

**Appeal No: VA17/5/253**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**POLONEZ**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2186400, Retail (Shops) at Unit 13, Belgard Square West, Tallaght, County Dublin.

**B E F O R E**

**John Stewart – FSCSI, FRICS, MCI Arb**

**Deputy Chairperson**

**Eoin McDermott – FSCSI, FRICS, ACI Arb**

**Member**

**Kenneth Enright - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 27<sup>TH</sup> DAY OF MARCH, 2019**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 9<sup>th</sup> 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 €57,900.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

- The Valuation of the subject property is excessive and inequitable.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €25,200.

## **2. REVALUATION HISTORY**

2.1 On the 13<sup>th</sup> day of April, 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 €77,200.

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 of the Property was reduced to €57,900.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €57,900.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> day of October, 2015.

## **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 10<sup>th</sup> day of January, 2019. At the hearing the Appellant was represented by Mr Eamonn Halpin BSc Surveying, MSCSI, MRICS of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr Viorel Gogu PhD, MSc, M Econ, Sc, RICS, SCSi, IAAO 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 modern ground floor retail unit located in Belgard Square West. The property has a principal frontage to New Street and a secondary frontage to Belgard Square West. The floor area was agreed at the hearing as 176.05m<sup>2</sup>.

4.3 The property was subject to a lease from 2009 at either €76,000/pa or €62,310/pa but nothing turns on this disparity given its historic nature.

## **5. ISSUES**

5.1 This is a quantum issue and the Appellant is seeking an NAV of €19,470 whereas the Respondent is seeking confirmation of a valuation of €33,400.

## **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 Mr. Halpin, on behalf of the appellant adopted his precis as his evidence in chief. Mr. Halpin stated that his case was based on the secondary location of the subject property and that the property was a standard unit suitable for zoning. He took issue with the Commissioner’s use of a Zone A rate of €300/m<sup>2</sup> and stated that following an earlier decision of the Tribunal (VA17/5/113 Tallaght Cross Pharmacy-which was determined at €190 Zone A by the Tribunal); and subsequent agreements namely ; VA 17/5/264 Aussie Outback (Unit 7 Belgard Square West) and VA 17/5/224 The Blazing Grill (Unit 16 Belgard Square 16) which were

settled by agreement at €212/m<sup>2</sup> and €230/m<sup>2</sup> Zone A respectively as well as supporting rental and tone of the list evidence that the Commissioner's adherence to €300/ m<sup>2</sup> was not correct.

7.2 Mr. Halpin referred to VA 17/5/113 and highlighted several comments therein which supported his contention that the subject property was over valued at €300/m<sup>2</sup> Zone A. These comments centred on the high levels of vacancy in the immediate vicinity as well as the weakness of the retail rental market in the location following the downturn. He referred to the high level of retail comparable rental transactions available which he claimed supported his contention for a valuation of €19,470. He also stated that the Tallaght Cross retail development was a failed one as both Marks & Spencer and SuperValu had vacated in 2013 and the M&S unit remains vacant to date and only a small part of the SuperValu unit has been let. He also referred to smaller units occupied by Spar and Captain America which closed, and other retail units which were never occupied.

7.3 Mr. Halpin's first comparison was VA/5/113 Tallaght Cross Pharmacy which is in an adjoining development to the subject property though is slightly inferior due to location. It had been determined by the Tribunal at a Zone A rate of €190/m<sup>2</sup> whereas the Commissioner had sought a Zone A rent of €300/m<sup>2</sup> for the subject property. The appellant argued that this approach adopted by the Commissioner had confirmed that the Commissioner had not seen any difference between this Unit and the remainder of Belgard Square.

7.4 Mr. Halpin's second comparison referred to VA 17/5/264 which had been agreed prior to hearing at €29,000. It was stated that this property had been let for 21 years from 1<sup>st</sup> July 2014 at €26,000 per annum inclusive of all fixtures and fittings and a commercial kitchen. The rent of €26,000 devalued to a Zone A level of €191/m<sup>2</sup> with €72/m<sup>2</sup> on the mezzanine restaurant. The analysis of the settlement of €29,000 equates to €190/m<sup>2</sup> rent for the ground floor and €74.66/m<sup>2</sup> and not €80/m<sup>2</sup> on the mezzanine.

7.5 Mr. Halpin's third comparison referred to the Blazing Grill Unit VA/5/244 at 16 Belgard Square West which was also agreed prior to hearing. This unit which comprised 220.77m<sup>2</sup> was agreed at an overall rate of €190/m<sup>2</sup> or Zone A €230/m<sup>2</sup> for a fully fitted restaurant unit with three display windows.

7.6 Mr. Halpin's fourth rental comparison was Unit 14 Belgard Square West – adjacent to the subject - which had been leased on a verbal agreement at €15,000 per annum from 2014, however the property is no longer occupied. The analysis of this rent from an adjoining property showed a Zone A of €152/m<sup>2</sup> however the Commissioners rate of €300/m<sup>2</sup> remains in place as the unit was vacant and no appeal was made.

7.7 Mr. Halpin's fifth rental comparison was Unit 6 Belgard Square West. This unit was let for 10 years from 1<sup>st</sup> December 2017 at €43,180 per annum which showed a Zone A rent of €232/m<sup>2</sup>, however, the appellant argued that this rate should be discounted by 15% to 20% to reflect the market conditions that existed in October 2015 as distinct to conditions which existed in December 2017.

7.8 Mr. Halpin's sixth comparison was a letting of 4 years and 9 months from 6<sup>th</sup> October 2015 for Unit F1 Talbot House Tallaght Cross, which was subject to an initial rent of €25,200 per annum with 3 month's rent-free concession. Discounting the rent-free concession, the NER is €23,873 per annum which devalues to €192/m<sup>2</sup> Zone A. This unit closed in 2018 and is 20m from the subject property and has a full profile to Tallaght Cross.

7.9 Mr. Halpin's seventh comparison was a letting at Unit F2 Talbot House Tallaght Cross. It comprised a letting of 4 years and 9 months from the 6<sup>th</sup> February 2015 at €9,042 per annum which equates to a Zone A of €190/m<sup>2</sup> whereas the Commissioner had relied on a rate of €300/m<sup>2</sup>.

7.10 Mr. Halpin's eighth comparison was Unit 6 Tuansgate Tallaght which had been let on a 9-year 9-month lease from 8 September 2014 at €14,000 per annum. This property is located approx. 500 m from the subject property and has profile to The Square car park and was valued at €105/m<sup>2</sup>. This property is under appeal to the Valuation Tribunal.

7.11 Mr. Halpin's ninth comparison was Unit 124/126 The Square Tallaght, let from 14<sup>th</sup> July 2016 for 20 years at a headline rent of €50,000 per annum. The appellant referred to incentives provided by the landlord to a total value of €221,375 which provided an effective net rent of €27,862.50/pa and a Zone A rent of €235/m<sup>2</sup> for a significantly better located retail unit.

7.12 Mr. Halpin also referred to Unit 15 Belgard Square West, located 2 doors from the subject property, that has been vacant for over 10 years and had never achieved a letting. He also referred to Unit 2 Belgard Square West which has been available to let for over 5 years and was last occupied by a Vietnamese shop in 2013. The appellants also noted that the Commissioner had never assessed either of these 2 units even though they were constructed approximately 12 years ago. He also referred to Unit F4 Talbot House Tallaght which had been let in June 2000 at €100,685 per annum but has been vacant since 2011 with a current asking rent of €30,000 per annum. He stated that this property is located some 25 m from the subject property and has profile to Tallaght Cross. He also referred to Tramway Court Old Blessington Road wherein the Commissioner's assessment was based on a Zone A rate of €200/m<sup>2</sup>. He referred to Unit 7 Westgate Park where a Zone A rate of €180/m<sup>2</sup> was applied and a Zone A rate of €140/m<sup>2</sup> was applied to a unit from Marlfield Row.

7.13. Mr. Halpin noted that the off-licence was obtained in 2018 after the effective date of 7<sup>th</sup> September 2017. He stated that this had now been agreed with the Respondent.

7.14 Mr. Halpin concluded his evidence by seeking a valuation of €19,470 based on a Zone A rate of €210/m<sup>2</sup>.

Zone A	45.83m <sup>2</sup>	@	€210.00	€9,624.30
Zone B	60.72m <sup>2</sup>	@	€105.00	€6,375.60
Zone C	62.75m <sup>2</sup>	@	€52.50	€3,394.38
Remainder	6.75m <sup>2</sup>	@	€26.25	€177.19
				€19,471.47

**Say €19,470**

7.15 During cross-examination Mr. Halpin stated that in his opinion Belgard Square was not a continuation or extension of The Square as evidenced by the fact that two anchors namely Marks & Spencer's and SuperValu had closed. He further stated that some of the units had not been leased since their construction and some had been vacant for 12 years. Mr. Halpin confirmed that the property had an unusual shape and while it had a second display area and a door facing on to Belgard Square West this could not be regarded as secondary access due to

the difference in floor heights and the requirements of the building regulations. He stated that the door could be used as an emergency exit only.

## **8. RESPONDENT'S CASE**

8.1 Mr. Gogu, on behalf of the respondent adopted his precis as his evidence in chief and confirmed that there was agreement that the off-licence should not be valued as it was not in existence at the valuation date. He stated that the subject property was located on Belgard Square, West opposite The Square Shopping Centre and that the property comprised a retail shop and had frontages on two sides one facing a pedestrian mall – New Street and a second on to Belgard Square West Roundabout.

8.2 Mr. Gogu confirmed that the floor areas had been agreed at 176.05 m<sup>2</sup>.

8.3 Mr. Gogu referred to the actual rent for the subject property at €62,310/pa from 2009 which devalued at €322.85/ m<sup>2</sup>. He further stated that in his opinion the proposed valuation of the subject property was in line with the general rental evidence for similar properties in Tallaght. He stated that the Commissioner had relied on 6 items of market information to inform the estimate of NAV.

8.4 Mr. Gogu referred to Key Rental Transaction 1 at Unit 10 Belgard Square West. It comprised 190.52 m<sup>2</sup> with a lease commencement of 1 August 2015, a 5-year term and a rent of €40,000 per annum. The respondent analysed the NER as at 30<sup>th</sup> October 2015 at €37,978pa which provided an overall rate of €199.3/m<sup>2</sup> or a Zone A rate of €376/m<sup>2</sup>. He confirmed that this property had not been subject to representations or Valuation Tribunal appeal.

8.5 The second key rental transaction was Unit 8 Belgard Square West with the floor area of 81.77 m<sup>2</sup> and a letting of 2 years 9 months from 8<sup>th</sup> October 2013 at an initial rent of €18,000 per annum. The respondent analysed this rent with an NER of €18,000 at €220.12/m<sup>2</sup> on an overall basis and €258.17/ m<sup>2</sup> on a Zone A basis. He confirmed that this property had not been subject to representations or Valuation Tribunal appeal.

8.6 The third key rental transaction referred to Unit 7 Belgard Square West, with a ground floor area of 114.83 m<sup>2</sup> and a mezzanine of 96.21m<sup>2</sup> with a lease commencement of 3<sup>rd</sup> May 2017.

The lease term was for 21 years and the annual rent was €26,000 per annum. Mr. Gogu analysed the rent at an overall rate of €170/m<sup>2</sup> for the ground floor with €75/m<sup>2</sup> on the mezzanine.

8.7 The fourth key rental transaction referred to Unit 16 Belgard Square West, with a floor area of 220.77 m<sup>2</sup> and a lease commencement of 1<sup>st</sup> November 2010. The lease term was 4 years 9 months and the annual rent was €60,000 per annum. The NER was stated at €60,000 per annum and Mr. Gogu confirmed that in his opinion the unit was not suitable for zoning and the NAV was agreed at €49,100 or €190/ m<sup>2</sup> overall.

8.8 The fifth key rental transaction referred to Unit 1 Belgard Square West which had a total floor area of 144.33 m<sup>2</sup> and was let for a term of 25 years from 1<sup>st</sup> December 2016 at €25,000 per annum. Mr. Gogu analysed this rent at an overall rate of €173.20/ m<sup>2</sup> and €289.28/m<sup>2</sup> on a Zone A basis.

8.9 The final key rental transaction referred to Unit 11 Belgard Square West and comprised a floor area of 371.48 m<sup>2</sup> on a 24-year 11-month lease from 1<sup>st</sup> January 2012 a rent of €65,000 per annum. This rent was analysed at €175/ m<sup>2</sup> overall and a Zone A rent of €384.52/m<sup>2</sup>.

8.9 In conclusion Mr. Gogu stated that in his opinion the value at Tribunal stage, after disregarding the off-licence was €33,400 calculated as follows:

Use	AreaM <sup>2</sup>	€/m <sup>2</sup>	NAV
Shop	176.05	€190.00	€33,449.50
			€33,449.50

**Say €33,400**

8.10 Mr. Gogu confirmed that he was aware of the Valuation Tribunal determination in relation to the Tallaght Cross pharmacy and the comments therein. He argued that the 2<sup>nd</sup> frontage was of benefit to the subject property.

## 9. SUBMISSIONS

9.1 No legal submissions were received.

## **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 South Dublin County Council.

10.2 The Tribunal noted the agreed floor area at 176.05 m<sup>2</sup>, and it noted the zoning areas provided by the Appellant as follows: Zone A 45.83 m<sup>2</sup>; Zone B 60.72 m<sup>2</sup>; Zone C 62.75 m<sup>2</sup> and remainder 6.75 m<sup>2</sup>.

10.3 The Tribunal members undertook a site visit and noted the location of the subject property and the adjacent comparable properties as well as several vacant properties in the immediate vicinity. It also noted that the appellants were of the opinion that the recent Valuation Tribunal decision in relation to VA 17/5/113 referred to a Unit divorced from the main retail area and one that was in a slightly inferior position.

10.4 The Tribunal has looked at the twin, but very different approaches adopted by both parties based on the zoning methodology and an overall rate basis and it finds that the overall rate basis is the most appropriate and equitable method to adopt for retail premises on this occasion. The Tribunal having disregarded the zoning methodology has had particular regard to the rental evidence from the following comparisons which the Tribunal holds to be the most relevant for the subject property:

Unit 7 Belgard Square West from July 2014 based on an overall rate of €170/m<sup>2</sup>,

Unit F1 Belgard Square, West from October 2015 based on an overall rate of €136.40/m<sup>2</sup> (having deducted to 3 month's rent-free concession),

Unit F2 Talbot House from February 2015 based on an overall rate of €170.82/m<sup>2</sup>,

Unit 10 Belgard Square, West from August 2015 based on an overall rate of €199.30/m<sup>2</sup> and

Unit 1 Belgard Square West from December 2016 based on an overall rate of €173.20/m<sup>2</sup> to be the most relevant rental comparisons for the subject property.

10.5 The recent agreements for Unit 7 Belgard Square West at €29,000 and Unit 16 Belgard Square West at €41,900 were based on an overall rate of €190/m<sup>2</sup> which was supported by and was informed by the rental comparisons.

10.6 The parties agreed that the off-licence that currently attaches to the property and which was included in Mr. Gogu's précis was not in existence on the valuation date. Accordingly, it has been disregarded by the Tribunal.

10.7 The Tribunal does not accept that any additional rental value accrues to the subject property due to the rear frontage as it cannot be used for access due to the differences in floor levels and any such entrance could not comply with building regulations.

**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 **€33,400**.

Use	AreaM <sup>2</sup>	€/m <sup>2</sup>	NAV
Shop	176.05	€190.00	€33,449.50

**Say €33,400.00**

And the Tribunal so determines.