

Appeal No. VA08/5/216

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

**A.J. Clondalkin Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 407474, Shop at 78 Tower Road, Clondalkin, County Dublin.

**B E F O R E**

**Maurice Ahern - Valuer**

**Deputy Chairperson**

**Tony Taaffe - Solicitor**

**Member**

**James Browne - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 25TH DAY OF FEBRUARY, 2009**

By Notice of Appeal dated the 27th day of August, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €75,500 on the above-described relevant property.

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

"On the basis that the NAV as assessed is excessive, inequitable and bad in law. The revision of the property is invalid as the Commissioner did not comply with his obligations under S.23 of the 2001 Act, i.e. he did not publish and make available the valuation list in a free and unrestricted manner as set down."

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 which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 9<sup>th</sup> day of January, 2009. The appellant was represented by Mr. Eamonn Halpin, BSc, ASCS, MRICS, MIAVI. The respondent was represented by Mr. Damien Curran, MRICS, ASCS, a Staff Valuer in the Valuation Office. Both parties adopted their written submissions, which had previously been exchanged between them and submitted to the Tribunal, as being their evidence-in-chief given under oath.

### **Issue**

Quantum. While the valuation currently in the Valuation List is €75,500 the respondent contended for a valuation of €78,800 before the Tribunal.

### **The Property**

The property concerned is a ground floor property, with double frontage, in use as a newsagent's which includes an off-licence. The areas are agreed between the parties.

### **Location**

The property is located on the northern side of Main Street, at the junction with Tower Road in the centre of Clondalkin village. The property has frontage onto Main Street and Tower Road.

### **Tenure**

The property is held under a 35 year lease from 1<sup>st</sup> March, 1998 and is subject to 5 year rent reviews. The rent payable as of 30<sup>th</sup> September, 2005 was €50,500.

### **Valuation History**

The rating authority is South Dublin County Council. The property was the subject of a revaluation as one of all rateable properties in the rating authority area. Per a proposed Valuation Certificate that issued on 5<sup>th</sup> June, 2007, the property was valued at €75,500. An

appeal was lodged on 8<sup>th</sup> February, 2008 and the valuation remained unchanged on the conclusion of the appeal. An appeal was lodged with the Valuation Tribunal on 27<sup>th</sup> August, 2008.

### **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.

In his evidence, Mr. Halpin stated that the passing rent was €50,500 and not €60,500 as stated by the respondent and that the rent quoted by Mr. Curran was the asking rent. He pointed out that the rent was set by arbitration after the rent could not be agreed on a rent review and that this was very relevant. The review date was in February, 2003 although the matter was not decided by arbitration until 2006. Mr. Halpin could not see how rents could go up to €75,500 by September, 2005.

Mr. Halpin referred to the respondent's maps and he rejected the zoning method of valuing properties as used by Mr. Curran. He pointed out that property in this area is rented or sold on a per square foot basis. Mr. Halpin strongly argued that the zoning method should be rejected. Mr. Curran noted that the zoning scheme was not under review at this hearing and only the individual building was.

Mr. Halpin also stated that the method adopted by the Valuation Office changed from the first valuation to the appeal. The respondent's valuation for the purposes of this appeal is set at €78,800. However, the Commissioner initially valued the property at €75,500.

Mr. Halpin again referred to the respondent's map and stated that the map was not to scale. He felt that the triangle at the front of the shop was not part of the premises and should not have been included in the valuation. He accepted that the triangular area was secureable by way of a shutter. The respondent considered the triangle to be part of the premises and was merely a design feature.

Mr. Halpin considered the valuation differentials between the properties in Clondalkin to be too much and that there were no premises let in the Clondalkin area on a zoned basis. He pointed to

the difference between the passing rent and the NAV in the **VA08/5/020 – Ulster Bank** case as another example of inequality of the zoning basis.

He felt that the unusual configuration of the subject must be taken into account in assessing the valuation. He also stated that the address of the property was Tower Road and not Main Street and that it had more frontage on to Tower Road than on to Main Street, and in the circumstances lower values should apply.

Mr. Halpin presented the following estimates of valuation:

Estm NAV on Sept 2005 Basis:

Shop:	105.79 sq. metres	@ €484.38 per sq. metre	= €1,242
Store:	15.59 sq. metres	@ €150 per sq. metre	= € 2,338
Staff Area:	11.1 sq. metres	@ €80 per sq. metre	= € 888
Total NAV			€4,468
<b>Say</b>	<b>€54,400</b>		

Or (using the VO zoning model)

Zone A:	41.13 sq. metres	@ €700 per sq. metre	= €28,791
Zone B:	57.71 sq. metres	@ €350 per sq. metre	= €20,198
Zone C:	6.95 sq. metres	@ €175 per sq. metre	= € 1,216
Store:	15.59 sq. metres	@ €150 per sq. metre	= € 2,338
Staff Area:	11.1 sq. metres	@ € 80 per sq. metre	= € 888
Total NAV			€3,431
<b>Say</b>	<b>€53,400</b>		

Mr. Halpin then introduced his comparisons (details at Appendix 1 hereto) as follows:

1. The first comparison property is a coffee shop at Unit 7, Tower Shopping Centre, Clondalkin village with a passing rent of €32,000 and a NAV of €30,700 and thus a close correlation in the values. He pointed out that the NAV equates to approximately €472 per sq. metre.
2. Comparison 2 trades as Dominoes Pizza and is next door to Comparison No. 1 and the NAV on this property equates to €461 per sq. metre.

3. Comparison No. 3 is a Unicare Pharmacy and is located at No. 5 Main Street, Clondalkin village and was valued on a zoning basis.
4. Comparison No. 4 is Spelman & Co., The Corner House. This property was also valued on a zoning basis @ Zone A €750 per sq. metre. Mr. Halpin gave evidence that this was a higher profile location than the subject property, and situate at the junction of Main Street and Monastery Road. This property was reduced from Zone A €850 per sq. metre on an agreed basis.

Overall the appellant submitted that the scheme of value adopted by the Commissioner had not properly taken into account the actual rental value per the passing rent in formulating the NAV. He submitted that the scheme adopted by the Commissioner was flawed and the differential applied to the Main Street ranging from Zone A €600 per sq. metre to Zone A €850 per sq. metre on properties directly opposite each other is too large to be equitable and that the subject property should be assessed in line with comparable properties in the vicinity, including those adjoining it on Tower Road. The fact that staff areas do not directly adjoin the shop was also submitted as a limiting factor.

### **Cross examination of Mr. Halpin**

In cross examination by Mr. Curran, Mr. Halpin accepted that the subject property had double frontage and that it was in a good location. Mr. Curran put it to him that it was not an oddly shaped building; Mr. Halpin disagreed. When put to him, Mr. Halpin did not accept that all retail units in South Dublin County Council were valued on a zoning basis, but did accept that all the premises in Clondalkin Village were valued on a zoning basis. Mr. Halpin accepted that on a double frontage property you take the principal street as the measurement for valuation purposes even if the side facing onto the principal street is smaller than the side facing onto the secondary street. He also accepted that there was a monetary value to an off-licence, but said that it does not attract an increase in market value for a premises and there was no evidence that a premium is paid for an off-licence onsite. Mr. Halpin pointed out that there was an addition at the Tribunal stage of the appeal for the off-licence but it was not taken into account at the original valuation or at First Appeal stage. In relation to the office in the subject property, Mr. Halpin stated that it was not contained within the subject property, but could only be accessed from the subject property by in fact leaving it first, and that the respondent had not taken this into account. Mr. Curran stated that the one can go from the

shop into the adjoining Arcade, and then the door to the office is on the right hand side in the Arcade, without having to go outside.

### **Respondent's evidence**

Mr. Curran having taken the oath adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief. Mr. Curran stated that the premises was in a pivotal location. He further stated that he devised the valuation scheme in the area on a zoned basis and that Zone A €850 per sq. metre on Main Street was the highest, while Zone A €750 per sq. metre was the highest on Tower Road. He stated that the opposite side to that of the subject property on Main Street was less busy than the side that the appellant's property was located on. The values applied were based on passing rent according to Mr. Curran and the most valuable properties are on Main Street.

Mr. Curran accepted that an error had been made on the initial valuation as it had not included additions for the off-licence and for double frontage.

Mr. Curran contended for the following valuation:

Net Internal Area     Retail			
Zone A:	41.13 sq. metres	@ €850.00 per sq. metre	= €34,960.50
Zone B:	57.71 sq. metres	@ €425.00 per sq. metre	= €24,526.75
Zone C:	6.95 sq. metres	@ €212.50 per sq. metre	= € 1,476.87
Store:	15.59 sq. metres	@ €150.00 per sq. metre	= € 2,338.50
Office:	11.10 sq. metres	@ €200.00 per sq. metre	= <u>€2,220.00</u>
Sub-Total			€65,522.62
Addition for Double Frontage @ 5%			<u>€ 3,276.13</u>
Total			€68,798.75
Addition for Off-Licence			<u>€10,000.00</u>
Total			€78,798.75
Rounded to			€78,800.00

### **Cross Examination of Respondent**

In cross examination Mr. Halpin asked Mr. Curran whether he was aware of any premises in Clondalkin rented on a zoned basis. Mr. Curran responded by stating that the zoning basis was only a methodology, the purpose of which was to reach values that allow comparisons

for different sized properties. He stated that the analysis was carried out of the passing rents of available properties. These passing rents were obtained from agents, businesses, auctioneers, landowners and commercial organisations. On the basis of this information he reached values of passing rents and from these passing rents the Valuation Office worked out a zoned rent. He stated that out of 200 commercial premises that were valued in the Clondalkin area only 6 were appealed. He asserted that the zoning method is accepted by the Society of Chartered Surveyors as an appropriate model. Mr. Halpin put it to Mr. Curran that it was inappropriate to use this model as local rents were not set on a zoning basis.

Mr. Curran stated that the measurements on the premises were changed by agreement and this was why the valuation decreased. He also referred to his failure to include a value for the off-licence in his initial valuation. Mr. Curran stated that there was a capital cost in acquiring a licence and thus it has a value for the NAV as compared to a premises without one. Mr. Halpin stated that there was no market evidence for this. Mr. Curran also stated that he forgot to add for the double frontage on the initial valuation. Mr. Halpin pointed out that no property comparison with a double frontage was put forward by the respondent. Mr. Curran replied that was because there was none. Mr. Halpin felt that this was unlikely.

## 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. Section 63(1) of the Valuation Act, 2001 states: *“The statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of the Act.”* Therefore, the onus is on the appellant to prove that the valuation under appeal is not correct.
3. The Tribunal notes that the Commissioner of Valuation has sought to include a valuation for an off-licence and double frontage that were not included at the valuation date and which were not subject to a First Appeal to the Commissioner.
4. The Tribunal finds that the Commissioner of Valuation cannot appeal his own valuation.

5. In particular the Tribunal finds that the Commissioner cannot at appeal stage before the Tribunal include valuations that were not included at the valuation date.
6. The Tribunal therefore finds that the valuation of €75,500 as set out in the Valuation List is the valuation under appeal.
7. The Tribunal notes that the parties have agreed the areas of the subject property at appeal stage and that these areas vary from the areas as set out in the original valuation.
8. In arriving at its decision the Tribunal relies on the comparisons put forward by the parties. The Tribunal accepts that the valuation levels in the area were derived from an analysis of available market information of commercial premises, that all retail properties in the revaluation were valued on a zoned basis and that the subject property was valued comparatively to other commercial properties in the area.
9. The Tribunal finds that the zoning method of valuation in respect of both the subject property and the comparison properties has been correctly applied. The Tribunal considers it reasonable and fair to uphold the zoning method of valuation and the levels as applied in respect of the subject property.
10. The Tribunal finds that the valuation should be amended to reflect the agreed amended floor areas within the subject property.

### **Determination**

In reaching its determination the Tribunal has been required to consider only the evidence submitted and adduced. In so doing the Tribunal has made the foregoing findings and in the light of those findings determines the valuation of the subject property to be as follows:

Zone A	41.13 sq. metres	@ €850	per sq. metre	= €34,960.50
Zone B	57.71 sq. metres	@ €425	per sq. metre	= €24,526.75
Zone C	6.95 sq. metres	@ €212.5	per sq. metre	= € 1,476.88
Store	15.59 sq. metres	@ €150	per sq. metre	= € 2,338.50
Office	11.10 sq. metres	@ €200	per sq. metre	= <u>€ 2,220.00</u>
Total NAV				= €65,522.63
Say €65,522				

And the Tribunal so determines.