

Appeal No: VA21/4/0036

AN BINSE LUACHÁLA  
VALUATION TRIBUNAL

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

Dublin Discovered Boat Tours

APPELLANT

and

Commissioner of Valuation

RESPONDENT

**In relation to the valuation of**

Property No. 5022343, Ticketing kiosk at Kiosk 3, Liffey Boardwalk, North Dublin.

B E F O R E

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

Kenneth Enright - Solicitor

Member

Martin Connolly - MAgrSC, M.Sc., MSCSI, FCInstArb

Member

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 27TH DAY OF FEBRUARY, 2023**

**1 THE APPEAL**

- 1.1 By Notice of Appeal received on the 12<sup>th</sup> day of November, 2021 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 **€9,870**.
- 1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *"I do not know on what basis the valuation has been made. It is stated on the proposed valuation certificate that the category for the property is Retail (shops). However, the property has not been used as a shop. Instead it is used for tourism purpose in that it serves as a ticket office for the boat tours which we operate on the river from that location. The majority of our customers will have paid in advance online, so the volume of cash sales at the property is small. The property serves as a place at which to check in arriving passengers, and a place in which to carry out all relevant administration associated with the boat tour. It would be very difficult for us to run our boat trips without this cabin. The kiosk is empty for 3 months each year, since our boat tours are seasonal and run from 1st March to 30th November each year. The valuation appears high in that it will result in rates of €2645 (based on current ARV of 0.268). This compares with rent that we pay to DCC of €400 per month."* I got no response from valoff.ie. Instead the Valuation Certificate was issued on 29th Oct. The valuation of €9870 will present an arduous burden on our boat trips that we have operated on the river Liffey for 15 years. The kiosk is an essential piece of

*infrastructure which has been used to support this activity and is not the same as a retail outlet. It can only be used for a maximum of 9 months of the year given the seasonal nature of our business*

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of **€1,000**.

## **2. VALUATION HISTORY**

- 2.1 On the 10<sup>th</sup> day of September, 2021 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 **€9,870**.
- 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 29<sup>th</sup> day of October, 2021 stating a valuation of **€9.870**.
- 2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 7<sup>th</sup> of April 2011 and the condition in which it is assessed is that of the 29<sup>th</sup> October, 2021.

## **3. THE HEARINGS**

- 3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 14<sup>th</sup> day of June 2022. At the hearing Mr. Mícheál Ó Cionna, a director of the Appellant company, appeared in person and the Respondent was represented by Mr Ian Power, Valuer, of the Valuation Office. The Appellant explained that because of pressure of work he was unable to provide a précis as required by the Tribunal Rules and requested an extension of time. Mr Power did not object and the Tribunal decided to grant an extension in accordance with Rule 88 of the Valuation Tribunal (Appeals) Rules 2019.
- 3.2 The appeal resumed by way of a remote hearing on 12<sup>th</sup> August 2022.
- 3.3 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:
- 4.2 The Subject Property is a kiosk situated on the Liffey Boardwalk, Batchelors Walk, Dublin 1 adjacent to a landing stage for Liffey boat tours. The area, 7.05 m<sup>2</sup>, is agreed between the parties.

4.3 The Subject Property is held on a licence dated 9<sup>th</sup> June 2022 between Dublin City Council and Sea Cruise Connemara Ltd T/A Liffey River Cruises for a period of eight months commencing on the 1<sup>st</sup> of April 2022 and terminating on 30<sup>th</sup> November 2022. The permitted use shall mean use:

*“...solely by the Licensee for the purpose of operating a ticket sales office for its business and not for any other purpose.”*

4.4 The Subject Property was originally located upstream on the Boardwalk, nearer to Capel Street Bridge, where it functioned as a coffee shop. It was moved to its present location by the Licensor to facilitate boat tours on the River Liffey.

4.5 The Appellant sells tickets from the Subject Property but most of their business is from online bookings. The user, therefore, is largely administrative.

4.6 On the Appellant’s evidence, which was not controverted, the Subject Property is in a shabby condition internally, it has no connection to the public sewer and no phone line. It does have an electricity and water connection.

4.7 The location on the Liffey Boardwalk is subject to anti-social behaviour.

4.8 A copy of the Licence Agreement is in Appendix I (N/A to public)

## **5. ISSUES**

5.1 The primary issue is quantum. The Appellant contends for an NAV of **€1,000** and the Respondent **€9,870**. A secondary issue is user, as the Respondent has assessed the Subject Property as retail while the Appellant contends that, in accordance with the terms of the licence, it is precluded for using the property for general retail purposes.

## **6. RELEVANT STATUTORY PROVISIONS:**

6.1 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 The Appellant outlined the nature of the Subject Property and the nature of the business carried on there. It a kiosk, located on the Liffey Boardwalk, at Bachelors Walk, Dublin 1. Previously it was located further upstream near Capel Street Bridge where it functioned as a coffee shop. It was moved to its present position beside a landing stage

by Dublin City Council to provide ticketing services for boat tours. The business was closed for much of 2020 and 2021 and currently is operating at 60% of 2019 levels. The Subject Property is not connected to the foul sewer and has no phone connection. There are water and electricity connections. The Appellant described the Subject Property as being shabby internally and the Boardwalk as poorly serviced with problems of dirt, litter, crime and other aspects of anti-social behaviour.

- 7.2 The Subject Property is held subject to a eight month licence from Dublin City Council from 1<sup>st</sup> April 2022 for monthly fee of €400. User is restricted to the sale of tickets and the Appellant had to sign a deed of renunciation of renewal rights under S 17 of the Landlord and Tenant (Amendment) Act 1980, at the commencement of the licence. A copy of the licence and the Deed of Renunciation were furnished to the Tribunal and are in Appendix I (N/A to public)
- 7.3 The Appellant outlined the use of the Subject Property. It is used for ticket sales, 75% of which are online, and managing embarkation and disembarkation for the boat tours. There is no other similar facility at Bachelor’s Walk.
- 7.4 On cross examination by Mr Power the Appellant conceded that selling boat tickets was retailing in the same way as selling tickets at another facility run by the same company at Custom House Quay for tours of the tall ship, Jeannie Johnston, was retailing. The Appellant also accepted that the two other nearby kiosks on the Boardwalk were similar to the Subject Property except that one had rights to place furniture on the Boardwalk. The Appellant also agreed on questioning by Mr Power that if the Subject Property were vacant, it could be let by Dublin City Council as a coffee shop.
- 7.5 On questioning by the Tribunal, the Appellant confirmed that the kiosk was moved to its present position beside the landing stage in 2016, specifically to facilitate boat tours. It is located a few metres from the entrance. In his opinion, as someone with 25 years’ experience and expertise in the tourism business, the crowds getting on and off the boats render it unsuitable for selling coffee. This was not contradicted.
- 7.6 The Appellant contended that the proposed NAV, €9,870, almost three times the licence fee, is excessive having regard to the restricted user of the Subject Property. One NAV comparison was put forward to support this view, PN 2174684, Customs House Quay, Dublin 1. It served the same function and he contended that, based on common sense, it should be valued similarly.

Use	Area (m <sup>2</sup> )	NAV €m <sup>2</sup>	NAV (€)
Store	16.50	€100	€1,650

On questioning by the Tribunal, the Appellant explained that the business operated at this facility was exactly similar to the that in the Subject Property. Tickets are sold through the same channels for guided tours of the Jeannie Johnston.

- 7.7 Based on the comparator put forward, the Appellant contended for an NAV of €1,000.

## 8. RESPONDENT'S CASE

- 8.1 Mr Power, for the Respondent, in his précis briefly described the revaluation and revision processes and the difference between them. This is a revision case and is governed by S 49 of the Valuation Act 2001. The valuation is determined:

*“... by reference to the values as appearing on the valuation list relating to the same rating authority area as the property is situate in, of other properties comparable to the property.”*

This is known as the tone of the list and is designed to ensure equity and uniformity between ratepayers.

- 8.2 Mr Power provided a map, photographs, and a block plan of the Subject Property. He described it as a purpose-built kiosk, a steel frame cabin type structure located on the Liffey Boardwalk at, Batchelors Walk, used for ticket sales. It is one of three similar type structures at this location, the other two of which are used as coffee shops.
- 8.3 Mr Power put forward five comparators from the list, all kiosks, that are summarised in the table below. Two were adjacent to the Subject Property on the Boardwalk and the other three at various location in Dublin 1, 2 and 3. Mr Power stated that of those he put forward the two on the Boardwalk were the most relevant; the others were to give a flavour of the market for kiosks in Dublin City Centre.

Property No.	Address	Area (m <sup>2</sup> )	NAV/m <sup>2</sup>
2162212	Kiosk 1, Liffey Boardwalk	7.05	€1,400
2162214	Kiosk 2, Liffey Boardwalk	7.05	€1,200
5005854	Upper Ground Floor, Jervis Centre, Dublin 1	7.37	€3,150
5023510	Kiosk 2, Pearse Station, Dublin 2	7.90	€1,000
1545134	Ferry Port Terminal, Alexandra Road, Dublin 3	11.60	€500

- 8.4 PN 2162212 is a kiosk on the Liffey Boardwalk, exactly similar to the Subject Property located closer to O'Connell Bridge. It is used for coffee sales and has furniture placed on the Boardwalk. On questioning by the Tribunal, Mr Power confirmed that there is no extra value for the furniture included in the NAV. PN 2162214 is also a similar kiosk on the Liffey Boardwalk, used for selling coffee and located nearer to the Half Penny Bridge, with a lower NAV, €1,200/m<sup>2</sup>. On cross examination by the Appellant, Mr Power conceded that the other three comparators that he put forward were not directly comparable with the Subject Property. They were included by way of context.
- 8.5 On cross examination by the Appellant, Mr Power accepted that PN 2162212, was 50 metres nearer to O'Connell Bridge than the Subject Property but would not accept that this was significant.

- 8.6 The Appellant cross-examined Mr Power at length on the use of the Subject Property. He accepted that it is currently used mainly for administrative purposes but explained that the NAV must be assessed as vacant and to let, *rebus sic stantibus*. At the termination of the current licence, Mr. Power submitted that it could be let by Dublin City Council for retail use. He also confirmed to the Tribunal that all three kiosks had similar planning permission.
- 8.7 When the Appellant questioned Mr Power about the company's other property, PN 2174684, Customs House Quay, he stated that it is valued as a store and in his opinion the valuation is wrong. This could be seen from comparison with the NAV of PN 1545134, €500/m<sup>2</sup> for an unmanned ticket desk in Alexandra Road. He would consider Bachelors Walk a better location. When it was put to him that visitor numbers at Custom House Quay, with the EPIC Centre and the Jeannie Johnston, were higher than Bachelors Walk, he replied that he did not have footfall data for either location. In any event it was buildings that were being valued not businesses. Thus, he said, visitor numbers would have no bearing on the NAV.
- 8.8 On questioning by the Tribunal about the value of PN 2174684, Customs House Quay on the list Mr Power described it as "*anomalous*".

## **9. SUBMISSIONS**

- 9.1 There were no legal submissions.

## **10 Closing Arguments**

- 10.1 In summing up the Appellant stated that there were three identical kiosks on the Boardwalk, all coffee shops. Fifteen years ago, the Subject Property was repurposed as a terminal and has not functioned as a coffee shop since and, given the investment by Dublin City Council on landing facilities on the Liffey, it was unlikely to do so again. He stated that the best comparator was PN 2174684, the Jeannie Johnston terminal. It has fulfilled a similar function as the Subject Property for over 20 years and is a better location than the Boardwalk.
- 10.2 Mr Power stated that the Subject Property must be valued in accordance with S 49 of the Valuation Act 2001 on the assumption that it is vacant and to let. Use is not valued, and the Subject Property could be let as a coffee shop on the expiry of the licence. The adjoining kiosks were the best comparators. His proposed valuation met the requirements of uniformity and equity.

## **10. FINDINGS AND CONCLUSIONS**

- 10.3 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, uniform 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.
- 10.4 The Appellant, an experienced tourism business operator, runs boat tours from the Subject Property and similar operation at Custom House Quay.

- 10.5 The Subject Property is one of three similar properties located on the Liffey Boardwalk. It is held on a short-term licence from Dublin City Council. User is restricted to operating a ticket sales office and there is no right of renewal.
- 10.6 The Tribunal must determine the NAV of the Subject Property in accordance with s. 49 of the Valuation Act 2001, i.e., by comparison with the net annual values of other similarly circumstanced properties on the list.
- 10.7 Mr Power put forward five comparator properties to assist the Tribunal. However, he stated, correctly in the Tribunal's view, that PN 2162212 and PN 2162214, two similar kiosks on the Liffey Boardwalk, with NAVs of €1,400 and €1,200/m<sup>2</sup> respectively, were the most relevant.
- 10.8 The Appellant put forward one comparator, PN 2174684, a facility providing similar ticketing services at Custom House Quay with an NAV of €100/m<sup>2</sup>. However, Mr Power stated in his opinion that the valuation was wrong, and he described it as "anomalous". S 63 (1) of the Valuation Act 2001 provides that:

*"The statement of value of a property as appearing on a valuation list shall be deemed to be the correct statement of that value until it has been altered in accordance with the provisions of this Act."*

However, the Court of Appeal in the case of the Commissioner of Valuation v Stanberry Investments Limited [2020] IECA 33 held at paragraph 75:

*"The purpose of this provision [S 63] is to prevent a collateral attack on valuation of a property on the list, not to condition the weight to be given to values on the list for the purposes of the valuation of other properties."*

Furthermore, in the case of Commissioner of Valuation and Carlton Hotel, Dublin and others, [2013] IEHC 170 the High Court in considering the question of uniformity and equity held at Paragraph 61:

*"There is no merit in the uniform application of a mistake."*

The Tribunal can see no rationale for the valuation of PN2174684 at an NAV of €100/m<sup>2</sup> and accepts Mr Power's view that it is an anomaly. Thus, the Tribunal finds that if it gave weight to the NAV of PN 2174684 in its consideration of this appeal, it would be perpetuating an error. Accordingly, the Tribunal decides not to do so.

- 10.9 The Appellant argued strongly that the NAV was excessive having regard to the restrictive user clause in the licence. Mr Power for the Respondent, on the other hand, argued that the terms of the licence should be ignored and that the Subject Property should be valued *rebus sic stantibus*, i.e., as if vacant and to let. This question is considered in detail in *Rating Valuation. Principles and Practice*. Patrick H Bond and Peter K Brown, Routledge. 4<sup>th</sup> Edition. At page 101 the authors describe the hypothetical tenancy:

*“The terms of the hypothetical tenancy, which is the basis behind all rateable values, therefore, are very simple. The idea is that each property to be valued for rating is vacant and available to let in the market on an annual tenancy which has only a few basic terms. ... The terms of the actual real world occupation are disregarded because the hereditament is viewed as vacant and on the market to let.”*

The Tribunal finds, therefore, that the terms of the Appellant’s licence should be disregarded.

10.10 The Tribunal accepts Mr Power’s evidence that the best two comparators are the two nearby kiosks. PN 2162212 and PN 2162214, with NAVs of €1,400 and €1,200/m<sup>2</sup>, respectively. The former’s higher rate presumably is based on its proximity to O’Connell Bridge. The Subject Property is also closer to O’Connell Bridge than PN 2162214. The Tribunal finds, therefore, that the NAV of the Subject Property is correctly assessed at €1,400/m<sup>2</sup>.

#### **DETERMINATION:**

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent at the Net Annual Value at € 9,870.

Use	Area (m <sup>2</sup> )	NAV/m <sup>2</sup>	Total NAV €
Kiosk	7.05	€1,400	€9,870

#### **Right to Appeal**

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal’s determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court.

The right of appeal may be exercised only if a party makes a declaration of dissatisfaction, by notice in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal’s determination and having declared dissatisfaction, by notice in writing to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.



