

Appeal No: VA23/5/0483

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

**SB VENTURES NUT LIMITED
T/A STARBUCKS**

APPELLANT

and

**COMMISSIONER OF
VALUATION**

RESPONDENT

In relation to the valuation of

Property No. 2202222, Retail (Shops) at Unit F1, Nutgrove Shopping Centre, Rathfarnam,
County Dublin.

B E F O R E

Dairine Mac Fadden - Solicitor

Deputy Chairperson

Allen Morgan - FSCSI, FRICS

Member

Brian Meldon - FSCSI, FRICS, Reg Val, Arb

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF OCTOBER, 2024**

1. THE APPEAL

1.1 By Notice of Appeal received on the 12th day of October 2023 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 €80,800.

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: "*(a) The Valuation is Incorrect. (b) Details stated in the relevant Valuation List are incorrect. Without Prejudice" - The proposed valuation is considered to be excessive and inequitable having regard to market dynamics and transactions, the location, quality and physical circumstances of the subject property, title and relativity to other properties. Opinion of value is based on current available information. Property is listed as a kiosk as opposed to a retail unit.*"

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €40,400.

2. REVALUATION HISTORY

2.1 On the 23rd day of September 2022 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 €40,000.

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, it was noted that Starbucks were now occupying two kiosk units within the centre, so an amalgamation took place. Subject property 2202222 (initial Valuation €40,000 – incorrectly zoned) and PN 2202220 (initial valuation €24,800 – valued as kiosk) were amalgamated. Both units amalgamated and valued as a kiosk unit. The valuation was increased to €80,800.

2.3 A Final Valuation Certificate issued on the 15th day of September 2023 stating a valuation of €80,800.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 1st day of February 2022.

3. THE HEARING

3.1 The Appeal proceeded by way of a remote hearing held from the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 26th day of June, 2024. At the hearing the Appellant was represented by Ms. Pauline Madden BSc (Surv) and the Respondent was represented by Triona McPartlan B.Sc., MSCSI, MRICS 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 her précis as her 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 subject property is located on the ground floor of Nutgrove Shopping Centre. Nutgrove Shopping Centre is located at the junction of Nutgrove Avenue and Nutgrove Way.

The parties agree that the property extends to a net internal area of 56.92 sq. m. at ground floor level.

That the property is held subject to a lease for a term of 20 years from the 1st August 2012 on full repairing and insuring terms subject to the rent set out in Appendix A (N/A to public).

5. ISSUES

The parties disagree based on valuation citing their analysis of comparators listed within the centre.

The Appellant's opinion of value is based on a Zone A NAV rate per sq.m. of €1,000, resulting in a total NAV (rounded) of €56,900.

The Respondent's opinion of value at the hearing is based on a NAV rate per sq.m. of €1,400 resulting in a total NAV of €79,688 less a 10% reduction for quantum totaling €71,720 rounded to €71,700.

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 considered 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 presented by Ms. Pauline Madden BSc (Surv).

7.2 Ms. Madden opened her case by describing the general location of Nutgrove shopping centre, seeing it in her view as a neighborhood centre in contrast to Dundrum Town Centre, a far larger centre, which she described as being the main competitor in the locality. She stated that the subject unit was hidden behind other units and was not directly visible to a customer to the centre travelling to either Dunnes or Tesco, the main anchor tenants. She pointed out that the unit shared a communal seating area in front of it with other users and had no designated toilet facilities.

7.3 Under the heading of “Market Rental Evidence” Ms. Madden listed seven comparables in support of her opinion of rental value. In addition to this she included a Tone of the List schedule of fifteen rents to demonstrate the level pertaining to smaller kiosk units. See Appendix B (N/A to public).

7.4 Ms. Madden stated that the subject property should be valued on a Zone A basis at the rate of €1,000/sq.m, resulting in a NAV of €56,900 which she stated was her opinion of value.

7.5 Under cross examination Ms Madden was asked to comment on the current rent reserved as opposed to her valuation of €56,900. Ms Madden replied that at the review in 2022 the rent had been left unchanged by agreement between both parties without engaging third parties. She did not know why the level wasn't tested. Ms. Madden was asked why she had not included the neighbouring unit Quigleys, which was basically an identical unit. Ms. Madden replied that she understood it had gone to representations stage and that the tone of the list was still emerging.

7.6 The Tribunal asked Ms. Madden to identify what she would consider to be the top three of her comparators which had influenced her opinion in order of their importance. She listed the following three - Vodafone, Subway and Fixi's. She observed that the Zone A areas of these were smaller than the subject and valued as retail units with an NAV of €1000/sq.m. She stated that Fixi's appeared to have been entered twice in her schedule comparisons with the same Eircode but with two different property numbers and two different valuations, one based on the kiosk rate and the other as Zone A.

7.7 The Tribunal asked Ms. Madden if she could clarify the difference in terms of definition as between a kiosk and retail unit. She was of the view that kiosks were much smaller but was unable to find a definition in the Chartered Surveyor's guidance notes. The Tribunal directed a query to Ms. McPartland, the respondent, to clarify if the common seating area was paid for by all the center's tenants as part of the overall service charge. She understood that it was.

8. RESPONDENT'S CASE

8.1 Ms. McPartland, for the Respondent, then adopted her precis and summarized her evidence which was largely similar as the Appellant's in terms of location, description of the centre and unit. She disagreed that the subject unit was disadvantaged visually and noted it was at the heart of the centre. Ms. McPartland then addressed her comments to the Appellant's comparative evidence.

8.2 She noted that the first five of Ms. Madden's rental evidence comparisons were not comparable as they were not kiosk units. She made the same comment in relation to the final two comparisons, adding that they were vacant.

8.3 In relation to Ms. Madden's Tone of the List comparisons, Ms. McPartland prefaced her remarks by saying in relation to Ms. Madden's citing of anomalies in Eircodes that they were not the responsibility of Tailte Eireann and were not relied on, especially in shopping centres.

8.4 Ms. McPartland noted that Ms. Madden's Tone of the List comparisons 1,2,4,5 6 ,7, 9 10, 11,12,14 and 15 were kiosk units and were valued at the same rate per square metre as the subject property. Her comments in relation to units 3,8 and 13 were that the units did not compare as they were retail units whereas the subject was a kiosk unit. She commented that Ms. Madden did not adduce Quigley's (Units F3,F4,F5) in her evidence. Ms. McPartland regarded Quigley's as the most relevant comparison as it adjoined and had similar characteristics to the subject. It was valued as a kiosk and did not appeal to the Valuation Tribunal. Similarly, none of Ms. Madden's other

mix of 23 rental and Tone of the List evidence were appealed. Ms. McPartland concluded by stating it was not appropriate to zone an amalgamation of two units as it still had all the characteristics of a kiosk.

8.5 In support of her own opinion as to rental value, Ms. McPartland adduced two key rental transactions and three NAV comparisons. See Appendix C (N/A to public). These were of varying sq.m. areas, all with a NAV per sq.m. of €1,400 and close to the subject. She took over the case at appeals stage and formed the view that the valuation was high in relation to the size of the kiosk. After taking a “stand back and look approach” she decided that a quantum allowance of 10% was appropriate to account for the size of the kiosk and that a valuation of €71,700 should be entered on the valuation list.

8.6 When invited to cross examine the witness, Ms Madden asked McPartland to define the characteristics of a kiosk. Ms. McPartland answered that she attempted to research a definition also but had not found one. In her view any unit that did not form part of the mall could be regarded as a kiosk. Ms. Madden pointed to Buena Ice Cream which was valued on a zoned basis. Ms. McPartland stated that this was the valuer’s decision at the time and that it formed more of a block of units. Ms. Madden pointed to the fact that the subject was also in a block. Ms. McPartland’s reply was that it faced onto the seating area and was an amalgamation of kiosks and was therefore a kiosk. Ms Madden then cited the Subway unit, which was smaller, located opposite the seating area and was zoned. Ms. McPartland replied that it was joined on to Specsavers which was a standard unit and was therefore in a parade of shops. The parties then discussed and differed on the visibility of the unit relative to where it was approached from.

8.7 Turning to Ms McPartland’s key rental transactions, Ms. Madden pointed to Instant Solutions which she described as dated. Ms. McPartland disagreed and said they had to use what was available. Ms. Madden made the same comment regarding the next comparison Perfect Fit for You, to which Ms. McPartland considered VO to have been more than fair.

8.8 In relation to the NAV Comparisons. The parties had already discussed Quigleys. Seating was mentioned in relation to Natural Bakery, which was described as temporary by Ms. McPartland.

8.9 The Tribunal then sought clarification in relation to the Natural Bakery and unclear map references, clarification of which was provided.

8.10 The matter of the definition of a kiosk was then revisited in terms of what characteristics were specific. The Respondent was unable to provide a firm definition.

8.11 When asked why she chose a 10% quantum reduction on the subject she replied that it was the largest kiosk unit within the centre and in her judgement that was a fair allowance.

8.12 When asked what her three main comparisons were to influence her decision as to value, she stated Quigleys, being identical in every sense, Bus Stop and Natural Bakery.

8.13 The Tribunal requested that the parties agree their comparative evidence and provide it in summary format for ease of reference. The Tribunal addressed the definition of a kiosk again

asking if it was common between the parties that there was a size threshold wherein a kiosk fitted being too small to zone and at what larger size it might be then regarded as a unit.

8.14 The Respondent did not consider it a matter of size but more a different characteristic issue and different centres might have larger kiosk sizes. She didn't think it appropriate to zone a kiosk.

8.15 Ms. Madden stated that this was one of the main issues and reiterated her point that the problem was there was such a wide range of kiosk sizes ranging from 8.5 sq.ms. to 35.5 sq.ms. and the subject was much bigger. And yet there were smaller units that had been zoned such as Subway.

8.16 Ms. Madden summarized her case by reiterating that there was no definition of a kiosk and that her kiosk comparisons were all smaller than the subject property. Also, that the rent from 2022 currently on the subject unit was agreed directly with the landlord and therefore was not an open market rent as it was not tested on the market. It should not be used therefore by Tailte as a benchmark.

8.17 Ms. McPartland summarized her case by mentioning the Quigleys unit as per section 19.5 of the Valuation Act using equity and uniformity had been valued similarly. It is also similarly circumstanced in every way. Regarding the subject property, the rent which was being paid should be considered. In this regard a rent review could have been triggered in either 2017 or 2023 if either party had felt it was too high or too low.

The hearing concluded.

9. LEGAL 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 Appellant in support of her opinion of value presented rental evidence of three lettings and four units available for rental. The Tribunal does not consider properties available to rent as Market Rental Evidence and does not regard them to be of assistance. The three lettings, Trespass, Specsavers and Lipstick comprise of what are described as mall units and are larger or considerably larger than the subject unit. These are also therefore of little assistance to the Tribunal.

10.3 Of the Appellant's fifteen units of the list comparisons the majority are smaller or considerably smaller than the subject. However, the Tribunal are assisted to a limited degree by comparison

numbers 10 (Bus Stop), 13 (Vodafone), 14 (Subway) and 15 (Buena Ice Cream), all of which are in close proximity to the subject with differing degrees of visibility.

10.4 When asked to state the three pieces of evidence which most influenced her opinion of value, the Appellant cited Vodafone, Subway and Fixez.

10.5 The Respondent adduced five comparisons, two described as Key Rental Transactions and three NAV Comparisons.

10.6 As the rental transactions are considerably smaller than the subject, the Tribunal considers them of little assistance.

10.7 The Tribunal finds the Respondent's NAV comparisons to be of assistance as they are in close proximity to the subject and in the case of Quigley's, that adjoins the subject and is most similar in size, orientation and availing of common area seating.

10.8 All three have an NAV of €1,400.

The Tribunal finds therefore having regard to the foregoing that the Appellant has not on the balance of probabilities discharged the onus of proof to show that the valuation level of €1,400/sq.m applied by the Respondent is incorrect.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal does not allow the appeal and decreases the valuation of the Property as stated in the valuation certificate to €71,700.

$56.92 \times 1400 = €79,688 - 10\% = €71,719.20$ Say €71,700.

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.