

Appeal No. VA14/4/019

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

**John Sherlock**

**APPELLANT**

**And**

**Commissioner of Valuation**

**RESPONDENT**

**Property No. 407538, Retail (Shops), 9/10 Main Street Clondalkin, County Dublin**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 11<sup>TH</sup> DAY OF NOVEMBER, 2015**

**BEFORE:**

**Stephen J. Byrne – BL**

**Mairead Hughes - Hotelier**

**Thomas Collins – PC, FIPAV, NAEA, MCII, CFO**

**Deputy Chairperson**

**Member**

**Member**

By Notice of Appeal received on the 12<sup>th</sup> day of November, 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €67,200 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

*"The valuation is unfair and inequitable."*

*"The first floor is let to Minister Frances Fitzgerald T.D. and may be exempt from rates."*

*"Category: Planning permission is in place for office use and not retail use which would have a lesser rental value."*

*"The property should be included under office use and valued accordingly."*

The above entitled appeal came on for oral hearing before the Tribunal on the 1<sup>st</sup> April 2015. The Appellant was represented by Patrick M. O'Dwyer of O'Dwyer English Auctioneers. Mr. O'Dwyer gave evidence under Oath before the Tribunal and adopted his précis of evidence as his evidence in chief. The Respondent was represented by Elizabeth Murphy. Ms. Murphy gave evidence under Oath. She adopted her précis of evidence as her evidence in chief.

### **The Property**

The property consists of ground floor offices situate at 9/10 Main Street, Clondalkin, Dublin 22. The internal area was agreed between the parties at 102.78 square metres. The original Grant of Planning Permission is dated the 21<sup>st</sup> January 1977. Planning Permission was granted at that time for use of the premises as a retail bank. It is common case that the property is currently used as a Solicitor's office. The evidence establishes that the property underwent a refurbishment in or about 2007. The Appellant is the owner of the freehold.

A final Valuation Certificate issued with a valuation of €67,200. This is dated the 5<sup>th</sup> March 2014. This is under appeal to the Tribunal.

The Appellant, in broad terms, argues that the valuation as certified is unfair and inequitable. The Tribunal will deal and in greater detail with the evidence and arguments of the parties.

### **The Appellant's case**

As has been stated, Mr. O'Dwyer, on behalf of the Appellant, adopted his précis of evidence as his evidence in chief.

In support of the Appellant's contention that the value as certified is excessive and inequitable, Mr. O'Dwyer seeks to draw support from five properties which he has put forward as comparable and which he argues present as a fair and accurate analysis of the value which the subject property ought to bear.

Of the five properties which he has put forward in evidence, two are on Main Street, Clondalkin. The remaining three properties are on Tower Road. It is clear from the map which has been put in evidence by Mr. O'Dwyer that Main Street joins onto Tower Road. It is also apparent from the map that the Tower Road properties are within close proximity to the subject property.

Moreover, it is reasonably apparent from the map as adduced that the area comprising Main Street, Clondalkin, and as one turns right onto Tower Road, appears to form something of a discrete 'hub', for want of a better word.

Mr. O'Dwyer in evidence made it clear that the property which he has been presented as, in effect, comparison No. 5, 19 Main Street, Clondalkin, Dublin 22 is his own offices and put in evidence by him primarily to emphasise that the Main Street, Clondalkin comprises a variety and/or mix of properties of varying structures and vintage, or as he puts it himself, is "*a street of mixed residential, commercial, vacant units and derelict cottages*".

It is useful at this point to pause and to observe that both Appellant and Respondent have, in support of their respective and countervailing evidential positions, sought to rely, inter alia, on 'retail zoning' as an analytical tool.

Retail zoning as a method of measurement appears to have been endorsed by the Tribunal in the Decision which has been appended to the Respondent's précis of evidence, that is to say, Judgment of the Valuation Tribunal issued on the 25<sup>th</sup> February 2009 in the case of *A.J. Clondalkin Limited, Appellant and Commissioner of Valuation, Respondent*.

It is clear from the evidence as adduced that retail zoning applies only to the ground floor of the property. Retail zoning allows for what might be termed a staggered approach to valuation. As suggested by the title, the subject property is divided into different zones. The number of zones will vary according to the size of the property under consideration. The smaller the property, the fewer the zones. Zone A is cardinal and represents the area closest to the street. Zone A bears the highest value. As one retreats through the property, the value diminishes. Zone B is valued at less than Zone A and on it goes. The zones are given a value per square metre.

The anonymous author of the zoning methodology pamphlet as put in evidence has somewhat sagely observed that whilst zoning is an aid or tool to valuation, "*it must at all times be overruled by common sense*".

Returning then to the evidence, Mr. O'Dwyer in evidence maintains that a fair and more equitable valuation for the subject property is €25,480 per annum.

As has been stated, Mr. O'Dwyer argues that the comparative evidence deployed by him supports this analysis. In his précis of evidence, he bases the various and respective conclusions as to value on 'current market value', that is to say, the market rent which each of the comparative properties bears as of the 16<sup>th</sup> March 2014.

This gives a current market value for each of the comparators relied upon as follows:

- |    |  |                   |
|----|--|-------------------|
| 1. | Nos. 2 & 6 Tower Road, Clondalkin, Dublin 22:                        | €15,000 per annum |
| 2. | No. 4 Main Street, Clondalkin, Dublin 22 - €24,510<br>rounded up to: | €25,000 per annum |

- |    |  |                   |
|----|--|-------------------|
| 3. | No. 2 Tower Road, Clondalkin, Dublin 22:                               | €25,000 per annum |
| 4. | No. 4 Tower Road, Clondalkin, Dublin 22 - €18,109.50<br>rounded up to: | €18,000 per annum |

For reasons alluded to above, the Tribunal does not, at this juncture, propose to recite the current market value put forward by Mr. O'Dwyer in respect of comparator No. 5 which, as has been stated, is Mr. O'Dwyer's own offices.

In respect of each of the comparators relied upon, the current market value is broken down into value per zone, with particular focus on retail zone A and retail zone B. The following is noted:

- |    |   |            |
|----|---|------------|
| 1. | Units 2 & 6 Tower Road, Clondalkin, Dublin 22           |            |
|    | Zone A - 32.52 square metres @ €330 per square metre:   | €10,731.00 |
|    | Zone B - 29.42 square metres @ €165 per square metre:   | €4,850.00  |
| 2. | 4 Main Street, Clondalkin, Dublin 22                    |            |
|    | Zone A - 34.2 square metres @ €400 per square metre:    | €13,680.00 |
|    | Zone B - 34.2 square metres @ €200 per square metre:    | €6,840.00  |
|    | Zone C - 34.2 square metres @ €100 per square metre:    | €3,429.00  |
|    | Zone D - 11.4 square metres @ €50 per square metre:     | €570.00    |
| 3. | No. 2 Tower Road, Clondalkin, Dublin 22                 |            |
|    | Zone A - 30.5 square metres @ €450 per square metre:    | €13,725.00 |
|    | Zone B - 30.5 square @ €225 per square metre:           | €6,862.50  |
|    | Zone C - 30.5 square metres @ €112.50 per square metre: | €3,431.25  |
|    | Zone D - 9 square metres @ €56.25 per square metre:     | €506.25    |
| 4. | 4 Tower Road, Clondalkin, Dublin 22                     |            |
|    | Zone A - 37.88 square metres @ €300 per square metre:   | €11,364.00 |
|    | Zone B - 42.78 square metres @ €150 per square metre:   | €6,417.00  |
|    | Zone "B" - 2.19 square metres @ €75 per square metre:   | €328.50    |

As a matter of convenience and taking Zone A for each as a guide, the Appellant through Mr. O'Dwyer argues for a minimum valuation of €300 per square metre and a maximum on a valuation of €450 per square metre. By way of contrast, the Respondent seeks to stand over a Zone A valuation of €850 per square metre.

Reliance by Mr. O'Dwyer on current market value was challenged by the Respondent. Mr. O'Dwyer appears to accept the validity of this challenge.

Mr. O'Dwyer sought to introduce evidence of passing rent for the properties which he has put forward as comparators. He sought to introduce evidence of passing rent as of or closer in time to the 30<sup>th</sup> September 2005. It is fair to say that evidence of passing rent of the properties relied upon by Mr. O'Dwyer's evidencing the values which he has put forward and as of September 2005 is not contained in Mr. O'Dwyer's précis of evidence. It follows that the Respondent had not been put on notice of Mr. O'Dwyer's intention to rely on this evidence.

Notwithstanding this, Ms. Murphy for the Respondent, agreed to permit Mr. O'Dwyer to give this evidence. Mr. O'Dwyer gave evidence of the passing rent for each of the comparable properties relied upon by him. He then calculated the Zone A valuation for each of the comparators and based on the evidence of passing rent.

Thus the Tribunal has had the benefit of the following evidence of passing rent in respect of each of the four relevant comparators:

1. Units 2 & 6 Tower Road, Clondalkin, Dublin 22  
 Passing rent as of 9<sup>th</sup> June 2005: €19,685.00
2. 4 Main Street, Clondalkin, Dublin 22  
 Passing rent as of 2005: €28,000.00
3. No. 2 Tower Road, Clondalkin, Dublin 22  
 Passing rent as of January 2006: €39,000.00
4. 4 Tower Road, Clondalkin, Dublin 22  
 Passing rent as of 2005: €24,900.00

Following on from this, the Tribunal has had the benefit of evidence as put forward by Mr. O'Dwyer of what might be termed the Zone A valuation for three of the four comparable properties and based on passing rent as of 2005 and as follows:

1. Units 2 & 6 Tower Road, Clondalkin, Dublin 22: Zone A @ €450 per square metre
2. 4 Main Street, Clondalkin, Dublin 22: Zone A @ €465 per square metre
3. No. 2 Tower Road, Clondalkin, Dublin 22:
4. 4 Tower Road, Clondalkin, Dublin 22: Zone A @ €700 per square metre

This yields a Zone A valuation in respect of the comparative properties being relied upon by the Appellant ranging from €450 per square metre to €700 per square metre and where the evidence in support of same is passing rent at or close to September 2005.

In addition to the above and as stated, Mr. O'Dwyer has emphasised the variety of properties on Main Street. He makes the case that the subject property being currently occupied as offices should be valued as offices and not as retail. He further emphasises the fact that the street (Main Street) is one way. There is no parking or loading to the front of the subject property.

### **The Respondent's case**

Ms. Elizabeth Murphy for the Respondent adopts her précis as her evidence in chief. The position as put forward by the Respondent is a mix of legal and quantum. The Respondent contends that the Appellant bears the onus of satisfying the Tribunal by evidence that the valuation as set by the Respondent is, in all of the circumstances, unfair and inequitable.

The Respondent further argues that the relevant and/or appropriate statutory provision requires the Appellant to put before the Tribunal evidence of value as per a particular date, that is to say, the 30<sup>th</sup> September 2005 ("the Valuation date").

Further, the Respondent has argued that the relevant and/or appropriate statutory provisions require the Appellant to put before the Tribunal evidence of properties (comparable properties) drawn from (appearing on) the Valuation List on the valuation date as representing what is referred to as 'the tone of the list'.

Essentially the Respondent's defence is two-pronged:

- (a) The Respondent, through Ms. Murphy, reasons that the Appellant has failed to put before the Tribunal relevant and/or material evidence. On this argument, evidence of current market value is not relevant and/or appropriate. Moreover, on this argument, evidence of passing rent at or close to September 2005 is not relevant and/or material in that it does not, on the Respondent's case, meet the statutory requirement.
- (b) The Respondent, through Ms. Murphy, reasons that the evidence relied upon by the Respondent is directly relevant and material and meets the aforementioned statutory requirement.

The Respondent has put in evidence what the Respondent maintains are comparable properties. Three of the four comparable properties put forward by the Respondent as candidates for comparison have addresses on Main Street, Clondalkin. The remaining property has an address

on Tower Road but is in fact adjacent to the subject property. It appears from the photographs and indeed from the map that this particular property No. 78 Tower Road, Dublin 22 straddles both Main Street and Tower Road.

It is perhaps useful to concentrate and for the moment on the Zone A valuation as extrapolated by the Respondent from the ‘base evidence’ as to value. Each of the properties put forward by the Respondent as candidates for comparison yields a Zone A retail valuation of €850 per square foot. This is equivalent to the Zone A valuation imposed in respect of the subject property.

The Respondent urges the Tribunal to have regard to the decision of the Tribunal in the case of *A.J. Clondalkin Limited, Appellant and Commissioner of Valuation*, Respondent Judgment of the Valuation Tribunal issued on the 25<sup>th</sup> February 2009 Appeal No. VA08-5-216. This is an appeal in respect of a property situate at 78 Tower Road, Clondalkin. The Tribunal, in this case, approved zoning as a method or tool of valuation. The Zone A valuation of €850 per square metre was upheld in that particular appeal.

Ms. Murphy asserts that it is correct to value the subject property on a retail basis. Whilst the property is currently used as offices, it could, in Ms. Murphy’s view, be readily adapted for use as retail. According to Ms. Murphy, “*retail use is forthcoming*”.

In addition, Ms. Murphy emphasises the need when striking a rate, to achieve fairness and equity as between rate payers. The Tribunal takes this to mean that all things being equal, property owners on the same street or within the same locality, should when applying proportionality, pay equivalent sums by way of rates.

### **Determination**

The Tribunal notes the valuation history as set out in the précis of evidence of the Respondent.

For reasons which have not been gone into for the benefit of the Tribunal, the property was, it seems, listed by the Local Authority for revision on the 20<sup>th</sup> February 2013. The only information that has been furnished to the Tribunal in relation to this is that the property was listed by the Local Authority for revision of valuation “*to take account of Minister Francis Firtzgerald’s constituency office move from Laurel House*”.

On foot of the listing for revision, a final certificate issued with a valuation of €67,200. On appeal the Commissioner of Valuation determined a valuation certificate at €67,200. This is dated the 13<sup>th</sup> October 2014. The Appellant appeals this decision to this Tribunal.

The Tribunal therefore finds that this is an appeal from a decision pursuant to s. 28(4) of the Valuation Act, 2001. (Hereinafter referred to as “the Act”).

The Act, at part 7 thereof, makes provision for what is termed ‘basis of valuation’. The “basis of valuation” encompasses in the main ss. 48 & 49 of the act.

Where s. 48 is deemed to apply, valuation is determined by reference to what is termed ‘net annual value’ defined as follows:

*“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 stage, 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.”*

s. 49 as an approach to the basis of valuation is materially different. It is expressly provided to apply in circumstances where the value of a relevant property falls to be determined for the purposes of s. 28(4) of the Act.

S. 49(1) of the Act requires careful scrutiny. The section contains within it what might be termed primary and default positions.

Primarily, the person and/or body charged with valuing the property must, under s. 49(1) of the Act:

- \* Have regard to values as they appear on the Valuation List.
- \* The Valuation List means the Valuation List for the same rateable authority as that in which the property is situate.
- \* Regard must be had to properties appearing in the Valuation List which are comparable to that property. (The subject property).

The default position is a modified application of the s. 48(1) basis of valuation. The default position comes into play where there are no comparable properties. Thus, one could have a situation where, on revision, a person and/or body charged with determining value is required to apply a modified version of the approach to valuation as provided for under s. 48 employing, as it does, net annual value as defined.

The Tribunal accepts and so finds that the onus is on an individual Appellant to put before the Tribunal relevant material evidence of sufficient weight to advance such Appellant’s case.

Such onus cannot and does not remove from the Tribunal, a creature statutorily charged with achieving fairness between the parties and an obligation on the Tribunal’s part to ensure that



the Respondent has arrived at its valuation properly, that is to say by a correct interpretation and application of the relevant statutory provision, be it s. 48 and/or s. 49.

At the heart of S. 49(1) is a requirement that the person and/or body charged with determining value does so by reference, *inter alia*, to 'other properties'. Other properties must in the first instance be properties which appear on the Valuation List for the Local Authority area in which the subject property is situate.

The Valuation List is defined under s. 21(2) of the Act. Colloquially put, the Valuation List comprises a list of properties which have been rated and the valuation recorded in respect of each.

The 'other properties' by which value is referenced must in addition be 'comparable'. The other properties must, in other words, be comparable to the subject property.

The persons and/or body charged with determining value must, and in order to comply with the provisions of s. 49(1), be satisfied that the 'other properties' by which value is referenced are in truth and in substance comparable. (That is to say, comparable to the subject property).

The Act does not offer any guidance as to what is meant by and/or understood by comparable properties.

In summary therefore, 'other properties' relied upon as material evidence must, if the provisions of s. 49(1) are to be satisfied,

- \* Be on the Valuation List on the relevant date.
- \* Be comparable to the subject property (it necessarily follows as of the relevant date).

It is common case that the subject property was originally granted Planning Permission for use as a retail bank. The evidence established that it was refurbished in or about 2007. Whilst the position is not abundantly clear, it seems reasonable to deduce that the use was converted from a retail bank to offices in or about 2007. Further, it seems reasonable to deduce that as of September 2005 (the relevant date) the property was in use and as per the Grant of Planning Permission as a retail bank.

This being so, it is, in the Tribunal's view, appropriate for the Respondent to select as candidates for comparison, properties which have retail use. The objection to the selection of retail premises as candidates for comparison, where the subject property is currently used as offices is not and in the circumstances and for reasons as set out herein, a valid objection.

Each of the candidates put forward by the Respondent as comparable evidence is recited in the Respondent's précis of evidence as being on the Valuation List. No issue has been taken with this.

Each of the properties put forward by the Respondent as candidates for comparison has been listed as retail as of the relevant date. Accordingly and bearing in mind the observation above, each candidate is, in this sense, comparable to the subject property. Candidate 1 for comparison, (78 Tower Road) is adjacent to the subject property. It abuts Tower Road, the adjoining thoroughfare.

Candidate 2, (3 Main Street, Clondalkin) and candidate 3, (1 Main Street, Clondalkin) are on the same side of Main Street, albeit the other end.

Candidate 4, (22 Main Street, Clondalkin) is on Main Street, albeit on the other side of the street. This particular candidate appears to straddle Tower Road. By way of observation, it is by any measure an imposing property.

Taking a perhaps pragmatic and convenient view that the subject property comprises Zone A and Zone B retail areas, the Tribunal is satisfied that candidates 1, 2 & 3 offered by the Respondent are comparable in size with the subject property.

To emphasise this point, the subject property boasts 70.86 square metres (in Zone A) and 21.87 square metres (in Zone B) yielding a total (A and B) retail area of 92.73.

Candidate 1 for comparison yields a total Zone A and Zone B retail area of 98.84 square metres.

Candidate 2 yields a total Zone A and Zone B retail area of 104.92 square metres.

Candidate 3 yields a total Zone A and Zone B retail area of 110.65 square metres.

Whilst Candidates 1, 2 & 3 are not equivalent in size to the subject property, they are, in the Tribunal's view, within a permissible range when due allowance or account is afforded to the evident absence of uniformity as one moves along the street, a point emphasised by Mr. O'Dwyer in his evidence.

It occurs to the Tribunal that candidates 1, 2 & 3 as put forward by the Respondent meet the statutory requirement that 'other properties' put forward as 'comparable' are in fact comparable.

By way of summary,

- \* Each of the candidates, 1, 2 & 3 has the same use as the subject property. In other words, retail and as per the relevant date, September 2005.
- \* Each of the three properties is in close proximity to the subject property.

- \* The ground floor retail area of each of the candidate properties is similar in terms of size, outlook, appearance and/or facade, to the subject.

The reasoning as employed by the Tribunal and which supports the finding that candidates 1, 2 & 3 offer evidence to suggest that those properties are comparable to the subject property does not, in the Tribunal's view, apply to candidate 4. One only has to view the photograph put in evidence by the Respondent to appreciate that this particular property cannot in any sense or by any measure be viewed as comparable to the subject property. Candidate 4 is a stand-alone modern purpose-built landmark structure comprising a total ground floor area of 340 square metres. This is more than double the size of the subject property. The Zone A retail comprises 105 square metres. The Zone B retail comprises 92 square metres. There is a Zone C retail which comprises 143 square metres. It is worth recalling that the recording for the Zone A retail area for the subject property is 70.86 square metres and the Zone B is recorded at 21.87 square metres.

The only truly common feature between this candidate and the subject is the fact that they both occupy Main Street. Even on this their comparative value is somewhat diminished by the fact that the subject property is entirely located on Main Street whilst candidate 4 appears to straddle both Main Street and Tower Road.

In conclusion, the Tribunal is not and in the circumstances, satisfied to accept candidate 4 as evidence of a comparable property, that is to say a property which is comparable to the subject property.

The requirement on the Respondent is to ensure that the value which it has arrived at is determined by reference, inter alia, to 'other properties' comparable to the subject property.

This suggests reliable evidence with reference to more than one (singular) property. It suggests reliable evidence referenced by a minimum of two 'other properties'. The Respondent has met this requirement. The Tribunal is satisfied that candidates 1, 2 & 3 are comparable 'other properties' for the purposes of and within the meaning of s. 49(1) of the Act.

The fact that the Respondent has put in evidence a property which is not and in the Tribunal's view, comparable whilst less than desirable, is not, in the Tribunal's view and in the circumstances, fatal.

For reasons which have been set out herein, the balance of the candidates relied upon by the Respondent are, and for the reasons as set out herein, sufficiently persuasive and cogent to allow the Tribunal to come to the conclusion that the Respondent has in fact, and when arriving at the value which he has struck, done so by reference to 'other properties' (more than one – a minimum of two) comparable to the subject property.

Mr. O'Dwyer, acting on behalf of the Appellant, gracefully and graciously accepts that evidence of current market value cannot and in the circumstances, assist and where, as in this case, a revision is being appealed under s. 28(4) of the Act.

The Tribunal is required by law to construe and apply s. 49(1) and so as to give it statutory meaning and effect. This requires the Tribunal to be satisfied that the evidence as to value as a pre-requisite be by reference to values appearing on the Valuation List as of the relevant date.

Mr. O'Dwyer very fairly concedes (as he must) that the evidence as to value which he has put forward is not taken from or referenced from the values as they appear on the Valuation List.

The evidence of passing rent achieved by the candidates put forward by the Appellant as comparative is regrettably similarly afflicted. Colloquially put, it is not evidence which is drawn from the Valuation List. As such, it cannot and in the circumstances of this case, be relied upon as tending to advance the Appellant's case.

Accordingly, the Tribunal must in law and in the circumstances uphold the value put forward in this case by the Respondent and must dismiss the appeal of the Appellant.

The valuation as entered on the Valuation List in the sum of €67,200 is confirmed.