

Appeal No. VA11/5/098

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

**Lacombs Ltd. t/a China Sichuan**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2201404, Retail (shops) at Unit R2 The Forum, Ballymoss Rd, Sandyford Industrial Estate, County Dublin.

**B E F O R E**

**Niall O'Hanlon - BL**

**Deputy Chairperson**

**Joseph Murray - BL**

**Member**

**Mairead Hughes - Hotelier**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 27TH DAY OF JANUARY, 2012**

By Notice of Appeal dated the 27th day of July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €124,000 on the above described relevant property.

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

*"The valuation is excessive and inequitable." "Section 48 of the Valuation Act, 2001 has not been correctly implemented by the Commissioner of Valuation. The principle of "rebus sic stantibus" should apply and the property should be valued in its actual state. i.e. the property should be valued as a restaurant".*

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 29<sup>th</sup> day of November, 2011. At the hearing the appellant was represented by Mr. Donal O'Donoghue, Director of OMK Property Advisors, Tennant Hall, Christ Church, Rathgar, Dublin 6, while Mr. Dean Robinson, Valuer in the Valuation Office, represented the respondent.

### **The Issue**

The issue between the parties was the issue of quantum, the appellant maintaining that the rateable valuation of €24,000 was excessive.

### **Valuation History**

The property was the subject of a revaluation as one of all rateable properties in the Dun Laoghaire Rathdown County Council Area. A valuation certificate (proposed) issued on 15<sup>th</sup> June 2010 for €44,800. Representations were lodged by OMK on behalf of the appellant in July 2010 that resulted in a reduction of valuation to €17,100. An appeal was lodged with the Commissioner of Valuation on 8<sup>th</sup> February 2011 and following consideration of this appeal the Commissioner increased the valuation to €24,000. On 28<sup>th</sup> July 2011 an appeal was lodged with the Valuation Tribunal.

The NAV was assessed as follows:

Zone A	88.44 sq.metres @	€900.00 sq.metres	€79,596.00
Zone B	72.40 sq.metres @	€450.00 sq.metres	€32,580.00
Zone C	46.14 sq.metres @	€225.00 sq.metres	€10,381.50
Zone D	13.00 sq.metres @	€12.50 sq.metres	€1,462.50
NAV			€24,020.00
		<b>NAV</b>	<b>€24,000</b>

### **The Property**

The subject property is a Chinese restaurant and is one of four commercial units at ground floor level that is situated in a cul-de-sac on the Ballymoss Road in Sandyford Industrial Estate. This development is known as The Forum and is part of a residential apartment scheme. The other three units here are a Spar shop, a café and a dry cleaners. The property is freehold.

### Accommodation

Zone A	88.43 sq. metres
Zone B	72.40 sq. metres
Zone C	46.14 sq. metres
Zone D	13.00 sq. metres

### The Appellant's Case

Having taken the oath, Mr. Donal O'Donoghue adopted his written précis as his evidence-in-chief.

Mr. O'Donoghue argued that the location of the subject property is very moderate, being at the end of a cul-de-sac, with little passing trade and 30 metered car park spaces to the front. He contended that a valuation of €900 per sq. metre Zone A on the subject was incorrect and did not conform with section 48 of the Valuation Act, 2001. He said that the subject restaurant should be valued in its actual state and on an overall basis, should be compared with properties that are truly comparable in all respects to the subject property, and should be valued in line with other restaurants in the locality, rather than opting for a valuation as a retail unit. He further stated that when planning permission was sought, permission was given for a restaurant as per the design submitted at the time, and that if the subject unit needed to change from a restaurant it needed planning permission to do so.

He backed up his arguments by referring to section 48 of the Valuation Act, 2001, the principle of *rebus sic stantibus*, and two Tribunal decisions, viz **VA08/5/125 – Marks & Spencer (Ireland) Ltd.** and **VA10/5/027 James Cassin.**

Section 48 of the Valuation Act, 2001 provides that ‘ “*net annual value*” means, in relation to a property, 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.’

Mr. O'Donoghue further stated that the subject premises should be valued according to the principle of *rebus sic stantibus* which may be defined as “*the rent is to be estimated for a*

*particular hereditament as it stands with all its privileges, opportunities and disabilities, created or imposed by its natural position [...]*”

He said that it was not sustainable to suggest that the hypothetical tenant would pay more for a restaurant unit such as the subject (as assessed by the Valuation Office at Zone A – €900 per sq. metre) rather than a restaurant unit in nearby better located Dundrum Town Centre that has a Zone A rate of €500 per sq. metre, or even Central Park in Leopardstown that accommodates a first floor restaurant with an overall rate of €280 per sq. metre.

Mr. O’Donoghue continued his evidence by referring to **VA08/5/125**, which comments that *“the Tribunal must consider and evaluate the evidence then put before it, be it the actual rent of the property concerned, the rents of other properties of a size, use and location similar to the property concerned and last, but by no means least, the assessment of properties which are truly comparable in all respects to the property concerned [...]*”

He also referred to the **Cassin** judgment wherein it is stated that section 48 of the Valuation Act, 2001 sets out the basis of valuation and NAV of the property and should be estimated having regard to various matters including its *“actual state.”*

Mr. O’Donoghue concluded by saying that he could not accept that similar units in the subject Ballymoss Road location would have a higher valuation than similar units located in the much more superior Dundrum Town Centre, a development that houses one of the largest shopping centres in Europe.

Mr. O’Donoghue said that his preferred method of valuing the subject property was on an overall basis and contended for a NAV of €68,190, valued on an overall basis, as follows:

219.97 sq. metres @ €310 per sq. metre = €68, 190.70      NAV say €68,190

He also provided an alternative calculation of NAV, on a zoned basis, as follows:

Zone A	88.43 sq. metres @ €500 per sq. metre	=	€44,215.00
Zone B	72.40 sq. metres @ €250 per sq. metre	=	€18,100.00
Zone C	46.14 sq. metres @ €125 per sq. metre	=	€ 5,767.50

Zone D	13.00 sq. metres @ €62 per sq. metre	=	<u>€ 812.50</u>
Total			€68,895.00

NAV say €68,500.

### **Comparisons**

In support of his valuation Mr. O'Donoghue introduced four comparisons, details of which are set out in Appendix 1 to this judgement.

His comparison 1 (Mao Restaurant in Dundrum Town Centre) is located just 3 kilometres from the subject property, and while situated in a much more valuable location than the subject location, is a similar type of unit to the subject. Mr. O'Donoghue stated that the property was valued on an overall basis by the Valuation Office at €500 per sq. metre. Comparison 2 (Dunne & Crescenzi, Dundrum Town Centre) is similarly valued at €500 per sq. metre overall. Comparison 3 (Pinot's Café Bar, Beacon South Quarter, currently vacant) has a ground floor valuation of €400 per sq. metre, while the lower ground and mezzanine have a valuation of €300 per sq. metre. The final comparison, number 4, is the Baan Thai restaurant, Central Park, Leopardstown, and this unit is valued on an overall valuation of €280 per sq. metre. This is Mr. O'Donoghue's primary comparison, and though it is an irregularly shaped first floor unit, it is situated in a fully let scheme. The valuation on this property was agreed at Representations Stage, and overall is in a better catchment area to the subject.

### **Respondent's Evidence**

Mr. Dean Robinson, having taken the oath, adopted his written précis as his evidence-in-chief. Mr. Robinson outlined the valuation history of the subject as previously detailed in this judgment. Mr. Robinson contended for a NAV of €124,000 on the subject property, calculated as previously outlined in this judgment.

### **Comparisons**

In support of his opinion of net annual value, Mr. Robinson introduced three comparisons, details of which are attached at Appendix 2 to this judgment.

Mr. Robinson said that he valued the subject premises in accordance with section 48(3) of the

Valuation Act, 2001. His comparisons 1 and 2 are located in Carmanhall Road in Sandyford (close to the subject) and are similarly valued at €900 per sq. metre Zone A. His comparison 3 (Brambles Deli Café, Ravens Court, Sandyford) is currently under appeal to the Tribunal.

Mr. Robinson confirmed to the Tribunal that the Mao Restaurant in Dundrum Town Centre was valued on an overall basis at €500 per sq. metre, that all rental evidence had been analysed by him and that the rental evidence in the Sandyford area supported the valuation of the subject property.

### **Findings**

The Tribunal finds as follows:

1. The subject property includes kitchens and toilets and a cold room that facilitates its use as a restaurant.
2. The Tribunal is mindful of the **Cassin** judgement and the principle of *rebus sic stantibus*, wherein it notes the manner in which the NAV should be estimated, having regard to various matters including a property's "*actual state*."
3. The Tribunal finds comparisons 1 and 2 (Mao, Dunne & Crescenzi), used by the appellant, particularly helpful.
4. The subject property has an overall valuation of approximately €63 per sq. metre, whilst properties in Dundrum Town Centre have an overall valuation of €500 per sq. metre.
5. The Tribunal is of the opinion that the location of the subject property is inferior to that of Dundrum Town Centre.

### **Determination**

Mindful of the foregoing, together with all the evidence submitted and advanced at hearing, the Tribunal considers that a fair and reasonable valuation on the subject should be set at a level of €460 per sq. metre as follows:

Restaurant 219.97 sq. metres @ €460 per sq. metre = €101,186.20

NAV say €101,200

And the Tribunal so determines.