

Appeal No: VA20/4/0057

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020**

The Art of Coffee

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5020431, Retail (Shops) Restaurant at 126 Pembroke Road, Ballsbridge Dublin 4, County Dublin.

B E F O R E

Hugh Markey - FSCSI, FRICS

Deputy Chairperson

Michael Brennan - BL, MSCSI

Member

Allen Morgan - FSCSI, FRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 25TH DAY OF APRIL, 2022

1. THE APPEAL

1.1 By Notice of Appeal received on the 7th day of December, 2020 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 €59,200.

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 28(4) of the Act because : “*The Valuation is Incorrect.*

The value of the subject property is not in line with the values of similar properties situated in Dublin City Council.

More specifically, the NAV Zone A level is excessive in comparison to the Zone A levels of similar retail units in the locality.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €46,300.

2. VALUATION HISTORY

2.1 On the 29 day of September, 2020 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 €66,700.

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 €59,200.

2.3 A Final Valuation Certificate issued on the 12th day of November, 2020 stating a valuation of €59,200.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 11th day of February, 2022. At the hearing the Appellant was represented by Mr. John Algar MSCSI, MRICS of Avison Young and the Respondent was represented by Mr. Oliver Parkinson 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 The subject property is located in a large mixed use development known as Number One Ballsbridge on lands formerly occupied by the UCD Veterinary College.

4.2 The property comprises a purpose built ground floor retail unit that forms part of an eight storey modern office building fronting onto Pembroke Road, Dublin 4.

4.3 The subject retail is in use as a coffee shop with a kitchen and store room to the rear.

4.4 The net internal floor (NIA) areas have been agreed between the parties as follows:

Use	Floor	Size (Sq. m.)
Retail Zone A	Ground	62.4
Retail Zone B	Ground	48.62
Store	Ground	31.60
Total		142.62

4.5 The property is held subject to a 20 year lease from 26th April 2019 at a rent of €60,000 per annum and is subject to five yearly rent reviews.

5. ISSUES

5.1 The appeal raised the sole issue as to whether the NAV of the Property as determined by the Respondent is excessive.

6. RELEVANT STATUTORY PROVISIONS:

The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”

7. APPELLANT'S CASE

7.1 Mr Algar, for the Appellant contended for a valuation as follows:

Floor Level	Use	Size (Sq. m.)	NAV (per Sq. m.)	NAV
Ground	Retail Zone A	62.4	€575.00	€35,880.00
Ground	Retail Zone B	48.62	€287.50	€13,978.25
Ground	Store	31.6	€50.00	€1,580
Less end allowance of 10%				-€5,143.83
				€46,294.43
			Say	€46,300.00

7.2 Mr Algar stated the revision of the subject property arose because it was a relatively new premises. He stated that as it was a revision it had to be valued in accordance with the tone of the list under section 49 of the Act. He stated that the valuation date was 7th April 2011 and that the property appeared on the valuation list on 19th November 2020 with a NAV of €59,200.

7.3 He stated that the zoning method of valuation was adopted by both parties and that the floor areas were agreed. He stated that the Respondent had adopted a 5% end allowance. He stated that it was the only retail unit fronting this section of Pembroke Road and that it was located approximately 200 northwest of Ballsbridge Village and 2km southwest of Dublin City centre.

7.4 He stated that the ideal frontage to depth ratio for retail use was 1.3 : 1 and that the subject property frontage to depth did not conform to this ideal. He stated that the subject to depth ratio was 1 : 1.173 therefore should be subject to a 10% discount. He relied on a number of NAV Comparisons in support of this discount. He referred to his NAV Comparison 1 which had a large frontage and shallow depth corresponding to a frontage to depth ratio of 1 : 0.63 and stated that it benefitted from a 10% end allowance. He also referred to his NAV Comparison 2 which had a frontage to depth ratio of 1 : 0.8 in support of a 10% end allowance.

7.5 Mr Algar stated that only three retail units in Ballsbridge were valued at €700 per sq. m. ITZA, which is the ITZA rate applied to the subject NAV as it appears on the valuation list. He said that the subject property was an isolated and standalone unit by virtue of its location on Pembroke Road. He stated that it was not an established retail location and the ITZA rate should be adjusted to €575 per sq. m.

7.6 Mr Algar stated that the subject location is approximately 200 metres from the hub of Ballsbridge where the centre of commercial activity is located which includes various retail uses, cafés and public houses. He also stated that there was commercial activity on Shelbourne Road including that part of the subject mixed use development. He stated that the opposite side of the subject development fronting Shelbourne Road is busy in comparison to the subject location.

7.7 Mr Algar submitted a number of NAV Comparisons to demonstrate the relativity of the location. He relied on his NAV Comparison 3 which is within the same mixed use development but at the opposite side and fronting onto Shelbourne Road. He stated that this NAV comparison was valued at €575 per sq. m ITZA. He stated that this was a superior location and had complementary adjacent users. In comparing it to the subject property, he stated that the subject was adjacent to the former Ballsbridge Hotel which is under redevelopment as well as being adjacent to the vacant Hume House office building. It was his contention that there was much more activity in the location occupied by his NAV Comparison 3.

7.8 Mr Algar also submitted two NAV Comparisons relating to where he considered was the hub of commercial activity in Ballsbridge. His NAV Comparison 4 comprised of a retail unit in use as a takeaway restaurant. He stated that this was valued at €700 per sq. m ITZA and that it was located at the opposite end of Pembroke Road, close to the bridge in the centre of Ballsbridge. He also stated that his NAV Comparison 5 was a mid-terrace retail unit occupied by a pharmacy located between a well-known national retail franchise and restaurant in the centre of Ballsbridge, also valued at €700 per sq. m ITZA. He stated that both of these units were in the prime Ballsbridge location. He stated that central Ballsbridge was located opposite the RDS and the immediate occupiers included the Post Office, various pubs, bookmakers shops, cafés, restaurants and newsagents. It was his view that given the isolated nature of the subject property and absence of complementary occupiers that an adjustment should be applied to the subject property for locational inferiority.

7.9 Under cross examination, Mr Algar confirmed that the subject property was constructed in 2018 and occupied since 2019. It was put to Mr Algar that there were three NAV comparisons on Pembroke Road valued at €700 per sq. m ITZA. In response, Mr Algar stated that whilst they were located on Pembroke Road, they were located some distance away. He did not

agree that they were in a similar location to the subject property. He said that the subject property was removed from the centre of Ballsbridge village and that the road name on which a property is located does not determine the value. It was put to Mr Algar as to why he was relying on his NAV Comparison 3 when it was located on Shelbourne Road. Mr Algar stated that he was relying on this comparison as it was located within the same development as the subject but was in a better location. He further stated that this was the most comparable NAV to the subject property. It was put to Mr Algar whether it was fair and equitable to apply €575 per sq. m. ITZA to the subject property, if €700 was applied to three other retail units on Pembroke Road. He stated that it was fair and equitable as those NAV comparisons were superior in terms of location. Mr Algar accepted that the SCSi information paper on zoning was not mandatory but stated that his NAV Comparisons 1 and 2 show the tone of the list for adverse frontage to depth ratios.

7.10 In summarising his evidence, Mr Algar stated that there was a vast difference between the centre of Ballsbridge and the subject location. He stated that whilst it may only be 200 metres away, there is significant footfall in the centre of Ballsbridge and Shelbourne Road where retail units are adjacent to complementary occupiers.

8. RESPONDENT'S CASE

8.1 Mr Parkinson, for the Respondent contended for a valuation as follows:

Floor Level	Use	Size (Sq. m)	NAV (per Sq. m)	NAV
Ground	Retail Zone A	62.4	€700.00	€43,680.00
Ground	Retail Zone B	48.62	€350.00	€17,017.00
Ground	Store	31.6	€50.00	€1,580
Less end allowance of 5% on ITZA				-€3,034.00
				€59,243.00
			Say	€59,200.00

8.2 Mr Parkinson relied on four NAV Comparisons in support of his valuation. Three of Mr Parkinson's NAV Comparisons are located on Pembroke Road, close to its intersection with Shelbourne Road and his NAV Comparison 4 is located on Merrion Road approximately 200 metres south of the centre of Ballsbridge village.

8.3 His NAV Comparison's 1 and 2 are located immediately adjacent to each other, opposite Elgin Road and Herbert Park and were in restaurant use. His NAV Comparison 3 was also immediately adjacent and had return frontage to Shelbourne Road. Mr Parkinson was firmly of the view that this location was equivalent to the subject location. Mr Parkinson's NAV Comparison 4 is located on Merrion Road opposite the RDS Arena and he was of the view that as this was 200 metres from the centre of Ballsbridge it demonstrated that €700 also should be applied to the subject property which was a similar distance away.

8.4 Mr Parkinson stated that Mr Algar's NAV Comparison 3, which is located on Shelbourne Road, was not comparable to the subject property and not in accordance with section 49 of the Act. He stated that the subject property was in an isolated location in comparison to the end of Pembroke Road where his NAV Comparisons 1-3 were located. He also relied on a marketing brochure for Number One Ballsbridge which stated that the development was within walking distance of Ballsbridge's amenities.

8.5 Mr Parkinson also relied on two prior decisions of the Valuation Tribunal in VA15/1/002 and VA15/1/013 relating to revisions under section 49 of the Act. It was his view that these decisions provided a basis for excluding any NAV's not located on Pembroke Road, in the subject case.

8.6 Under cross examination, Mr Parkinson stated that the subject property had been revised downwards from €750 per sq. m. ITZA to €700 per sq. m ITZA, based on the tone of the list and information supplied by the occupier. He stated that he did not inspect his comparisons but did walk past them. When it was put to him that his Comparison 4 had been demolished, he said that it was irrelevant as it was being valued in accordance with section 49 and the valuation date was April 2011. Mr Parkinson was asked if he had evidence to show why a 5% end allowance was appropriate. He stated that the configuration of the subject in contrast to the Appellant NAV Comparison's 1 and 2 was not as adverse as they were nearly twice as wide as they were deep. It was put to Mr Parkinson that there were a lot of commercial occupiers adjacent to his NAV comparisons and he did not disagree with this. He was unable to confirm if there were any commercial occupiers located between the subject property and his NAV Comparison 1, when it was put to him by Mr Algar. He did not disagree with Mr Algar when it was put to him that there were no public houses, retail units or restaurants on that stretch of

Pembroke Road and that it mainly comprised of offices and residential. He stated that his understanding of ‘tone of the list’ was that comparisons in the same area should only be considered. When Mr Algar asked him if they had to be on the same road, he stated that he had three NAV’s on Pembroke showing a rate of €700 per sq. m ITZA and his NAV Comparison 4, which showed a NAV of €700 per sq. m ITZA had been applied to a property 200 metres from the centre of Ballsbridge.

8.7 Mr Parkinson was asked by the Tribunal as to why he didn’t consider any NAV’s on Shelbourne Road, when it was arguably closer to the subject property and he stated that he disregarded them as he did not consider that the location was of equal commercial quality to the subject and it would not be equitable to apply a matching NAV. He gave a similar response when the question was put to him as to why he did not adduce any NAV’s that were located between his NAV Comparisons 3 and 4.

8.8 In summarising his evidence, he stated that there was a considerable body of evidence to demonstrate a NAV of €700 per sq. m ITZA and that a 5% end allowance was appropriate for the frontage to depth ratio of the subject property.

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 Dublin City Council.

10.2 The relevant question on this appeal concerns the amount a hypothetical tenant would pay in rent for a tenancy of the Property on the terms set out in section 49 of the 2001 Act, as amended by “*reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.*”

10.3 In assessing the relevant similarity of comparable NAV's, careful analysis of each individual property is required. In this regard, the Tribunal had regard to, *inter alia*, the following factors which would be key considerations under section 49 of the Act:

- (a) Locational characteristics;
- (b) Physical characteristics;
- (c) Design & functionality;
- (d) Trading style and user;

10.4 The Tribunal accepts the Appellant's evidence that the subject property is in an isolated retail location by virtue of the absence of adjacent retail occupiers. The Tribunal accepts that such a location is not comparable with the southern end of Pembroke Road which intersects with Shelbourne Road and lies directly opposite Herbert Park and Elgin Road. This part of Pembroke Road benefits from increased footfall and activity due to the presence of multiple existing retailers, pubs, shops and its proximity to the RDS and American Embassy. The subject property has inferior locational characteristics to the foregoing and a natural consequence of this is that its value should be discounted from the level applied to these NAV comparisons.

10.5 The Appellant relies on his NAV Comparison 3 as being most relevant to the subject property in terms of the NAV to be applied. This comparison is a similar retail unit and is located within the same mixed use scheme as the subject but on the opposite end and fronting onto Shelbourne Road. The Appellant argues that it is a superior location due to having a number of adjacent retail occupiers resulting in higher footfall. This property is on the list with an NAV of €575 per sq. m ITZA. The Tribunal also notes the locational characteristics as stated by the Appellant and further accepts that it is of a similar age, size and use. As these characteristics are highly comparable, it considers that a zone A rate of €575 per sq. m should be applied to the subject property.

10.6 The Appellant has sought a 10% end allowance for its frontage to depth ratio. It relies on two NAV Comparisons on the valuation list with similar design and functionality characteristics to the subject. The Respondent has stated that it has relied on its subjective

judgment in assessing that a 5% adjustment is appropriate. The Tribunal considers a 10% end allowance to be appropriate in the circumstances.

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 €46,300.

Floor Level	Use	Size (Sq. m)	NAV (per Sq. m)	NAV
Ground	Retail Zone A	62.4	€575.00	€35,880.00
Ground	Retail Zone B	48.62	€287.50	€13,978.25
Ground	Store	31.6	€50.00	€1,580
Less end allowance of 10%				-€5,143.83
				€46,294.43
			Say	€46,300.00