

Appeal No: VA23/5/0767

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

AGENBITE LIMITED T/A MILANO

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 2202460, Retail (Shops) at Block 1, Ground Floor, Harbour Square, Crofton Road, Dun Laoghaire, County Dublin.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF APRIL, 2025**

BEFORE

Peter Stapleton FSCSI, FRICS, Dip Arb

Member

1. THE APPEAL

1.1 By Notice of Appeal received on the 18th 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 €55,000.

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 EXCESSIVE AND BAD IN LAW AND SHOULD BE REDUCED. THE VALUATION DOES NOT CORRECTLY TAKE ACCOUNT OF THE RECENT RENTAL TRANSACTIONS WITHIN THE SUBJECT BLOCK OF PROPERTIES."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €33,700.

2. RE-VALUATION 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 €55,000.

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 manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 15th day of September 2023 stating a valuation of €55,000.

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

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.

The subject property is one of four ground floor retail units within a five-storey development called Harbour Square, comprises a restaurant seating area with an open plan kitchen and ancillary stock/office area and WC's to the rear. The unit is fitted with wooden flooring, exposed concrete ceiling, air-conditioning vents.

4.2 The parties state that they have agreed the floor area. This is 267.26 m. The Tribunal notes that the Appellants arithmetic is incorrect and correctly is 267.26 m

4.3 Agenbite Limited holds the subject property on a lease for approx. 20 years from 24 November 2008 at an initial headline rent of €125,000 pa. The lease includes 5 yearly upwards only rent reviews to Open Market Rent. The rent review clause is upwards only and therefore the rent has been documented at the passing rent every 5 years. The most recent rent review of 24 November 2023 has passed without change, so remains at €125,000 pa. The lease is full repairing and insuring and includes a service charge provision.

5. ISSUES

5.1 The Zone A pricing applied to the ground floor shop

5.2 The weight that should be attached to rents of comparable properties within the same block of properties at Harbour Square.

5.3 The Tribunal notes the variance in floor areas which are stated by the parties to be agreed.

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 is represented by Ms Joanne Hobson BSc Hons MRICS

7.2 Ms Hobson considers that

1. open market lettings closest to the statutory valuation date for Dun Laoghaire Council of 1 February 2022 are the most relevant and should carry most weight.
2. The historic rent on the subject property is of no assistance in establishing the valuation as at 1 February 2022, given that the rent took effect from the lease commencement in 2008, almost 13 years before the valuation date.
3. The upwards only rent review clause within the lease means that there has been no opportunity to reduce the rent on the 5 yearly rent reviews.

7.3 In support of her case, she submitted three KRT comparators from this street, noting that open market lettings should carry most weight. The summary is:

Appellant's KRT's								
KRT	Property No.	Address at Harbour Square	Event date	Annual Rent (€)	€ psm Zone A	€NAV psm Zone A	Event	Comment
KRT 1	5004455	No. 2	3 September 2022	35,000	490	286.06	Rent review	Rent was increased
KRT 2	5010089	No. 3	1 July 2020	40,000	600	284.84	Rent review	Rent review memo provided
KRT 3	2202461	No.4	20 November 2020	32,200	640	246.35	Letting	Average of stepped rental over first 5 years

7.4 Ms Hobson refers to the most recent open market letting, and in her view the most relevant comparable transaction, namely the letting of **Unit 4 Harbour Square**. In this case, the tenant took a 15-year lease, with tenant breaks at years 7 and 10. The lease was effective from 20 November 2020, approximately 14 months before the statutory valuation date. A stepped rental was agreed over the first five years of the term. Ms Hobson calculates the average rent over the first five years to be €32,200 per annum, devalues the average rent to equate to €246.35 psm Zone A.

7.5 The next most relevant transaction referred to by Ms Hobson is the rent review of **Unit 2 Harbour Square**, as at 3 September 2022. The rent increased from €30,000 per annum to

€35,000 per annum. Ms Hobson devalues the revised rent to €286.06 psm Zone A. Due to the fact that it is a rent review transaction, and effective 7 months post the valuation date, she considers it to be less important to an open market letting in the hierarchy of evidence.

7.6 The third is the rent review of Unit 3. The tenant agreed an increase at rent review from €30,000 per annum to €40,000 per annum from 1 July 2020. Ms Hobson devalues the revised rent to €284.84 psm Zone A and includes a Review Memorandum noting that the rent review of July 2020 predates the open market letting of Unit 4, November 2020 and therefore carries less weight. Ms Hobson claims that a transaction closer to the valuation date will carry more weight than a transaction further away from the valuation date.

7.7 On balance, Ms Hobson considers a fair and reasonable Zone A pricing for the subject property is €245 psm Zone A.

7.8 Ms Hobson contends for a NAV

Level	Use	Area (m ²)	Price (€/m ²)	NAV
0	Retail Zone A	79.70	€245.00	€19,526.50
0	Retail Zone B	79.70	€122.50	€9,763.25
0	Retail Zone C	45.22	€61.25	€2,769.73
0	Retail Zone Remainder	18.37	€30.63	€562.67
0	Store	44.27	€24.50	€1,084.62
			Total	33,706.34
			Total (Rounded)	€33,700

7.9 No tone of the list comparators were included in her evidence.

8. RESPONDENT'S CASE

8.1 The Respondent is represented by Ms Triona McPartlan.

8.2 Ms McPartlan refers to the rental data presented by the Appellant which she points out pertains to transactions made during the height of the Covid pandemic when the market was highly volatile, and predicting the future of the retail sector was challenging. She refers to the fact that restaurants, including the three units in this block, were operating under strict restrictions and facing ongoing uncertainty with landlords eager to retain tenants.

8.3 Ms Partlan then refers to two of the comparables cited by the Appellant wherein the valuations were not appealed to the Valuation Tribunal and remain listed at a Zone A level of €400. Ms Partlan explains that the rental values have to be considered in the context of the entire town of Dun Laoghaire, rather than focusing solely on a specific block of four properties owned by the same landlord.

8.4 Ms McPartlan sets out that The Net Annual Value is established in accordance with section 48(1) and (3) and section 19 (5) of the Valuation (Amendment) Act 2015 and how the subject is valued ‘relative to the value of other properties comparable to that property on that valuation list in the rating authority area’ in accordance with correctness of value, equity and uniformity. The Net Annual Value is established in accordance with section 48(1) and (3). Properties which are ‘similarly circumstanced’ are considered comparable. This means that they share characteristics such as use, size, location and/or construction. She sets out comparative evidence to demonstrate that both correctness and equity & uniformity of value have been achieved in this case.

8.5 Ms McPartlan outlines her three KRT comparators.

Respondent's KRT's							
KRT	Property No.	Address	Event date	Annual Rent (€)	€ per sq m Zone A	Event	Comment
KRT 1	2151081	8 The Pavillion	1 August 2019	105,000	834.20	Letting	NAV Zone A: €650 psm
KRT 2	509586	1-2 Windsor Tce	1 September 2019	40,000	530.00	Rent review	NAV Zone A: €450 psm
KRT 3	526185	58 Up Georges St	1 December 2021	30,000	595.00	Letting	NAV Zone A: €400 psm

8.6 Her comments are:

KRT 1. Similar in nature, similar location, higher Zone A, and not appealed.

KRT 2. Located in a similar area to the subject, slightly superior location, in residential location, not appealed.

KRT 3. Valued at same Zone A levels, lease two months before Valuation date. Not appealed.

8.7 Four NAV comparators are submitted

Number 1

Property Number	5004455
Occupier	Travel Café Ltd
Address	Unit 2, Harbour Square
Total Floor Area	163.71m2
NAV	€48,900

Level	Use	Area (m2)	NAV (€ per m2)	NAV (€)
0	RETAIL ZONE A	90.89	€400.00	€36,356.00
0	RETAIL ZONE B	53.02	€200.00	€10,604.00
0	RETAIL ZONE C	19.8	€100.00	€1,980.00

Additional Items (€):	€0.00
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Total (€):	€48,940.00
Rateable Valuation (€):	€48,900.00

This property is a restaurant, adjoins the Property and has not appealed to the Valuation Tribunal.

Number 2.

Property Number	2202461
Occupier	Cycle Hub
Address	Unit 4, Harbour Square
Total Floor Area	204sq.m
NAV	€52,200

Level	Use	Area (m2)	NAV (€ per m2)	NAV (€)
0	RETAIL ZONE A	77.98	€400.00	€31,192.00
0	RETAIL ZONE B	84.85	€200.00	€16,970.00
0	RETAIL ZONE C	41.23	€100.00	€4,123.00

Additional Items (€):	€0.00
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Total (€):	€52,285.00
Rateable Valuation (€):	€52,200.00

This property is in the same block as the Property and has not been appealed to the Valuation Tribunal.

Number 3

Property Number	5004463
Occupier	Luvbay Ltd Starbucks
Address	Unit 2, Royal Marine Road
Total Floor Area	207 sq.m
NAV	€36,800

Level	Use	Area (m2)	NAV (€ per m2)	NAV (€)
0	OFFICE(S)	13.85	€50.00	€692.50
0	STORE	17.29	€50.00	€864.50
0	RETAIL ZONE A	35.75	€500.00	€17,875.00
0	RETAIL ZONE B	32.4	€250.00	€8,100.00
0	RETAIL ZONE C	41.57	€125.00	€5,196.25
0	RETAIL ZONE REMAINDER	66.17	€62.50	€4,135.62

Additional Items (€):	€0.00
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Total (€):	€36,863.87
Rateable Valuation (€):	€36,800.00

This property is a restaurant, close to the Property, valued at a higher Zone A level of €500, and not appealed to the Valuation Tribunal.

Number 4

Property Number	2165675
Occupier	Itsa Bagel
Address	Unit 1 & 2 The Pavillion, Dun
Total Floor Area	118 sq.m
NAV	€74,200

Level	Use	Area (m2)	NAV (€ per m2)	NAV (€)
0	RETAIL ZONE A	109.8	€650.00	€71,370.00
0	RETAIL ZONE B	9	€325.00	€2,925.00

Additional Items (€):	€0.00
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Total (€):	€74,295.00
Rateable Valuation (€):	€74,200.00

This property is in use as a restaurant, close to the Property, valued at a higher Zone A level of €650, and not appealed to the Valuation Tribunal.

9. SUBMISSIONS

9.1 None were received.

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 Dun Laoghaire Rathdown County Council.

10.2 The issue that arises in this appeal is the quantum of value of the subject property and specifically the rate per square metre to be applied to the property.

10.3 The Tribunal notes that while the Appellant's KRTs provide some insight into rents agreed during the valuation period, two events occurred in extraordinary market conditions affected by Covid pandemic.

10.4 The Tribunal accepts the Respondent's position that pandemic-era volatility undermines the reliability of these KRTs as broader indicators of market rent.

10.5 The Tribunal finds that the emerging tone in Dún Laoghaire is well established and consistently applied, with numerous comparable retail and restaurant properties listed at the same Zone A rate of €400 per sq. m.

10.6 The Tribunal accepts that the Property shares similar characteristics, size, and location with other listed properties, and no exceptional circumstances have been demonstrated that would warrant deviation from the tone.

10.7 The Tribunal considers the two lease events submitted by Ms Hobson at Harbour Square, within the same development of the Property, which show lower passing rents than that of the Property and were agreed during 2020–2021. The letting of **Unit 4 Harbour Square** took place on 20 November 2020, some 14 months before the statutory valuation date with tenant breaks at years 7 and 10 and with a stepped rental over the first five years of the term.

10.8 The rent review of **Unit 3 Harbour Square** at 1 July 2020 demonstrated a revised rent of €284.84 psm Zone A in the mist of Covid although predates the statutory valuation by over a year. The Tribunal is persuaded that these two events were significantly impacted by the uncertainty caused by the Covid pandemic when the market was depressed. The Tribunal is conscious of the dates of the transactions when the effects of Covid were significant and accordingly finds that this evidence is unhelpful.

10.9 The rent review of **Unit 2 Harbour Square**, demonstrated a rent increase to €35,000 per annum effective 3 September 2022. Ms Hobson devalues the revised rent to €286.06 psm Zone A. The Tribunal accepts that a rent review transaction falls below an open market letting in the hierarchy of evidence and notes that as the effective date is 7 months post the valuation date, it is of some but limited assistance.

10.10 The Tribunal in noting that the floor areas that are stated to be agreed, show an incorrect addition by the appellant. The agreed floor area is 267.26 m.

10.11 The Tribunal accepts that an open market letting carries more weight than a rent review in the hierarchy of evidence. Furthermore, that a transaction closer to the valuation date will carry more weight than a transaction further away from the valuation date.

10.12 The Tribunal is persuaded that the Appellant's rental evidence is too narrowly focussed and does not reflect the broader Dún Laoghaire market.

10.13 The Tribunal accepts that within the period of the Covid pandemic, the market was highly volatile and as a result the Tribunal is persuaded that a broader view generally must be taken rather than that adopted by the Appellant, and that the property must be valued more properly relative to others on the list, ensuring equity, correctness, and uniformity.

11. DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

12. 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.