

Appeal No. VA12/1/007

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

**Wappinger Food Corpn Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 842981, Restaurant/Cafe, at Lot No. 7a, Ballsbridge Terrace, Pembroke West B, Pembroke West, County Borough of Dublin.

**B E F O R E**

**Maurice Ahern - Valuer, IPAV**

**Deputy Chairperson**

**Veronica Gates - Barrister-at-Law**

**Member**

**Frank Walsh - QFA, Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 17TH DAY OF JULY, 2012**

By Notice of Appeal received on the 19th day of January, 2012, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €607 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are as follows:

*"The tone of the list for recently revised properties in the same rating area."*

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, 3<sup>rd</sup> Floor, Holbrook House, Holles Street, Dublin 2 on the 27<sup>th</sup> day of April, 2012. At the hearing the appellant was represented by Mr. Conor Ó Cléirigh, FSCSI, FRICS. The respondent was represented by Mr. John Plunkett, BSc Estate Management, a valuer with 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 Issue**

Quantum.

### **The Property**

#### **Location**

The property is situated in the village of Ballsbridge on Ballsbridge Terrace at the junction of Shelbourne Road and Pembroke Road. The immediate area is predominantly made up of retail/office properties. There are a number of embassies and diplomatic residences located in the area. Herbert Park, the RDS and Aviva Stadium are also located within close proximity.

#### **Description**

The property comprises a two-storey over basement flush pavement, end of terrace building of brick and concrete block construction, with brick elevation and a pitched slate roof. The original Victorian building has been significantly renovated and extended over the years and the recent revision request was triggered by the erection of a two-storey kitchen extension.

There is a single-storey side building fronting onto Clyde Road which also forms part of the subject premises. This building is of concrete block construction with concrete floor and sloping roof.

The internal layout of the main building provides restaurant use on the ground and first floors with the basement given over to kitchens, staff changing rooms, food preparation areas, staff toilets, etc. There are no car parking facilities with the property.

#### **Accommodation**

The following net internal floor areas have been agreed between the respective valuers.

<b>Ground Floor</b>	<b>Floor Areas</b>
Zone A	75.52 sq. metres
Zone B	75.52 sq. metres
Zone C	8.91 sq. metres
Kitchen	43.55 sq. metres
<b>First Floor</b>	
Restaurant	170.94 sq. metres
Kitchen	43.55 sq. metres
<b>Basement</b>	
Kitchen and Prep Area	104.98 sq. metres
<b>Side Stores</b>	132.55 sq. metres

Toilet accommodation for customers is available at ground and first floor levels.

### **Services**

All mains services are supplied and connected to the property.

### **Tenure**

The property is held under a thirty-five year lease with five year reviews from August 1992 with a commencement rent of €73,697.

### **General Observations**

This property has been finished to a high standard.

### **Rating History**

1 <sup>st</sup> April, 2011	Proposed Valuation Certificate issued with RV of €607
28 <sup>th</sup> April, 2011	Representations made to the Valuation Office
17 <sup>th</sup> May, 2011	RV unchanged at €607
25 <sup>th</sup> June, 2011	Appeal to the Commissioner of Valuation
23 <sup>rd</sup> December, 2011	RV unchanged at €607
19 <sup>th</sup> January, 2012	Appeal to the Valuation Tribunal

### Appellant's Evidence

Mr. Ó Cléirigh having taken the oath adopted his précis of evidence and valuation which had previously been received by the Tribunal and the respondent, as being his evidence-in-chief. In his evidence Mr. Ó Cléirigh contended for a rateable valuation of €533, calculated as follows:

#### Ground Floor

Zone A	75.5 sq. metres	@	€341.75 per sq. metre	=	€25,802
Zone B	75.5 sq. metres	@	€170.8 per sq. metre	=	€12,895
Zone C	8.91 sq. metres	@	€85.40 per sq. metre	=	€ 760

**Kitchens** 43.55 sq. metres @ €85 per sq. metre = € 3,701

#### First Floor

Restaurant	170.93 sq. metres	@	€136.76 per sq. metre	=	€23,376
Kitchens	43.51 sq. metres	@	€85 per sq. metre	=	€ 3,701 <i>[sic]</i>

#### Basement

Kitchen and Prep Area 104.97 sq. metres @ €68.30 per sq. metre = € 7,177 *[sic]*

**Side Store** 132.55 sq. metres @ €54.68 per sq. metre = € 7,247  
€84,659

€84,659 x 0.63% = €533.55 *[sic]*

RV Say €533

In support of his opinion of net annual value (NAV), Mr. O'Cléirigh introduced three comparisons, as follows:

#### Comparison No. 1

Property No. 843568 t/a Chandri Restaurant RV€155 (2006 Revision)

174 Pembroke Road, Ballsbridge, Dublin 4.

His first comparison property chosen was a restaurant opposite the subject property, analysed as follows:

Zone A 67 sq. metres @ €341.75 per sq. metre

Kitchen            24 sq. metres @        €82.00 per sq. metre

### Comparison No. 2

Property No. 843559 The Embassy Grill    RV€185 (2005 Revision)

172 Pembroke Road, Ballsbridge, Dublin 4.

The second comparison is a restaurant opposite the subject property, amended details of which were received on the day of the hearing by the Tribunal, as follows:

Ground Floor Restaurant    59.98 sq. metres @    €341.70 per sq. metre

Ground Floor Kitchen        64.20 sq. metres @    €82.00 per sq. metre

First Floor Store            44.33 sq. metres @    €82.00 per sq. metre

### Comparison No. 3

Property No. 842987            Kites Restaurant        RV€177.76 (1998 Revision)

15/17 Ballsbridge Terrace, Ballsbridge, Dublin 4.

Zone A                    61.30 sq. metres @    €273.5 per sq. metre = €16,765.00

Zone B                    45.2 sq. metres @    €136.76 per sq. metre = € 6,181.50

Zone C                    9.9 sq. metres @    €68.38 per sq. metre = € 676.00

Basement                52.75 sq. metres @    €68.36 per sq. metre = € 3,607.00

First Floor               91.14 sq. metres @    €16.7 per sq. metre = € 1,522.00

In his oral evidence Mr. Ó Cléirigh contended for a Zone A rate of €341.75 per sq. metre for the subject property as this was the Zone A rate for his first two comparisons which are situated opposite the subject property.

### **Cross-Examination**

In response to a question put by Mr. Plunkett that the subject property had a much better profile than his comparisons 1 and 2 and had double frontage, Mr. Ó Cléirigh stated that the zoning method took care of frontage and that, regarding profile, his comparisons nos. 1 and 2 are situated opposite the subject property.

### **Respondent's Evidence**

Mr. Plunkett, having taken the oath, adopted his précis of evidence and valuation which had previously been received by the Tribunal and the appellant as being his evidence-in-chief. In his evidence Mr. Plunkett contended for a value on the subject property as follows:

## Valuation Assessment

### Original Property

Ground Floor:	75.52 sq. metres	@	€410.10 per sq. metre	=	€30,970.75
	75.52 sq. metres	@	€205.05 per sq. metre	=	€15,485.38
	8.91 sq. metres	@	€102.52 per sq. metre	=	€ 913.45
1 <sup>st</sup> Floor:	170.94 sq. metres	@	€136.70 per sq. metre	=	€23,367.50
Basement	104.98 sq. metres	@	€68.35 per sq. metre	=	<u>€ 7,175.38</u>
Total: (RV £386.50)				=	€77,912.46
NAV (rounded)				=	€78,619.04
RV agreed at appeal 1993 (£390.00)				=	€495.30

### Extension

#### Ground Floor

Kitchen Extension 43.55 sq. metres @ €102.52 per sq. metre = €4,464.75

#### First Floor

Kitchen Extension 43.55 sq. metres @ €136.70 per sq. metre = €5,953.29

Stores 132.55 sq. metres @ €54.68 per sq. metre = €7,247.83

NAV = €17,665.87

RV = €111.29

Total NAV = €96,284.91

Rateable Valuation: Say: €607.00

In support of his opinion of valuation Mr. Plunkett introduced five comparisons, as follows:

### Comparison No. 1

Property No. 842981 (Subject Property) RV€495.30 (1<sup>st</sup> Appeal 1993)

Roly's Bistro, 7a Ballsbridge Terrace, Dublin 4

Ground Floor 72.52 sq. metres @ €410.10 per sq. metre = €30,970.75

75.52 sq. metres @ €205.05 per sq. metre = €15,485.38

8.91 sq. metres @ 102.52 per sq. metre = € 913.45

1 <sup>st</sup> Floor:	170.94 sq. metres @ €136.70 per sq. metre	=	€23,367.50
	104.98 sq. metres @ €68.35 per sq. metre	=	€ 7,175.38
Total			€77,912.46
NAV agreed at appeal (rounded)			€78,619.04
RV agreed at appeal			€495.30

\*RV of €495.30 was agreed between a Rating Consultant and the Commissioner of Valuation at 1<sup>st</sup> Appeal.

#### Comparison No. 2

Property No. 842983 RV€108 (2011 Revision)

9 Ballsbridge Terrace, Ballsbridge, Dublin 4

Shop <u>Ground Floor</u> :	Zone A	30.84 sq. metres @ €410.10 per sq. metre
	Zone B	19.77 sq. metres @ €205.05 per sq. metre
<u>Basement</u> *		12.31 sq. metres @ 41.01 per sq. metre

(\*Access to basement is by way of trapdoor in floor at the rear of the retail unit)

#### Comparison No. 3

Property No. 786965 RV€88.88 (1<sup>st</sup> Appeal 1993)

2 Merrion Road, Ballsbridge, Dublin 4.

Shop <u>Ground Floor</u> :	Zone A	23.22 sq. metres @ €410.10 per sq. metre
	Zone B	18.58 sq. metres @ €205.05 per sq. metre
	Remainder	9.56 sq. metres @ €102.52 per sq. metre

\*RV of €88.88 was agreed between a Rating Consultant and the Commissioner of Valuation at 1<sup>st</sup> Appeal.

#### Comparison No. 4

Property No. 786966 RV€100 (1991 Revision)

2B Merrion Road, Ballsbridge, Dublin 4.

Restaurant

<u>Ground Floor</u> :	Restaurant	27.00 sq. metres @ €410.10 per sq. metre
		27.00 sq. metres @ €205.05 per sq. metre
	Kitchen/Stores	29.72 sq. metres @ €95.69 per sq. metre

Comparison No. 5

Property No. 842985

RV€63.49 (1995 Revision)

11 Ballsbridge Terrace, Ballsbridge, Dublin 4

Restaurant

<u>Ground Floor:</u> Store	6.60 sq. metres @ €54.68 per sq. metre
<u>1<sup>st</sup> Floor:</u> Restaurant/Kitchen	51.00 sq. metres @ €191.38 per sq. metre
WC	1.30 sq. metres @ €82.02 per sq. metre

Mr. Plunkett, referring to his comparison No 1, the subject property, stated that the valuation on this property had been agreed between a rating consultant and the Commissioner of Valuation at first appeal in 1993. Three of his comparisons were located adjacent to the subject property and comparisons three and four were located on Merrion Road across from the subject. All his comparisons supported his valuation and a Zone A rate of €410.10 per sq. metre.

**Cross-Examination**

In response to questions put by Mr. Ó Cléirigh, Mr. Plunkett stated that:

1. It was appropriate to have the original valuation of the subject property as a comparison, even though the current valuation on the subject property is under appeal.
2. The subject property was located adjacent to eight other units and two public bars.
3. Mr. Plunkett was of the opinion that the subject was in a far superior location to the appellant's comparisons.

**Summary by Appellant**

Mr. Ó Cléirigh stated that the valuation set by the Commissioner is unfair to his client and the assessment flawed, having regard to the recently revised properties in the immediate vicinity of the subject property. He stated that his comparisons 1 and 2 are situated in the most comparable location and with similar frontage to the subject property.

Mr. Ó Cléirigh contended for Zone A rate of €341.75 per sq. metre. He also contended for a rate of €85 per sq. metre for the new kitchen extension on ground and first floors.

**Summary by Respondent**

Mr. Plunkett submitted on behalf of the respondent that the subject property was valued in accordance with the Valuation Act, 2001, on a ‘tone of the list’ basis. In his opinion the paramount piece of comparable evidence is the agreement reached between the agent at the time and the Commissioner of Valuation on the subject property at first appeal stage in 1993.

### **Findings**

The onus of showing that the valuation of the property concerned appearing in the valuation list is incorrect was on the appellant.

1. The ‘tone of the list’ used by the appellant to value the subject property was too narrow and all his comparisons were inferior to the subject property.
2. Under Section 63 (1) of the Valuation Act, 2001, *“The statement of the value of the property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act.”* Therefore the respondent was justified in listing the subject as one of his comparisons.
3. The comparison properties offered by the respondent were of most assistance to the Tribunal.
4. The Tribunal is satisfied that the same rate per sq. metre should be applied to the kitchens at ground and first floor levels.
5. The Tribunal notes the lack of comparative evidence proffered by both parties in relation to kitchens.

### **Determination**

All of the foregoing considered, the Valuation Tribunal determines that the valuation of the subject property should be calculated as follows:

#### Original Property

RV Agreed at Appeal 1993 (£390.00) €495.30

#### Extension

Gr. Floor Kitchen 43.55 sq. metres @ €102.52 per sq. metre = €4,464.75

1 <sup>st</sup> Floor Kitchen	43.55 sq. metres @ €102.52 per sq. metre =	€4,464.75	
Stores	132.55 sq. metres @ €54.68 per sq. metre =	<u>€7,247.83</u>	
NAV		€16,177.33	
€16,177.33 @ 0.63% =			<u>€101.92</u>
Total RV			€597.22

Say RV €597

And the Tribunal so determines.