

Appeal No: VA17/5/114

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

MR EDDIE TINGLE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 2191095, Retail (Shops) at Unit 5, Tuansgate, Belgard Square, County Dublin.

B E F O R E

Majella Twomey – BL

Deputy Chairperson

Thomas Collins – PC, FIPAV, NAEA, MCEI, CFO

Member

Liam G. Daly – MSCSI, MRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF JUNE, 2019.

1. THE APPEAL

1.1 By Notice of Appeal received on the 4th 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 Property was fixed in the sum of €25,500.

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

“The Valuation of the subject property is excessive and inequitable. The property’s value as applied by the Commissioner is not remotely in line with its actual rental value.”

“The subject property is let on a 10 year lease from 5th November 2014 at €18,000 per annum gross rent. The landlord is responsible for both the rates (currently €8,764 per annum) and the service charge (currently €5,767 per annum). This leaves a net rent of just €3,471 per annum.”

“The value as assessed by the Commissioner is also out of line with general rental evidence from Tallaght.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €11,780

2. REVALUATION HISTORY

2.1 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 €32,200.

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 of the Property was reduced to €25,500.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €25,500.

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.

3. THE HEARING

3.1 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 19th day of July, 2018 and the 17th day of January, 2019. At the hearing the Appellant was represented by Mr Eamonn Halpin BSc (Surveying), MRICS, MSCSI of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr Viorel Gogu PhD, MSc, MEconSC, RICS, SCSi, IAAO 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. Each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

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

4.2 The subject property is located at Unit 5 Tuansgate, Belgard Square, Dublin 24. This is a secondary location to the north of the carpark for The Square Shopping Centre.

4.3 The subject property is part of a mixed -use development with retail units on the ground floor. The subject property is a mid- terrace retail unit comprising a ground floor retail area with mezzanine floor and a basement floor for storage,

4.4 The accommodation has been agreed between the parties;

Ground Floor Retail Zone A 40.80 sq. m.

Retail Zone B 34.90 sq. m.

Mezzanine Store 81.20 sq. m.

Basement Store 71.02 sq. m. (not originally included in valuation certificate)

4.5 The subject is held under a 10 year lease from 5/11/2014 at €18,000 per annum.

5. ISSUES

5.1 The matter at issue is Quantum.

5.2 The Appellant claims that the valuation is excessive and inequitable and should be set at €11,780 to reflect the actual performance of the overall mixed use scheme as opposed to the original aspirations of its developers.

5.3 The Respondent claims that the valuation of €28,400 (when the basement area of 71.02sq.m is added) is in line with the tone of the list for South Dublin County Council and requests the Tribunal to affirm same in the accordance with the Valuation Acts.

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 Mr. Halpin, on behalf of the Appellant, adopted his precis as he evidence-in-chief. He described the subject property as situated in a tertiary location with limited footfall at the eastern vehicular entrance to The Square Shopping Centre carpark. The unit is located within a mixed used development known as Tuansgate. He explained that the original concept behind the broader development was a modern retail alternative to The Square Shopping Centre. What transpired was considerably different. Following initial successful lettings during 2006, the scheme was severely impacted by the economic downturn which followed. Thus the scheme never fulfilled its proposed objective. The current rents now showing a decline of over 75% since its original launch in 2006.

7.2 Mr Halpin also made reference to the performance of the nearby Square Shopping Centre. He commented that the shopping centre has been in serious decline since the early 2000’s. He cited the comparison between The Square Shopping Centre (assessed at €400-1000 sq. m Zone A by the Commissioner) and Liffey Valley Shopping Centre assessed at €1,100 – 2,000 sq. m Zone A by the Commissioner).

7.3 Mr Halpin introduced twelve rental comparison (See Appendix 1) within proximity of the subject property to support his case for a reduction.

7.4 It was Mr. Halpin's opinion that the above evidence contextualised the variations between what was being achieved in rents compared with NAV assessments of the Commissioner of Valuations. Mr. Halpin stated that the schematic which The Valuation Office has come up with is flawed and that the valuation should be amended in line with actual rental evidence.

7.5 Mr Halpin introduced a further three properties which, although, he did not consider to be direct comparisons to the subject property, they helped contribute to a broader understanding of the rents been achieved in the Tallaght district.

8. RESPONDENT'S CASE

8.1 Mr. Gogu, for the Respondent, adopted his precis as his evidence and chief.

8.2 Mr Gogu commenced his evidence by explaining how the Valuation Office utilised statistical information in determining the NAV of the subject property. This is achieved by employing a ratio study method to measure valuation performance. A ratio study method is a statistical analysis that compares the assessed rental value Net Annual Value (NAV) calculated by the Valuation Office Ireland with the Net Effective Rent (NER). It is called a ratio study because the NAV is divided by the NER and the resulting ratio is used for the evaluation. NER is generally established by observing the rent for which a property is leased in the open market and adjusted in accordance to the terms of the lease agreement.

8.3 Mr. Gogu explained that to determine the accuracy with absolute certainty, it would be necessary for all properties in the area to have been rented at arm's length, open-market transactions near the valuation date. As this is not possible, it is therefore necessary for ratio studies to use samples and draw inference or conclusions from the results.

8.4 In determining NAV within the region of the subject property, Mr. Gogu explained how a Ratio Studies Report was utilised to evaluate the performance of the commercial rates valuation system in South Dublin County Council. It is limited to a group of 74 retail properties with similar characteristics valued at €300 sq. m Zone A. An initial number of 16 Key Rental Transactions were used.

8.5 Mr Gogu supplied the Tribunal with the 13 Key Rental Transactions which provided the Net Effective Rent, which was then applied to the group of properties sharing similar characteristics and then, after further adjustments, the NAV was arrived at. In this particular case a valuation of €300 sq. m for Zone A was decided upon. The 13 Key Rental Transactions (See Appendix 2) included the following. Mr Gogu on cross examination accepted that while he looked at 13 properties that only two were situated in Tuansgate.

8.6 Mr Gogu stated that a mass appraisal of the district was undertaken to a set level for a group of similar properties. He explained that direct comparisons were not appropriate for this type of appraisal.

8.7 He described the Ratio Study Report, a copy of which was included in his precis, which was the system used by the Valuation Office to arrive at the NER and is statistical analysis that compares the assessed rental levels.

8.8 In cross- examination by Mr. Halpin, Mr. Gogu accepted that one of the occupiers in the list of comparisons put forward by him, had left occupation 10 years ago. Mr Gogu, then said that one had to look at the hypothetical Tenant. Mr Halpin put it to Mr. Gogu that his list of comparators was not relevant as some of them had the wrong occupiers and old photographs. Mr Gogu said that The Valuation Office was looking at the levels at October 2015. Mr. Halpin put it to Mr Gogu that there were other occupiers which were listed in his comparators list which were no longer there and Mr. Gogu said that the information was ‘taken from the system’. Mr Halpin also put it to Mr. Gogu that a large number of properties had been valued by a small amount of evidence and Mr. Gogu said that this was the only way of doing the valuation.

9. SUBMISSIONS

9.1 There were no legal submissions

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 property and has considered the written and oral evidence adduced by Mr. Halpin on behalf of the Appellant, who contended for a revised NAV of €11,780.00, and Mr. Gogu on behalf of the Respondent, who sought confirmation of the Valuations Offices determination of NAV of €28,400(taking into account the basement area of 71.02 sq.m)

10.3 The Tribunal accepted the Appellants contention that the economic downturn had a detrimental impact on what was originally envisaged for the Tuangate development at its' launch in 2006. The Appellant's evidence, as outlined above, highlighted the difficulties the development had in both attracting and retaining occupiers.

10.4 The Respondent undertook a Ratio Study Report (statistical study) of the entire South County Dublin area, which ranged from Lucan to Rathfarnham. This study was then used to arrive at the tone of the list and applied to the subject property. The Tribunal acknowledges the benefits in utilising such model in determining the tone of the list, however in this instance the Tribunal is of the opinion that the data being utilised in the model is not sufficient for a fair determination in this particular case. On the evidence presented, the Tribunal found, not only was some of the data lacking the necessary specifics to allow full interpretation, the methodology governing the data selection required improvement. While the Tribunal recognised the difficulties associated with quantifying beneficial occupation of a number of units within the district, the Valuation Office excluded a number of units for various reasons such as management failures and incomplete developments. The Tribunal, however, finds that it is a difficult proposition to accept that these ignored or excluded units would not have an impact on rents and values in the area.

10.5 The Tribunal has examined all the comparison evidence put forward, reviewed the Respondents Ratio Study Report that was utilised in this circumstance and is of the opinion that the weight of the actual rental evidence available in the immediate area is sufficient to determine the NAV for the subject property.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €16,161.50 NAV.

Level	Use	Area (sq. m)	€/per sq. m.	NAV
0	Retail Zone A	40.80	190	7,752.00
0	Retail Zone B	34.90	95	3,315.50
Mezzanine	Store	81.20	48	3,897.6
-1	Store	71.02	24	1,704.48
				16,161.58

And the Tribunal so determines.