

Appeal No: VA17/5/866

**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. 2147586, Retail (Shops) at 31 Superquinn Shopping Centre, Newcastle Road,
Lucan, County Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12th DAY OF SEPTEMBER 2022

BEFORE

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

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 €67,900.

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: “*Excessive & Inequitable.*”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €62,700.

2. RE-VALUATION 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 €79,400.

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 €67,900.

2.3 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €67,900.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is 15th day of September 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 were invited to exchange their respective summaries of evidence and submit them to the Tribunal.

3.3 The Appellant's precis was received by the Valuation Tribunal on 12th July 2022 and copied to the Respondent. The Respondent's precis was due on 26th July 2022 and no precis was submitted. Reminder emails were sent to the Respondent by the Tribunal on 28th July & 4th August and no reply was received and no application for an extension of time was made.

4. FACTS

4.1 The following facts have not been disputed.

4.2 The subject property is situated within South Dublin County Council's administrative area.

4.3 The subject property comprises an external unit in Lucan Shopping Centre which is located on the western side of Newcastle Road on the outskirts of Lucan village. It is situated at the northern end of the shopping centre mall between a unit occupied by Boyle Sports and a vacant unit.

4.4 Lucan Shopping Centre is anchored by SuperValue and Dunnes Stores and includes a mix of internal and external retail units.

4.5 The subject property comprises a two-storey terraced ground floor retail unit with a first-floor office and ancillary accommodation. It has concrete floors and a ceramic tiled finish to the ground floor and a mix of ceramic/marmoleum/carpeting to the first floor. The ground floor comprises a restaurant and kitchen area with staff and office accommodation located at first floor level.

4.6 The property is subject to a 25-year lease from the 4th February 2000 on full repairing and insuring terms at a current rent of €129,000pa established on the 1st of October 2008 and no subsequent rent reviews have taken place. The lease has an upwards only rent review provision.

5. ISSUES

5.1 The appeal states that the valuation is incorrect based on valuation levels applied; matters of fact and the NAV is excessive and inequitable. The appellants lodged a formal appeal to the Valuation Tribunal on the 11th of October 2017.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property must 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 confirmed that the subject property comprised an external unit in Superquinn/Lucan Shopping Centre which is located on the western side of Newcastle Road close to the roundabout with Esker Drive on the outskirts of Lucan Village.

7.2 They confirmed that it is an external unit situated at the northern periphery of the retail mall and argued that the unit had no direct interaction with the shopping centre and did not benefit from passing pedestrian traffic. They said the design of the centre was based on an internal mall focused on the two anchor tenants SuperValue and Dunnes Stores and that external units predominantly face onto the main car park adjacent to the main entrance. They claimed the subject property did not have the benefit of these features as it was in a corner location at the northern end of the retail parade. They stated that the main entrance to the shopping centre was approximately 95 metres from the subject property.

7.3 They said the subject property comprised a two-storey terraced unit of steel framed construction with a pitched and tiled roof and a brick facade incorporating double glazed windows. They added that the ground floor comprised a restaurant and a kitchen area with staff accommodation and offices located on the first-floor level.

7.4 They said the ground floor accommodation extended to an area of 331.12sqm including customer toilet accommodation with 52.3sqm on the 1st floor level.

7.5 They claimed that the subject property was located on the outskirts of Lucan Village and that the Newcastle Road was used as a shortcut to the N7 and experienced congested traffic conditions at peak times and that Lucan Shopping Centre was a neighbourhood centre in

competition with Liffey Valley Shopping Centre and the Blanchardstown Centre. They said there was a McDonald's drive thru location in Lucan village where there was less traffic congestion, and this location was more accessible than the subject property.

7.6 They claimed that the location at the northern end of the retail parade was inferior to other units in the Centre as it did not benefit from passing trade and noted that footfall circulated around the main entrance which led to SuperValu and Dunnes Stores. They argued the subject property did not have visibility from the main car park or the main entrance and that other occupiers which had food offerings benefitted from superior locations within the centre and consequently they claimed a discount should be applied to the subject property.

7.7 They stated that the subject property did not have the benefit of a drive-thru option and that opening hours were limited to the shopping centre hours and claimed that extending trading hours would incur additional security costs. They confirmed that there were 37 units in total within the centre and 22 occupiers of which five had a food offering. They noted that Starbucks had a dual frontage and was located at the main entrance whereas O'Brien Sandwich Bar, Mao and Base Wood Fire Pizza were located beside each other clearly visible to customers entering the car park. They stated that Unit 34 was vacant and that the neighbouring units 28 and 29/30 were occupied by O'Brien's Off Licence and Boyle Sports and would not be expected to drive trade.

7.8 They claimed that the floor measurements were incorrect with a minor difference on the ground floor and a larger difference at first floor level. The ground floor overall areas showed a relatively minor difference of 0.7 sqm, however slightly larger differences were claimed on a zoning basis.

Valuation Office floor areas	Appellants floor areas
Retail Zone A 27.80sqm	Retail Zone A 26.55sqm
Retail Zone B 85.40sqm	Retail Zone B 85.58sqm
Retail Zone C 85.40sqm	Retail Zone C 85.58sqm
Retail Zone remainder 133.72sqm	Retail Zone remainder 135.54sqm
First floor offices 80.52sqm	First floor offices 50.30sqm

The Appellants stated the first-floor area was 52.3sqm whereas the Commissioner had relied on 80.52sqm. They also argued that the subject property had a reduced shop frontage due to the position of Unit 41 in the facade. They provided a copy of their ground floor and 1st floor sketch plans and measurements and the shopping centre layout.

7.9 They relied on three tone of the list comparisons which included a department store, a supermarket, and a ground floor retail unit. The analysis and commentary were as follows:

PN 2147566

Level	Use	Area Sqm	NAV/Sqm	NAV €
0	Department Store	2,502	€135	€337,772.70
0	Store	35.90	€135	€4,846.50
1	Offices	847.34	€68	€57,619.12
				€427,369.28
			Rateable Valuation Say	€427,000

The noted that the first-floor offices were valued at €68/sqm and argued that even allowing for quantum the proposed valuation for the subject property's first floor at €170/sqm was excessive.

PN445108

Level	Use	Area Sqm	NAV/Sqm	NAV €
-1	Store	59	€30	€1,770.00
0	Offices	63	€120	€7,560.00
0	Supermarket	4,697.03	€120	€563,643.60
1	Offices	2,765.40	€72	€199,108.80
2	Offices	348.75	€48	€16,740.00
Mezz	Store	287.91	€18	€5,182.38
	Additional items			€38,182.18
			Rateable Valuation Say	€832,000

The noted that the first-floor offices were valued at €70/sqm and argued that even allowing for quantum the proposed valuation for the subject property's first floor at €170/sqm was excessive.

PN 1545416

Level	Use	Area Sqm	NAV/Sqm	NAV €
0	Retail Zone A	35.67	€500	€17,835.00
0	Retail Zone B	19.63	€250	€4,907.50
0	Offices	17.39	€50	€869.50
				€23,612.00
			Rateable Valuation Say	€23,600

They noted that the ground floor offices were valued at €50.00/sqm.

7.10 They said that most units within the centre were valued on a Zone a rate of €500/sqm and argued that the other food units including Starbucks, O'Brian Sandwich Bar Base Wood Fired Pizza and Mao had superior locations facing the main car park and that Starbucks was located at the main entrance to the shopping centre and had dual frontage. They claimed that the proposed valuation for the subject property's first floor at €170/sqm was excessive.

7.11 They claimed that the secondary location of the subject property would justify a 10% discount on the Zone A rate of €500.00/sqm. This claim and the sought-after reduction in the rate for the first floor provided a claimed for NAV of €52,000, calculated as follows:

Level	Use	Area Sqm	NAV/Sqm	NAV €
0	Retail Zone A	26.55	€450	€11,947.50
0	Retail Zone B	85.58	€225	€19,255.50
0	Retail Zone C	85.58	€112.50	€9,627.75
0	Retail Zone remainder	135.54	€56.25	€7,624.12
1	Offices	52.30	€68	€3,556.40
				€52,011.27
			Say	€52,000

They also provided a copy of the Valuation Office analysis as follows:

Level	Use	Area Sqm	NAV/Sqm	NAV €
0	Retail Zone A	27.80	€500	€13,900

0	Retail Zone B	85.40	€250	€21,350.00
0	Retail Zone C	85.40	€125	€10,675.50
0	Retail Zone remainder	133.72	€62.50	€8,357.50
1	Offices	80.52	€170	€13,688.40
				€67,970.90
			Say	€67,900

This concluded the Appellants evidence.

8. RESPONDENT'S CASE

8.1 The Respondent's did not provide any precis of evidence or counter arguments. However, as the onus of proof lies with the Appellants, I have examined the Appellants precis.

9. SUBMISSIONS

9.1 No legal submissions were made.

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 main difference between the parties in the calculation of the NAV may be reduced to two areas firstly the different floor areas and secondly rate per square metre to be applied to the correct floor areas.

10.3 The Appellants provided ground floor and first floor plans which contained various measurements. In relation to the ground floor the differences are minor and arise from the calculation of the different zoned areas. I have not been provided with the detailed calculations as to how the Appellant's claimed for ground floor areas were determined and consequently, I must agree with the ground floor zoning areas as provided by the Commissioner. However, the first-floor areas appear to have been calculated by the Commissioner on a Gross Internal Area (GIA) basis and on a Net Internal Area (NIA) basis by the Appellants. I have reviewed the

2018 Code of Measuring Practice for Rating Purposes and it does not identify or specify any basis for offices over a retail unit. Under the heading Offices the Code refers to Gross External Areas (GEA) for offices attached to industrial units with all other offices calculated on a Net Internal Area (NIA) basis. Gross Internal Area (GIA) is only applied to retail accommodation such as department stores, drive-thru restaurants, motor showrooms, retail warehousing and supermarkets. Therefore, I find that the first-floor area of the subject property to be 52.30sqm.

10.4 The only evidence provided to me in relation to the rate for first floor offices was extracted from the valuations of the Department Store and the Supermarket and referred to much larger areas of 847.34sqm and 2,765.40sqm respectively at €68.00/sqm and €70.00/sqm, however I have also noted the rates applied to ground floor offices in PN1545416 at €50.00/sqm and €48.00/sqm for second floor offices. Therefore, I find that the rate proposed by the Appellants at €68.00/sqm to be fair and equitable.

10.5 The Appellants claimed that a discount of 10% should apply to the retail accommodation in the subject property. While I understand the basis for this claim, I cannot find for them as in this instance no evidence of differential rents for ground floor units from within the Centre was supplied.

10.6 I find that the NAV should be €57,800.

Level	Use	Area Sqm	NAV/Sqm	NAV €
0	Retail Zone A	27.80	€500	€13,900
0	Retail Zone B	85.40	€250	€21,350.00
0	Retail Zone C	85.40	€125.00	€10,675.50
0	Retail Zone remainder	133.72	€62.50	€8,357.50
1	Offices	52.30	€68.00	€3,556.40
				€57,839.40
			Say	€57,800

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 €57,800.