

Appeal No.VA14/5/497

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

**Pride N Joy Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In Relation to the Issue of Quantum of Valuation in Respect of:**

Property No. 695554, Unit 18, First Floor, Donaghmede Shopping Centre, Dublin 13

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 5<sup>TH</sup> DAY OF AUGUST, 2016**

BEFORE:

**Dolores Power – MSCSI, MRICS**

**Deputy Chairperson**

**Mairéad Hughes - Hotelier**

**Member**

**Carol O'Farrell - BL**

**Member**

By Notice of Appeal dated the 3<sup>rd</sup> September 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €12,800 on the above described relevant property.

The sole ground of appeal set out in the Notice of Appeal is:

*“The property has been valued as a retail unit but is in fact a storage unit and has been in use as such for 15 years.”*

The appeal proceeded by way of an oral hearing held on the 13<sup>th</sup> January 2016 the offices of the Tribunal, 3<sup>rd</sup> Floor of Holbrook House, Holles Street, Dublin 2. The Appellant was represented by Mr Kevin Daly B.Sc, Surveyor, associate member of Chartered Surveyors Ireland of Colliers International and the Respondent was represented by Mr Donal O'Donnabháin B.Sc. (Surveying), Dip Financial Management, Pg Dip Public Management, Associate SCSI of the Valuation Office.

In accordance with the Rules of the Tribunal, the parties exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to the Tribunal. At the oral hearing, both witnesses, having taken the oath, adopted their respective précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

### **The Issue Arising: Quantum**

This appeal has arisen from the recent revaluation of Dublin City Council rating authority area, undertaken pursuant to Part 5 of the Valuation Act 2001. Section 48(1) of the Valuation Act 2001 requires the value of a relevant property to be determined by estimating the net annual value of the property. For the purposes of the 2001 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.

The net annual value (NAV) of the subject property at the statutory valuation date i.e. the 7<sup>th</sup> April 2011 was determined at €12,800. The Appellant argues for a NAV of €6,500.

### **Location**

The property is located on the first floor of Donaghmede Shopping Centre, Grange Road, Dublin 13, approximately 9 kilometres north of Dublin city centre.

### **Description**

The property is a retail unit of rectangular shape and one of a row of retail units on the upper floor. The agreed net internal floor area of the property is 94.02 m<sup>2</sup>:

### **Tenure**

The appeal property is held under a 15 year lease from the 1<sup>st</sup> April 2000.

## **The Appellant's Case**

Mr Daly makes the following points

- (1) The property is in an inferior location on the upper level close to the lifts and adjacent to the toilet facilities where there is a low footfall. The profile of the property is completely obstructed by Kay's Kitchen Food Court.
- (2) The property is a store and not a retail unit containing extensive racking and shelving and is in storage use since the 1<sup>st</sup> April 2000.
- (3) The user clause in the Lease confines the user of the property to storage use.
- (4) The passing rent reflects the restrictive user clause in the Lease.
- (5) Insofar as the property is used for storage since April 2000, the use now constitutes exempted development as no action can be taken against unauthorised development after a period of seven years.
- (6) The property was previously valued as a store by the Respondent.

Under cross examination Mr Daly confirmed that the appeal property is located in an area zoned for retail use and that the change of use from retail to storage does not constitute exempted development. He further accepted that the Lease permits a change of use with the consent of the landlord which consent cannot be unreasonably withheld. He confirmed that the property is interlinked with the adjacent shop unit, that it has a traditional shop front and own door access which the Appellant has chosen not to use but which could be opened up.

## **The Respondent's Case**

Mr O'Donnabháin described the physical characteristics of the property and acknowledged that its location is one of the poorest on the upper level and that the profile and visibility is severely hampered by Kay's Kitchen Food Court. He pointed out that the property has a traditional shop front and is similar to the other neighbouring retail units in the Centre and that though let as a shell unit, it could be easily be converted to retail use. Despite its current use as a store, Mr O'Donnabháin contended that it is appropriate to value the property as a retail unit.

The NAV of the appeal property is to be estimated in accordance with section 48 of the 2001 Act. The onus of proof lies on the Appellant.

In support of his opinion of net annual value, Mr O'Donnabháin introduced three items of market information in order to estimate the NAV of the appeal property and these are attached at Appendix 1 to this judgment. Two of those properties are on the upper floor and are similarly disadvantaged in poor locations behind the Food Court premises.

Mr O'Donnabháin confirmed that there are 22 retail properties on the first floor of Donaghmede Shopping Centre, fifteen of which are valued at a Zone A rate of €250 m<sup>2</sup> whilst the remaining seven units which are situate to the rear of the Food Court are valued at a Zone A rate of €200 m<sup>2</sup> to reflect their reduced profile. He maintained that the valuation as determined by the Commissioner of Valuation is correct and

asked the Tribunal to confirm the rateable value of the appeal property at €12,800 with effect from 7<sup>th</sup> April 2011. Mr O'Donnabháin was not cross-examined on his evidence.

## **Findings**

The Tribunal, having examined the particulars of the property the subject of this appeal, having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence adduced by the parties to the appeal, makes the following findings:

1. As provided in section 35(a) (i) of the Valuation Act 2001, in rating appeals, the onus to show that the valuation of the appeal is incorrect lies on the Appellant. The Tribunal finds that the Appellant has not met this provision of the Act.
2. The rent payable by the Appellant for the subject property under the Lease is not a market rent.
3. The lease of the property permitted the use of the property for retail trade or business with the prior consent of the landlord.
4. The Tribunal does not accept Mr Daly's contention that the use of the property for storage purposes for a period in excess of seven years has the effect of rendering such use exempted development.
5. Whilst the property is being used for storage of merchandise, the Tribunal is satisfied that the valuation for rating purposes should be on the basis of retail use.
6. The Appellant did not adduce any evidence to prove that the Respondent's valuation is incorrect.
7. The valuation of the appeal property should stand on the basis of the quantum arising from the comparisons offered by the Respondent.

## **Determination**

Having regard to the evidence and the arguments adduced, the Tribunal considers that the NAV of €12,800 as determined by the Commissioner of Valuation is fair and reasonable. Therefore, the Tribunal disallows the appeal and accordingly affirms the decision of the Commissioner of Valuation.