

Appeal No. VA04/1/051

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

**Brian Smyth T/A Spar City West**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Lot No. Block 10, Unit 1 Brownsbarn/City West Business Park, Tallaght  
Fethercairn County Dublin

**B E F O R E**

**John Kerr - BBS. ASCS. ARICS. FIAVI**

**Deputy Chairperson**

**Michael McWey - Valuer**

**Member**

**Maurice Ahern - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 9TH DAY OF SEPTEMBER, 2004**

By Notice of Appeal dated the 9th day of March, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €200.00 on the above described relevant property.

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

"On the basis that the RV is excessive, inequitable and bad in law – excessive in view of established Tone of the List."

**At issue**

**Quantum**

The said appeal proceeded by way of an oral hearing, which took place on 18<sup>th</sup> June, 2004 in the offices of the Valuation Tribunal at Ormond Quay Upper, Dublin. Mr. Eamonn Halpin B.Sc. (Surveying) A.S.C.S., M.R.I.C.S., M.I.A.V.I., appeared on behalf of the appellant. Mr. Patrick Murphy, M.I.A.V.I., a Valuer in the Valuation Office, appeared for the respondent. Both parties prepared written summaries of their evidence, which they exchanged with each other prior to the hearing. They also presented those written summaries, as required, to the Tribunal in advance of the hearing.

Having taken the oath, Mr. Halpin adopted his précis as his evidence-in-chief with a minor amendment on Page 4 which indicated that the property in question is located on a cul-de-sac, whereas it is not so. He also acknowledged a minor difference in the calculated floor area of the subject but acknowledged and accepted the accuracy of the area measurements set out in the submission made by the Valuation Office.

### **The Property & Location**

A ground floor Retail Shop t/a Spar City West with overhead stores and staff canteen, with a total area of 242.66 sq.metres.

Mr. Halpin confirmed that the subject property is located in the City West Business Park, off the Naas Road (N7), Dublin 24. It is within a large industrial and office development park that has been ongoing for about 15 years. He referred the Tribunal to the good quality map of the Park which was appended to the Valuation Office submission. He suggested that access to the subject property required taking a series of minor roads to reach the location,

which is also on another minor internal road, providing poor profile for the subject shop in a rather obscure position within the Park.

Mr. Halpin informed the Tribunal that a considerable amount of traffic passes through City West Business Park and that the road which extends south to Tallaght and Blessington, does not pass by the subject property. He again asserted that the subject property is located in a rather remote location within the Park and is not seen from the N7. Mr. Halpin then presented the Tribunal with copy photographs of the subject and other properties within the Park, which he had earlier shown to Mr. Murphy. He dealt with the issue of directional signage controls and difficulty by his client in obtaining permission from the Park's management company to erect overhead shop signs. He demonstrated with photographs how the shop front signage was at variance with standard branding and display units of the Spar Group.

The appellant's consultant contended that there is no tone-of-the-list for convenience stores within City West Business Park. He stated that, generally, convenience stores operate or trade from early in the morning to late at night. Given the location of the subject, the nature of business conducted in the Park and the absence of any residential development or evening or weekend passing traffic, Mr. Halpin stated that trading hours are limited to normal commercial office opening hours during the week and to support his argument, he advised the Tribunal that during a recent Saturday, a sales figure indicating a low turnover had been achieved in the premises.

Mr. Halpin then reviewed the comparative properties outlined in his submission, as follows, noting again that no other retail units were available to him to use or to refer to as comparables within the Park.

**Comparison No. 1:** Londis Shop, Fortunestown, Dublin 24.

This was, in his view, the most relevant retail property to the subject. Mr. Halpin noted that in the subject property the initial intention of the developer was to rent the first floor area as a separate premises. When questioned by the Chairman, Mr. Halpin stated that his client was looking for additional spare room for storage and a staff canteen, which was not apparently available on the ground floor of the subject at the time of entering into the lease. The occupier decided to take the first floor and was charged office rental rates for same. Half of that first floor area may have sufficed the tenant's needs but Mr. Halpin indicated that his client had no choice at the time but to rent all of the area, ground and first floor. In response to a query, Mr. Halpin stated that he had no knowledge of a Change of Planning Use Application relative to the first floor. Mr. Halpin, in noting that this was a larger premises than that of the subject, asserted that the passing rent in year 2000 was higher than the subject in 2003 though he would calculate the current rental value at least 30% to 40% greater than the subject. He also indicated that this comparison premises enjoys full seven day trading conditions and is well branded to a familiar design. The R.V. on this comparison based on 2000 / 4, First Appeal is €177.76.

**Comparison No. 2:** Centra, Rathcoole.

This is reasonably close to the subject property, but is located in a busy shopping area of Rathcoole, again enjoying full seven day trading and on an area of 243.68 sq.metres, the R.V. determined in 1995 / 4 was €126.97.

**Comparison No. 3:** being Spar, again at Rathcoole, is a property also operating under a franchise arrangement. Mr. Halpin described this as a vastly superior convenience store trading with the benefit of a substantial off-licence trade. He noted that the Valuation Tribunal in its Judgment VA97/4/035 – Jim McCall had been provided with evidence at the time that Rathcoole was a booming area and the hinterland was developing at a rapid pace. He also noted that the Tribunal accepted the argument by the Commissioner at the time that this comparative property was considered a superior premises enjoying full seven day trading activity.

**Comparison No. 4:** Spar, The Dutch Village, Monksfield, Clondalkin, Dublin 22. Mr. Halpin stated that this Spar convenience store, with an R.V. of €126.97 calculated on a shop area of a little over 200 sq.metres, determined at First Appeal in 1990, is located in a densely populated area and also enjoys full seven day trading conditions.

**Comparison No. 5:** Londis , Old Bawn Shopping Centre, Dublin 24

With an area of a little less than 300 sq.metres, this property had its R.V. established at €158.72 at First Appeal stage in 1991 and subsequent Revision in 1994. Again, Mr. Halpin noted that this premises is more than 50 sq.metres larger than the subject, is located in a neighbourhood retail development and enjoys seven days per week trading.

The appellant's consultant again repeated that there is no "tone-of-the-list" for convenience stores or indeed retail property in the City West Business Park. There are two small 70 sq. metre Retail units in City West, which have remained vacant for the last two to three years.

Mr. Halpin stated they cannot be let because there is a perception that this is a poor retail investment area, due primarily to poor passing trade.

The appellant's consultant then concluded his evidence.

When questioned by the Chairman seeking details of the lease arrangement, Mr. Halpin confirmed that he did not have sight of the relevant documentation but stated that he believed that the unit is managed on a basis similar to that of a licensed operator for the benefit of the party holding the leasehold interest.

Mr. Halpin confirmed that his Comparison No. 1 is an actual lease and not a franchise operating agreement or licence. He also elaborated on his view that the Valuation Office had adopted an inconsistent and inequitable approach in attempting to establish a rateable valuation by reference to a tone-of-the-list for other shops beyond the area while apparently disregarding passing rent and simultaneously attempting to assess the subject by reference to its rent and ignoring the said tone-of-the-list.

Mr. Murphy then commenced cross-examination of Mr. Halpin.

The appellant's consultant agreed that City West Business Park is one of the largest expanding business parks in the country, but would not agree that there is a tone-of-the-list for retail convenience shops within it. Mr. Murphy asserted that Mr. Halpin's first comparison had its R.V. assessed by the tone-of-the-list and Mr. Halpin acknowledged that the rent was not the primary factor of assessment in that particular circumstance. In reply to a question, the appellant's consultant was not in a position to share knowledge on the fit-

out costs relating to the ground floor but he assumed that the premises was let on a shell basis and that the Valuation Office is required to consider the value of the units in all circumstances in their actual state. Mr. Murphy contended that if the subject premises had been fitted out to its current standard, it would have commanded a higher rent.

### **The Respondent's Case**

Mr. Murphy took the oath and adopted his précis as his evidence-in-chief, with one minor change on page 8, second line, December now to read November. He addressed and summarized the contents of Pages 6, 7 and 8 of his submission, which provided details of tenure and rent on the subject property and the valuation methodology adopted -being both comparative and index-linked rental. He confirmed the passing rent on both the ground and first floor, totalling €106,720.00 per annum and advised that there exists a franchise lease with payments based on turnover between Ashglen Property Company Ltd., and Brian Smyth t/a Spar City West, but was not able to obtain details on same from the consultant's valuer. He also confirmed that the total floor area, ground and first, calculated at 242.66 sq.metres and that he had adopted the comparative method of valuation keeping in line with what he considers to be the tone-of-the-list in the area, which produced an R.V. of €200. He went on to confirm that there was car parking available to the premises and that in his view, the limited trading hours did not bear negatively on the trading activities of the subject as Spar City West is dedicated to the convenience requirements of the large number of people working within City West Business Park and the National Digital Office Park within. He then focused on his comparisons.

**Comparison No.1.** Lancer Marketing, Belgard Road, Tallaght, Dublin.

Mr. Murphy cited this particular shop and restaurant premises as his primary comparison and affirmed that he would place a 20% premium approximately on the rental value of this property over the subject, with such adjustment to reflect the comparative advantage of high traffic volume convenience trading in Belgard Road over City West Business Park.

**Comparison No 2,** Cabbot Aircraft Services Ltd, City West Business Park.

Mr. Murphy offered this comparison, being part of a second floor office, to indicate a rental value of €120.96 per sq.metre to compare with €90.00 per sq.metre which he applied to the first floor office area of the subject. He also chose this comparison as it is located within City West Business Park.

**Comparison No. 3,** Café Fresco, City West Business Park

Mr. Murphy indicated that this restaurant property of 225 sq.metres, revised in the year 2000 at an assessed rent of €85.07 per sq.metre, and an NAV of approximately 54% of rent, whereas the NAV of the subject property was calculated by him at approximately 30% of rent.

**Comparison No. 4,** Centra, Round Tower Road, Clondalkin.

Also revised in the year 2000 with assessed ground floor rent of €118.39 per sq.metre and though finished to a high specification, was introduced to indicate the relative difference in calculated NAV being €60 per sq.metre on the subject.

**Comparison No. 5**, FKM Engineering Ltd., City West Business Park

Revised 2002, first floor offices at €18.22 per sq.metre. This office property is also located in the National Digital hub, within the Park, close to the subject.

Mr. Murphy acknowledged that Comparison No's 3, 4, and 5 above all comprise floor areas significantly larger than the subject.

He proceeded then to comment on Mr. Halpin's submission re-stating that the subject property is located in the National Digital hub, which is the commercial office area of City West Business Park. He said that he believed that as the subject was the only convenience shop trading in this area, the limited trading hours should not of themselves be considered a disadvantage to the value of the subject property. He also stated that as no "tone-of-the-list" exists within City West Business Park for uses akin to the subject, then passing rent should be given primary consideration.

Mr. Murphy then addressed Mr. Halpin's comparisons, and made the following observations:-

**Comparison No. 1:** He stated that this property is located in a very poor area of Tallaght, and not suitable as a comparison to the subject property located within City West Business Park and that retail outlet is almost 100 sq.metres larger than the subject property.

**Comparison No 2:** This property he stated, is again approximately 100 sq.metres larger than the subject property. **Comparison Number 3:** Mr. Murphy said that this property comprises a Supermarket and Off-License and is about twice the area of the subject property. **Comparison Number 4:** He said that this property is almost 30% larger in floor

area than the subject property. **Comparison Number 5:** Mr. Murphy said that this is a neighbourhood Shopping Centre in Tallaght and that it is over twice the area of the subject property.

Mr. Murphy, in reply to a query, stated that his Comparison No. 1 would be his primary comparison. It is located close to many industrial units and close to Tallaght village. He contended that the comparisons he submitted were appropriate under the Valuation Act 2001. All are located within the same Rating Authority area as the subject property. Mr. Murphy informed the Tribunal that he had no access to any comparative retail turnover figures between Belgard Road and City West Business Park. He also declared that he had no information or details on the franchise agreement relating to the premises though he had requested same of Mr. Halpin, however they were not provided to him. Mr Halpin had apparently stated to Mr. Murphy previously that it was a business management contract between Mr. Smyth and the lessor and not a typical property lease. Mr. Murphy stated that, to his knowledge, there were no specific conditions in relation to trading hours on leases within City West Business Park and that there are over eighty firms now located within this large, South Dublin business park. Mr. Murphy acknowledged that the greater level of passing traffic and other mixed trading activities on the Belgard Road comparison property served as a trading advantage in that particular location and, consequently, the valuation within the City West Business Park on the subject premises was reduced by an adjustment of about 20% to reflect same.

Mr. Halpin then cross-examined Mr. Murphy.

Mr. Murphy, in reply to a question, acknowledged the general rule that Rating Valuation practice required comparing “like-for-like” properties. The reason he offered Comparisons No’s 2 and 5 was to show the rental levels that are being applied to office accommodation in the City West Business Park area. Mr. Murphy stated that Comparison No. 1 is owner/occupied. He accepted that a substantial portion of this business is generated by passing trade as the property is situated near a busy road. In reference to Comparison No. 4, he said that this property is better situated than the subject but repeated that City West Business Park is one of the best in the country and that the subject premises is, in his view, in a very good location within the Park. He stated that he believed that the subject property values were higher than any of the comparisons submitted by Mr. Halpin. Referring to Comparison No. 1, Mr. Murphy confirmed that, in his opinion, there is no “tone-of-the-list” for convenience retail shops in City West Business Park and in carrying out his valuation on the subject, he did not rely solely on the rent, but looked to comparables within the general area.

Mr. Halpin felt and expressed the view that Mr. Murphy’s approach served to set the “tone-of-the-list”, not for retail, but rather for offices within the City West Business Park. Both valuers debated the relative trading merits and comparative features of the comparative properties provided by the Valuation Office.

Both parties provided summary closing statements to their evidence.

## Findings

The Tribunal, having read the evidence submitted by the parties, and having listened carefully to all of the evidence adduced at the hearing and noted the contents of the photographs and other materials referenced during the course of the hearing, wishes to acknowledge the cogent arguments made by both valuers in support of their evidence and finds as follows:-

1. There is no “tone-of-the-list” for retail convenience stores bearing broadly similar characteristics to the subject property, as described heretofore, within City West Business Park.
2. The property, including both floors, must be valued on an “as it is, where it is” basis.
3. The valuation for rating purposes of the subject property must be calculated in accordance with the provisions of the Valuation Act 2001, and in particular, with Section 49 thereof.
4. In the absence of a “tone-of-the-list” within the Park, it is appropriate to extend further into the same local authority area to assess the Net Annual Value of properties of similar use and function.
5. It is not appropriate to consider facts relevant to properties used for non-retail purposes, such as offices or restaurants, notwithstanding the apparent use of the first floor of the subject, which the Tribunal considers to be ancillary and

subsidiary to the operation and conducting of convenience retailing on the ground floor of Spar City West.

### **Conclusion & Determination**

The Tribunal took particular note of the 18.75% premium acknowledged by Mr. Murphy on Net Annual Value per sq.metre attributed to the Valuation Office Comparison No. 1 premises, described on Page 9 of their written submission, i.e. that located on Belgard Road. This matter was not challenged by Mr. Halpin. Then bearing in mind all the facts established, evidence adduced, and mindful of the seven day and evening passing traffic at that Tallaght location, it was felt by the Tribunal that the ground floor retail rate per sq.metre used to calculate the NAV of the subject property should accordingly be adjusted downwards and by employing the comparative method as set out by the Valuation Office on Page 7 of their submission, the following calculations would apply;-

<b>Floor Level</b>	<b>Use</b>	<b>Area sq / m</b>		<b>Nav€/ Sqm</b>		<b>NAV</b>
Ground Floor	Shop area	144.13	@	133.35	=	19,219.74
	Store/Cold Stores	33.04	@	85	=	2,808.40
First Floor	Office/Stores/Canteen	65.49	@	90	=	5,894.10
<b>Total Area</b>		<b>242.66</b>				<b>€27,922.24</b>

**RV = NAV @ 0.63%**

**RV = €27,922.24 @ 0.63% = €175.91**

**Say: €175**

And the Tribunal so determines.