

**Appeal No: VA17/5/868**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**GERLA RESTAURANTS LTD**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 403226, Retail (Shops) at The Mill Centre, Clondalkin, County Dublin.

**BEFORE**

**John Stewart – FSCSI, FRICS, MCI Arb**

**Deputy Chairperson**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 21ST DAY OF JUNE 2022**

**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 €108,000.

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.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €97,200.

## **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 €109,600.

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 of the Property was reduced to €108,000.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €108,000.

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. 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 grounds of the Mill Shopping Centre Ninth Lock Road on the edge of Clondalkin Village. The property is external to the Centre and is situated

on the southern end of the car park some distance from the retail mall. The Centre comprises a traditional linear retail scheme and is anchored by Dunnes Stores.

4.3 The agreed floor areas following a referral from the Tribunal and jointly measured by the parties on a gross internal basis have been confirmed as:

<b>Description</b>	<b>M<sup>2</sup></b>
Restaurant	269.66
Store	2.55
Container	17.82

The subject property comprises a single storey detached drive-thru fast food restaurant. It is of steel portal framed construction with a flat and partly pitched roof, concrete floors and brick and timber panelled walls. Internally the premises has been fitted out in the company's standard corporate style. The car park is shared with the Mill Shopping Centre.

## **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 Appellants were represented by Ms Pauline Madden and who provided a written precis of evidence and she claimed the Valuation was incorrect and did not reflect the character, specification, size and location of the subject property and relativity to other properties. The Appellant claimed the NAV was excessive and inequitable and the Valuation was incorrect based on valuation levels applied. A supplementary precis was provided 24<sup>th</sup> May 2022.

7.2 The Appellants stated that the property while located close to the Mill Shopping Centre was an external unit located at the periphery of the car park and did not benefit from passing traffic around the Mill Centre.

7.3 The Appellants described the property as a detached single storey premises with a steel portal frame, flat and pitched roof and walls of brick and timber construction. She stated that internally the walls were plastered and painted/papered and the floor was finished with Marmoleum and partly tiled. The property was held on a long lease at a zero rent from 13<sup>th</sup> October 1995 on a full repairing and insuring lease.

7.4 Following a query from the Tribunal the parties amended their respective floor areas and confirmed the floor areas as follows;

<b>Description</b>	<b>M<sup>2</sup></b>
Restaurant	269.66
Store	2.55
Container	17.82

7.5 The Appellants stated that the Mill Centre which comprised 29 units had a vacancy rate of 10% and was in competition with larger centres at The Square Tallaght and Liffey Valley and as a neighbourhood centre was subsidiary to these larger centres. She noted the tenants comprised local rather than national or international occupiers. She stated that there is a one way system in Clondalkin and at peak times congestion can deter potential customers. She

added that the property was a stand-alone unit at the entrance to the Centre and was removed from the retail areas.

7.6 The Appellants originally referred to five NAV comparisons and the supplementary comparisons are included below. The rates per square metre were agreed but matters of fact were under appeal to the Tribunal for McDonald’s Cranley Centre, Naas Road No. 154992 and McDonald’s Celbridge Road Lucan no 2188281 and which had been valued as follows:

Property No	Floor level	Floor use	M <sup>2</sup>	NAV/M <sup>2</sup>	Total NAV
1545992	0	Restaurant	259.42	€360.00	
	0	Steel container	17.26	€13.00*	
				Total	€93,600.00

*\* In the original precis the analysis included a store at €50.00/m<sup>2</sup> but the rate was amended to €13.00/m<sup>2</sup> in the amended precis.*

Property No	Floor level	Floor use	M <sup>2</sup>	NAV/M <sup>2</sup>	Total NAV
2188281*	0	Restaurant	307.46	€360.00	
				Total	€110,600

*\* In the original precis this analysis included a store valued at €50.00/m<sup>2</sup> but it was removed and the amended precis confirmed that it did not include a store.*

The NAV comparisons for Citywest Shopping Centre and Joel’s Restaurant Naas Road were not included in the amended precis. The amended KFC NAV comparison at Lidl Retail Park Nangor Road was included as follows:

Property No	Floor level	Floor use	M <sup>2</sup>	NAV/M <sup>2</sup>	Total NAV
5004007	0	Restaurant	116.00	€360.00	
	0	Restaurant	166.00	€54.00	
	1	Restaurant	238.38	€180.00	
				Total	€93,600 *

*\* The original precis referred to two different rates of €360/ m<sup>2</sup> and €270/ m<sup>2</sup> but the amended precis referred to the values above.*

7.7 The Appellants provided a number of additional NAV comparisons in the amended precis regarding containers from South Dublin County Council area.

Property No	Floor level	Floor use	M <sup>2</sup>	NAV/M <sup>2</sup>	Total NAV
2172344	0	Portacabin	17.93	€28.00	
	0	Yard	600.00	€20.00	€12,500.00

Property No	Floor level	Floor use	M <sup>2</sup>	NAV/M <sup>2</sup>	Total NAV
471543	0	Portacabin	13.45	€36.00	
	0	Yard	3915.00	€10.00	€43,800.00

Property No	Floor level	Floor use	M <sup>2</sup>	NAV/M <sup>2</sup>	Total NAV
820570	0	Yard	272.16	€20.00	
	0	Steel container	14.40	€6.00	
	0	Store	13.44	€20.00	€7,790.00

Property No	Floor level	Floor use	M <sup>2</sup>	NAV/M <sup>2</sup>	Total NAV
2164409	0	Steel container	351.36	€12.00	
	0	Yard	278.64	€20.00	€9,780.00

Property No	Floor level	Floor use	M <sup>2</sup>	NAV/M <sup>2</sup>	Total NAV
5010043	0	Portacabin	28.21	€20.00	
	0	Yard	680	€25.00	€17,560

Property No	Floor level	Floor use	M <sup>2</sup>	NAV/M <sup>2</sup>	Total NAV
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

Property No	Floor level	Floor use	M <sup>2</sup>	NAV/M <sup>2</sup>	Total NAV
2181029	1	Offices	22.54	€16.00	
	0	Warehouse	221.40	€14.00	
	0	Yard	1370.00	€4.50	
	0	Weighbridge	1,900.00	€1.00	
	0	Steel Container	132.00	€8.00	
	0	Portacabin	47.17	€16.00	
	0	Warehouse	347.76	€35.00	€25,500

Property No	Floor level	Floor use	M <sup>2</sup>	NAV/M <sup>2</sup>	Total NAV
820570	0	Portacabin	253.52	€22.00	
	0	Yard	1,187.68	€10.00	€17,450.00

7.8 The Appellants in conclusion stated that portacabins were of a higher quality than steel containers and usually accommodated offices whereas steel containers were commonly used for storage. They concluded and sought an NAV of €97,350 based on the following calculations.

Floor Use	M <sup>2</sup>	€/ M <sup>2</sup>	€
Restaurant	269.66	€360.00	€97,077
Store	2.55	€50.00	€127.50
Container	17.82	€8.00	€142.56
		Total say	€97,350.

## 8. RESPONDENT'S CASE

8.1 The Respondents were represented by Ms. Gillian Beale and who provided a written precis of evidence and a supplementary precis was provided 23<sup>rd</sup> May 2022.

8.2 The original precis contended for a Valuation of €117,700 increased from €108,000. This followed Ms. Beale's inspection of the property on 18<sup>th</sup> August 2018 where she noted that the floor areas were larger than originally valued. She adjusted her Valuation as follows with the addition of the an area referred to as '*single storey extension to rear*' and '*trash compound.*' Calculated as follows:

<b>Floor Use</b>	<b>M<sup>2</sup></b>	<b>€/ M<sup>2</sup></b>	<b>€</b>
Restaurant	269.66	€450.00	€107,864.00
Store	2.55	€60.00	€153.00
Single storey extension to rear GIA	14.72	€400.00	€5,888.00
Trash compound GEA	77.00	€50.00	€3,850.00
		Total	€117,700.00

8.3 The Respondents stated that the subject property was located in the Mill Centre car park attached to the Mill Centre Shopping Centre in Clondalkin which had a population of 46,813 in 2016. The Centre was described a busy traditional style grocery anchored retail scheme anchored by Dunnes Stores. The main occupiers included Specsavers, Costa coffee, EIR, TUI Group Euro Giant, An Post and Lloyds Pharmacy and an external Boots unit. A site plan showed the relative locations of the Centre, the subject property and Clondalkin Village.

8.4 The property was described as a single storey drive-thru restaurant which traded seven days a week from 7am to 1am and was fitted out to the company's standard corporate specification. A single storey extension had been added since the previous valuation in 2007. Various photographs were provide to show the external and internal views. The premises was subject to a long lease from 1995 on a full repairing and insuring lease at a zero rent.

8.5 Following representations the original valuation of €109,600 had been amended to €108,000. Ms Beale addressed the five NAV comparisons provided by the Appellants and noted in relation to PN. 1545992 McDonald's drive thru Cranley Centre that no representation had been made but it had been appealed to the Tribunal. Representations had been received in relation on PN. 2188281 McDonald's drive thru Celbridge Road Lucan and following representations no change had been made and the valuation was appealed to the Tribunal. Representation had been received in relation on PN.5010111 McDonald's Citywest Shopping Centre but no appeal had been made to the Tribunal. In relation to PN. 409351 Joel's Restaurant representations had been received and the valuation level was reduced to €180/m<sup>2</sup> and no appeal was made to the Tribunal. The final NAV comparison referred to PN. 5004007 KFC drive thru and following representations the valuation had been reduced from €152,200 to €137,000 due to the nature of the build to part of the ground floor and no appeal was made to the Tribunal.



8.6 Ms. Beale confirmed that she had relied on the Valuation Office Practice Note – Drive Thru Restaurants- Version 1.0 dated 10.08.2017 and that following her inspection of the property on 18<sup>th</sup> August 2018 she noted that the floor areas were larger than originally valued. She adjusted her Valuation at Tribunal stage as follows with two additions referred to as ‘*single storey extension to rear*’ and ‘*trash compound.*’

<b>Floor Use</b>	<b>M<sup>2</sup></b>	<b>€/ M<sup>2</sup></b>	<b>€</b>
Restaurant	269.66	€400.00	€107,864.00
Store	2.55 @15% of restaurant level (per guidance note 2007)	€60.00	€153.00
Restaurant	14.72 (single storey extension to rear)	€400.00	€5,888.00
Yard	77.00 (trash compound)	€50.00	€3,850.00
		Total say	€117,700.00

8.7 Ms Beale stated that there was no market evidence for this type of property. She stated that there was a total of eight properties characterised as Restaurant (drive thru) for South County Dublin Revaluation The subject property was one of four appealed to the Valuation Tribunal. She relied on three NAV comparisons.

8.8 The first referred to PN. 5010111 McDonald's Drive- Thru, City West Shopping Centre, City West Road, Dublin 24 which he stated had been valued at the same level as the subject property at €400/m<sup>2</sup>. She noted that it was located on the grounds of a shopping centre, similar to the subject property and that representations had been made by Adrian Power, Kelly and Company, and no change was made to the valuation and there was no appeal to the Valuation Tribunal. She provided photographs and a site map.

8.9 Her second referred to PN 476011 McDonald's Restaurants of Ireland Limited, Belgard Square East, Tallaght Dublin 24 and she stated that this property is located to the side of the Square Shopping Centre in Tallaght and has been valued at a higher rate €540/ m<sup>2</sup>. Representations had been made by Adrian Power, Kelly and Company, and no change was made to the valuation and there was no appeal to the Valuation Tribunal. She provided a photograph and a site map.

8.10 Her third referred to PN 2173949 OKR Group Ltd t/a Burger King, Belgard Retail Park, Belgard Road, Dublin 24. She stated that this property was located at the entrance to Belgard Retail Park which was why it had been valued at a higher rate of €540/ m<sup>2</sup>. She stated representations had been received and no change was made and there was no appeal to the Valuation Tribunal. She provided a photograph and a site map.

8.11 She concluded her original submission and sought an adjusted NAV of €117,000 calculated as follows:

<b>Floor Use</b>	<b>M<sup>2</sup></b>	<b>€/ M<sup>2</sup></b>	<b>€</b>
Restaurant	269.66	€400.00	€107,864.00
Store	2.55	€60.00	€153.00
Single storey extension to rear GIA	14.72	€400.00	€5,888.00
Trash compound GEA	77.00	€50.00	€3,850.00
		<b>Total</b>	<b>€117,700.00</b>

8.12 Following a query from the Tribunal the parties jointly inspected the property on 27<sup>th</sup> April 2022 and confirmed the agreed floor areas and the Respondent submitted a revised Valuation as follows:

<b>Floor Use</b>	<b>M<sup>2</sup></b>	<b>€/ M<sup>2</sup></b>	<b>€</b>
Restaurant	269.66	€400.00	€107,864
Store	2.55 @ 15% of rest. Level as per 2007 guidance.	€60.00	€153.00
Container	17.82	€13.00	€231.66
		<b>Total say</b>	<b>€108,200.</b>

She stated that the level attributable to the steel container above follows the valuation level applied to a steel container in a recent Valuation Tribunal judgement issued in January 2021 (VA17 5 864 Persian Restaurants Ltd t/a McDonald's Cranley Centre Naas Road PN. 1545992) and the Tribunal decision was €13.00/ m<sup>2</sup>.

## 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 Following a request from the Tribunal on 11<sup>th</sup> April 2022 the parties were requested to agree the floor areas and the corresponding values attributable to each element.

10.3 On 23<sup>rd</sup> May 2022 Ms. Beale responded to the Tribunal and confirmed that the parties had jointly inspected the subject property and had agreed the floor areas as follows:

<b>Description</b>	<b>M<sup>2</sup></b>
Restaurant	269.66
Store	2.55
Container	17.82

She also stated that the level attributable to the steel container above follows the valuation level applied to a steel container in a recent Valuation Tribunal judgement issued in January 2021 (VA17 5 864 Persian Restaurants Ltd t/a McDonald's Cranley Centre Naas Road PN. 1545992) where the Tribunal decision was €13.00/ m<sup>2</sup>.

10.4 On 24<sup>th</sup> May Ms. Madden confirmed that the floor areas and descriptions had been agreed. She referred to three NAV comparisons which had been subject to appeal namely PN. 1545992 (common to both parties supplemental precis) which confirmed the Restaurant level at €360.00/ m<sup>2</sup>, PN. 2188281 Celbridge Road Lucan where the Restaurant level of €360.00/ m<sup>2</sup> was also confirmed and the store was excluded and PN. 5004007 KFC Nangor Road where three levels €360.00/ m<sup>2</sup>, €54.00/ m<sup>2</sup> and €180.00/ m<sup>2</sup> replaced two earlier levels.

10.5 In relation to the Restaurant element of the valuation the Tribunal notes that the two Tallaght units -The Square and Belgard Retail Park namely PN. 476011 and PN. 2173949 at €540/ m<sup>2</sup> refer to superior locations as confirmed by Ms Beale and that only one Restaurant comparison refers to a rate of €400.00/ m<sup>2</sup> namely McDonald's City West. However The Tribunal finds that the rate of €360.00/ m<sup>2</sup> for Cranley, Naas PN. 154922, Celbridge Road Lucan PN. 2188281 and KFC Nangor Road PN. 5004007 across three comparable location has established a level that is correct, uniform and equitable for similarly circumstanced properties. It finds that the rate for the Restaurant is €360.00/ m<sup>2</sup> and based on the uncontested formula referred to as Per Guidance Reval. 2007 the rate for the store is €54.00/ m<sup>2</sup> .

10.6 Ms. Madden also provided eight NAV comparisons in support of her contention for a rate of €8.00/ m<sup>2</sup> for the steel container. The Tribunal has reviewed the supporting evidence relied upon by the Appellant in relation to the steel container and finds that there is no consistency in the levels provided which vary from €6.00/ m<sup>2</sup> to €8.00/ m<sup>2</sup> to €12.00/ m<sup>2</sup> to €20.00/ m<sup>2</sup> and consequently it finds that the established level of €13.00/ m<sup>2</sup> as claimed by the Respondents and extracted from a similar type of property is the correct value for the steel container.

**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 €97,500

<b>Floor Use</b>	<b>M<sup>2</sup></b>	<b>€/ M<sup>2</sup></b>	<b>€</b>
Restaurant	269.66	€360.00	€97,077.60
Store	2.55 @ 15% of rest. Level as per 2007 guidance.	€54.00	€137.70
Container	17.82	€13.00	€231.66
		Total say	€97,446.96
			Say €97,500.