Appeal No. VA14/4/024

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Barna Leisure Ltd **APPELLANT**

And

Commissioner of Valuation **RESPONDENT**

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 5003818, (Leisure) at 1C Orchard Lodge, Watery Lane, Clondalkin, County Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF NOVEMBER, 2017

BEFORE

Stephen J. Byrne - BL	**Deputy Chairperson**
Frank O'Donnell - FRICS, B Agr Sc, MIREF	**Member**
Aidan McNulty - Solicitor	**Member**

By Notice of Appeal received on the 26th day of November, 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a (net annual valuation) of €48,100 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 Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence adduced before us by the parties to the appeal,

DETERMINES

The Tribunal should state at the outset that the Appellant was represented at this Appeal by O'Dwyer English Auctioneers, Mr. Patrick O'Dwyer. The Respondent was represented by Rita Harris.

Mr. O'Dwyer adopted his precis of evidence as his evidence in chief and was cross-examined by Ms. Rita Harris. Ms. Rita Harris, for her part, gave evidence on behalf of the Commissioner of Valuation, adopting her precis of evidence as her evidence in chief and was cross-examined by Mr. O'Dwyer.

The subject property is situate at Unit 1C, Orchard Lodge, Water Lane, Clondalkin, Dublin 22. It was built in or about 2007. It comprises a ground floor shop unit. There is residential accommodation overhead.

The Appellant occupies the subject property on foot of a lease. The lease is subject to five yearly rent reviews. The lease commenced in or about 1st July 2012. The Appellant is paying €30,000 per annum by way of rent.

The property is in use as an amusement centre. The parties have agreed an internal area of 130 square metres.

The property is located on what has been described as the central business district in Old Clondalkin Village. The parties are agreed that the property is in good structural and decorative order.

The Respondent Commissioner is standing over a net annual value of €46,900. The property has been valued by the Respondent Commissioner as retail using what might be termed the zonal method. This breaks down as follows:

Zone A - comprising 43.10 square metres has been valued at €600 per square metre.

Zone B - comprising 53.87 square metres has been valued at €300 per square metre.

Zone C - comprising 32.95 square metres has been valued at t€150 per square metre.

The store has not been included in the valuation.

The Appellant, for his part, is arguing for a significantly reduced NAV in the sum of €25,100. The Appellant appears to accept that the property should be valued as retail. The Appellant appears to accept that the zonal approach and/or method ought to apply.

Applying and/or adopting the zonal approach, the Appellant agitates for the following:

Zone A - €330 per square metre.

Zone B - €165 per square metre.

Zone C - €82.50 per square metre.

Both parties have adduced comparative evidence which each maintains supports their opposing positions.

The Tribunal has been told that this is, colloquially put, a revision appeal. It is, in the Tribunal's view, well settled that upon revision, the value of an individual property must be determined under and in accordance with the 2001 Act and more particularly, Section 49(1) thereof. The Tribunal must therefore, and on appeal, consider:

(a) Section 49

(b) The Application of this Section to the circumstances of this particular Appeal

Concerning Section 49, the Tribunal is guided by and draws authority from decisions of the Tribunal which are relevant and/or material to same.

By way of overview, the 2001 Act makes express provision for distinct approaches to determination of value. The first consideration when deciding between the distinct approaches to determination of value is whether the person charged with responsibility for determining value is dealing with revaluation or revision.

It is reasonably settled that revaluation occurs intermittently and purports and when 'bedded down' to set in stone a fair, uniform and equitable valuation for what might be viewed colloquially as a generation of ratepayers.

Once revaluation is 'bedded down', so to speak, the opportunity and/or occasion for an individual reappraisal of the valuation struck is limited to the circumstances which, under the 2001 Act, permit revision. Revaluation is determined under and in accordance with Section 48 of the 2001 Act. The person charged with the determination of value upon revaluation must, under Section 48, do so by estimating the "net annual value". "Net annual value" is defined under Section 48(3) of the Act. Briefly, determination of value is by reference to the estimation of rent which a property might reasonably be expected to yield if let year on year in its actual state and where certain prescribed assumptions are taken into consideration.

Section 49, on the other hand, contains within it two distinct approaches to determination of valuation on revision. There is what might be termed the primary approach. There is, in addition, a secondary and/or default approach. It is secondary and/or default in the sense that it only becomes engaged where the person who is charged with determining valuation on revision, having considered the circumstances which he or she is required to consider, is satisfied that the primary requirements under Section 49(1) are not capable of being met.

In practical terms, Section 49(1) appears to envisage what might be termed a process of inquiry to be undertaken by the person charged with determination of valuation on revision. The commencement of this process of inquiry requires consideration at the very outset of the subject property, to include its physical characteristics, the size, the make-up, fit-out, to include the location of the property and to include its use.

Having considered the subject property, the person charged with the task of determining valuation on revision is required to do a trawl of and peruse and consider the Valuation List (assuming, of course, that there is such a list). The fact of the existence of a Valuation List for the Rating Authority in question does not appear to be in issue in this Appeal.

At this stage of the process inquiry, the inquirer is on the lookout for properties that strike him or her as comparable to the subject property. He or she will deploy the necessary skills and tools for such comparative analysis such as, but not confined to:

- Location
- Use
- Physical characteristics

Section 49 requires the inquirer, and whilst engaged in this particular trawl, to identify and, it follows, to nominate at least two candidates as comparable properties. The wording of the Section is clear. There is express reference to "*other properties*". There is express reference to "*values*" taken to mean the values of "*other properties*".

It necessarily follows that if, at the end of this particular stage of the process of inquiry, the inquirer, having completed his or her trawl of the Valuation List, concludes that there are no comparable properties or alternatively, there is but one comparable property, the focus of the process of inquiry necessarily and by statutory requirements, shifts.

The inquirer must, at this point and stage of the process of inquiry, necessarily conclude that he or she cannot determine valuation by employing the primary approach to determination and must set about determining value by use of the secondary (default) approach which is, as has been stated, a distinct and altogether different animal. It is along the lines of a (slightly modified) Section 48(1).

If, on the other hand and at this critical stage of the process of inquiry, the inquirer concludes that there are (more than one) comparable properties on the Valuation List, he or she must extract relevant recorded and/or documented information as to the value of those comparable properties.

This information as to value will, in turn, inform and substantiate the valuation which the inquirer fixes at the conclusion of the process of inquiry and which the inquirer is doubtless prepared to stand over as a correct fair and equitable determination of the valuation on revision of the subject property.

It necessarily follows that at the conclusion of this process of inquiry, the inquirer will, or ought to have, documents and reports intended by him or her to evidence and/or support, not just the determination as reached, but the conduct by him or her of a process of inquiry which, start to finish, adheres to the statutory requirements which are readily gleaned from a cursory consideration of Section 49(1).

Having carefully considered the evidence as adduced by the Appellant and as relied upon by the Appellant as tending to support the Appellant's claim of entitlement to a reduction in rates, the Tribunal is not satisfied that the Appellant has, and as required, engaged properly and/or meaningfully in the type of process of inquiry the Oireachtas put in place when enacting Section 49 of the 2001 Act.

The Appellant in evidence makes reference to "*passing rent*", alternatively to "*current rent*". The "passing rent", "the current rent" as evidenced is rent as currently paid, that is to say as of the date of appeal and is in respect of properties which the Appellant has argued are comparable to the subject in terms of size, location and, broadly speaking, use (retail).

On the Appellant's case, the conclusion as to the "*appropriate*" and fair level of rates applicable to the subject is drawn from the evidence of "*passing rent*" or "*current rent*" as adduced.

The picture that emerges from this evidence is that the locality is in commercial and/or economic decline; as a consequence commercial or retail properties in the locality, to include a number of those put in evidence by the Appellant, have been difficult to let and when let, the annual rent has tended to be significantly lower than a rent equivalent to the NAV affixed by the Respondent to the subject property.

The evidence of the Appellant establishes a decline/downturn in the commercial hub comprising the centre of Clondalkin where economic forces and competitive hubs offering what might be perceived as more attractive amenities have, in a sense, conspired together to create a depressed commercial outlook for the general commercial area in which the subject property is situate.

Having carefully considered the evidence as adduced by the Appellant, it is the Tribunal's view that the Appellant has not, as required by Statute (in particular, Section 49(1)) adduced evidence of valuation as drawn from the Valuation List for the functional area in which the property is situate. Rather, and as is clear from what has been stated above, the Appellant has adduced evidence of rents being paid for properties which are reasonably close to and/or proximate to the subject and which, in the main, are broadly similar to the subject in terms of size, aspect and use.

As is clear from the above, the statutory requirements as to mode and manner of proof in a case where an adjustment on revision is sought are reasonably clear. The party seeking the adjustment on revision must show to the appropriate standard that he or she has engaged in a process of inquiry, which said process of inquiry includes, as a fundamental, consideration of the Valuation List for the relevant functional area.

Thus, an Appellant seeking an adjustment on revision must, at a minimum, adduce evidence of having consulted the Valuation List and, it follows, bring forth and lay before the Tribunal the results of such a trawl.

This, in the Tribunal's view and having regard to the requirements of the 2001 Act and in particular, Section 49, is a prerequisite and must be in place if such Appellant is to have any reasonable prospect of success.

Alternatively and by way of secondary and/or default position, an Appellant must, and having trawled the Valuation List, establish to the requisite standard, that there are no comparable properties proceeding from that offer evidence of NAV in line with (a slightly modified) Section 48.

The Tribunal, having carefully considered the Appellant's evidence and submissions:

(i) Is not satisfied that this Appellant has, and as required by Statute, considered the Valuation List for the relevant functional area. The comparative evidence as adduced by or on behalf of the Appellant is heavily reliant on passing or current rent. There is no direct mention of and/or reference to the Valuation List for the functional area in which the properties are situate. The manner in which the evidence has been led with emphasis on current rent and/or passing rent and/or asking rent does not, in the Tribunal's view,

allow the Tribunal to safely and/or reasonably infer that the content and/or substance of same has been derived from a consideration of and/or a trawl of the Valuation List for the relevant functional area.

(ii) There is nothing in the evidence as adduced and/or the submissions as made which would permit the Tribunal to safely and reasonably conclude and/or infer that the Appellant is, in the first instance, relying on the fact that there are no comparable properties on the Valuation List for the relevant functional area, and this being so, the Appellant seeks to establish an entitlement to adjustment on revision under and in accordance with Section 48(1) of the 2001 Act and as provided for under Section 49(2) of the Act. The Appellant, in fairness, has not and in express terms, attempted to make the case that there are no properties comparable with the subject property on the Valuation List for the functional area at issue.

(iii) In any event, it is clear from the largely unchallenged evidence of Ms. Harris that there are properties on the Valuation List, which said properties are, by any measure or yardstick (be it size, location, use, physical characteristics), comparable to the subject property.

(iv) Further, consideration of the largely unchallenged evidence of Ms. Harris supports the Respondent's position which, simply put, is that the subject property has been valued equitably, fairly and consistently in line with properties which:

- Are on the Valuation List
- Which are comparable to the subject property

(v) Consideration of this largely unchallenged evidence, in the Tribunal's view, supports valuation on the zonal approach at:
- €600 per square metre – **Zone A**
- €300 per square metre – **Zone B**
- €150 per square metre – (store)/**Zone C**

(vi) This is the rate which has been applied to the subject property and which said rate should, and for reasons as set out herein, stand confirmed.

And the Tribunal so determines.