

Appeal No: VA17/5/210

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

EDMOND KEARNEY

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1207997, Retail (Shops) at 1A Market Square, Bagenalstown (Muine Bheag), County Carlow.

B E F O R E

Rory Lavelle – MA FSCSI FRICS ACI Arb

Deputy Chairperson

Orla Coyne - Solicitor

Member

Hugh Markey – FSCSI, FRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF JULY 2018.**

1. THE APPEAL

1.1 By Notice of Appeal received on the 6th day of October, 2017 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 €7,430.

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 19 (5) of the Act because:

“We wish to query the Category (Retail Shop) on the Valuation Certificate, this premises is an Auctioneering Office not a retail shop”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €3,500.

2. REVALUATION HISTORY

2.1 On the 11th day of May, 2017 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 €7,730.

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 of the Property was reduced to €7,430.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €7,430.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is 30th day of October, 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 15th day of March, 2018. At the hearing the Appellant appeared in person and the Respondent was represented by Mr Terry Devlin BSc, SCSI, RICS of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

5. ISSUES

5.1 None were identified.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

7. APPELLANT’S CASE

7.1 The Appellant, Mr Edmond Kearney in his direct evidence maintained that the premises were in use as an auctioneers’ office and should not be classified as retail. Furthermore, he said that the property had been vacant for 5 years prior to his taking occupation two years previously on a verbal agreement at €3,500pa; that there were significant vacancies in retail units in the town and it would be very difficult to actually let this unit were it vacant. He suggested the Respondent were inconsistent in the approach, applying rates of between €170 and €210 per sq. metre Zone A to retail in the town, viz; Property ID’s 1207688; 1207850 and 1207701.

7.2 In cross examination, the Appellant accepted that the property occupied a good corner location but added that there were five chemists and nine take aways in the town and retailers struggled to survive; he suggested shops ‘were untenable’.

He accepted that he had not put forward any comparisons to support his contended rental level of €3,500 pa; he did not accept the rental level proposed but that the law required the valuation to be based on actual rental levels.

He confirmed the original rent agreed in 2016 was €5,000pa.

8. RESPONDENT'S CASE

8.1 Mr Devlin, having adopted his Precis of evidence, outlined how the subject is a well located corner property in the town, opposite the Bank of Ireland branch. He said the areas had been agreed and he applied a Zone A rate of €210 per sq. m. to the subject retail area with €20 per sq. m. applied to the store to arrive at a Net Annual Value of €7,430pa. He adduced comparisons from Bagenalstown as well as Tullow, to support his opinion of value. In response to queries from the Tribunal, he confirmed that any property capable of retail use is valued as retail, regardless of the actual use.

8.2 In response to questions from the Appellant, Mr Devlin accepted that the premises had been closed for five years but the relevant valuation date was 2015. He also accepted that the premises did not have 'retail' frontage.

8.3 When asked whether he was aware that the bank, the pharmacy and the subject were the only premises actually trading in the immediate location, Mr Devlin responded that the premises were valued as at the relevant date.

9. LEGAL SUBMISSIONS

9.1 There were no legal submissions

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal, the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property, as determined by the Tribunal, is relative to the value of other comparable properties on the valuation list in the rating authority area of Carlow County Council.

10.2 The Tribunal finds that sufficient cognisance was not taken of the physical and locational characteristics of the subject property. In particular, the absence of a shop front and the actual passing rent.

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 €7,000.

Level 0 Retail Zone A 3	4.41 @ €200 per sq. m.	€6,882
Level 0 Store	10.68 @ €20 per sq. m.	€ 213.60
		Total €7,095

Say €7,000.

And the Tribunal so determines.