

**Appeal No: VA14/5/953**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001  
VALUATION ACT, 2001**

**DECLAN COLEMAN**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2209191, Miscellaneous on O'Connell Bridge House, 25 - 28 D'Olier Street,  
County Borough of Dublin.

**B E F O R E**

**Hugh Markey – FSCSI, FRICS**

**Deputy Chairperson**

**Frank O'Grady – MA, FSCSI, FRICS, FIABCI**

**Member**

**Caroline Murphy – BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 7<sup>TH</sup> DAY OF JANUARY, 2020.**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 4<sup>th</sup> day of September 2014 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 €125,000.

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

- 1) *“The subject property’s estimate of net annual value is excessive and inequitable. The subject property is licenced to Heineken at €160,000 per year, of which €80,000 per year is a land rent (payable by the appellant as tenant). Even this rent is excessive as it is unsustainable and also subject to significant threat from the proposed ban on drinks advertising.*
- 2) *The Commissioner is currently maintaining that this is the most valuable advertising station in the entire rating area of Dublin City. Whilst the subject property does have strong profile is it prohibited from colour advertising by its planning, a significant retardant on its potential rental value. It is further limited by the vertical nature of the signage. By contrast the ‘Nokia’ sign immediately opposite has been on offer to let at €40,000 per annum (since 2012) for a standard horizontal sign with full colour in exactly the same location as the subject property. Taking all factors into account the appellants believe that the Commissioner has erred significantly in determining the subject property’s relative value under sections 48 and 49 of the Valuation Act 2001.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €50,000.

## **2. REVALUATION HISTORY**

2.1 On the 23<sup>rd</sup> day of October 2012 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 €125,000.

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 not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 16<sup>th</sup> day of December 2013 stating a valuation of €125,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 7<sup>th</sup> day of April 2011.

### **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 26<sup>th</sup> day of August 2019. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI and the Respondent was represented by Mr. David Dodd BL, instructed by the Chief State Solicitor and Ms. Joanne Duggan MSCSI, MRICS of the Valuation Office. Mr Declan Coleman, the Managing Director of the Appellant company, attended as a witness.

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 find the following facts.

4.2 The subject is a fixed externally mounted advertising sign located on the northern elevation of O'Connell Bridge House, Dublin 2.

4.3 The subject advertising sign was erected in 1996 and is currently licensed to Heineken.

### **5. ISSUES**

5.1 The sole issue in this case is one of Quantum.

### **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 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 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.”

## **7. APPELLANT’S CASE**

7.1 Mr. Declan Coleman, Managing Director of Declan Coleman Signs, expressed the view that the value of this advertising location had been declining over a long number of years and the likelihood was that the current tenant would not renew the licence. He said he could not erect a digital sign, traffic restrictions reduced the number of cars accessing the quays, and in November 2019 restrictions are to be brought in which made alcohol advertising forbidden in certain areas and that the replacement sign could not advertise alcohol. He was unable to rent the sign that previously advertised another alcohol product for seven years. He said negotiations for the agreement that was signed in 2011 took months.

7.2 Under cross examination, Mr. Coleman said the rent was the same as the present day. He stated he had “knocked on every door in town” and that it is a small market for such a sign, such as soft drinks. He said it was understood within the drinks advertising industry that you could not erect another alcohol beverage sign on the building in the future. When asked where this was set out in the Code of Practice, Mr. Coleman stated that he was made aware that he couldn’t change from one alcohol sign to another and that he approached a number of companies in 2011 where he was told this. He couldn’t recall when the Luas began operating in that area but that there were fewer motorists crossing O’Connell Bridge than previously. He said the planning permission was of no value as it was simply for eight letters. He engaged in a High Court dispute with the Licensor and stated that this was a “sweet deal” for him at that number [€360,000pa]. He accepted that there had been no termination of the agreement with the current licensee in 2016.

7.3 Mr. Halpin, on behalf of the Appellant, stated that the Appellant have held a licence to allow them to erect a sign on the exterior of O’Connell Street Bridge House since 1996. The gross advertising revenue from the site is €160,000 per annum under a five year agreement

from 13<sup>th</sup> September 2011. There was a previous agreement with the Appellant and the same client dated July 2009 at a gross advertising revenue of €240,000 per annum which peaked at €360,000 in 2004. He outlined that the current licence fee received by the Appellant is split between the owner of the building and the owner of the sign on a 50:50 basis, however the owner of the sign (the Appellant) must pay all the outgoings including the rates, insurance and electricity, etc. Mr. Halpin said this left a maximum land rent of €80,000 under the current long-term licence agreement between the Appellant and the building owner.

7.4 Mr. Halpin contended that the agreement was an advertising contract, not a lease and not necessarily where you derive site rent from. He said this market began to decline prior to the economic crash.

7.5 Mr. Halpin said the sign cannot be changed unlike almost all signage in Dublin. He said in terms of value to the hypothetical tenant, the current drinks signage will expire as soon as the current tenant gives up occupation and cannot be replaced by an alternative drinks sign.

7.6 Mr. Halpin relied upon four NAV Comparisons:

1. **PN 670525** €40,000
2. **PN855866** €85,000
3. **PN5003461** €15,460
4. **PN809849** €30,800

In his précis, Mr. Halpin proposed a NAV of €45,000 plus add on @ €5,000 which amounts to €50,000.

7.6 Under cross examination, Mr. Halpin agreed that what was at issue was a right to affix a sign but said that it was an advertising contract plus the site rent. Mr. Halpin suggested that because you don't see examples of licensing, fees, construction and design in the contract doesn't mean that there aren't any.

7.7 Mr. Halpin identified Outdoor Media (No.11) in the Alcohol Marketing, Communications and Sponsorship Codes of Practice, "*No additional large permanent advertisements on buildings, bridges etc. [excluding licensed premises] will be erected.*" as to where the code states you cannot erect another alcohol drink sign in the same location. Mr. Dodd put it to him

that he was not an expert and that he had obtained this information from Mr. Coleman who in turn had been told this by other advertising agencies, which he said was second hand information, and, that it was an “understanding” and that the regulations do not come into effect until November 2019. In reply, Mr. Halpin said he was not disagreeing with Mr. Coleman but that this prohibition was in the code. He agreed the sign was prominent but did not accept that it was very large or iconic, but that it is almost invisible in daylight.

7.8 It was put to Mr. Halpin that signs that advertise Bulmers and Guinness change all the time and referred to the Appellant’s comparison No.1 which advertised ‘Hop House13’. Mr. Halpin answered that the subject property sign was a static one and that you can change different forms of advertising and the business model was very different. When it was put to him that comparison 2 was smaller, he could not say what his comparison 2 measured. He accepted that his comparison 3 was not as visible as the subject.

7.9 In his submission, Mr. Halpin said that the building owner receives a site rent plus 5%. The maximum site rent at the valuation date is €80,000pa which should not be taken in isolation and should be referred to other signs of similar prominence and value, and, accordingly the value should be reduced to €50,000.

## **8. RESPONDENT’S CASE**

8.1 Ms. Joanne Duggan, on behalf of the Respondent, outlined that the subject advertising sign is located on the front of a 12-storey building which was one of the tallest buildings in Dublin. She stated the advertising sign is in a prime city centre location facing onto O’Connell bridge which connects the North city and the South city centre. The sign it is visible for up to 1/2 km away in various directions. She was of the view that this is a unique iconic sign which is much larger and more prominent than any other advertising sign in Dublin city and is therefore not directly comparable with any other sign in the city. The advertising sign is attached vertically to the front of O’ Connell Bridge House and the design comprises of 8 silver metal letters which spell the word Heineken. The site had previously had other companies advertising on it such as Guinness and Tennants. She said it was a focal point in Dublin City Centre, well known by tourists and locals and as the best sign in the city. The sign can be illuminated at night and it has excellent visibility to all passing traffic and pedestrians.

8.2 Ms. Duggan outlined that the sign has been valued using the contractors method of valuation which had been used for valuing all advertising signs in Dublin city. A yearly site rent of €120,000 has been applied plus an Add on at €5,000 [5% of construction and erection costs estimated at €100,000], to arrive at a NAV of €125,000.

8.3 In her opinion, the head licence is not a market rent as it is linked to the CPI which dates back to 1st of August 1996 and was set out as per a High Court agreement. The licence fee that Heineken pay is €160,000 per annum from 2011 and they paid a fee of €240,000 prior to this. After allowing for the necessary deductions, this can be considered the market rent. The licence fee payable supports the NAV which has been applied to the subject site and is the strongest evidence which can be relied upon. She stated that when the précis of evidence were exchanged in 2015 that market evidence wasn't available and, in her opinion, the valuation should have been higher on account of the market evidence now available. She said her comparable, **PN 855866**, was the second-best sign in the city, although it was much smaller and not as prominent as the subject.

8.4 Ms. Duggan stated that she was not aware of anything in the code that prohibited erecting another sign advertising alcohol. She described the Appellant's comparison No.3 as inferior in nature and structure, visibly limited and comprising of 48 sheets that change often. She described the Appellant's comparison 4 as grade 5 of grade 1-6 with 6 being the best, located in a good area but as nothing in comparison to the subject.

8.5 In his submission, Mr. Dodd argued that the information that another alcohol drinks supplier is prevented from operating another sign advertising alcohol at this subject's location came from Mr. Coleman, who obtained this information from someone else within the advertising community. Mr. Dodd argued that there was no prohibition in the Code; it is an understanding and any restrictions do not come into effect until November 2019. He said the Appellants Comparison No.1 showed that Hop House 13 has not been banned by the code and Guinness and Bulmers had been in occupation of the subject before Heineken took over. He suggested that the licence fee is split between the owner of the building and the owner of the sign on a 50:50 basis but that this is irrelevant as it is a private commercial arrangement and referred to the Tribunal's decision in *Limerick West Wind Farm Limited VA15/5/012*.

## **9. SUBMISSIONS**

9.1 There were no legal submissions in this appeal.

## **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 relative to the value of other comparable properties on the valuation list in the rating authority area of Dublin City Council.

10.2 In an appeal, the onus is on the Appellant to put forward a rationale as to why the valuation should be altered. The subject is to be valued on the assumption that it is vacant and to let on 7<sup>th</sup> April 2011. The hypothetical landlord and tenant are assumed to be willing to negotiate the rent on terms as set out in section 48 of the 2001 Act.

10.3 The Appellant's evidence was that planning permission restrictions meant that the subject advertising sign was a vertical only sign without colour. The photographs of the subject produced by the Respondent and the Appellant show that the subject did show colour at night time. Mr. Halpin also agreed with this in Cross Examination. The Tribunal considers that planning permission restrictions can equally apply to other signs.

10.4 Mr. Halpin relied upon the Alcohol Marketing, Communications and Sponsorship Codes of Practice, and, in particular, the section relating to Outdoor Media (No.11) which states, "No additional large permanent advertisements on buildings, bridges etc. [excluding licensed premises] will be erected." The Tribunal does not accept Mr. Halpin's contention that another alcohol advertisement cannot be erected on the signage if the current sign is removed under Section 11 relating to Outdoor Media of the Code. Under cross examination, Mr. Halpin stated that the Appellant's comparison No.1 that advertised Hop House 13 was not a permanent structure and the prohibition did not apply, however no evidence was adduced to support this contention.

10.5 The Tribunal notes that in his evidence Mr. Coleman could not point to where this prohibition was stated in the Code and said it was an understanding within the advertising community. The Tribunal finds no evidence to support this understanding.



10.6 The Tribunal notes that the Revaluation date of the 7th of April 2011 falls between the first licence agreement, dated July 2009, and the second licence agreement dated September 2011. The Appellant's evidence is that negotiations for this agreement took place over the course of 2011 and that the licence agreement dated September 2011 is closer to the valuation date of the 7th of April 2011, than the agreement dated July 2009. The Tribunal has regard to these dates and accepts the Appellant's assertion that the second licence agreement is closer in time to the valuation date of 7<sup>th</sup> of April 2011.

10.7 The Tribunal accepts the Respondent's view that the 3 agreements, dated 1996, 2009 and 2011 all refer to the right to erect a sign on the subject property and are licensing agreements and not advertising contracts as contended by Mr. Halpin.

10.8 The Tribunal finds that the subject advertising sign has a significant profile. The Tribunal notes that both parties relied upon **PN855866** and finds this to be a helpful comparison. The Tribunal find that the subject is a far larger sign, located in a more prominent location than this comparison. The other comparisons put forward by the Appellant are inferior in terms of location and size.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

And the Tribunal so determines.