

Appeal No. VA10/3/008

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

**Fresh Opportunities Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2188778, Shop, Store at Lot No. Block F, Unit 5, Flr 0, Flr -1, Smithfield Market, Arran Quay C, Arran Quay, County Borough of Dublin.

**B E F O R E**

**Maurice Ahern - Valuer**

**Deputy Chairperson**

**Michael F. Lyng - Valuer**

**Member**

**Fiona Gallagher - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 14TH DAY OF JANUARY, 2011**

By Notice of Appeal dated the 14th day of July, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €605 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:

"That the RV as assessed is excessive and inequitable. This location is now very poor and the shop is over assessed when viewed against the tone. The Commissioner has failed to attach sufficient weight to the disadvantages of this location when arriving at his estimate of NAV."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin, on the 29<sup>th</sup> day of September, 2010. At the hearing, the appellant was represented by Mr. Eamonn Halpin, BSc. (Surveying), ASCS, MRICS, MIAVI. Mr. Greg Grouse, Manager of subject property was also in attendance. The respondent was represented by Mr. Peter Gilsenan, MIAVI, a valuer in the Valuation Office. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

**At issue**

Quantum.

**Valuation History**

The subject premises were first assessed in May 2007 when a proposed Valuation Certificate was issued at an RV of €17. Following representations, the Valuation Certificate was re-issued in August 2007 wherein the valuation RV was reduced to €11. In April 2008, following an appeal to the Commissioner of Valuation, and on foot of negotiations with Mr. Eamonn Halpin on behalf of the appellant, a Valuation Certificate issued with an RV of €73. In mid-2009, the property was again listed for revision, following the partial surrender of a portion of the ground floor to the landlord. On the 12<sup>th</sup> October 2009, a Valuation Certificate issued with an RV of €05. This was subsequently appealed on the 23<sup>rd</sup> December 2009 to the Commissioner of Valuation. On the 22<sup>nd</sup> June 2010, a Valuation Certificate issued with an RV of €05. It is against this decision of the Commissioner that the current appeal lies.

**Location**

The location of the property is Unit 5, Block F, Smithfield Market, Smithfield, Dublin 7.

**Description**

The property is a modern ground floor convenience shop with ancillary basement storage. The unit is in excellent condition with air conditioning, is painted and has tiled walls and spot lighting.

**Floor area:** Ground Floor: 817.00 sq. metres.  
Basement: 123.81 sq. metres.

**Tenure:** The subject is held under a 25-year lease with 5-yearly reviews from January 2006.

### **Appellant's Case**

Mr. Eamonn Halpin, having taken the oath, stated that the subject property was located in a very moderate location in a pedestrian area with little passing trade except for occupiers in the immediate area. He stated that the unit, although new and well-finished, does not compare with better located supermarkets already assessed by the Commissioner. In his opinion, the hypothetical tenant would not pay more for this unit than for similar properties which were better located. The levels applied by the Commissioner were, he felt, excessive in view of the actual location and do not take into account the lack of profile to any main road. The unit, he stated, could not be compared to local units with better profile and the premium applied by the Commissioner, he believed, was totally inappropriate given the established tone for the area for similar properties. Mr. Halpin stated that the original comparisons upon which the Revision Officer relied when formulating the valuation, were inappropriate and non-comparable. Even though the level of the RV on the subject property had been reduced in 2007, it was, in Mr. Halpin's opinion, still too high because the expectations for the Smithfield development have not materialised: he stated that the Commissioner, in valuing a ground-floor portion of the subject property which had been surrendered by the appellant to the landlord in 2009, had taken account of the lack of development of the location, but had not applied this revised thinking on the location to the assessment of the subject. Mr. Halpin felt that the RV on the subject property should be reduced to reflect the unit's value taking into account its location and the levels applied to other units, as shown by his comparisons. Mr. Halpin contended for a valuation of €370, calculated as follows:

Supermarket	817.00 sq.metres @ €68.34 per sq.metre =	€55,833
Basement staff & ancillary areas	123.81 sq.metres @ €27.33 per sq.metre =	€3,384
NAV		€9,217
RV @ 0.63% =	€73.06	
Say	€370	

In the alternative, Mr. Halpin proposed a valuation of €30, using the zoning method as follows:

Shop Zone A	139 sq. metres	@	€164 per sq. metre	=	€22,796
Shop Zone B	139 sq. metres	@	€82 per sq. metre	=	€11,398
Shop Zone C	174 sq. metres	@	€41 per sq. metre	=	€7,134
Retail Balance	365 sq. metres	@	€20.50 per sq. metre	=	€7,482
Basement	123.81sq.metres	@	€27.33 per sq. metre	=	<u>€3,384</u>
NAV					€2,194
RV @ 0.63%					= €28.82
SAY					€30

Mr. Halpin put forward 7 comparisons details of which are set out in Appendix 1 to this judgment.

### **Cross-Examination**

Mr. Halpin agreed that he was involved in the valuation of the subject in 2007. He stated that the levels agreed at that time were agreed with the expectation of development of the Smithfield area, which had not materialised. He agreed that the area was reasonably good but the spending power was less than other areas where car parking was available. Mr. Halpin felt that the subject property was designed for a bigger plaza. He also agreed that the subject did not suffer from local competition.

Mr. Greg Grouse, manager of the subject property for 8 months, stated that the area around Smithfield had huge social problems, in particular alcohol consumption and shoplifting. He stated that the footfall in the area during weekdays and at weekends was very little and that he still had to have 11 staff on duty to man the counters. Mr. Grouse also stated that the fact that the City Council car park is closed at present also affects business.

### **Respondent's Case**

Mr. Peter Gilson, MIAVI, a valuer in the Valuation Office, having taken the oath, adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief. He agreed with the description, location and floor areas as already presented to the Tribunal. Mr. Gilson contended for a valuation of €605 based as follows:

Ground Floor Retail:	817.00 sq.m. @ €12.75 per.sq.metre =	€2,116.75
Basement/Stores/Offices	123.81sq.m. @ €7.33 per.sq.metre =	€903.383.73
Total NAV		€5,500.48
€5,500.48 @ 0.63%		
RV say €605		

Mr. Gilsenan stated that the subject was in a very good location. It is, he said, a very modern ground floor retail unit with basement stores/offices which cater for everyday convenience food. It also has an off-licence. The rateable valuation was assessed at 0.63% of the net annual value, which is in line with the basis adopted for the determination of other properties in the same rating authority area as the subject. In regard to his comparisons, he stated that his first comparison (Fresh, Block F, Unit 5, Smithfield Market, Smithfield, Dublin 7) was the subject itself which was valued in April 2008, and that the levels on the ground floor had been agreed with Mr Halpin at first appeal stage at €12.75 per sq. metre. When the property was revalued after the partial surrender of floor space, it was valued in line with the valuation in 2008 at €12.75 per sq. metre. Mr. Gilsenan's second comparison (Fresh Unit 3B, 4 Grand Canal Square, Grand Canal Quay, Dublin 2) was valued in 2008 and, again, agreed with Mr Halpin at first appeal stage, at €13.42 per sq metre for retail ground floor. This is a retail unit similar to the subject. Mr. Gilsenan's third comparison (Eurospar, Hanover Street), which he considered to be in a secondary location and having limited footfall, is valued at €63.95 for retail ground floor. Mr. Gilsenan's fourth comparison, (Eurospar, Gordon House) is a modern convenience store and it depends on local trade. It was valued in 2007 at €36 per sq. metre for retail ground floor. Mr. Gilsenan's fifth comparison, (Polonez, Unit 9B, Block A, Smithfield) a retail ground floor unit, was valued in 2009 at €50 per sq. metre. Mr. Gilsenan's sixth comparison, (Paddy Power, Unit 17, Block C, Smithfield) is located in the adjoining block to the subject. The ground floor retail unit is valued at €49.62 per sq. metre.

Mr. Gilsenan stated that the subject property was a bright, spacious and modern convenience store located in Smithfield which is a rejuvenated modern area. He stated that the rateable valuation of the property has been determined by reference to Section 49 of the Valuation Act, 2001, as represented by the comparisons cited and by the valuation of the subject property as agreed at the previous appeal in 2008. The unit, he stated, provides functionality and a standard of fit-out that is similar to other large 'stand alone' retail units and the valuation levels applied reflect this.

**Cross-Examination**

In reply to questions from Mr. Halpin, Mr. Gilsenan agreed that the location, trading and the environment would influence the hypothetical tenant. Mr. Gilsenan would not agree with Mr. Halpin that the quality of the subject was inferior to Fresh, Grand Canal Square. When it was put to him by Mr. Halpin that the office accommodation at Grand Canal Square was attracting high quality tenants, Mr Gilsenan stated that, in his opinion, both Smithfield and Grand Canal Square are developing areas. In reply to Mr Halpin's question as to why so many units in Smithfield are not occupied, Mr Gilsenan stated that, in his opinion, it had more to do with economics than location.

**Findings**

The Tribunal, having carefully considered all the evidence and arguments adduced by the parties, makes the following findings:

1. The Tribunal felt that the comparisons referred to by both parties were not directly comparable with the subject property and were, therefore, of limited assistance.
2. The Tribunal felt that Supervalu in Talbot Street and Fresh in Grand Canal Quay are the most relevant comparisons but that the subject was inferior to both.
3. The Tribunal accepted Mr. Grouse's evidence of social problems in the area in which the subject property is located.
4. The Tribunal also accepted Mr. Grouse's evidence that the footfall in the area was limited to a few hours every day but that the subject still had to be manned during the quiet time by 11 staff.
5. The Tribunal is of the view that current closure of the nearby City Council car-park is a major disadvantage to shoppers.
6. The Tribunal notes evidence advanced on behalf of the appellant to the effect that in the block where the subject is located, only two retail units - Paddy Power and the subject - are occupied. This indicates the low level of business activity in the area.

Taking account of the above, the Tribunal determines the RV of the subject property to be as follows:

Ground Floor Retail 817.00 square metres @ €100 per sq. metre	=	€81,700.00
Basement/Stores/Offices 123.81 sq. metres @ €27.33 per sq. metre	=	<u>€ 3,383.73</u>
Total NAV		€85,083.73

RV @ 0.63% = €36

And the Tribunal so determines.