

Appeal No: VA21/4/0024

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Ashurst Supplies Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1040213, Retail (Shops) Restaurant at Kiosk B Jervis Shopping Centre, Henry Street, Dublin 1

B E F O R E

Eoin McDermott, FSCSI, FRICS, ACI Arb

Deputy Chairperson

Barra McCabe, BL, MRICS, MSCSI

Member

TJ Kearns, BSc (Surv.), MRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF MARCH, 2023**

1. THE APPEAL

1.1 By Notice of Appeal received on 9th 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 €75,100.

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: -

“1) The subject property has not been measured correctly. The total size of the unit is 25.79m2 as constructed.

2) The level applied to the subject property as a kiosk does not take into account the size of the unit which is akin to PN 1040196, a standard unit within the development. Standard units are valued at €2,000/m² Zone A, where the subject property has been valued at €2,800/m² Zone A. There is simply no way that the hypothetical tenant prefers a kiosk over a standard unit of equivalent size. Indeed, the application of the standard rate of €2,000/m² Zone A is backed up by indexation of the actual rent back to the valuation date.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €51,500.

2. VALUATION HISTORY

2.1 On 13th 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 €75,100.

2.2 A Final Valuation Certificate issued on 26th October 2021 stating a valuation of €75,100.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely via Zoom, on 9th February 2023. At the hearing the Appellant was represented by Mr David Halpin, M.Sc. (Real Estate) BA (Mod), and the Respondent was represented by Mr Ian Power 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.

4.2 The subject property forms part of Jervis Street Shopping Centre, located on Mary Street, Dublin 1. The Centre was opened in 1996. It trades mainly on two levels, ground and first floor.

4.3 The subject property is located amongst a group of kiosks situated at a central area on the ground floor of the Centre. The property comprises a purpose-built retail kiosk.

4.4 The area of the property is 25.79 M².

5. ISSUES

The issue is one of quantum.

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 Mr. Halpin described the property, using photographs contained in his précis. He noted that the Respondent had now accepted the measurement of 25.79M² as set out in his appeal.

7.2 Mr. Halpin developed his case by noting that the subject property, as a large kiosk, was approximately the same size as a number of standard units within the Centre. He pointed out that these units had been valued by the Respondent at a lower rate per square metre than that applied to the subject property and argued that the standard units were in fact more attractive to retailers than the kiosk units, and that his client would have preferred to take a standard unit in the Centre had one been available. He could see no reason why the subject property should be valued on a different basis to PN 1040196, which he considered to be the best evidence available.

7.3 Mr. Halpin drew the Tribunals attention to the rent agreed on the property in 2019 and the subsequent reductions that had been put in place as a result of Covid. He argued that indexing the 2019 rent back to 2011 levels would suggest that the valuation put forward by the Respondent was significantly overstated.

7.4 Mr. Halpin also queried the approach of the Respondent in relation to the other kiosk units within the Centre. He argues that kiosk units should be valued on a “per pitch” basis and that the size of the respective units was not particularly significant. He also drew attention to the Respondents comparisons 1 and 2, which he said were more in the nature of permanent fixtures rather than kiosk units.

7.5 Mr. Halpin put forward details of all the kiosk units as valued by the Respondent into evidence as his first comparison. These were as follows: -

PN	Level	Size	NAV	NAV € per M ²	Identifier
2164943	0	26.01	72,800	2,800	GH
2164942	0	26.01	72,800	2,800	IJ
1040214	0	13.93	50,100	3,600	K2
1040215	0	13.93	50,100	3,600	K3
1040216	0	9.29	41,800	4,500	K4
1040217	0	13.93	50,100	3,600	K5
2211981	0	5.68	25,500	4,500	
2164944	0	5.57	25,000	4,500	
2212111	1	7.2	21,600	3,000	Z
2212113	1	6.51	19,530	3,000	
2212110	1	5.15	16,220	3,150	
2211983	1	11.25	33,700	3,000	
5005854	1	7.37	23,200	3,150	
2212112	1	15	45,000	3,000	

7.6 Mr. Halpin also introduced comparable evidence of two standard retail units within the Centre as follows: -

Comparison 2 – PN 1040196 – NV €53,400

Level	Use	Area (M ²)	NAV € per M ²	NAV
0	Retail Zone A	25.53	2,000	€51,060.00
0	Retail Zone B	2.43	1,000	€2,430.00
				€53,490.00

Comparison 3 – PN 1040232 – NAV €30,900

Level	Use	Area (M ²)	NAV € per M ²	NAV
1	Retail Zone A	24.89	1,100	€27,379.00

1	Retail Zone B	6.50	550	€3,575.00
				€30,954.00

7.7 Mr. Halpin contended for a valuation of €51,500, calculated as follows: -

Level	Use	Area (M ²)	NAV € per M ²	NAV
0	Retail Zone A	25.79	2,000	€51,580.00

7.8 In response to cross examination from Mr. Power, Mr. Halpin confirmed that the Respondents comparisons 1 & 2 were the two comparisons physically closest to the subject property. He accepted that section 49 of the 2001 Act (as amended) (“s.49”) required the Respondent to have regard to the tone of the list. He further confirmed that he had no evidence other than his experience to support his contention that standard units were more attractive to retailers than kiosk units but he noted that kiosk units were generally smaller than standard retail units and in this case he had put forward evidence of a similar sized standard retail unit that was valued on a lower rate per square metre than that applied to the subject, and that indicated to Mr. Halpin that there was an inherent contradiction in the tone of the list.

7.9 In response to questions from the Tribunal, Mr. Halpin confirmed his opinion that the kiosk unit was no more valuable than PN 1040196. He also pointed out that a number of the other kiosks were valued at €51,000 and that the Tribunal should consider the value of the pitch rather than the size of the unit in assessing the NAV. He did accept that the other kiosks were valued based on their size but reiterated his view that this was a flawed approach. He accepted that the visibility of the two central kiosks (Respondents comparisons 1 & 2) was obscured by the kiosks surrounding them. He said that if standard units and kiosks had similar areas then there should be little difference in the respective rents. He confirmed that he did not know the current rent that was being paid on Unit PN 1040196.

8. RESPONDENT’S CASE

8.1 Mr. Power described the property using photographs contained in his précis. He explained that the reason for the revision of the valuation was that the subject property had replaced a smaller previous kiosk unit and that this constituted a material change of circumstances. He confirmed that the Respondent accepted the Appellants arguments in relation to the size of the property.

8.2 Mr. Power emphasised that the requirements of s.49 required the Tribunal to ensure that the valuation of the subject property was in line with other similar properties. He confirmed that the property was valued as a retail kiosk and provided a schedule of valuation details, similar to that provided by the Appellant, of kiosk valuations within the Centre. He confirmed that PN 1040196 and PN 1040232 (put forward by the Appellant as comparisons 2 & 3) had been valued as standard retail units within the centre, not as kiosk units. He confirmed that market evidence at the time of the revaluation showed that kiosk units attracted a higher rent per square metre than standard retail units, even when both properties are of a similar size. He further noted that this evidence was now reflected in the tone of the list and that the rent currently paid on the subject property was irrelevant in assessing the NAV of the property as of 2011.

8.3 Mr. Power put forward 6 NAV comparisons as follows: -

PN	Address	Area (M²)	NAV € per M²	NAV
2164942	Kiosk Unit IJ (Ground Floor), Jervis Shopping Centre, Dublin 1	26.01	€2,800	€72,800
2164943	Kiosk Unit GH (Ground Floor), Jervis Shopping Centre, Dublin	26.01	€2,800	€72,800
1040215	Kiosk Unit K3 (Ground Floor), Jervis Shopping Centre, Dublin 1	13.93	€3,600	€50,100
1040217	Kiosk Unit K5 (Ground Floor), Jervis Shopping Centre, Dublin 1	13.93	€3,600	€50,100
2211981	Gr fl - Beside Unit 1B, Jervis Shopping Centre, Dublin 1	5.68	€4,500	€25,500
2212112	Kiosk Unit 10 (First Floor), Jervis Shopping Centre, Dublin 1	15	€3,000	€45,000

In addition, Mr. Power put forward for context purposes the details of the unit that had previously been on the site now occupied by the subject property. These were as follows: -

PN	Address	Area (M²)	NAV € per M²	NAV
1040213	Kiosk Unit K5 (Ground Floor), Jervis Shopping Centre, Dublin 1	22.11.m	€2,800	€61,900

8.4 Mr. Power contended for a valuation of €72,200, calculated as follows: -

Level	Use	Area (M²)	NAV € per M²	NAV
0	Retail Zone A	25.79	2,800	€72,212.00

8.5 In response to cross examination from Mr. Halpin, Mr. Power confirmed that it was fair and equitable to value the subject property at the same rate as PN 2164942 and PN 2164943. He confirmed that the figure of €2,800 per square metre represented the tone of the list based on the available evidence. He repeated that s.49 required him to ensure that the valuation reflected the tone of the list. He did not accept that there was any contradiction in the tone of the list despite the differing values for similar sized properties as represented by the subject property and PN 1040196, arguing that it was standard practice to value kiosks at a higher rate than standard retail units. He did not accept Mr. Halpin's point that kiosk units should be valued on a "per pitch" basis, saying that the Respondent had valued what was on the ground. He pointed out that no evidence had been put forward to suggest that kiosk occupiers had ever valued their units on a "per pitch" basis.

8.6 In response to questions from the Tribunal, Mr. Power confirmed that the previous unit on the site had been valued at €2,800 per M² but stressed that this property was no longer on the list and that he was not basing his valuation on it.

9. SUBMISSIONS

9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must 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.

10.2 This is a Revision type appeal where the Tribunal is directed to consider the relative Net Annual Value ("NAV") of the Property by reference to comparable assessments of NAV from the tone of the Valuation List only, by virtue of section 49 of The Valuation Act 2001 (as amended).

10.3 The Tribunal finds that in this appeal, and in all appeals before the Tribunal, the onus of proof rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal's determination.

10.4 The Appellants case is basically that the property is overvalued due to (a) an incorrect area being adopted by the Respondent and (b) the Respondent valuing the property as a kiosk at €2,800 per M² rather than on the basis adopted for similarly sized ground floor standard retail shops in the same shopping centre, namely €2,000 per M² on a Zone A basis. To support his position, he has pointed to the rent levels achieved by the property in 2019 and to NAV comparisons in the centre.

10.5 The Respondent has conceded point (a) above. In respect of point (b) he argues that 2019 rental levels have no relevance in this case, that there is an established tone of the list for the valuation of kiosk units within the centre, and that his valuation reflects the established tone.

10.6 The Tribunal accepts the Respondent's position that the valuation as put forward is in accordance with the tone of the list. The Tribunal further accepts that in the 2011 revaluation it was standard practice to value retail kiosks on a different basis to standard retail units. The Tribunal does not accept the Appellants argument that kiosks should be valued on a "per pitch" basis and notes that no evidence was put forward to substantiate this claim. The Tribunal does not accept the Appellants position that the 2019 rental agreement on the property can be indexed back to 2011 levels.

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 €72,200, calculated as follows: -

Level	Use	Area (M2)	NAV € per M2	NAV
0	Retail Zone A	25.79	€2,800	€72,212.00