

Appeal No: VA21/4/0101

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

**The Clontarf Assembly Rooms
Ltd**

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 688837, Restaurant at The Clontarf Assembly Rooms Ltd t/a "The Baths at Clontarf" 123A Clontarf Road, Dublin 3 ('the Property')

B E F O R E

Majella Twomey - BL

Killian O'Higgins - FSCSI, FRICS

TJ Kearns - B.Sc. (Surv), MRICS

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 2ND DAY OF OCTOBER 2023**

1. THE APPEAL

1.1 By Notice of Appeal received on the 3rd day of December, 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 €111,700.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: "*The Valuation is Incorrect.*"

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €55,500.

2. VALUATION HISTORY

2.1 On the 10th day of September, 2021 a copy of the 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 €111,700. The Respondent proceeded to issue a separate valuation certificate under section 26(4) of the Act carving out the Property from a previous valuation which included adjoining baths/swimming pool.

2.2 Following representations received on the 18th day of October 2021, on behalf of the Appellant contending for a valuation of €55,500, a Final Valuation Certificate issued on the

11th day of November, 2021 stating a valuation of €111,700, marginally reduced to €111,000 at the appeal hearing.

2.3 The date by reference to which the valuation of the property was determined is the 7th Day of April 2011

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing, held remotely, on the 8th day of March, 2023. At the hearing, the Appellant was represented by Mr. Donal O'Donoghue BSc (Hons) Estate Mgmt, DipVals, MSCSI, MRICS of OMK Property Advisors & Rating Consultants and the Respondent was represented by Ms. Ciara Marron 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 or her précis as their 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 property is situated on the north side of Dublin city at the seafront promenade, Clontarf, Dublin 3 in the section opposite the grounds of the Scoil Uí Chonaill (O'Connell Schools) GAA club which lies between Castle Avenue and Oulton Road, Clontarf.

4.3 Formerly the site of Clontarf Baths, the Property was comprehensively redeveloped to provide a large restaurant overlooking a refurbished swimming pool, opening in 2018.

4.4 The agreed floor areas are:

Description	Area Sq. M
Ground Floor Restaurant	604.32
Ground Floor Terrace	188.20
Total	792.52

4.5 The Property has no designated parking for patrons but there are approximately 30 public car parking spaces available on the road allowing access to the Property which provides accommodation for up to approximately 180 covers (diners) and has a restaurant licence for the sale of alcohol.

4.6 The title to the property is Freehold.

5. ISSUES

The issues in this appeal are the rates per square metre (psm) to be applied to the restaurant and terrace at the Property.

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. O’Donoghue is a Chartered Surveyor with 27 years’ experience in the practice of valuation and rating.

7.2 Mr. O’Donoghue agreed to send a signed Statement of Truth to the Tribunal, the Chairperson having pointed that the copy of the Précis received by the Tribunal was unsigned.

7.3 Mr. O’Donoghue corrected his Précis of Evidence to reflect agreement with the Valuation Office on the floor areas, maintaining the Ground Floor restaurant at 604.32 Sq. M but amending the Terrace from 164 Sq. M to 118.20 Sq. M. Accordingly, Mr. O’Donoghue amended his valuation from €55,552.14 to €56,300.

7.4 According to Mr. O’Donoghue the original Clontarf baths closed in the late 1990’s and planning permission for a new development was granted in 2012. The baths re-opened in 2018, following re-development by the current owners which included a new restaurant. The original rateable valuation included both restaurant and swimming baths, however a separate valuation applied to the baths/swimming pool. Accordingly, the appeal concerned only the restaurant and terrace.

7.5 Mr. O’Donoghue said the Property (restaurant and terrace) was valued on an overall basis, without zoning, and that there was a lack of ‘tone of the list’ evidence of relevance to the property. He had cast his net wide in seeking relevant comparable properties, but he acknowledged that from the dearth of information, the evidence produced was very limited and he acknowledged that the Respondent was similarly challenged.

7.6 In describing the property Mr. O’Donoghue said it was a detached single storey café/restaurant building located on the Clontarf Road, at the Clontarf Baths. There is no reserved car parking for restaurant customers however 20 to 30 spaces off the Clontarf Road, on a poor road approach to the Property, are available to the public. The restaurant is now run separately to the Baths which were challenging to operate as the insurance requirements insisted on use by a private members club only. The Baths were open five to six months per year – roughly the season was Easter to Halloween. Mr. O’Donoghue described the property and its layout by reference to a General Layout Plan and photographs contained in his précis.

7.7 Factors which, according to Mr. O’Donoghue, affected the Net Annual Value (NAV) were:

- a) Restrictions in the Planning Permission.
- b) No dedicated car parking.
- c) The Property is too big for its location, the pavilion style development was dictated by the size of the baths and the restaurant with 180 covers is rarely full. Operationally, it is excessive when compared to its competitors which were typically in much smaller premises. Mr. O’Donoghue described the Property as a ‘white elephant’ due to size, scale, configuration, and location.

- d) Albeit Mr. O'Donoghue agreed with the Respondent that the Property was appropriately valued on an overall basis, there were few comparable properties on the list which were not zoned. The Property was categorised as a retail shop in use as a restaurant. Mr. O'Donoghue stated that most retail outlets were revalued for NAV purposes using well the established In Terms of Zone A (ITZA) zoning approach.

7.8 Mr. O'Donoghue provided detail on point 7.7 a) above – in effect, he said, there were restrictive covenants imposed on an occupier in terms of the planning permission approved by An Bord Pleanála (ABP). According to Mr. O'Donoghue, the planning permission (DCC Ref 2975/11 and ABP PL9N.240131 - a copy of ABP's decision was attached to Mr. O'Donoghue's Précis) came with three onerous and restrictive conditions attached. Mr. O'Donoghue was of the opinion that there was insufficient regard given by the Commissioner of Valuation to these conditions and their impact on a hypothetical tenant's bid for the Property.

7.9 Mr. O'Donoghue provided details from ABP's decision as follows:

Condition 2 a): *"The Restaurant/Café shall be operated in conjunction with the swimming pool."*

Condition 2 b): *"the Restaurant/Café shall be operated in conjunction with the swimming pool"*

Condition 2 c): *" In the event of a prolonged closure of the swimming pool (in excess of 12 months) the restaurant / cafe bar shall cease operation, until the swimming pool has been reopened, unless otherwise agreed with the planning authority."*

Reason: *"To ensure that the restaurant / café bar remains subsidiary to the main use of the site for swimming in accordance with the recreation and open space zoning of the site."*

Mr. O'Donoghue commented that the hypothetical tenant would have to factor this risk in when considering what rent they should offer for the premises in its actual state. Mr. O'Donoghue said that there was a fundamental dependency on a third-party operator at the swimming baths, in order for the restaurant to remain open. Mr. O'Donoghue considered this position as fraught with risk for the hypothetical tenant.

Condition 4: *"The opening hours of the restaurant / café bar shall be 0800 – 2330 Monday to Sunday."*

Reason: *"In the interest of the residential amenity."*

Mr. O'Donoghue said that this condition has an impact on how the restaurant can market itself as a venue. The restrictive closing times means it all but rules out any weddings and large birthday parties as 2330 is too early for most celebrations in Ireland to end. Mr. O'Donoghue considered this a material factor for consideration by the hypothetical tenant when assessing the trading potential and therefore rental value for the Property.

Condition 8: “*Details of the operation and the maintenance of the flood defences hereby permitted, including the flood gates shall be agreed in writing with the planning authority prior to the commencement of development.*”

Reason: “In the interest of orderly development.”

Mr. O’Donoghue said that flood defences pertain to the operation and maintenance of the flood defences including the flood gates and required the agreement of a maintenance and operation programme with DCC. Mr. O’Donoghue considered this a burden which the restaurant operator must bear and would have a negative impact on any bid made for the Property by the hypothetical tenant.

In response to a query from the Tribunal, Mr. O’Donoghue said that in relation to Condition 2 c) the Property would only cease to operate if the swimming pool was closed for a period in excess of 12 months. Mr. O’Donoghue described the ‘flood gates’ as metal gates raised to avoid flooding – the occupier must pay for these and maintain them unless the occupier can succeed in imposing the liability for the obligation and cost on the swimming pool operator.

7.10 Mr. Donoghue stated that there was no dedicated parking for a large restaurant; he accepted that there was parking outside on a road which he described as very poor, and anyone can park without payment – it is unmetered free parking.

7.11 Despite the location with views across Dublin Bay, Mr. O’Donoghue said that the size of property (which he described as enormous, with 180 covers) was such that even if 60/70 seats are occupied it still feels empty – there is an issue in filling the Property with customers and the staff required for service reflected the size of the Property. Mr. O’Donoghue opined that the swimming baths and their configuration dictated the layout and size of the Property. The property is isolated and is not co-located, unlike Howth which is also a destination - the Property is not a destination. Mr. O’Donoghue said that it required many staff and had provided a list (Appendix 2 of his précis – n/a to public) which listed eleven restaurants in Clontarf most of which had NAV’s in the €20,000 to €30,000 bracket, whereas the Property was listed at €111,700.

7.12 Mr. O’Donoghue proceeded to critique the four properties considered by the Valuation Office in making the assessment for the valuation certificate: PN 500 872 – city centre restaurant in a good location; good passing custom – neither appropriate nor relevant. PN839804 – off Grafton Street, passing trade – neither appropriate nor relevant. PN2171168 – on the grounds of one of the top five most visited tourist attractions in Ireland – has some relevance subject to understanding differences. PN 799513 – formerly housed one of Dublin’s most famous restaurants, closed meantime. City centre location - entirely unsuitable to compare this restaurant with the Property

7.13 Mr. O’Donoghue contended for a valuation of €54,300

Description	Size Sq. M	NAV psm	NAV
Restaurant	604.32	€90.00	€54,388.80
Terrace	188.20*	€10.00	€ 1,882.00
			€56,270.80

Say €56,300

*As revised at the hearing

7.14 In support of his valuation Mr. O'Donoghue offered the following 'tone of the list' comparisons (details of addresses at Appendix 1 n/a to public):

Comparison 1 PN 2207716 – NAV €15,360

Description	Size Sq. M	NAV psm	NAV
Ground Floor - Retail (Shops)/Café	97.42	€120.00	€11,690.40
Terrace	305.90	€ 12.00	€ 3,670.80
Total			€15,361.20

In arriving at an appropriate NAV psm at the Property, Mr. O'Donoghue made the following adjustments to the NAV at PN 2207716 to arrive at an appropriate NAV psm for the Property:

Description	Adjustment
Size	- 10%
Risk of Pool Closing	- 10%
Flood Defences	- 5%
Total	- 25%

Following adjustment, the revised NAV psm would reflect €90psm for the Restaurant and €10.00 for the Terrace at the property.

Comparison 2 PN 2171168 – NAV €30,400

Description	Size Sq. M	NAV psm	NAV
Ground Floor - Retail (Shops)/Café	167.77	€160.00	€26,843.20
Ground Floor - Store	71.77	€ 50.00	€ 3,558.50
Total			€30,401.70

In arriving at an appropriate NAV psm at the Property, Mr. O'Donoghue made adjustments to the NAV at PN 2171168 to arrive at the following NAV's: €90 psm (restaurant) and €10 psm (terrace). Mr. O'Donoghue said that his adjustments to Comparison 2 reflected:

- it is on the grounds of Irelands fifth most visited free tourist attraction
- captive customer footfall
- destination dining venue with year-round attractions
- densely populated Dublin suburbs with 100% surrounding catchment area
- size of the Property pool and flood discounts/allowances.

Following unconfirmed levels of individual adjustments, the revised NAV psm would reflect €90psm for the Restaurant and €10.00 for the Terrace at the (Assembly Rooms) Property.

Comparison 3 PN 2180576 – NAV €14,700

Description	Size Sq. M	NAV psm	NAV
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Basement - Retail (Shops)/Café	210.08	€70.00	€14,705.60
Total			€14,705.60

In arriving at an appropriate NAV psm for the Property, Mr. O'Donoghue made adjustments to the NAV at PN 2180576 to arrive at the following NAV's: €90 psm (restaurant) and €10 psm (terrace). Mr. O'Donoghue said that his adjustments to Comparison 3 reflected:

- basement location
- lower order of value for basement
- smaller in size
- size of the Property pool and flood discounts/allowances.

Following unconfirmed levels of individual adjustments, the revised NAV psm would reflect €90psm for the Restaurant and €10.00 for the Terrace at the (Assembly Rooms) Property.

Comparison 4 PN 2173623 – NAV €22,100

Description	Size Sq. M	NAV psm	NAV
Ground Floor - Retail (Shops)/Restaurant			
Zone A	28.66	€350.00	€10,031.00
Zone B	18.97	€175.00	€ 3,319.75
Zone C	15.13	€ 87.50	€ 1,323.88
Remainder	6.84	€ 43.75	€ 299.25
Store	20.67	€ 35.00	€ 723.45
First Floor - Offices	64.66	€100.00	€ 6,466.00
Total	153.15		€22,163.33

In arriving at an appropriate NAV psm at the Property, Mr. O'Donoghue made adjustments to the NAV at PN 21173623 to arrive at the following NAV's: €90 psm (restaurant) and €10 psm (terrace). Mr. O'Donoghue said that his adjustments to Comparison 4 reflected:

- nearby competing restaurant
- seafront location
- smaller and more manageable in size (the Property is seven times larger)
- retail areas total €14,974 which equates to an average of €179.63 psm
- pool and flood discounts/allowances.

Following unconfirmed levels of individual adjustments, the revised NAV psm Mr. O'Donoghue stated would reflect €90psm for the Restaurant and €10.00 for the Terrace at the (Assembly Rooms) Property.

7.15 In response to queries from the Tribunal, Mr. O'Donoghue said that he was not aware if the restaurant had traded whilst the pool was not operating. The operator had worked to keep the baths/swimming pool open, and a party related to the occupier of the Property is the current tenant of the baths/swimming pool and associated accommodation. Mr. O'Donoghue said that if the restriction opening hours did not apply, he would increase his valuation by 10% and if the planning restrictions did not exist, he would be comfortable with a further increase of €25,000. Relative to the comparable evidence he had provided, particularly PN 2207716 in the immediate locality, Mr. O'Donoghue did not understand why the Property, which was much larger than any of the evidence supplied by the Valuation Office, was valued at the level of

€111,000 in the Respondent's evidence. Mr. O'Donoghue confirmed the location of public parking spaces and re-iterated that the Property had no reserved parking. He confirmed that his top two comparable properties provided in evidence were PN 2207716 and PN 2171168. The crucial issue was the valuation on an overall basis and the consequent dearth of comparable information as most restaurants were valued using a zoning approach.

7.16 In response to cross-examination by Ms. Marron, Mr. O'Donoghue disagreed that the property was well served by parking and accepted that public transport was available. The crucial issue from Mr. O'Donoghue's perspective is that the property is valued on an overall basis, and therefore appropriate and true comparable evidence is not available.

7.17 Mr. O'Donoghue stated that it was potentially possible that the restaurant could continue to function if the baths opened only one day a year. He also stated that the timing of the last dinner service was not the issue it was the hard stop closing at 23.30 every day. Mr. O'Donoghue rejected the proposition that the hypothetical tenant could operate without liability for the flood gates. He accepted it might be possible to transfer the liability to the pool operator in lease negotiations. Whilst accepting that the restaurant was functioning independently, Mr. O'Donoghue said that the hypothetical tenant relied on an adjoining independent occupier in order to continue operating as a restaurant.

7.18 Mr. O'Donoghue agreed that the Property had a superior fitout to PN 2207716 but said that PN 2207716 was likely a protected structure and the fit out in that context was good. He confirmed his discounts to the PN 2207716 evidence he introduced was 10% for size, 10% for pool closing risk and 5% for flood defences.

7.19 In relation to PN 2171168 Mr. O'Donoghue said that the area was densely populated whereas 50% of the catchment area at the property was the sea. The café was located at Ireland's fifth largest, non-fee-paying, attraction and the Property was a multiple of its size.

7.20 Mr. O'Donoghue accepted that there were restrictions on the hours of operation at PN 2207716 and PN 2207716 and that the attraction for these two properties was the park settings.

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8. RESPONDENT'S CASE

8.1 Ms. Marron is an experienced valuer in the Valuation Office. now Tailte Éireann.

8.2 Ms. Marron said that the Property is adjacent to two car parking areas and is located 1.1km from Clontarf, 2.3km from Fairview and 2.5km from Eastpoint Business Park, with the area well served by public transport (bus and Clontarf DART station).

8.3 Ms. Marron described the property as a seafront restaurant adjoining Clontarf Baths and that it is finished to a high standard, overlooks Dublin Bay, and has external terraced seating. Ms. Marron referenced plans and photographs in her Précis to demonstrate the external and internal appearance, layout, and parking area. Ms. Marron said that the Property was very well fitted out with a glazed area at rear overlooking the terrace and swimming pool; the restaurant was approximately oval in shape, mainly open plan, and included a separate function room. Ms. Marron agreed with Mr. O'Donoghue that there were approximately 30 car spaces and whilst not exclusively designated, she said that the car spaces were available to patrons.

8.4 Ms. Marron stated that the photographs demonstrated that there are no windows to front - it was a masonry wall - and therefore Ms. Marron had adopted an overall approach to the valuation as she did not believe that a zoning approach was appropriate in the circumstances.

8.5 The agreed floor areas were:

Description	Area Sq. M
Ground Floor Restaurant	604.32
Ground Floor Terrace	188.20
Total	792.52

8.6 Ms. Marron said that both she and Mr. O'Donoghue were giving evidence on a number of the same comparisons, but the parties were taking a different approach in analysing same. Addressing Mr. O'Donoghue's comparisons, Ms. Marron made the following observations:

Appellant Comparison 1 - PN 2207716: Comprised an old stable block which was a protected structure; there were shared toilets and external seating, and it could only operate during hours which the park in which it was situated was open. Ms. Marron pointed out that this property was now vacant, but the café now occupied a smaller, immediately adjacent property. Ms. Marron was of the view that Appellant Comparison 1 was significantly inferior as the Property was much larger, had a much better fitout and a view over Dublin Bay. Ms. Marron stated that the approach to NAV was to value the physical building, not the business.

Appellant Comparison 2 - PN 2171168: the building was inferior and the location more one for a family day out for picnics. The café operator is obliged to run a canteen for attraction staff at the location. She considered this a seasonal business and Ms. Marron believed that the restrictions on opening hours/car parking together with conditions of the Licence Agreement makes the property highly comparable to the Property.

Appellant Comparison 3 - PN 2180576: a much inferior basement with no street profile and parking provision was unknown. Traditionally lower valuation applied to basements.

Appellant Comparison 4 - PN 2173623: Detached property valued using zoning method with Zone A of 28.66 Sq. M and the Zone A valued at €350. The Property is valued significantly lower at €180 psm.

8.7 Ms. Marron said that she and Mr. O'Donoghue agreed that there was very limited evidence of comparable properties in the Rating Authority's area. Ms. Marron presented the following evidence (details of addresses at Appendix 1 n/a to public):

Respondent Comparison 1 – PN 799513:

Ms. Marron amended the total floor areas to 414.24 Sq. M.

Description	Size	NAV
Ground Floor -	189.70	€315.00
First Floor - Restaurant	169.70	€148.50
Mezzanine Restaurant	20.46	€148.50
Second Floor - Office	34.40	€100.00
Total	414.24	€91,400

The property is in Dublin 2. 6.3km from the Property. Superior location close to city centre. Valued on an overall basis. The Clontarf location was only slightly inferior, and the Property is valued at 60% of the level of this Comparison 1. Representations were received from an agent but not appealed to the Valuation Tribunal.

Comparison 2 – PN 2207716 – identical to Appellant Comparison 1

Ms. Marron amended the total floor area to 403.32 Sq. M.

Description	Size	NAV
Ground Floor - Cafe	97.42	€120
Ground Floor -	305.90	€ 12
Total	403.32	€15,360

Located 3km from the Property. Coffee within a park with restricted opening hours. Toilet maintained by occupier but shared with visitors to the park. Also inferior to the Property in terms of quality of finish, profile, and sea views. No representations received. This evidence has been used to assess the €12 psm for the Terrace at the Property.

Comparison 3 PN 2171168 – Identical to Appellant Comparison 2

Ms. Marron amended the total floor area to 238.94 Sq. M

Description	Size	NAV
Ground Floor -	167.77	€160.00
Ground Floor - Store	71.17	€ 50.00
Total	238.94	€30,400

Situated 5.1 km from the property. Restricted opening and closing times. No profile and no street frontage. Restrictive licence. The Property is superior with a profile location. Finished to high standard, close to Fairview and Clontarf, overlooking Dublin Bay. Representations received and valuation reduced from €61,200 to €30,400.

Comparison 4 PN 5021113

Ms. Marron amended the total floor area to 275.28 Sq. M

Description	Size	NAV
Ground Floor - Cafe	164.32	€150
Ground Floor - Shop	110.96	€150
Total	275.28	€41,200

Situated 5.1km from the Property. Destination location operating under licence 0900 to 1800, Monday to Sunday. The Property is superior in term of quality and location and would be classified as a destination location. The valuation was appealed to the Valuation Tribunal.

8.8 Ms. Marron provided the following summary of comparative evidence submitted on behalf of the Respondent:

Property No	NAV psm	NAV
PN - 799513	€315	€91,400
PN - 2207716	€120	€15,360
PN - 2171168	€160	€30,400
PN - 5021113	€150	€41,200

8.9 Ms. Marron contended for the valuation as follows:

Level	Use	Area	NAV psm	NAV
Ground Floor	Restaurant	604.32	€180.00	€108,777.60
Ground Floor	Terrace	188.20	€ 12.00	€ 2,258.40
			NAV Rounded	€111,000

8.10 In response to queries from the Tribunal Ms. Marron stated that she was unaware of any planning restrictions at Comparison 2 - PN 2207716 and stated that opening times were 0900 to 1800 but restricted to closing at 1500 in winter. The business has since closed and moved to smaller premises inside the gate to the park. Ms. Marron considered the comparison still relevant because the vacant property is still valued on the list. There was no letting sign on the property. Ms. Marron had no previous experience of one occupier having control over another occupier's business. Ms. Marron said it was a unique and quite a large premises – she admitted that whilst there was a possibility that while the swimming pool could have issues for the hypothetical tenant, the pool is open and has not closed. There is a relationship between the two properties, but both were separate properties.

8.11 In response to further questions from the Tribunal, Ms. Marron accepted that there was a difference between restaurants and cafés, and acknowledged that, apart from Comparison 1 - PN 799513, her comparative evidence represented cafés only. In relation to the restricted closing of 2330, Ms. Marron maintained that much of her comparative evidence has earlier restricted closing hours. Disregarding licencing law restrictions, Ms. Marron could not offer any evidence of another restaurant with restricted closing hours incorporated into a planning permission. Ms. Marron pointed to the function room but accepted that the 2330 restriction applied to any part of the Property, including the function room.

8.12 In response to a question from the Tribunal on the level of quantum reduction applied for size given the mainly significantly smaller floor areas of her comparative evidence, Ms. Marron could not provide an indication and accepted that it was possible that she did not allow adequately for quantum, in the context of the comparative evidence offered. Ms. Marron also accepted the principle that where large property was compared to a much smaller property, a quantum reduction would be appropriate for the larger property.

8.13 Ms. Marron accepted that her Respondent Comparison 1 – PN 799513 had a large unrestricted catchment radius of at least 1km and that 50% of the Property's catchment area was in the sea at Dublin Bay. Ms. Marron also accepted that this comparison in the city centre was a much more accessible location however, Ms. Marron said that Clontarf was only 10 mins from Abbey St. Lower, by bus. Ms. Marron maintained that her Respondent Comparison 1 was relevant, particularly as it was an overall valuation – not zoned. Ms. Marron accepted that the comparison fronted Baggot Street Lower although the building was set back behind the courtyard which adjoined the street. In relation to the value of the terrace, according to Ms. Marron, the only evidence was the €12 psm at the common comparison PN 2207716 (Respondent Comparison 2 and Appellant Comparison 1).

8.14 In response to a request to identify her top two comparisons, Ms. Marron stated that all her comparative evidence was relevant, pointing out that Respondent Comparison 3 - PN 2171168 and Respondent Comparison 4 - PN 5021113 were valued at €160 psm and €150 psm, respectively. The most modern was Respondent Comparison 4 - PN 5021113. Ms. Marron stated that she had tried to be fair and informative and accepted that evidence offered is open to different interpretations.

8.15 In cross examination, Mr. O'Donoghue asked if the Valuation Office was aware of the planning factors prior to his representations. Ms. Marron said that she was aware of this factor as the development was the subject of various public commentary, accordingly Mr. O'Donoghue's representations did not bring any current information – the Valuation Certificate at €111,700 was identical to the Draft Valuation Certificate. Ms. Marron was not aware if Respondent Comparison 1 – PN 799513 was a protected structure and accepted it was formerly the location of a very well-known Dublin restaurant.

9. Closing Argument

9.1 Summing up and concluding, Mr. O'Donoghue offered his view that the Property was overvalued due to its size, commercial isolation, and planning restrictions. He requested the Tribunal to affirm his valuation of €56,300.

9.2 Summing up and concluding, Ms. Marron said that the Property is in use as a high-end restaurant. The developer/owner was aware of restrictions and proceeded with the development. She believed that Mr. O'Donoghue was placing too much emphasis on planning restrictions and his approach undervalues the building and does not adequately reflect the building's excellent location within easy access of Fairview, Clontarf, and the city centre. Ms. Marron maintained that the private function room is one of the best on the north side of the city. Whilst Ms. Marron accepted that there was no directly comparable property offered in evidence she maintained that all the Valuation Office comparisons were relevant. Based on the comparisons submitted ranging from a Nav of €120 psm to €315 psm Ms. Marron believed that adequate discounts had been made in arriving at a NAV of €180 psm. Ms. Marron requested that her valuation of €111,000 be affirmed by the Tribunal.

10. SUBMISSIONS

10.1 There were no legal submissions

11. FINDINGS AND CONCLUSIONS

11.1 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 Dublin City Council.

11.2 Both parties accepted that there was a very limited pool of comparable information available on the Dublin City Council Valuation List, demonstrated by the fact that the parties used two of the same properties as comparative evidence albeit with different interpretations.

11.3 The Tribunal finds that the evidence presented is not just limited in terms of availability, but it also offers limited assistance to the Tribunal in arriving at a reasoned approach in the application of appropriate discount to support the NAV's presented, as the Property is different in terms of size and specification to the evidence of comparable properties provided.

11.4 The Tribunal accepts the Appellant's submission that the restrictions within the planning permission (previously outlined) are both an operational and financial burden that any hypothetical tenant must consider carefully. Of particular concern and importance is the obligation to operate and maintain the flood defences in a district that has ongoing challenges with flooding.

11.5 Given the unique nature of the Property, the Respondent could not identify any restaurant in the Dublin City Council Valuation List similarly affected. In circumstances where two similar properties were on offer to a hypothetical tenant, one with the restrictions, one without, it is reasonable to expect that the hypothetical tenant would pay less for the premises with restrictions.

11.6 Turning to the comparisons introduced by the Appellant the Tribunal considered them as follows:

Appellant Comparison 1 - PN 2207716: This is situated in the locality of the Property. It is a Café as opposed to a full-service restaurant. There is no night-time trade, and the catchment area is restricted by the sea at Dublin Bay. The size of the café exclusive of external seating is approximately 16% of that of the Restaurant at the Property and the NAV at €15,360 is 13.75% of the €111,700 in the Final Certificate issued for the Property. It is a destination location within a public park and is subject to opening and closing restrictions aligned with restrictions on public access to the park. The Tribunal finds that this comparison is considered to be of limited assistance to the Tribunal given its size relative to the Property. However, it provides the only evidence offered in relation to the NAV psm for the terrace.

Appellant Comparison 2 – PN 2171168: This is Approximately 5km distant from the Property. It is a Café as opposed to full-service restaurant. There is no night-time trade. The size of the café (exclusive of the store area) is approximately 28% of that of the Restaurant at

the Property and the NAV at €30,400 is 27.23% of the €111,700 in the Final Certificate issued for the Property. There is no external seating or terrace.

Appellant Comparison 3 – PN 2180576: This is in the locality of the Property. It is a full-service restaurant with night-time trade. The catchment area is restricted by sea at Dublin Bay. The size of this basement café is 35% of that of the Restaurant at the Property and the NAV at €14,700 is 13.16% of the €111,700 in the Final Certificate issued for the Property. Given its size relative to the Property, location at basement level, the weight which the Tribunal attaches to this comparison is limited. However, it sets the lowest level of NAV for a property considered to be much inferior to the Property.

Appellant Comparison 4 – PN 2173623: This is near the Property – a competing full-service small restaurant valued on a zoned basis. The total floor area is 154.93 Sq. M (not 168.99 Sq. M) of which the size of the ground floor restaurant (exclusive of ground floor stores and first floor offices) is 69.60 Sq. M (not 83.36 Sq. M). This is 11.50% the size of that of the Restaurant at the Property and the NAV at €22,100 is 19.78% of the €111,700 in the Final Certificate issued for the Property. Given its size relative to the Property and the zoning approach in calculating NAV the Tribunal does not attach significant weight to this comparison.

11.7 Turning to the comparisons introduced by the Respondent, the Tribunal considered Respondent's comparisons as follows:

Respondent Comparison 1 – PN 799513: This is approximately 6km distant from the Property in the heart of the city at Dublin 2. This was formerly the location of a very well-known full-service restaurant. The location attracts significant lunchtime and night-time trade. There is no impediment to catchment area. There is no external seating and terrace. This is a major office location and an area close to hotels and national visitor attractions for many visitors and tourists. The size of the restaurant (exclusive of the office area) is 379.86 Sq. M approximately 63% of that of the Restaurant at the Property and the NAV at €91,400 is 81.82% of the €111,700 in the Final Certificate issued for the Property. Although ostensibly introduced to provide a comparison of a restaurant valued on an overall basis, the Tribunal considers it not comparable to the Property given its location in Dublin City Centre.

Respondent Comparison 2 – PN 2207716: This is a common comparison; the Tribunal has commented on this property at Appellant Comparison 1 above.

Respondent Comparison 3 – PN 2171168: This is common comparison; the Tribunal has commented on this property at Appellant Comparison 2 above.

Respondent Comparison 4 – PN 5021113: This is approximately 6km distant from the property. This is a Café as opposed to full-service restaurant. There is no night-time trade. The size of the café (exclusive of the shop area) is approximately 27% of that of the Restaurant at the Property and the NAV at €24,648 (café only) is 22.07% of the €111,700 in the Final Certificate issued for the Property. The Tribunal is aware that there is external seating, but it does not appear to be rated. This is a destination location and subject to opening and closing restrictions aligned with restrictions on public access to the facility. While there are some similarities to the Property, there are also significant differences such as the location, size, and the fact that there is no night-time trade. This comparison is, therefore, only considered to be of limited assistance to the Tribunal.

11.8 The summary of evidence offered by both parties is outlined in Appendix 2 (n/a to public). The percentages indicated in column 1 indicate the relativity of the comparisons in terms of size and level of NAV compared to the Property.

The average size of Appellant's comparisons for size relative to the Property is 22.62% and the NAV relative to the Property 18.46%

The average size of Respondent's comparisons for size (excluding Comparison 1) relative to the Property is 23.66% and the NAV relative to the Property 20.93%. The Tribunal considers the Respondent Comparison 1 is not comparable to the Property.

11.9 The low relativity of both size and NAV, compared to the Property and introduced in evidence by both parties affirms the comments on the challenges the parties had in securing appropriate evidence. Ms. Marron stated in evidence that she might not have adequately reflected quantum in assessing the NAV at the Property. Given the evidence outlined above where comparisons average in size approximately 25% of the Property and NAV approximately 20%, the Tribunal finds that a quantum reduction is appropriate and considers the appropriate level is 10%. The methodology for this reduction is set out in the following paragraphs.

11.10 The Tribunal accepts Mr. O'Donoghue's argument that there are unusual restrictions or potential negative impacts on the ability of an occupier to trade as a restaurant – namely the three conditions imposed in the planning application relative to (a) the obligation to close at 2330 which the Tribunal views as a serious impediment to trade, (b) the need to ensure that the baths/swimming pool continue to operate to ensure that Restaurant can continue to trade, and (c) need to ensure flood defences are operated and maintained. Whilst the Tribunal accepts the argument by Ms. Marron that the obligations to ensure the pool continues to operate and the maintenance of flood defences might possibly be imposed on a tenant of the baths/swimming pool, the ultimate liability will always be a risk to the restaurant operator. Accordingly, the Tribunal finds that an appropriate additional allowance overall is -7.5% for these factors or individually -2.5% for the pool operator risk and -5% for the flood defence operation/maintenance liability risk.

11.11 Mr. O'Donoghue has accepted a level of €120 psm as a base rent, before allowances in his calculations at Appellant Comparison 1 and similarly a base rent before allowances for Appellant Comparison 2 of €160 psm (average €140 psm) before allowances which, when applied reduced the NAV to Mr. O'Donoghue contended for a rate of €90 psm for the restaurant area. Ms. Marron assessed an NAV for the Property at €180 psm but included Respondent Comparison 1 with an NAV of €315 psm which the Tribunal considers not to be comparable to the Property for reasons outlined above. The remaining comparisons are all much smaller destination cafés with no night trade. The average NAV of these three cafés in evidence from Ms. Marron was €143.33 psm. In the circumstances the Tribunal considers a base level of €140 before allowances as an appropriate level.

11.12 However, the property is significantly better premises and better fitted out than the cafés which were put forward in evidence. The Tribunal considers it, therefore, appropriate to apply a + 10% allowance to reflect this point whilst noting that restaurants are often let on a shell basis with the tenant paying for the fitout.

Accordingly, the Tribunal's approach in reaching a NAV psm for the Ground floor restaurant is:

Description	Allowance	NAV psm
Ground Floor Restaurant		€140.00
Allowance for better fitout/premises	+ 10.00%	€ 14.00
Subtotal		€154.00
Allowance Quantum	- 10.00%	€(15.40)
Subtotal		€138.60
Allowance for pool /flood defences	- 7.50%	€(10.40)
Total		€128.20

Say €128.00 psm

The only evidence presented in relation to a NAV for a terrace or seating area, was the seating area at common comparison PN 2207716 which was €12 psm. Although Mr. O'Donoghue argued for €10 psm, no evidence was provided to support this contention. Accordingly, the Tribunal accepts the evidence of Ms. Marron in relation to the terrace NAV of €12 psm.

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 **€79,600**.

Level	Use	Area	NAV psm	NAV
Ground Floor	Restaurant	604.32	€128.00	€77,352.96
Ground Floor	Terrace	188.20	€ 12.00	€ 2,258.40
Total			NAV	€79,611.36
NAV Rounded				€79.600