

Appeal No. VA12/3/006

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Mile Height Caffé One Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2210701, Retail Warehouse, Restaurant/Cafe at Lot No.1H Unit 1, Manor East, Tralee Rural, Tralee, County Kerry.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Tony Taaffe - Solicitor

Member

Rory Hanniffy - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF JANUARY, 2013

By Notice of Appeal received on the 16th day of July, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €72 on the above described relevant property.

The grounds of appeal are set out in a schedule accompanying the Notice of Appeal, a copy of which is attached at Appendix 1 to this judgment.

This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 3rd day of September, 2012. At the hearing the appellant was represented by Mr. Michael Kelly (Solicitor Non Practising) who was at once a Director of the appellant company and the landlord/developer of the property concerned. Mr. Alan Sweeney, BSc (Property Valuation and Management), a Valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation.

In accordance with the rules of the Tribunal the parties were afforded an opportunity of informing the Tribunal and exchanging a précis of the evidence and submissions they proposed to adduce at the oral hearing. Mr. Kelly chose not to avail of this opportunity and did not expand beyond the grounds of appeal stated in the notice of appeal document received by the Tribunal on the 19th July, 2012. Mr. Sweeney, however, forwarded a copy of his précis of evidence and submissions he proposed to adduce at the oral hearing to the Tribunal and Mr. Kelly which was subsequently received in evidence under oath at the oral hearing. From the evidence so tendered and additional information received at the hearing the following facts relevant and material to the appeal were found to be not in dispute or are so found.

The Property Concerned

The property concerned is an end of terrace unit in what was formerly a showroom and warehouse building which has recently been upgraded and refurbished to provide three retail units at ground floor level and additional accommodation overhead. The subject premises are situated in a well-established commercial development location on the eastern fringes of Tralee just off the N21 at the Clashleane roundabout. The surrounding area generally is referred to as Manor West and the subject property is located in the Manor Park development adjacent to the Mile Height development, which are mixed-use schemes providing a number of retail warehouse outlets and other conventional warehouse units. The Manor West Retail Park which is anchored by a tenant and several other well known traders is located close by, but unlike the Manor Park and Mile Height developments it is located within the Tralee Urban district council rating authority area.

It is agreed that the property concerned which is currently occupied as a coffee/café outlet provides the following agreed accommodation measured on a gross internal area basis:

Coffee/Café 234.21 sq. metres

It is common case that the premises occupy a prominent location at the entrance to the Manor Park development and are highly visible from the local road network. It is also common case that the premises are well fitted out for their current use and provide an extensive dining area with ancillary serving area, kitchen, food preparation area, staff rooms and customer toilets.

Tenure

The premises are occupied under the terms and conditions of a 4 years 11 month lease arrangement from May, 2011 at a yearly rent of €40,000 excluding VAT. It is agreed that the lease is one between connected parties.

The Appellant's Evidence

Mr. Kelly, having taken the oath, outlined the history of the Manor Park development which was formerly premises occupied by Heat Merchants who vacated the premises in 2008. After planning permission and other statutory consents were obtained the premises were redeveloped to provide retail warehouse units at ground floor level and additional space overhead. Unit 1, being the subject property, operates as a coffee shop/café under a franchise arrangement. Mr. Sweeney said that the use of the premises as a restaurant was included under the planning permission but that it was difficult to distinguish what was the difference between a restaurant user and a coffee shop/café user. Unit 2, Mr. Sweeney said, was a furniture sales outlet with retaining space at ground floor and first floor levels. The valuation of this unit was subject to and is yet an undetermined appeal to this Tribunal. Unit 3 was a ground floor retail warehouse and Unit 4 overhead was in use as a hairdressing and beauty salon.

Mr. Kelly said that in his opinion the assessment of all the units in the development was excessive but acknowledged that the only valuations subject to challenge either at representation stage or appeal stage were in respect of the subject property and Unit 2. Mr. Kelly acknowledged that as the landlord he could have challenged the assessments of Units 3 and 4 but did not do so due to inadvertence. Mr. Kelly said that following research in the area it was clear that the established valuation level for retail warehouse buildings and other similar uses such as car showrooms in the vicinity was in the order of €47.83 per sq. metre.

In the circumstances he considered the valuation of the subject property should be assessed on this basis thus giving the rateable valuation in the order of €2.55.

In support of his opinion of rateable valuation Mr. Kelly drew the Tribunal's attention to Mr. Sweeney's comparisons nos. 3, 4, 5 & 6 wherein the retail warehouses and car showrooms were each valued at €47.83 per sq. metre. When it was pointed out to him by the Tribunal that all the retail warehouse were substantially larger than the subject property or formed part of a large complex of buildings, Mr. Kelly acknowledged that this was so. He also indicated that he was aware of the concept of quantum in valuation and letting practice and said that in today's market rents on a square metre basis were roughly the same irregardless of the size of the unit.

Under-cross examination by Mr. Sweeney, Mr. Kelly said he had no knowledge of the retail valuation of the properties before they were redeveloped.

In a final comment, Mr. Kelly drew the Tribunal's attention to the fact that a new by-pass road has been constructed about 1.5 metres to the east of the property concerned and expressed the view that this could, when completed, have an adverse effect on trading in the Manor Park area.

The Respondent's Evidence

Mr. Sweeney, having taken the oath, adopted his written précis which had previously been received by the Tribunal and the appellant as being his evidence-in-chief.

In his evidence Mr. Sweeney contended that the proper valuation of the property concerned, in accordance with Section 49(1) of the Valuation Act, 2001, was as set out below:-

Retail Warehouse	234.21 sq. metres	@ €1.50 per sq. metre	€14,404
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Rateable Valuation @ 0.5% = Say €72.00

In support of his opinion of net annual value Mr. Sweeney introduced his comparisons, details of which are set out in Appendix 2 attached to this judgment.

In his evidence Mr. Sweeney said that in arriving at his opinion of net annual value of the property concerned he had regard to the following factors which he said were of importance.

- Its prominent location next to a busy junction adjacent to the main access road to Manor West Retail Park; Its high profile at the junction to the Manor Park development;
- The fact that there are a number of retail warehouse developments in the vicinity which creates a strong customer base for a café/coffee shop property.
- The fact that the property concerned was reconstructed and fitted out to a very high standard and provided excellent café/coffee shop accommodation.

Mr. Sweeney said that there were no properties of a similar size and use in the immediate vicinity. In this regard his comparisons 3, 4, 5 & 6 were either considerably larger (Comparison Nos. 3 & 4) or formed part of a complex of buildings (Comparison Nos. 5 & 6). Accordingly, he is of the view that his decision to value the subject property at €61.50 per sq. metre was fair in order to reflect this excellent location, superior fit-out and finish and its relatively small area compared to comparisons 3, 4, 5 & 6. Mr. Sweeney also looked to the fact that the showroom area in the former Heat Merchants warehouse building was valued at €47.51 per square metre.

Under cross-examination Mr. Sweeney confirmed that no representations have been received in respect of Units 3 and 4 but said that he had informal conversation with the tenants of these units. He also confirmed that Unit 2 (i.e. a furniture shop at ground and first floor levels) was subject to an appeal to this Tribunal. In relation to the Soundstore premises, Mr. Sweeney confirmed that this unit had been recently valued in 2006 and revised in 2011 by virtue of the fact that it had been extended.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and finds as follows:-

1. This appeal arises out of a request for a revision of valuation in accordance with Section 27 of the Valuation Act, 2001 occasioned by the redevelopment of the former Heat Merchant premises.

2. The statutory basis for valuing property on foot of a request for a revision is contained in Section 49 of the Valuation Act, 2001 which states as follows:

—(1) *If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28 (4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.*

(2) *For the purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then—*

(a) *in case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48 (1), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20,*

b) *in case an existing valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48 (1) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988, but the amount estimated by those means to be the property's net annual value shall, in so far as it is reasonably practicable, be adjusted so that the amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act.*

3. It is common case that the property concerned occupies a high profile location in an established retail warehouse/warehouse location.

4. It is also common case that the redevelopment of the former Heat Merchant premises has resulted in the provision of a number of well finished units at ground and first floor

levels. It is further agreed that the property concerned comprises café/coffee shop space and ancillary accommodation.

5. Having regard to the partial evidence (Comparisons 3 & 4) introduced by Mr. Sweeney and the evidence of Mr. Kelly the Tribunal finds that the prevailing tone of the list for large retail warehouse premises in the vicinity of the property concerned is €47.83 per sq. metre. Mr. Sweeney's comparisons 5 & 6 indicate that showroom space in large mixed-use premises is valued at €47.83 per sq. metre and €54.70 per sq. metre.
6. The Kerry Hair supplies premises (Unit 3 & Comparison no.1) is located in the same development as the property concerned and was valued at the same time on the following basis: 150.70 sq. metres @ €61.50. This valuation was now the subject of representations or a Section 30 appeal to the Commissioner. It is consequently an unchallenged valuation in the list and must be accorded some weight.
7. Mr. Sweeney said that in valuing the property concerned he was of the opinion that the sq. metre rate of €61.50 attributed to the property concerned reflected amongst other factors the difference in size between the subject property and the Soundstore premises (comparison no. 4) and the World of Wonder premises (comparison no. 3) which are both valued at €47.00 and €83.00 per sq. metre respectively - an uplift of just over 28.5%. Mr. Sweeney did not specify what portion of this uplift was due to the quantum element or other factors which he considered to be of some importance such as the better location of the property concerned and its higher quality of fit-out and finish.
8. Having considered all of the comparative evidence the Tribunal is of the opinion that Mr. Sweeney overestimated the added value caused by the better location and fit-out of the subject property and the difference in the area. Accordingly, therefore, the Tribunal has come to the conclusion that €61.50 per sq. metre is excessive for the subject property, having regard to the prevailing levels in the vicinity. The Tribunal also notes that the Kerry Hair Supplies premises which is approximately 35% smaller than the property concerned is also valued at €61.50 per sq. metre. It is also noted that this valuation was not subject to review either at representation or appeal stage.

Determination

Having regard to the foregoing the Tribunal determines that the net annual value of this property concerned is as set out below:-

Coffee Shop/Café	234.21 sq. metres	@ €57.00 per sq. metre	= €13,349
Net Annual Say €13,400			
Rateable Valuation @ 0.5% = €67			

And the Tribunal so determines.