

Appeal No. VA06/1/013

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

**Peter Davis**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Supermarket at Lot No. Unit 2112, Airport Business Park, Lehenagh More, Lehenagh, Cork Lower, County Cork

**B E F O R E**

**John O'Donnell - Senior Counsel**

**Chairperson**

**Brian Larkin - Barrister**

**Member**

**Michael F. Lyng - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 21ST DAY OF JULY, 2006**

By Notice of Appeal dated the 1st day of March, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €175.00 on the above described relevant property.

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

"The RV is excessive inequitable and bad in law - it has not been fixed in accordance with the terms of S49(1) of Valuation Act 2001. The revision is unsound as the property was not revised in accordance with S.49(1) of the Valuation Act 2001. On this basis the RV should be struck out."

The appeal proceeded by way of an oral hearing which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 24<sup>th</sup> April, 2006. At the hearing the appellant was represented by Mr. Eamonn Halpin, B.Sc.(Surveying), A.S.C.S., A.R.I.C.S, M.I.A.V.I. The respondent was represented by Mr. Terence Dineen, District Valuer in the Valuation Office and by Mr. James Devlin, B.L., instructed by the Chief State Solicitor.

## **PRELIMINARY ISSUE**

At the outset a preliminary issue was raised as to the jurisdiction given to the Tribunal under the legislation. The Appellant submitted that the Commissioner was obliged under the Act to follow certain procedures and if he did not comply with those procedures it followed that what had been valued must be excluded from the valuation list. In this regard the Appellant relied on the decision of the Tribunal in the **D.I.D. Electrical** case and in the **Banba Toymaster** case. In essence the submission made by the Appellant was that because the Revision Officer did not look at what was contended were comparable properties his revision (and the appeal therefrom, and the appeal to the Tribunal) is fundamentally flawed and as a result the property should not be listed.

By way of response on behalf of the Respondent Mr. Devlin said that the Commissioner was entitled to look at the “*tone of the list*” by looking at premises that were comparable in use, location, construction and in any other relevant manner. He was not obliged only to compare other “*Spar*” shops with the instant “*Spar*” shop. Mr. Devlin also submitted that in any event a Commissioner could only exclude property from the valuation list if either (a) the property was not rateable or (b) there was a global valuation. Neither of these situations applied here.

Mr. Devlin also submitted that even if the Revision Officer had acted incorrectly, if the matter was heard by way of case stated to the High Court, the High Court could only declare that he had acted incorrectly and send the matter back for reconsideration by the Revision Officer. The Tribunal does not have the power to remit a case to the Commissioner and can instead substitute its own Judgment.

By way of response Mr. Halpin on behalf of the Appellant claimed that because there was a fundamental error there was a gross unfairness in the process which took place. He

contended that the error in question was an error of the order of magnitude that occurred in the **D.I.D. Electrical** case and the **Banba Toymaster** case and in the circumstances the property should be excluded from the valuation list.

### **The Law**

The Tribunal is of the view that the “*error*” was not of the order or magnitude or indeed of the type which occurred in the **D.I.D. Electrical** or **Banba Toymaster** cases. The Tribunal is of the view that its jurisdiction to hear the appeal has not been ousted. The Tribunal is not obliged to “*de-list*” the relevant property from the valuation list. The Tribunal is concerned that the Commissioner of Valuation did not look beyond the relevant business park for comparable properties but does not believe that this in any way ousts the jurisdiction of the Tribunal to hear the appeal.

### **The Determination**

The Tribunal determines that it has jurisdiction to hear the appeal in question and thus refuses the Appellant’s application in respect of the preliminary issue.

## **SUBSTANTIVE ISSUE**

### **The Property**

The property is located in the Airport Business Park, off the Kinsale Road, adjacent to Cork Airport, which is five miles from Cork city centre.

The property is comprised of a new Spar convenience store with ancillary office canteen, W.C.’s and small store on the ground floor rear of a new two storey commercial/service block in the centre of the Airport Business Park.

### **Tenure**

The unit is held and operated under a licence agreement from the Spar franchise.

### **Valuation History**

On the 23<sup>rd</sup> February, 2005 the Revision Officer issued a Valuation Certificate to the effect that he proposed to determine the rateable valuation of the subject property at €175.00 in accordance with the provisions of the Valuation Act, 2001. On the 1<sup>st</sup> July, 2005 a Valuation Certificate was issued confirming the rateable valuation at €175.00.

The matter was appealed to the Commissioner of Valuation on the 6<sup>th</sup> August, 2005. However on the 7<sup>th</sup> February, 2006 the Commissioner issued the result of this 1<sup>st</sup> appeal unchanged at €175.00. It is against this decision by the Commissioner that this appeal to Tribunal now lies.

### **Appellant's Case**

Mr. Halpin having taken the oath adopted his written précis which had previously been received by the Tribunal as his evidence-in-chief. In evidence Mr. Halpin contended for a rateable valuation of €16.00 or alternatively €13.00 calculated as follows:

Shop	232.5 sq. metres	@ €90.00 per sq. metre	= €20,925.00
Office, wc's and store	48.5 sq. metres	@ €45.00 per sq. metre	= <u>€2,182.00</u>
			€23,107.00
		@ 0.5%	RV €15.53
			Say €16.00

**Or** Unit overall 281 sq. metres @ €80.48 per sq. metre = €22,615.00 @ 0.5% =  
RV €13.00

In support of his opinion of net annual value Mr. Halpin introduced three comparisons, details of which are set out in Appendix 1 to this judgment. He referred the Tribunal to the good quality map of the Airport Business Park which was appended to the Valuation Office submission.

By reference to the map and to his own photos, Mr. Halpin demonstrated that the main entrance to the Business Park was on the extreme right of the map. The subject property was located in an obscure area within the Park behind the Subway restaurant. It had a very poor profile and required considerable “juggling” to reach. Consequently there was little or no potential for passing trade. Furthermore the unit enjoyed limited trading hours and a 5.5 day trade. In general the rental values for retail units within the park were moderate with three unlet units available with asking rents €69.00 per sq. metre or €25.00 per sq. foot. Mr. Halpin added that the subject property was remarkably similar to another Spar convenience store located at City West, County Dublin, also the subject of a Tribunal appeal **VA04/1/051 - Brian Smyth t/a Spar City West**. Given, therefore, the location of the subject, the nature

of business conducted in the Park and the absence of any residential development or evening or weekend passing trade, trading hours were restricted, by and large to normal commercial office hours. This, Mr. Halpin said, contrasted with the typical convenience store, which opened from early morning till late at night.

Mr. Halpin then contended before the Tribunal that there was no established tone of the list for convenience stores within the Airport Business Park. He emphasised that the use by the Commissioner of Valuation of non-comparable properties had seriously distorted the NAV in the subject case, before going on to review the comparisons in his own submissions viz Spar, Mount Oval Village, Scally's Supervalu, Blarney and The Grove, Broadale. In particular Mr. Halpin relied on his first comparison, Spar, Mount Oval Village. In his view this was the most relevant retail property to the subject and he expressed amazement that it was not included in the Valuation Office submission. It was almost, Mr. Halpin said, identical in area to the subject, 287 sq. metres v. 281 sq. metres with similar passing rents. It was located in a residential development, surrounded by pub, crèche, etc. and if anything was superior to the subject. It was impossible, Mr. Halpin added, to stray mistakenly into and yet its RV at €15.00 based on an overall rate of €80.48 per sq. metre, as against a rate of €25.00 per sq. metre for the subject, was vastly lower.

Mr. Halpin concluded his evidence to the Tribunal by reciting the findings in **Brian Smyth t/a Spar City West** for the benefit of the Tribunal and reiterated that they had particular application here.

Mr. Halpin was then cross-examined by Mr. James Devlin, BL, for the respondent, with regard to the relative levels of passing rents obtaining in Mount Oval and the Airport Business Park. He replied that they were moderate in both cases. Pressed further to comment on turnover, Mr. Halpin stated that while he had no precise details, his sources informed him that Mount Oval enjoyed higher turnover and had a superior lunch time trade.

Replying to further questions put to him by Mr. Devlin touching on the tone of the list, Mr. Halpin argued that simply because no tone had been established for convenience stores within the Airport Business Park did not justify the Commissioner of Valuation introducing non-comparable properties differing in function as comparisons with resultant distortions to the subject NAV. Mr. Halpin was particularly referring to the Subway restaurant which was

located next door to the subject property and was rated at €130.00 per sq. metre. Neither would Mr. Halpin accept that the Irish Shell Service Station included at Comparison 4 of the Valuation Office submission and rated at €153.90 per sq. metre was a valid comparison. That property comprising a shop and service station on the road in from Cork Airport was open 24 hours a day and had high visibility. In any event, Mr. Halpin added that 50% of the RV was attributable to the shop while the remainder related to the service station.

### **Respondent's Evidence**

Mr. Dineen took the oath and adopted his précis as his evidence-in-chief. He referred to the comparisons (see Appendix 2 hereto) included in his submissions and to the valuation methodology used. Mr. Dineen gave evidence to the Tribunal that he was involved in the vast majority of commercial valuations in the area where the subject property was located. In fact he had done all the valuations in the Airport Business Park since 1999 and adopted the following basic model:-

€5.23 per sq. metre for areas up to 10,000 sq. ft.

€8.88 per sq. metre for areas between 10,000 sq. foot and 20,000 sq. ft.

€2.53 per sq. metre for areas over 20,000 sq. ft.

He relied on this background local knowledge and methodology when valuing the Subway restaurant in 2004. In that case, as a rule of thumb, Mr. Dineen applied a premium of 50% onto the rate per sq. metre applicable to offices as exemplified in Altera Trading and Digisoft TV (€5.66 per sq. metre and €5.23 per sq. metre respectively). Mr. Dineen was of the view that retail units were entitled to such a loading over office space and so initially a rate of €150.00 per sq. metre was applied to the Subway unit. On appeal this was reduced to €130.00 per sq. metre. Accordingly, when the Spar unit came to be valued in 2005 Mr. Dineen indicated that he was hugely influenced by the rate set for Subway which was adjacent to Spar in the Airport Business Park and valued it at a rate of €125.00 per sq. metre.

Drawing comparison with Spar, Mount Oval where no tone had been established and which was valued at €80.48 per sq. metre overall, Mr. Halpin cross-examined Mr. Dineen as to how he valued the subject where equally no tone had been established and yet was valued at €125.00 per sq. metre. Mr. Dineen in response said he took into consideration the asking rents of the two units initially let. Those were of the order of €22/23 per sq. foot but Mr.

Dineen acknowledged however that the rents achieved for those units were lower at approximately €18.00 per sq. foot.

Mr. Halpin put it to Mr. Dineen that he was inconsistent with his valuation treatment of the subject vis-a-vis the Spar, Mount Oval which both accepted was a comparable property by applying a 36% differential in the former and only 4% in the latter, despite the fact that both units were less than 10,000 sq. ft. in area. Mr. Dineen replied that Spar, Mount Oval was a special case as the developer was in financial difficulties. At all events Mr. Halpin put it to Mr. Dineen that the scheme he had adopted was mainly for office valuation and had no proper application to retail units and cited again the findings in **Brian Smyth t/a Spar City West** in support of his argument for retail convenience stores.

On the basis of that judgment, Mr. Halpin argued that Mr. Dineen should have looked at appropriate comparisons outside the Business Park given that no tone for convenience stores existed within it.

Mr. Halpin concluded his cross-examination of Mr. Dineen by putting it to him further that his valuation approach and methodology was at variance with the spirit of Section 49(1) of the Valuation Act, 2001 by the Valuation Office use of non comparable properties.

### **Findings**

1. It is common case that no tone of the list existed for retail convenience stores within the Airport Business Park adjacent to Cork Airport.
2. The Subway restaurant adjacent to the subject is not an appropriate yardstick on which to base a rateable valuation for the subject convenience store.
3. The scheme adopted by the respondent specifying various rates per sq. metre for areas below and above 10,000 sq. ft. for office space, supplemented by a 50% loading for retail units has not been consistently applied.
4. The four comparisons included in the respondent's submission are not appropriate in arriving at a rateable valuation for the subject.
5. The unit enjoys limited trading hours and a 5.5 day trade and has no potential for passing trade due to its location.
6. The rental values for retail units in the Business Park reflect its moderate location and there is no justification for the premium applied by the Commissioner of Valuation.

7. The use of non-comparable properties has distorted the NAV/RV in this case. Establishing NAVs by reference to non-retail comparisons is at variance with the Valuation Tribunal decision in **VA04/1/051 - Brian Smyth t/a Spar City West**.
8. The valuation for rating purposes of the subject property must be calculated in accordance with the provisions of the Valuation Act, 2001 and in particular with Section 49 thereof.
9. In the absence of a “tone of the list” within the Park it is appropriate to extend further into the same local authority area to assess net annual value of properties of similar use and function.
10. The Spar, Mount Oval Village, included in the appellant’s précis afforded the best comparison on the basis that it was almost identical to the subject in key respects.

### **Determination**

Having regard to the evidence adduced and arguments proffered the Tribunal determines the rateable valuation of the relevant property as follows:

Shop 232.5 sq. metres	@ €100.00 per sq. metre	= €23,250.00
Offices,wc’s and store 48.5 sq. metres	@ €50.00 per sq. metre	= <u>€2,425.00</u>
	Total NAV	€25,675.00
Rateable Valuation €25,675.00 @ 0.5%		= €128.375
		Say €128.00

And the Tribunal so determines.