

Appeal No. VA11/5/152 & 155

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

**Myrmidon CMBS (Propco) Ltd. &  
Myrmidon CMBS (Propco) Ltd.**

**APPELLANTS**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 400437, Store at A2 Rear Store, Stillorgan Shopping Centre, Kilmacud Road Lower, Stillorgan, County Dublin and RE: Property No. 400443, Store at C1 Rear Store, Stillorgan Shopping Centre, Kilmacud Road Lower, Stillorgan, County Dublin.

**B E F O R E**

**John F Kerr - BBS, FSCSI, FRICS, ACI Arb**

**Deputy Chairperson**

**Mairead Hughes - Hotelier**

**Member**

**James Browne - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 17TH DAY OF FEBRUARY, 2012**

By Notices of Appeal dated the 19th day of August, 2011 the appellants appealed against the decision of the Commissioner of Valuation in fixing valuations of €2,770 (VA11/5/152) and €14,000 (VA11/5/155) respectively on the above described relevant properties.

The Grounds of Appeal as set out in the Notices of Appeal as are follows:

"The valuation is excessive and inequitable."

"Section 48 of the Valuation Act, 2001 has not been correctly implemented by the Commissioner of Valuation. The principal of 'rebus sic stantibus' should apply and the property should be valued in its actual state."

The appeals proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 6<sup>th</sup> day of January, 2012. At the hearing the appellant was represented by Mr Donal O'Donoghue, BSc (Hons) Estate Mgmt, DipVals, AssocSCSI, MIAVI. The respondent was represented by Mr Paul Ogbebor, BEng (Hons) Civil Engineering, 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.

### **The Issue**

The issue between the parties was that of quantum, the appellant maintaining that the valuations of the subject properties of €2,700 and €4,000 were excessive.

### **Valuation History**

The relevant properties were the subject of a revaluation as two of all rateable properties in the Dun Laoghaire Rathdown County Council Area. Valuation certificates (proposed) were issued on 15<sup>th</sup> June, 2010 for Unit A2 for €2,770, and Unit C1 for €4,060. Representations were made on 12<sup>th</sup> July, 2010 which resulted in no change for Unit A2 and a reduction of valuation to €4,000 for Unit C1 (due to a small floor area reduction). An appeal was lodged to the Commissioner of Valuation on 8<sup>th</sup> February, 2011 and following consideration of these appeals the Commissioner made no changes. On 2<sup>nd</sup> September, 2011 Notices of Appeal were lodged with the Valuation Tribunal for both properties.

The NAVs were assessed as follows:

Unit A2	Store	11.09 sq. metres	@ €250 per sq. metre =	€2,772.50
Unit C1	Store	56.00 sq. metres	@ €250 per sq. metre =	€14,000.00

### **The Properties**

The subject properties are two storage units located in the service area to the rear of Stillorgan Shopping Centre in South County Dublin. The area is a well established residential and commercial location and has good access both to the M50 some distance away as well as the nearby N11. Stillorgan Shopping Centre is one of Ireland's oldest shopping centres and dates from the 1960s. It houses more than 50 retail units and claims both Tesco and Dunnes Stores as anchor tenants.

The subject properties are pre-fabricated storage units. Built in the 1960s, they have high level windows, flat roofs which are leaking, no mechanical ventilation, no services except for power, and were described at the hearing as being in poor condition.

### **Accommodation**

Unit A2	Store	11.09 sq. metres
Unit C1	Store	56.00 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 described the prefabricated nature and location of the units. Built in the 1960s and two of a group of 12 storage units, they feature high level windows, flat roofs (leaking), poor ventilation, signs of mould and mildew throughout, no services except for power, and now in very poor condition, effectively at the end of their functional life. Staff car parking obstructs access into Unit A2, as well as an elevated door making it difficult to move goods in and out of the unit. Photographic evidence given to the Tribunal by Mr O'Donoghue showed water condensation conditions on the ceilings as well as water pooling on the floor. He said that the units were now only used to store Christmas decorations for the shopping centre. He said that both properties are held freehold by Myrmidon CMBS (Propco) Ltd, a company controlled by Treasury Holdings.

Mr O'Donoghue argued that ancillary stores within the shopping centre were valued at €50 per sq. metre, whilst the subject properties were valued much higher at €250 per sq. metre. He said that in his opinion the decision to value the subject properties was incorrect and did not conform to Section 48 of the Valuation Act 2001 which states 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.*

Concluding his evidence, Mr O'Donoghue said that both of the subject properties were in poor condition, that the value of €250 per sq. metre was incorrect and that both of the subject units were valued higher than storage premises within the Stillorgan Shopping Centre.

### Comparisons

In support of his valuations Mr. O'Donoghue introduced three comparisons, details of which are attached at Appendix 1 of this judgment. Comparisons 1 and 2 are ancillary stores located to the rear of retail units in Stillorgan Shopping Centre, and both of these stores are valued at €50 per sq. metre. Comparison 3 is also a store and also valued at €50 per sq. metre, and is located on the Old Dublin Road in Stillorgan. Mr O'Donoghue concluded his evidence by contending for a valuation of €50 per sq. metre on both of the subject properties.

### **Respondent's Evidence**

Mr Paul Ogbebor, having taken the oath adopted his written précis as his evidence-in-chief. Mr Ogbebor outlined the valuation history of the subjects as already detailed herein. Mr Ogbebor argued that the subject properties have exclusive access to their location to the rear of the centre, with the added benefit of a security service provided on site. He noted that the retailers within the shopping centre like to have the use of these storage areas due to the secure nature of their location. In support of his opinion of net annual value, he introduced four comparison properties, details of which are attached at Appendix 2 to this judgment.

Mr Ogbebor said that all of his comparisons were similar storage units to the subjects, in the same location and assessed to a level of €250 per sq. metre, and that the basis of valuation was the 'tone of the list' and Section 48 of the Valuation Act, 2001. He acknowledged that his Comparison Property No. 1 was not tested, while Comparison No. 2 offered evidence of periodic rental evidence, Comparison No. 3 had month-to-month rental evidence, but Comparison No. 4 did not have any rental evidence. Under cross-examination on these details, Mr Ogbebor conceded that the details of his comparisons 2, 3 and 4 did not conform with Section 48(3) of the Act which states that "*net annual value*" means, in relation to a property, the rent for which, one year with another..." as none of them offered rentals one year with another.

When asked to comment on the subject stores being valued at the same level as some 1<sup>st</sup> floor offices in the Stillorgan area, Mr Ogbebor said that he stood over his valuation on the subject

properties, as Stillorgan Shopping Centre commanded very high rents compared to other rents in the surrounding area, and that these subject stores had the added advantage of security.

Mr Ogbebor concluded his evidence by arguing that both the subject properties were valued correctly, have exclusive access and the added benefit of manned security surveillance.

### **Findings**

The Tribunal would like to thank all parties for both the quality and detail of evidence given during the course of the hearing and finds as follows:

1. The parties agreed that the condition of the subject units is poor, dated, and though capable of beneficial occupation, their useful remainder purpose as storage units is likely very limited.
2. The units are located within the environs of Stillorgan Shopping Centre, and as such, benefit from security surveillance and other common area services of the centre. However, no details were provided on the costs associated with the relevant charges for these services.
3. The Tribunal notes the respondent's acknowledgment that the rental details of his Comparison Properties Nos. 2 and 3 were not sufficient to comply with Section 48(3) of the Valuation Act, 2001, as they did not reflect rentals taken one year with another. Neither was any rental detail provided by the respondent on his comparison 4, and accordingly, pertinent rental information was available only on his Comparison Property No. 1.
4. The Tribunal considers that sole reliance on rental information provided on just one similar rental unit of *circa* 12 sq. metres may not suffice, or adequately serve the purpose of establishing a 'tone of the list' for up to 12 storage units at Stillorgan Shopping Centre of which two are the subjects of the instant appeal.
5. The respondent advised that the 'tone of the list' for storage units in the subject rating area (excluding those at the Stillorgan Shopping Centre) is €50 per sq. metre.

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 units should be set at a level of €50 as follows:

**Determination**

Unit A2 Store            11.09 sq. metres            @            €50 per sq. metre =    €554.50

Say: NAV €550

Unit C1 Store            56.00 sq. metres            @            €50 per sq. metre =    €2,800.00

Say: NAV €2,800

And the Tribunal so determines.