

**Appeal No: VA20/4/0062**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Atercin Liffey ULC T/A Starbucks**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 5018638, Retail (Shops) at Ground Floor Warrington House, Mount Street, Crescent, Dublin 2

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 20<sup>TH</sup> DAY OF SEPTEMBER 2023**

**BEFORE**

Barry Smyth, FRICS, FSCSI, MCI Arb

**Deputy Chairperson**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 11<sup>th</sup> day of December 2020 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 **€23,600**.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 28(4) of the Act because: -

*"The valuation proposed is excessive & inequitable having regard to the size, location and characteristics of the subject property. The subject property is part of an office building with low passing trade, limited access and poor visibility. It should not be valued as retail use."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of **€9,800**.

## **2. VALUATION HISTORY**

2.1 On the 29<sup>th</sup> day of September, 2020 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 €23,600.

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 November, 2020 stating a valuation of €23,600.

## **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.

## **4. FACTS**

The parties are agreed as to the following facts.

4.1 The property is located on Mount Street Crescent, the continuation of Mount Street Upper to Warrington Place/Herbert Place and opposite the Pepper Canister Church. Neighbouring properties comprise Warrington House, a modern office block of which this property is a small extension, other modern office blocks and Georgian houses in office or residential use.

4.2 The property comprises a c.2018 elevated ground floor extension of an existing office block including a section of the original ground floor of the office building to provide a coffee shop/café and ancillary accommodation. The approach to the property is shared with the office block comprising a short flight of steps and a ramp to facilitate disabled access. The extension is constructed with concrete floor, a flat roof with roof lights and with a floor to ceiling height, glazed façade in granite surrounds.

4.3 The accommodation comprises a coffee shop/café and ancillary store/office with shared use of toilet accommodation at the rear of the office entrance lobby/service core. The gross internal floor area of the coffee shop/café is 68.75 sq metres and the stores 19.48 square metres, total 88.23 square meters.

## **5. ISSUES**

The quantum of the valuation is the sole issue in dispute.

## **6. RELEVANT STATUTORY PROVISIONS:**

The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 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 situate in, of other properties comparable to that property”*

## **7. APPELLANT’S CASE**

7.1 The appellant’s case was set out in a submission presented by Pauline Madden BSc (SURV), MRICS, MSCSI, Associate director Power Kelly & Co Chartered Valuation Surveyors.

7.2 In addition to the matters listed under 4 above as facts, Miss Madden noted that the property is not easily visible travelling east on Mount Street Upper and that this is a quiet location lacking passing traffic and pedestrians with no retail operators or retail units in the vicinity. She noted that staff working in the office buildings have inhouse facilities and are inclined to walk to Baggott Street Upper or Baggott Street Lower at lunch time. The property is open only Monday to Friday and not Saturday or Sunday reflecting the office location. She also noted a once-a-week food market which takes midday trade from the subject property.

7.3 The property is a single storey coffee shop extension to an office building. Street access is via steps, or a ramp, shared with the office users. The use reflects the fact that the administration offices for the tenant’s business are within the same building, and it is therefore a special tenant.

7.4 Because material change of circumstances in the Valuation Act 2001-2015 relates to structural changes rather than change of use, and that as the likely market demand for the accommodation is as offices rather than retail, to assess it at a retail value would adversely affect the property’s marketability because of the inability to review the rateable valuation or the NAV in future were office use to be reinstated.

7.5 The following comparisons were introduced:

I) PN790620 29 Upper Mount Street, Salt Cellar Coffee Shop, basement accommodation at €132 per sq.m. NAV. The upper floors of this building are valued at €160 per sq.m. on the ground floor and €140 per sq.m. on the first floor and that generally offices in the locality are valued at hall floor or ground floor level at €160 per sq.m. and at basement level at €120 per sq.m. as confirmed by the valuations on PN793122 & PN 790333.

II) PN814936 25 Lower Leeson Street, Peacock Green Coffee Shop, basement level valued at €132 per sq.m. The ground floor of 25 Lower Leeson Street is valued at €160 per sq.m. and the first floor at €140 per sq.m. and the second floor at €120 per sq. m. Generally, offices in the vicinity at ground floor are valued at €160 per sq.m. and basement at €120 per sq.m.and confirmed by the valuations of 28 Lower Leeson Street and 73 Lower Leeson Street.

III) PN5019776 37 Merrion Square East, Camerino Bakery Café, basement level coffee shop valued at €143 per sq.m. Within the same building PN790279 the ground floor is valued at €170 per sq.m , the first floor at €150 per sq.m, the second floor at €130 per sq.m., the third floor at €110 per sq.m. and fourth floor at €80 per sq.m. This equates to a 11.7% discount between ground and first floor. Office floors in the vicinity are valued at Ground Floor level at €170 per sq.m. and basement at €130 per sq.m. confirmed by PN790274 38 Merrion Square East and PN 790293 46 Merrion Square.

IV) Warrington House, Mount Street Crescent (The same building as the subject property). All office floors are valued at €180 per sq.m.

7.6 Miss Madden made the following comments on the valuation office comparisons.

PN799648 Ground Floor, Elm House, Clanwilliam Court. The property is valued on a zoned basis with Zone A at €400 per sq. m. It is located in a mixed-use development comprising 4 office blocks in excess of 100,000 square feet and a residential block. This property has full retail use and is in a busy location on Lower Mount Street with a high volume of passing trade as opposed to the subject property which lacks visibility and is located in a quieter location.

PN790342 Ground Floor 1-2 Lower Mount Street. The property is valued on a zoned basis with Zone A at €400 per sq.m. The property is located close to the corner of Lower Mount Street and Merrion Square and opposite the National Maternity Hospital.

PN799625 Ground Floor 32-34 Grand Canal Street Lower. Property valued on a zoned basis with Zone A at €400 per sq.m. The property is on a corner location at the junction of Grand Canal Street Lower and Macken Street opposite the Treasury Building with a high volume of passing trade. There is extensive retail frontage. The subject property lacks visibility and is located in a quieter location.

7.7 Miss Madden noted that all the valuation office comparisons are retail units some notably with full retail frontage, own door and superior locations as opposed to the subject property which is part ground floor within a second-generation office building with limited trading opportunities particularly on the effective date of issuing of the valuation certificate when Covid 19 lockdowns were in effect. By comparison, her evidence from the valuation list that coffee shops similar and adjacent to the subject within office premises and office locations are valued at within 10% of the tone of the list for other office units within the vicinity.

7.8 Ms Madden's opinion of the appropriate Net Annual Value is €16,800 calculated as follows:

Floor area 88.47 square meters @ €190 per square metre = €16,809 say €16,800

## **8. RESPONDENT'S CASE**

The respondent's case set out John Shaughnessy's precis of evidence dated 30<sup>th</sup> September 2022.

8.1 In addition to the matters noted above as facts agreed, Mr Shaughnessy noted that the property is located less than 50 meters from one of the busiest cycle ways in Dublin City, the Grand Canal greenway.

8.2 He noted the increased agreed floor area over that used in the original valuation and as the property is in retail use noted revised floor areas as Zone A 58.93 sq.m., Zone B 9.92 sq.m., total 68.85 square meters and the store 19.48 sq.m., total 88.33 sq.m.

8.2 In response to the appellant's submission, he stated that the subject property stands out compared to the Georgian/Victorian buildings around it. He said that standing up to 400 metres

away at Mount Street Lower the retail premises is distinguishable on the street. He provided a marked street plan showing sight lines from various points to the subject property. He stated that there was no evidence as to how many of the office buildings, if any, had staff canteens as alleged and that the food market is a considerable distance away.

8.3 He commented that the appellant's comparisons comprised three basement level coffee shops and were therefore not comparable with the subject ground floor unit and that the other comparisons comprised ground and upper floor offices and also were not comparable with the subject.

8.4 He provided 6 NAV comparisons as follows:

I) PN 2211594 24 Grattan Court East, Dublin 2 NAV €16,710  
calculated at Zone A 33.95 sq. m. @ €400. This is a retail unit on a side street off Mount Street Lower.

II) PN790493 Retail unit. 94/95 Mount Street Lower, Dublin 2 NAV €27,200  
Zone A 55.19 sq.m. @ €400  
Zone B 25.7 sq.m. @ €200  
Stores 1.27 sq.m. @ €40

III) PN2177214 16 Hogan Place, Dublin 2 NAV €19,060  
Retail zone A 32.33 sq.m. at €400  
Retail zone B 30.67 sq.m. at €200  
This is a continuation of Grand Canal Street, Lower.

IV) O.C.B.S. Elm House, Clanwilliam Court, NAV €14,440  
Zone A 29.28 sq.m. at €400  
Zone B 8.16 sq.m. @ €200  
Ancillary kitchen and stores @ €40  
This is located within Clanwilliam Court office and apartment block with very limited visibility from passing trade on Mount Street and with a shopfront of only 4.5 meters.

V) Property number 790342 1-2 Mount Street Lower, Dublin 2 NAV €33,100  
Zone A 54.35 sq.m. @ €400  
Zone B 43.5 sq.m. @ €200  
Basement stores 68 sq.m. @ €40  
This property has a 9 metre frontage.

VI) PN799625 32-34 Grand Canal Street Lower, Dublin 2 NAV €33,900  
Zone A 53.21 sq. m. @ €400  
Zone B 9.44 sq. m. @ €200  
Basement stores 63.37 sq.m. @ €40  
First floor offices 62.23 sq. m. @ €180  
Frontage 9.1 m.

8.5 Mr Shaughnessy's opinion of the correct NAV for this property is €26,300 increasing from €23,600 as on the Valuation List because of the agreed increased floor area. This opinion of NAV is calculated as follows:

Retail Zone A	58.93 sq.m.	@ €400 per sq. m.	€23,572
Retail Zone B	9.82 sq. m.	@ €200 per sq. m.	€1,984
Store	19.49sq. m.	@ €40 per sq. m.	€779
			€26,335 SAY €26,300

**9. In a counter submission** to Mr O'Shaughnessy's precis, Miss Madden stated that the Grand Canal Greenway cycleway was of no benefit to the subject property. The property is not a newly constructed retail unit but a converted and adapted unit with toilet accommodation off the lobby area to the offices and it does not have direct access on to street level but is approached via steps or a ramp. Mount Street Crescent is not a retail location, and the visibility of the property is restricted by the Pepper Canister church.

Ms. Madden made the following observations on the respondent's comparisons.

- 1) Grattan Court East is at street level and includes an outdoor seating area.
- 2) 94-95 Lr Mount St. is at street level with outdoor seating area.
- 3) 16 Hogan place is on a busy arterial route to the city centre with residential premises close by and enjoys seven-day trading.
- 4) Elm House ,Clanwilliam Court is within a large mixed-use development.
- 5) 1-2 Mount Street Lower is at street level opposite the National Maternity Hospital and close to Merrion Square with a full traditional retail display and has operated as a newsagents and delicatessen.
- 6) 32-34 Grand Canal Street Lower is at street level in a corner position.

## 10. SUBMISSIONS

10.1 There were no legal submissions.

## 11. FINDINGS AND CONCLUSIONS

11.1 This **revision and appeal is as a result of** a material change of circumstances as defined in Section 28(4) of the Valuation Act 2001 as amended arising from the construction of an extension to existing premises.

11.2 On this appeal the Tribunal has to determine the value of the property on the basis of Section 49(1) of the Act which provides that 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.

11.3 The valuation date of Dublin City Council's last revaluation is 7<sup>th</sup> April 2011 Therefore the fact that in this case the valuation certificate was issued during a period of Covid lockdown is irrelevant.

11.4. The valuation must be based on the existing use of the premises and the Tribunal cannot be expected to consider future possible changes. The Act provides that each rating authority area must be revalued at intervals of not more than five years or less than ten years, and this can accommodate any relevant change in the valuation rather than the Tribunal endeavouring to predict the future.

11.5 The relativity between upper floors in Georgian buildings and basements in coffee shop type use introduced by the appellant is not convincing to the Tribunal as a relevant basis for assessing the value of this property.

11.6 On the basis of the rating hypothesis that the property is vacant and to let the lease which commenced in April 2019 some 8 years post the valuation date is not relevant. However, it is worth noting that the Stipulated Business Hours are between 8.30 and 18.30 on Monday to Friday inclusive and the user is as a coffee shop and not further or otherwise. The Tribunal accepts the appellant's evidence that this is an office location, and not a retail location, with no demand for weekend trade.

11.7 It is not relevant that the present tenant has its administrative offices within the overhead building.

11.8 The property is not as prominent or visible as the Respondent contends and the visibility map and the commentary are also somewhat inconsistent e.g., a visibility distance of 400 meters is referred to in relation to Upper Mount Street and in the same paragraph a distance of 300 meters is referred to as being the distance from the premises to the junction of Mount Street Upper and Merrion Square. Visibility from the cycleway is of no benefit to the property.

11.9 No zoning plan was provided so it is difficult to ascertain how the floor area was zoned. It is questionable whether zoning is appropriate because of the access to the property via a side door approached by either a short flight of steps or a ramp. The Society of Chartered Surveyors information paper Retail Zoning for the Chartered Surveyor suggests a discount in the applicable Zone A rate of +/- 10% for units with a frontage to depth ratio of less than 1:2. This unit has a ratio of 1:0.8.

11.10 When zoning is utilised the overall rate per square metre of the retail area should also be provided rather than it being left to the Tribunal to work it out.

11.11 Section 19(5) of the Act stipulates that the valuation determined shall achieve both (insofar as is reasonably practicable) (a) correctness of value and (b) equity and uniformity. However, it is well established that correctness must not be sacrificed for the achievement of uniformity.

11.12 Section 49(1) of the Act, quoted above in 11.2, notes that the determination of the value of the property shall be made by reference to the values of other properties comparable to that property. Comparability does not only refer to use but also includes location and physical layout. The value of the property to be determined is not inextricably tied to the value of comparable properties but should be determined by reference to the valuation of comparable properties. In the Tribunal's view this allows for adjustment from values on the valuation list to allow for differences, if they exist, between the property being valued and those regarded as comparable.

11.13 Most of the comparisons utilised by the Respondent are better located or more prominent than the subject property and a discount on their Zone A rate is appropriate to reflect this.

11.14 In the Tribunal's view an appropriate discount to reflect both the frontage to depth ratio and the inferior location of this property is 20%

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €21,000.

This is calculated as follows:

Retail zone A 58.93 square metres @ €320 per square meter	€18,858
Retail zone B 9.82 square metres @ €160 per square meter	€1,571
Stores 19.48 square metres @ €32 per square meter	€623
	Total €21,052

say €21,000 and the Tribunal so determines.

**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.