

Appeal No: VA20/4/0003

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020**

Five Guys

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2203001, Retail (Shops) at Unit CSC 1.1, Dundrum Town Centre, Dundrum,
Dublin 16

B E F O R E

Hugh Markey - FRICS FSCSI

Orla Coyne - Solicitor

Fergus Keogh – MRICS MSCSI

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18 TH DAY OF MAY 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on the 23rd day of October, 2020 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 **€310,000**.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: “The agent argues that a quantum discount of 15% is warranted referring to the same points that he made in his Representations.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €281,214.

2. VALUATION HISTORY

2.1 On the 4th day of February, 2020 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 €326,000.

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, the valuation of the Property was reduced to €310,000.

2.3 A Final Valuation Certificate issued on the 28th day of September, 2020 stating a valuation of €310,000.

3. THE HEARING

3.1 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 21st day of March, 2022. At the hearing the Appellant was represented by the Michael Harrington MBA MRICS MSCSI, Managing Director of Harrington Retail and the Respondent was represented by Sean Donnellan B.Sc. (Hons) Property Valuation & Management, 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 his précis as his 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 located in the Pembroke District of Dundrum Town Centre and comprises the ground floor premises in use as a restaurant.

4.3 The agreed area is 363.20 sq. m. and the relevant valuation date is 30 September 2005.

5. ISSUES

5.1 The sole issue in this case is one of quantum.

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 Harrington began by outlining how his client had instructed him to note how it was incensed at the level of rental value attributed to the premises by the Respondent; how the unit was not trading well and the tenant hoped to have the rent reduced on rent review.

Commencing his evidence proper, he noted the relevant valuation date was 30 September 2005.

7.2 He described the position as part of the ‘Pembroke District’ of Dundrum Town Centre as ‘secondary’. He said the upper level of this element of the centre had seen successive retail failures, while the lower level, where these premises are located, had a predominantly food offering. He suggested the letting to another food operator in this location was as a ‘last resort’. He outlined how the net effective rent (NER) as at the date of letting in October 2016 was €743.39 per sq. m.

7.3 He suggested the Respondent had relied on the rate of €900 per sq. m. adopted for Cath Kidson and Magee Menswear in arriving at its opinion of NAV. Both of these units are on Level 1 of the Pembroke District (Units 49 & 50).

7.4 At Representations stage, he had suggested a discount of 15% was appropriate to allow for quantum. He also said the unit should be valued as a restaurant and not as a shop. At this stage he put forward a NAV of €281,214 reflecting a rate of €765 per sq. m. which he arrived at by applying a 15% discount to the above comparables.

7.5 He then became aware of a judgment of another Division of the Tribunal in the VA11/5/192, a restaurant also in the Pembroke District. In this, the Tribunal applied a rate of €650 per sq. m. He noted this unit was of similar size to Cath Kidson and Magee but significantly smaller than the subject and required further adjustment.

7.6 In his Précis, Mr. Harrington put forward a NAV of €200,668. He noted he had, again, revised his opinion of value having had sight of the Respondent's comparisons. He suggested an appropriate adjustment, based on his analysis of Cath Kidson and Magee as well as that of Unit 48A (Louis Copeland), was in the order of 29.31%, having adopted a zoning approach. If the rate adopted by the Division in the Nando's case were adopted, it would result in a NAV of €167,617. He arrived at this adjustment by considering the ITZA areas of each of the Cath Kidson and Magee comparables as well as the other two, substantially smaller, units and considered the respective ITZA's as a proportion of the overall floor area. The average arrived at arising from this exercise was 29.305%; on this basis he submitted the NAV should be €167,617.

8. Cross-Examination of Mr. Harrington

8.1 In response to questioning from the Respondent, he confirmed his understanding that this was a revision case and fell to be determined by the 'tone of the list'. He accepted the comparisons used were all valued on an overall basis; he suggested they should be zoned but he had carried out an exercise to arrive at an appropriate discount. He further accepted that all except the department store on this level were valued at €900 per sq. m.

8.2 It was put to him that Units 49&50 were further away from the main part of the Town Centre and were valued at €900 per sq. m.

He confirmed his opinion on the discount to be applied was subjective but the principle had been established by the Respondent's application of a figure of 4.9%.

8.3 In response to a query from the Tribunal, the witness confirmed the original planning use of the Property was retail; the landlord had sought planning permission for the Appellant's use.

9. RESPONDENT'S CASE

9.1 Mr. Donnellan, in his oral evidence outlined the background to the Revision and to this appeal. He noted that, following representations, the NAV was reduced from €326,000 to representations, the NAV was reduced from €326,000 to €310,000, having taken into account the representations made by the Appellant's valuer. These representations centred on the relative size of some of the comparisons. The Valuer had suggested a quantum discount of 15% to reflect the size of the unit.

9.2 The witness considered the comparisons put forward by the Appellant's valuer. He said the first was the letting of the Premises which is the subject of this appeal and which was let in October 2016, considerably after the valuation date.

9.3 he noted that the next two comparisons were common. They are in retail use and valued at a level of €900 per sq. m. he suggested their location was inferior describing it being as being *'further away from Pembroke Square (sic) and the main shopping centre of Dundrum Town*

Centre and not as attractive for that reason’. He also said there is a break between the buildings and a bridge crossing required to get to these units.

9.4 With respect to Mr. Harrington’s introduction of the judgment of a Division of the Tribunal in the case of PN 2203005, he posited that it was an inferior unit both in terms of location and it also had a narrow window frontage. He suggested there were better comparables available.

10 Cross-examination of Mr. Donnellan

- 10.1** In reply to a question about the agreed location, Mr. Donnellan said he believed the bridge was a matter of fact; the comparisons used were further away from the Property.
- 10.2** Mr Donnellan responded, when he was asked whether he contended the lower level was inferior, that he regarded the lower level ‘as ‘not as good’ because it was down a double flight of stairs. He did accept that the approach from Ballinteer Avenue to this level involved a flight of steps whereas the lower level was at grade and gave direct access to the centre and would be the main source of footfall from that direction but the footfall from Ballinteer Avenue was limited.
- 10.3** Mr Donnellan was asked whether the discount allowed in the case of PN 2203005 which he had suggested was an inferior location was to allow for configuration and responded that it was narrower and the allowance was to allow configuration.
- 10.4** He responded to say he had adopted a figure of about 5% as a discount in the instant case, having taken all matters into consideration.

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 Dun Laoghaire Rathdown County Council.

11.2 in arriving at its judgment, the Division of the Valuation Tribunal is tasked with ‘slotting’ the valuation of the Property under Appeal into the existing order or ‘Tone of the List’. This is achieved by considering the evidence heard and submitted and a consideration of the respective arguments put forward.

11.3 The onus in any appeal is on the Appellant to demonstrate that their opinion of the NAV is correct and the Respondent’s is not; that the valuation arrived at by the latter is incorrect. In this case, it is the Tribunal’s judgment that the high bar of proof has not been met by the Appellant. The level of €900 per sq. m. is well set as the tone and the Tribunal did not hear any evidence to show it should be otherwise.

11.4. The Tribunal does, however consider the Respondent did not adequately allow for factors such as size and location in arriving at its opinion of NAV. It allowed an allowance of under 5%. The Tribunal does not regard the user of the Property as being relevant in this instance. The Tribunal considers a discount of 10% to be appropriate to reflect the above mentioned factors.

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 €294,200.

Ground Floor Shop 363.20sq. m @ €900 per sq. m. €326,880

Allowance – 10% €32,688

€294,192

But say €294,200.