

Appeal No. VA11/1/019 & 020

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

Alan Condron t/a SuperValu & Alan Condron

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2187881 (VA11/1/019), Supermarket 2 at Condrons Super Valu, Unit 4.5.6 Belgard Square, Tallaght and Property No. 5002488 (VA11/1/020), Supermarket 2 at Unit 4, Belgard Square, Tallaght, County Dublin.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Patrick Riney - FSCS FRICS FIAVI

Member

Frank Walsh - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF JUNE, 2011

By Notices of Appeal dated the 21st day of February, 2011 the appellant appealed against the determinations of the Commissioner of Valuation in fixing valuations of €279,000 (VA11/1/019) and €170,200 (VA11/1/020) on the above described relevant properties.

The grounds of appeal are set out in the Notices of Appeal, copies of which are attached at Appendix 1 to this judgment.

The appeals proceeded by way of an oral hearing, held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 20th day of April, 2011. The appellant, Mr. Alan Condron, leaseholder of both properties and operator of the SuperValu business in Property No. 1 was present and represented by Mr. Eamonn Halpin, BSc (Surveying) ASCS, MSCSI, MRICS. The respondent was represented by Mr. Denis Maher, MRICS, a Valuer in the Valuation Office.

In accordance with the rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At issue

Quantum

The Properties

At the commencement of the hearing the parties agreed to address the issues pertinent to both properties through the course of this hearing.

Property No. 1 – VA11/1/019: This property comprises a supermarket t/a Condron's SuperValu, much of which is set back from the street and located to the rear of street-side units. Access to the property is by way of a 4.5 metres' deep and 9 metres' wide fronted street-side lobby, which also provides access to the car park lifts and adjoining retail units. The subject relevant property is described as an open plan retail unit laid out to SuperValu retail requirements, and also includes ancillary stores, cold stores and freezers, offices, staff facilities, together with locker rooms, canteen and toilets, and plant and switch rooms. The property comprises c. 1,225.2 sq. metres, including a mezzanine store of c. 70 sq. metres.

Property No. 2 – VA11/1/020: This property contains the vacated part of the former supermarket, which together with Property No. 1, was the subject of Valuation Tribunal decision **VA08/5/120 - Condrons Supervalu**. This Property No. 2 comprises c. 622.5 sq.

metres with a street frontage of c. 18.2 metres onto Belgard Square West. Access to this property is currently available from the entrance lobby described in Property No. 1 above, and although open plan and vacant, has potential to be divided into at least two independent retail units with own access capabilities.

Location

Both properties are situated at Belgard Square West, which is a new mixed-use residential/retail development located immediately to the west of The Square Shopping Centre, Tallaght. The Belgard Square West development comprises 370 apartments over 20 ground floor retail units with a car park at basement level. The subject relevant properties are at street level fronting the eastern side of the development and overlook the west car park of The Square Shopping Centre. The car park serving the foregoing properties is not part of their respective demises and operates on a “pay and display” basis. The properties are situated in close proximity to the Red Line Luas Terminus.

Services

The subject relevant properties are served with mains power, water, telephone, storm and foul sewer.

Tenure

Both properties are held under 25-year leases which commenced in 2006, the details of which are outlined in Valuation Tribunal judgment **VA08/5/120 – Condrons Supervalu**, which forms part of the appellant’s précis of evidence and is attached hereto at Appendix 2.

Valuation History

2007:	Both properties taken together as one were revised as part of the South Dublin Revaluation with a proposed valuation of €365,000. Following representations the valuation was increased to €463,000.
December 2008:	The valuation was appealed to the Tribunal (VA08/05/120) and the value determined by the Commissioner of Valuation was upheld.

2010: Following a subdivision of the premises, the two properties were revised at the request of the occupier and proposed Valuation Certificates issued at €297,000 (occupied section) and €143,100 (vacant section).

April 2010: Representations were submitted on behalf of the appellant to the Commissioner of Valuation seeking lower valuations. Following consideration of representations, the Commissioner adjusted the valuation of the occupied section and reduced it to €279,000, and adjusted the valuation of the vacant section, increasing it to €170,200.

April 2010: The appellant appealed to the Commissioner of Valuation.

January 2011: Following consideration of the appeals, the proposed valuations were affirmed by the Commissioner.

February 2011: The appellant appealed those decisions to the Valuation Tribunal by Notices of Appeal dated 21st February, 2011.

Floor Areas

The agreed floor areas, measured on a gross internal area basis, are as follows:-

VA11/1/019

Supermarket:	1,155.2 sq. metres
Mezzanine Store:	70.0 sq. metres

VA11/1/020

Vacant units:	622.5 sq. metres
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Appellant's Case

Mr. Eamonn Halpin took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. Mr. Halpin provided the Tribunal with a summary of the net annual values assessed on the two subject properties when they were valued as one relevant property. The three assessments ranged as follows: €365,000, €463,000 and €450,000. (The respondent then informed the Tribunal that the submission made by him had incorrectly included an NAV assessment of €3,500 on the mezzanine, and requested that, accordingly, the NAV calculation set out in page 5 of his submission applying to the property the subject of appeal VA11/1/019, should be reduced to an adjusted figure of €275,500.)

Mr. Halpin also advised that the floor areas on the respective properties were agreed with the Commissioner. He explained the location of the properties at Belgard Square, and in turn its proximity to the Tallaght Town Shopping Centre. He stated that since the subject properties were valued in accordance with the Revaluation exercise completed some time ago in the Rating Authority area of South Dublin County Council, there were only three commercial lettings on record at Belgard Square. He contended that there remains approximately 12,500 sq. metres of new office space developed and lying vacant in the area, as well as up to 1,000 apartment residential units built or partly completed and either unsold and/or vacant. He noted that the only two major branded facilities which have been occupied since his client commenced trading were Aldi at Tallaght Cross, and Captain America's. He emphasised that the vacant units in Property no. 2 benefit from approximately twice the frontage of Property no. 1. He referred to Valuation Tribunal judgment **VA08/5/219 - Marks & Spencer (Ireland) Ltd.** (copy enclosed with his written submission) and cited from the findings therein which noted that the Tallaght Cross development occupies a vastly inferior location from a retailing point of view than the Tallaght Town Square Shopping Centre. Mr. Halpin noted that his client's premises are located opposite the Tallaght Cross development and are similarly removed from the Town Square. He also stated that the aforementioned judgment reflected those observations by applying a rate of €185 per sq. metre on that particular Marks & Spencer property. Referring again to his submission and the six comparison properties contained therein, namely;

1. Tesco, Clondalkin
2. Crest Stores, Rowlagh Shopping Centre

3. Marks & Spencers, Belgard Square
4. Centra, Clondalkin village
5. Halal Hypermarket, The Plaza, Tallaght
6. Various units in the Tallaght area

he declared that, from his perspective, all of the foregoing units were superior to the subject. He advised that the supermarket areas of Comparisons Nos. 1 and 2 were agreed at €200 and €190 respectively, and as noted by him earlier, Comparison No. 3 was determined by the Tribunal at €185 per sq. metre. Referring to his Comparison No. 4, he drew attention to the very limited floor area calculated within Zone A, which was assessed at €850 per sq. metre in Valuation Tribunal Judgment **VA08/5/216 – A.J. Clondalkin Ltd.** and also that no additional sum was applied to the net annual value for the Off-Licence at that Clondalkin Village convenience store. Mr. Halpin considered the Zone A rate of €650 per sq. metre applied by the Commissioner on the subject Property No. 2, i.e. the vacant units, to be excessive when compared with the rate of €850 per sq. metre, Zone A, at the Clondalkin premises, having regard to the location and catchment area which the latter is serving. The agent's Comparison No. 5 property details were considered as unreliable, as the NAV assessment on same is under appeal. The details contained in Comparison No. 6 of Mr. Halpin's submission referred to various vacant units at Tallaght Cross, Village Green, Fortunestown Shopping Centre and Main Street, Tallaght, currently available to let. Mr. Halpin advised that retail units with floor areas in excess of 500 sq. metres are currently available to let at rental levels of €100 per sq. metre or less in the Tallaght Cross development. He added that Zone A rates in the other three noted developments range from €500 per sq. metre on the first two and €580 per sq. metre on Main Street, Tallaght, and contended accordingly, that the rate of €650 per sq. metre Zone A applied by the Commissioner on Property No. 2 herein, is excessive.

Mr. Halpin adopted a Zoning approach to calculate the net annual values of both properties, namely the SuperValu supermarket and the vacant unit. By adopting the Zoning Method and a Zone A rate of €500 per sq. metre, he concluded that the valuation of VA11/1/019 should amount to €89,500 and the valuation on VA11/1/020 should amount to €130,000.

In support of his calculations, Mr. Halpin argued that the vacant units, because of the benefits accruing to their available frontage, were more valuable in rental terms than the area demised to the supermarket. He explained that he followed the findings of the Valuation Tribunal on the aforementioned Marks & Spencer judgment with respect to the influence of location on the valuation of that department store premises with respect to its proximity to the Town Square, and added that, unlike Marks & Spencer, his client's premises were not and never were intended to serve as anchor unit/s. He characterised the nature of the Belgard Square development as severely stressed and commercially untenable, and urged the Tribunal repeatedly to have particular regard to the peripheral location to the Square and lack of profile and frontage of Property No. 1, i.e. the subject SuperValu supermarket premises. He asked the Valuation Tribunal to support his calculations above which would reflect an overall rate of €77.50 per sq. metre on Property No. 1. He concluded his direct evidence by stating that, from his point of view, the development at Belgard Square West was an ill-conceived scheme.

Cross-examination

Mr. Halpin clarified a number of points and responded to some queries raised by the Tribunal. In particular, he clarified his understanding that the exercise to hand was that of a revision, and accordingly the valuations of the subject relevant properties, having regard to the extensive body of information available post-revaluation, should primarily be determined by reference to the "tone of the list" of similar properties, size and location.

In response to queries then put by Mr. Maher, Mr. Halpin advised, as follows, that:-

- Belgard Square West was ill-conceived as a development scheme as it was spurred on by optimism and readily available credit during 2005, though he acknowledged that such an opinion of misconception evolved with the benefit of hindsight.
- The economic downturn was not the main contributing factor to the current difficult trading conditions at Tallaght, and Belgard Square West in particular, but from his point of view, it was the sheer overall size and scale of the development in Tallaght

which has overwhelmed and oversupplied the market with surplus retail and other forms of accommodation.

- There was no contradiction within item 1 on page 6 of his précis under heading “appellant’s Case” recited here as the “*very poor retail location being so close to the established Square shopping centre*” and to clarify he cited similar conditions which prevail between Dawson Street and Grafton Street retailing.
- He chose to zone Property No. 1 in the instant exercise, as the GIA of same was now smaller than when the subject properties were valued as one, and also to be consistent with the same approach applied to Property No. 2. He said that it was not unusual for, and valuers are not precluded from, zoning property devoid of frontage, but acknowledged that none of the 27 supermarkets in South County Dublin, (twelve of which are located in the Tallaght area), were zoned for rating valuation purposes.
- He contended that none of the foregoing supermarkets were comparable with the subject SuperValu premises.
- He was seeking an overall equivalent rate of €77.50 per sq. metre on behalf of his client for Property No. 1, but acknowledged that said level was approximately one-third of that applicable to the overall rate assessed on his Comparison property No. 2 located at Rowlagh Village Shopping Centre.
- He was contending for a total combined valuation of €219,500 on both Properties Nos. 1 and 2, as compared with the figure of €450,000 currently on the valuation list of the properties when they were assessed as one, per Valuation Tribunal judgment **VA08/5/120**.
- It may be feasible to compare the overall rate per sq. metre of the subject Property No. 1 with an industrial unit at Cookstown Industrial Estate, but Mr Halpin declared that it is not appropriate to compare across uses, and referred to the judgment on Castlehyde Hotel case. (VA99/3/059 – Castle Hyde Hotel (E & H. Speekenbrink))

- While the Marks & Spencer judgment of 27th February, 2009, followed the determination of the Tribunal **VA08/5/120** of the 3rd February 2009, on the subject units (all taken as one together), may have limited bearing now on the subject, Mr Halpin expressed the view that the finding by the Tribunal in the M&S case, with respect to that property's peripheral location to Tallaght Town Square, was material to the subject valuations.

Mr. Condrón then took the oath and addressed the Tribunal. He provided details pertinent to the two premises, their locations, various influences on his business at Belgard Square, his experience trading there and elsewhere, his knowledge of the market in terms of rental conditions, competitive influences and trading performance statistics of his competitors in Tallaght. He contended that the publicity surrounding the launch of the development may have served the developer's strategic goals, guided by the zoning designation established for the area by the Development Plan in 2005, and the aspirations contained therein, including proposed pedestrianised walkways, street barriers, and other proposed neighbourhood style promotional activities. He explained that the reality was and remains that expectations were not fulfilled and that the proposed urban scheme at Belgard Square West providing for extended trading hours, busy cafés, bars and hotels in the development and surrounding area among other things, did not occur as planned. He advised that as an experienced supermarket retailer, his turnover in Property No. 1, from the initial trading date, indicated that the location chosen for his business was ill-advised, and added that since SuperValu opened its premises there in mid 2006, the earlier-opened Sherry Fitzgerald and West Coast Coffee premises had since closed down. As a measure of how matters had either not happened or had gone wrong in Tallaght, he estimated that there are currently 900,000 sq. feet of empty space available and to let in the immediate development.

Respondent's Case

Mr. Denis Maher took the oath, adopted his précis as his evidence-in-chief and referred to his submission. He explained that though the individual net annual values of the respective subject relevant properties had been adjusted from initial assessment, the resultant combined

values equate to the value contained on the valuation list established following the revaluation of the subject premises when assessed as one single relevant property. Mr. Maher also explained that the valuation methodology adopted by the Commissioner of Valuation was that the valuation was assessed at the NAV as at 30th September, 2005 and that the valuation was made by reference to the “tone of the list” values of comparable properties appearing in the valuation list for South Dublin County Council Rating Authority area, as established at revaluation.

Mr Maher contended for the following valuations:

VA11/1/019 - €275,500

VA11/1/020 - €170,200

In support of the above assessments, he put forward 9 comparisons, details of which are attached at Appendix 3 to this judgment.

Mr Maher requested the parties to accept his précis in full, without amendment (excepting only the exclusion noted earlier in the hearing with respect to the assessment of the mezzanine area), which in the usual manner had been exchanged and read by the appellant and his Agent, and the Tribunal members prior to hearing.

Cross-examination

In response to questions raised by the Tribunal, Mr. Maher advised as follows that:-

1. He did not need to consider Comparison property 1 provided by the appellant, which is located at Clondalkin, as he had twelve comparison supermarket properties to consider on the valuation list in the Tallaght area, and that he reduced the overall rate per sq. metre in Property No. 1 by €15 per sq. metre from the average of those twelve premises, to a level of €215 per sq. metre to make allowance for the configuration of the subject SuperValu store.
2. He relied upon the determination of the Valuation Tribunal when the NAV was established on the subject properties when taken together as one single unit, i.e.

€450,000, and considered that the sum of the NAV's of the subject property should again amount to the same figure of €450,000.

3. He did not perceive a disadvantage per se to the existence of an underground car park available to serve the subject properties, as such condition did not change and the same car park was available for the same purpose when the Tribunal heard the Appeal VA08/5/120, and determined the NAV, as set out above in item 2.

Summary Statements

The Agent representing Mr. Condron reiterated his view that the subject properties are both located within a development at a very inferior location when considered with the comparison properties cited in his précis, and contended that the subject location at Belgard Square West must be viewed as *“the worst of the worst, that the development was misconceived, a complete lemon”* and therefore for those reasons, from his perspective, have been over-assessed for Rating purposes.

Mr. Maher asserted that he tried his very best to assist the tenant as much as possible by adjusting the rate per sq. metre down on Property No. 1, and increasing the RV of Property No. 2 by a similar amount. He felt that this reapportionment of values fully reflected the changed circumstances resulting from the sub-division of the initial property. He also expressed surprise that the matter had come back to the Tribunal for consideration for the second time in a little over two years.

Findings

The Valuation Tribunal thanks the parties for their efforts, arguments and contributions at the hearing and the written submissions that preceded same. Having considered all of the pertinent matters, the Tribunal finds as follows:

1. The Tribunal is not obliged to follow all of the findings set out in **VA08/5/120** in so far as said determination and findings apply to another property, albeit of the same location, and not the two separate properties being the subject of these appeals. The principle of valuing *“rebus sic stantibus”* is long established and widely adopted in valuation rating practice, and should be maintained.

2. The Tribunal is satisfied that having regard to the evidence submitted and adduced at hearing, and in particular the comparisons cited by the respondent providing details on five properties trading as retail supermarkets in Tallaght, and specifically Comparison No's 1 – 5 inclusive, contained within said précis, that the “tone of the list” for supermarkets in the immediate area is well settled.
3. The Tribunal is of the opinion that a “tone of the list” by reference to Zone A rental rates per sq. metre has also been established for the immediate area in Tallaght, as indicated by the respondent's comparison properties 6 – 9 inclusive.
4. The Tribunal is guided by its remit to establish the net annual value and valuation of each of the two properties separately and in accordance with Section 49(1) of the Valuation Act, 2001.
5. The Tribunal is satisfied that the assessment of net annual value calculated by the respondent by reference to the aforementioned Zoning Method on VA11/1/020 is correct, fair and reasonable, calculated at Finding 10 below.
6. The Tribunal is of the opinion that with respect to Property No. 1, VA11/1/019 the overall rate per sq. metre sought by the appellant is without basis of support or comparative analysis.
7. The Tribunal shares the view that the rate of €215 adopted by the Commissioner of Valuation on VA11/1/019 overstates the value of the supermarket as it fails adequately to take cognizance of that unit's very limited frontage, and most particularly the rear of the premises' layout and the internal location or position of the majority of the floor area of the supermarket. The Tribunal was not provided with any details of other comparison properties bearing similar floor layout characteristics to the subject. The Tribunal concluded that the narrow frontage effectively serves only as a lobby.
8. The Tribunal finds that the NAV should be calculated by reference to Section 49(1) of the Valuation Act, 2001 and the net annual value should be considered bearing in mind the likely level of demand for space of such configuration and internal position, as described above, and compared with the “tone of the list” for supermarkets in the Tallaght area.

9. Mindful of the foregoing, the Tribunal considers that the overall rate on the supermarket property (VA11/1/019) should be reduced to €175 per sq. metre and the Off-Licence NAV of €10,000 and a fit-out sum added.

Determination

In accordance with the above findings, the Tribunal determines that the NAV on the relevant subject property of VA11/1/019 should be calculated as follows:-

	NAV
Supermarket: 1,155.2 sq. metres @ €175 per sq. metre	= €202,160
Off-licence:	= € 10,000
Fit-out of supermarket @ 7% x floor area NAV	= <u>€ 14,151.20</u>
Total NAV:	= €226,311.20

Say: €226,000.

and that the NAV on the relevant subject property of VA11/1/020 should be calculated as follows:-

	NAV
Zone A: 117.79 sq. metres @ €650 per sq. metre	= €76,564
Zone B: 138.10 sq. metres @ €325 per sq. metre	= €44,883
Zone C: 139.67 sq. metres @ €162.50 per sq. metre	= €22,696
Balance: 321.84 sq. metres @ €81.25 per sq. metre	= <u>€26,150</u>
Total NAV:	€170,293

Say: €170,200

And the Tribunal so determines.