

Appeal No. VA02/5/014

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**Homebase**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop, store, carpark & yard at Map Reference; 5E Whitehall, Ward Churchtown Nutgrove, County Dublin

**B E F O R E**

**Tim Cotter - Valuer**

**Deputy Chairperson**

**Joseph Murray - Barrister**

**Member**

**Patrick Riney - FSCS FRICS MIAVI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 23RD DAY OF MAY, 2003**

By Notice of Appeal dated 22 November 2002 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €2,412.50 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are that:

The valuation is unfair and excessive as the valuation of the unit is not in tone with other properties in similar state and circumstances.

The appeal proceeded by way of an oral hearing that took place in the Office of the Valuation Tribunal on 30 April 2003. The appellant was represented by Mr. Joseph Bardon FSCS, FRICS. The respondent was represented by Mr. Aidan Mc Daid, District Valuer. The valuers had exchanged written préces of evidence and submitted them to the Tribunal in advance of the hearing. At the hearing both valuers adopted their written précis as their evidence in chief given under oath.

### **The Property**

The property is situated on the east side of Meadow Park Avenue close to its junction with Nutgrove Avenue and c.6 km. south of Dublin City Centre. This is a densely populated area with the vast majority of houses in private ownership. The adjoining occupier is the ESB, while nearby is the Nutgrove Office Park, a newly constructed office development and the Nutgrove Shopping Centre.

The property comprises a purpose built retail warehouse originally constructed in 1989/1990 and formerly occupied by Texas Homecare. The lease was taken over by Homebase c.3 year ago. The accommodation includes the main retail warehouse together with two-storey administration offices, ancillary stores and mezzanine stores, garden centre and rear yard. There is also a large car park to the front which is shared with the new ESB shop. The property is accessed via a long avenue from Meadow Park Avenue which also serves the newly developed Nutgrove Office Park behind.

The building is constructed with concrete floors, a mixture of brick, glazed, concrete and metal clad walls, metal-framed windows and a steel portal frame supporting a double skin metal deck roof. The eaves height is a minimum of 5.5m.

The accommodation has been agreed with the respondent.

### **Title**

The property is held under a 35 years FRI lease from 1 January 1991 at the current rent of €53,915 (£515,000) per annum.

**Services**

The usual mains services are supplied and connected to the property. Heating is by means of suspended blow air heaters in the retail warehouse section and electric wall heaters in the office sections.

**Valuation History**

The property was first revised during the 1991 revision and assessed at £2,200.

A revision request was made in 1992 by Jackson Stops McCabe, agents for Texas and following discussions with the revising Valuer later that year, a rateable valuation of £1,890 was agreed on revision. No appeal was lodged.

The property was again listed in 1995 as part of a general revision request for the Nutgrove Shopping Centre nearby and consequently the rateable valuation was issued unchanged in the 1995/4 revisions. No appeal was lodged.

The property was again listed in 1997 to revise the new canopy in the garden centre. Due to pressure of work this request was not dealt with until the 1999/4 revision when the rateable valuation was increased by £10 to £1,900. No appeal was lodged.

The property was again listed in 2002 to revise the new ESB shop opposite. The ESB shop was considered to be in progress and the revision was therefore deferred. The rateable valuation of Homebase was marked unchanged following a visual inspection by the revising Valuer.

An appeal to the Commissioner of Valuation was submitted by Bardon & Co, on 6<sup>th</sup> June 2002 on the instructions of GL Hearn. Despite submissions to and negotiations with the appeal Valuer, no agreement was reached and consequently the rateable valuation was issued unchanged at €2,412.50. This valuation was appealed to the Valuation Tribunal by GL Hearn in November 2002 with Bardon & Co acting on behalf of the occupier following the receipt of further instructions from GL Hearn.

### **Appellant's Case**

The property has little or no profile from Nutgrove Avenue or from Meadow Park Avenue. Unlike many of the other retail warehouses in the city, it did not have the benefit of other complementary retail warehouse users in the same location until recently. This situation has changed somewhat with the recent opening of the ESB shop on the same site. However, this shop had not commenced trading at the relevant valuation date in May 2002.

There is no direct access to the property from Nutgrove Avenue and instead access is via a cul-de-sac roadway off Meadow Park Avenue, with the entrance to the car park c. 150m. from this road.

Despite the fact that no less than five revisions have been carried out in 12 years since the rateable valuation was first assessed, the crucial revision was carried out in 1992 when the rateable valuation was agreed at £1,890 with the agents acting on behalf of Texas. Mr. Bardon said that he understood that this valuation was agreed solely on the basis of the passing rent at the commencement of the lease, which was £300,000 per annum. This was accepted by both sides as being the 1988 rental value and formed the basis for agreement.

He said that while there have been three subsequent revisions, these have been technical revisions and no serious attempts were made to investigate whether the RV £1890 was fair and reasonable with reference to tone of the list. The only change made since the 1992 agreement was the £10.00 increase at the 1999/4 revision for the canopy over the garden centre. Given that at least five years has elapsed since the rateable valuation was last seriously addressed in 1992, Mr. Bardon considered it reasonable to investigate the rateable valuation at this time.

Mr. Bardon said that the rent of the subject property has been reviewed twice since the 1992 revision and the original rent of £300,000 per annum was increased to £305,000 with effect from January 1996 and to £515,000 (€53,915) with effect from January 2001. The January 1991 rent of £300,000 was used as the basis of assessment. Mr. Bardon submitted that in relation to this assessment, no allowance appears to have been made for the period between November 1988 and January 1991. The Jones Lang Wootton Index shows that retail rents rose from 387 to 439 or by

13.4% between December 1988 and December 1990. Secondly, the same index rose from 439 to 486 or by 10.7% between December 1990 and December 1995. In the same period the rent increased from £300,000 per annum to £305,000 or by only 0.017%. Mr. Bardon submitted that this demonstrated the acceptance on the part of the landlord that the 1991 rent was, in retrospect, too high, otherwise the rent agreed on review would have been far higher.

Mr. Bardon said that it appears that the two valuers took no account of the ‘tone’ of the list evidence in 1992, however there was an absence of comparable properties at the time. Since then, there have been many more retail warehouses developed and revised across the south side of the city, so that a ‘tone of the list’, is now available to assist in the valuation process. Section 5(2) of the Valuation Act 1986 demands that ‘regard be had, in so far as is reasonably practicable, to the valuations of tenements and rateable hereditaments which are comparable and of similar function and whose valuations have been made or revised within a recent period’. Mr. Bardon set out a number of comparisons indicating the levels applied to similar retail warehouses in the Dun Laoire-Rathdown Co. Council area and whose valuations have been revised in and around 1992. (Details of these comparisons are set out in Appendix I). Based on this evidence he submitted that the current rateable valuation arrived at by reference to the 1991 rent, in the absence of comparables, was excessive.

Mr. Bardon gave his estimate of rateable valuation as follows:

Lobby	53 sq. m. x €75.19 (£5.50) =	€3,985
Retail Warehouse	3,359 sq. m. x €75.19 (£515) =	€ 252,563
Offices	303 sq. m. x €54.68 (£4.00) =	€16,513
Warehouse	561 sq.m. x €48.75 (£3.50) =	€26,844
Mezzanine Stores	391 sq. m. x €13.67 (£1.00) =	€5,345
Garden Centre	790 sq. m. x €6.84 (£0.50) =	€5,404
Canopy over	236 sq. m. x €6.84 (£0.05) =	€1,614
Yard	885 sq.m. x €3.42 (£0.25) =	€3,027
NAV = €315,295 x 0.63% =		€1,986.00

In cross-examination by Mr. Mc Daid of Mr. Bardon, Mr. Mc Daid stated that he accepted Mr. Bardon’s comparisons unreservedly. He submitted that the principal consideration in this case

was the valuation history. He also said that the profile of the relevant property was significant and that it had a tower sign on the main road. Mr. Mc Daid said that there was a very large shopping centre 300 metres away, i.e. Nutgrove Shopping Centre which generated a very high degree of shopping traffic. Mr. Bardon disagreed with Mr. Mc Daid that the relevant property adjoins Nutgrove shopping Centre.

### **Respondent's Case**

Mr. Mc Daid in his oral evidence said that his case was mainly concerned with the valuation history of the premises. He took the Tribunal through the history of the relevant property.

**1991** The Texas Homecare building was listed for revision by the local authority and it was revised to RV £2,200.

**1992** The premises was, again listed for revision. The listing, this time was at the behest of the occupier, through their agents Jackson Stops and McCabe on the grounds that the valuation was “excessive and inequitable”, indicating a Net Annual Value of £300,000. This estimate was regarded by the Valuation Office as reasonable and, consequently, the Rateable Valuation was reduced from £2,200 to £1,890.

**1995** The property was, again listed for revision by the Local Authority. This listing related, in a general way, to Nutgrove Shopping Centre. The existing Rateable Valuation of £1,890 was left unchanged.

**1999** The property was again listed, in 1997 for revision by Dunlaoghaire Rathdown County Council to take account of a new canopy erected to the side of the building. Mr Michael Coyle, of Consultants Palmer McCormack wrote to the local authority seeking consultation with the Revising Valuer at this time. The revision took place in 1999 and the existing Rateable Valuation of £1,890 was increased by £10 to £1,900 to take account of the new canopy. The requested consultation with Mr. Coyle took place and there was no appeal resulting from this revision.

**2002** The property was once again listed by the Local Authority to take account of a new development “adjacent to Homebase”. As the listing intention was clear the revising Valuer did not attempt to inspect or report on the subject property. He regarded the

new building, the intended object of the listing and now an ESB outlet, as unfinished, and notified the applicant.

Mr Coyle of Palmer McCormack again wrote to the Valuation Office to point out that the property referred to in the listing was “adjacent to our client’s premises”. He went on to point out that the premises has been the subject of a revision in 1994/4, that no material alterations has occurred since that date and there had been no appeal.

Mr. Mc Daid said that the quality of the location of the subject property is evidenced by the fact that it is located near to the Nutgrove Shopping Centre which has 70 outlets and that recently a number of new developments have been constructed nearby, including the new ESB showrooms and the Nutgrove Office Park to the rear. There is also the recently developed Nutgrove Enterprise Centre nearby.

He said that in his opinion the revision of both 1992 and 1999 are binding. The letter from Mr. Coyle dated September 4<sup>th</sup> 1997 to Dun Laoghaire Rathdown County Council, in which he sought consultation with the revising Valuer, together with the fulfilling of this request, is evidence of his full awareness and detailed knowledge of the revision. Furthermore he said that Mr. Coyle’s letter of February 20<sup>th</sup> 2002, pointing out the appellant’s intention, was further evidence of his awareness of the current and up to date position of the rateable valuation. In this regard he referred the Tribunal to its determination in Allied Irish Bank, Ballincollig vs Commissioner of Valuation (VA96/4/027).

In the respondent’s opinion valuations, once fixed “should remain in place for an appreciable length of time”. In this regard he referred the Tribunal to its decision in North Kerry Milk Products Ltd vs Commissioner of Valuation (VA89/0/024). The most recent valuation in relation to the subject case was carried out in 1999.

He said that in his view the valuation of €2412.50 was correct and should be affirmed on the grounds that:

- In 1992, a consultant acting under an initiated revision, on the grounds that the rateable valuation was excessive and inequitable, agreed a Net Annual Value of £300,000.

- This NAV stood as the basis of valuation until a revision of 1999 at which time the RV of £1,890 was increased by £10 to £1,900 (€2,412.50).

In conclusion Mr. Mc Daid submitted that:

- The subject property is its own best comparison.
- The original valuation was based on information that was reasonably contemporary to the base of 1988.
- The valuation has been recently revised.
- The rateable valuation has been examined repeatedly and as a consequence provided for its own “tone” and there was no need to look further than the circumstances of the property itself.

Mr. Bardon cross-examined Mr. Mc Daid in relation to the 1999 revision. He put to him that he had maintained in his evidence that a full revision took place in 1999 but that in reality, following consultation between Mr. Coyle of Palmer McCormack and the revising Valuer, the valuation issued with no change. Mr. Bardon said that a document he had obtained under the Freedom of Information Act supported his submission in this regard. Mr. Mc Daid said he could not give a clear answer as to Mr. Coyle’s involvement, that it would be just hearsay.

Mr. Mc Daid accepted that there was a row of trees blocking visibility of the relevant property and that the access to the subject premises was convoluted. However he said that access to Atlantic Homecare in the Sandyford Industrial Estate, a comparison relied on by the appellant, was more difficult than the relevant property. Mr. Mc Daid agreed that there was no complimentary retail units in the area until recently.

## **Finding & Determinations**

1. The Tribunal has said on many occasions that the exchange of précis under the rules of the Tribunal takes place in order that issues that may be in dispute can be resolved before the Tribunal hearing. The basic issue of agreeing areas is a matter of fact and should not

have to be resolved by the Tribunal. The Tribunal considers that such matters should be resolved by the parties in advance of the hearing so that members receiving these précis can rely on the accuracy of the contents.

2. The agent for the appellant offered the only comparisons that were of assistance to the Tribunal. No serious attempts were made by the respondent to investigate whether the RV of £1,890 was fair and reasonable. The Tribunal consider the fact that the 1991 rent of £300,000 was increased to only £305,000 effective from January 1996, demonstrates the acceptance on the part of the Landlord that the 1991 rent was too high.
3. The respondent did not offer to the Tribunal any comparisons in support of the valuation placed on the premises. Furthermore he did not attempt to give the Tribunal a breakdown of his view of the appropriate valuation for the relevant property. The Tribunal considers it essential that comprehensive valuation evidence be presented to it to assist it in coming to a determination on the appropriate level of valuation on a relevant property whose valuation is appealed.
4. The respondent accepted in direct evidence that access to the relevant property was convoluted and that Liffey Valley and Blanchardstown shopping centres were far superior to Nutgrove Shopping Centre. He further accepted that the Shopping Centre was not adjoining but adjacent to the relevant property.
5. Mr. Bardon gave to the Tribunal five comparisons in support of the valuation he had assessed. Taking into account the evidence of these comparisons and all the other evidence and argument proffered before it, the Tribunal considers that the appellant's valuation on the relevant property is the most appropriate.

In the circumstances the Tribunal allows the appeal and determines the rateable valuation to be €1986.

$$\text{NAV} = \text{€}15,295 \times 0.63\% = \text{€}1,986.00$$