

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

**Declan Cosgrave**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Map Reference: 18.19/Unit 16 Ashleaf Shopping, Townland: Commons Templeogue, County Dublin

**B E F O R E**

**Tim Cotter - Valuer**

**Deputy Chairman**

**Frank O'Donnell - B.Agr.Sc. FIAVI.**

**Member**

**Michael McWey - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 29TH DAY OF APRIL, 2002**

By Notice of Appeal dated the 17th day of October 2001 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €222 (£175) on the above described hereditament.

The Grounds of Appeal as set out in the Notice of Appeal are that:

"The assessment is excessive, inequitable and bad in law having regard to the provisions of the Valuation Acts and on other grounds."

The appeal proceeded by way of an oral hearing, which took place in the offices of the Tribunal in Dublin on the 4<sup>th</sup> day of March 2002. The appellant was represented Mr. Eamonn O Kennedy of O’Kennedy & Co. Valuation and Rating Consultants. The respondent was represented by Mr. Joe McBride, a District Valuer in the Valuation Office.

### **The Property**

The premises comprises a retail shop unit located in the Ashleaf Shopping Centre, which in turn is located at the corner of Cromwellsfort Road and Whitehall Road West, known locally as Crumlin Cross in the suburb of Crumlin, in South Dublin.

The Ashleaf Shopping Centre was completed during the year 2000 and consists of twenty-one retail units on the ground floor with Dunnes Stores as the anchor tenant. The Submarine bar, restaurant and offices occupy the first floor. The main entrance to the shopping centre is off Cromwellsfort Road and a secondary access is provided off Whitehall Road West. Access to the basement car park, which provides 513 car spaces, is provided both by internal stairs and travelator from within the mall.

The premises under Appeal, unit No. 16 comprises a butchers shop to the front with cold storage passage and WC to the rear. The premises is identified and trades under the name of Cosgraves.

### **Accommodation**

The accommodation comprises of 97 m<sup>2</sup>. Both the Appellant and Respondent agreed on these measurements

### **Tenure**

The premises are held under a 25-year lease with Rent Reviews every five years. The lease commenced on the 28.03.2000 at an annual rent of €86,342.19 (£68,000).

### **Valuation History**

A 2000/4 Revision established a first RV at €222.20 (£175.00). The Commissioner of Valuation issued the result of the first Appeal with an unchanged RV in September 2001.

## **Appellant's case**

Mr. O'Kennedy assessed the rateable valuation on the subject as follows:

Estimated Open Market Rental Value November 1988 Tone = £22,000

Rateable Valuation £22,000 @ 0.63% = Say £140.

Mr. O'Kennedy's comparisons are attached as Appendix 1.

In oral evidence for the appellant Mr. O'Kennedy stated that his client was paying above the market rent. This can happen in a shopping centre like this and is generally down to the skills of the letting agent. Mr. O'Kennedy stated that his client Mr. Cosgrave, expected to do better business than he was doing. Mr. O'Kennedy stated that unit 14 was a similar size to the subject unit. He stated that 60% of the subject unit was taken over with storage thus reducing the retail area for customers.

Mr. O'Kennedy stated that larger companies such as Budget Travel and Unicare do not have as much concern about overheads as a smaller one would. His client felt that his unit should be compared with those in the Crumlin Shopping Centre. Mr. O'Kennedy stated that ground floor was more suitable for use as a butchers shop. He stated that Mr. McBride's comparison No.15 was the same size as the subject and should have the same RV.

In cross-examination by Mr. McBride, Mr. O'Kennedy stated that the rent on the subject property was £68,000pa and on unit 14 was £45,000. Mr. O'Kennedy agreed with Mr. McBride that the Commissioner had made a higher adjustment on the passing rent in the subject compared to other cases. Mr. O'Kennedy said that the smaller units fed off the anchor tenant Dunnes Stores.

## **Respondent's Case**

Mr. Joseph McBride representing the Commissioner of Valuation gave his opinion of the Rateable Valuation on the premises as set out in his précis of evidence, as follows:

NAV

Shop Unit      97m<sup>2</sup>    @      €63.61 / m<sup>2</sup>                      =      €5,270.17 (£27,777.77)

Rateable Valuation    @      0.63% of NAV                      =      €222.20 (£175)

Mr. McBride stated that leases were 25 years with 5-year reviews. Mr. McBride stated that the NAV must be in line with adjoining units and the Tone of the List established in the centre. He indicated that 17 ground floor units excluding McDonalds were valued on the 2000/4 Revision. He stated that eight First Appeals were lodged and no change had been made to any of the Revision figures on Appeal.

Mr. McBride set out the details of five comparisons, which are appended to this judgment as Appendix 2.

Mr. McBride in oral evidence contended that the subject property was at the better end of the shopping centre and he did not agree with comparing units in this shopping centre to those in the Crumlin Shopping Centre as he felt that this was a far better shopping centre.

Mr. McBride stated that the reason for the lower rent on unit 14 was because of its shape. Mr. McBride acknowledged that the revising valuer had agreed that rents were high in some instances. Mr. O'Kennedy asked Mr. McBride if he believed that the ratepayer in such circumstances should have to pay extra rates as well. Mr. McBride agreed that rents were not uniform but he did not accept the Appellant's assertion that the RV of the subject was excessive when compared to assessments on other units within the Ashleaf Centre. Mr. McBride stated that it could be clearly seen from his map that the subject unit and others were pre-signed. He accepted that the rent was high in the subject premises but said that he had made a larger allowance of 60%, in the backdating of the rent to 1988 in this case, than he had in relation to other units in the centre where he had applied 50%, in acknowledgement of this fact.

### **Finding and Determination**

The Tribunal has considered the evidence presented by the appellant and respondent and has noted the arguments adduced in evidence by Mr. O'Kennedy for the appellant and Mr. McBride for the respondent.

This shopping centre is relatively new with one mall and an underground car park.

Dunnes Stores is the Anchor tenant and thus is the main attraction in the centre. This shopping centre could not be compared to Liffey Valley or The Square (Tallaght) because of its size and because it is a neighbourhood shopping centre.

The Tribunal is of the view that the location of any one unit has no great benefit over any other because it is a one mall shopping centre and because of the overall size.

Mr. McBride stated frankly that the Commissioner was unusually generous to the appellant by applying a factor of 60% to calculate NAV. Mr. O'Kennedy stated that he felt the best comparison was unit 14 because of its size compared to the subject property.

The Tribunal accepts that the rents vary enormously in this centre. There is no uniform rent applying. The various comparisons offered were of no great benefit but were certainly a guide and of some assistance to the Tribunal. When rent reviews are carried out the levels should be more uniform across the board.

The Tribunal is also of the view that it was correct to only use comparisons within the centre.

Having regard to the evidence adduced and the arguments proffered the Tribunal determines the rateable valuation of the subject property to be €208 calculated as follows:

NAV	97 M <sup>2</sup>	@	€340	=	€32,980
-----	-------------------	---	------	---	---------

RV		@	0.63%	=	€207.77
----	--	---	-------	---	---------

Say			€208		
-----	--	--	------	--	--

Mr. O’Kennedy on behalf of his client, set out a number of points during the Oral Hearing and summarized his précis of evidence, the key points which are as follows;

- The Ashleaf Mall is a small centre and the best comparisons are located in the centre
- The Rent on the subject premises is above market rent as in Shopping centres standard units can have different rents until the first rent review.
- Unit 14 has a smaller shop front but much the same floor area and an RV of €177 whereas the subject has an RV of €222.

Almost 50% of the area of the subject is used as cold stores with only one third in use as a retail shop.