

Appeal No. VA11/5/043

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

**Alan Byrne**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2192812, Retail (Shops) at Plaza Block A1, Beacon South Quarter, Sandyford, County Dublin.

**B E F O R E**

**John O'Donnell - Senior Counsel**

**Chairperson**

**Frank O'Donnell - FRICS, B Agr Sc, MIREF**

**Member**

**Fiona Gallagher - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 20TH DAY OF DECEMBER, 2011**

By Notice of Appeal dated the 24th June, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €105,400 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal and accompanying sheet are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing held at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 10<sup>th</sup> day of October 2011. At the hearing the appellant was represented by Mr. Patrick Hennigan, BSc (Surv) Dip Env Econ MSCSI, MRICS, and the respondent was represented by Mr. Dean Robinson, BSc (Hons) Surveying, a Valuer in the Valuation Office.

### **Location**

The subject property is located in the Plaza, Beacon South Quarter, a mixed-use development in Sandyford, Co. Dublin. It is approximately 600 metres from the M50 and 1.5km from the N11. The development was never completed and is now under the control of NAMA, with a receiver in place.

### **The Property Concerned**

The subject property is in use as a yoga studio, beauty treatment area and gymnasium. The yoga studio is located at ground floor level of a nine-storey apartment block known as The Cubes 2 and the treatment area and gymnasium are situated on the ground floor level of an adjoining single-storey extension, which projects into an open courtyard. Total agreed accommodation is 263.55 sq. metres.

### **Rating History**

The subject property was listed for revaluation as part of the revaluation of all rateable properties in the Dun Laoghaire-Rathdown rating authority area in 2010. A proposed valuation certificate was issued on 15<sup>th</sup> June 2010 with a Net Annual Value (NAV) of €141,800. Following representations the NAV was reduced to €114,300. An appeal was lodged to the Commissioner of Valuation on 8<sup>th</sup> February 2011, which resulted in a further reduction of the NAV to €105,400. The appellant appealed this valuation to the Tribunal by Notice of Appeal lodged on 27<sup>th</sup> June 2011.

### **Tenure**

The subject property originally operated as a hair and beauty salon under the terms of a 25 year lease from 1<sup>st</sup> July 2007, subject to a passing rent of €17,000 per annum from 6<sup>th</sup> December 2007. The initial rent review was to occur after six years and thereafter every five years. The original occupant surrendered the lease in late 2009/early 2010 and the property was advertised to let in Spring 2010.

The appellant took occupation of the unit from 1<sup>st</sup> June 2010 and converted it to a yoga studio, treatment area and gymnasium. He occupied the property rent free until 31<sup>st</sup> May 2011, subject to the payment of rates and service charge. A licence arrangement has now been agreed with the receiver with a licence fee payable in Year 1 of €28,000, rising to €35,000 in Year 2 and €45,000 in Year 3.

### **The Issue**

Quantum.

### **The Appellant's Evidence**

Mr. Hennigan, having taken the oath adopted his written précis and valuation, which had previously been received by the Tribunal and the respondent, as his evidence-in-chief. He set out a number of factors, which he stated affect the NAV of the subject property. Firstly, in Mr. Hennigan's view Beacon South Quarter has failed to develop as a successful commercial entity and many of the retail units, especially those in the vicinity of the subject, have never been fitted out and remain vacant. In addition, some larger units which were occupied have since been vacated. Secondly, in Mr. Hennigan's opinion the subject property has a very poor profile, well removed from the main shopping stream in the Courtyard level. It is situated in a concealed and hidden location, effectively sandwiched between two nine-storey office blocks, with no direct view from the Plaza itself, nor with any direct vehicular access to the Plaza. Furthermore, Mr. Hennigan stated that the subject is not a standard shop unit, but is required under planning conditions to be used primarily for health and leisure purposes. Finally, he stated that the rent agreed by the original tenant was aspirational, based on expectations which never materialised. He stated that he was very familiar with the location, his own office being situated a few doors away and that his recollection of the hair salon was that it was either empty or almost empty.

Mr. Hennigan stated that the subject property was currently in use as a yoga studio, gymnasium and treatment area and should be valued *rebus sic stantibus* as such. In support he referred to the Tribunal decision in **VA10/5/027 - James Cassin v Commissioner of Valuation**. He contended for a NAV of €8,000, based on rental values and the emerging tone of the valuation list in the rating authority area, calculated as follows:

263.55 sq. metres @ €20 per sq. metre = €5,981

Say, €8,000

As a back-up method, Mr. Hennigan also took the average rent payable under the current licence agreement with the receiver, which equates to €36,000 per annum and indexed this back to the valuation date of 30<sup>th</sup> September 2005, using both the Jones Lang LaSalle Retail Index and the Lisney Retail Index. Using the former with an index of 1.44 results in a figure of €1,840 and using the latter with an index of 1.36 works out at €48,960.

Mr. Hennigan put forward six comparisons in support of his contention of NAV, four of which are located in Beacon South Quarter, three at Courtyard Level and one at Plaza Level, like the subject. The three units at Courtyard level were valued at a ground floor rate ranging from €310 per sq. metre in respect of Unit D5, O'Brien's Fine Wines, and Unit D3, Nationwide Tiles and Bathrooms, to €450 per sq. metre in respect of Unit D1, Roche Babois. This latter unit was, in Mr. Hennigan's view, the best retail unit in the entire development, being a corner unit with dual frontage situated very close to the main retail entrance on Carmanhall Road. He also felt that both O'Brien's Fine Wines and Nationwide Tiles and Bathrooms were far superior retail units than the subject. The unit at Plaza Level, The Beacon Barber, is much smaller than the subject and is valued at a rate of €320 per sq. metre.

As in Mr. Hennigan's opinion there were no other premises in Beacon South Quarter directly comparable to the subject, the planning for which was for health and leisure purposes only, he also relied on two gyms in Dundrum. Rock Fitness is valued at a rate of €220 per sq. metre and Curves at a rate of €260 per sq. metre, subject to a 10% allowance.

### **Cross-Examination**

It was put to Mr. Hennigan that not much had changed in relation to the property since 2007 and that the internal configuration could be moved around fairly easily. He disputed this and stated that showers, heating and insulation had been installed for the hot yoga studio. In reply to a question as to whether the rent fixed in 2007 was the fairest representation of NAV, Mr. Hennigan stated that this was not necessarily so. He referred to the concealed location of the unit and his recollection from 2007 was of the unit always being empty or nearly empty.

It was further put to Mr. Hennigan that his Comparison 2, Unit D1 at Courtyard Level, was a retail warehouse and not a retail unit. Mr. Robinson stated that there was a difference in quality between Unit D1 and other retail units and that tenants get a quantum discount in respect of these type of units, as they are larger. Mr. Hennigan maintained that it was a retail unit and was being used for retail purposes.

### **Respondent's Evidence**

Mr. Dean Robinson having taken the oath adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as his evidence-in-chief. Mr. Robinson contended for a NAV of €105,400 calculated as follows:

263.55 sq. metres @ €400 per sq. metre = €105,420

Valuation Office Estimate of NAV (Rounded to) €105,400

He stated that the rate of €400 per sq. metre he had placed on the subject property was closely based on the rental evidence from 2007, which broke down at a rate of approximately €443 per sq. metre.

In support of his opinion of NAV, Mr. Robinson put forward four comparisons, all of which are located in the Beacon South Quarter. Two of these are small cafés/sandwich bars located close to the subject in the Plaza, valued at a Zone A rate of €850 per sq. metre. The third comparison, Sportsvalue, is also located in the Plaza and is valued at the same Zone A rate. The fourth comparison is a vacant restaurant unit situated on the outer side of the development. It is valued at a ground floor rate of €400 per sq. metre and €300 per sq. metre in respect of the basement and first floor. None of these comparison properties was tested on appeal.

### **Cross-Examination**

Mr. Robinson admitted that none of the comparisons were of a similar layout to the subject and that is why he felt that the rent from 2007 was the best way to analyse the property. It was put to him that this rent was not sustained, but Mr. Robinson replied that it was a fair, open market rent and that it was not absurd or out of the ordinary versus other rental transactions within the development.

It was also put to Mr. Robinson that his first two comparisons were part of a small cluster of cafés at the side of the main entrance to Imaginosity, which had frontage on to the Plaza, whereas the subject property has no such direct frontage. Mr. Robinson disputed this, saying that you can see the subject from the Plaza. He did accept however, that these two properties along with his third comparison, Sportsvalue, had access from the rear and car parking directly behind. He admitted that the location of Sportsvalue was a little bit better than the subject, but contended that he had made an appropriate allowance for same. It was put to Mr. Robinson that his fourth comparison, Pinots Restaurant, was unreliable as it was vacant at the time of assessment. He denied this however, stating that as per Section 63 of the Valuation Act, 2001 it was a fair comparison.

### **Summary**

Mr. Hennigan submitted that the valuation of the subject property was fundamentally flawed, as it was valued as a standard shop unit, when it is not in terms of layout, configuration and planning permission. He stated that the property should be valued as it stands and that a NAV of €8,000 was a fair valuation.

Mr. Robinson on the other hand, contended that his valuation was fair and that the appellant had ignored the rent from 2007, which gave a fair reflection of the NAV in 2005 and had also ignored the comparisons in the Plaza.

### **Findings**

1. The statutory basis of valuation for properties on revaluation is set down in Section 48 of the Valuation Act 2001, wherein at subsection 3, the Net Annual Value of a property is defined as, *“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 relevant valuation date for the subject property is 30<sup>th</sup> September, 2005 and a passing rent was agreed from 6<sup>th</sup> December, 2007 of €17,000 per annum. This was one of the main guiding factors used by Mr. Robinson in support of his valuation of

the subject. However, it is clear that this rent was unsustainable and was maintained only for approximately two years. Accordingly, in the Tribunal's view, it must be treated with a degree of caution. Similarly, the current "rent" agreed with the receiver as part of a proposed licence arrangement is also to be treated with caution, given the current circumstances where the development is being run by a receiver on behalf of NAMA.

3. The subject property is a unique property within Beacon South Quarter. It is not a standard, retail unit and accordingly is not directly comparable to the other retail units in Beacon South Quarter cited by both parties as comparisons. The use of the property is restricted by the planning conditions to health and leisure purposes and thus a hypothetical tenant would be limited in terms of the types of business he/she could conduct from the premises.
4. The profile of the subject property within the development is poor and it is also lacking in frontage. It is further disadvantaged by the lack of direct vehicular access to the Plaza. These factors, combined with the planning restrictions, are such as being likely to reduce the Net Annual Value of the property and, in the Tribunal's view, a rate of €400 per sq. metre as fixed by the respondent is excessive.

### **Determination**

Having regard to the foregoing findings the Tribunal determines that the Net Annual Value of the subject property is as follows:

263.55 sq. metres @ €360 per sq. metre = €94,878

NAV say €5,000

And the Tribunal so determines.