

Appeal No: VA21/4/0059

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

STONYBATTER PIZZA COMPANY LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2170550, Property Type: Retail (Shops) Restaurant, Address of Property: Unit 1, Norseman Court, 23-27 Stonybatter, Manor Street, Dublin 7, County Dublin.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28th DAY OF MARCH 2024**

BEFORE

Martin Connolly, MAgrSc, MSc, MSCSI, FCInstArb

Tribunal Member

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 10th day of December, 2021 the Appellant appealed against the determination of the Respondent pursuant to which the rateable value of the above relevant Property (“the Property”) was fixed in the sum of €47,800.
- 1.2 The valuation of the Property falls to be determined from a decision made by the revision manager under section 28(4) of the Valuation Act 2001 as amended (‘the Act’)

that a material change of circumstance occurred since a valuation under section 19 of the Act was last carried out in relation to the rating authority area in which the Property is situate or since the last previous exercise of powers under section 28(4) of the Act in relation to the Property.

- 1.3 The sole ground of appeal as set out in the Notice of Appeal is that the valuation of the Property is incorrect as it does not accord with that required to be achieved by section 49 of the Act because:

“(a) The Valuation is incorrect. The area allocated to retail shop space on the valuation report seems to exceed that of the actual nett space of the site. Greater clarity is required. Is it possible to receive a marked plan showing the space defined clearly?”

(b) Details stated in the relevant Valuation List are incorrect

The grounds on which the Appellant considers that any detail in respect of the property concerned, other than the property’s value, in the relevant valuation list is incorrect are stated to be as at (a) and (b) above.

The grounds on which the Appellant contends that the circumstances referred to in section 28(4) do not exist for the exercise of powers under that section in respect of the Property Concerned are stated as:

“Clarity is required on the valuation report”.

- 1.4 The Appellant considers that the valuation of the Property ought to have been determined in the sum of approximately €30,000.

2. VALUATION HISTORY

- 2.1 There is no evidence before the Tribunal as to when, or by whom, an application was made to the Respondent for the appointment of a revision manager to exercise powers under section 28(4) of the Act in relation to the Property on the basis that a material change of circumstances had occurred since a valuation under section 19 was last carried out in relation to the rating authority area of Dublin City Council or since the last previous exercise of the powers under section 28(4) of the Act in relation to the Property, and that the valuation of the Property ought to be amended. Neither is there any evidence as to the basis for the request to revise the valuation of the Property.
- 2.2 The valuation milestones set out at Paragraph 4 page 18, on Ms Harris’ precis indicate that in August, 2021 a copy of the proposed valuation certificate issued under section

29(1)(a) of the Act in relation to the Property was sent to the Appellant indicating a valuation of €50,600.

- 2.3 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 €47,800.
- 2.4 A final valuation certificate issued on the 15th day of November, 2021 stating a valuation of €47,800.
- 2.5 The date by reference to which the value of the Property, the subject of this appeal, was determined is 7th day of April, 2011.

3. DOCUMENT BASED APPEAL

- 3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.
- 3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.
- 3.3 Mr Cian O Colmain, Director Stoneybatter Piazza Company submitted a precis of evidence on behalf of the Appellant. He did not file a response to the to the precis submitted on behalf of the Respondent.
- 3.4 Ms Rita Harris, valuer Tailte Éireann, submitted a précis of evidence on behalf of the Respondent.

4 PRELIMINARY ISSUE

- 4.1 On reviewing the documentation provided by the parties it was clear to the Tribunal that there was not agreement as to the floor area of the Property, as required by Rule 39(c) of the Valuation Tribunal (Appeals) Rules 2019. Specifically, the Appellant stated in his submission:

“The area allocated to retail, a shop space on the Valuation report seems to exceed that of the actual nett space of the site.”

- 4.2 On 27 February 2024 the Tribunal wrote to the parties requesting them to provide an agreed schedule of areas. A copy of the letter is in Appendix 1 (N/A to public).

4.3 On 13 March 2024 both Ms Harris on behalf of the Respondent and Mr O Colmain, the Appellant replied to the Tribunal. Their replies are at Appendices 2 and 3 respectively (N/A to public).

5. FACTS

5.1 On the evidence before it the Tribunal finds the following facts.

5.2 The Property is a retail unit located on Manor Street with frontage also on to Arbour Place, Dublin 7. It is in restaurant use, having previously functioned as a supermarket.

5.3 The floor areas are agreed by the parties as follows:

| | |
|--------------|-----------------------|
| Ground Floor | 259.71 m ² |
| Basement | 46.98 m ² |
| Total | 306.69 m ² |

5.4 On the uncontroverted evidence of Ms Harris the Property is held leasehold on a four years and nine months lease from 01 January 2020 at an annual rent of €42,000.

6. ISSUE(S)

6.1 The primary issue is quantum. In addition, the Appellant contended that the Property should not be classified as retail and that the assessment of the rateable value should be based on turnover like public houses and hotels and not on floor area.

7. RELEVANT STATUTORY PROVISIONS:

7.1 All references to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.

7.2 Section 3(1) of the Act, so far as material to this appeal, defines "*material change of circumstances*" as meaning a change of circumstances that consists of:

(a) *the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or*

(b) *a change in the value of a relevant property caused by-*

(i) *the making of structural alterations to that relevant property, or*

(ii) *the total or partial destruction of any building or other erection which forms part of that relevant property, by fire or any other physical cause, or*

- (c) *the happening of any event whereby any property or any part of any property begins, or ceases, to be treated as a relevant property, or*
- (d) *the happening of any event whereby any relevant property begins, or ceases, to be treated as a property falling within Schedule 4, or*
- (e) *property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or*
- (f) *property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property, or*
- (g) *the fact that the relevant property has been moved or transferred from the jurisdiction of one rating authority to another rating authority, or*
- (h) *relevant property or part of any relevant property becoming licensed or ceasing to be licensed under the Licensing Acts 1833-2011.*

7.3 If a revision manager is satisfied that a material change of circumstances as defined by section 3 of the Act has occurred since a valuation under section 19 of the Act was last carried out in the rating authority area in which the Property is situated, the revision manager has power under section 28(4)(a)(i) of the Act to amend the valuation of the property as it appears on the list.

7.4 Where a property falls to be valued for the purpose of section 28(4) of the Act that value is ascertained in accordance with the provisions of section 49 (1) of the Act which provides:

- “(1) 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 situated in, of other properties comparable to that property.*
- (2) For purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then-*
 - (a) In case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be*

adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20,

8. APPELLANT'S CASE

8.1 Mr Cian O Colmain on behalf of the appellant company, Stoneybatter Pizza, Co T/A Stone submitted a sitemap, plans the Property, photographs of two vacant restaurants in the vicinity, a report from MCM Accountants, a copy of his correspondence with the Revision Manager and a letter to the Chairperson of the Valuation Tribunal.

8.2 In his letter dated 23 September 2023 to the Revision Manager Mr O Colmain makes the following points:

- The premises were converted from a supermarket which had a much higher turnover than their current use.
- The drawings show that the current net usable space is less than previous. The office retail unit 1 is now used for storage as it cannot function as a standalone unit because of lack of access to toilets.
- The initial plans were for a 65-seat restaurant, but it is now operating as 40-seater because of reduced demand.
- There is a reduced footfall because of remote working and the business no longer opens for the lunch time trade.

8.3 In his letter dated 29 November 2023 to the Chairperson of the Tribunal Mr O Colmain set out the grounds on which the Company was appealing:

- There was difficulty in reconciling the areas and valuations on the valuation report.
- The plans showed a 66-person restaurant layout. An area of 48 m² shown as office, retail store was now in storage use.
- Because of Covid there has been a significantly reduced footfall, which has been exacerbated by anti-social behaviour in the area,
- The premises were now trading as a 44-seat restaurant with reduced opening hours.
- Mr O Colmain included a report from MCM Accountants which set out the difficulties facing the business: the recently increased VAT rate; higher costs;

poor location. Without an increase in profitability the business would not be viable, and the premises could not be rented.

- Mr O Colmain contended that the Property should be rated similarly to public houses based on turnover rather than floor space. The Property is not a convenience store as its previous use was and the rateable valuation should reflect this.

8.4 In the Notice of Appeal Mr O Colmain contended for a valuation of approximately €30,000.

9. RESPONDENT'S CASE

9.1 Ms Harris provided a summary of her case, her response to the Appellant's case, the valuation history of the Property, a location map, annotated floor plans photographs and evidence of three comparable properties in support of her case.

9.2 Ms Harris described the Property as a semi-detached corner retail unit with access from Manor Street and dual frontage on to Manor Street and Arbour Place. There is a central lift and stairs leading to the basement store and car park. The Property was described as being in good condition.

9.3 The floor area was agreed at 306.69 m² as set out at paragraph 5.3. In addition, Ms Harris provided an annotated plan of the Property showing the zoning, which she stated was made in accordance with the Society of Chartered Surveyors Ireland's Professional Guidance, Retail Zoning for Chartered Surveyors Information Paper. She also provided a copy of the Valuation Report from the Tailte Éireann website. The data are summarised in the table overleaf.

| Zoning | | |
|---------------|------------------|-----------------------------|
| Level | Use | Area (m²) |
| -1 | Car Spaces (No.) | 2 |
| -1 | Offices | 10.02 |
| -1 | Store | 36.96 |
| 0 | Retail Zone A | 71.01 |
| 0 | Retail Zone B | 66.23 |
| 0 | Retail Zone C | 50.62 |
| 0 | Shop | 39.20 |
| 0 | Store | 10.56 |
| 0 | Toilets | 22.09 |

9.4 Ms Harris put forward NAV comparators of three retail properties located on Manor Street. These set out below. They range in size from 54.36 m² to 94.25 m². All were valued at €350/m² Zone A and €200/m² Zone B. She also stated that the properties, photographs of which were submitted by the Appellant, were value at €350/m² Zone A. However, neither she nor the Appellant provided a breakdown of the valuation of these properties.

Comparison 1

| | | |
|-------------------------|--------------------------|--------------------------|
| Property Number | 673072 | |
| Address | 3 Manor Street, Dublin 7 | |
| Total Floor Area | 94.25 m ² | |
| NAV | €18,640 | |
| Description | Area | NAV/m² |
| Retail Zone A | 26.38 | €350.00 |
| Retail Zone B | 36.57 | €200.00 |
| Retail Zone C | 19.02 | €87.50 |
| Office and Store | 12.21 | €35.00 |
| Total | 94.25 | |

Comparison 2

| | | |
|-------------------------|---------------------------|--------------------------|
| Property Number | 709008 | |
| Address | 92 Manor Street, Dublin 7 | |
| Total Floor Area | 53.36 m ² | |
| NAV | €13,760 | |
| Description | Area | NAV/m² |
| Retail Zone A | 24.33 | €350.00 |
| Retail Zone B | 24.12 | €200.00 |
| Retail Zone C | 4.912 | €87.50 |
| Total | 53.36 | €35.00 |

Comparison 3

| | | |
|-------------------------|---------------------------|--------------------------|
| Property Number | 673533 | |
| Address | 7a Manor Street, Dublin 7 | |
| Total Floor Area | 81.25 m ² | |
| NAV | €19,740 | |
| Description | Area | NAV/m² |
| Retail Zone A | 37.49 | €350.00 |
| Retail Zone B | 24.88 | €200.00 |
| Retail Zone C | 18.88 | €87.50 |
| Total | 81.25 | €35.00 |

- 9.5 Ms Harris cited the Valuation Tribunal judgement VA14/5/453, ZZSEL Limited v Commissioner of Valuation, in support of her contention that that the Property should be assessed on an area basis and in accordance with the Tone of the List, not on the basis of the business, i.e. turnover, as contended by the Appellant.
- 9.6 Ms Haris contended that the NAV on the list, €47,800, should be affirmed. She attached a copy of the valuation report on the Property on the Tailte Éireann website. This is summarised in the table below.

| Level | Use | Area (m ²) | NAV(€/m ²) | NAV € |
|-------|------------------|------------------------|------------------------|------------|
| -1 | Car Spaces (No.) | 2 | 0 | 0 |
| -1 | Offices | 10.02 | €35.00 | €350.70 |
| -1 | Store | 36.96 | €35.00 | €1,293.60 |
| 0 | Retail Zone A | 71.01 | €350.00 | €24,853.50 |
| 0 | Retail Zone B | 66.23 | €175.00 | €11,590.25 |
| 0 | Retail Zone C | 50.62 | €87.50 | €4,429.25 |
| 0 | Shop | 39.20 | €210.00 | €8,232.00 |
| 0 | Store | 10.56 | €35.00 | €369.60 |
| 0 | Toilets | 22.09 | €35.00 | €773.15 |
| | Allowance | | | -€4,060.30 |
| | | | Total | €47,831.74 |
| | | | Rateable valuation | €47,800.00 |

10. FINDINGS AND CONCLUSIONS

- 10.1 On this appeal the Tribunal has to determine whether the value of the Property accords with that which is required to be achieved by section 49 of the Act, namely a value that is relative to the value of other properties on the valuation list of Dublin City Council rating authority area.
- 10.2 There was no evidence before the Tribunal as to why the Commissioner exercised his powers under s 28(4) of the Act or on what basis the rateable valuation of the Property was revised. However, the Tribunal accepts, in accordance with s 563(1) of the Act, that the statement of value of the Property on the list is correct until it has been altered in accordance with the provisions of the Act.
- 10.3 On the evidence before it the Tribunal finds that the Property is retail in restaurant use.
- 10.4 The Tribunal accepts Ms Harris' contention that the value of the Property falls to be determined by comparison with other similar properties on the valuation list of Dublin City Council, i.e. the Tone of the List, which the Tribunal finds is well established, and not by reference to turnover as contended by the Appellant.
- 10.5 The total floor area of the Property was agreed between the parties and Ms Harris submitted annotated drawings showing the zoning data, which she stated were determined in accordance with the Society of Chartered Surveyors, Ireland standards. The Appellant expressed difficulty in reconciling the areas and rates/m² in his letter

dated 29 November 2023 to the Chairperson of the Tribunal. However, the Tribunal accepts Ms Harris' evidence in this regard, which was not rebutted.

- 10.6 Three comparator properties were put forward in the précis on behalf of the Respondent. The Tribunal found these helpful. They were all retail properties located on the same street as the Property. They are somewhat smaller, but Ms Harris has applied an allowance to reflect quantum. In addition, she has applied a lower Zone B rate, €175/m² in the Property as against €200/m² in the three comparators. She has applied the same rate, €35/m², for office and storage as in Comparison 1.
- 10.7 The two properties put forward by the Appellant, 31 Brunswick Street North, Dublin 7 and 4/5 Stoneybatter, Dublin 7, were of no assistance. Neither he, nor Ms Harris in her comments, provided the necessary valuation details to enable the relevance of these properties to be assessed.
- 10.8 The Tribunal found the submission put forward by MCM Accountants of no assistance. It concentrated solely on the business, not the property.
- 10.9 Tribunal finds that in this appeal, and in all appeals before the Tribunal, the onus of proof rests with the Appellant. This has been stated and affirmed on multiple occasions, including in the three Tribunal judgements: VA00/2/032, Proudland; VA07/03/054, William Savage Construction; VA09/1/018, O'Sullivan's Marine. This remains the guiding principle for Tribunal's determination.
- 10.10 The Tribunal finds, on the evidence before it, that the Appellant has not been able to meet the threshold of proof necessary to demonstrate that the Respondent's decision was incorrect.

11. DETERMINATION:

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

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 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.