

**Appeal No: VA20/4/0055**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Fleet Street Events Ltd**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 5017315, Retail (Shops) at Fleet Street Events Ltd t/a Medley Unit 7, Fleet Street East, Dublin 2, Dublin D02R128

**B E F O R E**

**Hugh Markey FRICS FSCSI**

**Deputy Chairperson**

**Gerard O'Callaghan MRICS, MSCSI**

**Member**

**Caroline Murphy BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 24th DAY OF MAY, 2022**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 10<sup>th</sup> 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 **€100,800**

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: "1. *The passing rent of €60,000 with a 6 months' rent free was agreed on the 01/12/2015. This gives a net effective rent of €54,000 and the subject property should be valued in line with this.*

2. *The current valuation of €100,800 is excessive and inequitable.*

3. *It is long established rating practice that a property should be valued in accordance with the principle of "Rebus sic stantibus" in accordance with Section*

*48 & 49 of the Act having regard to the passing rent at the valuation date "in its actual state". The property is located in a side street, in a tertiary location, with very limited profile.*

4. *The property is in a Categorised incorrectly. The premises is in use as a Private*

*Dining and Event Venue and should be categorised as Conference Centre / Venue for Hire.*

*5. The Respondent has applied the zoning method of valuation for retail shops and assessed the ground floor of the subject property as a retail unit by comparison with the nearby D'Olier Street. I have also had regard to an overall rate per sq. m. When considering comparable properties of similar size which would be more appropriate (as well as having regard to the zoning method). The unit is triangular in shape. When zoning method is applied to this it also further distorts the calculation of the value when compared to other more regular shaped units. A significant portion of the rear of the ground floor has been fitted out as toilets. While acknowledged as part of the original net floor area it is not appropriate to value these areas as part of the retail area. We have assessed them as ancillary space in line with comparable evidence.*

*23*

*6. There are discrepancies in the floor areas on which the Respondent has based their valuation calculations. We outline the measured areas and have sought to identify possible areas of where the discrepancy may have occurred. I will seek to agree areas with the Respondent prior to the hearing and will advise the Tribunal when/if the parties are in a position to agree floor areas in advance.*

*7. The premises has struggled to break even, prior to the onset of Covid 19 trading difficulties and restricted trading, and in the last two years trading has been.*

*The comparisons relied on are located in the vicinity including Poolbeg Street, Tara Street and Townsend Street. The A rate/M2 on Drury Street and Fade Street is €500.00/M2 with first floor restaurants valued at €140.00/M2. The rate/M2 applied to the mezzanine on the subject property is overstated. The agent had regard to the judgement in Tribunal case VA11/5/117 where similar issues were addressed.*

*8. An allowance of 5% should be applied to the A rate/M2 due to the irregular shape of the subject property.*

*9. The mezzanine level is generally taken at 20% of the ground floor A rate.*

*The Valuation Office have valued it at 30% of A rate which is higher than the rear of the ground floor (C) which is at 25% of A."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €54,000.

## **2. VALUATION HISTORY**

2.1 On the 24<sup>th</sup> day of January, 2019 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 €123,100.

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 €100,800.

2.3 A Final Valuation Certificate issued on the 13<sup>th</sup> day of November, 2020 stating a valuation of €100,800.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 22<sup>nd</sup> day of February, 2022. At the hearing the Appellant was represented by Nicholas Corson FRICS, FSCSI of Finnegan Menton and the Respondent was represented by John O'Brien, MRICS, MSCSI ACI Arb 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.

The Premises comprise a commercial unit, over ground and mezzanine levels, in use as a private licensed venue. They form part of the 'Times Building', located on the northern side of the section of Fleet Street between D'Olier Street and Westmoreland Street.

The floor areas have been agreed as follows:

Ground Floor: 175.30 sq. m. GIA

Mezzanine: 201.77 sq. m. GIA

#### **5. ISSUES**

Two issues were identified by the Appellant:

The first is that the quantum of the NAV attributed to the Property was excessive and the Property was incorrectly categorised as 'Retail Shop' – it is operated as a private licensed venue and should have been valued as such or at least as 'Retail Shop - other'.

#### **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 In addition to his written Précis, Mr. Corson, the Expert Witness representing the Appellant gave the following oral evidence.

He said the primary ground of appeal was the quantum of the NAV and secondly, he suggested the Property was incorrectly categorised.

He outlined the history of the Property, how it formed part of the Times Building which had been redeveloped c. 2009/10 and had been vacant from completion until let in September 2015.

He said this part of Fleet Street was not comparable to Westmoreland or D'Olier Streets, there was not the same footfall. He noted that while central, it was a back street with service areas for buildings with frontages on other streets.

He said the original use following letting was as a café during the day and a private venue in the evenings. He outlined how the café operation was loss making and had closed. The Property now operated as a private venue. He suggested the rear parts of the demise were only suited for use as toilets and a fire escape, due to the relatively low headroom.

He noted there had not been a rent review in 2020.

Mr. Corson noted that, while the floor areas had been agreed, the zoning had not.

He indicated there were no comparisons for private venues and he relied on the original 2015 rental evidence and the tone of the list, adjusted where appropriate.

He posited the best evidence was the letting in 2015; he suggested rents had risen from 2011 to 2015 and the unadjusted 2015 net effective rent (NER) was €54,000pa.

In support of his opinion of net annual value, he introduced 7 'Tone of the List' comparables as well as the 'precedent' of the letting of the Property.

He also suggested that if the Property were treated as the rear of a property on Westmoreland Street, then it would be valued as Zone C, at a rate of €137.50 and relied on the judgment of another Tribunal division regarding a property on Main Street, Dundrum in support of this view.

He also suggested the Property suffered from various drawbacks including, apart from the tertiary location, the triangular shape and lower headroom to the rear, under the mezzanine.

In terms of the rate applied to the mezzanine, he suggested the rate applied by the Respondent (30% of Zone A) was too high; generally mezzanines were valued at 20% of Zone A in high street retail locations. He differentiated between the rental rates applied to the different sections of the mezzanine and applied a rate which analysed at a rate equivalent to 24% of the Zone A figure. He applied a rate of €340 per sq. m. Zone A to the ground floor and zoned according to the occupier's use of the space.

He applied an average €84 per sq. m. to the mezzanine, resulting in a Net Annual Value of €54,000pa.

Apart from his analysis of the letting of the Property which, he suggested, reflected overall rates of €230 per sq. m on ground and €80 per sq. m on the mezzanine, Mr Corson introduced 7 further comparisons –these are included in Appendix 1 (N.A public) to this judgment.

The Appellants Comparisons 2- 6 were 'Tone of the List' comparisons and he posited they were generally 'similarly circumstanced' to the subject with many occupying higher profile positions. He noted that all, with the exception of his Comparison No. 4- the convenience store on Tara Street (PN 2151127) which was valued at €300 per sq. m Zone A, were valued at a rate of €400 per sq. m. Zone A.

The comparisons valued at the higher level were all in similar use to the subject with the single exception of Comparison No. 5 PN 2172910 (Setanta Place). Comparison No. 2 - PN 5017122 is located on Pearse Street; No 3 -PN 2164616 on Poolbeg Street; Comparison 6 – PN 839442 on Schoolhouse Lane and No's 7 & 8 (PN's 787460 & 815915 on Montague Street.

He noted the rate applied to the mezzanine restaurant of PN 839177 on Nassau Street was in the order of 22% of the ground floor Zone A rate.

He also surmised there was a correlation between the Zone C rate applied to retail units on a superior street and the retail unit on the adjoining side street, as in this case. To support this view,

he instanced the relative rates applying on Harcourt Street and Montague Street; Nassau Street and Setanta Place and Westmoreland Street and Fleet Street.

**Cross examination of Mr. Corson.**

In response to a question from the Respondent, Mr Corson accepted that Zone A rates of €500/600 per sq. m had been applied by the Respondent to retail units on Fleet Street but his view was comparing this part of Fleet Street with Fleet Street 'proper' was like comparing '*Talbot Street with Mary Street*'; there were only 3 trading concerns on this part of Fleet Street whereas to the west, on the other side of D'Olier Street, retailing was very strong, centred on Temple Bar Square.

He suggested that an overall approach should also be adopted when arriving at an ERV as well as a zoning approach.

He accepted that, when let, the Property was a single open area; the occupier had partitioned and created the fire corridor.

He answered that he did not deem it appropriate to consider eight other valuations on Fleet Street; there were 2 other rateable properties on this part of the street; one being a licensed premises and the second, a bookmakers. He suggested the licensed premises was not relevant as it was valued based on turnover and he was unaware of the position with the bookmakers which had been vacant for several years but believed it may have been taken over by the adjoining pub. The valuation had not been contested.

He suggested there were now no bus stops on the street, it was a set down location only. In any event, he said, there was very little activity on the street.

In response to a question from the Tribunal, he said the premises were completed c. 2010 and had been vacant and available to let until the lease was commenced in 2015. He noted there had been difficulty in leasing the vacant units in the development.

He responded that he was unsure as to why an allowance of 10% had been applied by the Respondent to his Comparison No. 2, bringing the effective Zone A rate down to €360 per sq. m. It may have been an allowance for the unusual configuration.

**8. RESPONDENT'S CASE**

8.1 Mr O'Brien, the Expert Witness for the Respondent, in addition to his written Précis, gave the following oral evidence:

He referred the Tribunal to Page 6 of his Précis in which he outlined the statutory basis for revaluations and revisions and noted that the instant case was a revision one. He went on to outline how the Tone of the List was established and the valuation arrived at for the subject had to be in line with this 'Tone'. He suggested there was a tone established for Fleet Street and the immediate area. He said this was in accordance with s.49 of the Act.

He outlined how the property had been measured and zoned, without taking account of partitions. He said the letting of the Property was at some remove, time wise, from the valuation date and he therefore relied on 8 no. comparisons from Fleet Street and the surrounding area.

The Respondent's comparisons are attached to this judgment at Appendix 2. He noted how Zone A values of between €550 and €650 per sq. m. had been applied to Fleet Street premises by the Respondent and how he had applied a rate of €550 per sq. m to the subject. He had valued the Property in accordance with s.49.

He noted how this building was of a higher specification than adjoining buildings and this was reflected in the valuation adopted.

In outlining his 5 comparisons, he noted there was one which had a mezzanine – that of his Comparison No. 4 – PN 2211874.

He asked the Tribunal to affirm his opinion of NAV as set out in Page 40 of his Précis. The witness had adopted a zoning approach, halving back from the frontage but ignoring any partitioning installed by the occupier.

He adopted the following zoning:

A 83.40 sq. m.

B 63.00 sq. m.

C 29.00 sq. m.

Mr. O Brien applied a rate of €165 per sq. m. to the entire mezzanine.

### **Cross examination of Mr. O Brien**

In response to questioning from Mr. Corson, the witness variously acknowledged that there had been an open market letting and that €650 per sq. m. was the tone in Fleet Street; he stood over the discount of €100 per sq. m. he had applied to the Zone A of the subject property.

He further accepted that market conditions had improved between the valuation date and the date of the letting but there was too much of a gap in time for it to be considered.

In response to a suggestion the rate applied by the Respondent to the mezzanine of his comparison No. 4, must set the rate for this element, he said it was open to each operator as to how they would use this space.

In response to a query from the Tribunal, the witness said the property had to be considered ‘vacant and available to let’ and as far as planning was concerned, it could be used as retail.

### **Summing Up -Appellant**

Mr Corson, in summing up, said it was indisputable that the Property had been let at €60,000pa and this reflected a NER of €54,000. He suggested the Respondent valued both sides of Fleet Street equally even though they not comparable. The Respondent also treated it as it did D’Olier Street. He invoked s.49 to suggest that where there no immediately comparable properties, note should be taken of the rental value as demonstrated by the letting.

He further suggested that the Property was incorrectly categorised by the Respondent; it should be listed as ‘Retail – other’.

### **Summing Up - Respondent**

Mr O Brien, in his summing up, confirmed how the Property had been valued in accordance with s.49 and should be valued as a retail shop.

He suggested the location was a good one.

## **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.

1. The property is correctly categorised. The Property is part of a retail and office development. The property’s first use, albeit vacant, was retail.
2. The Division determines that the appropriate Zone A rate to apply is €400 per sq. m. It arrives at this view following consideration of the witnesses’ written and oral evidence.

In the view of the Division, the Respondent did not sufficiently differentiate as between the western part of Fleet Street (towards Temple Bar) and this short section. It found the Appellant's comparisons to be 'similarly circumstanced' to the subject and of most assistance.

All, except one situated on nearby Tara Street which was valued at €300 per sq. m., were valued at a rate of €400 per sq. m. This evidence was compelling.

The Appellants comparisons were helpful in coming to a determination as to the tone.

Of the Respondent's comparison, that of No 4 was helpful, insofar as it occupies a corner location on Westmoreland Street and Fleet Street, a vastly better location than the subject. This was valued at a rate of €650 per sq. m. Zone A. Some adjustment is required to this level to reflect the greatly superior location. The comparison is also helpful insofar as it has a mezzanine and this gives some guidance as to the tone to be adopted for this space, relative to the Zone A rate applied.

In light of the above weight of comparable evidence, it was found unnecessary to consider the Appellant's suggestion that the Zone A rate to be applied to the subject should equate to the Zone C for a property on the superior street.

3. An adjustment of 10% of the ground floor NAV is required to reflect the Property's irregular configuration.

The Property is almost triangular in shape and, in the view of the Division, an adjustment of 10% is required to reflect this fact. Little evidence was produced to assist on this point and the Respondent was unable to clarify why his office had applied a 10% discount in the case of the Appellant's Comparison No. 2 – PN 5017122, located on Pearse Street. The Division believes that it is custom and practice to apply an adjustment to retail outlets with non-standard frontage to depth ratios and this should apply equally in this instance.

4. The mezzanine area should be valued as a single entity at a rate which is 25% of the Zone A rate applied to the ground floor. Support for this view is derived from the Respondent's Comparison No. 4 - PN 2211874, a café on the corner of Westmoreland Street and Fleet Street. Here the Zone A rate is €650 per sq. m. and the rate applied to the mezzanine was €165 per sq. m. - approximately 25%.

#### **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 €62,100.

Calculated as follows based on the Respondent's zoning:

Ground Floor Zone A	83.40 sq. m @ €400 per sq. m.	= €33,360
	Zone B 63.00 sq. m. @ €200 per sq. m.	= €12,600
	Zone C 29.00 sq. m. @ €100 per sq. m.	= € 2,900
Mezzanine	201.77 sq. m. @ €100 per sq. m.	= <u>€20,177</u>
		€69,037
Allowance 10%		<u>€6,903</u>
Total		<u>€62,134 but say, €62,100</u>

**NAV €62,100.**