

Appeal No: VA17/5/774

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

Glenn Cran & David Potter

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2145197, Office at Unit 8 Floor 3 Block 8 & 9, St Johns House, High Street, Tallaght Retail Centre, Tallaght, County Dublin.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF OCTOBER, 2024**

BEFORE

Barra McCabe – BL, MRICS, MSCSI

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 12th day of October, 2017, 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 €120,300.

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:

“The Valuation Office have allocated/demised 16 car spaces to the property. There are no car spaces demised to the property.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €114,785.

2. RE-VALUATION HISTORY

2.1 On the 13th day of April 2017, 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 €135,700.

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 €120,300.

2.3 A Final Valuation Certificate issued on the 07th day of September 2017, stating a valuation of €120,300.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is 30th day of October 2015.

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 Location: There was no dispute between the parties as to the location of the property at Unit 8, Floor 3, Block 8 and 9 St. John’s House, Tallaght Retail Centre, High Street, Tallaght, Dublin 24.

4.3 The property comprises open offices located within the third floor of a three storey office building over ground floor retail.

4.4 Areas: The property extends to 1,043.5 sq m.

4.5 NAV of the office space: There is no dispute as to the NAV of the office space. The parties to the appeal are agreed that the appropriate NAV of the office space is €110 per sq m, which equates to €114.785.00.

4.6. Comparators: As the rate per sq.m. to be adopted was not in dispute, neither party introduced comparators.

5. ISSUES

5.1 The sole issue in dispute is whether the Respondent should include car spaces when calculating the NAV of the subject property.

5.2 The Appellant claims that the Respondent should not have included any car spaces in the calculation of the NAV.

5.3 There is no dispute in relation to the value of €350 applied per car space.

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 Appellant’s case was that there were no car parking spaces allocated/demised to the subject property. They adduced a plan showing the location of the designated car spaces for the entire office block and submitted that there were thirty two (32) car parking spaces, the entirety of which were designated to other tenants within St. John’s House. The Appellant also adduced a plan of the entire of Tallaght Retail Centre showing the location of St. John’s House and 427 multi-storey car parking spaces located within Tallaght Retail Centre. They also explained the ownership structure of 200 on street spaces and the 427 multi-storey car spaces, as being part of a private limited company called Tallaght Retail Centre Management Limited (TRCML), which comprised owners of the various blocks within Tallaght Retail Centre. The Appellant submitted that the landlord of St. John’s House had acquired blocks of car parking spaces in the multi-storey car park by way of an annual licence for other tenants in St. John’s House, but that the Appellant held no such car spaces on this basis. Finally, the Appellant adduced a letter from the managing agents for Tallaght Retail Centre, dated 20th September 2017, stating that no spaces were allocated to the subject property in the multi-storey car park.

8. RESPONDENT’S CASE

8.1 The Respondent submits that the onus of proof is on the Appellant and that insufficient evidence has been provided to prove that there are no car spaces assigned to the subject property. In addition, the Respondent has valued the property in accordance with Section 48 of the Valuation Act, 2001, as amended.

8.2 The Respondent adduced photographs of surface car spaces to the rear and side of St. John’s House and the adjacent building, which the Tribunal understands to be a stand-alone retail warehouse formerly occupied by Smyth’s Toys. One of the photograph’s shows a surface car space located at the side of St. John’s House, with the number ‘42’ stencilled on the ground. The aerial photographs taken of St. John’s House and the adjacent (former Smyth’s Toys) building includes boxes and arrows, which indicate that there are forty-four surface car spaces located to the side and rear of these two buildings. One of these photographs also indicate that

the forty-four car spaces are managed by a different company to the rest of Tallaght Retail Centre. The Respondent also adduced a copy of the landlord's letting brochure as evidence that the car spaces associated with St. John's House were "designated parking" and not "Permit Parking".

8.3 The Respondent contends that because there is no formal lease in place between the parties, it is difficult to define the exact number of spaces assigned to the subject property. They also refer to the section 46 submission of the adjacent occupier on the third floor, which indicates that that occupier has five car spaces assigned to their office space, a copy of which was not included in the Respondent's précis. Further to making enquiries into a schedule of car spaces, which the Respondent felt might clarify matters or form the basis of a settlement agreement between the parties, the Appellant confirmed in writing that the information would not be available from the managing agents for the St. John's House until after the Respondent was due to deliver their précis.

8.4 In their précis, the Respondent included an email dated 10 July 2018 from Eoin O'Toole of Quinn Agnew for the Appellant, issued to Ian Power of the Valuation Office, informing Mr Power that HWBC, managing agents for the Landlord, had informed Mr O'Toole that the person responsible for the subject property within HWBC was gone on annual leave and that it would be after 20 July 2018, before Mr O'Toole would be able to obtain a car park schedule. To the Tribunal's knowledge no further correspondence was issued by either party thereafter. On the 27 July 2020, the Valuation Tribunal followed up with Mr O'Toole requesting evidence from the Appellant in relation to the car parking situation at the subject property. Mr O'Toole responded almost four months later on the 17th of November 2020, requesting a further extension until December 19th 2020 in which to provide the supplemental information requested by the Valuation Tribunal. A further extension was granted to obtain the tenant / car park schedule but nothing further was received by the Tribunal.

9. FINDINGS AND CONCLUSIONS

9.1 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.

9.2 The Appellant provided a letter from the managing agents for Tallaght Retail Centre confirming they held no car spaces under licence from the owners of the 427 multi-storey car spaces. The Tribunal finds therefore that the Appellant holds no car spaces under licence from the owners of Tallaght Retail Centre.

9.3 The Appellant provided a schedule at page 6 of its précis that indicates the full thirty-two car spaces owned by the Landlord of St. John's House have already been allocated to other tenant's in the building . Subsequently, the Tribunal made a request that the managing agent's car park schedule for St. John's House be submitted, but this was not provided.

9.4 The Respondent provided compelling evidence that there are forty-four car spaces located to the rear of St. John's House and the adjacent retail warehouse, formerly occupied by Smyth's Toys, and that these spaces are managed by a different car park management company to that of the on street and multi-storey car spaces in Tallaght Retail Centre. It is the view of the Tribunal however, that the Respondent has not provided any evidence that all forty-four car spaces are designated to St. John's House only. In addition, no evidence was provided by the Respondent on which to base their opinion that sixteen car spaces were allocated to the Appellant.

9.5 The Tribunal accepts the Respondent's contention that where there is no formal lease or documentary evidence in place detailing the terms of occupation, it is difficult to ascertain the amount of car spaces if any assigned to the Appellant. While a copy of same was not provided to the Tribunal, the Respondent stated that the section 46 submission of the adjacent occupier on the third floor of the same property indicated that five car spaces were assigned to that office space. No further explanation was provided by the Respondent in relation to these five car spaces, and with access to a further 427 multi-storey car spaces in Tallaght Retail Centre, the Tribunal finds it feasible that the five car spaces could be held under separate licence. Beyond this, the Tribunal fails to understand based on what evidence the Respondent came to its opinion that the number of car spaces allocated to the subject property was sixteen.

9.6 The Tribunal is aware that in these appeals the burden of proof lies with the Appellant to provide the necessary evidence. However, this burden of proof does not give the Respondent

a licence to effectively guess how many car spaces an occupier may have demised to them. In circumstances where the only piece of evidence provided showing the allocation of demised car spaces is the schedule provided by the Appellant's expert witness, the only conclusion that the Tribunal can come to is that there are no car spaces assigned to the Property.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal, and decreases the valuation of the Property to €114,785.

Use	Area (sq.m)	€/per sq.m	NAV
Offices	1043.50	€110.00	€114,785.00
		TOTAL NAV	€114,785.00

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.