

Appeal Nos: VA17/5/483 & VA17/5/486

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

FERGAL CADDEN

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

- (1) Property No. 407487, Office(s) at 8 A Tower Shopping Centre, Tower Road Clondalkin Village, County Borough of Dublin &
- (2) Property No. 746323, Office(s) at 8 B Tower Shopping Centre, Tower Road, Clondalkin Village, County Borough of Dublin.

BEFORE

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Caroline Murphy - BL

Member

Fergus Keogh – MSCSI, MRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF FEBRUARY, 2019.**

1. THE APPEALS

1.1 By Notice of Appeals received on the 12th day of October, 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV)’ of the above relevant Properties was fixed in the sum of:

- (1) €34,000 in respect of Property No. 407487 and
- (2) €31,000 in respect of Property No. 746323.

1.2 The sole ground of appeal as set out in the Notice of Appeals is that the determination of the valuation of the Properties is not a determination that accords with that required to be achieved by section 19 (5) of the Act because:

- The Valuation for the subject property is excessive and inequitable. The property's value as applied by the Commissioner is not in line with its actual potential rental value.
- PN 746323 is let at €17,500 per annum.

1.3 The Appellant considers that the valuation of the Properties ought to have been determined in the sum of:

- (1) €18,880 in respect of Property No. 407487 and
- (2) €17,260 in respect of Property No. 746323

2. REVALUATION HISTORY

(1) Property No. 407487

2.1 On the 22nd day of June, 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €34,000

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €34,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th day of October, 2015.

(2) Property No. 746323

2.5 On the 13th day of April, 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €31,000.

2.6 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.7 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €31,000.

2.8 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th day of October, 2015.

3. THE HEARING

3.1 The Appeals proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 7th day of February, 2019. At the hearing the Appellant was represented by Mr David Halpin MA (Real Estate), BA (Mod) of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr John O'Brien BSc (Hons), H.Dip, PVEA, MSCSI, MRICS of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

3.3 Whilst the hearing relates to two separate adjoining properties similar save for a small difference in size of (19.05 sq. m.), Mr. Halpin and Mr. O'Brien agreed that for convenience purposes they would each read from their submissions in respect of the second property, Property No. 746323 (offices at 8 B Tower Shopping Centre), reflecting their comments to Property No. 407487 (Offices at 8 A Tower Shopping Centre).

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The Properties comprise two adjoining self-contained first floor offices suites overhead of a terrace of ground floor lock-up retail units with communal car parking to the front located in the centre of Clondalkin Village.

4.3 Unit 8 A extends to 222.20 sq. m. and is currently vacant.

4.4 Unit 8 B extends to 203.15 sq. m. and is let under a 15 year lease dated 22nd December 2016 at an annual rent of €17,500 pa from the 1st January 2017. It is occupied as a doctor's surgery.

4.5. The areas of both properties have been agreed by the parties.

5. ISSUES

5.1 The issues may be summarised as follows:

5.2 In relation to Property No. 407487 the Appellant considers that the Valuation of the subject property is excessive and inequitable and that the Property's value as applied by the Commissioner is not in-line with its actual and potential rental value having particular regard to the fact that the adjoining property and similar unit is let at €17,500 pa.

5.3 The Respondent considers that the subject property is valued in line with similarly circumstanced properties in the South Dublin County Council area and that the rent reserved in the adjoining property is low in comparison to similarly circumstanced properties in the South Dublin County Council area.

5.4 In relation to Property No. 746323 the Appellant considers that the Valuation of the subject property is excessive and inequitable and that the Property's value as applied by the Commissioner is not in-line with its actual and potential rental value having particular regard to the fact that the property is let at €17,500 pa effective from the 1st January 2017.

5.5 The Respondent considers that the property is valued in-line with similarly circumstanced properties in the South Dublin County Council area and considers the rent reserved to be low in comparison to similarly circumstanced properties in the South Dublin County Area.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“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.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“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 be expected to let from year to year, on the assumption that the probable annual cost 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 in respect of the property, are borne by the tenant.”

7. APPELLANT’S CASE

7.1 In relation to Property No. 746323 (Unit 8 B) Mr. Halpin on behalf of the Appellant opened his evidence by describing the location and the layout of the property using photographs contained in his precis.

7.2 The property consists of a self-contained first floor office suite of 203.15 sq. m overhead of a parade of lock up retail units known as the Tower Shopping Centre, Tower Road, Clondalkin. The property is of traditional construction with a brick front elevation and a tiled pitched roof. There is communal car parking to the front of the retail units. The Property is used as a doctor’s surgery and internally has been divided into consultation rooms and a waiting area.

7.3 Mr. Halpin commented on the prevailing conditions of the South Dublin Office market as of the valuation date and that demand was improving however it was largely driven by occupiers seeking high quality 3rd Generation accommodation.

7.4 Mr. Halpin submitted that the rent reserved under the lease of the subject property was extremely relevant to the valuation date in that if the property had been capable of achieving a greater rent then it would have done so in the open market. He further submitted that a hypothetical tenant would not pay the rent applied in the Respondents submission in the

knowledge of the fact the adjoining similar accommodation was available in the open market at a lesser rent.

7.5 Mr Halpin opined that to his knowledge there was no specific market analysis for 'over the shop' type offices and stated that there is very strong evidence that there is a steep quantum discount required beyond the standard size of 1st floor accommodation, being 20 – 60 sq. m., submitting that rental rates declined as follows:

- (i) To €142 per sq. m for units of 88 sq. m,
- (ii) To €86 per sq. m for units of 203.15 sq. m. and
- (iii) To €35 per sq. m for units of 638 sq. m.

7.6 The subject property is let on a new lease dated 22nd December 2016 at a rent of €17,500 pa which devalues to €86 per sq. m. per annum.

7.7 Unit 8 A (Property No. 746323) has been vacant for approximately 5 years and is available to be let. Due to the length of the vacancy period Mr. Halpin advised that the Appellant is considering seeking planning permission for a change of use to residential use.

7.8 Mr. Halpin submitted that The Commissioner is principally valuing 1st Floor offices in Clondalkin at €170 - €180 per sq. m. per annum and submits that the Commissioner acknowledges that the subject property does not fall within this category by applying a discount of 15% which results in an effective rental level of €153 per sq. m. per annum which is approximately double the passing rent reserved.

7.9 Mr. Halpin submits that there is a total of 51 properties valued by the Commissioner in the 'over the shop category' in Clondalkin, with only two with a larger area than the subject properties. Mr. Halpin analyses these as follows:

	NAV	Size
Average	€9,259	59.40
Median	€5,980	34.10

7.10 Mr. Halpin submits that the Commissioner is valuing 3rd Generation offices in South County Dublin at €110 - €130 per sq. m. per annum and 2nd Generation offices in the immediate vicinity at €100 per sq. m. per annum commenting that ‘over the shop accommodation’ cannot be considered superior to either.

7.11 The Appellants seek a reduction in the level applied based on the subject’s actual passing rent and the rents of comparable properties in-line with Section 48 of the Valuation Act 2001.

7.12 Mr. Halpin further submitted the following comparisons:

(i) Three comparisons of lettings in Clondalkin which gave examples of office lettings let in or around the valuation date at rental levels ranging from €35 per sq. m. per annum for 638 sq. m, €142 per sq. m per annum for 88 sq. m. per annum and €90.55 per sq. m. per annum for 154.61 sq. m.

(ii) Two comparisons in Lucan which gave examples of office lettings in or around the subject date of €115 per sq. m. per annum for 174.17 sq. m. and €96 per sq. m. per annum for 100 sq. m.

(iii) One comparison in Tallaght of modern third generation accommodation of 360.40 sq. m at €102.38 per sq. m. per annum.

(iv) Three ‘context’ comparisons (having withdrawn comparison no. 10) in Clondalkin, Tallaght and Kilcarberry of properties currently available to let on the market including over the shop and modern 3rd Generation properties at rents varying from €110 – €176 per sq. m. per annum depending on size and location in support of his opinion of rental value.

7.13 In response to limited cross-examination by the Respondent, Mr. Halpin confirmed that in his opinion that the best comparisons in his submission were the two subject properties and further confirmed that there was a parallel between the subject properties and his comparisons and that he had disregarded modern blocks outside of the town centre.

7.14 In response to a query from the Tribunal as to the exact date of the term of the lease and the rent commencement date of the subject property, as these had been omitted from the unstamped lease as submitted, Mr Halpin advised that these dates were the 1st January 2017.

7.15 Mr. Halpin's comments are to be reflected to Property No. 407487.

8. RESPONDENT'S CASE

8.1 In relation to Property No. 746323 (Unit 8 B) Mr. O'Brien on behalf of the Respondent opened his evidence by describing the location and the layout of the property using photographs contained in his precis.

8.2 Mr. O'Brien submitted a summary of 'South County Dublin Council Revaluation Facts and Figures' outlining statistics in relation to proposed Valuation certificates issued, Representations made, and Appeals received by the Valuation Tribunal.

8.3 Mr. O'Brien advised that the Commissioner relied upon five 'Key Rental Transactions' to inform the estimate of Net Annual Value. These properties are each located within the Town Centre of Clondalkin and acknowledged that the areas of his 'Key Rental Transactions' were all smaller than the subject properties with some being dated.

8.4 Mr. O'Brien stated that there are 17 properties in the vicinity of the subject properties each valued at €180 per sq. m. per annum.

8.5 Mr. O'Brien submitted three 'NAV' comparisons including Unit 8 A (noting that it is under appeal) to support his opinion of value of €180 per sq. m. per annum.

8.6 In response to a question under cross examination by Mr. Halpin, when asked where in his submission Mr. O'Brien reflected the broader picture in relation to rents, Mr. O'Brien responded by saying this was dealt with in his quantum discount of 15% that had been applied to the subject properties.

8.7 Mr. O'Brien was questioned by Mr, Halpin in relation to the 'division of labour' within his office of all appeals in Clondalkin but was not in a position to supply this information.

8.8 Mr. O'Brien was questioned about the availability of lease documentation in relation to the properties in his submission and acknowledged that he did not have copies of any of these leases and relied on S46 Forms that had been submitted. Mr. O'Brien confirmed he had met with the tenants in occupation of Property No. 746323 (Unit 8 B).

8.9 Mr. Halpin asked whether Mr. O'Brien remained in the €180 per sq. m. per annum 'area' and Mr. O'Brien confirmed that he was.

8.10 In response to a question from the Tribunal as to Mr. Halpin's assertion that a hypothetical tenant would not pay the rental value attributed to the subject properties by Mr. O'Brien if they were available in the open market at a lesser rent, Mr. O'Brien acknowledged that a tenant would pay the lesser rent.

7.12 Mr. O'Brien's comments are to be reflected to Property No. 407487.

9. SUBMISSIONS

9.1 No legal submissions were made.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of South Dublin County Council.

10.2 The Tribunal has examined the particulars of the properties and considered the written and oral evidence adduced by Mr. Halpin on behalf of the Appellants who contended for a revised NAV for the subject properties of €18,880 and €17,260, and by Mr John O'Brien on behalf of the Respondent who contended for a NAV of €34,000 and €31,000 for the subject properties.

10.3 The Tribunal finds the evidence as presented by the Appellant in relation to rental values as of the Valuation Date persuasive in this instance.

10.4 The Tribunal accepts that the Commissioner has taken first floor accommodation in the vicinity at a value of €180 per sq. m. per annum, however, the Tribunal considers that it is not appropriate to compare the subject Properties to standard 'over the shop' type of accommodation due to their size. The Tribunal finds that the comparisons relied upon by the Respondent are much smaller than the subject properties and the lease information for the NAV comparison No.2 is dated.

10.5 In the Tribunal's opinion the hypothetical tenant would not pay the same level of annual rent as presented by the Respondent particularly having regard to the rent achieved in respect of Unit 8 B and the quoting rent being sought for Unit 8 A.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuations of the Properties as stated in the Valuation Certificates as follows:

(1) In respect of Property No. 407487, Offices at 8 A Tower Shopping Centre, Tower Road, Clondalkin;

Office (1st Floor) 222.20m² @ €85/m² = €18,887

Say NAV €18,880

(2) In respect of Property No. 746323, Offices at 8 B Tower Shopping Centre, Tower Road Clondalkin;

Office (1st Floor) 203.15 @ €85/m² = €17,267.75

Say NAV €17,270

And the Tribunal so determines.