

Appeal No. VA17/2/024

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHTANNA LUACHÁLA, 2001 – 2015
VALUATION ACTS, 2001 - 2015

Furninova Limited T/A Soul

APPELLANT

And

Commissioner of Valuation

RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 2196326, Retail (Shops) at D3, The Courtyard, Beacon South Quarter, Sandyford, County Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20th DAY OF DECEMBER 2017

BEFORE:

Carol O’Farrell - BL

Chairperson

Liam Daly – MSCSI, MRICS

Member

Hugh Markey – FSCSI, FRICS

Member

1. THE NOTICE OF APPEAL

1.1 By Notice of Appeal dated the 27th June 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 €186,600.

1.2 The Notice of Appeal states that the valuation of the Property is incorrect on grounds that:

- (i) *The property is over assessed in terms of its relative rental value in terms of the revaluation list on Dun Laoghaire Rathdown. The development itself was a failed development at the time of the revaluation and this is comprehensively dealt with in the O'Briens decision VA15/5/113 (sic) which relates to an adjacent similar unit. Much of the development still remains incomplete even many years later.*
- (ii) *The Commissioner while initially proposing to assess this property in line with the Tribunal's decision on the adjoining unit O'Briens VA 11/5/113 and issuing a proposed valuation at RV €120,400 on the 8th March 2017 in line with that Tribunal's suggestion that similarly circumstanced units in this development should have the amended level applied, then appears to have changed his mind and reverted to the original valuation basis which the Tribunal found to be flawed. This is clearly inequitable and should be reversed and the property should be valued at RV €120,400 as originally proposed by the Revision Manager – (See copy of the original proposed Cert attached)-i.e. in line with the earlier recommendation to the Commissioner of the Tribunal in VA 15/5/113 (sic).*

- 1.3 The Notice of Appeal stated that the Appellant considers that the valuation of the Property ought to have been determined in the sum of €120,400.

2. THE HEARING:

The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 26th October 2017. At the hearing the Appellant was represented by the Mr Eamonn Halpin B.Sc. (Surveying) M.R.I.C.S. M.S.C.S.I. and Mr Seán Donnellan of the Valuation Office represented the Respondent.

3. THE PROPERTY:

- 3.1 The property is located in the Beacon South Quarter in Sandyford, Dublin 18. It comprises a ground floor retail unit situated in a courtyard setting with other furniture retailers, a pharmacy and a Dunnes Stores outlet. These units are larger than usual and are more akin to

retail warehouse outlets. Limited surface car parking is provided while there are additional parking spaces available underground serving the entire Beacon South Quarter development.

- 3.2 This element of the development is described as ‘The Courtyard’ and was completed c. 2007. The area to the south accessed by travelers from The Courtyard is known as The Plaza and comprises a variety of food and beverage outlets, banks and a children’s museum/attraction. There are a substantial number of apartments in the development.
- 3.3 The property is occupied on a 10 year lease from the 1st April 2016 at rent of €110,000 per annum inclusive of rates and service charges.

4. RE-VALUATION HISTORY

- 4.1 A third party made an application in 2016 to the Respondent for the appointment of an officer under section 28 (2) of the Act as amended to exercise the powers under section 28 in relation to the Property on the basis that the mezzanine had been removed.
- 4.2 On the 8th March 2017 a copy of a valuation certificate proposed to be issued in relation to the Property was sent to the Appellant indicating a valuation of €120,400.
- 4.3 On the 12th May 2017 a second proposed valuation certificate was issued indicating a valuation of €186,600.
- 4.4 Despite representations in respect of the proposed revision, the revision officer did not consider it appropriate to amend the terms of the valuation certificate proposed to be issued under section 28.
- 4.5 A Final Valuation Certificate issued on the 21st June 2017 stating a valuation of €186,600.
- 4.6 The Valuation Date is September 2005.

5. THE RELEVANT STATUTORY PROVISIONS:

- 5.1. There being no issue as to the appointment of a revision manager or as to whether a material change of circumstances had occurred since a valuation was last carried out under section 19 in relation to the rating authority area of Dun Laoghaire-Rathdown, the value of the Property falls to be determined for the purpose of section 28(4) of the Act (as substituted by section 13 of the Valuation (Amendment) Act, 2015) in accordance with the provisions of section 49 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.

6. THE AGREED FACTS

The Property is measured on a Net Internal Area (NIA) basis and the floor area is agreed at 602 m².

7. THE DISPUTED ISSUES

This appeal raised the sole issue as to whether the net annual value of the Property as determined by the Commissioner is correct.

8. THE APPELLANT’S EVIDENCE

- 8.1 In accordance with the Rules of the Tribunal, the parties had exchanged their respective Précis of Evidence prior to the commencement of the hearing and submitted them to the

Tribunal. At the oral hearing, each witness, having taken the oath, adopted his Précis as his evidence-in-chief in addition to giving oral evidence.

8.2 Mr Halpin outlined his view that in 2005 Beacon South Quarter was an incomplete and ‘largely unsuccessful development’. The vacancy level has been quite high and remained so due to the proximity of Dundrum Town Centre and Carrickmines Retail Park.

8.3 Mr Halpin relied on the Tribunal’s decision in appeal Reference VA11/5/113 between O’Briens Wine Off Licence v Commissioner of Valuation (hereinafter “the O’Briens appeal”) in respect of Unit D5, The Courtyard, Beacon South Quarter but he also adduced 5 other comparators outside Beacon South Quarter to support his opinion of value. It is unnecessary to outline them.

Mr Halpin suggested that the Respondent’s officer had initially taken note of the Tribunal’s determination on the O’Briens appeal and the recommendation therein that the Respondent when amending the valuation list in respect of the property under section 38 (which the Commissioner was obliged to do by reason of the Tribunal’s decision), review the assessments of the other retail units in the Courtyard and exercise his discretionary powers under section 40 of the Act to amend those values. Mr Halpin pointed out that the proposed valuation certificate issued on 3rd March 2017 at a proposed valuation of €120,400 could be interpreted as giving credence to the Tribunal’s recommendation, however, inexplicably a revised proposed valuation certificate issued on the 12th May 2017 in the amount of €186,600. By way of aside Mr Halpin remarked that the issue of a further proposed valuation certificate was of doubtful validity but, in any event, he contended that it was inequitable having regard to the Tribunal’s earlier decision in the O’Briens appeal. In his opinion, the first proposed valuation certificate had correctly identified the valuation level to be applied.

8.4 Mr Halpin further submitted that the Respondent appeared to be contending against the Tribunal’s decision in the O’Briens appeal, notwithstanding that the two properties were virtually identical, the exception being that the mezzanine had been removed from the appeal Property.

9. THE RESPONDENT'S EVIDENCE

- 9.1 Mr Donnellan gave a brief outline of the development of Beacon South Quarter, its location and a history of the valuation milestones.
- 9.2 Mr Donnellan contended for a rate of €310 per m² and argued that this level was supported by a consideration of the tone of the rents in The Courtyard. He adduced 8 comparators, all within The Courtyard, one of which is subject to an outstanding appeal before the Tribunal. Excluding Dunnes Stores as being in a different size and use (supermarket) category and O'Briens, the remaining units were valued at a rate between €310 and €€330 per m² apart from Roche Bobois Ireland, a unit approximately 50% smaller than the appeal Property and valued at €450 per m² at ground floor level.
- 9.2 He believed the tone of the list was established by his comparable properties with the exception of Unit D5.

10. TRIBUNAL'S FINDINGS AND CONCLUSIONS

- 10.1 On this appeal the Tribunal must determine the value of the Property by reference to the value of other properties on the valuation list comparable to the appeal property.
- 10.2 Mr Halpin's criticism of Mr Donnellan's comparables understandably focussed on the Tribunal's determination of the value of Unit D5 The Courtyard in the O'Briens appeal.
- 10.3 On the 27th January 2012 the Valuation Tribunal allowed an appeal by O'Briens Off Licence against the determination made by the Respondent of the value of Unit D5 The Courtyard. The Tribunal amended the value of that property as stated in the valuation certificate from €198,700 to €132,000. The ground floor retail area measuring 602 m² was valued at €120,400 on a rate of €200 per m².
- 10.4 This Tribunal is not bound to follow the decision of another Division of the Tribunal. However, in the interests of comity and to avoid inconsistencies in decision making, the

Tribunal will normally follow a prior decision where the properties are similarly comparable and the relevant circumstances are substantially the same, subject of course to any later material change in circumstances.

- 10.5 Both valuers referred to the Tribunal's judgment in the O'Briens appeal. It was accepted by Mr Donnellan that having regard to the statutory scheme for determining the valuation of properties a decision of the Tribunal within the hierarchical framework of agreements, adjudications by the Respondent and appeals to the Tribunal has greater authority. During the life of a valuation list, a decision of the Valuation Tribunal as to the value of a property should be respected and that decision should guide the value of other properties comparable to that property on the valuation list in the rating authority area concerned.
- 10.6 The Tribunal does not regard it as necessary to look beyond the O'Briens decision. It is persuasive authority that supports a similar approach on this appeal. No evidence was adduced before the Tribunal that could suggest that the decision in O'Briens was arrived at on a mistaken understanding of the facts or the law. Nor was there any other good reason adduced as to why the Tribunal should not follow that decision. Unit D5 The Courtyard was the one common comparator that both valuers relied upon as being similarly circumstanced to the appeal Property, the only difference being that there is no longer a mezzanine store in the appeal Property. It is to that comparison that most weight must be given as it most closely resembles the Property in terms of location, size, construction and use.
- 10.7 The Tribunal is disappointed that the Respondent has not taken account of the recommendation in the O'Brien's appeal and having apparently ignored that recommendation, issued a Proposed Certificate in line with that finding, only to withdraw it and replace it with a second, higher, valuation. Mr Donnellan acknowledged that he had recommended the lower valuation as appeared on the proposed certificate of valuation that issued first in time. He had no explanation as to how the second proposed valuation came about. Neither Mr Halpin nor Mr Donnellan was aware of any other

instance in which a second proposed certificate of valuation issued on the same, unchanged, property. The Tribunal can only conclude that the Commissioner's representative was placed in an unenviable position, as a professional, having to defend a valuation figure over which he probably had little or no input. While Mr Donnellan suggested in his Précis that he was going to address the grounds of appeal (one of which was that the subject property should be valued in line with O'Brien's decision), he singularly failed to do so.

11. DETERMINATION:

Accordingly, the Tribunal allows the appeal and decreases the net annual value of the Property as stated in the Valuation Certificate as follows:

Level 0 Retail 602 sq. m. @ €200per sq. m. = €120,400

And the Tribunal so determines.