

Appeal No. VA10/5/039

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

**Mark Wright, Wrights of Howth**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 747035, Fish (Facility Rateable) at Auction Hall, West Pier, Howth, County Dublin.

**B E F O R E**

**John Kerr - Chartered Surveyor**

**Deputy Chairperson**

**Michael Connellan Jnr - Solicitor**

**Member**

**Patricia O'Connor - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 24TH DAY OF FEBRUARY, 2011**

By Notice of Appeal dated the 23rd day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €41,400 on the above described relevant property.

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

"Assessment is excessive as average passing rent is €8,500 p.a. Assessment is excessive by comparison with other Fish Auction Halls." "Description as "Fish Stores" is incorrect."

"Restrictive covenants of use of building exclusively as "Fish Auction Hall" limits the rental value of the property." "Comparison with similar fish auction halls throughout the country."

The appeal proceeded by way of an oral hearing in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 22<sup>nd</sup> day of October, 2010. At the hearing the appellant was represented by Mr. Donal Fitzpatrick, FSCS, FRICS, North's Property, and the respondent by Ms. Gillian Beale, BSc, a Valuer in the Valuation Office. At the hearing, both parties having taken the oath, adopted their respective précis as their evidence-in-chief.

**Issue**

Quantum only.

**Description**

The property concerned consists and comprises a purpose-built industrial building comprising store (Auction Hall), cold room and 1<sup>st</sup> floor office. It has 6m eaves with double skin roof, block walls and 4 roller shutter doors. It has a self draining floor facilitated by a central channel. It forms part only of a single-storey modern industrial building which is also occupied by the Howth Harbour Master and the Howth Sea Fishery Officer. There is an integral two-storey office section which has shared toilets, tea station and first aid facilities on the ground floor. The Auction Hall was constructed circa 1993 by the Department of Agriculture, Fisheries and Food who currently occupy the adjoining offices within the building.

**Location**

The property is located on West Pier, Howth adjacent to the Syncro-Lift and Boat Repair Yard, forming part of Howth Fishery Harbour Centre. Howth village is approximately 14 km north east of Dublin city centre and approximately 17 km south east of Dublin International Airport. The Dublin Port Tunnel entrance is approximately 10km south west of West Pier. West Pier is accessed from R105/Dublin Road via Harbour Road and is located adjacent to Howth Dart Station.

**Accommodation**

The accommodation was measured on Gross External Area (GEA) basis and has been agreed by the parties as follows:

**Ground Floor**

Store (Auction Hall)	308.56 sq. metres
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Cold Room	121.15 sq. metres
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**First Floor**

Office	22.27 sq. metres
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Total GEA	451.98 sq. metres
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**Licence Terms/Tenure**

The subject property was secured under a licence between the Minister for the Marine and Natural Resources and Howth Fish Sales Ltd on the 18<sup>th</sup> July 1999 for a 5- year period to operate the Auction Hall at an annual rent of (IR £5,000) €6,348.69 per annum plus commission of 0.5% of gross fish sales. The licence expired on the 17<sup>th</sup> July 2004, the terms of which remain in place.

**Valuation History**

The subject property was revised in 1994 and subsequently a first appeal was lodged to the Commissioner of Valuation on the grounds the rateable valuation was very high given the limited permissible use of the building as an Auction Hall. The Valuation issued unchanged. This decision was not appealed to Tribunal. Under the Revaluation Order, a Valuation Certificate (proposed) was issued on 16<sup>th</sup> June, 2009 with a valuation of €47,600. Representations were lodged by agents North's Property for the subject on 9<sup>th</sup> July, 2009 and the valuation was reduced to €41,400 on issue of the final certificate. An appeal was lodged by the appellant to the Commissioner of Valuation on 5<sup>th</sup> February, 2010. The valuation issued unchanged at €41,400 following first appeal. An appeal was lodged to the Valuation Tribunal on 25<sup>th</sup> August, 2010.

**Appellant's Evidence**

Mr. Donal Fitzpatrick for the appellant took the oath and adopted his précis of evidence as his evidence-in-chief. Mr. Fitzpatrick informed the Tribunal that:

1. The subject property can only be used for "*The running of all activities relating to the sale and auction of fish.*" as outlined in the first Schedule of the Licence Agreement.

2. Section 18 of the licence states that the operator can charge a maximum commission of 7.5% to the suppliers of fish, of which the Minister receives 0.5%.
3. Section 21 of the licence provides that the Minister, the tenant and Howth Fishermen's Association shall appoint a Joint Committee consisting of representatives of the Minister, the tenant of the subject property and the Howth Fisherman's Association, thus maintaining that the emphasis is on providing a service rather than maximising the commercial use of the subject property.

Mr. Fitzpatrick also included in his précis a schedule of rent paid by the appellant from 1<sup>st</sup> April 2004 to 31<sup>st</sup> August 2010.

Mr. Fitzpatrick also stated that in arriving at his opinion of the NAV of the subject property he had regard to the total passing rent (comprising fixed rent and commission) which, he stated, reflects the use of the premises as a fish auction hall and for activities related thereto. Mr. Fitzpatrick informed the Tribunal that the European Union provided funding for the building on the understanding that it be used as an auction hall. Mr. Fitzpatrick asserted that any hypothetical tenant would have regard to these powers, the short licencing period and fit-out expenditure when deciding the market rent. Mr. Fitzpatrick said that as the passing rent is a *prima facie* indicator of the NAV. It was his opinion that the valuation on the subject property should be €18,206.

Mr. Fitzpatrick did not provide any comparable evidence. He also maintained that the restrictive covenant in the licence meant that the subject property could not be let on the open market. Mr. Fitzpatrick said that the planning permission granted in respect of the subject property for an auction hall restricts the letting opportunities for the subject property. As the appeal was in respect of a property valued as part of a Revaluation, Mr. Fitzpatrick said that no comparisons should be given and that the valuation should be decided based on passing rent.

### **Respondent's Evidence**

Ms. Gillian Beale took the oath and adopted her précis as her evidence-in-chief. In her evidence she gave five comparisons in support of her submission.

Mr. Beale contended for a valuation on the subject property of €41,400 calculated as follows:

Block 1	First Floor Offices	22.27 sq. metres	@	€90 per sq. metre	=	€2,004.30
Block 2	Store (Auction Hall)	308.56 sq. metres	@	€90 per sq. metre	=	€27,770.40
Block 3	Cold Room	121.15 sq. metres	@	€6 per sq. metre	=	<u>€1,630.40</u>
NAV						€41,405.10

Valuation Office estimate of NAV (rounded to) 41,400.

### **Basis of Valuation**

In paragraph 2.1 of her précis, Ms. Beale outlined the basis of her valuation in the following terms:

*“The property was the subject of a Revaluation as one of all rateable properties in the Fingal County council Area. The Valuation Order for Fingal County Council specifies 30<sup>th</sup> September 2005 as the Valuation Date. Valuation levels were derived from the analysis of available open market rental information of comparable properties and applied to the subject property.*

*The valuation of this property, on Appeal to the Commissioner of Valuation, was determined by reference to the values of comparable properties stated in the Valuation List in which the property appears.”*

In support of her opinion of valuation, Ms. Beale put forward 5 Comparisons:

### **Comparison 1**

11 West Pier, Howth. Occupied by Thomas Mulloy Ltd. is Located on West Pier, Howth, positioned on the opposite side of the pier to the subject property and consists of a 2-storey industrial unit in use as fish factory/storage. The valuation was agreed at representations stage.

### **Comparison 2**

14 West Pier, Howth. Occupied by Simro Ltd (t/a Wrights of Howth) and is located on West Pier, Howth and positioned on the opposite side of the pier to the subject property and consists of a two-storey industrial unit as fish factory/offices/cold room/stores and shop. The valuation was agreed at representations stage.

### **Comparison 3**

6 West Pier, Howth. Occupied by Comhar Iascaire Eireann Teo and is located on West Pier, Howth and positioned on the opposite side of the pier to the subject property and consists of a two-storey semi-detached unit in industrial use, ground floor as store area and the first floor is semi-derelict and not valued. It is inferior to the subject property.

### **Comparison 4**

Old ice plant, West Pier, Howth. Occupied by Lett Doran & Co. Ltd and is located on West Pier, Howth and positioned on the opposite side of the pier to the subject property. It consists of an old ice plant now used as store. No representations or appeals were submitted and it is inferior to the subject property.

### **Comparison 5**

15a West Pier, Howth. Occupied by Howth Angling Centre and is located on West Pier, Howth and positioned on the opposite side of the pier to subject property. It is a two-storey industrial unit used as the Angling club, ground floor is used as storage and first floor as a bar. The occupier deemed the lease contained a restrictive covenant. An appeal to the Commissioner for Valuation was submitted, the valuation issued unchanged and the decision was not further appealed to the Tribunal.

Ms. Beale accepted that the only comparison property she had visited was comparison 2, despite confirming that comparison 1 is the respondent's primary comparison. Ms. Beale also stated that comparison 5 was not given as a comparison as such, but in support of evidence, as the lease contained a restrictive covenant similar to the subject property. Ms. Beal said that in the case of Comparison 5, the terms of the lease and the restrictive covenant were not considered in reaching a valuation on the property.

### **Findings**

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and makes the following findings.

1. The subject property is a purpose-built industrial building comprising store (Auction Hall), cold room and 1<sup>st</sup> floor office.

2. Comparison 2, comprises a shop in addition to a cold room, and office similar to the subject property and is located on the opposite side of the pier to the subject property.
3. There is no shop in the subject property although the office should be valued at a lesser figure per square metre than a shop.
4. The primary comparison of the respondent, comparison 1, has never been visited by valuation officer and therefore should not be relied upon.
5. None of the comparisons given by the respondent have ever been tested by way of appeal to the Valuation Tribunal.

### **Determination**

Having regard to the foregoing, the Tribunal determines the rateable valuation of the property concerned to be as follows:

Cold room	121.15 sq. metres @	<del>€</del> 5.60 per sq. metre =	€10,370.44
Office	22.27 sq. metres @	<del>€</del> 80 per sq. metre =	€ 1,781.60
Store	308.56 sq. metres @	<del>€</del> 80 per sq. metre =	<u>€24,684.80</u>
			€36,836.84

NAV €36,836.84

Say €36,800

And the Tribunal so determines.