

Appeal No: VA20/4/0008

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

PM Ging Architect

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5002389, Retail (Shops) at Unit G, Tower Commercial Centre, Monastery Road,
Clondalkin, Dublin 22, County Dublin.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9th DAY OF DECEMBER 2022**

BEFORE

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 10th day of November 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 €13,600.

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:

“1. The Ground Floor Store is used for keeping a family classic car. It is unsuitable for commercial use being 20metre from the street & low ceiling.

2. The first-floor rooms are used only for domestic storage & a home cinema. They are unsuitable for commercial use because the stairs are extremely steep, there are no windows & no Toilet.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.

2. RE-VALUATION HISTORY

2.1 On the 2nd day October, 2019 of 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 €13,600.

2.2 A Final Valuation Certificate issued on the 21st day of October 2020 stating a valuation of €13,600.

2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is the 15th day of September 2017

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 in Tower Commercial Centre, Monastery Road, Clondalkin Dublin D22 PN44. The accommodation comprises ground floor and first floor accommodation.

4.3 The floor areas are not in dispute with a ground floor total of 19.44sqm and the first floor comprising 101.43sqm calculated on a net internal area basis.

5. ISSUES

5.1 The issue is whether the subject property is domestic and therefore exempt from rates or if it is commercial what value should attach to it.

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 represented by Mr Ging the owner stated that the subject property comprised a ground floor garage and two low rooms in the attic space which had originally been used as stores for a pet shop on the ground floor.

7.2 He stated that the ground floor was used to garage his classic car and was unsuitable for commercial use as it was set back from the street by approximately 20 metres. He provided a photograph of the premises including the ground floor unit which showed a raised roller

shutter door and a picture of the ground floor area housing a car. He stated that the two attic rooms had remained unused until approximately 12 months ago and had been used by family members as a store for domestic materials and that he had subsequently fitted out part of the area as a small home cinema for family use. He argued that there was no commercial aspect to this accommodation.

7.3 He claimed that the first-floor section of the property could not be used commercially due to their low height and comprised attic accommodation without windows and there was no toilet accommodation. He added that the property did not comply with fire safety requirements in relation to travel distance to the stairs and could not be made to comply. He added that the stairs were extremely steep with the rise of 235mm and a thread of 220mm and a pitch of 47 degrees whereas the Building Regulations stipulated a maximum pitch of 33 degrees for public use. He included an extract from the Building Regulations TGD.K. in support of his claim. He added a plan showing the elevation internally which was 2.928m in the centre reducing to 1.406m at the side walls. He said that the space below the first-floor accommodation was occupied by a hair salon, and it was not possible to alter the stairs.

7.4 He acknowledged that his office was in an adjoining part of the building Rate No. 5022389 which is subject to rates. He added that there was no link between the two premises and stated that he did not store anything relating to his business in the premises which is the subject to this appeal.

7.5 He concluded that the subject premises was used solely for domestic use and was not suitable for commercial use and should be exempt from rates.

7.6 He concluded that the property was domestic and should be excluded from the Valuation List.

8. RESPONDENT'S CASE

8.1 Mr Gibbons a valuer representing the Respondent provided his precis of Evidence. He stated that this appeal had arisen from the recent revision of the property, concerned following the exercise by an officer of the Commissioner, on appointment, of their powers under Section 28 of the Valuation Act 2001. He stated that the onus of proof in appeals before the Tribunal rested with the Appellant and cited 3 cases VA00 2 032 Proudland Ltd. trading as Plaza Hotel;

VA07 3 054 William Savage Construction and VA 09 1 018 O'Sullivan's Marine Limited in support. He also stated that Section 63 (1) of the Valuation Act 2001 provided that "the statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act." He added that the valuation of the subject property is determined by reference to the values, as appearing on the valuation list relating to the same rating authority area as the property is situated in, of other properties comparable to that property - Section 49 (1) Valuation Act 2001.

8.2 Mr Gibbons states that he met with staff of the occupier on the 17th of September 2019 however he was unable to access the first-floor accommodation and he confirmed that he relied on plans and measurements on file to complete the revision request. He stated that he subsequently conducted a joint inspection with the Appellant on the 6th of May 2022 and completed a full survey of the subject property and took several photographs which he included in his appendix (n/a to the public).

8.3 Mr Gibbons confirmed that the subject property was in Tower Commercial Centre in Clondalkin Village at the junction of the Monastery Road and Laurel Park. He provided two location maps which showed details of the Village as well as an overall location map for the Dublin area.

8.4 Under the heading description he stated that the subject property formed part of a former cinema complex-built c.1939 which closed in 1977. He stated that it was a concrete block construction with a pebble dash finish and a pitched roof which is part tiled and part corrugated asbestos. He added that since its closure it has been converted into a number of commercial units at ground floor and first floor levels which have been valued separately. He stated that the original building appears to have been extended with flat roof extensions to the northeast and southwest elevations. He said the subject property comprised both ground and first floor accommodation and was currently used by the Appellant as an own door office and storage area at first floor level with the ground floor unit in use as a carport with steel shuttering. He stated Tower Centre was owned by the Appellant. He provided various photographs including an external view of the centre. Additional photographs showed the roller shutter entrance to the ground floor unit, an aerial photograph and four internal photographs which

refer to block A, block B, block C related to the first floor and block D which showed the ground floor unit including a car parked in the unit.

8.5 He provided the following schedule of accommodation and included a section plan which showed the floor to ceiling heights as previously provided by the Appellant. He also provided a ground floor and a first-floor block plan. The ground floor plan showed the accommodation referred to as D 'Store' and measured 2.7m x 7.2m. The first floor referred to three areas, the first A referred to 'My Office' and a WC which do not form part of the subject property. The other two areas B and C refer to 'Home Cinema' and 'Domestic Storage'.

Floor	Block	Use	Area M ₂
0	D	Retail Zone A	16.47
0	D	Retail Zone A	2.97
1	A	Office	18.09
1	B	Office/store	29.40
1	C	Store	53.94

8.6 He provided the valuation milestones of the subject property noting it was inspected on the 17th of September 2019 and the proposed Valuation Certificate was issued on the 2nd of October 2019. The proposed valuation was €13,600 and the final Valuation Certificate was issued on the 21st of October 2020 at €13,600. A Notice of Appeal to the Valuation was received by the Tribunal on the 12th of November 2020 and a joint inspection with the Appellant was undertaken on the 6th of May 2022.

8.7 Mr Gibbons referred to the Grounds of Appeal and addressing the Appellant's claim stated if that the subject premises was a "domestic premises" it was not rateable. He stated per Section 3 (1) that "Domestic Premises" means any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed-use premises nor an apart-hotel. He stated that the property must satisfy a positive test in that it must be either "*in whole or in part... be used as a dwelling*" as well as two negative tests in that it cannot be a "mixed premises" or an apart-hotel. He stated that the definition of domestic process requires that there be an identifiable premises used as dwelling. He argued however that there is no premises of a

residential character in the subject property. He noted that the Appellant's offices were rateable for which there is no dispute while the cinema room and accompanying store are in dispute but that they do not meet the preconditions required by the Act to be considered domestic. He added that the carport could be used as a lock up or commercial unit and is not considered domestic under the Act. He states that he was of the opinion that the subject property was a relevant property as it is a purpose-built commercial building. He states that it falls under Schedule 3 of the Valuation Act 2001 as amended by the Valuation Act 2015.

8.8 He said the subject property caters for storage for the owner occupier in a commercial building and that there is no domestic element to the subject property. He added that the carport could be used as a lock up or commercial unit and is not considered domestic under the Act. He added that due consideration was given to Blocks B and C (Office/store and store) and the first-floor office rate was significantly discounted to reflect the lack of windows in both blocks and the reduced headroom in Block C.

8.9 He provided a schedule of the calculations as published.

Floor	Block	Use	Area M₂	NAV€/ M₂	NAV
0	D	Retail Zone A	16.47	€375.00	€6,176.00
0	D	Retail Zone A	2.97	€187.50	€556.00
1	A	Office	18.09	€180.00	€3,256.00
1	B	Office/store	29.40	€90.00	€2,346.00
1	C	Store	53.94	€18.00	€970.00
				Total	€13,600

8.10 He concluded by stating that the subject property is considered to be a relevant property as per Schedule 3 of the Valuation Act 2001 as amended by the Valuation (Amendment) Act 2015 and is rateable. He added that it does not fall to be described as Relevant Property Not Rateable pursuant to Schedule 4 of the Valuation (Amendment) Act 2015. This concluded his submission.

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 The Tribunal has carefully examined the case made for domestic premises as set out by the Appellants. It notes per Section 3 (1) that "Domestic Premises" means any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed-use premises nor an apart-hotel" this does not apply to the subject property and consequently the Tribunal finds that in this instance the subject premises is not a 'domestic premises' as described in the Act.

10.3 The Tribunal notes the description of accommodation provided by both parties wherein they variously describe the ground floor accommodation as a garage (the Appellants) and a store (the Respondents) with accompanying floor plans and photographs in support of their differing descriptive statements and importantly it notes that neither refer to it as a retail unit. The Respondents stated that the ground floor could be used as a lock up or commercial unit and is not considered domestic under the Act. The ground floor area has been valued on a retail zoning basis with a Zone A of 16.47sqm and a Zone B of 2.97sqm totalling 19.44sqm. Based on the descriptions, the plans, and the photographs it is clear that this area should be regarded as storage accommodation. Accordingly, the Tribunal finds based on *Rebus sic stantibus* that it must be valued as a garage/store and has adopted the value €90.00/sqm attributed to the first-floor office/store to reflect the ground floor location but accounting for the garage/store usage.

10.4 The first-floor accommodation comprises three sections described as an office with toilet accommodation, a home cinema and domestic storage. The Appellants referred to a first-floor office occupied by the Appellant as an office with a Property no. 5022389 which refers to a premises in Wexford and should more correctly be described as part of Property No. 5002389 the subject property. The Appellants have not disputed the valuation of the first-floor office comprising 18.09sqm at €180.00/sqm.

10.5 The Tribunal notes that the Appellants as architects have stated that the stairs to the 'home cinema and domestic store' are steep and that the rise of 235mm exceeds the maximum

permitted rise for private use of 220mm and was well more than the maximum rise for public access of 180mm. They also noted that the thread/going of 220mm equated to the minimum permitted length for private use and was below the range for public usage which ranged from 280mm to 300mm. They also stated that the pitch was 47 degrees whereas the maximum according to the regulations was 33 degrees for public use. They stated that these two areas did not comply with fire safety regulations due to travel distance but no proof, or measurements demonstrating this failure to comply was provided. As the owner's office forms part of Property no. 5002389 limited toilet accommodation would appear to be available. The photographs of the first-floor accommodation for Block A shows the office and a side window whereas the other photographs for Block B and C show attic style accommodation without any windows. The statements regarding the failings of the stairs were not disputed by the Respondents though they were aware of the Appellants claims prior to making their own submission. The Tribunal finds that this 'home cinema and domestic storage' accommodation due to the very poor access allied to the lack of windows must be regarded as and valued as storage accommodation.

Floor	Block	Use	Area M₂	NAV€/ M₂	NAV
0	D	Store/garage	19.44	€90.00	€1,749.60
1	A	Office	18.09	€180.00	€3,256.20
1	B	Store	29.40	€18.00	€529.20
1	C	Store	53.94	€18.00	€970.92
				Total	€6,505.92
				Say	€6,500

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 €6,500.