

Appeal No. VA08/5/011

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

**Noone Foods Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 1141562, Restaurant at JFK Industrial Estate, Bluebell Avenue,  
Clondalkin, County Dublin

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Joseph Murray - B.L.**

**Member**

**James Browne - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 3RD DAY OF DECEMBER, 2008**

By Notice of Appeal dated the 24th day of June, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €15,900.00 of the above-described relevant property.

The grounds of Appeal are set out in a Notice of Appeal and a letter attached to the Notice of Appeal, a copy which is attached at Appendix 1 to this Judgment.

1. This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 23<sup>rd</sup> day of October, 2008.
2. At the hearing the appellant's company was represented by Mr. Chris Noone, the Managing Director and proprietor of the company. Mr. Viorel Gogu, a Valuer in the Valuation Office appeared on behalf of the respondent the Commissioner of Valuation.

### **The Property Concerned**

3. The Property concerned is an end of terrace, light industrial building converted to retail and restaurant use, located in the JFK Industrial Estate, Bluebell Avenue, Clondalkin. The surrounding area is mainly in light industrial and warehouse use.
4. Internally the original building has been extensively fitted out by the occupier with tiled floors, suspended ceilings and shop front. There is ample forecourt car parking at the front and side of the building. Part of the forecourt area is also used for external dining purposes.
5. The area of the property measured on the gross internal area basis is 167.19 sq. metres.

### **The Tenure**

6. The property is occupied under a 35 year full repairing and insuring lease from 1<sup>st</sup> February, 1997. This provides for upward only rent reviews at 5 yearly intervals and the current rent payable for the 5 year period commencing 1<sup>st</sup> January, 2007 is €23,000.00. This rent, in accordance with the rent review provisions contained in the lease, disregards any uplift in rent due to the improvements carried out by the tenant.

### **Rating History**

7. In the first instance the Valuation Office issued a certificate to the effect that it was proposed to value the property concerned in the sum of €8,500.00. Following representations by the ratepayer a Valuation Certificate was issued on 5<sup>th</sup> June, 2007 to the effect that the valuation of the property concerned had been determined at €45,900.00. No change was made on foot of an appeal under Section 30 of the Valuation Act, 2001 and it is against this decision by the Commissioner of Valuation that the appeal to the Tribunal lies.

### **The Appellant's Evidence**

8. Mr. Noone said that his greatest concern was that as a result of the revaluation his rates bill had been increased from €5,557.07 to €7,573.50, which he considered to be exorbitant given the low level of services which were provided to him by the local authority. In his opinion it was unfair to value his premises at a level substantially higher than similar sized units in the immediately adjoining area, some of which were used for retail purposes.
9. Mr. Noone said that insufficient regard had been had to the nature and level of his business in this location, which relied solely on local custom. There was no passing trade as such and this was reflected by the fact that the opening hours were 7.30am to 3.30pm on 5 days a week only. The premises does not open at weekends or during Bank Holidays or Public Holidays.
10. Mr. Noone, in answer to a question from Mr. Gogu, said he had spent approximately IR£ 75,000.00 in fitting out the premises when he first moved in. This expenditure could be apportioned, he said, on a 50-50 basis to fit-out works and the installation of trade fittings and plant.
11. At the hearing Mr. Noone provided the Tribunal with some information in relation to other assessments in the vicinity.

### **The Respondent's Evidence**

12. Mr. Gogu having taken the Oath adopted his written précis and valuation which had previously been received by the Tribunal and the appellant as being his evidence-in-chief. In his evidence Mr. Gogu contended for a rateable valuation of €45,900.00 calculated as set out below:

Restaurant/Café 167.19 sq. metres	@ €275 per sq. metre	= €45,977.25
NAV Say		€45,900.00

13. In support of his opinion of NAV, Mr. Gogu introduced 4 comparisons, details of which are set out in Appendix 2 attached to this judgment.

14. Mr. Gogu said that in arriving at his opinion of NAV he had regard to the actual use of the premises which was as a shop and a restaurant. All his comparisons, he said, were similar in nature to the property concerned and were also located within Industrial Estates and operated under the same business constraints. Mr. Gogu said that the most relative comparison was comparison No. 1 which was located very close to the property concerned and was occupied under a lease at a rent of €45,000.00 per annum.
15. Mr. Gogu said that in preparing for the revaluation programme the Valuation Office had carried out an analysis of all rents for premises similar to the property concerned and had arrived at what he considered to be fair levels of value for such premises, having regard to their size, location and other relevant factors which would have a bearing on rental value.

### **Findings**

The Tribunal has carefully considered all the evidence and arguments adduced at the hearing and finds as follows:

1. The statutory basis of valuation is set down in section 48 of the Valuation Act, 2001, wherein at section 48(3), the net annual value of a property is defined as being, “*the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average 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 and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant*”.
2. The onus of showing that the valuation of the property concerned, appearing in the valuation list is incorrect is on the appellant.
3. The Tribunal accepts Mr. Noone’s evidence that the nature of his business at this location relies solely on local custom. It is also true to say that the same applies to all the comparisons introduced by Mr. Gogu.
4. Of all the comparisons introduced, the O’Brien’s Unit A1 in JFK Industrial Estate (Mr. Gogu’s Comparison No 1) is the most helpful insofar as it occupies a similar location to the property concerned and its assessment of €2,700.00 is well supported by the rent passing of the €45,000.00. It too is located in the JFK industrial estate. It is noted however that the valuation of this property was not subject to a review either

at representation or appeal to the Commissioner of Valuation, so that to some extent it must be treated with a degree of caution. As to the other comparisons they would appear to occupy better locations than the property concerned and are not totally reliant upon locally based custom.

5. The information introduced by Mr. Noone really did not stand up to critical scrutiny and was not of much assistance to the Tribunal.
6. The property concerned is considerably larger than the O'Brien Unit above referred to, but given the nature of the business in this location it does not necessarily follow that this would be reflected in the level of achievable turnover. Accordingly we are of the view that the valuation of the property concerned as assessed is somewhat on the high side, having regard to its location, which is reflected in its restricted trading hours, and indeed the quality of the building itself.

### **Determination**

Having regard to the foregoing the Tribunal determines the rateable valuation of the property concerned to be €43,400.00.

The above figure may be analysed as follows:

Restaurant/Café	167.19 sq. metres	@ €260.00 per sq. metre	=€43,469.00
NAV Say			€43,400.00

And the Tribunal so determines.