

Appeal No. VA11/5/020

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

**Patricia Duggan**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 439478, Retail (Shops) at 3 Leopardstown Gardens, Stillorgan, County Dublin.

**B E F O R E**

**John F Kerr - BBS, FSCSI, FRICS, ACI Arb**

**Deputy Chairperson**

**Patricia O'Connor - Solicitor**

**Member**

**Thomas Collins - PC, FIPAV, NAEA, MCEI, CFO**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 19TH DAY OF DECEMBER, 2011**

By Notice of Appeal dated the 16th day of June, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €34,900 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal Ormond House, Ormond Quay Upper, Dublin 1, on the 14<sup>th</sup> day of September, 2011. The appellant represented herself at hearing and the respondent was represented by Mr. John Purcell BSc, MRICS, MSCSI, 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 at hearing 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 Property**

The subject relevant property comprises a ground floor retail unit situated within a two-storey building. The subject unit is located mid-terrace within a block of four retail units and a licensed Public House. The layout of the premises includes a retail sales area to the front with food preparation / kitchen, store and w/c to the rear. A rear door is fitted for fire escape and ventilation purposes. The subject property is identified and trades as “The Food Lovers Den”. The overhead floor does not form part of the subject relevant property. Car parking is provided to the front of the retail units.

### **Location**

The subject property is located in Stillorgan, a short distance from the Brewery Road which connects the Stillorgan Road (N11) to the Leopardstown Road (R113). The subject property is situated approximately 500 m from the N11.

### **Services**

The subject relevant property is served with mains power, water, telephone, storm and foul sewer.

### **Tenure**

Understood to be leasehold with passing rent reduced from the 2005 level of €28,000 to a current amount of €25,000 p.a.

### Floor Areas

The agreed floor areas, measured on a Net Internal Area (NIA) basis, are as follows:-

Block 1	Zone A:	33.23 sq. metres
Block 1, 2	Zone B:	20.45 sq. metres
Block 3	Shop:	12.88 sq. metres
Block 4	Store:	<u>16.53</u> sq. metres
Total:		83.09 sq. metres

Total street frontage: 5.1 metres

### Valuation History

June 2010:	Proposed Valuation Certificate was issued with an RV of €34,900.
July 2010:	Representations lodged to the Commissioner of Valuation. Following consideration, the Valuation Certificate issued unchanged.
February 2011:	Appeal submitted to the Commissioner of Valuation. Following consideration of the Grounds of Appeal, the valuation remained unchanged.
June 2011:	The appellant appealed the decision to the Valuation Tribunal by Notice of Appeal dated 16 <sup>th</sup> June, 2011.

### Appellant's Case

Ms. Patricia Duggan took the oath, adopted her précis as her evidence-in-chief, attached hereto as Appendix 2, and provided the Tribunal with a review of her submission. The appellant made the following points:-

- The area to the rear of the southern door which appears in similar colour to the subject in the respondent's photograph on page 4 of his précis is not part of the subject.
- A small area of the rear store should be excluded from the valuation, namely that covered by a manhole of approximately 0.75 sq. metres, in the same manner as the area designated as w/c.

- The surface car park to the front of the premises is privately owned and controlled with limits of not more than three hours' parking permitted for customers and staff of the subject premises.
- It is unfair to compare the subject property with those cited in the respondent's precis, having regard to the nature, scale and type of businesses conducted therein and their floor areas.
- Ms Duggan failed to comprehend how rating valuation practice could establish an identical Zone A rate for units 1, 2, 3 and 4 in the subject neighbourhood centre.
- The centre is small and without a major anchor retail draw and is set-back within a residential community.
- With the exception of the licensed premises situated at the southern end which enjoys profile onto the internal estate roads surrounding the car park and the Brewery Road thoroughfare to the west, the subject unit and the Respondent's three comparison properties have no profile or direct access onto Brewery Road and, consequently, are visible only to neighbouring dwellings and the adjoining internal Leopardstown Gardens estate roads.
- Ms Duggan had succeeded in negotiating a current rent reduction of approximately €3,000 per annum, lower than the rent payable under the lease in 2005.
- Ms Duggan was led to understand that officers of the Valuation Office had negotiated and agreed more favourable terms on the Revaluation of the adjoining premises in the subject centre.
- The location, distance from schools, absence of passing traffic and very limited profile of this neighbourhood centre contrasts negatively with other neighbourhood retail units serving the nearby Stillorgan, Kilmacud, Leopardstown and Foxrock communities.
- The respondent had erred in the manner in which the premises was zoned for rating purposes, as it did not take account of the current use employed by the appellant with the very limited actual retail floor area and the disproportionate service area of the subject premises and the resulting division of the workspace within.
- The rating assessment of a similar premises trading as "Simply Delicious" on Foxrock Avenue is substantially lower than on the subject, notwithstanding the vast surrounding

residential catchment it serves and the prevalence of two nearby large schools, namely Newpark and Hollypark .

- The valuation assessment of €34,900 is excessive, unreasonable and unfair and should be fixed at €27,000.

### **Cross-examination of the Appellant**

In response to questions put by Mr. Purcell and the Tribunal, Ms. Duggan stated that:-

- i. There was no ingress or egress through the rear of the subject premises.
- ii. The aforementioned parking restriction bears a negative influence on the value of the property.
- iii. The subject property has very limited visibility, and none from the major thoroughfare of Brewery Avenue.
- iv. The Leopardstown Inn is the largest occupier within the centre, but it does not contribute footfall or a customer base for the subject premises. In the alternative, it serves as strong competition for her business, serving coffees and refreshments to customers.

### **Respondent's Case**

Mr. John Purcell took the oath and adopted his précis as his evidence-in-chief. The location, description and floor areas were common case and not in dispute.

Mr. Purcell referred to page 5 of his précis which provided both a chart and layout plan indicating a zoning approach to the valuation of the subject relevant property. Measurements were carried out on an NIA basis by the respondent in accordance with established Measurement Practice Guidelines, which resulted in 33.23 sq. metres of Zone A and 20.45 sq. metres of Zone B space calculated. Two further zones were designated but not as Zone C or Zone D, but in the alternative labelled as 12.88 sq. metres of Shop and 16.53 sq. metres of Store area.

Mr. Purcell explained that the exercise was a Revaluation task carried out initially in accordance with Section 48 (1), (2), & (3) of the Valuation Act 2001, under a Valuation Order issued for the Dun Laoghaire-Rathdown County Council area, with a specified Valuation Date of 30<sup>th</sup> September, 2005.

The respondent then advised the Tribunal that the current valuation levels were derived from the analysis of available open market rental information of comparable properties and applied to the subject property. Mr. Purcell added that the valuation of the subject property on appeal to the Commissioner was determined by reference to the values of comparable properties stated in the Valuation List in which they appear.

The NAV rounded to €34,900, was calculated by the respondent with reference to the foregoing including a 5% frontage to depth ratio allowance on Block 1 which included all of Zone A and part of Zone B, as follows:

Block	Use	Area	Rate		NAV
1	Zone A	33.23 sq. metres	@ €750 per sq. metre	=	€24,922.50
1,2	Zone B	20.45 sq. metres	@ €375 per sq. metre	=	€ 7,668.75
3	Shop	12.88 sq. metres	@ €180 per sq. metre	=	€ 2,318.40
4	Store	16.53 sq. metres	@ 100 per sq. metre	=	€ 1,653.00
Less 5% allowance for frontage to depth ratio					<u>(€1,633.00)</u>
Total					€34,929.65

Valuation Office Estimate of NAV (rounded to) €34,900

Mr. Purcell also clarified the location of internal structural walls (as distinct from partitions) within the premises and explained that the valuation rate per sq. metre applied by the respondent to Blocks 3 and 4, as described above, were based on values comparable with back-of-house similar floor area uses in other like locations.

Referring to his précis, Comparison Properties Nos. 1, 2 and 3 (details of which are attached hereto at Appendix 3), all within the subject neighbourhood centre known locally as Leopardstown Gardens, Mr. Purcell noted that each of their Zone A valuations were calculated at €750 per sq. metre and added that Comparisons 2 and 3 were offered the 5% allowance frontage to depth ratio in common with the subject. The Valuer added that representations were submitted on Comparisons Nos. 1 and 2, but that no representations or appeals were submitted on Comparison No. 3.

### **Cross-examination of the Respondent**

Responding to various questions asked by the Tribunal and the appellant, Mr. Purcell responded as follows:-

- 1) He had visited the subject and comparison properties listed in his précis.
- 2) He was satisfied that a Zone A rate of €750 per sq. metre on the subject was fair, reasonable and consistent with the other retail units at the subject small neighbourhood retail centre of Leopardstown Gardens and set at a level commensurate with other levels established under the pertinent Revaluation Order, and now on the List in other nearby neighbourhood retail centres, including Leopardstown and Stillorgan.
- 3) That the Zone A rate of €750 per sq. metre is the lowest level on the List of any small neighbourhood retail centres established in accordance with the Revaluation Order in the Dublin 18 area.
- 4) He was not aware that Block 6 at the rear of his Comparison property No. 1, namely the Spar shop at Leopardstown Gardens, was no longer a detached store as it appeared on his précis layout plan. He could not recall such detail from his visit to that property. He explained that the description of the store was extracted from notes in the Valuation Office records, which he relied upon, and he acknowledged that they may not have been updated and accordingly may not be reliable in the circumstance.
- 5) With respect to Comparison No. 3, he added that the windows along the northern elevation of Leopardstown Beauty Salon did not make any positive contribution to the Zone A rate applied there as profile and exposure of that side of the unit was very restricted by reason of the orientation of the centre to the car park and nearest road and the existence of a garden party wall or fence shared with the neighbouring residence to the north.
- 6) He reiterated that Blocks 3 and 4 ( Shop and Store) were valued at the Leopardstown Centre by reference to other stores in the area though the rates per sq. metre applying thereto appeared to vary with the evidence pertaining to his Comparison Properties No's. 1 and 3.

## **Findings**

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at both hearings.

The Tribunal finds that:-

1. The appellant's submission and arguments adduced at hearing were, in the main, based on issues of concern outside the remit of the Valuation Tribunal.
2. The appellant's evidence lacked the support of any empirical data on open market rents and/or data on valuations of comparable properties.
3. The respondent did not provide adequate comparison details to support the valuation rates per sq. metre applied generally.
4. The Tribunal considers that the evidence submitted by the respondent with respect to the Zone A rate of €750 per sq. metre applied to the subject relevant property and to the other retail units in the subject neighbourhood centre is not of itself sufficient or adequate at the current early phase of Revaluation of the Dun Laoghaire-Rathdown area, to warrant full reliance thereon.
5. The Valuation Tribunal is of the opinion that in the instant case it would have been most helpful if the respondent had supported his case by providing additional evidence of
6. available open market rental values of similar retail properties in the area as at September 2005.
7. The Valuation Tribunal is not satisfied that the submission of a sample of values on just three adjoining properties, one not tested by the process of representations and/or First Appeal, and the other two established at representations stage, provides an adequate reflection of the List and/or 2005 open market rental values. Based on the paucity of evidence, it appears that those three values may not necessarily have been made relative to, assessed and/or weighted with the values of other similar retail units within the greater Dun Laoghaire-Rathdown Rating Authority area. The Valuation Tribunal is of the view that the submission of such evidence would have assisted its task in determining a fair and reasonable valuation on the subject relevant property.



8. The foregoing considered with all of the evidence submitted in précis and adduced at hearing, the Tribunal determines that the subject Zone A rate should be reduced to €675 per sq. metre and the appropriate resulting reduction applied on Zone B.
9. The area designated as Block 3, Shop, should also be reduced by a similar reduction percentage of 10%.
10. Block 4, Store, valuation rate per sq. metre should, based on the evidence provided by the Respondent on Comparison No. 1, and in the absence of any other compatible data, be set in this case at €60 per sq. metre.

### **Determination**

Accordingly, the Tribunal determines the valuation on the subject property as follows:

Block 1	Zone A:	33.23 sq. metres@€675 per sq. metre	=	€22,430.25
Block 1, 2	Zone B:	20.45 sq. metres@€37.50 per sq. metre	=	€ 6,901.88
Block 3	Shop:	12.88 sq. metres@€162 per sq. metre	=	€ 2,086.56
Block4	Store:	16.53 sq. metres@€60 per sq. metre	=	<u>€ 991.80</u>
				€32,410.49
Less 5% front to depth ratio allowance of NIA areas				
within Zones A and B of Block 1 totalling 53.69 sq. metres :				<u>(€1,466.61)</u>
Total:				€30,943.88

NAV Say €30,900

And the Tribunal so determines.