

Appeal No. VA08/5/083

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

**Liam Clegg & Brian Clegg**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 492954, Retail (Shops) at Unit 10D, Rathfarnham Shopping Centre,  
Butterfield Avenue, Rathfarnham, County Dublin

**B E F O R E**

**Maurice Ahern - Valuer**

**Deputy Chairperson**

**Tony Taaffe - Solicitor**

**Member**

**Fiona Gallagher - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 23RD DAY OF DECEMBER, 2008**

By Notice of Appeal dated the 7th day of July, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €30,200.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal and in a letter attached to the Notice of Appeal, copies of which are attached at Appendix 1 to this Judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 6<sup>th</sup> day of November, 2008. Mr. Liam Clegg represented the appellants and Mr. Patrick Kyne, MSc (Planning & Development), BE, MRICS, ASCS, a Team Leader in the Valuation Office, represented the respondent, the Commissioner of Valuation. At the oral hearing both parties having taken the oath adopted their précis as being their evidence-in-chief.

### **Location**

The property concerned is known as Unit 10D, Rathfarnham Shopping Centre, Rathfarnham, Dublin 14.

### **Description**

The subject property is a retail unit in a shopping centre which is almost 40 years old and which was upgraded in 1988. It is one of a total of 13 units at ground floor level and is an end unit. The agreed floor area of the subject property measured on a gross internal area basis is:

Zone A: 3.2 metres x 6.1 metres = 19.52 sq. metres

Zone B: 3.2 metres x 4.8 metres = 15.36 sq. metres

Total Area = 34.88 sq. metres

### **Tenure**

The property is held under a lease for a term of 35 years from 27<sup>th</sup> September, 1989 at a current rent of €28,500 per annum fixed on 27<sup>th</sup> September, 2004. The previous rent in respect of the subject property, was fixed in 1999, was €20,825 per annum.

### **Valuation History**

The subject property was the subject of a revaluation as one of all rateable property in the South Dublin County Council area. A valuation certificate (proposed) issued valuing the property at €2,100. The final certificate issued at a valuation of €30,200. Following an appeal to the Commissioner the valuation remained unchanged at €30,200. An appeal to the Valuation Tribunal was received on 11<sup>th</sup> July, 2008.

Prior to the hearing the following amendments were made to the respondent's précis of evidence:

- Page 4 Zone B floor area amended to 15.36 sq. metres and Total floor area amended to 34.88 sq. metres.
- Page 5: under Tenure amended from 25 year lease to 35 year lease and 1989 to 1999. Under General Observations, 15 retail units were amended to 13 and 14 was amended to 12.
- Page 7, the NAV contended for was amended from €30,200 to €29,900.

### **Appellant's Case**

Mr. Liam Clegg presented the appellant's case. He essentially presented their case by following the contents of his notice of appeal which is attached at Appendix 1 hereto. He felt that a Zone C rate should have been applied proportionately to his unit which would have produced a lower valuation and complained that Zone C appeared to have been applied only to larger shop units than the subject property. He contended that the increase in rates should only have been 4% per annum, as a service charge along with his rent had to be paid to the landlord. He also contended that a lower valuation should have been placed on the unit because it was the last shop on the ground floor and that continuity with the other shops had been broken by a display window for upstairs shops, by toilets and by a wide staircase leading to the first floor. It was also separated from the other shops by a set of steps leading from the car-park. He contended that his unit was in an inferior position compared to other units. He described the proposed increase in his rates as "exorbitant".

### **Cross Examined by the Respondent**

Mr. Clegg stated that his brother had agreed the revision of rent and that the rent review that had taken place was very unfair and was too high. It was put to him that his rent had increased by €7,600 over a 5 year period, which was a 7.37% increase. This was compared to 2004-2005 rental movement figures of 8.6% (Jones Lang LaSalle Index) and 11.5% (Chartered Institute of Surveyors). He did not dispute this. He also accepted that the planning permission for the shopping centre was for an entirely retail development. He accepted that his unit was a double fronted unit. He also accepted that his unit was the only shoe repair unit in the shopping centre.

### **Respondent's Case**

The comparison evidence of the respondent is attached at Appendix 2 hereto. The respondent's evidence was that the shopping centre was a very long established shopping centre which trades well. It is what is known as a local shopping centre and had approximately 400 car-parking spaces.

The respondent submitted an amended valuation as follows:

Zone A	19.52 sq. metres @ €1,160 per sq. metre	= €22,643.20
Zone B	15.36 sq. metres @ €80 per sq. metre	= €8,908.80
Less 5%		<u>- €1,577.60</u>
Total		= €29,974.40
NAV Say €29,900		

Mr. Kyne said that all 13 units on the ground floor had been rated at a Zone A level of €1,160 per sq. metre. Of the 13 units on the ground floor, 12 units had settled their valuations. A Zone B rate of €80 per sq. metre had also been applied to all of them. It was then outlined to the Tribunal the basis upon which the remaining units were zoned. It was explained to the Tribunal that the allowance of 5% given to the appellant was because of the layout of the unit, which did not fit the ideal zoning ratio. The respondent had attempted unsuccessfully to explain this rationale to the appellant, and had simply put this 5% allowance down to location of the unit because the appellant did not appear to understand the principle of zoning which had been explained to him. This was not contested by the appellant. In reply to the respondent's direct evidence the appellant stated that the shopping centre was old and decrepit and that it was losing business to other shopping centres in the area and had limited appeal. In his summary the appellant stated that he was not happy with the proposed increase and with what he felt was the failure to allow for what he considered to be the inferior location for his unit.

### **Findings**

The Tribunal has carefully considered all the evidence and arguments adduced by both parties and concludes that:

1. A valuation level has been presented by the respondent for Rathfarnham Shopping Centre which the Tribunal accepts is satisfactory for comparison purposes insofar as it was derived from an analysis of available market rental information for comparable properties and applied to the subject property.
2. The comparisons provided by the respondent are all equally reasonable properties to compare with the subject property.
3. The subject property enjoys a double frontage and is not in an inferior trading position to the remaining ground floor units.
4. The zoning method of valuation in respect of both the subject property and the comparison properties has been fairly applied. The Tribunal considers it fair and reasonable and in accordance with the concept of the valuation level for the shopping centre concerned to uphold the valuation made in respect of the subject property.

**Determination**

Having regard to all of the above the Tribunal affirms the amended valuation of the respondent at €29,900. The appeal is dismissed.

And the Tribunal so determines.