

Appeal No. VA08/5/120

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

**Condrons Supervalu**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2187881, Supermarket 2 at Unit 4, 5, 6, Belgard Square, Tallaght,  
County Dublin

**B E F O R E**

**Maurice Ahern - Valuer**

**Deputy Chairperson**

**Damian Wallace - QFA, MIPAV, Valuer**

**Member**

**Mairéad Hughes - Hotelier**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 3RD DAY OF FEBRUARY, 2009**

By Notice of Appeal dated the 7th day of August, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €463,000.00 on the above-described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are "On the basis that the RV as assessed is excessive, inequitable and bad in law. The appellants believe the revaluation was invalid as the Commissioner failed to publish and make available the completed list of valuations as set down in the 2001 Act."

This appeal has been the subject of a hearing dealing with a preliminary issue namely, the alleged non-compliance of the respondent with section 23 of the Valuation Act, 2001. The Tribunal heard evidence/submissions on this issue on 12<sup>th</sup> September, 2008 and issued its written judgment on 25<sup>th</sup> September, 2008.

The appeal in relation to quantum proceeded by way of an oral hearing held in the Offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 17<sup>th</sup> of December, 2008. At the hearing the appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI, Eamonn Halpin & Co. Ltd. Mr. Alan Condrón, the appellant, gave evidence on his own behalf. The respondent was represented by Ms. Orlaith Ryan, BSc Surveying, Dip. Prop. Economics, MIAVI, a Valuer in the Valuation Office. Each representative having taken the oath adopted his/her précis and valuation, which had previously been received by the Tribunal and exchanged with the other party, as his/her evidence-in-chief.

### **Valuation History**

The property was valued as part of the South County Dublin revaluation and a Valuation Certificate proposing a valuation of €365,000 was issued. The occupier, Mr. Alan Condrón, appealed the decision through his agent, Mr. Eamonn Halpin, and the final Valuation Certificate was issued with the valuation increased to €463,000 on 31<sup>st</sup> December, 2007. An appeal was lodged on 7<sup>th</sup> February, 2008 and on conclusion of the appeal the valuation remained unchanged. An appeal was then lodged to the Valuation Tribunal on 7<sup>th</sup> August, 2008.

### **At Issue**

Quantum. While the valuation currently in the Valuation List is €463,000 the respondent contended for a valuation of €450,000 before the Tribunal.

### **Location**

The subject property is located in Belgard Square, opposite the Level 3 car park of the Square Shopping Centre, Tallaght. It is close to the M50 motorway, convenient to the Luas transport link and approximately 12km south west of Dublin City Centre.

## The Property

The subject property is the anchor unit in Belgard Square and comprises three new ground floor retail units (units 4, 5 and 6), amalgamated to form a supermarket which trades as SuperValu. The unit has a standard SuperValu fit-out and the entrance faces directly on to the Square Town Centre car park. Belgard Square is a mixed use development scheme comprising of 19 retail units, 372 residential apartments, a crèche and a leisure centre. The gross internal area of the subject property has been agreed as follows:

Supermarket	1,777.70 sq. metres
Mezzanine Store	70 sq. metres

## Tenancy

The property is held under three separate 25-year leases as follows:

- **Unit 4** is approximately 151 sq. metres held on a 25 year lease from 2006 at a rent of €645.84 per sq. metre.
- **Unit 5** is approximately 1,424.50 sq. metres and is held on a 25 year lease from 2006. This is a finance type arrangement where the landlord avails of the tax breaks associated with the development and the tenant has an option to purchase the property in year 13 for €9.15 million. There is no rent payable for the first 4 years and the rent thereafter is linked to the cost of funding the loan.
- **Unit 6** is approximately 210 sq. metres and is held on a 25 year lease from 2006 at a rent of €99.65 per sq. metre.

## The Appellant's Case

Mr. Halpin, having taken the oath, adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief. He confirmed that the floor areas were agreed. He said that this is a simple case in one way but very complex in another. He confirmed that the subject property is a combination of 3 ground floor units, one large and two small, and part of an overall block comprising of 370 apartments and a number of commercial units. Mr. Halpin advised that a number of the units had never been let and others have traded and then ceased. He said that it is impossible to trade as a supermarket in this area due to the proximity of Dunnes and Tesco and noted that the area itself is not a settled community of people. In the immediate vicinity residents move regularly, while

people in the greater Tallaght area are settled in their shopping patterns and shop in the Square. Mr. Halpin then offered the following key points in support of his case:

1. The subject property is situated at a very poor location being so close to the established Square Shopping Centre.
2. The area has a number of unfinished/unoccupied commercial/residential developments which are unlikely to be completed or occupied in the foreseeable future.
3. The potential for trade at this location is limited due to the established competition from Tesco & Dunnes Stores in the Square.
4. The development here has experienced very poor trading and a number of high profile occupiers have already closed up their units including McCabes Pharmacy, West Coast Coffee and Sherry Fitzgerald. Additionally, a number of the other leasehold interests are currently on the market where tenants wish to get out.
5. There was no sound basis for the Commissioner to increase the original assessment here at first appeal stage from the original estimate of €65,000 which in itself the occupier believes was excessive.
6. The subject is the least attractive unit of all the comparisons cited due to its actual location, competition and difficult trading environment.
7. The unit is overly large as a convenience store at this location, yet cannot function as a full scale supermarket due to its proximity to the established supermarkets in the Square.
8. The hypothetical tenant would offer a very moderate rental bid if he had to rent the entire premises as one unit at this location.

Mr. Halpin indicated that it is clear that Ms. Ryan thinks that this is an excellent location. However, he disagrees and said it is a tough location to do business in. He said there are a million sq. feet of vacant commercial space and a thousand apartments unsold in the immediate vicinity. It is not a vibrant place and has the appearance of an unsuccessful development. In contrast, Mr. Halpin said, there is free parking in the Square Centre while you have to pay to park in the underground parking of the subject property. He advised that the valuation should be at the lowest level of the range of values submitted by the Commissioner in view of the many disadvantages of the subject property. Mr. Halpin then offered 4 comparisons (attached at Appendix 1 hereto) as follows:

1. Crest Stores Ltd, Neilstown.
2. Tesco, Lucan Shopping Centre.
3. Tesco, Clondalkin.
4. Tesco, Rathfarnham.

He indicated that he believed that the subject property is less valuable than any of the 4 comparisons put forward. He added that there is no comparison anywhere in South Dublin that faces the same difficulties as the subject property.

Mr. Halpin contended for a valuation of €25,000 as follows, confirming that he had taken the combined area and then added for fit-out at a rate of 7%.

Estm. NAV on Sept 2005 basis:

Unit 4	151 sq. metres	
Unit 6	210 sq. metres	
Unit 5	<u>1,416.7 sq. metres</u>	
	1,777.7 sq. metres @ €70 per sq. metre	= €302,209.00
Add for fit out @ 7%		= € 21,155.00
Mezzanine	70 sq. metres @ €41 per sq. metre	= <u>€ 2,870.00</u>
		€326,234.00

Say €25,000

### **Cross Examination**

In cross examination Ms. Ryan raised a number of queries regarding the lease details, car parking in the vicinity, Mr. Halpin's comparisons and his method of valuation.

Mr. Halpin confirmed that Unit 4 is leased @ €6,000 per annum, Unit 6 @ €143,000 per annum, and added that Unit 5, the substantial part of the subject property, is structured on a rent to buy arrangement with the rent linked to the cost of funding a capital figure of €9.5 million. Mr. Halpin also confirmed that the rent on Unit 5 for the first four years was nil.

Mr. Halpin indicated that the free car parking spaces across the road in the Square car park are of little benefit to the subject property, as there is a barrier between the roadway and the

car park and anybody parking in the Square car park is more likely to shop in the supermarkets in the Square.

In response to a question on his comparisons Mr. Halpin said that Tesco, Lucan Shopping Centre, was part of a successful shopping centre and the turnover would be a multiple of the subject property. He acknowledged that both Tesco, Clondalkin, and Tesco, Rathfarnham, were much older buildings, but added that their locations, in the case of Clondalkin, within 25 metres of the centre of Clondalkin village, and Rathfarnham being a significant location shows that these are far superior properties to the subject. Mr. Halpin confirmed that even though he believes that the property is worth less than the €70.00 per sq. metre which he valued it at, because of the extreme difficulty associated with the location, he was unable to justify it on the list and therefore could not put forward a lower value. He indicated that he did not believe that the current difficulties associated with the property were due to the economic downturn and added that it is primarily due to location, as even in the boom times these rents could not be sustained.

In response to a question from the Tribunal, Mr. Halpin confirmed that he did not value the off-licence as he does not believe it has a capital value and he cannot see any circumstances under which people would pay extra for an off-licence as part of a convenience store as it is expected, as part of any sale of a convenience store, that an off-licence is an integral part of the sale.

### **Mr. Condrón's Evidence**

Mr. Condrón was called by Mr. Halpin to give evidence and he confirmed that, when doing the deal in 2005 for the property, the whole development plan for the area indicated that it was going to be a huge growth opportunity and for that reason he was happy to go ahead. In the meantime however things have come to a standstill with many apartments vacant and those that are occupied tend to have transient occupants. Access to the development is difficult and while they had an expectation of 3,000 apartments in the whole development there are only a fraction of these occupied. Mr. Condrón added that initially it was intended that the barriers around the Square would be taken down and one development would lead into the other. This would offer the opportunity of securing business from people parking in the Square car park. However, this has not happened. He also added that the road network is not conducive to attracting people to the store. Mr. Condrón indicated that, in hindsight, he

overpaid for the two front units but they were needed to get proper frontage. In the long term he feels that he can only pay €200,000 rent and the options available to him are to downsize to two small units or alternatively to close the business, as by the year end he will have accumulated very substantial losses. He added that Musgraves have been very helpful to date as they do not wish to see the store closing down.

### **Respondent's Evidence**

Ms. Ryan, having taken the oath adopted her précis as her evidence-in-chief. She confirmed the location of the subject property, in Belgard Square adjacent to the Town Centre in Tallaght, and confirmed that the subject property is the anchor unit in Belgard Square and is in use as a supermarket trading as SuperValu. She said that the unit has a standard SuperValu fit out, and the entrance faces directly on to the Square Town Centre car park. Ms. Ryan confirmed that there is split level paid car parking at basement level and that the Luas stops just across the road from the development. She confirmed that the gross internal area of the subject property had been agreed. Ms. Ryan then referred to the map included in her précis of evidence and pointed out the proximity of the Luas stop to the subject property.

Ms. Ryan then outlined details of the tenure, confirming that the subject property is held leasehold under three separate leases. She indicated that she had requested copies of the leases; however, to date had not received them. Ms. Ryan then proceeded to outline the basis of her valuation confirming that, in the revaluation of this rating authority area, valuation levels were derived from the analysis of available market information of comparable properties and this detail was then applied to the subject property. The value of this property, she said, on appeal to the Commissioner of Valuation, was determined by reference to the values of comparable properties stated in the Valuation List.

She confirmed that the reduction in valuation at Tribunal stage from €463,000 to €450,000 was as a result of a reduction on the original fit-out. She confirmed that the figure of 7% for fit-out is as per the agreement between rating agents and the Valuation Office. She then confirmed details of her valuation as follows:

Supermarket	1,777.70 sq. metres @ €30 per sq. metre	= €480,871.00
Fit-out addition – 7% of NAV		€28,620.97
Mezzanine Store	70.00 sq. metres @ €50 per sq. metre	= €3,500.00

Addition for off-licence	= €10,000.00
Total NAV	= €450,991.97
Say	= €450,000.00

Ms. Ryan then introduced her comparisons (set out at Appendix 2 hereto) as follows:

1. Aldi, Belgard Road, Tallaght.
2. Lidl, Fortunestown Lane, Tallaght.
3. Lidl, Nangor Road, Clondalkin.
4. Pennys, Rathfarnham Shopping Centre
5. Tesco, Level 2, the Square Town Centre.
6. Dunnes Stores, Citywest Shopping Centre, Citywest.

Ms. Ryan identified the comparisons on her location map and, referring to Mr. Halpin's précis, she said that she did not agree with his point regarding the inferior location of the subject property, as she believed the problems associated with the development are related to the economic downturn. She further added that it is the policy of the Valuation Office to make an addition for an off-licence, and this addition is made because there is a capital value in the fact of having an off-licence.

### **Cross Examination**

In cross examination Mr. Halpin asked Ms. Ryan questions regarding her valuation method, the comparisons offered and car parking in the subject unit. Ms. Ryan confirmed that the initial value that the Commissioner came up with was €365,000, being €180 per sq. metre. However, when they got additional information it became obvious that this valuation was too low. She added that, in arriving at a scheme of valuation, they looked at the market as a whole. Ms. Ryan said that she used the Pennys comparison as it was rented and she did not agree that Tesco was a better comparison as the rent there is a court rent (agreed because it was going to court). Ms. Ryan also confirmed that she did not make an allowance in the valuation in respect of the charge for car parking. However, she confirmed that she would have valued it higher if it had its own car park.



## Summary

Mr. Halpin in summarising his case said that the businesses in Belgard Square and surrounding areas are facing extremely challenging conditions, having to compete with the existing well established Square Shopping Centre and having little prospect of the vacant properties in the vicinity being completed and occupied in the immediate future. The hypothetical tenant, in view of these circumstances, would only offer a modest rent for these premises if it was offered to let in its entirety. Mr. Halpin added that the appellant believes that there is a range of values which could be applied to the subject property and it is not acceptable to suggest that it is a better location than Tesco Lucan, the Square or Rathfarnham. There is relativity in the market for valuation and in this case the Commissioner has got the balance wrong because of the intense competition from the Square Shopping Centre. Mr. Halpin concluded that hindsight can be used in this case to throw light on what is going on. At the valuation date, 2005, Belgard Square was going to be the new centre in the area. It turned out not to be and the valuation should reflect this.

Ms. Ryan in summarising her case said that the subject is located in the centre of Tallaght and benefits from public transport. She said that having considered her comparisons the subject is the lowest of her valuations and she does not think it is uniquely located. She added that the situation faced by the property is no different to many other properties in the current climate. On this basis she believes her valuation is fair and reasonable.

## Findings

The Tribunal has carefully considered all of the oral and written evidence submitted by the parties and the arguments adduced at the hearing and makes the following findings:

1. The statutory basis of valuation is set down in section 48 of the Valuation Act, 2001, wherein at section 48(3), the net annual value of a property is defined as being, “*the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant*”.
2. The onus of showing that the valuation of the property concerned, appearing in the valuation list, is incorrect is on the appellant.

3. The subject property is of good quality, well fitted out in a modern building.
4. The Tribunal finds both parties' comparisons helpful and notes that all of Ms. Ryan's comparisons were either tested by agreement with rating consultants or fixed at appeal.
5. The Tribunal believes that Ms. Ryan's comparison 1 - Aldi, Belgard Road, is the best comparison, being located immediately adjacent to the subject property.
6. The Tribunal notes Mr. Halpin's evidence regarding the general environment and the levels of vacancy in the immediate vicinity of the subject property but believes that this is the result of the present economic climate rather than any perceived problems in the general area. The Act does not provide for any reduction on an isolated basis, as part of the valuation of a single property, for a general economic downturn.

In reaching its determination the Tribunal has been required to consider only the evidence submitted and adduced. In doing so the Tribunal has made the foregoing findings and in the light of those findings determines that the valuation of the respondent is fair and reasonable. The Tribunal therefore affirms the respondent's amended valuation of €450,000.

And the Tribunal so determines.