

Appeal No. VA11/5/061

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

**Filomena Fusco**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No: 2166496, Retail (Shops) at Unit 2, Mart House, Leopardstown Road, County Dublin.

**B E F O R E**

**John F Kerr - BBS, FSCSI, FRICS, ACI Arb**

**Deputy Chairperson**

**Damian Wallace - OFA, Grad Dip**

**Member**

**Thomas Collins - PC, FIPAV, NAEA, MCEI, CFO**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 8TH DAY OF DECEMBER, 2011**

By Notice of Appeal dated the 16th day of June, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €40,500 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 5<sup>th</sup> day of October, 2011. At the hearing the appellant was represented by Mr. Paul Breslin, MSCSI. The respondent was represented by Mr. John Purcell, BSc, MRICS, MSCSI a Valuer in the Valuation Office. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

At the outset of the appeal Mr. Purcell advised the Tribunal that there were discrepancies in the précis of evidence relating to the area of the subject property. He said that both he and Mr. Breslin had visited the premises and agreed the respective areas and these were now contained in the addendum that he proposed to circulate. The Chairman sought clarification on a number of aspects of the addendum and following a short adjournment the agreed areas were submitted to the Tribunal. The agreed areas are as outlined in the Determination section at the end of this judgment.

### **Location**

The subject property is located in a small neighbourhood centre on the Leopardstown Road, at the junction with Leopardstown Avenue. The property is approximately 500 metres from the N11 Stillorgan Road.

### **The Property**

The subject property comprises a ground floor retail unit, currently used as a coffee shop, trading as Delizia Café and is situated mid terrace in a block of four retail units. The property has a kitchen and bathroom internally and a basement level store area which is accessed from the rear of the property through a separate door. The property fronts onto the busy Leopardstown Road.

### **Valuation History**

The property was valued as part of the revaluation of all rateable properties in Dun Laoghaire Rathdown County Council area and a valuation certificate was issued on 15<sup>th</sup> of June, 2010 proposing a valuation of €40,500. On 9<sup>th</sup> December, 2011 an appeal was lodged with the Commissioner of Valuation and following consideration of the appeal the valuation remained unchanged. On 20<sup>th</sup> June, 2011 an appeal was lodged with the Valuation Tribunal.

### **Appellant's Evidence**

Mr. Breslin, having taken the oath commenced his evidence by adopting his written précis as his evidence-in-chief. He outlined details of the premises, confirming that the subject property is one of four retail units on Leopardstown Road. He said that the Leopardstown Road was extensively widened in the last few years. The subject property is currently used as a coffee shop and there is also a basement attaching to the premises. Mr. Breslin said that because of the extremely busy road fronting the premises the immediate environment is only attractive for destination retailers. Mr. Breslin confirmed that the Zone A rate per sq. metre was the main point of dispute between the parties. Mr. Breslin contended for a valuation of €26,000. In support of his opinion of NAV, he provided 3 comparisons details of which are attached at Appendix 2 of this judgment.

Comparisons:

1. 37 Gledeswood Drive, Clonskeagh, Dublin 14 – Zone A €38 per sq. metre.
2. 1 Leopardstown Gardens, Blackrock, Co. Dublin – Zone A €603.50 per sq. metre.
3. 34 Main Street, Blackrock, Co. Dublin – €706.65 per sq. metre.

Mr. Breslin advised that the tone of the Zone A rates of the three comparisons, particularly the rate of €700 per Zone A in Blackrock Village, clearly shows the inequity of applying a Zone A rate of €350 on the subject property, which is in a far inferior location in his opinion. Mr. Breslin also added that he would make a separate application later to have the basement rated separately but that this was not part of the current appeal.

In response to questions from the Tribunal, Mr. Breslin confirmed that the subject property is not located in a retail centre in the same way as a village centre but could be considered a neighbourhood centre. He added that the tone is out of kilter with any comparison he considered reasonable and he believed that the tone is inflated. Mr. Breslin confirmed that all of his comparisons are located within the Dun Laoghaire Rathdown area.

### **Cross-Examination**

In cross-examination by Mr. Purcell, Mr. Breslin confirmed that the lease arrangement for the subject property is not a full arms length transaction and that in an open market transaction the passing rent (currently €30,000 p.a.) would possibly have been higher. He acknowledged that in rating valuation terms, suitable comparison properties, if available and located closer

to the subject might possibly carry more weight than the three comparisons submitted by him. He added that he had raised points about lease break options as in his view these were pertinent to the valuation analysis of a lease. He further added that the relevant date of valuation in the instant case was 30<sup>th</sup> September, 2005 and accordingly a lease dated 2008 would not have a huge bearing on this case.

Mr. Breslin said that the zoning method is generally used in prime retail areas such as Grafton Street to address any discrepancies between shop sizes and shapes and that in areas of lower value, typically suburban areas; retail zoning is generally not employed.

### **Respondent's Evidence**

Mr. Purcell, having taken the oath commenced his evidence by adopting his written précis as his evidence-in-chief. The respondent contended for the following valuation:

<b>Block</b>	<b>Level</b>	<b>Use</b>	<b>Measured</b>	<b>Area M2</b>	<b>Rate/M2</b>	<b>Value</b>
1	0	Zone A	NIA	35.64	€850 / m2	€30,294
1	0	Zone B	NIA	18.0	€425 / m2	€7,650
2	-1	Store	NIA	43.43	60 / m2	€2,605

Total Zoned Area 53.64 sq. metres

Total Area 97.07 sq. metres

Total = €40,549

Valuation Office Estimate of NAV (Rounded to) €40,500

He said that he had provided 2 comparisons as follows, details of which are attached at Appendix 3 of this judgment.:

- Unit 1 Mart House, Leopardstown Road, Dublin 18
- Unit 3 Mart House, Leopardstown Road, Dublin 18

Mr. Purcell explained that his comparison properties are two local shops on either side of the subject property. Mr. Purcell said that the shops are under leases with rents of €90 Zone A for Unit 2 and €1,001 Zone A for Unit 3 which is a corner unit. He then set out the details of the leases confirming that Unit 1 is held on a 21 year lease from the 1<sup>st</sup> April, 2006 on an annual rent of €24,000, while Unit 3 is held on a five year lease from 2007. Mr. Purcell added

that the valuation of Unit 1 was appealed to the Commissioner and following consideration of the grounds of the appeal the valuation remained unchanged. Representations were submitted on Unit 3 and the valuation was also appealed to the Commissioner and subsequently the valuation remained unchanged. Mr. Purcell concluded that this evidence is the basis of his case for the valuation on the subject property.

Mr. Purcell then responded to questions from the Tribunal and confirmed that he feels that 2 properties, adjacent to the subject, are sufficient and appropriate comparisons. He added that there is a third property in the block but this has been appealed to the Tribunal and he did not feel it was appropriate to include it as a comparison. Mr. Purcell added that a quantum allowance would only apply when properties are significantly larger. He said that the four properties have a higher rental value because they are four smaller properties and in demand as a result.

In response to a question about relying exclusively upon the value of other properties in the wider Local Authority area, Mr. Purcell said that he interpreted the **VA08/5/219 - Marks and Spencer** case of 2009 to say that the tone of the list is finally fully established upon the final determination by the Valuation Tribunal of all cases brought to it under appeal within the Rating Authority area. He added that when undertaking a Revaluation exercise, consideration should include reference to demographic changes within Rating Authority areas which may influence and create different values over time for different centres such as the subject neighbourhood centre. He noted that in Stillorgan Zone A values up to €1,200 per sq. metre are considered fair and further contended that it was important that the respondent should accordingly consider property values for comparison purposes situate in close propinquity to the subject.

Mr. Purcell said that he did not feel that the pedestrian crossing in front of the subject property was a burden on the property but rather it may be considered as evidence of pedestrian footfall. He confirmed that the volume of traffic had increased in recent years around and about the subject area.

### **Cross-Examination**

In cross-examination Mr. Breslin asked a number of questions regarding the subject property and the valuation methods used. Mr. Purcell stated that the Valuation Office took other

centres into account when arriving at a valuation. He added that the comparison properties were inspected but the leases were not always seen. However he acknowledged that he was satisfied that the occupiers in the subject centre provided him with correct details of their leases. Mr. Purcell did not accept that the Zone A rate determined in Blackrock village is less than that of the subject property and added that the rental evidence of the occupier in the subject property, provided to the Valuation Office, suggests that the level that they have applied is correct. Mr. Purcell added that the subject property has good profile, people can see the shop and they are aware that it is there. In conclusion Mr. Purcell outlined details about the traffic junction confirming that it is a restricted junction.

### **Summary**

In summarising his case Mr. Breslin said that he wished to make two main points and added that when considering the comparative units in Blackrock and Clonskeagh it does not make sense that the subject property should be valued at higher levels to those areas. He re-stated that the restricted junction and widening of the road had reduced footfall. Finally, Mr. Breslin asked the Tribunal to take into account the comparative evidence he submitted.

Mr. Purcell asserted that Mr. Breslin had failed to give any supporting evidence for a reduction in the valuation and that the Valuation Office comparisons show that the adjoining occupiers were prepared to pay more than the occupier of the subject property. Mr. Purcell concluded by asking the Tribunal to affirm the valuation set by the Commissioner of Valuation.

### **Findings**

The Tribunal has carefully considered all of the oral and written evidence produced by the parties and the arguments adduced at the hearing and make the following findings:

1. The Tribunal notes the paucity of rental evidence proffered by the parties with respect to the developing or evolving tone of the list for properties comparable to the subject within the subject rating authority area.
2. The Tribunal was not satisfied that only 2 comparable properties adjoining the subject, as set out in the respondent's précis, are sufficient to establish a reliable or settled tone of the list.

3. The undisputed evidence adduced by the respondent with respect to Zone A rental values in the cited comparison properties in the appellant's précis indicated a considerable variance in value ranging from €400 per sq. metre to €750 per sq. metre. However, the parties acknowledged that the latter value is attributed to a property within a nearby retail centre of which one of the units therein is under appeal and consideration by the Valuation Tribunal.
4. The Tribunal is of the view that insufficient consideration was given by the respondent to the following matters which might influence the NAV of the subject property:
- (a) Physical location at a controlled and restricted traffic junction;
  - (b) The upgrading and widening of Leopardstown Road as a feeder route between the N11 and M50 junction 14;
  - (c) The stepped access, devoid of ramp, restricting ingress and egress to the subject property;
  - (d) The absence of immediate adjoining parking or set down for vehicles.

### **Determination**

Having regard to the foregoing the Tribunal determines the rateable valuation of the subject property to be as follows:

Zone A	33.73 sq. metres @ €725	per sq. metre =	€24,454.25
Zone B	19.84 sq. metres @ €362.5	per sq. metre =	€7,192.00
Store	43.43 sq. metres @ €60	per sq. metre =	<u>€2,605.80</u>
Total =			€34,252.05
NAV Say	€34,200		

And the Tribunal so determines.