

Appeal No. VA11/5/186

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

**Lorcan Macken**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property no. 520033, Retail (Shops) at 41 Main Street, Blackrock, County Dublin.

**B E F O R E**

**Niall O'Hanlon - BL**

**Deputy Chairperson**

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

**Member**

**Aidan McNulty - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 24TH DAY OF FEBRUARY, 2012**

By Notice of Appeal received on the 26th day of August, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €69,600 on the above described relevant property.

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

*"Zoning method is incorrect."*

An oral hearing in respect of this appeal took place in the offices of the Valuation Tribunal at Ormond House, Ormond Quay Upper, Dublin 7, on the 19<sup>th</sup> of January, 2012. Mr. Paul Breslin MSCSI, of Breslin & Co. appeared on behalf of the appellant and Ms. Olga Harney, BSc (Hons) Property Studies, a valuer in the Valuation Office, appeared on behalf of the respondent.

### **The Subject Property**

Property no. 520033, the subject property, is located on Main Street, Blackrock. It is positioned on the junction of Main Street, Carysfort Avenue and Temple Road.

The subject property comprises a ground floor retail unit amounting to 80.49 sq. metres, measured on a net internal area (NIA) basis and a basement storage area, amounting to 66.00 sq. metres, measured on a NIA basis. The front of the property is curved at ground floor level.

### **The Valuation History of the Subject Property**

A proposed Valuation Certificate was issued in respect of the subject property on the 15<sup>th</sup> of June, 2010. The property was valued at €9,600. No representations were received in respect of the property. An appeal was lodged with the Commissioner of Valuation on the 8<sup>th</sup> of February, 2011 and the valuation remained unchanged. By Notice of Appeal, received by the Tribunal on the 26<sup>th</sup> of August, 2011, the appellant appealed against the decision of the Commissioner of Valuation.

### **The Issue Arising on this Appeal**

Quantum is at issue in this appeal.

### **Preliminary Issue**

The Tribunal noted, at the outset of the proceedings, that on page 1 of the appellant's précis the following words appeared:

*“The contents of this submission are private and confidential and must not be reproduced in any form.”*

When questioned by the Tribunal, Mr. Breslin confirmed that notwithstanding the aforementioned statement, there was no objection on the part of the appellant to the content of the précis being referred to by the Tribunal in its judgment.

### **The Evidence adduced on behalf of the Parties**

Both Mr. Breslin for the appellant and Ms. Harney for the respondent gave direct evidence and were cross-examined. Both adopted their précis as their evidence-in-chief.

Mr. Breslin stated in direct evidence that the appellant disputed the manner in which the subject property had been zoned and the rate per square metre applied to the retail area. He gave evidence that the property was not uniform in shape and that this severely restricted the retailing area. Mr. Breslin also stated that there was a lack of parking facilities in or about the premises. He indicated that the comparable evidence adduced on behalf of the respondent was not in dispute. When it was put to him by the Tribunal, Mr. Breslin agreed that no comparisons were included in his précis. On the basis of his evidence Mr. Breslin argued for a valuation of €42,000 for the subject property.

Ms. Harney gave evidence regarding the description and location of the property. She stated that the information available to her indicated that the property was held in freehold by the current occupier. Ms. Harney also referred, in her direct evidence, to the six comparisons included in her précis, details of which are attached at Appendix 1 to this judgment.

Ms. Harney stated that the property measured 146.49 sq. metres on a NIA basis, which figure Mr. Breslin agreed was correct. This figure comprises a ground floor retail area of 80.49 sq. metres and a basement of 66 sq. metres. The Tribunal notes that there was no dispute between the parties in relation to the application, by the respondent, of the rate of €70 per sq. metre to the basement.

In the course of the cross-examination of Ms. Harney by Mr. Breslin there appeared to be some confusion between the two witnesses as to the manner in which the respondent had zoned the

property. Accordingly, the Tribunal adjourned the matter briefly to allow the parties to clarify matters.

When the hearing resumed the parties stated that they had reached an agreement that the ground floor should be valued on an overall basis but that they remained apart in relation to the rate per sq. metre that ought to be applied.

### **The Submissions on behalf of the Parties**

Mr. Breslin, on behalf of the appellant, submitted that an overall rate should be applied to the subject property so as to arrive at a net annual value (NAV) of €42,000.

Ms. Harney, on behalf of the respondent, submitted that an overall rate should be applied to the subject property so as to arrive at a NAV of €69,600. In so doing, Ms. Harney argued that dividing the rent passing by the retail floor area, in respect of each of the six comparisons provided by the respondent, supports the argument for a NAV of €69,600.

When asked by the Tribunal, Ms. Harney did not dissent from the view that the Tribunal was entitled to take into account the NAV of each the respondent's comparisons in preference to the rent passing.

Mr. Breslin urged the Tribunal to utilise the NAV, rather than the rent passing, on the basis that the evidence adduced established that the rents passing had been set on a variety of dates whereas the NAV in respect of each property had been arrived at as at the valuation date of the 30<sup>th</sup> of September, 2005.

### **Findings**

The Tribunal, having considered the evidence adduced and the submissions made on behalf of the each of the parties, makes the following findings:

1. The subject property comprises a ground floor retail unit amounting to 80.49 sq. metres, measured on a NIA basis and a basement storage area, amounting to 66.00 sq. metres, measured on a NIA basis;
2. It is common case between the parties, and the Tribunal holds, that the basement storage area has been (and ought to be) valued at the rate of €70 per sq. metre;
3. It is common case between the parties, and the Tribunal holds, that the ground floor retail area of the subject property ought to be valued on an overall basis;
4. In arriving at the rate per sq. metre to be applied to the ground floor retail area it is appropriate that the Tribunal consider the comparisons advanced on behalf of the respondent;
5. The Tribunal notes that two of the comparisons advanced by the respondent, namely comparisons 4 and 6, have retail floor areas of 39.19 sq. metres and 33.58 sq. metres respectively. The Tribunal finds that these properties are of less assistance to it in considering the present appeal as they are considerably smaller than the subject. Accordingly, the Tribunal excludes them from further consideration;
6. The Tribunal finds that, in considering the comparisons advanced by the respondent, it is more appropriate to compare the NAV, rather than the rent passing, with the retail floor area for each comparison. The Tribunal so finds on the basis that the NAV was arrived at for a single date, the 30<sup>th</sup> of September, 2005 whereas the rents passing were established on a variety of dates. Accordingly, it is the view of the Tribunal that the NAV provides a more reliable comparison on the facts of this case;
7. The Tribunal notes, on the basis of the uncontested evidence adduced on behalf of the respondent, that the NAV for comparisons 1, 2, 3 and 5 amounts to €65,300, €55,600, €61,900 and €63,700 respectively;

8. The Tribunal further notes, again on the basis of the uncontested evidence adduced on behalf of the respondent, that the part of the NAV which relates to the non-retail area for comparisons 1, 3 and 5 amounts to €80, €1,860 and €18,309 respectively (comparison 2 having no non-retail area);
9. that the part of the NAV which relates to the non-retail area for comparisons 1, 2, 3 and 5 amounts to €80, €0, €1,860 and €18,309 respectively;
10. The Tribunal also notes, again on the basis of the uncontested evidence adduced on behalf of the respondent, that the retail area, measured on a NIA basis, for comparisons 1, 2, 3 and 5 amounts to 89.46 sq. metres, 88.55 sq. metres, 63.6 sq. metres and 67.2 sq. metres respectively;
11. The Tribunal finds that taking, for each comparison, that part of the NAV which excludes the amount relating, on the basis of the respondent's evidence, to the non-retail area, and dividing the resulting figure by the retail area for that comparison gives the following amounts (to the nearest euro) for comparisons 1, 2, 3 and 5 respectively, namely €19, €28, €87, and €75;
12. The Tribunal finds that the simple average (to the nearest euro) of €19, €28, €87 and €75 amounts to €702 and the Tribunal holds that this is the appropriate rate to apply to the ground floor area of the subject property.

### **Determination**

In view of its findings the Tribunal considers that a fair and reasonable assessment of the valuation of the subject property is as follows:

Ground Floor Retail	80.49 sq. metres @ €702 per sq. metre = <del>€</del> 6,503.98
Basement	66.00 sq. metres @ €70 per sq. metre = <u>€4,620.00</u>
	€1,123.98
NAV Say <del>€</del> 1,100	

And the Tribunal so determines.