

Appeal No: VS23/6/0001

**VALUATION TRIBUNAL
AN BINSE LUACHÁLA**

**URBAN REGENERATION AND HOUSING ACT, 2015
AN tACHT UM ATHBHEOCHAN UIRBEACH AGUS TITHE 2015**

HALEXMAIN ENTERPRISES LTD

APPELLANT

AND

DUBLIN CITY COUNCIL

RESPONDENT

**In relation to the market valuation of
6 Kilmainham Lane, (aka 6 High Road, Kilmainham Lane), Kilmainham, Dublin 8, County Dublin.
D08 FW7T**

TRIBUNAL

Barry Smyth - FRICS FSCSI MCI Arb

Deputy Chairperson

Orla Coyne - Solicitor

Member

Fergus Keogh - MSCSI MRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19th DAY OF JANUARY, 2024**

Appearances:

For the Appellant: Mr. Fergal Hennessy, B.Sc (Surv), Assoc. SCSi, Bohan Hyland & Associates.
Mr. John Doyle, Eue. Ing. C. Eng. MIEI, F Cons EI Dip .Proj. Man., Fitzsimons Doyle & Associates.

For the Respondent: Mr. Brendan O'Brien, MSCSI MRICS, Dublin City Council.
(‘the Parties’).

THE APPEAL

1. On the 9th Day of December 2022 a copy of a Notice of Determination of Market Value issued in accordance with Section 12 of the Urban Regeneration and Housing Act, 2015 (as amended)

(‘the Act’) was sent to the Appellant indicating a market value of €1,100,000 in respect of the vacant site situated at 6 Kilmainham Lane, Dublin 8, D08 FW7T (hereinafter referred to as ‘the Subject Property’).

2. The date by reference to which the value of the Vacant Site was determined by the Respondent is the 29th August 2022. By Notice of Appeal received on the 6th of January 2023 the Appellant appealed against the Respondent’s determination of value. The grounds of appeal are fully set out in the Notice of Appeal, briefly stated they are as follows:

“The property consists of a detached 2-storey residence set on a private site which has been let since July 2021. The grounds of the property consist of a small paved area to the rear of the house with the remainder in mature woodland. The grounds slope very significantly down to the river which bounds the rear of the grounds. The property has been valued in its entirety in Jan 23 by Bohan Hyland and associates, Rathgar House, 53A Rathgar Ave, Dublin 6 at 700,000 euros.”

3. The Appellant considers that the market value of the Subject Property ought to have been determined in the sum of €700,000.

THE HEARING

4. The appeal proceeded by way of a remote hearing held on the 11th of October, 2023.
5. In accordance with the Valuation Tribunal (Appeals) Rules 2019 the Parties exchanged their respective précis of evidence and reports prior to the hearing and submitted them to the Tribunal.

RELEVANT STATUTORY PROVISIONS

6. A planning authority is required by s.12 of the Act to determine as soon as may be, after a vacant site has been entered on the register of vacant sites maintained under s.6 of the Act, and at least once every 3 years thereafter, the market value of the unencumbered fee simple of a vacant site if it was sold on the open market on the date of the determination. In that regard, a planning authority must authorise a person it considers suitably qualified for that purpose to inspect the site and report to it on the site’s value.

7. Under s.3 of the Act the ‘market value’ of a vacant site is to be construed in accordance with s.12 which requires the market value to be determined;

“by estimating or causing to be estimated the price which the unencumbered fee simple of such site would fetch if it was sold on the open market on the date of the determination in such manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the site.”

8. Under s. 14 of the Act, The Tribunal may, where it considers it appropriate in all the circumstances, deem that a vacant site has a zero market value, in particular where;
- (i) no market exists for the site, or
 - (ii) the site is situated on contaminated lands and the estimated costs of remedial works necessary in order to use or develop the site exceed the market value of the site itself.

THE FACTS

9. On the basis of the evidence adduced by the Parties, the following facts in respect of the physical condition of the Subject Property were agreed or proved to the satisfaction of the Tribunal;
- (i) The Subject Property is situated on the southern side of Kilmainham Lane a short distance to the east of the intersection with Rowserstown Lane, diagonally opposite Kilmainham Garda Station and the grounds of Royal Hospital Kilmainham and approximately 2.5 km to the east of Dublin City Centre.
 - (ii) The Subject Property extends to approximately 0.11 ha (0.27 acres) and is a mainly rectangular in shape with direct street frontage and access to Kilmainham Lane from its northern boundary. The southern boundary immediately abuts the Camac River. The land slopes steeply downwards from Kilmainham Lane in a southerly direction to the river.
 - (iii) There is a 2-storey 3-bedroom house of approximately 105.50 m² which dates from the early 20th century and fronts to and immediately adjoins the public pavement on Kilmainham Lane. Photographs submitted by Mr. Hennessy indicated that the grounds are wooded and overgrown.

- (iv) At the date of valuation the relevant development plan for the area was the Dublin City Development Plan 2016-2022 with the Subject Property located on an area Zoned Objective Z1- *'To protect, provide and improve residential amenities'*.

Permissible Uses under the Z1 Zoning include:- Buildings for the health, safety and welfare of the public, Childcare facility, Community facility, Cultural/recreational building and uses, Education, Embassy residential, Enterprise centre, Halting site, Home-based economic activity, Medical and related consultants, Open space, Park and ride facility, Place of public worship, Public service installation, Residential, Shop (local), Training centre.

Uses Open for Consideration under the Z1 Zoning include:- Bed and breakfast, Betting office, Car park, Civic and amenity/recycling centre, Garden centre, Golf course and clubhouse, Embassy office, Hostel, Hotel, Industry (light), Live-work units, Media recording and general media associated uses, Petrol station, Pigeon lofts, Public house, Restaurant, Veterinary surgery.

- (v) The Subject Property previously benefitted from a Grant of Planning Permission, which is now lapsed and which was granted as part of a larger development site incorporating a section of land on the southern bank of the Camac River. The planning permission permitted in total the development of 58 no. apartments with 32 no. apartments accommodated on the Subject Property to include a combination of one, two and three bedroom units.
- (vi) A section of land at the south-western boundary adjoining the Camac River and measuring approximately 10m in length and 5m in depth is within an area with a 'Flood Zone A' designation and an additional small section on the south-eastern boundary is designated a combination of 'Flood Zone A' and 'Flood Zone B'. The 'Flood Zone A' designation provides for a high probability of flooding more frequently than 1 in 100 years for river flooding and 'Flood Zone B' provides for a moderate probability of flooding with a flood risk of 1 in 100 years for river flooding.
- (vii) The Subject Property is held under a freehold title.

(viii) The Subject Property was previously valued in November 2016 at €700,000 and at in August 2019 at €950,000 for inclusion in the Vacant Site Register.

APPELLANT'S CASE

Evidence of Mr. Fergal Hennessy

- 10.** Mr. Hennessy is a valuer with Bohan Hyland & Associates and an RICS Registered Valuer. Mr. Hennessy having taken the oath adopted his précis as his evidence-in-chief in addition to giving oral evidence. He advised that he had inspected of the Subject Property on the 8th August 2023.
- 11.** In his oral evidence to the Tribunal Mr. Hennessy described the Subject Property as being a 0.11 ha (0.27 acre) plot of land with a residence occupying a corner position within the plot. He said that the primary issue with the land was its topography and the fact that it sloped steeply in a southerly direction toward the Camac River and that it was substantially overgrown.
- 12.** Mr. Hennessy confirmed that the Subject Property did not benefit from a grant of planning permission at the valuation date. He outlined the planning history of the land and the content of a previously granted and time extended planning permission which is now lapsed. This planning permission related to the development of the Subject Property as part of a larger development site which included a plot of land on the southern side of the Camac River with access from Shannon Terrace off Old Kilmainham.
- 13.** The planning permission permitted in total the development of 58 no. apartments, ancillary services and accommodation on the combined sites. The Subject Property accommodated 32 no. apartments within Block 'A', being a part six part seven storey block when viewed from the southerly aspect and being part three part four storey when viewed from the northerly aspect due to the sloping nature of the land. The 32 no. apartments included 7 no. 1-bed units, 4 no. 2-bed units, 11 no. 2-bed duplex units, 5 no. 3-bed units and 5 no. 3-bed duplex units.

Block 'B', which was to be constructed on the section of the combined site on the southern side of the Camac River with a new access road from Shannon Terrace was to be linked to the Subject Property via a bridge over the Camac River and was to contain 26 no. apartments and ancillary

accommodation including car parking for the overall development. The site of Block 'B' was to provide vehicular access to the total development with only pedestrian access to Block 'A' from Kilmainham Lane.

14. Mr. Hennessy said that the Subject Property was zoned for residential development purposes however due to a number of onerous issues there would be increased construction costs due to the requirement for special foundations on account of the sloping nature the land, the construction of retention walls to prevent river flooding and the provision of access from Kilmainham Lane. He also said that due to the historic nature of the locality additional costs would be incurred due to envisaged planning conditions to deal with archaeology matters.

Mr. Hennessy referred to two sites at numbers 30 and 40 Old Kilmainham Road where he said that an application for planning permission were refused by An Bord Pleanála as the proposed developments were deemed to be premature pending the outcome of the Camac River Flood Alleviation Scheme.

15. Mr. Hennessy contended for a valuation of €700,000 to be applied to the Subject Property and in support of his opinion of value submitted details of three comparison properties which are summarised below.

- (i) Comparison No. 1 - 40 Old Kilmainham Road, Kilmainham, Dublin 8 was described by Mr. Hennessy as being a 0.212 ha (0.524 acre) site which sold in Q3 2020 for €2.650 m. The site was sold with the benefit of an expiring planning permission for a 5,250 m² (56,510 ft².) enterprise & employment development. A subsequent planning application for a development of 74 no. apartments was refused planning permission. Referencing the proposed 74 no. unit development Mr. Hennessy analysed the sale price at €35,000 per apartment plot.
- (ii) Comparison No. 2 - Site at Blackhorse Avenue, Dublin 7 was described by Mr. Hennessy as being a 0.31 ha (0.76 acre) site which was sale agreed in Q3 2023 for €3.50 m. The site was offered to the market with the benefit of a grant of planning permission for a development of 68 no. apartments. Referencing the grant of planning permission Mr. Hennessy analysed the proposed sale price at €51,000 per apartment plot.

- (iii) Comparison No. 3 - Site at 6, 6a & 7 Pim Street, Dublin 8 was described by Mr. Hennessy as being a 0.07 ha (0.173 acre) site which was sold in Q2 2022 for €1.20 m. The site was offered to the market with the benefit of a grant of planning permission for a development of 29 no. apartments. Referencing the grant of planning permission Mr. Hennessy analysed the sale price at €41,000 per apartment plot.
16. Under cross-examination by Mr. O'Brien, Mr. Hennessy said that he did not know which flood zone category (Flood Zone A, B, or C) his comparison at 40 Old Kilmainham Road was in. Mr. Hennessy accepted that the purchaser paid in excess of approximately €5m per acre in 2020 for this site in the knowledge of the flood risk potential and its location within a Flood Zone A.
17. Under cross-examination by the Tribunal Mr. Hennessy revised the valuation date he had used in his précis of evidence from the 8th August 2023 to the 29th August 2022 being the date by reference to which the value of the Subject Property was determined by the Respondent.
18. Mr. Hennessy said in response to a question regarding access issues to the Subject Property from Kilmainham Lane that he considered that access issues both during the construction phase and post construction of a development would impact on the value of the land and that access issues would impact on development costs and potentially on development densities with a requirement that any development within the site to be set-back from the public road so as to provide vehicular access.
19. In response to a question regarding the limited impact of potential flooding on the Subject Property Mr. Hennessy acknowledged due to the sloping nature of the land the potential impact of flooding was limited however he said works would be required that could impact on adjoining or adjacent properties. He said that he would defer to Mr. Doyle for comment in this technical area.
20. In response to a question regarding whether the revised valuation date now being adopted which is approximately one year earlier than the valuation date stated in his précis had any impact on his opinion of value Mr. Hennessy said that he did not consider that it made any significant difference to his opinion of value as he considered the overall area to be in a hiatus due to the ongoing flood plain issues.

21. In reply to a question regarding the basis of his adopted valuation of €700,000, Mr. Hennessy said that he had applied a value of €35,000 per apartment plot based on his opinion that the site could accommodate 20 no. apartments.
22. In response as to a question as to the basis of his adopted value of €35,000 per apartment plot with his three comparisons indicating values of €35,000, €51,000 and €41,000 per plot respectively, Mr. Hennessy said that he had regard to the planning status of the three comparisons and the Subject Property. He said that he considered that €45,000 per apartment plot was an appropriate value for apartment plots in the area and that he had reduced this by a factor of approximately 20% to reflect the planning status of the Subject Property and to allow for additional construction and development costs due to site topography and flood risk. When asked to quantify these additional costs he said that he was unable to provide details of these costs and that he would defer to Mr. Doyle in this area.
23. In response as to a question regarding the type of planning permissions in his three comparisons and whether they relevant units were 'build for sale' or 'build for rent' Mr. Hennessy said that the units in each development were 'build for sale' units.

Evidence of Mr. John Doyle

24. Mr. Doyle is the managing director of Fitzsimons Doyle & Associates Consulting Engineers. Mr. Doyle having taken the oath adopted his précis as his evidence-in-chief in addition to giving oral evidence.
25. Mr. Doyle submitted a short précis of evidence which primarily dealt with the issues of flood risk management within the planning system and archaeology issues as they may pertain to the Subject Property. In his précis he said that flood risk management in the planning system was a procedure that was very onerous and a time consuming undertaking with planning conditions being imposed that are outside of the normal requirements.

26. He said that the Subject Property was in an area of archaeological interest and as such the planning authority would require an archaeological report to be undertaken which involves obtaining an opening licence from The Office of Public Works to commence preliminary fact-finding excavation.
27. In his oral evidence Mr. Doyle said that his expressed views were based on his experience gained while working on developments in the area and were not specific to the Subject Property. He said that any development on the Subject Property would probably have to be built using a piling & stilt method of construction and that a new retaining wall would probably be required at the river frontage. He said that a lot of analysis would be required to deal with water run-off issues. He said that access to the Subject Property would be difficult due to the narrowness of Kilmainham Lane. Due to the steepness of the site a development may require the use of a car-lift for vehicular access which he said takes up space as would circulation lifts and stairs within the completed development. In relation to archaeology issues he said that exploratory drill holes would be required.
28. In cross examination Mr. O'Brien asked Mr. Doyle if his submitted report referred to the larger site which incorporated the Subject Property and which previously had the benefit of a grant of planning permission as his précis referenced the Subject Property being divided by the Camac River. Mr. Doyle confirmed that his report was in relation to the Subject Property only.
29. Under cross examination by the Tribunal Mr. Doyle was asked why his report did not reference the extent of the slope and the topography of the site. Mr. Doyle said that he did not have a site survey available to him indicating land levels. He confirmed that he not visited or inspected the Subject Property and that he was basing his comments on aerial photographs and maps.
30. Mr. Doyle was asked to quantify the likely additional costs that might be incurred in undertaking a development on the Subject Property due to the nature of the topography. He said that he could not say what the extra costs might be but would make an allowance of between 10% and 20% adding that flood plain issues are difficult to deal with.
31. Mr. Doyle was asked the location of car parking facilities under the grant of planning permission on the larger site which includes the Subject Property. He said that car parking for the proposed

apartments on the Subject Property was within the section of the larger site on the southern side of the Camac River.

32. In reply to a question concerning the need for car parking within a development he confirmed that a waiver was required for car parking to be replaced with bicycle parking facilities.

RESPONDENT'S CASE

33. Mr. O'Brien is a Chartered Surveyor and an Acting Senior Executive Valuer in Dublin City Council with 17 years valuation experience. Mr. O'Brien having taken the oath adopted his précis as his evidence-in-chief in addition to giving oral evidence. In addition to his précis of evidence Mr. O'Brien submitted two additional documents, an extract map from the Strategic Development Regeneration Area (SDRA) Map 7 from the Dublin City Development Plan 2016-2022 and an extract from the Flood Map of the area also from the Dublin City Development Plan 2016-2022.
34. Mr. O'Brien described the location of the Subject Property, provided a description of the land and noted its land use zoning and permissible / open for consideration uses under the Dublin City Development Plan 2016-2022. In his oral evidence he said that he was in agreement with the Mr. Hennessy as to these factual matters.
35. Mr. O'Brien referred to the submitted Flood Map extract noting that a section of the Subject Property at the south-western boundary adjoining the Camac River and measuring approximately 10m in length and 5m in depth is within an area with a 'Flood Zone A' designation and an additional small section on the south-eastern boundary is zoned a combination of 'Flood Zones A' and 'Flood Zone B'. The 'Flood Zone A' designation acknowledges a high probability of flooding more frequently than 1 in 100 years for river flooding and 'Flood Zone B' provides for a moderate probability of flooding with a flood risk of 1 in 100 years for river flooding. Based on this information Mr. O'Brien said that there was limited impact on the Subject Property from flood risks as only two very small areas at its southern boundary with the Camac River were within flood designation areas.
36. Mr. O'Brien supplied details of the lapsed planning permission on the larger site as outlined by Mr. Hennessy in his précis noting that it was intended that the site of the Subject Property would accommodate 32 no. apartments under that grant of planning permission.

37. Mr. O'Brien contended for a valuation of €1,100,000 to be applied to the Subject Property and in support of his opinion of value submitted details of four comparison properties which are summarised below.

- (i) Comparison No. 1 - Site at Brookfield Road, Kilmainham, Dublin 8 was described by Mr. O'Brien as being a 0.25 ha (0.62 acre) site close to the new Children's Hospital. A section of the site was within a Zone of Archaeological Interest in the Dublin City Development Plan 2016-2022. This comparison sold in Q2 2023 for approximately €6.0 m. The site was sold with the benefit of planning permission for a 79 no. apartment development comprising a combination of studio and 1 & 2 bedroom units. Referencing the proposed 79 no. unit development Mr. Hennessy analysed the sale price at €75,949 per apartment plot or approximately €9.67m per acre.
- (ii) Comparison No. 2 - Site & Buildings at 162 -165 James's Street, Dublin 8 was described by Mr. O'Brien as being a 0.093 ha (0.23 acre) site located 600m east from the Subject Property which was sold in Q1 2023 for €2.45 m. The site was sold with the benefit of a grant of planning permission for a mixed use development to include 22 no. apartments, a retail unit and basement car parking. Part of the site contains a Listed Building. Referencing the grant of planning permission Mr. O'Brien analysed the sale price at €10.50m per acre.
- (iii) Comparison No. 3 - Site at Steevens' Lane, Dublin 8 was described by Mr. O'Brien as being a 0.24 ha (0.60 acre) site located adjacent to the Guinness Quarter which was sold in Q2 2023 for €4.725 m. The site was offered to the market with the benefit of a feasibility study for a development of 110 no. apartments. Referencing the feasibility study Mr. O'Brien analysed the sale price at €42,954 per apartment plot and €7.825m per acre.
- (iv) Comparison No. 4 – Site to the rear of 20-22 Fitzgibbon Street, 6-10 Emmet Street & 48 Charles Street, Dublin 1 was described by Mr. O'Brien as being a 0.109 ha (0.27 acre) site located adjacent to Fitzgibbon Street Garda Station which was sale agreed in Q4 2022 for €1.575 m. The site had the benefit of a grant of planning permission for a development of 18 no. apartments in a combination of 1 & 2 bedroom units over 4 & 5 floors.

Referencing the grant of planning permission Mr. O'Brien analysed the proposed sale price at €87,500 per apartment plot and €5.833 m per acre.

- 38.** Mr. O'Brien said that he did not consider that the slope and the topography of the land to be an issue in the development of the site as any issues could be resolved with some clever design and engineering. He said that the site was higher than the river and therefore flooding was not an issue and said that enquiries that he had made with the Dublin City Council Archaeologist indicate likely costs of €10,000 - €12,000 to undertake initial archaeological tests. He said that in the investigations and excavations undertaken of three nearby sites of archaeological interest just one site was found to contain items of interest.
- 39.** Mr. O'Brien's valuation of €1,100,000 was based on applying a rate of €45,000 per apartment plot based on the Subject Property accommodating 32 no. apartments which resulted in a valuation of €1,440,000 which he reduced by approximately 20% to €1,100,000 to reflect the sites sloping topography and the flood risk. This he said equates to approximately €34,375 per apartment plot and approximately €10,000,000 per hectare.
- 40.** Under cross examination by Mr. Hennessy and responding to a question where Mr. Hennessy accepted that the Subject Property was not significantly affected by potential flooding based on the Flood Map submitted by Mr. O'Brien, Mr. O'Brien was asked if he accepted that there would be significant extra costs to be incurred by a developer due to the proximity of the river bank. Mr. O'Brien said that he considered that a reinforced concrete wall could be constructed to deal with potential flooding issues. He said that it would be an extra cost to the development but did not accept that it would be an extraordinary cost.
- 41.** Mr. Hennessy asked if the larger apartments proposed under the lapsed planning permission were due to the topography of the land and to provide better natural light to the units. Mr. O'Brien said that he did not agree with this contention. Mr. Hennessy asked Mr. O'Brien if larger apartment units would result in a development having a lower development density. Mr. O'Brien agreed and said that a higher value would apply to larger apartment plots. Mr. O'Brien said that he also considered value rates per acre in his valuation.

42. Mr. Hennessy asked Mr. O'Brien's if his contention that the adoption of clever design and engineering techniques in developing the Subject Property to overcome the topographical issues would reduce the size of the saleable footprint by the inclusion of say an access ramp from Kilmainham Lane. Mr. O'Brien said that whilst he was not an engineer he saw no reason why an access ramp could not be constructed and as the site sloped there was a benefit in not having to dig out a basement as is the case in other sites.
43. In relation to Mr. O'Brien's submitted comparisons Mr. Hennessy asked as they were closer to the city centre whether he would expect them to have higher values. Mr. O'Brien said that he considered that Kilmainham was close to the city centre.
44. Mr. O'Brien was asked by the Tribunal whether any of his four comparison properties required the construction of an access ramp off a public road as would be required in the Subject Property. Mr. O'Brien said that he did not consider that access ramps would be required in his comparisons at Brookfield Road and James's Street. He said that there may be access issues on the Steeven's Lane comparison as it was a small site that may be impacted by the proximity of the LUAS Line. He did not consider that his fourth comparison at Fitzgibbon Street had access issues. Mr. O'Brien was asked which of his four comparisons he considered to be the best and most comparable to the Subject Property. He said that he considered the Brookfield Road comparison to be the most appropriate in terms of location and the sale date being closest to the valuation equating to approximately €76,000 per apartment plot and €9.670 m per acre.
45. Mr. O'Brien confirmed that the adjustment made in his valuation to reflect topography and flood issues was also made in the valuations of the Subject Property that he had prepared in 2016 of €700,000 and in 2019 of €950,000.
46. In reply to a question from the Tribunal in relation to his knowledge of the extent of the potential flood impact on the Subject Property when he had prepared his valuation, Mr. O'Brien said that he was not aware at the time of the limited impact as indicated on the Flood Zone Map that he had submitted to the Tribunal. He said that he had acted on information from the Dublin City Planning Department that the site was impacted by flood issues and said that he had not consulted with the Dublin City Development Plan on the matter.

- 47.** Mr. O'Brien was asked whether he valued the Subject Property on a rate per apartment plot or on a rate per acre to which he replied that he used both approaches. The Tribunal noted that Mr. O'Brien's comparisons when analysed ranged in value from approximately €43,000 to €105,000 per apartment plot and asked Mr. O'Brien to explain the rationale as how he had arrived at his adopted value of approximately €34,000 per apartment plot. Mr. O'Brien said that his primary comparison of Brookfield Road analysed at €75,000 per apartment plot had full planning permission and was a ready to go site. He said that he had made allowances and had taken into account in his valuation that the Subject Property did not have planning permission and he had made allowances for extra construction costs. He said that he had taken a conservative approach in his valuation. When reminded by the Tribunal that Section 12 of the Act does not refer to preparing a conservative valuation Mr. O'Brien said that he had allowed and factored in for a worst case scenario. He confirmed that he had factored in additional development costs but had not conducted any development cost analysis.
- 48.** Mr. O'Brien confirmed that the Brookfield Road comparison was a 'build to rent' development. He said that the James's Street comparison was an off-market sale by Dublin City Council to the HSE negotiated by the two parties and reflected market value. He said that he was not sure whether the feasibility study for the Steevens' Lane comparison was a 'build for sale' or 'build for rent' development and likewise for his Fitzgibbon Street comparison.
- 49.** Mr. O'Brien confirmed that he had assumed a density of 32 no. apartments on the Subject Property and said that he had not prepared a feasibility study as to the number of units that may be permitted under the SDRA Zoning of the land. He said that he considered that 32 no. units would be at the higher side of the permitted densities.
- 50.** Mr. O'Brien said that he was not aware whether the valuations of 2016 and 2019 were contested by the property owner. Mr. O'Brien confirmed that there was planning permission in 2016 on the enlarged site which had lapsed by the time of the 2019 valuation and confirmed that the Subject Property was valued separately on both occasions.
- 51.** The Tribunal put it to Mr. O'Brien that the permitted density under the SDRA information he had submitted implied a density of between 100-250 units per hectare which suggested a maximum development of 27 no. units. He was asked if his adoption of a density of 32 no. units was made having regard to the historic lapsed planning permission. Mr. O'Brien said that the lapsed

planning permission envisaged larger units and that with a reduction in size of the units the higher density may be accommodated under the SDRA. Mr. O'Brien confirmed that due to the size of the site a Social & Affordable contribution would be required under a grant of planning permission.

FINDINGS AND CONCLUSIONS

- 52.** On this appeal the Tribunal is required to determine the market value of the Subject Property in accordance with Section 3 of the Act which is to be construed in accordance with Section 12 of the Act as of the valuation date of 29th August 2022. The précis of evidence, appendices and additional information submitted by the Parties and the oral evidence adduced have been all been considered in detail by the Tribunal in arriving at this decision.
- 53.** The Tribunal relies upon and decides an Appeal based on the evidence placed before it. It is a well-established principle that the onus rests with the Appellant to prove his / her case and provide evidence to the Tribunal that the Respondent's valuation of the property in question is incorrect and that the valuation should be amended. The Tribunal must consider the nature of the evidence submitted by the Parties in their respective précis and in their oral evidence to determine whether it supports the argument advanced on behalf of the Appellant.
- 54.** It is necessary to consider all of the evidence in the round. The Tribunal considers that the evidence submitted and arguments adduced on behalf of the Appellant, on any basis, provides a very mixed picture.

Mr. Hennessy's valuation was prepared by reference to an incorrect valuation date which was some 12 months after the required valuation date of the 29th August 2022. This error was acknowledged in his oral evidence. No evidence was given to his contention that the initial incorrect valuation date had an impact or not on the valuation of the Subject Property. It appears to the Tribunal that his valuation was prepared without reference to the Sections 3 & 12 of the Act.

Considerable emphasis was placed by Mr. Hennessy in his oral evidence on the influence that the topography of the Subject Property and the fact that part of the land was subject to flooding. It was said that these issues would result in "substantial additional construction costs" for any development

being undertaken. Mr. Hennessy said that he had made an allowance for these costs but was unable to provide any details or quantum of these anticipated “substantial additional construction costs” that he said were reflected in his valuation. He confirmed that he had not taken advice on development costs from a suitable qualified person. He said that he would defer to Mr. Doyle in this area however Mr. Doyle also was unable to quantify these costs when asked in cross-examination.

Whilst relying in his evidence on the impact of potential flooding issues on the Subject Property, Mr. Hennessy was unaware of the exact nature and extent of this potential issue. Evidence submitted by Mr. O’Brien in the extract from the Flood Map of the area from the Dublin City Development Plan 2016-2022 indicated the limited impact of potential flood issues on the land.

Mr. Hennessy said he was advised that the site would accommodate 20 no. apartments and valued the Subject Property based on this assumption. No evidence was submitted to the Tribunal to support the contention that the Subject Property would accommodate 20 no. apartments. A development feasibility study would have been of assistance particularly having regard to the potential densities permitted under the SDRA zoning.

- 55.** Mr. Hennessy relied upon his analysis of the sales details of three comparison properties to arrive at his adopted valuation rate of €45,000 per apartment plot reduced to €35,000 reflecting an approximate 20% allowance for planning, flood risk and additional development cost issues. No evidence was submitted to the Tribunal in support of the 20% reduction allowance.

Comparison No. 1, 40 Old Kilmainham Road was analysed based on a sale price of €2.65m in Q3 2020, approximately two years prior to the required valuation date and a subsequently refused planning application for the development of 74 no. apartments on a site that is approximately twice the size of the Subject Property at 0.524 acres. Mr. Hennessy analysed the sale price based on the number of apartments contained in the planning application at €35,000 per apartment plot and €5.05m per acre. An alternative analysis is approximately €12,473,500 per hectare. Mr. Hennessy said that the planning application was refused as the proposed development was considered to be premature pending the outcome of the Camac River Flood Alleviation Scheme.

No evidence was submitted as to the basis or appropriateness of the number of apartments in the proposed development and the Tribunal considers that this method of analysis as being unreliable.

Comparison No. 2 at Blackhorse Avenue was analysed based on a sale agreed price of €3.5m in Q3 2023, approximately one year after the valuation date. This site is 0.76 acres, approximately three times the size of the Subject Property with planning permission for 68 no. apartments which he analysed at €51,000 per apartment plot. The Tribunal considers that this is a superior location to the Subject Property and no regard was had to the fact that the grant of planning permission was for a 'build to rent' development. An alternative analysis is approximately €11,375,000 per hectare.

Comparison No. 3 at Pim Street was analysed based on a sale price of €1.20m in Q2 2022. Though close to the valuation date this site is approximately half the size of the Subject Property at 0.173 acres with planning permission for 29 no. apartments. Mr. Hennessy analysed this sale at €41,000 per apartment plot. The Tribunal considers that this is an inferior location to that of the Subject Property. An alternative analysis is approximately €17,130,000 per hectare

- 56.** In his précis Mr. Doyle primarily gave evidence as to matters pertaining to site topography, archaeology matters and dealing with flood risk assessment within the planning application process. He said that he had not prepared a site survey, was unaware of site levels or the actual steepness of the site and had not made enquiries or investigations as to flooding issues and how they may impact the Subject Property.

Mr. Doyle confirmed to the Tribunal that he had not visited or inspected the Subject Property for the purposes of preparing his précis or attending the hearing and that his comments were based on his experience of a nearby development. The Tribunal considers that his evidence was of a generic nature and of little assistance to determining the matter in hand as it did not specifically reference the Subject Property.

57. Mr. O'Brien in his evidence stated that he had approached his Valuation both on a price per site basis and on a price per hectare basis. On the price per site basis, he used a figure of approximately €35,000 per site on the basis of 32 no. units on the site. The alternative basis is approximately €10,000,000 per hectare.

58. No planning evidence was presented to the Tribunal to establish the number of units that might be constructed on the site. Although 32 no. units fitted on the area of the subject site as part of a development including a site on the south side of the Camac River it cannot be assumed that this number of units could be constructed on the subject site in isolation. The Tribunal has no information to come to that conclusion. Equally the Appellant's number of proposed units on the site of 20 no. is not supported by any information that the Tribunal can consider. The SDRA zoning allows 100 to 250 units per hectare and on the basis of the site area 0.11 hectares would imply between 11 and 27.5 units. The Tribunal is not a planning or development expert body but a valuation body. Therefore, it cannot proceed on a possible number of units basis as it has received no evidence to support the contentions put forward by either the Appellant or the Respondent. It is therefore more appropriate for the Tribunal to proceed on a price per hectare basis as in the seven comparisons provided.

59. The Tribunal has considered the seven submitted comparisons in chronological order as follows:

1. Sold in Quarter 3 2020, 40 Old Kilmainham, Dublin 8, 0.212 hectares equivalent to approximately €12,500,000 per hectare and without planning permission.
2. Sold in Quarter 2 2022, 6-7 Pim Street, Dublin 8, 0.07 hectares equivalent to approximately €17,130,000 per hectare with Planning Permission for 29 no. units.
3. Sold in Quarter 4 2022, Rear of 20 /22 Fitzgibbon Street, Dublin 1, 0.11 hectares equivalent to approximately €14,400,000 per hectare with Planning Permission for 18 no. units.
4. Sold in Quarter 1 2023, 162 -165 St. James's Street, Dublin 8, 0.08 hectares equivalent

approximately €29,950,000 per hectare with planning permission for 22 no. units and one retail unit.

5. Sold in Quarter 2 2023 Site at Steeven's Lane, Dublin 8, 0.24 hectares equivalent to approximately €19,450,000 per hectare with a feasibility study for 103/110 no. units.

6. Sold in Quarter 2 2023, Site at Brookfield Road, Dublin 8, 0.25 hectares equivalent to approximately €23,900,000 per hectare with Planning permission for 79 no. units.

7. Sale agreed in Q2 2023. Site at Blackhorse Avenue, Dublin 7, 0.31 hectares equivalent to €11,375,000 per hectare with planning permission for 68 no. units.

60. It is noted that the Respondent valued the site at €10,000,000 per hectare which is less than any of the comparisons introduced by either party. The Tribunal considers that The Appellant's written and oral evidence and adduced valuation has not undermined the evidence of the Respondent.

DETERMINATION:

Accordingly, for the above reasons The Tribunal determines that the Appellant has not provided evidence that the Respondent's valuation of the Subject Property is incorrect or that the valuation should be amended. The Tribunal disallows the appeal and confirms the valuation of **€1,100,000 (One Million One Hundred Thousand Euro)**, as stated in the Notice of Determination of Market Value dated 9th December 2022.

RIGHT OF APPEAL:

Any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court.

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.