

Appeal No. VA11/5/105

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

**Insomnia**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2200175, Retail (Shops) at Suite 100, Q House, 76 Furze Road, Sandyford Business Park, County Dublin.

**B E F O R E**

**Maurice Ahern - Valuer, IPAV**

**Deputy Chairperson**

**Fiona Gallagher - BL**

**Member**

**Frank Walsh - QFA, Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 27TH DAY OF JANUARY, 2012**

By Notice of Appeal dated the 28th day of July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €74,500 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal and attached letter are attached herewith at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing held at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 21<sup>st</sup> day of November 2011. At the hearing the appellant was represented by Mr. Mervyn Feely, FSCS, FRICS, and the respondent was represented by Mr. Dean Robinson, B.Sc (Hons) Surveying, a Valuer in the Valuation Office.

### **Location**

The subject property is located on Furze Road, a cul-de-sac within Sandyford Industrial Estate, which is approximately 10km south of Dublin City Centre.

### **The Property Concerned**

The subject property is situated on the ground floor of a multi-storey office block, known as Q House. Internally it is fitted out with suspended ceilings, incorporating fluorescent lights, plastered and painted walls and a tiled floor. There are two public toilets, a staff toilet and a cleaning room. Total frontage is approximately 29m.

The agreed accommodation, measured on a Net Internal Area (NIA) basis is as follows:

Ground Floor Retail	149.12 sq. metres
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### **Tenure**

The subject property is held under a 20 year lease from 17<sup>th</sup> June 2008, at a rent of €45,000 per annum with a three month rent free period. However, the rent was abated in 2009 to €33,750 and has remained at this level since. The lease contains break clauses in Years 5 and 10.

### **Rating History**

The subject property was listed for revaluation as part of the revaluation of all rateable properties in the Dun Laoghaire Rathdown rating authority area. The relevant valuation date, as per the Valuation Order for this rating authority area, is 30<sup>th</sup> September 2005.

A proposed Valuation Certificate was issued on 15<sup>th</sup> June 2010 with a valuation of €74,500. Following representations lodged by the appellant on 12<sup>th</sup> July 2010, the valuation remained unchanged. An appeal was lodged by the appellant with the Commissioner of Valuation on 8<sup>th</sup> February 2011, which appeal was rejected and the valuation remained unchanged. The

appellant appealed against that decision to the Tribunal by Notice of Appeal dated 28<sup>th</sup> July 2011.

## **The Issue**

Quantum

## **The Appellant's Evidence**

Mr. Mervyn Feely, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the respondent, as his evidence-in-chief. Mr. Feely stated that the area immediately surrounding the subject property is mainly industrial in nature, with Q-House, where the subject is located, being the only multi-storey office block in the vicinity. In addition, he stated that Furze Road is a cul-de-sac with little or no passing traffic and restricted parking with double yellow lines immediately outside the premises and metered parking on the opposite side of the street. In his opinion, it is very difficult to see the subject property and it is in an isolated retail location, with no other complementary retailers in the immediate area to attract customers.

In Mr. Feely's view, the valuation of the subject property is excessive when compared to the actual rent of €45,000 which he states was agreed at the height of the property market. He contended for a Net Annual Value (NAV) of €33,750 calculated as follows:

Ground Floor Retail 149.12 sq. metres @ €226.33 per sq. metre = €33,750

In support of his contention of NAV, Mr. Feely submitted details of three comparisons, namely:

### 1) Comparison 1 – The Subject Property

Mr. Feely discounted the three month rent free period over five years, giving an average rent of €42,500 per annum, which amounts to a rate of €286.68 per sq.metre. He then used an average of the Lisney Retail Rental and IPD Retail Rental Indices to adjust the rental value back to the valuation date, which resulted in a rate of €223.23 per sq.metre.

2) Comparison 2 – Baristas Café, Unit B2 Block B, The Forum, Ballymoss Road, Sandyford

Mr. Feely stated that this unit is located on the ground floor of a multi-storey apartment development, as part of a parade of shops and with other office buildings in the immediate area. In his opinion, this is a far superior location to the subject property. This property is let under a 20 year lease from January 2008 at a rent of €74,000 per annum, with a six month rent free period and a break clause in Year 10. It is valued at a NAV of €3,000, but Mr. Feely stated that this valuation is currently under appeal to the Tribunal.

3) Brambles, Block A, Ravens Court Office Park, Sandyford

This property is also operating as a coffee shop and is located within Sandyford Business Park, in an area Mr. Feely described as primarily a commercial district. The property is held under a 25 year lease from November 2003 at a rent of €65,000 per annum. The NAV fixed on the property is €65,000, which is currently under appeal to the Tribunal. Mr. Feely stated that the rent reflects the superior location of this property, compared to the subject and that to apply a higher NAV to the subject property was unreasonable.

Mr. Feely submitted that the actual rent on the subject property was the primary evidence and that there was no reason to suggest a NAV of €74,500 in September 2005, when the actual rent in 2008 was €45,000. He maintained that the area where the subject was located was primarily an industrial area and was a dead end and that the comparisons cited by the respondent were not comparing like with like.

**Cross-Examination**

Under cross-examination Mr. Feely confirmed that the subject unit was let as a shell and stated that he would attribute an extra 5-10% in value on account of the fit-out. He accepted that the Lisney index was not specific to the Dun Laoghaire Rathdown rating authority area and that movements in each local authority area may be different. However, he stated it was his opinion that rents generally rose between 2005 and 2008. Mr. Feely also accepted that his Comparison 2 was let as a shell unit.

**Respondent's Evidence**

Mr. Dean Robinson having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as his evidence-in-chief.

Mr. Robinson stated that he had valued the subject property in accordance with section 48(3) of the Valuation Act 2001.

He contended for a NAV of €74,500, calculated as follows:

Ground Floor Retail                      149.12 sq. metres @ €500 per sq. metre =    €74,560

NAV Say €74,500

In Mr. Robinson's opinion, a rate of €500 per sq. metre was a fair rate for the subject property, having regard to the comparisons he put forward. He submitted three comparisons as follows:

1) Units 1&2 Carmanhall Road, Sandyford Industrial Park

This property is operating as a Centra store and is valued at a Zone A rate of €900 per sq. metre and a Zone B rate of €450 per sq. metre, with a total NAV of €129,400. In Mr. Robinson's view, this is in a slightly better location to the subject property. The rent on this unit is €123,161 per annum under a 35 year lease, with a five year break clause from 1<sup>st</sup> February 2002

2) Unit 3A Carmenhall Road, Sandyford Industrial Park

This property is the adjoining unit to Comparison 1 and is valued at the same Zone A and B rates per sq. metre and has a NAV of €9,200. Mr. Robinson pointed to the fact that the rent of €68,326, which was agreed under a 20 year lease from January 2002, did not increase at the 2007 rent review as evidence that the rental market in Sandyford did not rise between 2005 and 2007. The rent then decreased in 2008 to €5,000, which he believed shows a market in decline.

3) Unit A, Ravens Court Office Park, Sandyford

This is a common comparison with Mr. Feely (also his Comparison 3). Mr. Robinson stated that it is located at the bottom of a cul-de-sac and is very similar to the subject property in terms of quality and build.

Mr. Robinson stated that Mr. Feely had used the rent agreed in 2008, backdated to 2005 using property indices, with no regard to actual transactions in the Sandyford Industrial Estate. He further stated that he had made no allowance for fit-out. He submitted that his comparisons showed that there was no growth in Sandyford between 2005 and 2008 and in actual fact that it was in decline.

### **Cross-Examination**

Under cross-examination, Mr. Robinson accepted that the subject property is primarily located in an industrial area with one office building. He also accepted that Carmanhall Road, where his first two comparisons are located, is the main thoroughfare to the Beacon Shopping Centre, along with Blackthorn Avenue. He stated that the rate per square metre he had fixed on the subject property was 33% less than his Comparison 1, which he said reflected the inferior location of the subject.

It was put to Mr. Robinson that the NAV of €74,500 fixed on the subject property was unfair having regard to the passing rent of €45,000 per annum agreed in 2008. Mr. Robinson contended, however, that the Beacon South Quarter was developed and occupied between 2005 and 2008, which would have resulted in an increase in competition in the vicinity and that the evidence he submitted shows that rents declined in this area during that period. It was also put to Mr. Robinson that the fact that the rent on his Comparison 2 did not change at the rent review in 2007 suggested that this property was over-rented in 2002. He did not accept this and replied that this was a valid transaction which took place in 2002.

Mr. Robinson was asked by the Tribunal what percentage he would attribute to the fit-out and he stated he would apply approximately €1,500 - €2,000 per sq. metre, amortised over ten years.

### **Findings**

1. The statutory basis of valuation for properties on revaluation is set down in Section 48 of the Valuation Act 2001, wherein at subsection 3, the Net Annual Value of a property is defined as, *“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”.*

2. It is accepted that the subject property is in a poor retail location, isolated from other retail units with restricted parking and little passing traffic. The comparisons cited by both parties are not directly comparable to the subject property, particularly the respondent's Comparisons 1 and 2, being located in a far superior location. The common comparison between the parties is currently under appeal to the Tribunal and thus must be treated with caution.
3. In the circumstances, it is accepted, as was contended for by Mr. Feely, that the passing rent on the subject property should be the primary evidence in determining the NAV. However, in examining the passing rent of €45,000 per annum agreed on 17<sup>th</sup> June 2008, it is noted that same does not include any allowance for fit-out. Mr. Feely stated that he would attribute an extra 5-10% for fit-out, but Mr. Robinson contended that fit-out would add an extra €1,500 - €2,000 per sq. metre. The Tribunal is of the view that Mr. Robinson's figures are more realistic.
4. The Tribunal is of the view that the NAV of €74,500 fixed on the subject property by the respondent is excessive and unsustainable having regard to the actual rent on the premises.
5. In attempting to determine what the NAV would be in September 2005, it is noted that the retail indices used by Mr. Feely to backdate the rent from June 2008 to September 2005 do not include any information specific to the Sandyford Industrial Estate and accordingly are not reliable and no weight is attached to same. Mr. Robinson gave evidence, based on actual transactions, that at best there was no change in the market in the immediate vicinity of the subject between 2005 and 2008, which in the absence of any contradictory evidence is accepted.

### **Determination**

Having regard to the foregoing the Tribunal determines that the Net Annual Value of the property is as follows:

Ground Floor Retail	149.12 sq. metres @ €400 per sq. metre = €59,648
NAV Say	€59,600

And the Tribunal so determines.