Appeal No. VA14/5/153

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Waltons Musical Galleries Limited **APPELLANT**

And

Commissioner of Valuation **RESPONDENT**

In relation to the issue of quantum of valuation in respect of:

Property No: 852433, Retail (Shops) at 68AB, 69, 70A South Great George's Street, County Borough of Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 30TH DAY OF MARCH, 2017

Sasha Gayer – Senior Counsel	**Chairperson**
Brian Larkin – Barrister	**Member**
Frank Walsh – QFA, Valuer	**Member**

1. THE NOTICE OF APPEAL

1.1 By Notice of Appeal dated the 4th of September, 2014, the Appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €120,100 on the above described property.

1.2 The Grounds of Appeal as set out in the Notice of Appeal are: "*The valuation as assessed is excessive, inequitable and bad in law*". In particular, the Appellant states that the property in question is a shop which is greater than 500 m² and that accordingly the "*shop should be treated as retail over 500m² and not zoned*".

2. THE HEARING:

2.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 18th day of May 2015. At the hearing the Appellant was represented by Stephen Keogh of OMK Property Advisers and Rating Consultants. The Respondent was represented by Mr. Liam B. Murphy, of the Valuation Office.

3. THE PROPERTY:

3.1 The Property is a well known retail outlet, trading as Waltons, which specialises in the sale of musical instruments and related products. It occupies the ground floor only of a four storey building and is an amalgamation of two separate retail properties, which are in adjoining Georgian buildings.

3.2 The Property is held by the Appellant pursuant to a Lease which commenced on the 1st of January, 1993. During the course of the valuation process, a lease summary was provided by the Appellant to the Respondent which stated that the terms of the said Lease were "*not known/available to*" them. However, the summary confirmed that the rent of the property is reviewed every five years and following a rent review in January, 2008, the rent was increased from €112,000 per annum to €180,000 per annum. This rent was paid until October, 2010, at which point, due to difficult trading conditions, the Appellant reverted to paying €112,000 per annum and commenced negotiations with its landlord to reduce the rent payable. On the 21st of February, 2013 the landlord agreed to accept an annual rent of €112,000, payable retrospectively from the 1st of February, 2011. This was the rent being paid by the Appellant when the Appeal came before the Tribunal.

4. THE RELEVANT STATUTORY PROVISIONS:

4.1 The relevant Property was revalued in 2012 as part of the Dublin City Council Revaluation.

4.2 Accordingly, the rateable valuation of the Subject Property, with which the Tribunal is now concerned, was determined pursuant to Section 48 of the Valuation Act, 2001, which provides:-

"Section 48-(1) The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.

(2) Subsection (1) is without prejudice to ***Section 49****.*

(3) Subject to ***Section 50****, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual costs of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant."*

4.3 As the Valuation Order for Dublin City specified the 7th of April, 2011 as the relevant Valuation Date, accordingly, it is the Subject Property's value as of that date that must be determined by reference to the above provision.

5. THE APPELLANT'S EVIDENCE AND SUBMISSIONS

5.1 The NAV of the Subject Property had been calculated by the Respondent utilising the "zoning method", which is an accepted method of establishing rental values for most

retail premises. The NAV of €120,100, which was under Appeal, had been arrived at by applying €700 per square metre to Zone A of the Property.

5.2 The Appellant argued that it was inappropriate to apply the zoning method of valuation to the Subject Property in circumstances where the Property had a large floor area of 594.99m². The Appellant argued that the Respondent had valued certain retail properties which ranged in size from 500m² to 2,500m² on an overall basis, at €165 per square metre. These properties were characterised as "*Supermarket 2 – 500 to 2,500 sq metres*".

5.3 The Appellant relied on three comparator properties and the valuations assigned to them during the course of the Dublin City Revaluation. Comparison 1 "*Dunnes Home*", located close to the Subject Property on South Great George's Street, was described by the Appellant as a "*homeware store*" which sold household goods, homeware products and some clothing. The ground floor retail area was 1,347.29m². Comparisons 2, 3 and 4 were supermarkets in the classic sense, in that they sold groceries, which were 647.67m², 718.16m² and 662m² respectively. Comparisons 2 and 3 were a short walk away from the Subject Property being located on Camden Street Lower and Aston Quay respectively. Comparison 4 was further away, being located on Talbot Street.

5.4 Mr. Keogh argued, on the Appellant's behalf, that it was inconsistent not to value the Subject Property on the same basis as these Comparisons. Furthermore, Mr. Keogh, on behalf of the Appellant, argued that the application of the zoning method to the Subject Property was difficult given the configuration of the Property which "kicked" back to one side. The large areas to the rear were categorised as "*shadow areas*" and Mr. Keogh felt that with a unit of this nature zoning produced an anomalous result.

5.5 The Informer Properties cited by the Respondent were part of a group of properties (which included the Subject Property) which the Respondent decided, during the course of the Revaluation, shared similar characteristics. Consequently, the Respondent had applied the same value per square metre in respect of Zone A in each of these properties – subject to adjustments being made to a particular property because of individual considerations affecting it. The Appellant noted that the three Informer Properties cited were far smaller than the Subject Property and Mr. Keogh submitted that it was inconsistent to value the Subject Property in line with smaller properties, but, not value it in line with larger properties – such as Comparison 1 referred to by him.

5.6 Mr. Keogh accepts that supermarkets were valued on the basis of their gross internal area (GIA) and that the GIA of the Subject Property was 601 sqm.

6. THE RESPONDENT'S EVIDENCE AND SUBMISSION:

6.1 Mr. Murphy, for the Respondent, stated that the Subject Property had been valued in line with the valuation scheme for retail properties situated on the west side of South Great George's Street (circa twenty-two properties) and set at €700 per square metre in respect of Zone A of same.

6.2 Mr. Murphy did not accept that the Comparisons relied upon by the Appellant were applicable. Only Comparison 1 was in the same area as the Subject Property and was significantly larger. The other three Comparisons cited by the Appellant were of a similar size, but were situated in less commercially advantageous areas. In any event, in Mr. Murphy's submission, the Subject Property was clearly not a supermarket and therefore could not be valued in accordance with the classification "*Supermarket 2 – 500 to 2,500 sq metres*".

6.3 Further, Mr. Murphy noted that the SCSI Zoning Guidance Note, May, 2009 states:

> *"In the region of 1,000m² of single level unit should be limit for the application of zoning."*

6.4 Mr. Murphy contended, therefore, that it was appropriate, therefore, to use the zoning method for valuation where the area of a Subject Property was up to 1,000m².

6.5 Mr. Murphy described how the Valuation Scheme for retail units in the South Great George's Street area was arrived at for the purposes of the Dublin City Revaluation. The Respondent had determined the Net Effective Rent of each of its Informer Properties. These properties were retail units extremely proximate to the Subject Property, Informer 1 has a total floor area of 96.72 sqm, Informer 2 has a total floor area of 90.58 sqm and Informer 3 has a total floor area of 97.56 sqm. In determining the Net EffectiveRent, the Respondent had regard to the available market information relating to these properties – the rent payable in respect of same, the date each Lease was entered into relevant to the

statutory valuation date of the 7th of April, 2011 and any inducements which were included in the leasehold arrangements – including, for instance, one month per annum rent free – and any other relevant individual features of the transaction. This collection of NER's provided the basis for deciding the appropriate NAV per square metre in Zone A to be applied to the group of retail properties in that area which the Respondent had determined share similar characteristics.

6.6 Mr. Murphy emphasised the need for equity and uniformity in the tone of the valuation list and noted that of the twenty-two properties included by the Respondent in this category, only two of the valuations were appealed to the Respondent with the Subject Property being the only one under Appeal to the Tribunal.

6.7 Furthermore, Mr. Murphy noted that the Subject Property was a narrow, elongated property with only 114.46 sqm (19.24% of the overall retail area) valued in Zone A and B with 480.53 sqm (80% of the overall retail area) valued in Zone C and Remainder Zone. The Remainder Zone accounts for 67% of the overall retail area, which had the effect of undervaluing the Property overall. In the circumstances, a "loading" of 10% had been applied to the very large Remainder Zone in circumstances where a 5% loading had previously been applied by the Tribunal for a Remainder Zone accounting for 51% of the overall retail area in *French Connection Retail Limited* (VA11.5.189).

6.8 Mr. Murphy also argued that the actual rent being paid by the Appellant could not be described as a market rent and one would expect a willing tenant to pay more for the Subject Property on the open market.

7. THE PRINCIPLES TO BE APPLIED BY THE TRIBUNAL:

7.1 In its decision in *Marks and Spencer (Ireland) Limited* (VA08/5) the Tribunal set out the principles to be applied when determining the NAV of a property on foot of a Revaluation under Section 19 and subsequent revision under Sections 27 and 28 of the 2001 Act. In particular, the Tribunal stated:-

"On the date a new valuation list is published a preliminary "tone of the list" is originated, but little weight, if any, can, for comparison purposes, be attached to any

of the assessments contained therein as they are as of yet unchallenged. After the forty day appeal period, as provided for under Section 30, the situation changes somewhat, in that there is then in the list a substantial number of entries whose assessments have been accepted (or perhaps in some instances agreed at the representation stage under Section 29) or otherwise unchallenged.

At the time of an Appeal to the Tribunal under Section 34 the situation will have moved on significantly, in that by far the greater percentage of entries in the list would have been accepted, agreed or determined at Section 30 Appeal stage and hence representatives of an as yet emerging tone of the list. When an individual Appeal comes before this Tribunal for determination the Tribunal must consider and evaluate the evidence then put before it, be it the actual rent of the property concerned, the rents of other properties of a size, use and location similar to the property concerned and last, but by no means least, the assessment of properties which are truly comparable in all respects to the property concerned and which are currently in the valuation list and attach such weight to this evidence as is considered appropriate."

7.2 These remarks were specifically endorsed by Ms. Justice O'Malley in the High Court in her decision *Commissioner of Valuation v. Carlton Hotel Dublin Airport Limited, Nethercross Limited t/a Roganstown Golf and Country Club, Newpark Care Centre Partnership, Dundas Limited, Humar Limited and Beechtree Healthcare Limited* [2013] IEHC. Ms. Justice O'Malley also remarked that any exercise based on the establishment of rental value, whether real or hypothetical, has to involve information about the rental market which in turn is going to involve comparisons with other properties in the market. Relative worth is an important consideration. Further, it also had to be taken into account, if established, that other occupiers and their professional advisers had accepted or agreed a certain level of assessment which would carry weight in deciding whether assessments in that line of business were being done correctly.

8. FINDINGS:

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 heard the oral evidence adduced, as set out above, including the rent payable

in respect of the Subject Property, the Net Effective Rent as of April, 2011 of the "Informer" Properties and the Comparison Properties referred to, along with the evidence adduced by each party in respect of the appropriate method of valuing the Subject Property, finds as follows:-

(i) The Informer Properties, whose NER's were used by the Respondent as a basis for calculating the appropriate value per square metre, in Zone A, of some twenty-two properties in the locality, are substantially smaller than the Subject Property. In particular, the floor area of each is below 100 sqm.

(ii) Comparison 1 relied upon by the Appellant which has been categorised by the Respondent as "*Supermarket 2 – 500 to 2,500 sq metres*" is a retail unit which sells homeware products – including soft furnishings, lighting, furniture – and some clothing. As such, it does not come within the classic definition of a "supermarket" being a retail unit which sells a large range of groceries, household goods, and hardware products. There was no explanation offered as to why this property was nonetheless categorised in the manner set out above. This suggests that the criteria required to be identified before including a property in this categorisation are not necessarily strict.

(iii) The SCSI Zoning Guidance Note dated May, 2009 relied upon by the Respondent does not indicate that it is compulsory to use these zoning methods when valuing retail properties. The Note states that zoning "*has become established as <u>an</u> accepted method of establishing rental values for the majority of retail premises*". It also goes on to state that where zoning is applied, it is recommended that the premises be considered on an overall basis as there are instances where zoning "*produces an anomalous result*". Further, it states that where figures or percentages are given, they are for guidance purposes only and are not intended to be taken as rigid cut off points so valuers are expected to use their judgment accordingly.

(iv) It is noted that Comparisons 2, 3 and 4, relied upon by the Appellant (which are all supermarkets in the classic sense) are all under 1,000 sqm in size. Comparison 2 is 647.67 sqm and Comparison 4 is 662 sqm. This suggests that there are occasions

on which the Respondent has decided that it not appropriate to apply the zoning method where the area of the Subject Property is less than 1,000 sqm.

(v) The said Zoning Guidance Note states, at paragraph 14, that "*zoning is not recommended for period premises or those without a standard shop front premises*". The Subject Property is an amalgamation of the ground floor of two adjoining Georgian buildings. Accordingly, the Guidance Note suggests that it may not be appropriate to value the Subject Property by using the zoning method.

(vi) It is notable that there are only three retail shops larger than 500 sqm on South Great George's Street – the Subject Property, Comparison 1 and a further property which is described as a large supermarket with a ground floor area in excess of 2,500 sqm and ancillary office accommodation on the upper floors. Neither of these properties were categorised, for valuation purposes, with the twenty-two properties, including the Subject Property, where the value of €700 per square metre, in respect of Zone A, of each property, was applied.

(vii) The Tribunal is satisfied that because of the nature of the building in which the Subject Property is found and the size of the Subject Property, it is not appropriate to categorise same with the other twenty-one properties, referred to above, whose NAV's have been determined by reference to the Informer Properties and relied upon by the Respondent. If the Subject Property is the only retail unit, within this category, with a floor area in excess of 500 sqm, then this may explain why this is the only Tribunal Appeal which has been brought in respect of retail units in that area.

(viii) The Tribunal is satisfied that it would be more equitable and would not affect uniformity of tone of the List, to value the Subject Property in accordance with the methods proposed by the Appellant, as applied to the valuation of Comparison 1.

9. DETERMINATION:

The Tribunal determines that the Appeal be allowed and the Net Annual Value of the Subject Property be arrived at by applying a value of €165 per square metre overall. The Gross Internal Area of the Subject Property being 601 sqm, the NAV is as follows:

€165 x 601 = €99,165

And the Tribunal so determines.