

Appeal No: VA17/5/864

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

PERSIAN RESTAURANTS LTD T/A MCDONALD'S

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1545992, Retail (Shops) at Cranley Centre, Naas Road, Clondalkin, County Dublin

BEFORE

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF JANUARY 2021.

1. THE APPEAL

1.1 By Notice of Appeal 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 Property was fixed in the sum of €101,600.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

“The valuation is excessive and inequitable, is not appropriately relative to other similar properties, does not reflect the size, character, nature and location of the subject property and circumstances pertaining. Valuation Office floor areas are in dispute”.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €92,300.

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 €101,600.

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 it 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 €101,600.

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. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. FACTS

4.1 The parties are agreed as to the following facts.

4.2 The subject property is located on the southern side of the Nass Road between its intersections with the Long Mile Road to the east and the M50 to the west at the rear of a Circle K filling station forecourt. Access is from south bound traffic only and the subject property shares a common entrance with the filling station.

4.3 The agreed restaurant floor area is 259.42m² following a referral from the Tribunal. The subject property comprises a single storey semi-detached fast-food restaurant which includes a drive thru facility. The accommodation includes a shared entrance porch, customer seating and toilet accommodation, serving counter, kitchen preparation area and ancillary freezer, staff area and offices and stores and a separate area for refuse storage.

5. ISSUES

Quantum

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 The difference between the parties referred to matters of fact and a disagreement as to whether the 'store' should be valued. Both parties agreed that the location of the subject property was on the Long Mile Road and formed part of a Circle K petrol filling station close to the M50. Both agreed that the premises comprised a Drive Thru and fast-food restaurant of brick and block construction with a shared entrance porch, seating area, toilet accommodation kitchen and ancillary accommodation with shared car parking.

7.2 The Appellants provided a written submission which challenged the valuation as it did not reflect the character, specification size and location of the subject property on the basis that it is incorrect on matters of fact. In this initial submission the Appellants stated that in their opinion the valuation should be calculated as follows:

Floor use	Area M²	€/ M²	€
Restaurant	252.80	360.00	€91,008
Store	24.77	50.00	€1,238
			€92,246 Say €92,245

Whereas they argued that the Respondents valuation of €101,600 was based on incorrect floor areas.

Floor use	Area M²	€/ M²	€
Restaurant	272.31	360.00	€98,031
Store	73.20	50.00	€3,660
			Say €106,600

7.3 The appellants provided an additional clarification dated 26th November 2020 following a query from the Tribunal in relation to a lack of agreement in relation to the floor areas. The second submission provided the agreed restaurant area as 259.42M². However, the appellant did not accept the Valuation Office definition of 'Store'. They referred to the SCSi Measuring Practice Notes which stated that drive thru's are measured on a GIA basis and noted that the SCSi Guidance notes at 2.9 states that "*Lift rooms, plant rooms, fuel stores, tank rooms which*

are housed in a covered structure of a permanent nature, whether or not above the main roof level” would be included however argued that the as the yard area is used for refuse and that while refuse areas and not specifically mentioned in the notes they fall into the category of “Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level” and as the yard is not covered the area should not be valued. They added that this area is an external area with no covering and separate from the subject property.

7.4 In support of this contention the Appellants provided examples from two comparison properties where the restaurant only was valued.

Belgard Square-has a yard but it is not separately valued

VO No.	Floor	USE	M²	NAV €/ M²	Total NAV
476011	0	Restaurant	553.52	540.00	€298,900
					€298,000

Citywest has a yard but it is not separately valued

VO No.	Floor	USE	M²	NAV €/ M²	Total NAV
5010111	0	Restaurant	307.78	540.00	€123,112
	1	Restaurant	307.78	250.00	€76,945
					€200,000

7.5 They concluded their first submission by arguing for an amended valuation of €93,000 to exclude the 'store' calculated as follows:

VO No.	Floor	USE	M²	NAV €/ M²	Total NAV
1545992	0	Restaurant	259.42	360.00	€93,391
				Say	€93,000

7.6 Following a referral from the Tribunal to the parties to provide agreed floor areas they both confirmed that the Restaurant area was 259.42M². The parties also agreed that the other accommodation comprised a steel container 17.26M² and a Perspex covered area 19.06M².

However, the appellants argued that that the Perspex covered area should not be valued. They referred to the Valuation Office website for the calculation of the Gross Internal Area GIA –

“2.0 Gross Internal Area (GIA) Gross Internal Area is the area of a building measured to the internal face of the perimeter walls at each floor level.

Including 2.1 Areas occupied by internal walls and partitions. 2.2 Columns, piers, chimney breasts, stairwells, lift-wells, and the like. 2.3 Atria with clear height above, measured at base level only. 2.4 Internal open-sided balconies and the like. 2.5 Structural, raked, or stepped floors are to be treated as a level floor measured horizontally. 2.6 Horizontal floors, with permanent access below structural, raked, or stepped floors. 2.7 Corridors of a permanent essential nature (e.g., Fire corridors, smoke lobbies etc) 2.8 Mezzanine areas intended for use with permanent access. 2.9 Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered 2.10 Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners’ rooms, and the like. 2.17 Conservatories. (Domestic) structure of a permanent nature, whether or not above main roof level.

Excluding 2.18 Perimeter wall thickness. 2.19 External open-sided balconies, covered ways, and external fire escapes. 2.20 Canopies over loading doors and the like. 2.21 Voids 2.22 Greenhouses, garden stores, fuel stores, and the like (Domestic). 2.23 Sub-stations not used exclusively by the subject property (ESB sub-stations) 2.11 Projection rooms. 2.12 Voids over stairwells and lift shafts on Upper floors. 2.13 Loading Bays 2.14 Areas with a headroom of less than 1.5m. 2.15 Pavement vaults. (Domestic) 2.16 Garages. (Domestic).”

The Appellants specifically refer to item 2.9 which states” *Lift room, plant rooms, fuel stores, tank rooms which are houses in a covered ...* The Valuation Office confirms that the Code of Measuring Practice for Rating Purposes has been based on the SCSI Measuring Practice Guidance Notes noting specific exceptions below, none of which apply in this case.

Adoption of SCSI Measuring Practice Guidance Notes: The Valuation Office generally adopts the SCSI Measuring Practice Guidance Notes as its basis for measuring property for rating purposes. This is subject to the following exceptions: • Specialist type properties such as Hotels, Nursing Homes, Public Houses etc. • Entrance Halls for offices converted from a dwelling house (Diagram J), in a single occupation, are excluded except if used as a reception etc. (Ref 3.2) • Notional Lift Lobbies are included if opening directly onto the office area (Diagram I). If opening onto a lift lobby they are excluded (Ref. 3.3).

The Appellants referred to the SCSi Measuring Practice Guidance Notes Core definitions Gross Internal Area at 2.9 as follows” *Lift room, plant rooms, fuel stores, tank rooms which are houses in a covered structure of a permanent nature, whether or not above the main roof level.*”

They pointed out that the Valuation Office definition as published was incomplete as it did not include a ...” *structure of a permanent nature, whether or not above the main roof level*”. They argued that the refuse stores are not specifically included in the GIA Guidance Notes and therefore must be included in item 2.9 as iterated above. They further argued that while the size of the Perspex covered area was not disputed that it was not a ‘*covered structure of a permanent nature*’ and should therefore not be valued. They added that it was an outside area which was remote and separate from the subject property.

7.7 The stated that the area was used for the storage of refuse and was a Health and Safety requirement to avoid vermin and arson and as it was a necessity the Appellant should not be penalised.

7.8 The Appellants referred to the Respondents counter submission wherein Ms Beale referred to the *Commissioner of Valuation’s v Seven Wonders Ltd* wherein Mr Dodd on behalf of the Commissioner of Valuation noted that “...*anomalies can arise in the valuation list but if found, should be corrected* “ and the Judge concluded that “*even if anomalies exist, the valuation Tribunal is bound to apply the provisions of the act of 2001* “ in relation to the definition of relevant properties as per Schedule 3 of the Act. The Appellants quoted from Schedule 3 (b) Relevant Property “*Land used or developed for any purpose (irrespective of whether such lands are surfaced) and any constructions affixed thereto which pertain to that use or development.*” They argued that the area is not a construction affixed to the Drive Thru and is a separate area for bins and that it follows that it is not ‘Relevant Property’ under the Act.

7.9 Addressing the issue of ‘anomalies’ raised by the Respondents the Appellants referred to the “*Commissioner of Valuation v Carlton Hotel Dublin Airport Ltd & Orr’s*” wherein the Judge concluded that “*The Commissioner is certainly correct in saying that uniformity and equity are essential to the administration of the rating system, as they are in relation to any tax. Like must be treated alike. However, there is a logically prior issue and that is whether liability to the tax in question has been properly assessed in the first place. There is no merit*

in the uniform application of a mistake". The Appellants concluded therefore that applying this ruling to the subject property that it would be incorrect to place a value on the Perspex covered area, and while acknowledging that values may be placed on Perspex covered areas elsewhere, this did not mean that this approach was correct in this instance and argued that in fact the correction of the anomaly should be the removal of the Perspex covered area from the valuation.

7.10 The Appellants provided eight comparisons from properties within South County Dublin and stated that Portacabins would be of a higher quality than a steel container and that steel containers were commonly used for storage.

<i>VO No.</i>	<i>Floor level</i>	<i>Floor use</i>	<i>M²</i>	<i>€/ M²</i>	<i>Total NAV</i>
2172344	0	Portacabin	17.93	€28.00	
	0	Yard	600.00	20.00	€12,500.00

<i>VO No.</i>	<i>Floor level</i>	<i>Floor use</i>	<i>M²</i>	<i>€/ M²</i>	<i>Total NAV</i>
471543	0	Portacabin	130.45	€36.00	
	0	Yard	3915.00	€10.00	€43,800

<i>VO No.</i>	<i>Floor level</i>	<i>Floor use</i>	<i>M²</i>	<i>€/ M²</i>	<i>Total NAV</i>
820570	0	Yard	272.16	€20.00	
	0	Steel Container	14.40	€6.00	
	0	Store	13.44	€20.00	€7,790.00

<i>VO No.</i>	<i>Floor level</i>	<i>Floor use</i>	<i>M²</i>	<i>€/ M²</i>	<i>Total NAV</i>
2164409	0	Steel Container	351.36	€12.00	
	0	Yard	278.64	€20.00	€9,780.00

<i>VO No.</i>	<i>Floor level</i>	<i>Floor use</i>	<i>M²</i>	<i>€/ M²</i>	<i>Total NAV</i>
5010043	0	Yard	680.00	€25.00	
	0	Portacabin	28.21	€20.00	€17,560.00

<i>VO No.</i>	<i>Floor level</i>	<i>Floor use</i>	<i>M²</i>	<i>€/ M²</i>	<i>Total NAV</i>
2180888	0	Portacabin	19.22	€20.00	
	0	Workshop	27.00	€20.00	
	0	Steel Container	30.50	€20.00	
	0	Yard	2250.00	€5.00	€12,780.00

<i>VO No.</i>	<i>Floor level</i>	<i>Floor use</i>	<i>M²</i>	<i>€/ M²</i>	<i>Total NAV</i>
2181029*	1	Offices	22.54	€16.00	
	0	Warehouse	221.40	€14.00	
	0	Yard	1370.00	€4.50	
	0	Weighbridge	1900.00	€1.00	
	0	Steel Container	132.00	€8.00	
	0	Portacabin	47.17	€16.00	
	0	Warehouse	347.79	€35.00	€25,500

<i>VO No.</i>	<i>Floor level</i>	<i>Floor use</i>	<i>M²</i>	<i>€/ M²</i>	<i>Total NAV</i>
820570	0	Yard	1187.68	€10.00	
	0	Portacabin	2453.52	€22.00	€17,450.00

* Valuation agreed at appeal stage by the appellants.

7.10 They concluded by stating that in their opinion the valuation should be amended to €93,400 as follows:

<i>VO No.</i>	<i>Floor level</i>	<i>Floor use</i>	<i>M²</i>	<i>€/ M²</i>	<i>Total NAV</i>
1545992	0	Restaurant	259.42	€360.00	€93,391.00
	0	Steel container	17.26	€6.00	€103.56
					€93,494.56
					Say €93,400

8. RESPONDENT'S CASE

8.1 The Respondents provided a written submission which argued that the valuation should be €96,800 based on the following amended floor areas.

Floor use	Area M²	€/ M²	€
Restaurant-GIA	259.42	360.00	€93,391.20
Store-GEA	69.54	50.00	€3,660.00
			€96,868.20
			Say €96,800

8.2 The Respondent referred to Valuation Office Practice Note-Drive Thru Restaurants Version 1.0 dated 10/08/2017 as the basis for her Valuation.

8.3 In this subsequent submission 24/11/2020 the Respondent confirmed the NAV at €96,800 and referred to a trash compound. This calculation was based on confirmation of the main restaurant floor area of 259.42 m² as agreed with the Appellants.

8.5 In a supplementary statement of evidence dated 06/01/21 the Respondents confirmed that following a request from the Valuation Tribunal on 17/12/2020 which requested both parties to the appeal to review the trash compound element of the subject property the following history of the appeal.

1. On 27/08/18 submissions of evidence were filed the Tribunal and simultaneously exchanged between the parties. The Appellant had submitted that they believed that the valuation of the subject property was excessive as in their view the trash compound/yard should not be included in the valuation.
2. On 24/11/20 floor area discrepancies were agreed between the parties which confirmed the restaurant at 259.2 m² but the store/trash compound at 69.54 m² was not agreed.
3. On 09/12/20 the Tribunal emailed both parties to arrange for a Tribunal member to carry a site visit.
4. On 16/12/20 the Tribunal emailed confirmation of the Tribunal site inspection would take place on 17/12/20.
5. On 17/12/20 the Tribunal requested that both parties submitted supplementary statements of evidence addressing the trash compound only which statements should

be filed and exchanged by 06/01/21. This instruction included a further period of five working days for counter submissions if any.

8.6 The Respondents addressing the trash compound yard issue confirmed that the Commissioner of Valuation had decided that the trash compounds/yards were not be valued in the subject property, and the tone of the list for other comparable properties corresponded. They noted however that external buildings in these trash compound/yards (including stores steel containers and canopies and the like) are valued as they are buildings that are “Relevant Properties” under Schedule 3 Paragraph 1 (a) (b) of the Valuation Acts 2001 to 2020.

8.7 The Respondents confirmed that the floor areas had been discussed and agreed with the Appellant as follows:

Steel Container 17.26 m²
Perspex Canopy 19.06 m².

8.8 The Respondents concluded their supplementary statement of evidence and argued that the valuation should be confirmed at €94,300 calculated as follows.

Floor use	Area M²	€/ M²	€
Restaurant-GIA	259.42	360.00	€93,391.20
Steel Container	17.26	50.00	€863.00
			Say €94,300

8.9 No counter-submissions or statements were received by the 11th January 2021.

9. SUBMISSIONS

9.1 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 Following agreement on the floor area for the restaurant at 259.42M² the only difference between the parties resided in the issue of the steel container and the Perspex canopy and whether they should be included and if so at what rate per square metre. As the supplementary statements agreed to exclude the canopy area the sole issue for determination refers to the steel container.

10.3 The Appellants argued for a steel container of 17.26M² at €6.00/ M² and the Respondent argued for 17.26M² at €50.00/M². The only evidence relating to steel containers was provided by the Appellants which varied from €6.00/ M² to €8.00/ M² to €12.00/ M² to €20.00/ M². No evidence was provided to explain the rationale for the variation in these rates and the Tribunal finds that an average of the high and low rates provided to be the correct rate at €13.00/M².

Floor use	Area M²	€/ M²	€
Restaurant-GIA	259.42	€360.00	€93,391.20
Store-trash compound	17.26	€13.00	€224.38
			Say €93,615.38
			Say €93,600

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 €93,600.

And the Tribunal so determines.