

Appeal No. VA09/4/001

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

**Coldwell Banker Lloyd**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2198841, Shop at Lot No. 12A, Pelletstown, Ashtown A, Cabra West, County Borough of Dublin.

**B E F O R E**

**Maurice Ahern - Valuer**

**Deputy Chairperson**

**Aidan McNulty - Solicitor**

**Member**

**Fiona Gallagher - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 18TH DAY OF MARCH, 2010**

By Notice of Appeal dated the 19th day of October, 2009 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €87.00 on the above described relevant property.

The Grounds of Appeal are in the Notice of Appeal and a letter attached, copies of which are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing, which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 3<sup>rd</sup> day of February, 2010. The appellant, formerly Coldwell Banker Lloyd, now known as B & L Estates t/a William Brennan Property Consultants, was represented by Mr. William Brennan of William J Brennan & Co. Solicitors. The respondent was represented by Ms. Orla Lambe, BSc (Surveying), a Valuer with the Valuation Office.

In accordance with the rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. Mr. Brennan had no photographs to accompany his comparisons. Ms. Lambe agreed to share her photographs with him as they had comparisons in common. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

**At Issue**

Quantum.

**Tenure**

Leasehold term of 25 years.

**The Property**

The subject property is a mid-terraced ground floor unit used as an estate agency office/shop. The property has a wide frontage of 14 metres allowing good light penetration and is finished to a good standard with tiled flooring and painted and plastered walls. The new development within which the subject property is located has a designated underground car-park located under the Superquinn supermarket with free parking for up to 2 hours. On-street parking is also available free of charge.

**Location**

The subject property, Unit 12, The Village Centre, Rathbourne, Ashtown Road, Dublin 15 is situated 8 kilometres west of Dublin City on the Ashtown Road adjacent to the Ashtown train

station. It is in close proximity to the Navan Road, the River Road, Castleknock and the M50 west of Dublin City.

### **Valuation History**

4 <sup>th</sup> February 2009:	Draft Valuation Certificate issued with an RV of €87.00.
3 <sup>rd</sup> March 2009:	The Revision Officer made no change to the valuation at Representation Stage.
5 <sup>th</sup> March 2009:	Final Certificate issued at RV €87.00.
26 <sup>th</sup> March 2009:	Appellant appealed the valuation to the Commissioner of Valuation.
23 <sup>rd</sup> September 2009:	Commissioner of Valuation issued result of the First Appeal with the valuation unchanged.
19 <sup>th</sup> October 2009:	The appellant appealed the Commissioner's decision to the Tribunal by Notice of Appeal dated 19 <sup>th</sup> October 2009.

### **Agreed Floor Areas**

Ground Floor net internal area 80.64 sq. metres.

### **Appellant's Case**

Mr. William Brennan took the oath and adopted his précis as his evidence-in-chief, and provided the Tribunal with a review of his submission. He also raised the following points in support of his case that the rates levied upon his unit were excessive:-

1. The Valuation Office had incorrectly compared Rathbourne Village centre to the Maple Centre on the Navan Road, as Rathbourne Village is not directly comparable to the Maple Centre. The Maple Centre is situated on one of the busiest national roads in the country, whereas the Rathborne Centre is on a periphery road. Rathbourne only attracts people who live in the area, whereas the Maple Centre has thousands of commuters passing their door every day. There is a McDonald's fast food restaurant in the Maple Centre and there is no such similar facility in the Rathbourne Village that could create the amount of footfall created by the McDonald's restaurant. The fact that there is a Superquinn in Rathbourne Village does

create a certain amount of footfall; unfortunately, most people park underneath the Superquinn premises and go directly into the premises without visiting the rest of the shops in the centre. The effect is that Rathbourne has substantially less footfall than the Maple Centre. The anticipated volume of traffic from the Navan Road to the new development at Rathbourne Village has not been realised. The train line, which passes close to Rathbourne Village, is a hindrance in that it prevents many potential customers using the area as they do not want to get delayed at gates when the train is passing at the crossing.

2. In addition to the expense of rates, occupants also pay annual service charges to the management company of the centre which are in the region of €5,000/€7,000 per annum. There is currently a dispute between local retailers and the management agents on these charges. A lot of the local services are already being provided by the management agents and having to pay further payments to the local council for rates is creating great difficulty and Mr. Brennan submitted that this should be taken into consideration by the Tribunal in determining the rateable valuation of the subject property.
3. The subject property is an estate agency and is not comparable with a barber's shop or a doctor's surgery, where a customer must appear in person. Estate agents do not need clients to attend in person. The nature of the business is that a person can conduct business by email and so it does not depend on footfall. As a result, one does not need the same level of local services and this should be borne in mind. Consequently, Mr. Brennan submitted that rates for estate agents should be lower than for, say, a supermarket or restaurant.
4. The property business has suffered hugely in the past two years and is under great pressure and is under-performing. Wages have been adjusted due to the downturn and to save the jobs of the 5 employees currently working for the appellant company. Mr. Brennan contended for a rateable valuation of between €25 and €35 and also offered that the rates be paid by direct debit to facilitate payments. He also adverted to the fact that a colleague's firm in County Meath with a similar unit to the subject property had an RV of €38.

Mr. Brennan advanced 3 comparisons as below, details of which are at Appendix 2 to this judgment:-

No. 6 O'Briens Fine Wine	Unit 6 Maple Centre
No. 7 Fergal Connolly t/a Spar	Unit 5 Maple Centre
No. 8 Chartbusters	Unit 2 Maple Centre

### **Cross-examination by the Respondent**

In response to various questions put by Ms. Lambe, Mr. Brennan responded as follows:

1. Mr. Brennan confirmed he was aware that there are other units in the centre valued on a similar basis and such valuation is based on the tone of the list. He also accepted Ms. Lambe's interpretation of section 49(1) of the Valuation Act, 2001.
2. He accepted Ms. Lambe's interpretation of section 48(3) of the Valuation Act, 2001 that the issue of service charges and rates are a matter for the tenant. However, he said that the rent and rates should be lower due to the fall in the value of the property.
3. He maintained that rates are a fixed charge adding to other fixed costs which affect the ability of the business to retain current staffing levels and that the County Council should bear this in mind when assessing the rateable valuation of a property. Furthermore, the local services are already provided and paid for by the management company and this should be remembered in this case.
4. Mr. Brennan accepted that the Maple Centre did not have on-street parking. He pointed out, however, that the Maple Centre benefits from easy access and does not have the disadvantage of the railway line crossing. He further pointed out that the Maple Centre had a greater footfall than Rathbourne Village due to the popularity of the McDonald's restaurant situated in the Maple Centre. No such draw was enjoyed at Rathbourne Village he said. The existence of a Superquinn supermarket, which he would not classify as large, creates less footfall than a McDonald's restaurant. This is coupled with the fact that customers use the Superquinn underground carpark exclusively for shopping at Superquinn, without moving around the rest of the centre.

### **Respondent's Case**

Ms. Lambe took the oath, formally adopted her précis as her evidence-in-chief and reviewed her submission. Ms. Lambe consented to sharing her comparison photographs, which were common to both parties, with the appellant and reviewed the valuation of the subject property, as follows:

Ground Floor Shop	80.64 sq. metres @ €170.81 per sq. metre	= <u>€13,774.11</u>
NAV		NAV = €13,775

RV @ 0.63% = RV €86.77

RV say €87.00

Having submitted photographs of her comparisons, Ms. Lambe reviewed and summarised the valuation details pertinent to her comparisons numbers 1 to 8. She concluded her evidence and contended for the assessed rateable valuation, citing the following points:

1. The subject mid-terraced ground floor retail unit used as an estate agency enjoys a wide frontage of 14 metres with good light penetration and good frontage. It is finished to a good standard with tiled flooring and painted and plastered walls.
2. The property has a direct consumer base within the village centre itself, with newly constructed apartments, nearby substantial apartment block developments on the Navan Road, River Road and west of Dublin City, together with nearby office developments, a restaurant, an off-licence, a take-away, a pharmacy and a Superquinn supermarket.
3. The subject property was constructed to a high standard compatible with Ms. Lambe's eight comparison properties noted above, details of which are attached at Appendix 3 hereto.
4. When valuing the property, the location, size and relative value of the subject property had been taken into consideration and Ms. Lambe submitted that the valuation was fair and reasonable.
5. The property was supported with ample free on-street and underground parking.
6. The property was valued by reference to the "tone-of-the-list", as per section 49 (1) of the Valuation Act, 2001.
7. The appellant's comparisons were the same as 3 of the comparisons submitted by the respondent, namely Units 2, 5 and 6 of the Maple Centre, which, in Ms. Lambe's opinion, confirmed the tone of the list.

#### **Cross-examination by the Appellant**

In reply to questions raised by Mr. Brennan, Ms. Lambe advised the following:

1. Properties at the Maple Centre were used as comparisons in determining the rateable valuation of the subject property because it was the closest to Rathbourne Village.

2. Regarding access to the Maple Centre, while no train tracks delay traffic, heavy traffic can block entry to the centre.
3. Ms. Lambe acknowledged the large footfall in the Maple Centre and stated that this advantage was cancelled out by the advantage of the overhead apartments in the Village Centre, Rathbourne.
4. Ms. Lambe pointed out that while McDonald's has a profile to draw people to the Maple Centre, the Superquinn supermarket and its underground free car-parking draws people to the Village Centre, Rathbourne, which, in Ms. Lambe's opinion, is more advantageous.
5. Regarding Mr. Brennan's assertion that service charges, rent and rates are substantial, Ms. Lambe referred to Section 48(3) of the Valuation Act, 2001, which states that *"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 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."* However, Mr. Brennan said that the rent and rates should be lower due to the fall of the value of the property.

### **Findings & Conclusions**

The Tribunal thanks both parties who attended the hearing and appreciates the time and effort committed by both in seeking a satisfactory and equitable determination. Having read the written submissions and considered the additional information the Tribunal finds as follows:

1. The subject property offices are used for the provision of professional services associated with the management and operation of a general services estate agency.
2. There was no dispute between the parties as to the calculation of the area of the subject property.
3. There was no disagreement between the parties as to the description, location or condition of the relevant property.
4. The appellant did not provide calculations to support the determination of a suggested RV of €25/€35.

5. The property was valued by reference to the “tone-of-the-list”, as per section 49 (1) of the Valuation Act, 2001.
6. The eight properties offered as comparisons by Ms. Lambe in her précis, and the details accompanying same, were considered by the Tribunal to be appropriate, relevant and supportive of the respondent’s case.

**Determination**

Accordingly, the Tribunal is satisfied that the rateable valuation of €87.00 as determined by the Commissioner of Valuation, is a fair and equitable calculation of the rateable valuation of the subject property. The Tribunal therefore affirms the valuation.

And the Tribunal so determines.