide such information.

Again in further replies Mr. McCarroll stated that he had not disclosed the passing rent at revision stage and had based his case at that stage on comparisons.

In answer to questions by the Tribunal Mr. McCarroll said that the subject property was part two storey and part one storey. In the two storey building the ground floor had 5.5 metres headroom and the first floor had headroom of 3.3 metres.

In further replies to questions from the Tribunal Mr. McCarroll said that the lease for the subject contained no mechanism for rent reviews. Again Mr. McCarroll said that the tenant had carried out improvements in the property, which were not reflected in the rent.

In his sworn testimony Mr. Hicks adopted his written submission as his evidence to the Tribunal. He said the revision date for the subject was 4th day of April 1997 and the Commissioner of Valuation's decision on the appeal was given on the 6th day of July 1998.

Mr. Hicks said he had telephoned and written to Mr. McCarroll to ascertain the exact grounds of appeal. There had been no response by Mr. McCarroll to his letter. Therefore Mr. Hicks said he had addressed the appeal on the grounds which the appellant had advanced at the revision stage, namely the use of comparative evidence. Neither of the comparisons advanced at that stage by the appellant showed a passing rent.

In arriving at his valuation Mr. Hicks said he had considered the appellant's two comparisons at revision stage and other more relevant comparisons. Mr. Hicks said he considered the appellants two comparisons as being of little use to him.

Mr. Hicks then dealt in detail with the four comparisons contained in his written submission.

Nena Models Ltd. (Castlefinn) was located near one of Mr. McCarroll's comparisons (Nena Models Ltd., Grahamsland). This comparison (Nena Models Ltd., Castlefinn) was a standard industrial building constructed in 1980. This property was comparable to the subject and the analysis of its valuation had been agreed.

McCarters, Raphoe was a good quality standard I.D.A. factory on landscaped grounds. Again the analysis of the valuation there had been agreed.

Herbert Plum, Ballymoon is located in a rural area close to Kilcar. The subject is located in the town of Kilcar.

Fruit of the Loom, Buncrana was being advanced to show a first floor production area at £1.00 p.s.f. The type of production being carried on at the first floor Buncrana was similar to the production carried on at the subject. Mr. Hicks said that higher rents could be obtained in Buncrana in comparison to Kilcar. However due to the size of the production area at Buncrana there had been a quantum allowance. Therefore on balance Mr. Hicks said his value of £0.80 p.s.f. for first floor production area in the subject was reasonable.

In further testimony Mr. Hicks said he had first learned of the appellant's rental evidence on the 27th day of September 1999.

Mr. Hicks said Udaras na Gaeltachta rents were unusual. The existence of ten-year reviews in the lease details given to the Tribunal showed this. Mr. Hicks said the rental details of the subject should have been shown to the Commissioner of Valuation. The matter could not be cured by an adjournment of the Tribunal hearing, as the effect of this would be to usurp the functions of the Commissioner. Finally Mr. Hicks said the lease document had not been put before the Tribunal.

At this stage in the proceedings, Mr. Hicks by leave of the Tribunal, cross-examined Mr. McCarroll on the details of the lease which grounded the appellant's valuation.

In reply Mr. McCarroll said he had not read the lease and did not have a copy of it in his possession. Mr. McCarroll said the only information he had about the lease was contained in a fax message document, which he had put in evidence at the hearing.

In further cross-examination Mr. Hicks asked Mr. McCarroll whether there were any terms in the lease which made the rent so low. Mr. McCarroll replied that this might be so. Mr. McCarroll said, however, that in his experience Udaras na Gaeltachta demanded a market rent for industrial premises.

Under cross-examination by Mr. McCarroll Mr. Hicks did not agree that his first comparison was better located than the subject. Mr. Hicks said that outside Letterkenny there is not much difference in locations in Co. Donegal.

Mr. McCarroll put it to Mr. Hicks that the Fruit of the Loom property in Buncrana was superior in standard to the subject. In reply Mr. Hicks said there was a wide variety of buildings in the complex.

At the conclusion of his cross-examination Mr. McCarroll said he was not calling Mr. Brendan McShane to give evidence.

Finally in reply to a question by the Tribunal Mr. Hicks said none of his four comparisons had rateable valuations that were based on a passing rent.

The Tribunal has considered the written submissions and the evidence produced by the appellant and the respondent at the oral hearing.

The Tribunal firstly wishes to draw attention to the appellant's grounds of appeal, eight grounds being listed in the Notice of Appeal. In the course of the appeal the appellant withdrew three grounds of appeal and he further admitted under cross-examination that the net point in his appeal was that the valuation was excessive.

The Tribunal considers it is necessary to draw the attention of the appellant to the law as to the grounds of appeal submitted to the Tribunal. Section 3(5) b of the Valuation Act 1988 states:

“the notice shall contain particulars of the valuation as entered in the Valuation Lists and a statement of the specific grounds for the appeal”.

Again the issue of the grounds of appeal was dealt with by the Tribunal in the *Ebeltoft Ltd.* case – VA88/165 at page four of the judgment as follows;

“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”.

In this case the appellant submitted a blanket set of grounds of appeal which could be reduced to one net point. The Tribunal considers that the appellant has in his notice of appeal adopted an unsatisfactory approach in not abiding by the statutory requirement to make his grounds of appeal specific.

Furthermore the Tribunal has stated in its decisions that the grounds of appeal and the case made at first appeal are the only acceptable grounds of appeal and case that can be made on appeal to the Tribunal. Only in very exceptional cases can new grounds and a new case to that made at appeal stage be advanced at the Tribunal hearing.

In this case Mr. McCarroll has based his appeal on a passing rent. He has admitted during the hearing that this passing rent was not put before the revision valuer or the appeal valuer. Mr. McCarroll did not advance to the Tribunal any exceptional grounds as a basis for the new case he made at the Tribunal hearing. The Tribunal therefore again considers this approach of the appellant to be unsatisfactory.

As to the issue of the quantum of valuation the Tribunal considers that Mr. Hicks in his cross-examination raised doubts about the rental evidence put before the Tribunal by the appellant. This rental evidence was contained in the fax message document.

Mr. McCarroll said he had not read the lease document and he was unable to put a copy of the lease document in evidence at the hearing. Again he was unwilling to call his client, Mr. Brendan McShane, to clarify the details of the lease for the subject property.

The Tribunal, therefore, finds that it cannot rely on the appellant's evidence in this case. In the circumstances, therefore, the Tribunal is obliged to rely on the evidence adduced by the respondent.

The Tribunal on the basis of that evidence affirms the decision of the Commissioner of Valuation and determines the rateable valuation of the subject hereditament to be £320.00.