

Appeal No: VA20/4/0067

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Sam McCauley Chemists Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of
Property No. 5018225, Retail (Shops) at French Mullen House, Charlemont Street, Dublin 2

B E F O R E

Hugh Markey - FRICS FSCSI,

Claire Hogan - BL

Peter Stapleton - FRICS FSCSI, Dip Arb

Deputy Chairperson

Member

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF DECEMBER 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 €51,500.

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 : *“Incorrect Valuation”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €34,000.

2. VALUATION HISTORY

2.1 On the 29th 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 €63,400.

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 €51,500.

2.3 A Final Valuation Certificate issued on the 11th day of November, 2020 stating a valuation of €51,500.

3. THE HEARING

3.1 The Appeal proceeded by way of a remote hearing held on the 7th day of April, 2022. At the hearing the Appellant was represented by the Mr. Paul Mooney MSCSI MRICS (Hons) Dip Rating and the Respondent was represented by Mr. Oliver Parkinson, Valuation Officer, 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 Property comprises a retail unit, forming part of the redeveloped French Mullen House on the western side of Charlemont Street, Dublin 2. The development was built in 2017.

The area of the Property under appeal has been agreed as follows:

Ground Floor Zone A	140.62 sq. m.
Zone B	<u>45.78</u> sq. m.
Total	186.4 sq. m.

The Property has street frontage of 23.05m

The relevant valuation date is 7th April 2011.

5. ISSUES

5.1 The sole issue in this appeal is one of quantum, and the appropriate valuation which should be determined in respect of the Property.

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’s case was twofold viz: the Zone A rate adopted was excessive and secondly, the allowance of 10% was insufficient to reflect the configuration of the property. Mr. Mooney stated that the property did not exist at the valuation date and for the purposes of the exercise of arriving at the valuation, it must be presumed to have existed. He referred to the letting of the Property in August 2018 at an average rent of €39,500pa over the first five years and suggested that it could not achieve anything like the NAV placed on it by the Respondent as of 2011, as this was unrealistic. He used the Lisney Retail Index and applied it to the rent achieved in 2018 to demonstrate that the rent would have been €34,000 in 2011.

7.2 He noted the Respondent had adopted two levels of Zone A rents for retail units on the street - €450 per sq. m. Zone A for small units and €350 per sq. m. Zone A for larger units. He discussed the size that unit had to be to command a rent of €250 per sq. m. – the level that he was contending for in the instant case. He noted that the Property’s frontage was 6.6m wider than that of his Comparison No. 2, which had received a 10% end allowance. He argued for a 20% end allowance to reflect the configuration of the unit.

7.3 He contended for a NAV of €32,700 which represented an overall rate of €175.43 or €250 per sq. m. Zone A.

Description/Use	Floor	Area	€/sq.m.	NAV €
Retail Zone A	0	140.62	€ 250.00	€ 35,155.00
Retail Zone B	0	45.78	€ 125.00	€ 5,722.50
Allowance	0	-20.00%	€ 8,175.50	-€ 8,175.50
				€ 32,702.00
Rounded to				€ 32,700.00
		Liability	0.268	€ 8,763.60

7.4 In support of his opinion, he submitted nine NAV comparators from this street and the nearby Harcourt Green.

	Property No.	Description/Uses	Address	Valuation (€)	Zone A Level (€)	Zone A Width/Frontage (M)
1	5018226	Retail (Shops)	French Mullen House Charlemont Street, Dublin 2	28,400.00	350.00	10.27
2	1136862	Retail (Shops)	3/4 Harcourt Green, Dublin 2	40,800.00	350.00	16.39
3	1136861	Retail (Shops)	2 Harcourt Green, Dublin 2	26,200.00	350.00	10.12
4	1136860	Retail (Shops)	1 Harcourt Green, Dublin 2	33,100.00	350.00	8.85
5	1136863	Retail (Shops)	5 Harcourt Green, Dublin 2	25,500.00	350.00	7.37
6	1136865	Retail (Shops)	6 Harcourt Green, Dublin 2	36,800.00	350.00	11.06
7	814751	Retail (Shops)	38 Charlemont Street, Dublin 2	14,730.00	450.00	4.45
8	814752	Retail (Shops)	39a Charlemont Street, Dublin 2	11,780.00	450.00	3.34
9	814736	Retail (Shops)	2 Charlemont Street, Dublin 2	34,000.00	450.00	4.8

7.5 In response to cross examination by Mr. Parkinson, Mr. Mooney accepted that the onus of proof (to show the valuation was incorrect) lay with the Appellant but said that s. 49(1) called for ‘equity and uniformity’. He said the Commissioner had power to correct a valuation if it is subsequently proved to be incorrect. He confirmed the location of his comparisons on the street and also that his Comparison No. 2 also had a large Zone A and was similar in configuration. This had a 10% end allowance applied, following the settlement of an appeal and before hearing. He responded to a question as to how he arrived at his opinion of €250 per sq. m. as being an appropriate level, by stating that as the Property did not exist on the date of valuation, so there was no evidence, and he was asking the Tribunal to make that determination. He conceded that the actual rent payable can be relevant, and some regard should be had to it.

8. RESPONDENT’S CASE

8.1 Mr. Parkinson, having set out the background to the revaluation, outlined the methodology to be adopted in arriving at an appropriate NAV for the Property. He noted that this was a Revision case, falling between revaluations and that the NAV adopted had to fit the ‘tone of the list’. He set out, in detail, how s 49 (1) had to be complied with; how the ‘tone of the list’ for the street was well established. He said that there were two levels adopted for Charlemont Street with the higher Zone A rate of €450 per sq. m. applied to properties at either end of the street, and a that a rate of €350 per sq. m. Zone A applied to those in the centre of the street, such as this Property,. He detailed the setting of the NAV, and how the Appellant’s representations had been considered. He detailed how, following these representations, the NAV had been reduced from €63,400 to €51,500 following a review of the floor areas and the application of a 10% allowance for the frontage to depth ratio. He outlined how the Respondent used zoning in arriving at the NAV.

8.2 He briefly outlined his comparisons:

Comparison No. 1, PN 15018226, was valued at €350 per sq. m. and while there had not been any representations, it had been appealed. The valuation was reduced by the application of a 10% frontage to depth allowance. This property is beside the subject.

His Comparison No. 2, PN 1136862, was evidence of the €350 per sq. m. tone, having been reduced at representations stage from €400 to €350 per sq. m. Zone A. A 10% frontage allowance was also given. Comparison Nos. 3 – 6, PNs 1136861; 1136860; 1136863 and 1136865, were all valued at €350 per sq. m., Zone A and were not appealed.

A summary of his comparisons is set out below:

Summary of Comparisons

Property No	Address	NAV per sqm	NAV
5018226	French Mullen House, Charlemont St, Dublin 2	350	28,400
1136862	3/4 Harcourt Green, Dublin 2.	350	40800
1136861	2 Harcourt Green, Dublin 2	350	26200
1136863	5 Harcourt Green, Dublin 2	350	25500
5010607	1/2 Chancery Lane, Dublin 2.	250	45100

Please note Comparison 5 is used as a comparison solely for evidence of 10% frontage to depth allowance applied to a large retail unit, similar in width and large Zone A areas.

Under cross examination by Mr. Mooney, he responded that it was a matter for the Valuation Tribunal as to whether the valuation list could be impugned. He said that he had relied solely on the tone of the list as required by s. 49 and had not considered rental evidence.

He was asked whether a unit with a Zone A of 61.77 sq. m. was ‘similarly circumstanced’ to the subject (Zone A 140.62 sq. m.). He responded that it was built at the same time and yes, it was similarly circumstanced. His response was the same regarding a unit of 100 sq. m. Zone A, noting that was the ‘tone of the list’.

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 practicable, 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 At the Hearing, the Tribunal instructed the valuers to confirm an analysis of the NAVs of the comparisons used by the valuers, analysed on an overall rate per square foot basis. This request was complied with and is attached at Appendix 3 (n/a to public) to this judgment. This exercise highlights that valuations which rely solely on the blanket application of a single Zone A rate can result in anomalies. Mr Parkinson correctly pointed out that valuers should ‘value as they devalue’ but the blanket application of a single Zone A rate can be problematic. This is well evidenced by the varying levels of NAV on an overall rate per sq. m, resulting from an analysis of the NAV comparables used by both valuers. Levels varied from €152.63 to €297.83 per sq. m. on an overall basis. The lowest level, on an overall basis, is from a unit at the northern end of the street where the Respondent has applied a rate of €450 per sq. m. Zone A in arriving at his NAV.

The Appellant’s comparison No.4, PN 1136860, is a corner unit with a ground floor of 164 sq. m and a NAV of €33,100.

The Appellant’s comparison No. 6, PN 1136865, is a corner unit of 178.3 sq. m and a NAV of €36,800.

The Appellant’s comparison No. 9, PN 814736, has a ground floor of 180.83 sq. m and a NAV of €34,000.

The Tribunal paid particular attention to these comparisons and their NAVs, which were helpful.

The subject Property has a ground floor area – (186.4 sq. m with a proposed NAV of €51,500) which is not significantly different to that of the Appellant’s Comparison No 9 (180.83sq. m. and a NAV of €27,600). As they are presumed to be ‘similarly circumstanced’ (in fact the former is better positioned, as recognised by the Respondent applying a higher rate per sq. m.), the only difference lies in the configuration. PN 814736 appears to have a frontage of 4.8m (Zone A - 29.28 sq. m. / 6.1m), giving a frontage to depth ratio of approximately 1:7.8. On the other hand, the subject has a frontage to depth ratio of approximately 3:1.

10.3 The Tribunal accepts that the tone of €350 and €450 per sq. m. is well settled. However, insufficient cognisance has been taken by the Respondent of the exceptional frontage to depth ratio. It is inconceivable that the notional willing occupier would, presented with this shop unit and the almost identically sized and better located PN 814736 (Appellant’s Comparison No. 9), pay so much more in rent as is suggested by the relative NAV’s.

10.4 The Respondent’s representatives regularly use the expression ‘stand back and look’ as a final test as to the appropriateness of a valuation. This is indeed good practice, and in the instant case, the approach taken does not withstand such scrutiny.

10.5 The Respondent suggested that to consider an approach other than zoning would risk the Tribunal falling into an error of valuation, suggesting that zoning was a valuation methodology adopted by practitioners generally. He further noted that one ‘should value as one devalues’. While this statement is fundamentally correct, a slavish adoption of zoning is more likely to lead to an incorrect result than

a rounded consideration of devaluations, derived from analyses resulting from a consideration of both overall and zoned bases. This is particularly the case when the valuer is faced with retail units of varying configurations. This is best illustrated by considering two units of identical size, with one having twice the frontage of the other and therefore a Zone A twice as large. The unit with the larger frontage will not be worth so much more than the other as might be suggested if one were to merely apply the zoning approach.

10.6 Zoning is not a method of valuation. It is a useful tool to apply evidential-based derived rates to 'similar' properties e.g. similarly configured. Where the property to be valued has differing characteristics e.g. wider frontage/different configuration/shadow areas etc., some adjustments must be made to reflect the different circumstances. Zoning can have a distorting effect on values as is evidenced by the comparisons relied upon by the Appellant. Consider his Comparisons 2 and 6. The first has an area of 130.28 sq. m and a NAV of €36,200; while that of No. 6 has an almost identical, slightly larger area (130.9sq. m.), and a NAV of €30,900. The difference is accounted for by the larger Zone A in the former.

10.7 The Tribunal determines that while there may be an established tone of €350 per sq. m applicable to this part of the street, it also believes that consideration should be given to the appropriate overall rate per sq. m. and an appropriate allowance made to reflect the exceptional frontage to depth ratio. Only by doing so is the requirement for equity and uniformity satisfied. In this instance, the Tribunal accepts the Appellant's evidence that an allowance of 20% is appropriate to apply.

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 NAV €45,800.

Retail Zone A_140.62 sq. m. @€350.00 per sq. m = €49,217.00

Retail Zone B 45.78 sq. m. @ €175.00per sq. m. = € 8,011.50

€57,228.50

Allowance: 20%

€11,445.70

NAV €45,782.80 say, €45,800

And the Tribunal so determines.

RIGHT OF 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

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction 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 addressed 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.