

Appeal No: VA17/5/263

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

MIJAN RAHMAN

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

**In relation to the valuation of
Property No. 5001777, Retail (Shops) at Unit 1 Belgard Square West, Tallaght, County Dublin.**

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 1ST DAY OF MAY, 2019**

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th day of September, 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 €28,500.

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 :

- 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 €17,300.

2. REVALUATION HISTORY

2.1 On the 13th 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 €30,200.

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 €28,500.

2.3 A Final Valuation Certificate issued on the 7th day of September stating a valuation of €28,500.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th 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 10th 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, MEcon,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 ground floor retail unit fitted out as a restaurant. It is located on Belgard Square West. There were minor differences in the floor areas as submitted however the parties have confirmed that the agreed floor area is 145.33m².

4.3 The subject property is subject to a lease for 25 years. A minor difference arose in the starting date for the lease between the parties but following clarification both parties have accepted that the start date was 1st December 2016.

5. ISSUES

5.1 This is a quantum issue and the Appellant is seeking an NAV of €17,300 whereas the Respondent is seeking confirmation of a valuation of €25,900.

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 appellant represented by Mr Halpin adopted his precis as his evidence in chief. He stated that his case was based on the secondary retail location of the subject property and was a standard unit suitable for zoning. He took issue with the Commissioners use of a Zone A rate of €300/m² and stated that following an earlier decision of the Tribunal (VA17/5/113 Tallaght Cross Pharmacy which had been determined by the Tribunal at €190/m² Zone A) 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/m² €230/m² Zone A respectively as well as supporting rental and tone of the list evidence that the Commissioners valuation at €300/ m² Zone A was not correct. Mr Halpin referred to a letting in the subject property which was for a term of 25 years from 1st December 2016 at €25,000/pa for a fully fitted restaurant with a commercial kitchen. He stated that the property had previously been rented in 2012 and 2014 at €30,000/pa but both lettings had failed.

7.2 Mr Halpin referred to VA17/5/113 and highlighted several comments therein which supported his contention that the subject property was over valued at €300/m². 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 €17,300. 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 referred to VA17/5/113 Tallaght Cross Pharmacy which was in an adjoining development to the subject property, though slightly inferior due to its location. It had been determined by the Tribunal at a Zone A rate of €190/m² whereas the Commissioner had sought a rate of €300/m² Zone A 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 refers to VA 17/5/264 which had been agreed prior to hearing at €29,000. He stated that this property had been let for 21 years from 1st 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/m² with €72/m² on the mezzanine restaurant. The analysis of the settlement of €29,000 equated to €190/m² rent for the ground floor and €74.66/m² on the mezzanine.

7.5 Mr Halpin's third comparison referred to Unit VA17/5/244 at 16 Belgard Square West which was also agreed prior to hearing. This unit which comprised 220.77m² was agreed at an

overall rate of €190/m² or a Zone A rate €230/m² 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 premises and had been leased on a verbal agreement at €15,000 per annum from 2014, however, the property is no longer occupied. The analysis of the agreed rent for this adjoining property showed a Zone A of €152/m², however, the Commissioners rate of €300/m² remains in place as the unit was vacant and no appeal was made.

7.7 Mr Halpin's fifth comparison was Unit 8 Belgard Square West. It had been let on a 2-year lease from 8th October 2013 at €18,000pa with 3 month's rent free which provided an NER of €15,750pa which was analysed as Zone A 57.67m² at €226 /m² and Zone B 24.10m² at €113 /m². However, the appellant stated that the Commissioner's rates were Zone A €300/m² and Zone B €150/m².

7.8 Mr Halpin's sixth rental comparison was Unit 6 Belgard Square West. It was let for 10 years from 1st December 2017 at €43,180 per annum which showed a Zone A rent of €232/m², however, the appellant argued that this rate should be discounted by 15% to 20% to reflect the difference in market conditions that existed in October 2015 as distinct to conditions which existed in December 2017.

7.9 Mr Halpin's seventh comparison was a letting of 4 years and 9 months from 6th 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 which devalues to €192/m² Zone A. This Unit closed in 2018 and is 20m from the subject property and has a full profile to Tallaght Cross.

7.10 Mr Halpin's eighth comparison was a letting of Unit F2 Talbot House Tallaght Cross. It comprised a letting of 4 years and 9 months from the 6th February 2015 at €9,042 per annum which equates to a Zone A of €190/m² whereas the Commissioner had relied on a rate of €300/m².

7.11 Mr Halpin's ninth rental comparison referred to Unit 6 Tuansgate Tallaght which had been let on a 9-year 9-month lease from 8th September 2014 at €14,000 per annum. This property is

located property 500 m from the subject property and has profile to The Square car park and was valued at €105/m² Zone A. This property is under appeal to the Valuation Tribunal.

7.12 Mr Halpin's tenth comparison was Unit 124/126 The Square Tallaght let from 14th July 2016 for 20 years at a headline rent of €50,000 per annum. The appellant referred to incentives provided by the landlord totalling €221,375 which provided a net effective rent of €27,862.50 and a Zone A rent of €235/m² for a significantly better located retail unit.

7.13 Mr Halpin also referred to Unit 15 Belgard Square West which was located 2 doors from the subject property and had been vacant for over 10 years and 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 has never assessed either of these two units even though they were constructed approximately 12 years ago. Mr Halpin 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 approx. 25 m from the subject property and has profile to Tallaght Cross. He also referred to Tramway Court Old Blessington Road wherein the Commissioners assessment was based on a Zone A rate of €200/m². He referred to Unit 7 Westgate Park where a Zone A rate of €180/m² was applied and a Zone A rate of €140/m² was applied to a unit from Marlfield Row.

7.14 Mr Halpin concluded his evidence by seeking a valuation of €17,300 based on a Zone A rate of €210/m².

Zone A	48.40m ²	@	€210.00	€10,164
Zone B	40.58m ²	@	€105.00	€4,260.90
Zone C	54.95m ²	@	€52.50	€2,884.88
				€17,309.78
			Say	€17,300

7.15 During cross examination Mr Halpin maintained that the premises should be valued on a zoning basis rather than an overall basis. He stated that the property had been rented to two

Indian restaurants in 2012 and 2014 at €30,000/pa and following the failure of these operations that it had been let in January 2017 for €25,000/pa.

8. RESPONDENT'S CASE

8.1 The respondent who was represented by Mr. Gogu adopted his precis as his evidence in chief and stated that the subject property was located in the Belgard Square West development with direct access to the Red Luas line.

8.2 Mr Gogu confirmed that the floor areas had been agreed at 145.33m².

8.3 Mr Gogu referred to the letting of the subject property at €25,000 from 1st December 2016 on a 25-year full repairing and insuring lease. He further stated that in his opinion the proposed valuation of the subject property relied on seven key rental transactions which when analysed provided net effective rents NERs. He confirmed that five of the valuations had been subject to further consideration at representation stage, four are subject to appeal to The Tribunal appeals and two had been agreed prior to hearing.

8.4 Mr Gogu referred to Key Rental Transaction 1 (the subject property) Unit 1 Belgard Square West. It comprised 144.33m² with a lease commencement of 1st December 2016 on a 25-year term and a rent of €25,000pa. Mr Gogu analysed the NER as at 30th October 2015 at €25,000 which provided an overall rate of €173.20/m² or a Zone A rate of €289.28/m².

8.5 Mr. Gogu referred to Key Rental Transaction 2 which comprised Unit 10 Belgard Square West. It extended to 190.52m² with a lease commencement of 1st August 2015, a 5-year term and a rent of €40,000 per annum. He analysed the NER as at 30 October 2015 at €37,978 which provided an overall rate of €199.3/m² or a Zone A rate of €376.20/m². He confirmed that this property had not been subject to representations or Valuation Tribunal appeal.

8.5 Mr Gogu's third key rental transaction was Unit 8 Belgard Square West with the floor area of 81.77m² on a letting of 2 years 9 months from 8th October 2013 at an initial rent of €18,000 per annum. Mr Gogu analysed this rent with an NER of €18,000 at €220.12/m² on an overall basis and €258.17m² on a Zone A basis. He confirmed that this property had not been subject to representations or Valuation Tribunal appeal.

8.6 Mr Gogu's fourth key rental transaction was to Unit 7 Belgard Square West, with a ground floor area of 114.83 m² and a mezzanine of 96.21m² and a lease commencement of 3rd March 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/m² for the ground floor with €75/m² on the mezzanine. He further stated that the NAV was agreed before hearing at a ground floor rate of €190/m² and the mezzanine rate was €80/m².

8.7 Mr Gogu's fifth key rental transaction was Unit 13 Belgard Square West, which had a floor area of 193m², was double fronted and had a lease commencement of 1st January 2009. The lease term was 25 years and the annual rent was €62,310 per annum. The NER was stated at €62,310 per annum and Mr Gogu confirmed that in his opinion the Unit was not suitable for zoning and the proposed NAV was €33,449 or €190/m² overall.

8.8 Mr Gogu's sixth key rental transaction was Unit 16 Belgard Square West, which had a floor area of 220.77 m² and a lease commencement of 1st 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/ m² overall.

8.9 Mr Gogu's seventh key rental transaction was Unit 11 Belgard Square West which had a double frontage and comprised a floor area of 371.48 m² on a 24-year 11-month lease from 1st January 2012 a rent of €65,000 per annum and an NER of €65,000. This rent was analysed at €175/ m² overall and had a Zone A rent of €384.52/m². There was no change at representation stage and no appeal was made to the Tribunal.

8.10 In conclusion Mr Gogu stated that in his opinion the most important comparison was the letting of the subject property at €25,000pa in 2016. He argued that the NAV should be €25,900 based on a reduced Zone A rate of €300/ m² or on an overall rate of €179.45/ m² calculated as follows:

Use	Area/ m ²	€/ m ²	NAV
Retail Zone A	48.80	€300	€14,640.00
Retail Zone B	54.95	€150	€8,242.50

Retail Zone C	40.58	€75	€3,043.50
		Total NAV	€25,926

Say €25,900

8.10 During cross-examination Mr Gogu stated that the most appropriate valuation basis was to adopt an overall rate per square metre. He confirmed that he has valued in accordance with the rental transactions.

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 145.33m². It also noted that the agreed zoning areas provided were as follows:

Zone A 45.50 m²;

Zone B 49.59 m²;

Zone C 48.19 m².

Zone D 2.05m².

Both parties had provided slightly different areas in their written submissions but confirmed that the agreed areas and zoned areas were as indicted immediately above.

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 approaches provided by both parties based on 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 subject property following its letting in 1st December 2016. This rent has been analysed at €172.02/m² based on the agreed floor area. The Tribunal has also considered the evidence from Unit 7 Belgard Square West from July 2014 based on an overall rate of €170/m²; Unit F1 Belgard Square, West from October 2015 based on an overall rate of €136.40/m² (having deducted to 3 month's rent-free concession); Unit F2 Talbot House from February 2015 based on an overall rate of €170.82/m²; Unit 10 Belgard Square, West from August 2015 based on an overall rate of €199.30/m² to be the most relevant rental comparisons for the subject property as well, of course, as the rent for the subject property itself, Unit 1 Belgard Square West, from 1st December 2016 based on an overall rate of €172.02/m².

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/m² which was supported by and was formed by the rental comparisons above.

10.6 The Tribunal takes the view that the question of whether the lease commenced on 1st December 2016 or 14 January 2017 has no material impact on its decision, though it was agreed after written submissions had been made that the earlier date was correct.

10.7 The Tribunal notes that, the total floor area was agreed between the parties at 145.33 m² and the zoning measurements were marginally different in the parties' respective precis. However, given that the Tribunal has decided that the property should be valued on an overall basis and that as the parties' *total* measurement has been agreed any variation in these areas has no material impact on its decision.

10.8 Taking account of the location of the subject property and the tangible evidence from its open market letting on 1st December 2016 the Tribunal finds that the agreed rent of €25,000pa fairly and equitably represents the NAV as at 30th October 2015.

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 €25,000.

$$145.33\text{m}^2 \quad \times \quad €172.02 = €25,000$$

And the Tribunal so determines.