

Appeal No. VA10/2/026

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

**Bodysmart Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2199942, Gymnasium at Lot No. 110/1, Grand Canal Square, Pearse Street, South Dock, County Borough of Dublin

**B E F O R E**

**Maurice Ahern - Valuer**

**Deputy Chairperson**

**Frank O'Donnell - B.Agr.Sc. FIAVI.**

**Member**

**Niall O'Hanlon - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 30TH DAY OF NOVEMBER, 2010**

By Notice of Appeal dated the 31st day of May, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €125 on the above described relevant property.

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

"The detailed description of the property is incorrect. It is not a gymnasium. It is a personal training studio. The description states gymnasium but the property is only an exercise studio capable of hosting 7 clients at one time."

This appeal proceeded by way of an oral hearing which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 10th day of September, 2010. The Tribunal notes that this matter came before it on the 27<sup>th</sup> day of August, 2010, on which date the appellant was unrepresented. The matter was adjourned to the 10<sup>th</sup> of September, 2010, to allow the appellant to secure representation. The appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI, and Mr. Denis Maher, MRICS, a valuer in the Valuation Office appeared on behalf of the respondent. Both valuers adopted their written submissions which had previously been exchanged between them and submitted to the Tribunal, as being their evidence-in-chief given under oath.

### **At Issue**

Quantum

### **Location, Description and Accommodation**

The property comprises a new ground floor retail commercial unit which operates as a gym/fitness/personal training establishment. The unit is mainly rectangular in shape and fronts onto Grand Canal Square adjacent to the main office block entrance and between it and the junction with Grand Canal Quay. It is approximately half way between Pearse Street and Sir John Rogersons Quay. It is close to the newly opened Grand Canal Theatre. The subject property is located at the entrance to an office block. The unit has a full height aluminium and glass window to the street elevation. The reception and training area measures 73.97 sq. metres.

### **The Appellant's Case**

Prior to adopting his précis Mr. Halpin made one change to page 5 of his evidence with regards to the size of the subject property where he had stated the area as 71.46 sq. metres, he changed this to 73.97 sq. metres in agreement with the respondent's measurement of the property. This in turn changed the RV being sought on behalf of the appellant from €64.00 to €66.00.

Mr Halpin took the oath and adopted his précis He stated that the subject property is moderate, being poorly situated away from the main pedestrian flow and is small and restricted to the number of clients it can hold. He stated that it is not a gym but a personal

training establishment. It can only accommodate up to 7 persons at one time. The unit, although new and well finished, does not compare, in his view, with the better new retail/restaurant units in the area cited by the respondent. Additionally, Mr Halpin drew to the Tribunal's attention a restrictive user clause in the lease for the subject property which specifically rules out restaurant use. The restrictive user clause notwithstanding, however, in Mr Halpin's opinion it was unlikely that there would be a tenant for such use, given that adjoining restaurant (Café Java) has closed and also that other restaurant in the same development, even in prime pitches directly fronting the water, cannot be let.

Mr Halpin stated that, in his opinion, a hypothetical tenant would not pay more for this unit than that for his comparison No. 1. which is close by and enjoys a better unobscured profile to the street and is without restrictive user clauses. In Mr Halpin's view, the rate per sq. metre applied by the Commissioner of Valuation to the subject property is excessive in view of the actual location and does not take account of the relatively poor aspect and lack of profile, both of which are significant factors. In this regard, Mr Halpin referred to photographs of the subject property in Appendix 2 of his précis which shows a concrete block wall leading to the office block of the plaza and obscuring the profile of the subject property.

Mr Halpin stated further that the broad tone of the list does not support the Commissioner's proposed rate per sq. metre for subject property. He asserted that the comparisons upon which the respondent relied upon when formulating the valuation of the subject property were inappropriate and were not comparable due to the permitted use clause in the lease for the subject property.

Mr. Halpin informed the Tribunal that there was a 25-year lease on the subject property at a rent of €50,000 per annum, but that he had been informed by his client that the rent had been reduced and is now €33,000 per annum.

Mr. Halpin also stated that although there has been a lot of redevelopment in the locality, in his opinion the subject development is not a prime location

Mr Halpin put forward 6 comparisons, as follows:

1. Gosson Agencies, Forbes Quay, Grand Canal Dock, Property No. 219758.

- RV €71.00. (2007 - agreed at representations stage.)
2. Convenience Store 8 till 12 Hanover Quay Grand Canal Dock, Property No. 2169382. RV €300. (2007 - ao appeal.)
  3. Ground Floor Offices at Forbes Street, Property No. 2188738. RV €200. (2007 - no appeal.)
  4. Sano Vitae Health Studio, IFSC, Property No. 2174668. RV €394. (2004 - 1<sup>st</sup> Appeal)
  5. Fresh Supermarket Grand Canal Dock, Property No. 2191545. RV €756. (2007 - 1<sup>st</sup> Appeal)
  6. Bridgecom Ltd. Property No. 2107337, RV €387. (**VA00/3/055 - Bridgecom Ltd.** agreed prior to hearing.)

### **Cross-Examination**

When questioned by Mr. Maher on the impact of footfall on the present occupier of the subject property, Mr. Halpin stated that the impact would be minimal. However, he stated that if he were to advise the hypothetical tenant on whether to lease the subject property, he would be opposed to it. Mr. Halpin restated that while the development was attractive, in his opinion the subject property, with no footfall and obscure profile, is very much the poor relation in the overall development. When further questioned by Mr. Maher about the usage of the subject unit, Mr. Halpin said he would not recommend its use as a retail unit. While he acknowledged that there may be no particular disadvantage for the present occupier, he said this did not mean that the subject unit should have been valued higher as a result. In response to further questioning, Mr. Halpin said he was of the opinion that, in general, rents in the subject development were pitched too high from the beginning, notwithstanding the fact that the development is attractive and has potential.

Mr. Maher questioned Mr. Halpin about page 2 of the rental agreement and the permitted use of the unit. In reply, Mr. Halpin stated that while the most attractive element in the subject development is the waterfront, he believed that this is not a good retail location. He acknowledged that units adjoining the subject property have either been sold or let and that most of them are now occupied. With regard to the respondent's first comparison, Mr Halpin asserted that the estimated NAV was excessive in relation to the established tone. Mr Halpin was also of the opinion that the area in which the subject development is located has moderate values relative to the rest of Dublin City.

**The Respondent's Case**

Mr. Maher took the oath and adopted his précis. With regard to the appellant's stated ground of appeal that the subject property had been incorrectly described in the Valuation List, Mr. Maher stated that the respondent would have no difficulty changing the description, but that this ground of appeal had not been put before the Commissioner of Valuation at first appeal stage. Mr Maher asserted that the appeal was invalid on the basis that the grounds of appeal put before the Tribunal did not correspond with the grounds put before the Commissioner and that the Notice of Appeal to the Valuation Tribunal did not state the appellant's estimate of rateable valuation of the subject property, as required under Section 35(a)(ii) of the Valuation Act, 2001.

Continuing with his evidence, Mr. Maher briefly dealt with the location and description of the property and referred to the photographs in his précis. Mr. Maher drew attention to the fact that all but one of the comparisons he had put forward were located in the same block as the subject property and that his remaining comparison, a pharmacy, was located in the block next to the block in which the subject property is located.

Mr. Maher then dealt with his comparisons, as follows:

1. Café Java – 83 sq. metres @ €275 per sq. This is a corner unit adjoining the subject property.
2. Il Valentino - 68.55 sq. metres @ €275 per sq. metre. This is a corner unit located on the corner of Pearse Street and the subject development.
3. GSN Pharmacies – 67 sq. metres @ €274 per sq. metre. Located on Pearse Street.
4. Riva Restaurant - 65.31 sq. metres @ €270 per sq. metre. Located in the same development as the subject property.

**Cross-Examination**

When questioned by Mr. Halpin, Mr. Maher stated that when valuing the subject property he had made an allowance for certain factors adverted to in the course of the hearing. Accordingly, he had valued the subject property at a rate of €270 per sq. metre as compared with a rate €275 per sq. metre for similar properties in the same development.

## Findings

The Tribunal has carefully considered all of the oral and written evidence produced by the parties and the arguments adduced at the hearing and make the following findings:

1. In accordance with Rule 10 of the Valuation Act, 2001 (Appeals) Rules, 2008, the Tribunal may, in exceptional circumstances allow amendments to the grounds of appeal at hearing. The Tribunal finds that exceptional circumstances pertain in this case in that the appellant did not have the benefit of professional representation until the retention of Mr Halpin and, accordingly, will allow an amendment to the grounds of appeal.
2. Section 49(1) of the Valuation Act, 2001 provides as follows:
 

*“If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situated in, of other properties comparable to that property.”*

In this case the Tribunal finds that the closest comparable properties are those units located in the same block as the subject unit.
3. The respondent’s first comparison, Café Java, which is the unit adjoining the subject unit and is a corner unit with double frontage, valued at €275 per sq. metre, is the closest comparable property to the subject.
4. The subject property exhibits some disadvantageous features, namely:
  - Due to the concrete block wall leading to the office block which is adjacent to the subject property, natural lighting to the subject property is restricted.
  - The location of the air ventilation which serves the development car park on the plaza restricts a clear view of the subject property.
5. While the respondent stated in evidence that in valuing the subject property, some allowance had been made in respect of the above features, the Tribunal finds that this allowance is insufficient.

**Determination**

Having regard to all of the foregoing the Tribunal determines the rateable valuation of the property concerned to be as follows:

73.975 sq. metres @ €243.00 per sq. metre =	€17,975.92
NAV @ 0.63% =	€13.24
Say	€113.00

And the Tribunal so determines.