

Appeal No. VA05/2/008

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

**Toni & Guy (Naas) Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Lot No. 4.10.9A.11.12.13.14/ Unit 19 & 20, Dublin Road, Naas West, Naas Urban, Naas, County Kildare

**B E F O R E**

**John Kerr - BBS. ASCS. ARICS. FIAVI**

**Deputy Chairperson**

**Brian Larkin - Barrister**

**Member**

**Patrick Riney - FSCS FRICS FIAVI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 20TH DAY OF SEPTEMBER, 2005**

By Notice of Appeal dated the 11th day of April, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €15.00 on the above described property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"On the basis that the RV is excessive, inequitable and bad in law."

**At issue**

Quantum

**Test Case**

It was agreed and confirmed by all parties that this particular property **VA05/2/008 – Toni & Guy (Naas) Ltd.** provided the basis for a suitable test case hearing for appeals ref. **VA05/2/009 – The Blue Door** and **VA05/2/010 - Mexx** also located within the Naas Town Centre development and that a decision determined by the Valuation Tribunal herein shall serve as the basis to establish the Net Annual Value and resultant Rateable Valuation for those said properties.

The appeal proceeded by way of an oral hearing held in the Offices of the Tribunal, Ormond House, Ormond Quay, Dublin, on the 1<sup>st</sup> June, 2005. At the hearing the appellant was represented by Mr. Eamonn S. Halpin, B.Sc (Surveying), ASCS., MRICS., MIAVI.. The respondent was represented by Mr. Denis Maher, M.R.I.C.S., a Valuer, Grade 1 in the Valuation Office.

In accordance with the Rules of the Tribunal, prior to the commencement of the hearing the parties had exchanged their respective submissions to the Tribunal. From the evidence so tendered the following emerged as being the facts relevant and material to the appeal.

**The Property**

The property comprises of a ground floor double shop unit (Units 19 & 20) located close to the end of terrace and used as a Hair Salon. The unit has both front and rear access, the former off the abutting Poplar Avenue and the rear off a raised pedestrian walkway. The unit is newly constructed of concrete block with brick finished front elevation, a slated pitched roof and concrete floors. The front elevation features a traditional style shopfront with large display windows and the rear elevation a smaller shopfront.

**Tenure**

Occupational Lease for a Term of 25 years commencing early 2004 with five year Rent Reviews, with an Initial Rent set at circa €430.50 per sq. metre.

### Valuation History

24 <sup>th</sup> September, 2004:	Revision Officer appointed on request of Naas Town Council to value the subject and other units in the new development known as Naas Town Centre.
1 <sup>st</sup> October, 2004:	Property inspected by Revision Officer Mr. Denis Maher.
3 <sup>rd</sup> November, 2004:	Proposed Valuation Certificate issued at RV €15.
2 <sup>nd</sup> December, 2004:	Valuation Certificate fixing RV €15 issued by the Commissioner.
7 <sup>th</sup> January, 2005:	Appellants appeal Valuation through their Consultant, Eamonn Halpin & Co. Ltd.
16 <sup>th</sup> March, 2005:	Commissioner issues unchanged Valuation Certificate in the amount of €15.
11 <sup>th</sup> April, 2005:	Appellants, through their Consultant, file Notice of Appeal to the Valuation Tribunal which was received by the Tribunal on 12 <sup>th</sup> April, 2005.

### Appellant's Case

Formal proceedings commenced when Mr. Halpin assumed his position in the stand, took the oath, formally adopted his précis (as amended, see below) as his evidence-in-chief and provided the Tribunal with a review and synopsis of his submission.

He drew attention to certain amendments to the text of his précis of evidence, as follows:

Page 4: Item 3, "Zone A" to read *84 sq. metres* and "Zone B" to read *14.5 sq. metres* to provide a combined total to read *98.5 sq. metres*.

He paginated Pages 5 – 13 inclusive.

Page 6: Section 2 under heading "The Property", Item 1, second sentence, to read "*These units are owner/ occupied by large retailers etc.*"

Page 7: Under heading "Accommodation", sub-heading "Agreed Areas", Zone A again to read *84 sq. metres*.

Page 12: Section 5 heading "Valuation" sub-heading "Est. NAV", Zone A again to read *84 sq. metres*.

Mr. Maher, representing the respondent agreed to the above changes.

Mr. Halpin then summarised the basis of his client's Appeal referring frequently to his written submission.

He indicated that, in his view, the estimated NAV had been excessive since first assessed by the Valuation Office and particularly when considered by reference to the NAV applied to the larger brand name stores along the Main Street of the development, occupied by traders such as Marks & Spencers, Lifestyle Sports, Boots and others. He contended that the Revision Officer had erred by failing to make sufficient allowance in his estimate of Net Annual Value of the subject when its location is considered within the overall Naas Town Centre development. Mr. Halpin considered that the appropriate euro rate per sq. metre to estimate the Net Annual Value should be €164 and €82 respectively for Zone A and Zone B in the subject, which in turn would support his calculation of RV of €75, the figure sought in his Notice of Appeal.

Mr. Halpin contended that there was a pattern of evidence to be considered which indicated that the Net Annual Value established on some of the units within the Naas Town Centre development essentially correlated to a fraction or percentage of the Rents passing on a number of units in the range of approximately 25% of the latter values. He also expressed the view that the Valuation Office, in this case, had failed to adopt the established Tone of the List for Naas in general and the Poplar Avenue and Sallins Road areas of the Naas Town Centre development, in particular.

In summary, Mr. Halpin sought by way of remedy, a reduction in the assessed Net Annual Value applied by the Commissioner of Valuation to a level commensurate with the physical location of the unit within the Centre and its general location at the edge of the town centre of Naas. He described the general layout of the Naas Town Centre with the major traders agglomerated and fronting to the Dublin Road, secondary traders to the Sallins Road, and additional secondary traders and service providers within eight units in total fronting onto Poplar Avenue, which serves as a service road providing entry to the multi-storey Car Park to the rear and to the adjoining exit road. He noted that many of the inner Centre units within the development were mainly at first floor level and that a number of the upper floor office and commercial units continued to remain unoccupied.

He acknowledged that though trading activity at the Naas Town Centre was doing reasonably well, much of this may be attributed to the proximity of the Dublin Road units to the large Tesco store nearby, but that the secondary businesses located on Sallins Road and Poplar Avenue were challenged by the absence of any substantial footfall and/or pedestrian traffic. He noted that the Landlord in the Centre had confirmed to him that the 565 spaces within the multi-storey Car Park of the Centre had yet to operate to levels in excess of 50% occupancy. Mr. Halpin argued that the Centre in general was disadvantaged due to the absence of an anchor grocery multiple store, indicating that the Marks & Spencers unit on the Dublin Road was a small, limited service retail unit.

Mr. Halpin also highlighted the fact that the subject property, though located within a terrace of other like new retail units, was further disadvantaged by virtue of its location as there were no retail units located across the street on Poplar Avenue. Mr. Halpin referred to the 20% allowance apparently calculated by the Commissioner to differentiate between the value of the prime located units fronting the Dublin Road, and the subject on Poplar Avenue, and considered such an allowance to be insufficient, particularly when considered in the context of the much lower rental value passing on the two locations within the same Town Centre development. Mr. Halpin provided the Tribunal with rental evidence in support of his argument. He repeated again his approach to calculating an appropriate value on the subject by correlating estimated Net Annual Value to Passing Rents in the Centre indicating a range of 20 – 24%, (excluding Marks & Spencers) and stated that the percentage rose to approximately 55%, if the Commissioner's estimate of NAV were to be applied to his method of calculation. He reinforced his argument by referring to his précis of evidence, Page 9, Section 4, attached herewith as Appendix 1.

Mr. Halpin then introduced other comparisons, namely two premises on Main Street being Spar, occupied by a Mr. Donal McCafferty, and Donal's, being a general convenience store, also located on Main Street and occupied by a Mr. Donal Curran, both of which were set out in his précis and attached herewith as Appendix 1. Spar comprises of ground floor area of circa 233.38 sq. metres, with circa 43 sq. metres of Zone A shop space, and Donal's comprises of gross floor area of circa 147 sq. metres, with circa 47 sq. metres of Zone A shop space. The former has a calculated NAV of €310 per sq. metre, by agreement prior to Appeal Hearing in 2004, and the latter at €275 per sq. metre per Revision of 2003. Furthermore, Mr. Halpin in his submission devalued the total retail areas of these two comparisons comprising

of Zones A, B and C in each, with additional residual shop space in the Spar building, and concluded devalued figures of €154.10 per sq. metre and €136.07 per sq. metre for these two Main Street units.

### **Cross-examination**

Mr. Maher cross-examined Mr. Halpin who confirmed that:-

- The subject property was being used for the provision of a service rather than for traditional retailing;
- The trade was satisfactory and in keeping with what he considered to be the secondary area where the unit is located;
- The Passing Rent was at a moderate level at circa €42,000 per annum for the 98 sq. metres occupied;
- The Main Street locations in Naas were demanding over 2.5 times (€100/per sq. foot) the subject Open Market Rental Values of circa €40 per sq. foot.

Mr. Maher contended that the comparisons employed by Mr. Halpin on Page 9 of his submission (see Appendix 1) could not be considered useful or relevant without the provision of much more information in terms of the configuration and size of the units noted. Mr. Halpin, in reply to a question, indicated to Mr. Maher that a number of other properties within the Centre were currently under review by the Valuation Office and that the decision of the Commissioner was not yet known and so the RV was not truly established. Mr. Maher queried Mr. Halpin on the contents of Pages 8 (see Appendix 2) and 9 (see Appendix 1) of his written submission and in reply Mr. Halpin claimed that the Valuation Office had failed to comply with the 2001 Valuation Act by not referring to or adopting the appropriate Tone of the List. Mr. Halpin acknowledged that if the subject relevant property was commanding a rent in the region of €70 - €80 per sq. foot per annum, then in his view a Zone A applied Rental to calculate NAV of about €246 per sq. metre might be correct, and again re-stated his opinion that the Tone of the List must rely on and relate to Passing Rents.

### **Respondent's Case**

Mr. Maher then assumed his position in the stand, took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. He confirmed from the outset that he

used existing levels of Net Annual Value established in Naas based on a rate per sq. metre, which applied at a time immediately preceding the development of the Naas Town Centre.

He drew attention to the fact that customers could drive their cars and park in front of the subject unit or nearby free for a period of one to two hours and after that period at the same cost as those parking on Main Street. He stated that the shops on Sallins Road and Poplar Avenue enjoyed good pass-by pedestrian traffic. He noted that the subject double unit enjoyed considerable frontage of circa 16.01 metres and 10 metres of secondary frontage at the rear and that the unit, in common with those adjoining it, benefited from good front-to-rear depths. Mr. Maher stated that the unit was well finished and might be considered better finished internally than many of the older units on Main Street.

Mr. Maher contended that Mr. Halpin's reference to Passing Rents in the context of estimating NAV was irrelevant, as the Act essentially required adoption of the "Tone of the List". He advised the Tribunal that he had considered rental levels applied to retail units opposite the Naas Town Centre on the Dublin Road, to retail units at an existing Shopping Centre on the Kilcullen Road, and to shop units on the Sallins Road, all as set out in Section 4 of his précis of evidence. He argued that the units on the Dublin Road provided a clear indication of established Zone A levels in the immediate area, which were circa €300 per sq. metre and were marginally below the levels of €315 - €355 per sq. metre, i.e. Zone A examples on Main Street and Sallins Road adjoining Poplar Square, with the higher levels achieved at the latter location. He cited the Centre on the Kilcullen Road as inferior to the subject, which was reflected in the Zone A established rate there of €246 per sq. metre. He identified a Zone A figure of €218.75 per sq. metre at a tertiary location in shops on New Row. He contended that the level of €250 per sq. metre for Zone A and €125 for Zone B applied to the subject was fair and reasonable, which in turn produced a total NAV adjusted to November 1988 of €22,812.50, which devalued at an average of €233.50 per sq. metre overall on the subject property and produced an RV of €15.

His précis of evidence included a summary of four comparison properties, the first being eight units on the Dublin Road opposite the Town Centre, the second being the aforementioned units at Kilcullen Road, and the third and fourth being two shops on the Sallins Road all as set out in Appendix 3 to this Judgment.

Mr. Maher again stated that he did not consider Mr. Halpin's comparisons useful and reminded Mr. Halpin that he had, in his opinion, acted fairly and reasonably by adopting a rate of €250 per sq. metre on the agreed Zone A area of 84 sq. metres of the subject, and stated that he considered Mr. Halpin's second Main Street comparison property, namely Donal's, to be a particularly poor comparison given its inefficient floor layout and its centrally positioned shared lobby. Mr. Maher confirmed that Passing Rents did apply in the practice of Valuation but are not the primary indicator used for statutory rating purposes.

### **Cross-examination**

Mr. Halpin cross-examined Mr. Maher, who in turn affirmed that Donal's was at a prime location on the Main Street near the well established Superquinn store and that Zone A values in that area were approximately €275 per sq. metre, as noted in Mr. Halpin's précis, on Page 11 thereof (see Appendix 1). Mr. Maher also stated that this subject premises was near Superquinn and that he had reduced the applied Zone A value by circa 10% to reflect the secondary location of the subject. Mr. Halpin sought to clarify or reach a consensus with Mr. Maher on an appropriate Tone of the List applicable to the Naas Town Centre. Mr. Halpin advised that he would accept and acknowledge that the retailers fronting Main Street, such as Marks & Spencers, Lifestyle Sports, Boots, and so on, would only consider that location suitable for their trading purposes. Mr. Maher, in reply to Mr. Halpin, confirmed that he had identified a reliable established Tone of the List on the Main Street and Dublin Road, but confirmed that no such established Tone was available due to the absence of retail units opposite the subject on Poplar Avenue, which is primarily residential. Mr. Maher confirmed to Mr. Halpin that he did not have access to specific Passing Rentals and Lease Terms for all of the units within the Naas Town Centre but replied that he was led to understand that some of the front units were achieving approximately €50 per sq. foot in Rental per annum and the rear secondary located units at about €40 per sq. foot. Mr. Halpin argued that Mr. Maher erred by adopting a Tone of the List from an established area located across the road from the prime units whereas the subject unit and those adjoining on Poplar Avenue could not be equally compared. In response, Mr. Maher stated that he had taken other properties as outlined in his précis of evidence on the Kilcullen Road and Sallins Road, as indicative and comparative to the subject for the purpose of relating to and relying upon the Tone of the List.



A discussion ensued between the Valuers citing references to other locations such as The Moat Shopping Centre with overall applied Rental Rates of €15 per sq. metre based on unit depths of approximately 10 metres, which might generate Zone A Rates of €40 - €50 per sq. metre.

### **Findings & Conclusion**

The Tribunal has carefully considered the contents of the written submissions made by both parties to the Appeal, including the appendices thereto and is grateful for the detailed content of both submissions including useful copy maps, photographs and relevant data. The Tribunal also wishes to thank the two Valuers for the concise and focused manner in which they represented their views and in reaching its conclusion, was mindful of the following:

1. The as yet to be well established trading activity of the Naas Town Centre development, in the Poplar Avenue area in particular.
2. The nature and mix of products and services being purveyed from the units fronting Sallins Road and Poplar Avenue within the Naas Town Centre.
3. The absence of commercial or retail activity across the street from the subject property on Poplar Avenue.
4. The proximity and location of the subject property relevant to the ingress to and egress from the multi-storey car parking structure to the rear.
5. The location and proximity of the national and internationally branded traders situated within the units fronting the Dublin Road and their proximity in turn to Poplar Square identified to the Tribunal as the main commercial core of the town of Naas.
6. The “Tone of the List” established for existing retail units on the opposite side of the road to the foregoing units in Item 5 above, and in turn their proximity to the major Tesco outlet nearby.
7. The “Tone of the List” cited for the Kilcullen and Sallins Road comparison properties, as outlined in the submission of the Valuation Office, and the unchallenged statement that such units are in well-established, large residential neighbourhoods or in areas of high volume passing traffic.
8. The requirement to comply with Sections 48 and 49 of the Valuation Act of 2001.
9. The unchallenged statements relating to high levels of vacancy in some of the rear retail units and upper floor commercial units of the development.

10. The unchallenged apparent low level of demand and occupancy declared on the multi-storey Car Park in the Naas Town Centre development.
11. The nature and capacity of a business such as that conducted in the subject unit to stimulate or create major footfall or indeed to benefit from such activity linked to trading dynamics of the nearby and adjoining units along Poplar Avenue of this development.

### **Determination**

Having considered all of the foregoing, the Valuation Tribunal considers that the established Tone of the List for the Dublin Road area, as declared at €300 for comparable type properties, should be reduced by a factor of circa 30% to €10 for Zone A type space and accordingly calculates the Net Annual Value on the agreed areas as follows:-

#### **Net Annual Value Calculation:**

Zone A:	84 sq. metres @ €10 per sq. metre	= €17,640
Zone B:	14.5 sq. metres @ €105 per sq. metre	= <u>€1,522.50</u>
Total NAV		= €19,162.50
RV @ 0.5%		= €95.81
		Say €96.00

And the Tribunal so determines.