

Appeal No. VA14/5/988

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

David Mc Nally

APPELLANT

And

Commissioner of Valuation

RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 1690782, Retail (Shops) at 5 Grattan Square, Dungarvan, County Waterford.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF JULY, 2017

BEFORE:

Rory Lavelle - M.A., FRICS, FSCSI ACI Arb

Deputy Chairperson

Rory Hanniffy- Barrister

Member

Dolores Power – MSCSI, MRICS

Member

By Notice of Appeal received on the 5th day of September, 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €26,600 on the above described relevant property on the grounds as set out in the Notice of Appeal attached at Appendix 1.

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence on the 6th day of October, 2015 and the 20th day of March, 2017 adduced before us by Mr. David McNally, the Appellant, who contended for a net annual value of €17,000, and Ms. Gillian Beale on behalf of the Respondent to the appeal.

DETERMINES

That the net annual value of the subject property be as set out below:

€26,600 - Unchanged

The reasoning being

This case initially commenced on the 6th October 2015 and was adjourned to allow the Respondent to consider additional material supplied by the Appellant at the hearing and furthermore to allow both parties an opportunity to consider the legal aspects of the appeal. A letter was received from the Chief States Solicitors Office dated 23rd December 2016 in which the position of the Respondent was that “the appeal to the Tribunal is a limited right of appeal, and the Tribunal has rightly repeatedly refused to exceed its statutory jurisdiction in several cases heretofore...” “It is well established that the Tribunal has no power to interfere with the independence of the Commissioner of Valuation in the performance of his functions, nor to declare any determination or action a nullity.”

The hearing resumed on the 20th March 2017 at which time the parties gave evidence of a quantum nature.

Appellants Case

At the resumed hearing the Appellant, addressed the Tribunal regarding Property Number 1690861 - Shamrock restaurant and specifically its proximity to Dungarvan Shopping Centre and to the development at Davitts Quay. He referred to the reducing zone A rents on O’Connell Street as one approaches his property. The Appellant submitted that the valuations do not reflect the current predominant factors in the town nor the retail changes which have occurred since 2004, which it was submitted had seen a movement away from Grattan Square. He stated that the valuations applied in Dungarvan were arrived at without the benefit of local knowledge and referred to zone A valuations on Davitts Quay being half the rate applied to Grattan Square. The Appellant listed the occupiers on Grattan Square and stated that there is no evening trade in the Square with the food quarter located at the bottom of Parnell Street. The Appellant also referred to the parking regime and put it to Ms. Beale during cross examination that it was an advantage to have parking outside the door of a business premises, which was accepted. He referred to the fact that there are less parking spaces available on Grattan Square compared to those available at the nearby Dungarvan Shopping Centre.

The Appellant referred to what he considered to be anomalies in the Dungarvan valuation scheme such as first floor offices being valued at €80 and €100/sqm in Grattan Square.

Respondents Case

Ms Gillian Beale, appearing on behalf of the Commissioner of Valuation, outlined the basis of the valuation scheme for Dungarvan and the rates applied to different locations. She stated that all retail units on Grattan Square were valued at a Zone A rent of €375 /sqm on the basis of six informer properties, the details of which were contained in her précis of evidence. Ms Beale stated that she had taken an average Zone A rate across the six informer properties and pointed out that whilst two informers do not support a rate of €375 /sqm Zone A, four do.

Finally, Ms. Beale confirmed that Property Number 1690861 - Shamrock Restaurant was appealed to the Valuation Tribunal and the valuation was confirmed.

Cross Examination

From the evidence presented by the Respondent in relation to Property Number 1690779 -1 Grattan Square (Newsagents) - it became clear that this unit benefits from dual frontage and that notwithstanding same, a 5% uplift had not been applied to the valuation. Indeed, the same Zone A rate of €375 /sqm was applied to the property as that applied to the other units on the square. Ms Beale conceded that this was an error as an adjustment to reflect dual frontage had been made in respect of other properties.

Ms. Beale conceded that the rate applied to Market Rental informer Number 1690820 - Boyle Sports Bookmakers - had been adjusted to reflect the property's use and she further conceded that bookmakers could be expected to pay a higher rent, however, she contended that this was reflected in her analysis of the property.

Summaries

The Appellant questioned the entire Dungarvan revaluation exercise on the basis that the Valuation Office did not collect complete rental information. He referred to anomalies between the rates applied to properties situate in Grattan Square and to those on other Streets. He also referred to the varying rates of €80 and €100 /sqm applied to office properties located in Grattan Square and to errors in the draft certs for Properties 1 and 4 Grattan Square. He stated that no allowance had been made for the relative width of Grattan Square and the fact that traffic passes through it. The Appellant also submitted that three of the informer properties did not fulfil their lease.

Ms. Beale referred to the Appellant's obligation to prove his case and to the fact that he did not put forward any rental information, instead only providing evidence from the List. Ms Beale also stated that the subject property was the only property on Grattan Square to be appealed.

Findings

The Tribunal have considered the parties submissions and correspondence concerning the Appellant's criticisms of the entire valuation scheme applied by the Respondent in Dungarvan. Whilst the Tribunal accepts that the Appellant at no time specifically categorised the appeal as one relating to quantum only and indeed included his criticisms of the entire scheme in the Notice of Appeal to the Tribunal, the Tribunal accepts the Respondent's contention that it has no power to interfere with the independence of the Commissioner in the performance of his functions, nor to declare any determination or action a nullity. In arriving at this decision, the Tribunal has had regard to the caselaw relied upon by the Respondent, namely, Telecom Éireann (VA96/06/012), Pfizer (VA05/3/054), Greaney (VA05/4/013), Chino (VA06/1/017) and Coolmine (VA08/5/017).

The Tribunal finds that whilst there are anomalies in the scheme applied by the Valuations Office in Dungarvan, they are based on market evidence and have been accepted in other Tribunal decisions (VA14/5/722 Shamrock Restaurant). Further, the onus of proof lies with the Appellant and the Tribunal finds that in relying solely upon evidence from the list and in

failing to provide relevant rental information from comparison properties, the Appellant has failed to discharge this burden.

Accordingly, the Tribunal refuses the appeal and affirms the valuation at €26,600.

And the Tribunal so determines.