

Appeal No: VA17/5/312

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

CHRISTINE HORKAN

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 2200675, Retail (Shops) at Local No/Map Ref: Unit 2, Bellaghy, Achonry
West, Tobercurry, County Sligo.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF JULY, 2018**

BEFORE

Eoin McDermott – FSCSI, FRICS, ACI Arb

Ordinary Member

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 €7,080.

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:-

“the business is practically non existent and the rates are exorbitant

- Income down year on year
- Adjoining property vacant with (sic) years
- Located in cul-de-sac
- Charlestown has/is severely impacted since the economic downturn.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €3,540.

2. REVALUATION HISTORY

2.1 On the 16th 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 €7,080.

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 07th day of September, 2017, stating a valuation of €7,080.

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.

3.3 Following the exchange of documents the Appellants raised some further queries to which the Respondent replied on 3rd July 2018.

4. FACTS

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

The property comprises a modern mid-terrace ground floor retail unit of 102.86 Sq. M. in a rural village close to the Sligo-Mayo border. The village effectively forms part of the town of Charlestown, Co. Mayo. The property is occupied under a month to month informal arrangement at an annual rent of €3,600 (€2,926.82 ex VAT), agreed in January 2015.

5. ISSUES

5.1 The issues that arise from this appeal are the quantum of value and the Respondents approach to applying all the principles outlined in the Society of Chartered Surveyors Ireland (SCSI) Information Paper “Retail Zoning for the Chartered Surveyor (2015 edition)”.

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 Appellants initial case was made on primarily economic grounds, that income was down year on year and the local community continued to be severely impacted since the economic downturn. The appellant noted that an adjoining property had remained vacant for a number of years but no further details were provided. No comparisons were put forward.

8. RESPONDENT’S CASE

8.1 The Respondent gave evidence of the property and the location (as set out in 4 above). The Respondent zoned the property as follows

Zone A (Retail) 45.14 Sq. M.

Zone B (Retail) 45.14 Sq. M.

Zone C (Retail) 12.58 Sq. M.

The Respondent noted that the Appellant had been in occupation since 2009. The property had originally been let on a 3-year lease at an annual rent of €8,400 (inclusive of VAT) but this had been reduced in January 2015 to an annual rent of €3,600 (inclusive of VAT) and the Appellant was now holding over on an informal month to month basis. The property was fitted out by the Landlord.

The Respondent provided evidence of three key rental transactions (see Appendix 1) at retail Zone A rents of €193/ Sq. M., 185/ Sq. M. and €72/ Sq. M., which he stated backed up his retail Zone A rent of €100/ Sq. M. Evidence was also given of NAV comparisons in the List as follows

Address	Area Sq. M.	Zone A rent/Sq. M.	Total NAV	Comments
1 Willowbrook	85.25	€100	€5,860	Adjoining subject property. Allowance of €648 given
3 Willowbrook	100.29	€100	€5,960	Adjoining subject property. Allowance of €643 given
4&5 Willowbrook	198.16	€100	€10,360	Two doors from subject property. Allowance of €1,081 given
Main St. Easkey	59.65	€100	€4,330	Described as similar to subject.
Riverstown	79.94	€100	€4,326	Described as similar to subject.
The Harbour, Mullaghmore.	57.63	€100	€4,370	Described as similar to subject. Allowance of €475 given.

8.2 Following receipt of the Respondents evidence, the Appellant sought answers to the following questions.

- Unit 2 is of the same size, stature, and location as the neighbouring units, and all the neighbouring units have a 'minus' for Shop area, Unit 2 doesn't?
- All the neighbouring units are charged €10 per Sq. M. for storage /kitchen areas. The WC/ storage/stock/kitchen area in Unit 2 is marked as a retail zone and charged €25 per Sq. M.?

8.3 The Respondent gave a detailed reply, in which they stated, inter alia, “The floor area of the subject property and neighbouring units are analysed by the ‘Retail Zoning Method’ of comparison...This method is applied having regard to the Society of Chartered Surveyors Ireland (SCSI) professional guidance note.” A copy of the Guidance Note is attached to the response.

In dealing with the first query, the Respondent refers to point 2 of the Guidance Note, which deals with allowances or additions that may be applied where the frontage to depth ratio of a particular unit is outside a given range. This is done in order to prevent overvaluing relatively wide units, or undervaluing narrow deep properties. The respondent notes a 1:3 frontage to depth ratio is considered as standard and that units with a ratio of less than 1:2 can be discounted by +/-10%, although it is noted that this figure is for guidance only and should not be applied rigidly.

The Respondent then gave evidence of the ratios of the subject property and others in the Willowbrook development, as follows

Address	Frontage	Depth	Ratio	Comments
2 Willowbrook	7.40	14.40	1.195	Subject Property
1 Willowbrook	8.40	11.30	1.135	
3 Willowbrook	7.40	11.30	1.152	
4&5 Willowbrook	13.70	11.40	1.083	

The Respondent explained that a 10% allowance was given to Units 1, 3 and 4 & 5 as their ratios were significantly below the 1:2 guideline while the subject property was only slightly below it and it was therefore considered that no allowance should apply.

In response to the second query, the Respondent explained that allowances were made for areas that were behind structural load bearing walls and that these were not considered as retail areas but rather as ancillary areas such as stores. There were no load bearing walls in the subject property and correspondingly it was all valued as retail space, save for the WC which was for staff purposes and therefore excluded from the measurements. It was also noted that Units 1, 3 and 4/5 had all been inspected as part of this appeal and that while overall floor areas remained the same, the composition of those areas had changed. Accordingly, the Commissioner of Valuation had requested a Revision of Valuation of those properties.

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 Sligo County Council.

10.2 The first question that the Tribunal has to consider is whether the Respondent was correct to apply the principles laid down in the SCSi Information Paper “Retail Zoning for the Chartered Surveyor”. Zoning is a tool of analysis of rental values of retail units whereby the rents derived from an analysis of a letting of a shop unit are applied to a similarly configured shop. Allowances must be made for differences in size, frontage, configuration etc.

The Information Paper itself has no formal legal standing. The SCSi produces a series of papers to assist its members and ranks them as follows

Type of document	Definition	Status
SCSi practice statement	Document that provides members with mandatory requirements of the Rules of Conduct for members.	Mandatory
SCSi code of practice	Standard approved by SCSi that provides users with recommendations for accepted good practice as followed by conscientious surveyors.	Mandatory or recommended good practice (will be confirmed in the document itself)
SCSi guidance note	Documents that provide users with recommendations for accepted good practice as followed by competent and conscientious surveyors.	Recommended good practice
SCSi information paper	Practice based information that provides users with the latest information and/or research.	Information and/or explanatory commentary.

It can be seen that, despite the Respondent referring to the Paper as a Guidance Note, the Paper is merely for information purposes and does not necessarily constitute best practice. Nonetheless, while the Tribunal has previously noted that it is not convinced that Zoning is the proper method to use when valuing retail units in small villages, there can be no real objection if the method is consistently applied to all similar units.

10.3 The Tribunal notes that the Respondents evidence differs from the approach put forward by the Information Paper in at least two instances.

In the introduction to the Paper, it states “where zoning is applied, it is also recommended that the premises be considered on an overall basis as there are instances where zoning can produce an anomalous result.” This does not appear to have been considered in this Appeal and the Tribunal recommends that consideration of the rent on an overall basis should be used in conjunction with the zoning approach in future, to ensure equity and uniformity.

Secondly, it is noted that Point 4 of the Information Paper deals with unit sizing, and states “It is suggested that greater weight be applied to evidence derived from units which are closer in size to the premises being valued. A guideline of +/- 50% is suggested.” In the comparable

evidence put forward by the Respondent, only one of the three key rental transactions put forward falls within +/- 50% range suggested, but no attempt is made to analyse the different rent levels or show how they relate to the valuation figure put forward.

10.4 Turning to the evidence put forward by the Respondent, apart from the size differentials mentioned above, the Tribunal further notes that the three key rental transactions mentioned above are all located in coastal locations in the north- east area of Sligo. The subject is located in an inland location on the southern boundary of the county. The Tribunal accepts that the lack of market rental evidence in such locations makes it particularly difficult for the Respondents to produce an accurate scheme that is applicable for all rural villages but considers that the remoteness of the rental transactions from the subject property severely diminishes their suitability as comparisons.

10.5 Of the six NAV comparisons put forward, the three properties in the same parade as the subject have all been relisted by the Commissioner of Valuation. NAV comparisons 4, 5 and 6 are again all located a considerable distance away from the subject property. However, all have a consistent approach of €100 per Sq. M. Zone A rents and the Tribunal considers it appropriate to maintain this figure.

10.6 The Tribunal notes that no allowance was given for the frontage;depth ratio in the subject property, despite it breaching the suggested minimum of 1:2. While it is accepted that the breach was slight, a 10% reduction was given in the adjoining properties and the unit in Mullaghmore and it is considered appropriate to apply a similar reduction in this instance.

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 €6,370

Use	Area	€/ M ²	NAV
Retail Zone A	45.14	€100	€4,514.00
Retail Zone B	45.14	€50	€2,257.00
Retail Zone C	12.58	€25	€314.50
			€7,085.50
Less frontage to depth allowance		10%	-€708.55
			€6,376.95

Say €6,370

And the Tribunal so determines.

Appendix 1 – Rental Comparisons

Respondent

Property	Lease Date	Area (M ²)	Rent	Retail rent Zone A	Comments
Carney Checkout, Main St, Carney	08/02/15	105.03	€13,100	€193	4-year 9-month lease. Grocery store.
Cliffoney PO, Cliffoney	01/12/13	37.14	€5,760	€185	5-year lease. Post office.
Macari's Take away, Grange	01/04/13	212.13	€10,400	€72	10-year lease. Take away.