

**Appeal No: VA23/5/0963**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**HALLSPACE LIMITED**

**APPELLANT**

**and**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 1158199, City Centre Car Park, Fairgreen Road, Galway ('the Property').

**B E F O R E**

**Mr Eoin McDermott – FSCSI, FRICS  
Ms Annamaria Gallivan – FRICS, FSCSI, MPhil SEE  
Ms Fiona McLafferty – Solicitor**

**Deputy Chairperson  
Member  
Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 11<sup>TH</sup> DAY OF FEBRUARY, 2025**

**1. THE APPEAL**

- 1.1 By Notice of Appeal received on 17<sup>th</sup> October 2023 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ('NAV') of the above relevant Property was fixed in the sum of €363,000.
- 1.2 The ground of appeal 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 Valuation Act 2001 (as amended) because "*The valuation is excessive having regard to the actual trade and profitability of this car park and having regard to the assessments of comparable properties on the valuation list.*"

- 1.3 In the Notice of Appeal, the Appellant considers the NAV of the Property ought to have been determined in the sum of €168,000.

## **2. REVALUATION HISTORY**

- 2.1 On 13<sup>th</sup> April 2023 a copy of the Valuation Certificate proposed to be issued pursuant to section 24(1) of the Valuation Act 2001 (as amended) in relation to the Property was sent to the Appellant indicating a valuation of €615,000.
- 2.2 Being dissatisfied with the valuation proposed, representations were made by the Appellant in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €363,000.
- 2.3 A final Valuation Certificate issued on 15<sup>th</sup> September 2023 stating a valuation of €363,000.
- 2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is 1<sup>st</sup> February 2022 ('the valuation date').

## **3. THE HEARING**

- 3.1 The Appeal proceeded by way of an oral hearing held remotely on 18<sup>th</sup> July 2024. At the hearing the Appellant was represented by Mr Michael Doyle MSCSI MRICS of Bagnall Doyle MacMahon, and the Respondent was represented by Mr Alan Sweeney MSCSI MRICS Dip Rating, of Tailte Éireann.
- 3.2 In accordance with the Rules of the Tribunal, the parties 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 made an affirmation, adopted their précis as their evidence-in-chief in addition to giving oral evidence.

#### **4. ISSUES**

- 4.1 The issue in the Appeal is the quantum of the valuation of the Property. At the hearing, the Appellant requested the Tribunal to determine the NAV in the sum of €142,000. The Respondent requested the Tribunal to determine the NAV in the sum of €303,000, a reduction from the sum of €363,000 contained in the final Valuation Certificate.
- 4.2 The Appellant contends that a Receipts and Expenditure method of valuation should be used to value the Property. The Respondent contends that a comparative method of valuation should be used.

#### **5. FACTS**

- 5.1 From the evidence adduced by the parties, the Tribunal finds the following facts.
- 5.2 The Property is a multi-storey car-park located at Fairgreen Road in Galway city, directly opposite the Galway Coach Station and in close proximity to Eyre Square. The Property is part of a mixed-use development known as Fairgreen House, comprising offices, residential apartments and the car-park. The Property comprises 404 car spaces over three basement and four upper storey floors, with ramp access to each level. There are two pedestrian entrances on the ground floor, with lifts and stairs.
- 5.3 The car park operates 24 hours seven days a week. The car park charges tariffs at an hourly rate and also operates the following charges – a 24-hour charge, overnight charge, weekly charge, four-week charge, quarterly charge, six-month charge and a yearly charge.
- 5.4 The Property was purchased by CWC Fairgreen Limited in February 2017. The Property was transferred from CWC Fairgreen Limited to Hallspace Limited in September 2021. The Property is held freehold.

## **6. RELEVANT STATUTORY PROVISIONS**

6.1 All references to a particular section of the Valuation Act 2001 ('the Act') refers to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act 2015.

6.2 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:

*"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."*

6.3 Section 48(3) of the Act provides the following meaning of '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 average 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."*

6.4 Section 20(1) of the Act provides:

*"A valuation order shall specify one date by reference to which the value of every relevant property, the subject of the valuation mentioned in the order, shall be determined."*

6.5 Section 19(5) of the Act provides:

*"The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date*

*of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable) —*

*(a) correctness of value, and*

*(b) equity and uniformity of value between properties on that valuation list,*

*and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.”*

6.6 Section 37(4) of the Act provides:

*“For the avoidance of doubt, neither subsection (1) (a) or (2) (b) (ii) (so far as it relates to section 19(5)) nor section 19(5) shall require the Tribunal to achieve the determination of the value of a property concerned by reference to any particular method of valuation and the Tribunal may arrive at its determination by reference to whatever method of valuation or combination of methods of valuation as the Tribunal, in its discretion, may deem appropriate.”*

## **7. APPELLANT’S CASE**

7.1 Mr. Doyle, on behalf of the Appellant, opened the appeal by providing a brief description of the Property using photographs contained in his précis. He set out his grounds of appeal, namely that *“(a) The Valuation is excessive having regard to the nature and use of the property and the assessments of comparable properties on the valuation list; (b) The rental values of car parks are assessed on a Receipts & Expenditure basis. The valuation is excessive having regard to the actual trade and profitability of the property.”*

7.2 Mr. Doyle submitted that as car-parks are rarely or infrequently let in the open market, there is a lack of available market evidence to facilitate an assessment of the NAV on a comparative basis. He explained that even if there is comparative evidence available, it can be difficult to compare car-parks as there will be differences in terms of location,

occupancy levels, turnover, profitability and costs. It was further submitted that in the absence of market evidence, the accepted method to establish the rent of a car-park is to review the actual trading information to estimate a sustainable level of turnover and profitability to determine the level of revenue that may be available to pay rent.

- 7.3 Mr. Doyle referred to the RICS Guidance Note on the Receipts and Expenditure (“R&E”) Method of Valuation for Non-Domestic Rating (“the Guidance Note”) which provides at paragraphs 3.3 and 3.4 that:

*“3.3 In the absence of such rental evidence, or a suitable unit of comparison to permit such rental evidence to be reliably analysed, the preferred method of valuation may be with the R&E method or the contractor’s basis.*

*3.4 Where the nature of the occupation of the property is primarily concerned with achieving anticipated profit, and the tenant’s rental bid is, therefore, likely to be based upon a consideration of receipts and expenditure, then in the absence of reliable rental evidence, the R&E method may be the most appropriate method of valuation to adopt.”*

- 7.4 Mr. Doyle cited an RICS publication titled ‘Red Book Global Standards’, and quoted from section VPGA4 headed ‘Valuation of individual trade related properties’, as follows *“Some properties are normally bought and sold on the basis of their trading potential... The essential characteristic of this type of property is that it has been designed or adapted for a specific use, and the resulting lack of flexibility usually means that the value of the property interest is intrinsically linked to the returns that an owner can generate from that use.”* He gave his opinion that a car-park comes within this description.

- 7.5 Mr. Doyle submitted that the fundamental principle of the R&E method of valuation is to arrive at a divisible balance which can be shared between the landlord and tenant. It was further submitted that the generally accepted approach is that the divisible balance is split 50:50 between the landlord and tenant, however, this is a matter of negotiation between the parties – how the split is decided will be influenced by the quantum of turnover and profit. The profit to the tenant must compensate for management time and risks involved in

operating the business. It must be a proper and sufficient inducement, and not merely a fraction of the divisible balance.

7.6 In relation to the Property, Mr. Doyle submitted that various factors affected the NAV. In short, the factors included the high level of competition in the car-park market in Galway city, the higher occupancy levels of other car-parks due to their superior locations/proximity to the retail core which is reflected in the higher turnover in those car-parks, and the traffic flow in Galway city directing cars to these other car-parks.

7.7 Mr. Doyle also referred to an extract from the Planning Permission granted which stated the following in relation to the Property:

*“13(a) Subject to the provisions of (e) below the car park shall be available for use by the public on a 24-hour, seven-day week, all year-round basis.*

*(b) Between the hours of 8.00 a.m. and 8.00 p.m. daily parking spaces shall be used for short term parking only and the level and structure of parking charges shall be so designed as to encourage short term use.*

*(c) Between the hours of 8.00 p.m. and 8.00 a.m. daily the level and structure of parking charges shall operate so as to encourage long stay parking.*

*(d) The use of the car park shall be available to members of the public generally without preference for any particular class of person upon payment of an appropriate charge on a first come first served basis.”*

7.8 Mr. Doyle listed four comparisons as follows: -

Property No.	Location	Car Spaces	NAV per car space
2164702	Hynes Car Park (UF)	418	€1,500
1158461	Hynes Car Park (GF)	78	€1,500
1158992	Eyre Square Shopping Centre Car Park	444	€1,800
1153869	Corrib Shopping Centre Car Park	580	€1,500

He stated that the four comparisons had significantly higher turnover than the turnover in the subject Property but that this was not reflected in the relative difference in the NAV per car space. He also noted that all four comparisons had been appealed to the Tribunal.

- 7.9 Mr. Doyle gave a detailed explanation of his R&E valuation, quoting, where necessary from the Guidance Note. He based his figures on financial statements provided for the years 2019 – 2022 inclusive. He noted that turnover was on a downward trajectory since 2018 and considered that the 2022 turnover figure was a fair reflection of the trading potential of the Property. He stated that the requirement to open on a 24-hour basis would increase costs over and above those stated in the financial statements and submitted that a hypothetical tenant may not be able to benefit from the economies of scale enjoyed by the Appellant. He made an adjustment for staff and management costs as he submitted that the figure in the financial statements did not reflect the full cost of operating the Property as a standalone business, and an adjustment was appropriate to reflect the costs that a hypothetical tenant would incur given that the hypothetical tenant would not have the benefit of the shared arrangements which operated between the Property and the other Group entities. In his calculation, he also excluded a figure in 2018 that represented the fee charged by iPark for managing the Property at that time. He explained his approach to renewals and depreciation and gave his opinion that given the quantum of turnover and potential profit generated from the Property, the hypothetical tenant would not accept less than 50% of the divisible balance for their share.
- 7.10 The Appellant submitted that the NAV of the Property ought to be determined in the sum of €142,000. The R&E computation is shown at Appendix A (N/A to public).
- 7.11 In response to cross-examination from Mr. Sweeney on behalf of the Respondent, Mr. Doyle stated that the R&E method is the accepted method of valuation for any potential tenant intending on renting a car-park and should also be the method used in the revaluation process undertaken by the rating authority. Mr. Doyle referred to the Guidance Note and previous judgments of the Tribunal as supporting the position that the R&E method should be used for valuing car-parks, as well as his experience in the market. In response to a



question to identify the relevant judgments, the Appellant referred to the Tribunal judgment in *VA19/5/0846 – DAA plc and Commissioner of Valuation*. Mr. Doyle stated that a potential tenant intending on renting a car-park could not rely solely on comparing rent with other car-parks given the nature of car-parks with the differences in location, occupancy levels, turnover, profitability and costs. The potential tenant would rely on the financial statements and use the R&E method. Mr. Doyle stated that he was unable to source the same level of information as the Respondent regarding market rental information. He was aware that Comparison 2 (Corrib SC) relied on by the Respondent was let. Mr. Doyle stated that even if there is rental information available, the differences in car-parks as regards location, occupancy levels, turnover, profitability and costs mean car-parks may not be readily comparable, unlike properties such as office buildings.

- 7.12 In relation to the reference in the ‘Red Book Global Standards’ to ‘properties are normally bought and sold on the basis of their trading potential’ and the purchase of the Property by CWC Fairgreen Limited in February 2017, Mr. Doyle agreed in cross-examination that the Property was bought and sold on the basis of its trading potential. He stated that he had not viewed the financial position of the Property at the time of purchase. He was questioned on whether the passing rent of €560,000 would have impacted the investment decision to purchase the Property but stated that there was no tenancy in place when the Property was purchased. He further stated that the lease details on the Property Services Regulatory Authority (PSRA) register which dated from 1 January 2013 did not continue for the full term of the lease and, in any event, pre-dated the valuation date by nearly a decade. He also stated that the information entered on the PSRA register is not verified and should be viewed as a guide as it can be unreliable. He outlined that the expectation from an investment may not align with what transpires in terms of value and yield, as it can be impacted by subsequent events, for example, since the purchase of the Property there has been events such as the Covid-19 pandemic, the war in Ukraine and interest rate increases. He stated that the purchase price of a property is not relevant when what is required to be ascertained is what a hypothetical tenant would pay in rent at a specified date. In relation to his evidence that the divisible balance should be split 50:50 between the landlord and tenant but that it would be a matter of negotiation, Mr. Doyle was questioned on whether

the purchase price would impact those negotiations from the landlord perspective. He stated that he applied a 50:50 split as it was the generally accepted approach in the market, and having regard to turnover and profit.

- 7.13 Responding to questioning on his comparisons, Mr. Doyle stated that he understood his comparisons (save Hynes Yard (GF)) operated 24-hours a day, seven days a week. He referred to his précis of evidence which stated that those properties *‘have much better occupancy levels and significantly higher turnover due to their superior locations/proximity to the retail core’*. Mr. Doyle further stated that he did not undertake any analysis of those properties as they were being represented by a colleague, however, the occupier of the Property provided general information on the competitors in the market. In response to a question on tariffs charged by the comparisons, he stated that the tariffs and occupancy levels of a car-park would be reflected in turnover. He agreed that turnover is a key determinant when assessing the value of a car-park.
- 7.14 Mr. Doyle was questioned on the additional staff and management costs that he had applied in his R&E valuation and explained that it was a mathematical output given the required hours of trading and the number of staff required to cover those hours. He stated that the pay rates were provided to him by the occupier of the Property and reiterated that the staff and management costs in the financial statements did not reflect the full cost to the occupier.
- 7.15 Mr. Doyle also noted that as the five comparisons in the précis of the Respondent are under appeal to the Tribunal there is no ‘tone of the list’.
- 7.16 In response to a question from the Tribunal on the information that would be available to a hypothetical tenant, Mr. Doyle stated that there may be market rental information available, however, it can be difficult to extrapolate that information to apply to another car-park given the nature of car-parks and their differences in location, occupancy levels, turnover, profitability and costs. In the circumstances, the hypothetical tenant would examine the actual trading information and consider the actual turnover, profit and cost, by

examining three years of audited financial statements. He stated that the hypothetical tenant would primarily rely on the R&E method. He was not aware of the rental information available or did not have access to the information. He stated that the hypothetical tenant would be unlikely to be influenced by market rental information and would be focussed on actual trading information.

7.17 In response to a question from the Tribunal on using the R&E method for valuing car-parks for rating purposes, Mr. Doyle stated that it was generally accepted that the R&E method is used for valuing car-parks and referred to the judgment in *VA19/5/0846 – DAA plc and Commissioner of Valuation* as a recent example of the R&E method being used for car-parks. He did not produce the judgment or open the judgment to the Tribunal. He stated that the R&E method was the only logical way to value car-parks as it was difficult to compare car-parks because of differences in location, occupancy levels, turnover, profitability and costs. The Tribunal referred Mr Doyle to paragraph 3.2 of the Guidance Note which states “*Where open market rental evidence exists for the subject property or similar properties, and that evidence conforms to the statutory definition of rateable value (net annual value in Scotland and Northern Ireland) or can be made to do so without adjustments of such a nature that its reliability is affected, a valuation based upon such evidence will provide the preferred method of valuation.*” Mr. Doyle stated that, in his opinion, there was not a sufficient body of rental evidence to facilitate using this method of valuation.

7.18 In response to a question from the Tribunal on using turnover of €775,000 in the R&E computation, which was effectively the turnover for 2022, rather than an average of the three years of turnover, Mr. Doyle explained that this was used as a reflection of the downward trajectory of the turnover. In relation to a 50:50 split between landlord and tenant of the divisible balance, he stated that this was a generally accepted approach in most R&E computations and was used to reflect trades which had less secure revenues and greater competition. He highlighted that the Corrib SC car-park was apportioned on a 60:40 split between landlord and tenant, but the turnover and profit for that property was higher.

- 7.19 In response to a question from the Tribunal on the rates adjustment applied by Mr. Doyle in the computation of the NAV, he agreed that a rates adjustment which apportioned the rates equally between landlord and tenant was appropriate. He stated that based on a divisible balance of €346,678, and deducting half the rate cost of €37,000, gives a balance of €309,678, which split on a 50:50 basis gives a tenant share of €154,839.
- 7.20 In closing, Mr. Doyle submitted that the issues for consideration in this appeal are (I) the appropriate method of valuation; he submitted that the appropriate method was the R&E method of valuation and that given the nature of car-parks that it is problematic to adopt a shortened method of applying percentages; (II) the level of expenses; he submitted that the analysis of the comparable properties undertaken in the cross-examination of the Respondent showed that the operating costs for car-parks was between €360,000 and €500,000, therefore the amount of €428,321 included by the Appellant in the R&E computation was within that range, and submitted that applying a percentage to turnover to arrive at costs was problematic; (III) the breakdown of the divisible balance; the Appellant referred to the market evidence in Corrib SC which showed a 60:40 split albeit on a higher turnover, and submitted that a 50:50 split was appropriate for the Property given that the level of turnover and costs meant no hypothetical tenant would operate the Property for less than a 50:50 split.

## **8. RESPONDENT'S CASE**

- 8.1 Mr. Sweeney, on behalf of the Respondent set out the background to the revaluation process and the information sought from occupiers to prepare the valuations. Information was provided by occupiers at various stages in the valuation process, including at the Tribunal stage. As a result, the valuation assessment of multi-storey car-parks in Galway City Council has been re-examined and has resulted in adjustments to the six car-parks, including the subject Property. The final Valuation Certificate that issued on 15<sup>th</sup> September 2023 stated a valuation of €363,000, representing 404 car spaces at a NAV of €900 per car space. The Respondent requested the Tribunal to determine the NAV in the sum of €303,000, representing 404 car spaces at a NAV of €750 per car space.

- 8.2 Mr. Sweeney gave a brief description of the Property, describing it as being in good condition. He referred to the planning permission for the Property and gave evidence of previous lettings of the Property taken from the Property Services Regulatory Authority website, showing two previous lettings both at annual rents of €560,000. Mr. Sweeney stated that he understood that the Property had been vacated in mid-2016 as the rent was not sustainable.
- 8.3 Mr. Sweeney submitted that the valuation of the Property was conducted according to the provisions of the Act. The estimate of the NAV is what a hypothetical tenant would pay in rent on the terms set out in section 48(3) of the Act, which is not necessarily what any particular tenant is paying. Mr. Sweeney submitted that the actual rent for a property may be material in deriving an estimate of the NAV but is not conclusive.
- 8.4 Mr. Sweeney submitted that the comparative method of valuation is the most appropriate method for valuing multi-storey car-parks. This was the method used in previous revaluations. He submitted that the Property was valued having regard to market data, the value of other properties comparable to the Property, the trading information provided for the properties, and the information and circumstances pertaining to the Property. He relied on relevant market data in the form of rental transactions and comparable properties to demonstrate both correctness of value, and equity and uniformity of value between properties on the valuation list.
- 8.5 Mr. Sweeney put forward five NAV comparisons to support his proposed valuation. All are located within one kilometre of the subject Property. His précis of evidence included photographs of the properties and their location relative to the Property. He noted that the valuations of each of the comparisons had been appealed to the Tribunal but stated that he had discussions with the valuers in each of those appeals and did not believe that any would proceed to Tribunal stage. His opinion of the comparable NAVs, as set out below, reflected those discussions and were the NAVs he would defend should any of the appeals proceed to Tribunal stage.

No.	Property	No. of Car Spaces	NAV in List	Witness opinion of NAV	Provisional NAV per car space
1	Hynes Yard (GF)	78	€117,000	€93,600	€1,200
2	Corrib SC	576	€870,000	€518,000	€900
3	Eyre Square SC	444	€799,000	€666,000	€1,500
4	Hynes Yard (UF)	418	€627,000	€501,000	€1,200
5	Spanish Arch	372	€558,000	€241,000	€650
	Property	404	€363,000	€303,000	€750

Full details of the comparable properties and rental transactions are set out in Appendix B (N/A to public).

- 8.6 Mr. Sweeney also provided an analysis showing his opinion of the NAVs as a percentage of estimated revenue per car space for each of the comparisons and the subject Property (Appendix C, N/A to public). The percentages for the comparisons ranged from 46.1% to 40.6%, while the subject Property was the lowest at just under 40%. He submitted that the analysis demonstrates a consistent approach to the valuation of multi-storey car-parks in the Galway City Council area.
- 8.7 Mr. Sweeney submitted that the evidence provided shows a relationship between rent and revenue being generated in public multi-storey car-parks in Galway city and stated that the turnover generating ability of a car-park remains the key element in determining the rent a hypothetical tenant might pay. The hypothetical tenant would consider the revenue being generated at the valuation date, which the parties are agreed is €775,000 per annum. The Respondent submitted the Appellant has not discharged the onus of proving that a NAV of €142,000, which equates to a NAV of €350 per car space, would achieve correctness of value and equity and uniformity of value between properties on the valuation list. The Appellant's contention that a hypothetical landlord would accept a yearly rent of €142,000 on a property which generates revenue of €775,000, is unsupported by evidence and does not accord with the relevant market data available and the comparable properties.

- 8.8 In response to the Appellant's précis of evidence, Mr. Sweeney submitted that Mr. Doyle provided no rental information, no sales transactions, no market commentary, no evidence to support a staff and management cost adjustment of €142,000 in his R&E computation and no evidence to support a tenant share of 50% in the R&E computation. Mr. Sweeney disagreed with the submission of Mr Doyle that there was a lack of rental information for car-parks, not least on the basis that three of the six multi-storey car-parks in Galway city had been rented in the recent past. In addition, the subject Property was also the subject of two previous lettings at a yearly rent of €560,000. The Respondent submitted that the approach of Mr Doyle would equate to the Property being valued at €350 per car space, whereas the car park in Eyre Square SC would be valued at €1,800 per car space and the car parks at Hynes Yard would be valued at €1,500 per case, but without providing a justification for such an approach having regard to the market data and the financial information for all three properties.
- 8.9 In relation to the R&E computation produced by Mr Doyle, Mr. Sweeney submitted that he had not produced evidence to support the level of staff and management costs sought. He submitted that his analysis of comparable properties would support staff and management costs of €150,000 as a working expense, and based on information available to the Respondent relating to the five comparisons provided the staff and management costs would not exceed 20% of turnover. The Respondent stated that the other areas of dispute in relation to the R&E computation could be distilled to the approach to depreciation/renewal of tenant items, the approach to deducting rates and, finally, the tenants share. In an endeavour to address these issues, and without accepting that the R&E method of valuation is the appropriate method given that market data and comparable properties are available, the Respondent produced an R&E computation for illustrative purposes as a means of highlighting the differences between the parties. This is reproduced in modified form in Appendix D (N/A to public).
- 8.10 In response to cross-examination from Mr. Doyle on behalf of the Appellant, Mr. Sweeney confirmed that the information on the PSRA register shows that the Property was the subject of a previous letting and although the lease dates from 2013 it shows that a yearly

rent of €560,000 was achieved at that time. He accepted that the tenant had vacated the Property in mid-2016 as the rent was not sustainable. He stated that he has been involved in the valuation and revaluation of car-parks in other rating authority areas and that the rental information relied on by the Respondent in this appeal is broadly aligned to the rent achieved in the market.

- 8.11 Responding to questioning on his comparisons Mr. Sweeney confirmed that financial information for the years 2018 to 2022 had been provided in respect of Comparisons 1-4 and 2020-2022 in respect of Comparison 5.
- 8.12 In relation to cross examination on the Hynes Yard (GF) comparison, Mr. Sweeney confirmed that the rental information for this property was the market data relied on by the Respondent. Questioned whether the rental information in this comparison could be used as relevant market data, given that the same entity occupying the property in Hynes Yard (UF) would also now occupy the property in Hynes Yard (GF) which created a benefit for the property in Hynes Yard (UF) given it would now have access and egress from two roads (Dock Road and Merchants Road), Mr. Sweeney stated that the NAV has been adjusted accordingly. Mr. Doyle questioned whether the Respondent had knowledge of the recent lease of the fifth floor of this car-park and stated that 89 car spaces had been leased on a 10-year lease from 26 February 2024 for €11,008, which equated to €124 per car space. Mr. Sweeney stated that the detailed information given by Mr Doyle had not been referred to in his précis of evidence and he was using cross-examination to introduce evidence. He further added that he understood that the fifth floor could only be used for four months of the year because there is an issue with seagulls. In relation to the two properties in Hynes Yard, Mr Sweeney said that separate relevant properties have been identified and had been valued accordingly. He confirmed that financial information for the properties in the two properties is captured in a single set of financial statements. Mr. Doyle put it to Mr. Sweeney that given the similar number of car spaces in Hynes Yard (496 car spaces combined) and the number of car spaces in the Property (404 car spaces), it could be said that the costs of operating the car-parks would be similar, meaning if costs are 40% of turnover, the costs for Hynes Yard (GF) and Hynes Yard (UF) would be 40%



of the combined turnover of €1,289,600 to give operating costs of €515,840, which shows that the costs in the R&E computation produced by the Appellant are appropriate. Mr. Sweeney stated that 40% of turnover may be a general barometer of costs for a property but there are outliers and different facts and circumstances would arise for each property. He stated that a percentage was not applied in arriving at the costs of operating the Property, rather it was an analysis of the financial statements for the Property that showed that the costs of operating the Property would be €248,050.

- 8.13 Responding to cross examination on the Corrib SC comparison, Mr. Sweeney stated that, in his opinion, the rental split of 60:40 between landlord and tenant was on the low side as there are restrictions in the planning permission and the lease which stipulate that it can only be used as a short-stay facility for shoppers, meaning the landlord retains greater influence over the car-park.
- 8.14 In response to a question from the Tribunal in relation to the Spanish Arch comparison and the lower level of NAV applying thereto, the Respondent stated that this property has a narrow access point, and the location has an impact on generating revenue. These factors would be reflected in the turnover.
- 8.15 In relation to the R&E computation produced by the Respondent for illustrative purposes, Mr. Sweeney confirmed in cross-examination that he adopted a figure of €248,050 for working expenses (to which the rates of €68,170 would be added), as opposed to the figure of €428,321 put forward by Mr. Doyle. In response to a question from the Tribunal, the Respondent confirmed that the audited financial statements were relied on in computing the amount of €248,050.
- 8.16 In closing, Mr. Sweeney submitted that, having regard to market data, the value of other properties comparable to the Property, the trading information provided for the properties, the information and circumstances pertaining to the Property, the comparative method of valuation can achieve a determination of the value of the Property which accords with the requirements of the Act and which will ensure correctness of value, and equity and

uniformity of value between properties on the valuation list. He submitted that the analysis put forward by Mr. Doyle in cross-examination endeavoured to produce operating costs for car-parks based on the information in the Respondent's précis of evidence rather than producing facts and evidence. The Respondent had relied on the audited financial statements for the Property in producing the illustrative R&E computation. He submitted that the ability of a car-park to generate turnover remains a key element in determining the rent a hypothetical tenant might pay. In this appeal, it is agreed that the turnover generated by the Property is €775,000. This computes to €1,918 revenue per car space. The Appellant contends for a NAV of €142,000 which equates to €350 per car space. Mr. Sweeney submitted that this would undervalue the Property and not accord with the requirements of the Act. In all the circumstances, he contended that a NAV of €303,000 which equates to €750 per car space should be determined.

## **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 Galway City Council.

### ***Onus of Proof***

- 9.2 The Tribunal has found on several occasions that the onus of proof rests with the Appellant in an appeal (see *Proudlane Ltd. t/a Plaza Hotel v Commissioner of Valuation* (VA00/2/032) and *AIB Group PLC v Commissioner for Valuation* (VA20/4/0053)). The position was expanded on in Tribunal decision *FGM Properties v Commissioner for Valuation* (VA19/5/1091) wherein it was held “*The onus of proof rests on the Appellant to demonstrate, through cogent evidence that the Respondent has erred.*”

- 9.3 Arising from these decisions, in order to succeed in this appeal, the Appellant was obliged to satisfy the Tribunal, through evidence, that the NAV was incorrect and the Commissioner's approach to valuation resulted in an incorrect valuation of the Property.

### ***Method of Valuation***

- 9.4 The Appellant advanced this appeal on the basis that the Respondent had erred in using the comparative method of valuation rather than using the R&E method. In support of this argument he quoted from the Guidance Note, the RICS Red Book and made reference in cross-examination to the Tribunal judgment VA19/5/0846 – *DAA plc and Commissioner of Valuation*. The Appellant stated in evidence that *“Car parks are rarely let in the open market and therefore there is generally a lack of available letting evidence to facilitate an assessment of Net Annual Value (NAV) on a comparative basis. In the absence of market letting evidence the accepted basis on which to assess the rental value of a car park, is to review the actual trading accounts to estimate a sustainable level of turnover and profitability, and thereby determine the level of income which may be available to pay rent.”* The Respondent submitted that comparative evidence for car-parks was available and, consequently, the value of the Property should be determined on that basis.
- 9.5 The Tribunal noted that the extracts from the Guidance Note put before it by the Appellant excluded paragraph 3.2 which states *“Where open market rental evidence exists for the subject property or similar properties, and that evidence conforms to the statutory definition of rateable value (net annual value in Scotland and Northern Ireland) or can be made to do so without adjustments of such a nature that its reliability is affected, a valuation based upon such evidence will provide the preferred method of valuation.”* When examined on this Mr. Doyle stated that, in his opinion, there was not a sufficient body of rental evidence to facilitate using this method of valuation. The Tribunal notes and agrees with the evidence of the Respondent that three of the six multi-storey car-parks in Galway city had been rented in the recent past.

- 9.6 The Appellant quoted an extract from the RICS Red Book – VGA4 ‘Valuation of individual trade related properties’ to support his case. While this point was not argued by the Respondent, the Tribunal notes VGA4 is described in the document as ‘advisory, not mandatory in content.’
- 9.7 The Appellant referenced a previous Tribunal judgment *VA19/5/0846 – DAA plc and Commissioner of Valuation* in support of his contention that the R&E method was the correct method to use in assessing the rental value of a car-park. That appeal involved the valuation of a single relevant property in Dublin Airport comprising 24,567 car spaces dispersed over 146.6 acres. In deciding that the R&E method was the appropriate method of valuation to take in that appeal the Tribunal noted the substantial differences between the comparisons put forward and the property to be valued. In its judgment it noted, at paragraph 103 “*Comparability is an impossibly difficult exercise because of the unique physical characteristics of the appeal property in terms of scale and layout.*” The Tribunal is not persuaded that the case referenced by Mr. Doyle justifies his position that the R&E method was the correct method to use in assessing the rental value of the subject Property.
- 9.8 For the reasons given above, the Tribunal is not satisfied that the Appellant has discharged his obligation to prove that the Respondent erred in adopting the comparative method of valuation.

### **Quantum of Valuation**

- 9.9 The Appellant also argued that the valuation was excessive having regard to the nature and use of the property and the assessments of comparable properties on the valuation list. Four NAV comparisons were put forward by the Appellant and it was stated that “*The turnover in these car parks is significantly higher than for the subject property, but this is not adequately reflected in the relative difference in the NAV per car space.*”
- 9.10 The Tribunal notes the evidence of the Respondent that while his five comparisons (which include the four referenced in 9.9 above) were all under appeal as at the date of the Tribunal

hearing, he had discussions with the valuers in each of those appeals and that he did not expect any of the appeals to proceed to the Tribunal. While he stressed that the valuations were not agreed at the time of the hearing, he put forward in his evidence the figures that he believed were acceptable to both the Appellants in those appeals and the Respondent. The Tribunal notes that all those agreements were subsequently confirmed to the Tribunal at the levels stated by Mr. Sweeney and that this information was also provided to the Appellant in this appeal.

- 9.11 The Tribunal also notes that the Respondent provided a table showing his opinion of the NAVs of his five comparable properties as a percentage of estimated revenue per car space for each of the comparisons and the subject Property, referenced at 8.6 above and shown in Appendix C (N/A to public). The Tribunal is satisfied that this table shows that the percentage of NAV per car space to estimated turnover per car space is broadly consistent across all the car-parks in the Galway City Council area and, indeed, that the subject Property has the lowest percentage of the six car-parks cited.
- 9.12 Having examined the particulars of the Property and carefully considered the written and oral evidence of the Appellant and the Respondent, the Tribunal is satisfied that the Appellant has not demonstrated that the value of the Property at the revised valuation of €303,000 put forward by the Respondent does not accord with that required to be achieved by section 19(5) of the Act.

## **DETERMINATION**

Accordingly, for the above reasons, the Tribunal allows the appeal in part and amends the net annual value of the Property to €303,000.

## **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.