

**Appeal No: DS23/0/0050**

**VALUATION TRIBUNAL  
AN BINSE LUACHÁLA**

**DERELICT SITES ACT, 1990  
AN tACHT UM LÁITHREÁIN THRÉIGTHE, 1990**

**Wingthorpe Ltd.**

**APPELLANT**

**AND**

**Dublin City Council**

**RESPONDENT**

**In relation to the market valuation of site no. DS1105 located at 105 & 107 Emmet Road, Inchicore, Dublin 8.**

**TRIBUNAL**

**Donal Madigan - MRICS, MSCSI**

**Mema Byrne - BL**

**Paul McElearney - FRICS, FSCSI, FCI Arb**

**Deputy Chairperson**

**Member**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 30<sup>TH</sup> DAY OF JULY, 2025**

**Appearances**

For the Appellant: **Conor Ó Cléirigh** FSCSI, **Ann McManus** of Wingthorpe Limited.

For the Respondent: **Diana Bukartaite** BSc (Hons), MSc, MRICS, MSCSI.

**THE APPEAL**

1. On the 4<sup>th</sup> of December, 2023 a copy of Notice of Determination of Market Value issued in accordance with s. 22 of the Derelict Sites Act, 1990 Act ('the Act') to the Appellant indicating a market value of € **500,000** in respect of urban land situated at 105 & 107 Emmet Road, Inchicore, Dublin 8. (hereinafter referred to as 'the Derelict Site').
2. The date by reference to which the value of the Derelict Site was determined is the **11<sup>th</sup> day of May, 2023**.
3. By Notice of Appeal received on the 18th of December 2023 the Appellant appealed against the Respondent's determination of market value. The grounds of appeal as set out in the Notice of Appeal are:
  - (a) *The market value is too high*
  - (b) *There is an issue with access to the site at the front onto Emmet Road. This has greatly reduced the value of the site.*

4. The Appellant considers that the market value of the Derelict Site ought to have been determined in the sum of € 110,000.

## THE HEARING

5. The appeal proceeded by way of a physical hearing held at the Valuation Tribunal offices, Holbrook House, Holles Street, Dublin 2. on the 14<sup>th</sup> of January, 2025.

6.(a) In accordance with the Valuation Tribunal (Appeals) Rules 2019 the parties' Valuers exchanged their respective valuation reports prior to the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted their valuation report as their evidence-in-chief in addition to giving oral evidence.

(b) Both Valuers provided the Standard Declaration and Statement of Truth to the Tribunal in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules 2019.

## RELEVANT STATUTORY PROVISIONS

7. A local authority is required by s. 22 of the Act to determine, after a derelict site has been entered on the derelict sites register maintained under s. 8 of the Act, the market value of that site in such manner and by such means as they think fit. In that regard, a local authority may authorise a person suitably qualified to inspect the site and report to them the market value.

8. Under s. 2 of the Act '**market value**' means the value of the relevant urban land assessed in accordance with s. 22. That assessment is undertaken by:

*“ estimating or causing to be estimated the price which the unencumbered fee simple of such land would fetch if it was sold on the open market on the valuation date in such manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the land.”*

## THE FACTS

9. On the basis of the evidence adduced by the parties, the following are the agreed or undisputed facts in respect of the Derelict Site:

9.1 The derelict site is situated on the north side of Emmet Road approximately 4.2 kilometres west of the city centre, a short distance east of the Richmond Park soccer ground. Emmet Road connects the South Circular Road with Tyrconnell Road and the character of the immediate area is largely defined by two storey period red brick Victorian terraced buildings in residential and local commercial uses, fronted onto Emmet Road, and well served by public transport, including a number of Dublin Bus routes and the LUAS Red Line with its Goldenbridge stop located just 650m south of the subject property.

9.2 The site comprises an area of 422.00m<sup>2</sup> (0.10 acre) and is bounded by Emmet Road to the south, a small pocket park to the east, and Myra Close, which comprises terraced two storey dwelling houses, to the north. A pedestrian footpath with steps and a handrail traverses along the east boundary of the subject site providing access from Myra Close to Emmet Road. The Kilmainham Bank apartment development adjoins the site to the north and west, and this comprises 104 apartments in five 3-8 storey blocks. Senan Court (Nos. 109-111 Emmet Road), a two storey residential/office building, adjoins it on the western frontage. The site slopes downwards from south to north, being part of the Camac River valley.

9.3 The subject site is currently occupied by a derelict public house, the Horse and Jockey (Nos. 105-107 Emmet Road) which was extensively damaged by a fire which occurred in May, 2005 and there is a further overgrown open area to the rear. The former pub is set back from the footpath creating a residual, hard surface area, forward of its building line. This truncated triangular area is identified outlined in yellow, on page 8 of the Appellant's precis.

9.4 The site is freehold.[ But please see below, under Findings and Conclusion, for further elaboration on this.]

9.5 Mains services are generally available in this area.

9.6 The site falls into two zoning categories in the Dublin City Development Plan 2022-2028 with the major part to the front zoned Z3 for neighbourhood centre, and the rear part (being about a third of the overall area) zoned Z1 for sustainable residential neighbourhoods.

9.7 The site has a planning history set out in both Expert's evidence, the last application being for demolition of a pub, residential dwelling and motorcycle workshop, and construction of a 2, 3 and part 4 storey residential / commercial development, in two separate blocks, with 19 no. apartments in total and 1 no. office unit at ground floor level with bicycle store, bin store and storage facilities and 18 no. car park spaces at basement level, served by a new vehicular entrance with landscaped open space and all associated site works with relocation of a public combined overflow sewer. This application **included adjoining properties**, being an area of 1,275.30m<sup>2</sup> (0.12753 hectare: 0.3151 acres) which includes the park owned by Dublin City Council as well as 109/111 and also 99 Emmet Road. This was refused on 8<sup>th</sup> November, 2017 register reference 3851/17 by Dublin City Council and subsequently by An Bord Pleanála (ABP) on 18<sup>th</sup> July, 2018 ABP reference 300386-17. The reasons for refusal by ABP were that:

*1. Having regard to the scale, density and design of the proposed residential units and the inadequate separation distance between blocks A and B, the proposed development would lead to a poor form of residential amenity for the intended occupants. The substandard quality of development in terms of excessive overlooking arising would contravene the policies of the Dublin City Development Plan 2016-2022 and the Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities, Department of Housing Planning and Local Government, March 2018. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

*2. The proposed development by virtue of its scale and design would result in an unacceptable degree of overlooking and overshadowing and would have an overbearing impact on the established adjoining property contrary to Land Use Zoning Objective Z1 “To protect and improve residential amenities”. The proposed development would, as a result, be seriously injurious to the visual and residential amenities of the area, and would therefore be contrary to the proper planning and sustainable development of the area.*

*3. The proposed development would result in the removal of an existing pedestrian route contrary Land Use Zoning Objective Z3 of the Dublin City Development Plan 2016-2022 which promotes pedestrian permeability and enhanced accessibility. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

9.8 The subject derelict site (105/107 Emmet Road) together with 109/111 Emmet Road, was sold in **December 2024** for a total consideration of € 610,000.

## APPELLANT’S CASE

10. Mr. Conor Ó Cléirigh, Chartered Surveyor for the Appellant, submitted a detailed précis of evidence outlining the location, characteristics and description of the site. This is supplemented by photographs and maps including zoning extracts from the Development Plan; background from BIDX on the marketing, and a note from a firm of Solicitors, dated 18<sup>th</sup> September, 2024, explaining the reduction from the original agreed price (for the **combined 105/107 and 109/111** Emmet Road) of € 820,000 to € 610,000 being, in the Solicitor’s words, on account of lack of clarity on the title to the hard paved area that is in front of 105/107 Emmet Road.

11. Mr. Ó Cléirigh submitted a valuation of € 110,000 which he calculated as follows:

Sale price of 105,107,109 &111 Emmet Road	€ 610,000 *1
<u>Allow</u> for value of 109 & 111 Emmet Road	€ <u>500,000</u> *2
Balance for 105 &107 Emmet Road	€ <b>110,000</b>

\*1 Sale price achieved on open market

\*\* Fair value for residential investment producing €50,000 p.a.

12. In his oral testimony Mr. Ó Cléirigh contended, in summary, that the subsequent sale of the enlarged property offered the most compelling evidence for the determination of the market value for the smaller derelict site, and that the overall property had been offered for sale and, at that time, a price of € 820,000 had been agreed (March 2023) which was then, subsequently in September, 2023 made subject to planning but that the sale did not progress. It was subsequently offered by BIDX at auction, (in Summer 2024), with an expected a reserve of € 700,000 (as being thought a prudent level for being offered as one lot) with the site being at € 150,000 reserve and the investment property at € 570,000 but that it only realised a total of € 610,000 with contracts signed on 25<sup>th</sup> July, 2024. He mentioned that the impact of the presence of the culvert and sewer wayleave requirement, which together with access difficulties caused by lack of title to the triangular area at the front on Emmet Road, would detract from the value of the site. He had mentioned the sloping nature of the site in his précis too, which he had said had a negative impact on market value.

13. He referred, in his précis, to the comparables mentioned by BIDX in their advice, of which brief summary details are set out hereunder:

In respect of the investment part of the property 109/111 Emmet Road

(a) 1-5 Hanbury Court, Hanbury Place, Dublin 8.

Residential investment property of 4 2-bed and one 1-bed apartments yielding income of € 78,240 p.a. which sold for € 1,050,000. Gross Yield 7.45%

(b) 1-4 Nerney Court, Rotunda, Dublin 1.

Residential investment of 4 1-bed apartments three of which were let, one being vacant, which was yielding income of € 39,600 p.a. and this sold for € 650,000 reflecting a gross yield of 8.4% if fully let.

The BIDX comment on these had been to say “Rationale: Based on the above comparable evidence, we would apply a GY of 8.75%, which equates to a reserve of €570,000”

In respect of the development site part of the property 105/107 Emmet Road

(a) The Brewery Bar, 5-9 Newport Street, Dublin 8.

Property containing derelict building on site of 150.00m<sup>2</sup> [corrected from what was indicated in précis at the hearing from planning file 0.037 acre] with planning permission for a 17 bedroom hotel sold for € 410,000.

(b) 61 Royal Canal Bank, Phibsborough, Dublin 7.

Residential development site of 0.11 acres containing a warehouse building and being zoned for residential neighbourhoods sold for € 381,000.

The BIDX comment on these had been “Rationale: Based on the above comparable evidence and the fact that there is a strip of land to the front, where there is an issue with ownership and it’s not forming part of the sale, we have discounted to account for the risk. We have applied a reserve of €150,000”.

14. In cross examination, in response to a request for information on the culvert and likely impact on value, Mr. Ó Cléirigh confirmed the presence of the underground culvert and he submitted an Engineering drawing detailing the position of the culvert and wayleave positions to draw attention to the effect of these on any proposed development of the site. He said this is an issue as the culvert runs down the west the side of the property. He said that he did not have any report on the effects of this on development or a report on the sloping nature of the site but contended that these were issues reflected in the purchase price. As regards the planning application in 2017, which was refused by both the council and subsequently by An Bord Pleanála, he said that this was primarily because of density and also because of proposed works on the adjoining site which might impede a right of way, both of which, he contended, must have filtered into the reasons for refusal. He was asked if the subject site was ever previously marketed as a stand-alone site or if any planning applications had been submitted for this site to which he replied it had not, in both cases. He confirmed that his valuation date was 11<sup>th</sup> May, 2023 and agreed that the eventual sale took place more than 14 months after the valuation date and was a sale of the combined property (i.e. 105/107 and 109/111 Emmet Road) and submitted that the sale of the enlarged property, albeit not the derelict site in isolation, was compelling evidence in his view and that it is not unreasonable to look at that sale price to guide him and to make a fair apportionment to derive a value for the subject site. He further contended that with the issues of access and the culvert, he was not certain the subject was actually saleable but that he has to deal at best with the evidence to hand, and that his apportionment is reasonable to arrive at a valuation of € 110,000.

15. In taking questions from the Tribunal, Mr O’ Cléirigh confirmed that his rationale for determining the value had been to apportion the later sale price of € 610,000 to produce a valuation of € 110,000. He was asked why he did not use the methodology of referring to comparables to support his opinion and he responded that the eventual sale of the enlarged property, though not ideal, is very strong evidence and indeed stronger evidence than other comparables, in his view, because these other comparables do not have the inherent disadvantages of the subject. He confirmed that BIDX, having looked at the sales of The Brewery Bar and 61 Royal Canal Bank (a common comparable to both Valuers in this appeal) had placed a minimum reserve on the subject site of € 150,000 and a reserve of € 570,000 on the investment property but reduced this for the combined property to a reserve of € 700,000. He said we have the subsequent sale showing what the market actually achieved for this combined property, which was a sale at only € 610,000. He clarified that the original price agreed of € 820,000 was subject to planning being received i.e. a purchaser would be content to pay the sum of € 820,000 but only if planning permission is received. What appears to have happened here, in his view, is that the sale did not proceed prompting the vendor to put it for sale by auction. It was put to him that is it not the case that it was put forward at € 820,000 and, being unable to secure planning permission, it only achieved € 610,000 and is that discount/difference not the precise calculation of the property’s inherent defects and he considered that the preference is to look at what the actual sale price that was achieved.

It was further put to him by the Tribunal if refurbishment was ever considered to which he replied that this could have been considered but was not and that this does not change the price that was subsequently achieved. He confirmed that he had adopted a yield of 10% to value the remainder part of the overall property [i.e. 109/111 Emmet Road] as the range for such investments tends to be between 8% and 12%. He confirmed that even though the BID X comparables were at 8.5% this was put by him at 10%, because it is an older building but that the location was perceived to be one which would not experience good capital growth.

He was asked if he had reviewed the extensive planning file at Dublin City Council and noticed that the area identified for the last planning application included the area now being called not in his Client's ownership at the front was shown as being in the applicant's ownership, to which he responded to say that it was the case that subsequent to the fire they lost their entitlement to that area [possessory title of it] because they were not in continuous occupation of it.

It was further put to him that the various departments in Dublin City Council had raised concerns at the preplanning meeting but he had no knowledge over those issues or how they were being addressed.

It was put to him that the Drainage department raised no queries/objection on the basis of the application and he said the application had resolved any issues on drainage by the proposal of putting in a new sewer at the Client's own expense through the adjoining land which would allow for the existing stone culvert to be built over. He explained that there were drainage issues with the subject site historically with a letter from Dublin City Council to the consultants advising his Clients dating back to 2006. He confirmed that he had not undertaken a valuation exercise of the site as he felt all the factors affecting value were reflected in the subsequent sale price for the combined larger property.

He clarified certain facts for the Tribunal on sizes and dates for the comparables mentioned [now incorporated in this Determination] but drew a distinction between what the Respondent had submitted as comparables and the properties referenced by him from BIDX as he said he had not submitted formal comparables but relied wholly on the eventual sale price [and the apportionment thereof] to produce a valuation for the subject site. These other properties were included in his précis to show the background to the sale process. When asked by the Tribunal what density he considered could be achieved for the site he said that, if one could overcome the various issues, that it should be possible to accommodate 10-12 units. He was asked if the fact that the site had been put on the derelict sites register had reduced the value and he confirmed that he had not said this in his précis.

16. After the Appellant Valuer, and later in the proceedings, the Appellant, Ms McManus also clarified for the Tribunal the factual matters and history of the site to provide a full background to the current circumstances and appeal. In her oral testimony she said that after the fire in 2005 they had looked at options along with an Engineer and Architect who drew attention to

services, (the title issue at the front was not a known issue at that time) and they had occupied the property since 1988 and in regard to the drains had asked Dublin City Council in 2006 for access to Myra Close by means of a right of way as all they had was fire escape access onto the adjoining ground. Her Engineers had investigated the drains and were told by DCC that if the building is to be demolished that they could not build over the existing drains and that they must have a six metre wayleave where the drains are situated to permit DCC to inspect/repair but if they only refurbished, then they could continue to use the stone culvert. She clarified that the stone culvert runs along west side of the property but that there is a further culvert across to No. 45 [Myra Close] which would also be subject to the same 6 metre wayleave restriction. In the green open space (east) there is another combined 225mm drain and after much deliberation between their Engineers and DCC the existing stone culvert would be moved into the green open space but DCC refused this as it was an overflow drain so they diverted the drain just to No. 45 and proceeded leftwards and installed a drain there and joined it up with the original culvert. It became complicated to arrange access having dealt with the drains and it was agreed, in principle, to buy the green space for € 175,000 but would not be able to build over a six metre wayleave in this area for the existing drains and that for their drain in this area they would have to pay for this themselves. On the issue of value she said they were advised the site was landlocked back in 2016 and so it was suggested they buy 109/111 Emmet Road which they did that year for € 360,000 to assist the process in realising a value for the remainder. She said it had always been the intention to sell but encountered problems with obtaining planning, despite offering a layout to avoid interference with the wayleave on the green land, and even after appealing it was refused. After the refusal it was decided to sell it (the combined property). They had canvassed estate agents on the likely value but none were enthused suggesting they might only get small price but she engaged Melford in a discrete marketing of it but although some interest expressed, when the drains were investigated, likely parties did not pursue further. Ultimately, a purchaser agreed a sale with them for € 820,000, offered as a cash buyer and agreeing to complete in three months but this did not happen and he then wanted a conditional “subject to planning permission” deal. Contracts were sent out in March 2023 and then with the condition on planning they were resent in September 2023 giving him 24 months to obtain planning permission but when contracts were not signed they put it to auction in July 2024 and it did not reach the reserve of € 700,000 and ultimately a sale of the combined property was agreed at € 610,000 with the original purchaser. This sale did not close until December, 2024 and thus the Appellants are no longer the owners of the property but remain liable for the levy. As regards the front area the subject of the title issue she said they had included that area in their planning application but because it is an open space and not fenced in any people enquiring cast doubt on ownership and she said that she does not have a formal legal opinion on it as it is open to interpretation.

17. In answer to a question from the Respondent Valuer, Ms McManus confirmed that they had not made a claim for adverse possession of the front area because it was just ongoing and they expected to get to a resolution in six months but that became a further six months, etc and that, as far as she knows, no one owns it.



18. In answer to questions from the Tribunal, Ms McManus stated that she did not have any written evidence of the advice on value obtained in 2016 and that she had been advised to buy 109/111 to assist in selling the subject site but her recollection was that the value of the subject site in 2016 had been put at only € 100,000 and that they would be lucky to get even that. She said that comparing this with the 2023 valuation of € 110,000 was possible, even a decade later, as things had not improved with it. She confirmed that the licence had been sold but cannot recall when but said that at one stage they had made a planning application, which was for student accommodation with reinstatement of the pub in 2014. She could not recall why the pub was not reinstated out of insurance proceeds. She confirmed that the pub had been operated since 1988 and the adjoining building acquired in 2015. She clarified that as respects the adjoining land to the east that they had an agreement in principle to buy the bike shop but did not purchase it. She agreed that AIB had a charge on this other property and had employed Melford to sell this. She confirmed that she had instructed BIDX to sell their property. She confirmed that in the sale of the combined property there is no further condition to recoup any further consideration to the price of € 610,000.

## RESPONDENT'S CASE

19. Ms Diana Bukartaite, Chartered Surveyor for the Respondent, submitted a detailed précis of evidence outlining the location and description of the derelict site together with photographs, maps and extracts from the Development Plan, flood prediction information, planning application history and copy extract of an engineering drawing showing the position of the culvert and wayleave.

20. Ms Bukartaite provided a valuation of € 420,000 which she calculated as follows:

8 standard units @ € 65,000 per apartment site	=	€ 520,000
But reduced to allow for small commercial unit that may be required by planning authority		€ 500,000
Further <b>reduction</b> of € 80,000 from this to allow for the title issue and financial impacts of that		€ <u>80,000</u> € 420,000.

21. In support of her valuation she made reference to the following six comparable transactions, brief outline summary details of which are set out hereunder:

Comparable Number 1.

119/119A Emmet Road, Dublin 8.

Site area: 302.00m<sup>2</sup> (0.08 Acre)

Lapsed planning permission for 4 apartments.

Acquired by Dublin City Council on 22<sup>nd</sup> March 2022 for € 560,000.

Analysis: € 140,000 per apartment site or € 7m per acre

Comparable Number 2.

61 Royal Canal Bank, Phibsborough, Dublin 7.

Site area: 0.044 hectare (0.11 Acre)

Lapsed planning permission for 7 apartments.

Sold at BIDX auction on 30<sup>th</sup> September 2021 for € 381,000.

Analysis: € 42,333 per apartment site or € 3.46m per acre

Comparable Number 3.

Blackhorse Avenue/North Road, Dublin 7.

Site Area: 0.137 hectare (0.34 acre)

Planning permission for 17 apartments

Sold in 3<sup>rd</sup> quarter of 2023 for € 1.36m

Analysis: € 80,000 per apartment site or € 4.0m per acre.

Comparable Number 4.

6A Killeen Cottages, Ballyfermot, Dublin 10.

Site area: 0.08 hectare (0.20 acre)

Planning permission for 13 apartments

Contracts exchanged in October 2021 at € 850,000.

Analysis: € 65,385 per apartment site or € 4.25m per acre.

Comparable Number 5.

Site rear of 20 & 22 Fitzgibbon Street

Site area: 0.11hectare (0.27 acre)

Planning permission for 18 apartments

Sale agreed in Q4 of 2022 at € 1,575,000.

Analysis: € 87,500 per apartment site or € 5,833,333 per acre.

Comparable Number 6.

41 Parkgate Street, Dublin 8.

Site area: 168.00m<sup>2</sup> (0.04 acre)

Planning permission for 9 apartments and office of 110.00m<sup>2</sup>

Sold at auction in December 2020 for € 800,000.

Analysis: € 88,000 per apartment site or € 20m per acre.

22. In her oral testimony, Ms Bukartaite confirmed that she had externally inspected the property in October, 2023, and prepared a market valuation on the statutory basis, referenced to the valuation date of 11<sup>th</sup> May, 2023 for the purposes of a derelict sites levy. She had also reinspected with the owner in April, 2024. She outlined the zoning and the fact that it enjoys good frontage; is slightly sloping; low risk of flooding and it has, in her opinion, potential for a small scale development. She confirmed that she had analysed the previous planning history and that her valuation was made on the basis of unencumbered freehold title with vacant possession. She had regard to the drainage point and sloping nature of the site and had reduced

her valuation on account of the title issue at the front of the site. She contended that the burden of proof in this appeal lies with the Appellant.

23. In cross examination by the Appellant Valuer, she confirmed that she based her valuation on only 8 units to account for drainage/sewerage issues and had arrived at a valuation, based on comparable sales, of € 520,000 which she rounded down to € 500,000. When she completed this original valuation she had not been aware of access/title issue at the front but on receipt of the Appellant Valuer's report had then reduced her valuation by € 80,000 to derive the current figure of € 420,000. She was asked how she reconciled the figure of € 420,000 with the sale price of this and the adjoining property, combined, for € 610,000 to which she responded by pointing out that the sale was 14 months after the valuation date and was not a sale of the subject site, but was of a combined property with two different components, a development site and a residential investment property. She said these would have a different appeal to each type of purchaser and further stated that when the combined property was sold, part had been entered on the derelict sites register which would have impacted the sale price of the entire. She said her approach in these cases was to value the site assuming it was not on the register. She was asked what she considered would be a suitable value for the adjoining property 109/111 Emmet Road but she said she could not comment as all she had valued was the site as shown on the register, i.e. 105/107 Emmet Road. She declined to offer a valuation for this adjoining property. As regards her first comparable, 119/119A Emmet Road, she confirmed that she had inspected this herself and that although not apparent externally it was in a dilapidated state with no floor or ceiling. Terms were agreed in May 2021 for a sale at € 580,000 but that owing to an access (rear from laneway) and title issue that they had to reduce this by € 20,000 in order to achieve an eventual sale in March, 2022 at € 560,000. She disagreed on the interpretation of this allowance being wholly comparable to the subject site, stating that in her valuation she had allowed much more for the title issue in the subject, at € 80,000. She confirmed to the Appellant Valuer that none of the other comparables had access issues in response to a question on that point. She was asked if she had any regard to the combined sale of 105/107 and the adjacent property to which she said she had not. She was asked about the doorway shown in the photograph at the bottom of page 5 of her précis and if she was aware it is for egress only to which she responded that she had no evidence that it was so. As regards the stone culvert she disagreed that this would impact the value as from her research of the planning file she could not find evidence that this would be an issue and had nothing proving this point from the Appellant other than a contention that it is an issue.

24. In taking questions from the Tribunal, Ms Bukartaite, confirmed that her comparables informed her view as they were transacted before the valuation date and that she was not aware of the sale price for the combined property when doing her valuation. It was put to her that, now that she has this sale price information, does she not feel it is useful to have regard to it but, she said that, having looked at the range of comparables she did not feel a revision of her valuation was required. She put a figure of € 80,000 based on her experience for the title issue at the front which from her knowledge of these type of issues seemed appropriate. She acknowledged that the adjoining site (to the east) was the subject of agreed terms for purchase at € 175,000 but was not involved in that which she said related to what was designated as open space. She further confirmed that her approach had been to use a unit rate for the valuation and had not cross checked this by undertaking a full residual valuation

stating that this was not required as it is not a red book valuation [SCSI/RICS] and that the original unit value of € 65,000 (before being reduced) was for the site assuming no planning permission. Ms Bukartaite confirmed that the engineering drawing shown by the Appellant Valuer at the hearing is the same as the extract shown in her précis at page 14. With regard to her Comparable Number 1 (Emmet Road) she said this was more a major renovation rather than a refurbishment opportunity when this was put to her. With regard to Comparable Number 2 (Royal Canal Bank) she did not see much of a difference in location, quality wise, from the subject but said this has limited access, is on a narrow site and is overlooked unlike the subject site which enjoys more flexibility. With regard to her Comparable Number 3 (Blackhorse Avenue, Dublin 7) she said this would be a better location than the subject site but was next to a protected structure and was affected by flood issues. For Comparable Number 4 (Killeen Cottages, Ballyfermot) she said this is not in as good a location as the subject site. As regards Comparable Number 5 (Fitzgibbon Street) she agreed this was probably ranked higher than the subject owing to greater demand. As regards Comparable Number 6 (Parkgate Street, Dublin 8) she said that although this is very dated it reflects an example of a similar small site and thought this would only be slightly better, in terms of the location, than the subject, with proximity to the park.

## FINDINGS AND CONCLUSIONS

25. On this appeal the Tribunal is required to determine the market value of the Derelict Site as defined in s. 2 of the Act assessed in accordance with s. 22 of the Act.

26. This Determination concerns a derelict site that is entered on the Derelict Sites Register of Dublin City Council as reference number DS1105. The Appellant's Valuer contends that the market value at the relevant date of 11<sup>th</sup> May, 2023 is € 110,000. The market value appearing on the Register is € 500,000 but the Valuer for the Respondent has proposed a change to that figure in her evidence, both in her précis and at the hearing, to a market value of € 420,000.

27. The approach of the Appellant Valuer is to apportion the subsequent sale price in December 2024 of the **enlarged property** i.e. 105-107 AND 109/111 Emmet Road, to derive his valuation. Although other transactions are mentioned in his evidence he made clear that he was not submitting these as formal comparables. The approach of the Respondent Valuer was to derive a value per buildable unit on the site by reference to comparables and then to make a downward adjustment to produce her valuation. The Tribunal considers that, although the subsequent sale of the **enlarged property** provides an indirect guide to the value of the smaller subject derelict site, it does not regard this as the only relevant evidence and considers that regard must also be had to sales of comparable sites to provide an adequate degree of context. The subsequent sale was of a combined investment and development site which would, in the opinion of the Tribunal, not have had the same appeal, as each individual portion might have had, if they had been separately marketed in the open market at the valuation date in May, 2023. The subsequent sale only provides secondary evidence because it is not a sale of the **actual site** under consideration and is therefore not conclusive. Furthermore, it was agreed approximately 14-15 months after the valuation date and completed in December 2024 and at

that stage part (the subject site) would have been entered on the Derelict Sites Register which would, most likely, dissuade certain purchasers from bidding for it.

28. Much of the exchanges at the hearing, which were developed by reference to the detailed precis of each Expert witness, focused on the capability of the site to accommodate a development scheme with residential units, not only by way of securing planning permission but also overcoming identified factors such as the perceived lack of title to part, the making of provision for a sewer wayleave, and for taking account of the sloping topography of the ground.

29. Accordingly, the Tribunal prefers the approach adopted by the Respondent Valuer to calculate what reasonable number of units could be anticipated for receiving permission on this site, and then applying a unit value, by reference to comparable sales, to this number of units to compute a valuation. In the exchanges at the hearing it was established that the site might yield a development of 8 to 12 units. Taking account of the valuation date of 11<sup>th</sup> May, 2023 the Tribunal is more of the view that, balancing the range of values from the various comparables and transactions cited; the planning history impacting the subject site; coupled with the sale price of the enlarged combined property in 2024, that a more conservative view would be taken by a potential purchaser and considers that the number of units adopted by the Respondent Valuer, of 8 units, is the more likely assumed outcome.

30. Taking each of the factors put forward by the Appellant and Appellant Valuer for discounting the market value of the site the Tribunal finds as follows:

- (a) Culvert and sewer wayleave
- (b) Title to front section
- (c) Sloping nature of the site

(a) Culvert and sewer wayleave

From an examination of the drawing submitted at the hearing by the Appellant it seemed clear to the Tribunal that no new information was evident from that, as it appeared to be an extract of the drawing already produced, in part, in the precis of the Respondent. On reviewing this, it was not clear, either, how such could materially affect a full development of the site as it was shown that these items only pertained to the margins of the site boundaries, on any reasonable interpretation. It would require an unrealistic view to conclude, on the evidence presented, that there was something of magnitude to prevent a reasonable development of the site, be that a block of apartments, being what seemed to follow from what both Valuers appeared to suggest in their submissions, when discussing expected densities of development. Most development sites face some challenge or other, and the Tribunal is not persuaded, on this occasion, that the presence of a culvert or the reservation of a sewer wayleave make development of this site unusually complex or extraordinary.

(b) Title to front area

Firstly, this area is outside the site area of the Derelict Site but crosses the frontage and to that extent might be considered a factor preventing unfettered access to the front, or at the least, putting that method or ease of access into question. Secondly, both Valuers seem ad idem on this having an effect on value, the Appellant not quantifying it as such, in isolation, contrasted to the Respondent who measures this as a reduction of € 80,000 from her original valuation of

€ 500,000 [ some 16% in percentage terms ]. It appears this issue came to light because of the lack of involvement by the owners of the site, in recent years, being understandable in the circumstances arising. This is somewhat endorsed by the letter from the Solicitors dealing with the conveyancing. To the extent that proving title to this area might be complicated by the abandonment of usage, the Tribunal considers that this warrants further consideration in calculating market value.

(c) Sloping nature of the site

No material evidence was submitted to support the view of the Appellant Valuer that this would be an issue in developing the site such as to decrease the market value. In the absence of such evidence the Tribunal, exercising judgment carefully, must form a realistic view, taking account of both Expert's opinions and employing the panel's own expertise to evaluate this, impartially. The Tribunal, having considered this issue, is not convinced that the sloping nature of the site would present any extraordinary impact on development or, consequently on value.

31. The valuation derived by the Appellant Valuer of € 110,000, based on only an apportionment of the later sale price, could be analysed by working back from some allowance for the title issue, which both Experts feel warrants some allowance. This is not calculated in isolation by the Appellant Valuer but is done so by the Respondent, based on her figures, at the sum of € 80,000 or, by analysis, being some 16% of her prior valuation. This is, as an amount of money, generous in the view of the Tribunal, but also realistic and rather than attempt a percentage allowance this is a more accurate reflection of what the market would dictate. If one adds € 80,000 to the Appellant Valuer's net valuation, thus giving the figure of € 190,000 this provides a like figure to compare and contrast with the Respondent Valuer who is at € 500,000 prior to making this allowance. Adopting a density of 8 units this puts the Appellant Valuer at € 23,750 per unit versus € 62,500 per unit for the Respondent Valuer.

32. The range of values, analysed on a value per unit basis, ranges from € 23,750 from the apportionment by the Appellant Valuer [but adjusted upwards by the Tribunal for purposes of analysis and comparison] to € 140,000 (highest) by the Respondent Valuer but more generally € 65,385 to € 88,000 but the Tribunal considers that the best comparable (common to both Valuers) is 61 Royal Canal Bank because it is of similar size with development potential analogous to the subject although in a different but equally comparable (slightly better location) which had only a lapsed planning consent at the time of sale. The Tribunal offers the following comments on the relevance of the other comparables:

Comparable Number 1. Notwithstanding proximity to the subject site the Tribunal has difficulty accepting the Respondent Valuer's analysis of this sale at € 140,000 per unit as this was more in the nature of an existing building, albeit in very poor condition, and if it was more to be considered to be in the nature of a development site, then a density of greater than 4 would have been assumed increasing the denominator, for analysis, from 4 to 6, thus yielding an adjusted unit value of € 93,333.

Comparable Number 3. Less relevant because of superior location and the fact that it had planning permission.

Comparable Number 4. Sale agreed during Covid but had planning permission.

Comparable Number 5. Inner city location quite distinct from Emmet Road and had a valid planning permission.

Comparable Number 6. Higher density small site opposite Courts complex which had planning permission although sold during Covid.

33. Accordingly, taking Comparable Number 2 (Royal Canal Bank) and based on 9 units being achieved for this comparable, this yields a value per apartment unit of € 42,333. As this sale occurred during Covid in December 2021 any negative value discount for location of Emmet Road, which the Tribunal places at 5%, must be balanced against the timing of the sale (September 2021) to the valuation date of May 2023. The Tribunal puts this addition for earlier challenging market conditions at 20%, thus leaving a net addition of 15% to yield an adjusted unit value, for comparison purposes, of € 48,683 per unit. The Tribunal considers, in the light of the range in values from the other comparable transactions, and the level emerging from the subsequent sale of the enlarged site, that, in these circumstances this adjusted unit value from the common comparable Number 2 can be applied to value the subject site of this appeal.

#### **DETERMINATION:**

Accordingly, for the above reasons, the Tribunal allows the appeal and determines that the market value of the Derelict Site falls to be amended to € 309,000 as of the valuation date.

This is calculated as follows:

8 units at € 48,683 per unit	€ 389,464
Less for title issue	€ <u>80,000</u>
	€ 309,464 rounded to € 309,000.

#### **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.