

Appeal No: VA14/5/987

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

**VERONICA & ROBERT GALLAGHER
T/A TRINITY STREET CAR PARK**

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1020552, Car Park (Multistorey) at Floor 1 14/15 Trinity Street, County
Borough of Dublin.

B E F O R E

Majella Twomey - BL

Deputy Chairperson

Donal Madigan – MRICS, MSCSI

Member

Allen Morgan – FSCSI, FRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF NOVEMBER, 2019.

1. THE APPEAL

1.1 By Notice of Appeal received on the 5th day of September 2014 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 €562,000.

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 :

- 1) *“The valuation is excessive & inequitable*

- 2) *The valuation is incorrect by reference to the values of other properties stated in the valuation list.*
- 3) *The valuation is incorrect by reference to the annual rents of other comparable properties in the valuations list.*
- 4) *The car park has a very high breakeven point in terms of costs to net revenues.*
- 5) *The specific business risks effecting Trinity Street car Park create significant uncertainty going forward. These include the move towards pedestrian only streets, traffic flow changes, the ban on cars in College Green at peak times and the extension of the Luas.*
- 6) *The car park is prohibited from providing long stay contract parking and is thus deprived of guaranteed contract rental income source.*
- 7) *The high rise multi-storey nature of the car park coupled with the layout of the building results in high maintenance costs per space.*
- 8) *The car park is constructed on a very restricted site resulting in difficult manoeuvrability.*
- 9) *The valuation is invalid and bad in law having been determined in error by reference to valuations and / or rents of other car parks on the south side of DCC etc[sic]*
- 10) *The commissioner of valuation[sic] erred in fact and in law:*
 - *By determining a grossly erroneous valuation*
 - *By determining the valuation in a disproportionate and arbitrary manner*
 - *By wrongfully relying on limited rental information, possibly one property – Setanta Centre Car Park (not comparable, arm’s length or appropriate)*
 - *By failing to attach sufficient weight to comparable valuations on the north side of the city or similarly the actual differential in retail valuations, rental values and car park charges between the north and south side of the city”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €170,000.

2. REVALUATION HISTORY

2.1 On the 11th day of January, 2013 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 €605,000.

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 of the Property was reduced to €562,000.

2.3 A Final Valuation Certificate issued on the 16th day of December, 2013 stating a valuation of €562,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 7th day of April, 2011.

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 10th day of July, 2019. At the hearing the Appellant was represented by Mr. Eamonn S. Halpin B.Sc. (Surveying) MRICS, MSCSI and Mr. Patrick Hennigan and the Respondent was represented by Mr. Alan Sweeney B.Sc. (Property Val & Mgmt) 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.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 This multi-storey car park (6 levels or 12 half levels) is located just a short distance north west of Grafton Street and is accessed by car from St. Andrew's Lane;

4.2 The car park comprises the major portion of a building containing, in addition to the car park, shops, a restaurant and office suites, all of which was built in 1994;

4.3 The subject matter of this appeal concerns 170 spaces, as contended for by Mr. Halpin on behalf of the Appellant or 173 spaces, as contended for by Mr. Sweeney on behalf of the Respondent;

4.4 The use of the car spaces is restricted to short term parking only with long term contract parking being prohibited under the condition of the planning permission granted by An Bord Pleanála;

4.5 The car park and remainder of the building is held on a lease from 27th May 1994 for a term of 35 years which was created to facilitate a sale and leaseback of the property and there is a complex rent review mechanism for each 5 year (upwards only rent review) whereby the car park element of the rent can be further increased (ratcheted upwards) and the rent passing prior to the statutory valuation date was € 864,430 per annum with c. € 580,543 attributable to the car park.

5. ISSUES

The only issues in dispute in this appeal are:

- (a) the correct number of assessable spaces (Appellant 170; Respondent 173), and
- (b) the quantum of the valuation (Appellant € 212,500; Respondent € 562,000).

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 At the hearing, Mr. Halpin for the Appellant contended for a valuation of € 212,500, which he calculated as follows:

Car Park 170 spaces @ € 1,250.00 per space = € 212,500.

7.2 In support of his valuation, Mr. Halpin, put forward 14 comparable properties as set out in Section A of the Appendix to this Determination. He also submitted a map indicating the location of other car parks and their NAV per space together with car parks under appeal, in relation to the subject property.

8. RESPONDENT'S CASE

8.1 At the hearing, Mr. Sweeney for the Respondent, contended for a valuation of €562,000 which he calculated as follows:

Car Park 173 spaces @ € 3,250.00 per space = € 562,250 rounded to € 562,000.

8.2 In support of his valuation, Mr. Sweeney put forward 15 comparable properties as set out in Section B. of the Appendix to this Determination. He also submitted a map indicating key NAVs of other car parks relative to the subject property.

9. SUBMISSIONS

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 Dublin City Council.

10.2 With regard to the first matter in contention between the parties, namely, the correct number of assessable car parking spaces, it is clear to the Tribunal that, on the basis of the information placed before it, 176 spaces have been valued whereas the total capacity is 173

spaces and thus, three spaces, it would appear, have been included twice, thus leading to the conclusion (in the absence of any information to the contrary) that if each one of three spaces are included with property numbers 1020561, 1020559 and 2203072, that leaves 170 spaces to be included in this (property number 1020552), the subject relevant property. The Tribunal also notes that each of these three spaces is valued at a rate of € 1,250 (in contrast to the subject property at € 3,250 per space), as submitted by the Appellant, and is naturally surprised at this disparity, in the absence of any clear explanation for same

10.3 Both Mr. Halpin and Mr. Sweeney produced very detailed and helpful submissions giving much background and detail, as well as photographs and maps which are of great assistance to the Tribunal. A wide spectrum of car parking rents and net annual values was submitted which ranged from Dublin 9 in the north of the outer city across Dublin 1 & 2 postcodes out to Dublin 8. A number of city centre car parks remain under appeal which is unfortunate as the Tribunal in the instant case, is also dealing with a city centre car park appeal.

10.4 The Tribunal considers that the existing rental evidence in the subject property does not provide a reliable basis for the assessment of net annual value, as the rent was agreed well in advance of the statutory valuation date in much different (and better) market conditions and as part of a sale and leaseback arrangement. In these circumstances, this evidence may not be considered an arms-length open market transaction. In addition, the subsequent review mechanism creates an artificially high rent (as the lease predates the legislation banning upward only rent reviews) and thus must be dismissed.

10.5 Both Surveyors for Appellant and Respondent provided car park tariff information by way of assistance and there was considerable in depth examination between them of the level of weight to be attached to each comparable put forward with consideration of age, proximity to the subject, and factors including location, accessibility, planning restrictions, condition and physical layout were discussed.

10.6 The Tribunal finds it difficult to ascertain a direct relationship between the other rental evidence and the consequent net annual values, and therefore is directed to look closely at the level of comparable assessments, especially where these have been challenged and agreed with agents. In this regard, whilst both Surveyors have provided a wealth of information

which defines a range of unit rate (per space) values from € 450 to € 3,250 (subject property), the Tribunal considers that the key value indicators in this case are, chiefly, the Respondent's comparable properties No. 1 and No. 15 in Section B of the Appendix of this Determination. The first of these gives an agreed NAV rate of € 3,000 per space for 223 spaces whilst the second gives an agreed NAV rate of € 2,250 per space for 321 spaces.

10.7 The Tribunal takes account of the argument advanced by Mr. Sweeney, for the Respondent, on the revenue earning capacity of the subject property, but to treat that as conclusive without full regard to the context of other assessments might give a one-sided outcome. It runs the risk of focusing on the business acumen of the current occupier rather than what a hypothetical tenant would bid for the car park, vacant and to let, at the valuation date of 7th April 2011. A "profits" derived valuation could produce a higher assessment but this then puts that assessment in significant contrast to the level of agreed net annual values.

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 € 467,500.

This is calculated as follows:

Car Park 170 car spaces @ € 2,750 per space = € 467,500.

And the Tribunal so determines.