

Appeal No: VA17/5/279

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

NOEL O'BRIEN

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 1739065, Retail (Shops) at 19a School Street, Kilcock, County Kildare.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF JULY, 2018.

BEFORE

Barry Smyth – FRICS, FSCSI, MCI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 10th day of October, 2017 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 €16,780.

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:

“a) The Appellant believes the valuation is excessive based on the asking rents of two retail units in Kilcock.”

“b) An opinion of market conditions provided by a local auctioneer.”

“c) A statement regarding the incorrect application of zoning.”

“d) Details of turnover in recent years.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €8,500. This was altered in the document submitted by the Appellant to the Tribunal to €9,000

2. REVALUATION HISTORY

2.1 On the 10th day of March, 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 €20,100.

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 €16,780.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €16,780.

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. 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

4.1 The parties are agreed as to the following facts.

4.2 The property is located on the west side of Church St., Kilcock, at its junction with the Square. The property comprises the ground floor shop of a two storey end of terrace building the shop trading as a Newsagents and a small store.

4.3 The following floor areas were submitted by the parties:

	<u>Appellant</u>	<u>Respondent</u>
Retail Zone A	49.38 sq.m	49.89 sq.m
Retail Zone B	14.01 sq.m.	32.23 sq.m
Retail Zone C	27.96 sq.m	2.8 sq.m
Total Retail	91.35 sq.m	84.92 sq.m
Store	6.24 sq.m	4.25 sq.m

5. ISSUES

5.1 The first issue that is disputed is the amount of the NAV assessed which the Appellant argues is in excess of the rental value of similar properties located in Kilcock. In addition the Appellant makes argument in relation to the zoning, and while basically agreeing the Zone A area, argues that Zone B should only comprise the area at the back of the shop to the right looking from the shop and that Zone C should comprise the area to the left, which is separated from the area to the right by a structural wall, and is not perceived by clients as being part of the retail area.

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 made a written submission on the appeal on the 16th January 2018 and included a Valuation Report dated 15th January 2017(sic) from Liam Reilly Auctioneers MIPAV, New Road, Kilcock, Co. Kildare.

7.2 Mr. Reilly in his valuation noted that the shop is in good condition internally but that the building is over 100 years old and in need of some repair and would benefit from refurbishment. He noted that in locations on the outskirts of Dublin there is an oversupply of properties to buy or let and that commercial property values have declined. He noted that Kilcock in particular has a large number of commercial, retail and office spaces with a number of these units vacant. He is of the view that retail space in Kilcock is renting at between €8 and €9.50 per square foot (€86.12 to €102.25 per square metre.) In his opinion the rental valuation of the property is €9,000 per annum i.e. approximately €91.50 per square metre.

Mr. Reilly provided a zoned basis of this valuation as follows:

	<u>Area m²</u>	<u>NAV € per m²</u>	<u>Euros</u>
Zone A	49.38 m ²	€140	€6,913.20
Zone B	14.01 m ²	€70	€ 980.70
Zone C	27.96 m ²	€ 35	€ 978.60
Store	6.24 m ²	€ 17.50	<u>€ 109.20</u>
		Total:	<u>€8,981.70</u>
			Say €9,0000

7.3 Mr. Reilly provided a photograph of the exterior of the premises and a floor plan with dimensions. Mr. Reilly provided two comparisons the details of which are in the appendix to this judgment

- 1) Shop New Road, Kilcock – Asking Rent €8,400 per annum with a total floor area of 92.23m². Analysis €89.14 per sq. meter or €8.29 per sq.ft.
- 2) Shop Church St. Kilcock -Asking rent €18,000 per annum, floor area 1,600 sq.ft

(148.64 sq. meters) Analysis - €11.25 per sq ft or €121.10 per sq metre.

The Appellant added the following Summary of Evidence:

- 1) The shop has been run as a Newsagent for the past 50 years and although relatively clean and tidy is old fashioned and out dated and requires a complete refurbishment and upgrade. The roof is in poor condition, leaking in several areas, and needs to be replaced.
- 2) In relation to the zoning, that the area towards the rear of the shop to the right of the structural wall should be Zone B and that the area to left of the structural wall should be Zone C as it was not entirely visible from the entrance to the shop.
- 3) He provided information on turnover and profitability for the years 2012-2016 incl
- 4) He concluded that a valuation of €9,000 is more appropriate.

7.4 In a subsequent submission to the tribunal dated 20th February 2018 he noted that comparison one had actually been recently let at a rent of €9,600 per annum on a five year lease with 3 months' rent free and that this is equivalent to €104 per sq metre overall.

8. RESPONDENT'S CASE

8.1 Mr. Don Donovan, on behalf of the Commissioner of Valuation, in his submission set out the context for the appeal and details of section 48 and section 19 (5) of the Valuation Act 2001 as amended by the Valuation (Amendment) Act 2015. He noted the requirement that the Net Annual Value be estimated in accordance with section 48 and the requirement to "achieve both, (in so far as is reasonably practical), a) Correctness of Value and b) Equity and Uniformity of Value between properties on that Valuation List", as required by section 19 (5) of the Act.

8.2 He noted the location of Kilcock on the M4 and on the Dublin/Sligo railway line and the location of the subject property within the town.

8.3 He provided a Block Plan without dimensions showing the layout of the property, including the structural wall extending into the retail area from the rear wall, and indicating the zone areas or boundaries applied. He noted that the floor areas are not contested. (As noted above, there are some variations and the zoning is contested.)

8.4 He set out his response to the appeal before the Tribunal and to the submission made by the Appellant. He noted that the Appellant's comparison comprised two "Asking Rents" rather than Rental Transactions. He analysed the comparison at Church St, as comprising Zone A at €270 per sq. metre, Zone B €135 and Zone C €67.50 and ancillary at €27 per sq metre. In relation to the second comparison at New Road, he analysed the Asking Rent on a zoned basis to give a Zone A rent of €171 per sq.m. with Zones B and C halved in the usual way. He noted that the most compelling evidence comes from market transactions which have been suitably adjusted to reflect the Net Effective Rent at the Valuation Date on full repairing and insuring terms. He noted that the Liam Reilly Auctioneer report dealt with analysis of rents on an overall basis rather than a zoned basis which the Valuation Office have applied to retail units in the revaluation of properties in Kildare County Council. He stated that Mr. Reilly's zoning basis was not in line with the SCSI Code of Measuring Practice. He also stated that the turnover details were not suitable as an indicator of Market Rents.

8.5 Mr. Donovan stated that he relied on five items of market information to inform the estimate of Net Annual Value of the subject property and set out details of these key rental transactions and showed a range of total floor areas and NER'S on a Zone A basis as follows :The Harbour 35 sq.m €290 ,May 2015; Bridge St 22.75 sq.m. €340, April 2015;Harbour View 53.85 sq.m €406,January 2013; New Lane 19.25 sq.m. €450,September 2012;New Lane 78.78 sq.m €590, December 2014.

All of these properties were assessed for Net Annual Value at €300 per sq. metre Zone A and none has been appealed to the Valuation Tribunal.

On the basis of evidence of equity and uniformity he said that there are 59 retail properties valued in the vicinity of the subject and 49 of these are considered to be on the highest value streets in Kilcock and are valued based on a Zone A of €300 per sq metre. Originally School Street had been included in these higher value streets but at representation stage had been reduced to the lower level of Zone A of €250 per sq metre. The subject property is the only one under appeal to the Tribunal. Mr. Donovan provided NAV comparisons summarised as follows:

- 1) School St. Kilcock: Property no 2201671 51.44 sq.m. Zone A -26.35 sq metres,
Zone B – 25.09 sq metres, Kitchen 7.44 sq.m.

Zone A valued at €250 per square metre. NAV €9,900.

He also indicated two further properties on School St. at €250 per sq metre:

Property Number 1739101: – Zone A – 22.2 sq metres, Zone B – 7.56 sq. metres

NAV €7,140

Property Number 1727454: – 24.68 sq metres and Ancillary accommodation.

NAV €6,910

2) Bridge St. 86.64 sq.m– Zone A – 71.23 sq metres at €300 per sq metre. NAV €6,910

3) The Square, Kilcock – 113.07 sq metres plus Ancillary Accommodation of 88.78 sq metres. Zone A – 43.92 sq metres at €300 per sq metre. NAV €24,300.

4) The Square, Kilcock – 87.23 sq metres. Zone A – 39.04 sq metres at €300 per sq metre. NAV €18,250.

5) The Square, Kilcock – 88.32 sq metres. Ancillary Accommodation - 30.26 sq metres and First Floor Offices - 98.425 sq metres. Zone A 58.06 sq.m @ €300 per sq metre. NAV €31,700.

He then outlined the valuation as determined following consideration of the representation:

Zone A – 49.89 sq metres at €250 per sq metre -	€12,472.50.	
Zone B – 32.23 sq metres at €125 per sq metre -	€ 4,028.75.	
Zone C – 2.8 sq metre at €62.50 per sq metre -	€ 175.00	
Store – 4.25 sq metres at €25 per sq metre -	<u>€ 102.5</u>	
Total	<u>€16,782.50</u>	say <u>€16,780</u>

9. 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 Kildare County Council.

10.2 There is some misunderstanding by the Appellant and his agent in relation to the concept of Zoning and this is fully understandable as it would not be common practice in assessing rental values of retail shops in smaller provincial towns which tend to be quoted on a rent per annum or even per week basis. However the practice of zoning has been utilised in relation to rating revaluations by the Valuation Office and in the interest of equity and uniformity it is useful that it should be followed but not slavishly so and any valuation should allow for a “stand back and look” appraisal.

10.3 The Society of Chartered Surveyors guidance notes in relation to Retail Zoning are set out in a guidance note entitled “Retail Zoning for Chartered Surveyors” and this is a separate document to the Code of Measuring practice referred to by the Respondent.

The Retail Zoning guidance notes refer to taking zones as being 6.1 metres deep and that is readily applied in most circumstances.

However the Zoning guidance notes also refer to an ideal frontage to depth ratio of 1:3 and in particular to situations where the frontage to depth ratio is less than 1:2 and provides for a consideration by Valuers of reducing the Zone A rate in such circumstances to avoid overvaluing.

The notes also suggest that greater weight be applied to evidence derived from units which are closer in size to the premises being valued.

10.4 In the subject case the internal frontage is approximately 8.9 metres wide with a depth on one side of approximately 9.95 meters and on the other 12.05 meters thus giving frontage to depth ratios of 1:1.12 and 1:1.35 and therefore not corresponding with the ideal 1:3 ratio.

The intrusion of the structural wall dividing the rear area is covered in the zoning guidance notes by reference to “shadow areas” and states that valuers would be expected to use their professional judgement on this issue.

It is accepted by the Appellant that the area to the right may be considered as Zone B but that the area to the left, which is somewhat shielded from the main area, should be treated differently or as Zone C.

DETERMINATION

Valuers must always adopt a ‘Stand back and look’ position when considering their valuations and to see if the application of guidelines are absolutely applicable in each particular case.

A number of the respondents NAV comparisons are smaller premises than the subject and this as well as of the frontage to depth ratio of the subject means that it is appropriate to adjust the emerging tone of the list Zone A rate to €200 per sq. metre

This reduction also takes account of the dividing structural wall and the shadow area resulting and therefore Zone B is calculated at €100 per sq. meter and Zone C at €50 per sq. meter

There is little difference between the parties in relation to the valuation applicable to the store.

As the NAV to be determined relates to the premises being valued and not the business the turnover figures and profitability are not relevant in relation to the valuation of retail shops.

For the above reasons the Tribunal determines the NAV at €13,500 calculated as follows:

Zone A – 49.89 sq. metres @ €200 per sq. metre	€9,978
Zone B – 32.23 sq. metres @ €100 per sq. metre	€3,223
Zone C – 2.8 sq. metres @ €50 per sq. metre	€140
Store - 4.25 sq. metres @€25 per sq. metre	€106.25
Total -	€13,447.75
	Say NAV €13,500

And the Tribunal so determines.