

Appeal No: VA17/4/003

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

INSOMNIA LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5010250, Retail (Shops) at Unit 2 Ridge Hall, Wyattville, Ballybrack, County Dublin.

B E F O R E

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Frank Walsh – QFA, Valuer

Member

Rory Hanniffy - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF DECEMBER, 2018**

1. THE APPEAL

1.1 By Notice of Appeal received on the 12th day of October 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV’) of the above relevant Property was fixed in the sum of €68,400.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because:

“Valuation is higher than the rent. The rent payable is €42,500 per annum.”

“Property address is incorrect.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €42,500.

2. VALUATION HISTORY

2.1 On the 16th day of August 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €68,400.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 3rd day of October 2017 stating a valuation of €68,400.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 17th day of July. 2018. At the hearing the Appellant was represented by Mr Barry Kehoe, Chief Financial Officer of Insomnia Coffee Company and the Respondent was represented by Ms Gillian Beale, BSc (Hons), ASCSI, ARICS of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The subject property comprises a ground floor coffee shop unit located at the intersection of Shanganagh Road, Wyattville Road, Church Road and Military Road Ballybrack. The property has dual frontages to Shanganagh Road and Wyattville Road. This is a mixed

residential and retail area with the commercial properties concentrated on Church Road and Military Road.

4.3 The subject property comprises a ground floor retail unit currently trading as an Insomnia cafe. The premises which has access from Shanganagh Road and Wyattville Roads is laid out as a restaurant/coffee shop.

4.4 The agreed floor area is Retail area: 148.94 m² and Sluice/store: 2.97m². Following a request from the Tribunal two zoning options were provided by the Commissioner's representative:

The first based on the Shanganagh Road frontage.

Use	Area m²
Retail Zone A	35.41
Retail Zone B	53.73
Retail Zone C	51.92
Retail remainder	7.88
Sluice Room/Store	2.97
	151.91

The second based on Wyattville Road frontage.

Use	Area m²
Retail Zone A	96.92
Retail Zone B	52.02
Sluice Room/Store	2.97
	151.91

4.5 The subject property is held on a full repairing and insuring lease for 20 years from 15th August 2016 subject to a rent of €42,500/pa. The lease includes 5-year rent reviews with tenant only break options at five-year intervals on giving 6 months-notice.

4.6 A block plan of the unit prepared by the Building Consultancy had been provided to the Tribunal showing the layout for the premises as currently laid out.

4.7 Following a request from the Tribunal additional documents were provided by the Appellants: -

- Notification of Grant of Planning Permission.
- A copy of the drawings that were submitted as part of the retention planning application (P001 – P004).
- Certificate of Compliance that was submitted on the BCMS system.
- Disability Access Certificate.
- Fire Safety Certificate.

These documents were circulated to the Respondents.

5. ISSUES

5.1 The valuation is higher than the passing rent. The property should not be zoned from the fire exit.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“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 be expected to let from year to year, on the assumption that the probable 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 in respect of the property, are borne by the tenant.”

7. APPELLANT'S CASE

7.1 The appellants were represented by Barry Kehoe, CFO & Commercial Director Insomnia Coffee Company. He stated that the zoning methodology adopted by the Commissioner, based on the Wyattville Road frontage was incorrect and that it should have been based on the Shanganagh Road frontage.

7.2 He further contended that the passing rent of €42,500 from 15th August 2016 was inconsistent with the proposed valuation of €61,000.

7.3 He stated that the front door was located on the Shanganagh Road frontage and this location was determined as part of a planning application D16A/0828 made to Dun Laoghaire Rathdown County Council for a change of use from retail use to coffee shop use.

7.4 He further stated that to comply with the Disabled Access criteria the entrance had to be moved from the Wyattville Road facade to the Shanganagh Road facade in compliance with DACMO 088/2016 issued by DLRDCC. He further claimed that it was incorrect to contend that the designated fire escape on Wyattville should determine the primary frontage.

7.5 He objected to the position adopted by the Commissioner whereby the Wyattville Road frontage was deemed the most valuable one and he contended that this adoption was solely to provide for a higher rateable valuation. He referred to the planning drawing prepared by The Building Consultancy which clearly showed the frontage on Shanganagh Road. He stated that if the primary access was from Wyattville Road such a use would be in contravention of Health & Safety and Building Regulation and consequently non-compliant. He further claimed that the works were specifically set out to comply with the requirements of Part B of the 2nd Schedule of the Building Regulations and that Insomnia incurred considerable cost to place a fire door at the side. He referred to the Fire Safety Certificate which explicitly states that the front entrance door should be a double door.

8. RESPONDENT'S CASE

8.1 The respondents were represented by Ms. Gillian Beale and she confirmed the location and provided a location map showing the subject property and included a few properties with blue dots identifying retail/commercial properties. An aerial map showed the subject property in

relation to Church Road, Military Road, Shanganagh Road and Wyattville Road was also provided.

8.2 The respondents provided two external photographs and confirmed that the floor area had been agreed on a net internal basis. Additional external and several internal photographs were provided.

8.3 A copy of the floor plan as submitted to the planning office was also included.

8.4 The submission referred to the lease from 15/08/2016, with a term of 20 years, five-year rent reviews and let on a full repairing and insuring basis.

8.5 Ms Beale referred to the Valuation on Final Certificate at €68,400 however she stated that this valuation should be reduced to account for a discount in the Zone rate per square metre to reflect the width of the frontage versus depth to €495.00 and the removal of staff toilet accommodation from the measurements. This resulted in a new valuation of €61,000.

Level	Use	Area M ²	€/ M ²	NAV
0	Retail Zone A	96.92	€495.00	€47,975.40
0	Retail Zone B	52.02	€247.50	€12,874.95
0	Store	2.97	€60.00	€178.20
				€61,028.55
			Say	€61,000.00

8.6 Ms. Beale provided four Tone of the List comparables to support her opinion of value.

Comparison 1.

19 Church Road Ballybrack t/a Centra

Property No. 519189

Block	Floor	Use	M ²	€/ M ²	NAV
1	0	Retail Zone A	57.95	€550.00	€31,872.50
1	0	Retail Zone B	57.95	€275.00	€15,936.25
1	0	Retail Zone C	36.10	€137.50	€4,963.75

2.4	0		114.58	€60.00	€6,874.80
					€59,647.30
				Say	€59,600

This property is located on Church Road, approx. 100m from the subject premises, is of a similar size. It was subject to first appeal but there was no appeal to the Tribunal.

Comparison 2

Property No. 534498

4A Military Road, Ballybrack, Co Dublin t/a Spar

Block	Floor	Use	M ²	€/ M ²	NAV
1	0	Retail Zone A	36.60	€550	€20,130
2	0	Retail Zone B	30.23	€275	€8,313.25
3.4	0	Store	49.70	€60	€2982
	NAV				€31,425.25
	RV (Rounded to)				€31,400

This property is located on Military Road, approx. 80m from the subject premises. It is a cross roads location and it was not subject to representations, first appeal, or appeal to the Tribunal.

Comparison 3

22 Church Road, Ballybrack, Co Dublin

Property No. 519194

Block	Floor	Use	M ²	€/ M ²	NAV
1	0	Retail Zone A	55.52	€550	€30,536
1	0	Retail Zone B	55.82	€275	€15,350.50
1	0	Retail Zone C	48.07	€137.50	€6609.62
	NAV				€52,496.12
	RV Rounded to				€52,400

This property is also located on Church Road, approx. 100m from the subject premises and is of a similar size.

Comparison 4

1 Military Road, Ballybrack, Co Dublin

Property No. 519209

Block	Floor	Use	M ²	€/M2	NAV
1.2	0	Retail Zone A	52.71	€550	€28,9950.50
1.2	0	Retail Zone B	33.08	€275	€9,097
				NAV	€35,887.50
RV (Rounded to)					€35,880

This property is located on Military Road, across from the subject premises. It was subject to first appeal which had been dealt with but there was no appeal to the Tribunal.

8.8 Based on these comparisons Ms Beale stated that in her opinion the Zone A level for this area was €550/ M² which was applied to the Wyattville Road frontage and she allowed for a discount of 10% in this calculation to reflect the extent of the frontage. This calculation provided a valuation of €61,000.

Level	Use	Area M ²	€/ M ²	NAV
0	Retail Zone A	96.92	€495.00	€47,975.40
0	Retail Zone B	52.02	€247.50	€12,874.95
0	Store	2.97	€60.00	€178.20
				€61,028.55
			Say	€61,000.00

8.9 Following a request from the Tribunal Ms Beale also provided the calculations based on the Shanganagh Road frontage which provided a valuation of €46,300 having added a 10% allowance to reflect the dual frontage ($€550 \times 10\% = €605.00$).

Level	Use	Area M ²	€/ M ²	NAV
0	Retail Zone A	35.41	€605.00	€21,423.05
0	Retail Zone B	53.73	€302.50	€16,253.32
0	Retail Zone C	51.92	€151.25	€7,852.90
	Retail remainder	7.88	€75.62	€595.88
	Sluice room/store	2.97	€60.00	€178.20

			Say	46,303.35
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Say €46,300

8.10 Ms. Beale confirmed that in her opinion the calculation based on the Wyattville Road frontage was the correct one.

9. SUBMISSIONS

9.1 No legal submissions were made.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Dun Laoghaire Rathdown County Council.

10.2 This case effectively turns on a single issue, namely which street is the primary one and consequently the frontage for determining the various zones.

10.3 The Tribunal does not accept that the passing rent of €42,500 from 15th August 2016 was of assistance as the Statutory valuation date was 30/09/2005.

10.4 The Tribunal is obliged to consider the property in **...” its actual state”** ...according to the Act.

10.5 Ms. Beale has argued that the Wyattville Road is the primary frontage and she points to the access doorway in this façade. The Tribunal has noted that this is a single width narrow access and includes several steps. The Disabled Access Certificate DACMO 088/2016 which sought a *“Change of use from retail unit to coffee shop use. Ground floor Unit, Shanganagh Road & Wyattville Road, Ballybrack, Co. Dublin.”* was granted permission subject to a single condition:

Condition 1: That the works be designed and constructed in accordance with the drawings and documentation submitted with this application.

Reason: To comply with Part M of the Second Schedule of the Building Regulations 2010.

These drawings as submitted clearly show the primary access is from Shanganagh Road and comprises a double door, whereas the Wyattville Road access is a single access and includes several steps.

The Fire Safety Certificate FSC/DR/346/16/7Day relating to the same application and issued on 4th October 2016 stated that: -

“ Dun Laoghaire Rathdown County Council, being the Building Control Authority for the County Health District of Dublin, by order dated as above, pursuant to Section 6 of the Building Control Act 1990 and in accordance with the Building Control Regulations 1997 to 2009, hereby certifies that the works or buildings to which this application relates will, if constructed in accordance with the plans, calculations and particulars submitted, comply with the requirements of Part B of the 2nd Schedule of the Building Regulations, 1997 to 2009, subject to the following 2 conditions.

Conditions and Reasons

- 1. The final exit/ emergency doors shall open in the direction of escape or be held open at all material times and shall comply with section 1.4.3. of Technical Guidance Document B.*

Reason: To comply with part B1 the 2nd schedule of the Building Regulations, 1997 to 2014.

- 2. The lining materials of walls and ceiling shall comply with section 2.1 - 2.3 of Technical Guidance Document B.*

Reason: To comply with part B2 the 2nd schedule of the Building Regulations, 1997 to 2014.

The Tribunal accordingly finds that the primary frontage is from Shanganagh Road.

10.6 Furthermore it is clear to the Tribunal from the photographs adduced that the Wyattville frontage is a sloping one and that it would be very difficult if not impossible to have a DAC compliant access on this frontage.

10.7 No issues were raised by the Appellants in relation to the comparisons adduced by the Respondents and the Tribunal therefore accepts the zoning levels utilised by them and the addition of 10% for the return frontage.

10.8 Taking account of the Disabled Access condition and reason, the Fire Safety Certificate approval and specifically condition 1 which referred to ... “the final exit/emergency doors...” the actual layout of the premises and the site limitations in relation to the substantial slope from Shanganagh Road down Wyattville Road, The Tribunal finds that the Shanganagh Road frontage is the primary one.

The Tribunal has therefore determined the Valuation at €46,300.

Level	Use	Area M²	€/ M²	NAV
0	Retail Zone A	35.41	€605.00	€21,423.05
0	Retail Zone B	53.73	€302.50	€16,253.32
0	Retail Zone C	51.92	€151.25	€7,852.90
	Retail remainder	7.88	€75.62	€595.88
	Sluice room/store	2.97	€60.00	€178.20
				€46,303.35
			Say	€46,300.00

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €46,300.

And the Tribunal so determines.