

**Appeal No: VA17/5/878**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015  
VALUATION ACTS, 2001 - 2015**

**CHANDOS INVESTMENTS PLC.**

**APPELLANT**

**and**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 894462, Office(s) at Unit 28 The Mill Centre, Clondalkin, County Dublin.

**B E F O R E**

**Hugh Markey – FSCSI, FRICS**

**Deputy Chairperson**

**Raymond J. Finlay – FIPAV, MMII, ACI Arb, TRV, PC**

**Member**

**Patricia O'Connor - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 27<sup>TH</sup> DAY OF AUGUST, 2020.**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 12<sup>th</sup> 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 €63,800.

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 Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *“The appellant considers that ought to have been determined as being the valuation*

*of the property concerned in accordance with the matters set out in section 19(5) of the Act as amended €19,000.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €19,000.

## **2. REVALUATION HISTORY**

2.1 On the 13<sup>th</sup> 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 €63,800.

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 7<sup>th</sup> day of September 2017 stating a valuation of €63,800.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> 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 16<sup>th</sup> day of September 2019. At the hearing the Appellant was represented by Mr. Donal O’ Donoghue BSc. (Hons) Estate Mgmt., Dip Vals, MSCSI, MRICS of OMK Property Advisors & Rating Consultants and the Respondent was represented by Mr. Viorel Gogu PhD, MSc, MEconSC, SCSi, RICS, 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. 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**

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

- (a) The subject property is located at Unit 28 The Mill Centre, Clondalkin, Dublin 22.
- (b) Accommodation has been agreed at 636.84 square metres.

#### **5. ISSUES**

This appeal raised the sole issue as to whether the net annual value of the Property as determined by the Respondent is correct.

#### **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. O’ Donoghue adopted his Précis as his evidence-in-chief in addition to giving oral evidence. Mr. O’ Donoghue stated at the outset that there were a number of important factors affecting the net annual value of the subject property which he had set out in full at Page 9 of his Précis. He stated that the subject property was vacated in 2008 and remained

unlet for ten years until the current tenants took the property on a lease from March 2018 and that the current passing rent is the only achievable rent for the property. It was vacant at the relevant date, 30 October 2015.

Mr. O Donoghue outlined how the owners of the property had obtained planning permission for conversion of the space, previously used as retail to offices, (SD15A/0326); this permission had never been implemented. He suggested that significant capital expenditure would have been required to comply with regulations and a lift would have to be installed in order to secure a DAC (Disabled Access Certificate).

He suggested that it was an error to classify the demise as 'Offices (over the shop)'; maintaining the correct category was 'Retail' as this was its last use, albeit planning permission had been secured for offices but not implemented. At the relevant valuation date, the use was retail.

7.2 Mr. O' Donoghue contended that the NAV per square metre should be €40, taking into account the factors affecting Net Annual Value and having regard to market rents. Mr. O' Donoghue was of the view that the valuation should be based on the First Floor Retail 638.84 square metres at €40 per square metre, totalling €25,553.60, rounded down to €25,300.

7.3 Mr. O'Donoghue relied on one key rental comparison and five Tone of the List comparisons which are set out fully in Appendix 1. Mr. O'Donoghue confirmed that Comparison 1 is the subject property. Comparisons 2 and 3 are common comparisons with the Respondent and are 'Offices (over the shop)' in a shopping centre in Dublin 22.

7.4 Mr. O'Donoghue noted that Comparisons 4, 5 and 6 were properties with leisure uses as is the current use of the subject property. These comparisons are gymnasia/fitness centres in County Dublin (Comparison 4) and Dublin 24 (Comparisons 5 and 6 respectively). Mr. O'Donoghue pointed out that there were very few first-floor retail comparables as such properties in The Square or Liffey Valley Shopping Centres are valued on the basis of zoning

7.5 Mr. O'Donoghue also referred to the change of use planning application which required the installation of a lift and suggested that the planning permission was based by the local authority on the use of the subject property rather than its designation as an office.

7.6 On cross examination, Mr. Gogu put it to Mr. O'Donoghue that a level of €40 per square metre, as was applied to industrial premises, was not realistic for this area given that it was a property in a busy shopping centre with a free car park. Mr. O'Donoghue replied that he felt that it was very instructive that the only lease which could be agreed on the property in a decade produced a net effective rent of less than €20,000 per annum. Mr. O'Donoghue also pointed out that there was no lift in the property, either at the valuation date of 30<sup>th</sup> October 2015, or at the publication date of the list.

7.7 Mr. Gogu asked if the current passing rent plus VAT per annum was realistic. Mr. O'Donoghue replied that it was reasonable and that it was what had been agreed. Mr. Gogu asked what the market rents had been in 2015. Mr. O'Donoghue replied that he felt that the market rents which were closest to the subject property were his Comparisons 2 and 3. Mr. O'Donoghue stated that both of these comparisons had been appealed to the Valuation Tribunal and that the Tribunal had accepted that essentially passing rents were more reflective of these properties.

7.8 Mr. Gogu put it to Mr. O'Donoghue that his three comparisons 4, 5 and 6 were purpose-built gyms on the ground floor and he asked if Mr. O'Donoghue believed that they were comparable with the subject property on the first floor. Mr. O'Donoghue said that they had been instructive to him as they showed that a rental level of €40 per square metre is typical for these types of properties and he felt that they were comparable. Mr. O'Donoghue also confirmed that he had not been able to find any 'Office (over the shop)' accommodation as similarly circumstanced to the subject property.

## **8. RESPONDENT'S CASE**

8.1 Mr. Gogu adopted his Precis and relied on six Tone of the List comparisons which are set out fully in Appendix 2. He stated that Comparisons 1 and 2 were common comparables with the Appellant. Mr. Gogu pointed out that Comparison 1, which is an 'Office (over the shop)' in a suburban shopping centre in Dublin 22, was let in 2016 on a 15 year lease at €17,500 per annum which equated to a rent of €86.14 per square metre. This was appealed to the Valuation Tribunal which determined a rent of €85 per square metre. Comparison 2 is the adjoining 'Office (over the shop)' to Comparison 1 and a rent of €85 per square metre was similarly determined by the Valuation Tribunal.

8.2 Mr. Gogu stated that Comparison 3 is also in the 'Office (over the shop)' category and was let in May 2015 for 2 years and 6 months at a rent per square metre of €102. This was appealed to the Valuation Tribunal and a NAV of €135 per square metre was determined with a change of use from office to leisure. Comparison 4 is an 'Office (over the shop)' in Dublin 24 with a NAV of €108.39 per square metre with an agreed change of user to 'leisure'. Comparison 5 is also an 'Office (over the shop)' in Dublin 12 with a NAV of €180.40 per square metre. Comparison 6 is a health and fitness club located on the first floor in a shopping centre in County Dublin with a NAV of €85 per square metre. Mr. Gogu described this as being superior to the subject property. Comparison 7 is a purpose-built, basement gymnasium and fitness centre in Dublin 24. This was the subject of a Tribunal determination (VA14/4/009) at a level of €125 per square metre.

8.3 Mr. Gogu proposed a NAV of €85 per square metre taking account of the comparables, and the tone of the list, giving a total NAV of 638.84 square metre at €85 per square metre totalling €54,301.40, rounded down to €54,300.

8.4 Upon questioning from the Chair, Mr. Gogu confirmed that there is usually a retail user on the first floor. With regard to the subject property, Mr. Gogu said that its use had been retail and it had never been an office but it could now be considered for use as one given that a lift has been installed.

8.5 On cross examination from Mr. O'Donoghue, Mr. Gogu agreed that his Comparisons 1 and 2 were common comparables. Mr. Gogu agreed that both comparisons were much smaller than the subject property but stated that they were located in an inferior shopping centre. Mr. Gogu agreed that Comparison 3 was let for what Mr. O'Donoghue described as "arcade use" in a leisure context and that it was smaller than the subject property. Mr. Gogu agreed that both Comparison 4 and Comparison 5 were smaller than the subject property but that they were both valued at higher levels. Mr. Gogu agreed that Comparison 6 was much larger than the subject property.

8.6 Mr. O'Donoghue put it to Mr. Gogu, in respect of Comparison 7, that the tenancy and accordingly the passing rent had been in place two years prior to the valuation date. Mr. Gogu agreed that it had and that the NAV for the property had been determined by a Tribunal decision which predated this current revaluation. Mr. O'Donoghue put it to Mr.

Gogu that the Respondent was happy to accept rental evidence such as this but not to accept a Tribunal determination. Mr. Gogu replied that they looked at the Tone of the List and went on to state that they estimate the value for the property, or any property, is not necessarily based on what any particular tenant is paying, but that at the same time the Tribunal has liberty to change 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 Appellant argued that the correct basis of value was as first floor retail and while the Tribunal has some sympathy for this view, given the last use of the property prior to the valuation date, he did not provide any supporting comparisons of such first floor retail to assist the Tribunal. The Tribunal must therefore extrapolate from the evidence placed before it by the valuers.

10.3 The valuers both presented evidence of Tribunal decisions in two cases and these must then be considered as ranking highest when considering the comparisons adduced. The Tribunal found a level of €85 per sq. metre to be appropriate for ‘Offices (over the shop)’ in a nearby location. The Tribunal finds this evidence to be of most assistance.

10.4 The Respondent introduced a further comparison in the ‘Offices (over the shop)’ category at a NAV of €180.40. As this is well above the level suggested by the Respondent, it must be regarded as an outlier and of no assistance in the Tribunal’s deliberations.

10.5 The Appellant’s introduction of the letting of the subject is of some assistance but it postdates the relevant valuation date by some time. Further, planning permission did not exist for the gymnasium use at the time.

10.6 For the above reason (absence of planning), the Tribunal finds the fitness centres/gymnasia comparisons to be of only very limited assistance.

**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 €43,000.

636.84 Sq. M. @ €68 per square metre = € 43,305

Say NAV €43,300

And the Tribunal so determines.