

Appeal No. VA11/2/025

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

**Independent Trustee Co. Ltd. as Trustee of Delta Fund 702317**      **APPELLANT**

**and**

**Commissioner of Valuation**      **RESPONDENT**

RE: Property No. 2206569, Launderette at Lot No. 11Aa/Unit 4, Clonreher, Borris,  
Mountmellick, County Laois.

**B E F O R E**

**John F Kerr - BBS, FSCSI, FRICS, ACI Arb**

**Deputy Chairperson**

**Mairead Hughes - Hotelier**

**Member**

**Patricia O'Connor - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 18TH DAY OF NOVEMBER, 2011**

By Notice of Appeal dated the 24th day of May, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €19 on the above-described relevant property.

The grounds of appeal are set out in the Notice of Appeal, a copy of which is attached at Appendix 1 to this judgment

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 9<sup>th</sup> day of August 2011. At the hearing the appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI. Ms Ciara Hayes, BSc (Surveying), Revision Officer appeared on behalf of the respondent, the Commissioner of Valuation. At the hearing both parties adopted their précis which had previously been received by the Tribunal as being their evidence-in-chief.

## **Test Case**

### **The Property**

#### **Location and Description:**

The subject property is a retail unit situated at Unit 4, Gandon Court, Fairgreen Village, Portlaoise, Co. Laois. Gandon Court is a mixed-use development comprising 11 retail units, a supermarket, office accommodation and apartments which is located on the west side of the N80 (Portlaoise to Tullamore Road) and is approximately 2.6km north west of Portlaoise town.

The development includes a shared communal car park to the front of the development which also serves the remainder of the development. A licensed premises and petrol filling station are located east of the development. Residential development is located west and south of Gandon Court.

The subject property is one of approximately 11 similar type units and comprises a new ground floor terrace to the lockup retail unit with rear storage.

#### **Accommodation:**

The area of the subject property was agreed between the parties as follows;

Ground floor retail 98.22 square metres

Rear store 12.70 square metres

### **Valuation History**

This is a new valuation. The Valuation Certificate issued with a rateable valuation of €55 on the 27<sup>th</sup> September 2010. An Appeal to the Commissioner was made on the 4<sup>th</sup> November

2010 following which the valuation was reduced to €49. It is against this decision of the Commissioner that the appeal to this Tribunal lies.

## **Tenure**

Freehold

## **The Appellant's Case**

Mr. Eamonn Halpin having taken the oath formally adopted his written précis as his evidence-in-chief with one minor change to the second paragraph on page 5 to read that there were 11 similar type units. Mr. Halpin stated that there were to have been up to another 1,000 houses built in this development. He confirmed that 450 houses had been built and thereafter his clients were to apply for Planning Permission for the remainder. Mr. Halpin stated that this resulted in a development far too large in scope to satisfy the requirements, then and now, of the community it was designed to serve.

Mr. Halpin stated that while some effort had been made by the Commissioner to make some discount in respect of circumstances, it was his opinion that the Commissioner had failed to fully appreciate the difficulties which the scheme was facing as it was under utilised and not attractive to tenants. Mr. Halpin said that this was a fine development which had been deprived of its function because of lack of completion of neighbouring residential units. He pointed out that it was this, which set it apart from the development at Kilminchy, the biggest in County Laois, which was fully completed and located nearer to the town of Portlaoise. Mr. Halpin accepted that the Commissioner had allowed a 17% differential from Kilminchy but felt that this was not sufficient regarding the drawbacks which the subject property faced.

Mr. Halpin contended for a rateable valuation of €28 on the subject property, calculated as follows:

Ground floor shop 98.22 square metres @ €54.68 per sq. metre	= €5,370.78
Rear Store 12.70 square metres @ €27.34 per sq. metre	= €347.21
Total NAV	= €5,717.98

$$€5,717.98 @ 0.5\% = €28.58$$

Say RV €28

Or

Zone A	64.72 metres @ €82 per sq. metre	= €5,307.00
Zone B	33.49 metres @ €41 per sq. metre	= €1,373.00
Rear Store	12.70 metres @ €20.50 per sq. metre	= €260.00
Total		€6,940.00
Allow 20% for difficulties at this development		
Due to the major residential content not being built		<u>€1,388.00</u>
Total NAV		€5,552.00

€5,552 @ 0.5% = €27.76

Say RV €28

### **Comparisons**

In support of his assessment of ratable valuation, Mr. Halpin put forward 6 comparisons as follows (details of which are attached to the Appendix 2 to this judgment)

1. Various units at Dunnes Stores Centre, Portlaoise RV €38.09 (in each case)
2. Gerry Hanlon, Portlaoise RV €25.39
3. Stonehart Ltd, Montmellick Road, Portlaoise RV €5.23
4. Ecrú Pharmacy, Kilminchy, Portlaoise RV €64
5. McElewees, Mountmellick Road, Portlaoise RV €37
6. Liam & Roisin Adams, 58 Main Street, Portlaoise RV €50.79

Mr. Halpin stated that the units comprising his Comparison No. 1 are broadly the same size as the subject property and located approximately 1km from Portlaoise. He pointed out that his Comparison No. 2 differed from the subject property as it is a stand-alone unit serving a local population. With regard to his Comparison No 6, Mr. Halpin stated that this also differed from the subject property as it is located in the main street of Portlaoise town and is zoned, unlike the subject property.

### **Cross-examination**

In response to questioning from the Chairman regarding the perceived 17% allowance, Mr. Halpin was of the opinion that the Commissioner might be attempting to look at a broader tone in allowing same. Mr. Halpin confirmed to Ms. Hayes that he had not been involved in the appeal taken previously by Paddy Power Leisure Ltd in respect of her comparison number

1 (unit number 1, Gandon Court). Mr. Halpin did not accept Ms. Hayes' contention that the most suitable comparisons in this case were necessarily those adjacent to the subject property as per Tribunal ruling reference **VA10/1/029 - O'Leary International Ltd.**

Mr. Halpin pointed out that Treehouse Children's Clothes had recently closed and that some of the units in fact had never been occupied. He stated that Unit Number 1 was the only unit that was paying the original rent, albeit less 10%, and confirmed that at present three out of the 11 units are vacant. Mr. Halpin was of the view that when the tone of the list commenced on a 1988 basis, the market had a much better balance between supply and demand as there were far fewer retail units. Mr. Halpin also stated that, in his opinion, the Commissioner had factored in future development instead of valuing the subject property as he found it.

### **The Respondent's Case:**

Ms. Ciara Hayes, having taken the oath, adopted her précis as her evidence-in-chief. Ms. Hayes contended for a rateable valuation of €49 on the subject property, calculated as follows:

Ground floor retail: 98.22 sq. metres @ €5.67 per sq. metre	=	€3,396.70
Ground floor store: 12.70 sq. metres @ €41.00 per sq. metre	=	<u>€ 520.70</u>
Total NAV		€9,917.40

Rateable valuation = Total NAV €9,917.40 x 0.5% = €49.58

Say RV €49.

In support of her assessment of rateable valuation, Ms. Hayes put forward three comparisons, details of which are attached at Appendix 3 of this judgment and all of which are situated in Gandon Court;

- |  |        |
|--|--------|
| 1. Power Leisure Plc, Unit 9 Gandon Court            | RV €45 |
| 2. Francesco's Takeaway, Unit 6 Gandon Court         | RV €49 |
| 3. Treehouse Children's Clothes, Unit 2 Gandon Court | RV €49 |

Ms. Hayes cited Tribunal appeal reference **VA10/1/1029 - O'Leary International Ltd.** as holding that the most suitable comparisons were those immediately adjacent to the subject property.

Ms. Hayes was unable to clarify whether an allowance of 17% had been made to the subject property as against the development at Kilminchy. Mr. Halpin confirmed that it had been his assumption that a differential of 17% had been allowed upon examining the Kilminchy development as against the subject property.

In response to questioning from Mr. Halpin, Ms. Hayes confirmed that all the units in the development were of similar type and fitted out with a pedestrian walkway leading to a rear car park. It was her opinion that this was a well-located centre and that Unit Number 1 (Power Leisure plc) was highly visible.

Ms. Hayes did not agree with Mr. Halpin's assertion that if comparison number 1 (Power Leisure plc) was disregarded, the other comparisons cited by the Commissioner should be deemed unhelpful or unreliable.

### **Summaries**

In summing up, Mr. Halpin again made the point that the scheme was not successful. He also argued that Comparisons 2 and 3 cited by the Commissioner were unreliable. Mr. Halpin felt that the Commissioner had not made sufficient allowance for the economic climate and the fact that the centre was designed for use by a much larger population.

Ms. Hayes, in her summing, up said that the Commissioner had taken account of all the difficulties presently attaching to the subject development and that all her comparisons were located in the same development in accordance with a previous Tribunal determination.

### **Findings**

1. In accordance with an agreement reached between the parties prior to the oral hearing, this appeal is a test case for itself and four other appeals, namely VA11/3/008 – Mizzoni's Pizza & Pasta Co., VA11/3/009 – The Tipp Medical Group, VA11/3/010 – Garry and Debbie Devane and VA11/3/011 – Sharon Carville.
2. The parties agreed and acknowledged that Section 49 (1) of the Valuation Act, 2001 is the relevant legislation upon which this matter is to be considered, which provides that *"If the value of a relevant property (in subsection(2) referred to as the "first mentioned property) falls to be determined for the purpose of section 28(4) (or of an*

*appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property”.*

3. It was the respondents’s view that the tone of the list was established upon the revision of 3 properties cited as the respondent’s comparisons. The respondent acknowledged that comparisons 2 and 3 were not brought forward for review or appeal at Representations or First Appeal stages, whereas Comparison No. 1 (Power Leisure plc) was considered by the Commissioner at First Appeal under representation by a professional valuer and settled prior to determination by the Commissioner.
4. The parties agreed that the current occupier of the respondent’s Comparison No. 1 would likely have agreed a rental premium for that unit’s location, having regard to the proximity of it to the licensed premises and its profile at the entrance to the car park. Whereas, conversely, the subject property is located at the opposite end of the terrace and positioned in a manner which does not offer the same profile.
5. The Tribunal considered in detail the comparisons proffered by the appellant and the arguments made by his representative of those properties cited by him in his précis that all are in well established locations and fully developed neighborhoods and extend from the centre of Portlaoise town out to the Kilminchy development approximately 1.6 kilometres distant from the subject.
6. Notwithstanding the foregoing, the respondent declared that the 3 comparisons contained and scheduled in her précis represented the tone of the list and that for a number of reasons the appellant’s comparisons, though considered, were not to be used or relied upon as guides to the tone of the list.
7. In view of the foregoing and having considered all of the facts and arguments adduced, the Tribunal considers that an allowance should be made to the rate per square metre to apply to the NAV of the subject property and has concluded that the

appropriate allowance figure should be an amount of 15% in respect of the rate per sq. metre applying to the retail floor area.

8. Insofar as there was no evidence proffered by the respondent to the contrary, the Tribunal is obliged to accept the evidence of the appellant on the valuation of the rear store as set out on page 10 of his précis.

### **Determination**

Accordingly the Tribunal determines the rateable valuation of the subject premises as follows:

Ground Floor shop 98.22 sq. metres	@ €81.32 per square metre	=	€7,987.25
Rear Store 12.70 sq. metres	@ €27.34 per square metre	=	<u>€ 347.22</u>
Total NAV:			€8,334.47

Total NAV €8,334.46 @ 0.5% = €41.67

RV = €42

And the Tribunal so determines.