

Appeal No. VA15/5/011

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

MICHAEL O'SULLIVAN

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:
Property No. 1259310, Retail (Shops) at 11F Market Yard, Newcastle West, County Limerick.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH FEBRUARY, 2019

BEFORE:

Stephen J. Byrne - BL

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Dairine Mac Fadden - Solicitor

Member

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th day of September 2015 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 €14,720.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

- The subject property's estimate of net annual value is excessive and inequitable. The valuation is based on incorrect use and on unrealistic NAV rents.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5,300.

2. REVALUATION HISTORY

2.1 On the 10th day of June, 2014 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 €6,030.

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 increased to €14,720 due to the amalgamation of what had hitherto been valued as two separate properties.

2.3 A Final Valuation Certificate issued on the 11th day of December, 2014 stating a valuation of €14,720.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 1st day of March, 2012 (“the valuation date”).

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 18th day of March, 2016. At the hearing the Appellant was represented by the Mr. Brian Geary and the Respondent was represented by Mr Dean Robinson MSCS, MRICS, ACI Arb 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. BACKGROUND

4.1 The property the subject matter of this appeal is situate at Market Yard, Newcastle West in the County of Limerick. It is a detached two-storey building. It is in use as a Drycleaners. It comprises a ground floor and first floor. The use has been categorised as retail.

4.2 On the ground floor, there is a relatively modest area to the front to which the public have access for the purpose of dropping off, collecting, paying for items which have had the benefit

of the dry cleaning and/or laundering process. There is a small countertop which marks the line beyond which the customer, in the normal course of things, does not go and functions as a platform on which commerce is directly transacted for the bailment of items in need of care, the collection of and payment for the items which have received same. Beyond this counter are rails of clothes in plastic membrane, pressed, laundered and ready for collection. Beyond this again is the industrial part with commercial size press, wash machines and dryers, clothes and the like arranged (stored) at the different stages of the cleaning process. The industrial part has been fitted out to meet the demands required to keep the plant and equipment running and so as to meet the pressing demands of the customer. A sense of what is required electrically and/or mechanically to keep all of this process going can be gleaned from the photographs which have been adduced in evidence.

4.3 The first floor of the subject property shows little signs of activity. It is evidently fitted out for office use, and is also used for storage purposes.

4.4 The floor area has been subdivided by the Respondent as follows:

Ground floor Retail Zone A:	58.37 square metres
Ground floor Retail Zone B:	26.49 square metres
Storage:	1.35 square metres

First floor office/store:	24 square metres	€14,720
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4.5 The valuation as set by the Respondent for the property is a total NAV of €14,720, broken down as follows:

Retail Zone A:	€190 per square metre
Retail Zone B:	€95 per square metre
Store:	€25 per square metre
First floor office/store:	€45 per square metre

4.6 Mr. Robinson on behalf of the Respondent gave evidence of the following 3 key rental transactions of properties which he said were all located or situate in Market Yard, adjacent to the subject and which he submitted were all comparable to the subject:

1 – PN 1259309 with a total floor area of 82.17 sqm, which had an NAV of €8,370, assessed on the basis of Zone A (27.06sqm) @ €190 per sqm and a Zone B (15.13sqm) @ 95 per sqm.

and a first floor area of 39.98sqm assessed @€45 per sqm. The rental evidence in respect of this property is set out in Appendix A appended hereto;

2 – PN 1259307 with a total floor area of 43.22 sqm, which had an NAV of €8,210, assessed on the basis of Zone A (43.22sqm) @ €190 per sqm. The rental evidence in respect of this property is set out in Appendix A appended hereto;

3 – PN 1264027 with a total floor area of 107.56 sqm, which had an NAV of €18,530, assessed on the basis of Zone A (87.56sqm) @ €190 per sqm and a Zone B (20.00 sqm) @ 95 per sqm. The rental evidence in respect of this property is set out in Appendix A appended hereto.

4.7 In outlining the valuation methodology applied to the subject, Mr Robinson said that the rental transactions relevant to each of these properties were investigated by the Respondent and resulted in an Net Effective Rent (NER) being established for each property and that the NER equated to the basis of valuation set out in section 48 of the Valuation Act, 2001 on the valuation date. Further, he said that this collection of NER's provided the basis for deciding what was the appropriate NAV per square meter or Zone A to be applied to the group of properties sharing similar characteristics including the subject. Following that, if there were any relevant individual considerations in relation to the subject, relative to that group, further adjustments may be made to the subject's NAV.

4.8 As evidence of equity and uniformity he gave evidence of the property identified by PN 1259308, which he said was a ground floor unit, also located in the Market Yard which had been valued with an NAV of €4,560 which equated to a Zone A rate psm of €190. He also submitted a table listing four properties, three of which were the three key rental transactions and the fourth of which was the property submitted firstly by way of evidence of Equity and Uniformity.

4.9 The Appellant submitted that the rate as struck is excessive and inequitable and seeks a reduction in the level of rates as fixed by the Respondent.

4.10 The Appellant grounds his entitlement to such a reduction on the following:

- (1) The age, physical and/or structural condition of the property, which he submits is in need of significant work at significant cost to render it "*retail ready*".

Mr. Geary, the Appellant's agent referred to the opinion of Patrick O'Donovan, Auctioneer, which is dated 4th March 2016 and which has been introduced into evidence by way of Appendix to the Appellant's precis of evidence.

In considering the rental value as of March 2016, Mr. O'Donovan states as follows:

“The building is dated and requires considerable modernisation. There is no central heating system and part of the roof is covered with corrugated iron. There is no toilet on the ground floor and the decoration is dated. The electrics are also dated and in my opinion would need to be updated. There is no alarm system in place. There is no back entrance which requires all deliveries to be made via the front door

Also please note the ground floor levels and ceiling heights vary by up to 2 feet in places. Going forward this would have to be rectified.

This property would require serious investment to be made available for rent.”

This statement, as per Mr. O'Donovan, as contained in his report, is consistent with the evidence of Mr. Geary, and insofar as that evidence concerns the age/structural condition of the property and as per the summary of evidence as prepared by and as adopted by Mr. Geary. Further, the photographs of the interior of the property as adduced in evidence appear to bear this out.

As noted Mr O'Donovan's opinion is dated 4th March 2016. The Tribunal is, by law, constrained to have regard to and/or view the property as per the valuation date (1st March 2012).

The Respondent's object to the admission of Mr O' Donovan's evidence on the grounds that he was not available at the hearing before the Tribunal to give his evidence in person and to be subjected to cross-examination. However, the Tribunal notes that the evidence as to the physical condition and/or fit-out and/or age of the property has not been in any way meaningfully challenged by the Respondent.

(2) The Appellant has presented a swath of properties (8 in total). For reference, these appear by way of Appendix 2 to the Appellant's precis of evidence and bear the title "*Comparable property valuations*".

All properties have been designated 'retail'. They have, or appear to have been rated by application of the so-called zonal approach and/or methodology (Zone A, Zone B, Zone C). The properties embrace a range of uses. The majority appear to be in use as what might loosely described as 'clothes shops'. One of the properties in use is a post office. There is a vacant property.

Having regard to the map as adduced in evidence, the properties are drawn from parts of Newcastle West which:

- Do not appear to be on the main thoroughfare.
- Are relatively close to the subject, albeit situated in what might be termed different retail parades.

The properties vary in size (total area) from 75 square metres (smallest) to 293 square metres (largest). Whilst the zonal approach has been employed when devising the appropriate measure of applicable rates, 6 of the 8 properties relied upon have had applied to them rates pertaining to 'Zone C'.

The Appellant makes the case that each of these properties is "*retail ready*". In other words, the Appellant makes the case that each of the properties is fit for retail use and/or occupation without the need for any significant work and/or investment. The point as emphasised by the Appellant and from a consideration of this evidence is as follows:

Retail properties relatively close to the subject to which the zonal approach to assessment has been applied have been assessed for rates in respect of Zone A, Zone B at the levels which are appreciably and/or significantly less than the rates applied to the subject in respect of Zone A/Zone B.

Consideration of the material as adduced bears this out. As noted above, the subject property has been assessed at €190 per square metre – Zone A and €95 per square metre – Zone B.

The properties being relied upon by way of comparison vary from €100 (Zone A) and €50 (Zone B) to €140 – (Zone A); €70 - (Zone B).

A trend (tone) appears to emerge whereby retail properties in or around Bridge Street are uniformly assessed at €120 per square metre (Zone A), €60 per square metre (Zone B), whereas retail properties in or off Bishop Street have been assessed uniformly at €140 per square metre (Zone A) and €70 per square metre (Zone B).

(3) At Appendix 8 the Appellant asks the Tribunal to consider rates levied in respect of properties with the same use as the subject (properties used for the purpose of Drycleaners and/or Launderettes) throughout the relevant Rating Authority (County of Limerick).

The following emerges from a consideration of this material:

- (a) The Respondent categorises use of properties as Drycleaners/Launderettes as retail.
- (b) Having categorised the said use as retail, the Respondent applies the zonal approach to assessment of rates where appropriate and applying different levels of rates to different zones with retail Zone A attracting the highest rate, Zone B the next highest and where appropriate, Zone C attracting the lowest rate.
- (c) Taking a narrow view of the material and honing in on:
 - Properties used as Launderettes/Drycleaners in urban Limerick.
 - Level of rates applied in respect of Zone A/Zone B to such properties.

Four properties present as being of potential assistance.

The Tribunal disregards:

- * Property No. 1252436 [RN], whilst in Drumcollogher, does not appear to have been assessed by the zonal approach. It is noted, in addition, that it measures in total 40.70 square metres.
- * Property No. 1256091 [MH]) because it has been assessed by reference to Zone A only.

Of the four remaining properties:

- * One is situated in Newcastle West.
- * The rates applied to Zone A range from €70 per square metre (lowest) to €200 per square metre (highest) and in respect of Zone B from €35 per square metre (lowest) to €100 per square metre (highest).
- * On this narrow presentation, application of rates to the subject property, being a property in use as Drycleaners/Laundrette and being a property to which a retail zonal approach to assessment is employed, which said approach yields a rate of €190 per square metre (Zone A) to €95 per square metre (Zone B), comes in significantly higher than the level of rates applied using the same approach to assessment (retail/zonal approach) to properties in use as a Laundrette/Drycleaners throughout the urban spread of County Limerick, wherein the next highest rating logs in at €200 per square metre (Zone A) and €100 per square metre (Zone B).
- * The Appellant makes the case that it is, in the circumstances, unfair/inequitable to require the Appellant to pay rates at a level which is significantly higher than ratepayers who are comparable:
- * In terms of use of property (Laundrette/Drycleaners) and in terms of geographical location.

(4)The Appellant asks the Tribunal to have regard to what might be termed ‘market conditions’.

In this regard and in summary, the Appellant makes the case that the area in which the subject is immediately located shows signs of uncertainty and/or nervousness, as evidenced by (a) frequent change of occupier and/or use; (b) vacancy and when one has regard (c) to competition posed by migration to modern commercial ‘hubs’. The Appellant argues that this should be

viewed as evidencing hesitancy/reluctance on the part of a potentially interested tenant when committing himself/herself to tenure of the subject property.

(5) In addition, the Appellant has, and by way of appendix A, put forward a number of properties dubbed “*comparable properties for rent*”, all of which the Tribunal has considered and which will be dealt with in more detail below.

5. DISCUSSION

5.1 As Mr. Robinson correctly observes, the subject property falls to be assessed under Section 48 of the Valuation Act, 2001. Under Section 48(1) of the 2001 Act, valuation is determined by estimating what is termed the net annual value. Under Section 48(3) the net annual value is defined as “*the rent to which the property in its actual state might reasonably be expected to let from year to year and on the assumption that the recoverable average 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 and charges (if any) payable by or under any enactment in respect of the property are borne by the tenant.*”

5.2 Arriving at the net annual value is not an exact science. The Respondent, in arriving at the net annual value, is required to put forward an estimate of what the property, in its actual state, might reasonably be expected to achieve. The Respondent is further constrained in that he is, by law, required to ensure that rates within the individual rating authority areas are treated fairly, equitably and uniformly.

5.3 Uniformity ordinarily dictates that ratepayers, who are broadly speaking, comparable ought, and broadly speaking, to pay rates at an equivalent level.

5.4 The net annual value, as applied by the Respondent to the subject property, has been put in issue. The Respondent is thereby required to satisfy the Tribunal that the rate as applied meets the statutory requirement. In other words, the rate as applied constitutes and/or equates to the rent which:

“The property, in its actual state, may reasonably be expected to let from year to year and on the assumption etc. etc. etc.”

5.5 The Respondent has argued that the evidence as presented by him supports the rate as struck and as applied to the subject property.

5.6 The Respondent argues that the evidence as presented by him complies with the requirement of Section 48(1). He further argues that it presents as reliable evidence of the NAV as defined.

5.7 This argument has been called into question by the Appellant.

5.8 The evidence as offered by the Respondent (key rental transactions 1-3/NAV comparison 4) has been offered as reliable indication of what willing tenants have in fact paid in rent in respect of comparable retail properties as of and/or close to the valuation date.

5.9 Key rental transaction No. 2 makes express reference to what is termed a rolling lease for one year duration. The Tribunal has not been told when this 'rolling lease' was executed.

5.10 The requirement that evidence in support of rent which is in fact being paid for, broadly speaking, comparable properties at or close to the valuation date is a requirement which the Respondent himself insists on and, in the Tribunal's view, for good reason.

5.11 Key rental transaction No. 2, having regard to the manner in which it is presented in this case does not, and in the Tribunal's view, evidence the meeting of this fairly basic requirement and cannot for that reason be relied upon.

5.12 The Tribunal cannot, and in the circumstances, safely draw from same any reliable indication of the amount of rent which a prospective/willing tenant would, on and/or close to the valuation date, be prepared to pay to rent the subject property.

5.13 Key transaction No. 3 strikes the Tribunal as being markedly different in size, countenance, use and fit-out to the subject. On the evidence as adduced, it expressly refers to a 10-year lease commencing on 1st May 2014. On the evidence as adduced, this lease was entered into in excess of two years after the valuation date. As such, separate and apart from the fact that the property is, for reasons as set out above, markedly different from the subject, the evidence of the rent being paid on foot of the lease entered into in March 2014 does not, by

any measure, meet the Respondent's requirement that such rental evidence, if it is to be relied upon, must relate to a transaction which is made at or close to the valuation date.

5.14 Accordingly, this particular piece of evidence is not, and in the Tribunal's view, reliable. It does not assist the Tribunal in coming to any safe and/or reasonable conclusion as to the amount of rent a prospective tenant would be willing to pay for the subject property in its actual state and on the prescription that such tenant is contemplating this transaction on or close to the valuation date.

5.15 NAV comparison 4 suffers in relative silence. It is a comparatively small ground floor property. It is in the same location as the subject property. It has an NAV of €4,560 which, in turn, yields Zone A equivalent of €190 per square metre.

5.16 Turning then to key rental transaction No. 1, evidence has been offered of what is termed 'a verbal agreement'. The Tribunal takes this to mean a contract of tenancy. The evidence suggests that this contract of tenancy was entered into in 2012. It appears from the evidence as adduced that the parties to this particular agreement have not specified and/or agreed a term of the contract of tenancy. This, in and of itself, evidences a measure of uncertainty in what might be termed the relevant market. This measure of uncertainty is affirmed by the fact that the rent has almost halved from a peak of €20,000 in 2010 to €11,400 in 2012, a space of two years or thereabouts.

5.17 The Tribunal has not been told when the parties to this agreement 'revisited' their arrangement, agreeing revised terms and in particular, a revised and significantly lower rent and critically revisited the question of the duration of the tenancy. Absent this critical information, the Tribunal cannot be satisfied that this is, in fact, evidence of what a willing/hypothetical tenant would be willing to pay for the subject property at or close to the valuation date.

5.18 This particular 'key rental transaction', if anything, evidences uncertainty in the rental market in which the subject property is situate with, if anything, an appetite for a significant reduction in rent with the landlord prepared to significantly reduce the rent which he had been receiving in order to hold on to a 'sitting tenant'.

5.19 As regards the Respondent's evidence of equity and uniformity, there is, in the Tribunal's view and in principle, merit in the Respondent's argument which may be summarised thus:

- Properties in the same retail sweep as the subject and in use as retail have been uniformly set out - €190 square metres Zone A and €95 per square metre Zone B.
- The Appellant's neighbours are 'happy' to pay this amount of rates in that they have not appealed the rate as levied against them.
- Thus, there is evidence of equity/uniformity, which said equity/uniformity the Respondent has the onerous task of safeguarding.
- Further, there is evidence of what some refer to as an emerging tone which offers all concerned the comfort that the rate as struck is, all things being equal, as fair and equitable as the limits of human endeavour will permit.

5.20 Having extracted from the key rental transactions of rent which, on the Respondent's case, equates with NAV/€14,720, Mr. Robinson asserts that adjustment to the NAV can, in principle, be made where there are "*relevant individual considerations in respect of the subject property*" (as per Mr. Robinson's precis of evidence at page 10).

5.21 Mr. Robinson has not in evidence furnished any example of what is meant in this particular context by "*relevant individual considerations*".

5.22 The Tribunal infers from the fact that no adjustment has been made at any point in the appeal process and in particular, at this hearing that the Respondent:

- Has, as per his self-imposed edict, considered whether this property has "*relevant individual considerations*".
- Following consideration has concluded that the subject property did not, and in the circumstances, have "*relevant individual considerations*".

5.23 There is no direct evidence which bears this out. It is, nevertheless, an inference which the Tribunal can draw from the following:

- * Opinion evidence which is to the effect that the Respondent as a matter of routine has regard to relevant individual considerations when considering assessment.
- * Adjustments can and are made when relevant individual considerations are found to exist.
- * The Respondent has not made any adjustment in respect of the subject property.

5.24 In circumstances where the Appellant has produced evidence (unchallenged) concerning the age and/or condition and/or fit-out of the property, this unchallenged evidence, in the Tribunal's view, appears and in the circumstances to present as "*relevant individual consideration*" worthy of consideration and, if necessary, worthy of an appropriate adjustment in the rate which is being contemplated.

5.25 The so-called hypothetical tenant, when viewing the subject property with a view to renting it as a retail premises, is bound to attach significant weight to matters as evidenced concerning the age and physical condition of this property and concerning the fit-out and having done so, the hypothetical tenant is likely to insist on an appreciable reduction in what might be termed prevailing market rent.

5.26 The Respondent has, it seems, taken the view that the matters as evidenced pertaining to the age and/or physical state and/or condition of the property and/or the fit-out of the property do not meet this particular requirement. This evidence does not, in other words and in the Respondent's view, present as "*relevant individual considerations*" worthy of adjustment.

5.27 Further, and as has been stated above, this particular decision has been arrived at by the Respondent in circumstances where the Respondent:

- Has not furnished any or any clear and/or satisfactory indication of what is meant by "relevant individual considerations".

- Has not furnished any or any satisfactory explanation as to why, and in the Respondent's view, the age and physical structure and/or condition of the property and/or the fit-out of the property do not, and in the circumstances, constitute "*relevant individual considerations*".

5.28 The fact of the matter is, and for reasons alluded to above, evidence pertaining to age/physical condition/fit-out of the subject property present as "*relevant individual considerations*" requiring appropriate reflection and attention with a view to potential adjustment on prevailing market rent with a consequent adjustment in the NAV.

5.29 The Respondent's patent failure to address this critical issue in any meaningful way and more particularly the Respondent's failure to:

- Adduce evidence which might assist the Tribunal in understanding what the Respondent means in this context by "*relevant individual considerations*";
- Put up any reasonable/coherent counter argument as to why the age/physical condition and/or structure of this subject property and/or the fit-out do not meet this standard of assessment;

does not, and in the Tribunal's view, stand up to scrutiny.

5.30 The Appellant bears the onus of proof. It falls to the Appellant and in an appeal such as this and where quantum is in issue, to satisfy the Tribunal by evidence and to the requisite standard:

- * That the rate as struck is, simply put, wrong in law.
- * Which permits the Tribunal to come to a reasonable and safe conclusion as to a level of rates which is equitable and fair and allows the Tribunal to conclude that same equates to NAV as defined by statutory provision. In other words, equates to the rent which, 'colloquially put', the hypothetical tenant is prepared to bid for the property on a date which is on or close to the valuation date.

5.31 It appears, and in the Tribunal's view to be reasonably well settled among experts acting for and against the Commissioner:

- that the most effective and safest way to come to an appreciation of what a hypothetical tenant will bid for a particular property on a given day is rental evidence which captures what might be termed the 'prevailing market' being a rental market which obviously includes the subject property.

5.32 Typically, this evidence is drawn from a consideration of actual rent agreed and being paid for, broadly speaking, comparable properties and where again, broadly speaking, comparability can be measured and/or assessed by tangible tools and/or hallmarks such as geographical location; size; use.

5.33 On revaluation, there is the additional refinement that the 'rental evidence' as offered must reflect the position on the ground on the valuation date or as close as possible to the valuation date as makes no discernible difference.

5.34 This approach, if properly conducted, allows all concerned to come to an informed view on matters which are, in the Tribunal's view, critical to an appreciation of whether and in fact the rate as struck has been arrived at following practical and evidence-based application of the requirements of Section 48(1) of the 2001 Act.

5.35 This approach, if properly conducted, allows all concerned to conclude, with a measure of confidence, that the figure for rent which has been arrived at, represents as close as human endeavour permits, the rent which a willing tenant would give for the subject property on the relevant date. It presents as, albeit hypothetically, the rent as demanded by an astute landlord on the relevant date. Further, it presents as the base from which the astute and commercially-driven perspective tenant will attempt to achieve a reduction by reference to "*relevant individual considerations*" which said "*relevant individual considerations*" are both patent and tangible.

5.36 If, for some (good and convincing) reason, the experts who put themselves forward in the cause of one side or the other, find that they cannot usefully deploy what might be termed "*the best evidence approach*", such experts' duty to their respective clients and the Tribunal is to

inform all concerned of this and applying the skill and experience which renders unto them the privilege of expertise, come up with a credible expert-based alternative means of coming to a safe and reliable appreciation of what the hypothetical tenant is likely to pay in rent for the individual property under consideration in its actual state at or close to the valuation date.

5.37 The Appellant's comparable properties for rent (Appendix 7) are advanced as a representative sample of rent being paid by tenants for retail units of varying sizes and which are collectively, on the Appellant's case, (which the Tribunal is prepared to accept) in appreciably better condition than the subject and which said retail properties are situated in Newcastle West, within relatively close proximity to the subject.

5.38 The problem with this evidence is that the rent as commanded by each of the properties appears to be the rent as paid and/or as sought in or about March 2016. Thus presented, it captures the prevailing, if somewhat bleak, commercial landscape in the locality as of that date (March 2016).

5.39 As has been stated above, the requirement on the Tribunal on revaluation is to have regard to rent which is being sought and/or paid for comparable properties on or close to the valuation date. (1st March 2012). It follows and the Tribunal so determines that the Appellant's comparable properties for rent do not assist the Appellant in discharging the onus on him of satisfying the Tribunal as to the amount which the Tribunal should, on the Appellant's case, posit as a fair and equitable rate being a rate that derives from an NAV which has, in turn, been computed under and in accordance with statutory provision.

5.40 The evidence of Mr. Patrick O'Donovan is unfortunately of no assistance to the Appellant as it is an opinion on the property given 4 years after the valuation date.

5.41 Evidence based on NAV by definition is qualitatively different to what has been referred to above as "*rental evidence*". As such, evidence based on NAV presents as a different approach to assessment of rates to the orthodox approach, as set out above.

5.44 The Tribunal must be satisfied that this qualitatively different approach to assessment of NAV as proffered by the Appellant presents as a proper and/or reliable alternative to the

orthodox approach which, as stated above, relies on evidence of rent which has, in fact, been paid and/or demanded for comparable properties at or close to the valuation date.

5.45 If so satisfied, the Tribunal can go on to consider whether this alternative approach yields a rate in respect of the subject property which, and in all of the circumstances, presents as a more just and/or reasonable and legally sustainable figure than that agitated for and on behalf of the Respondent.

5.46 The Appellant, in presenting this alternative approach to assessment, has undoubtedly raised issues which are, and at first blush, troubling.

- * By way of example, it might be asked why a retail property, used as a Launderette/Drycleaners in Newcastle West attracts commercial rates which are significantly higher than the rate as struck for a (relatively speaking) comparable retail property used as a Launderette/Drycleaners in Rathkeel.
- * By way of further illustration, it might be asked why a retail property in use as a Drycleaners/Launderette in one part of Newcastle West attracts rates at €70 Retail Zone A and €35 Retail Zone B, whilst the subject, being a retail property in use as Drycleaners/Launderette in another part of, broadly speaking, the same urban spread, attracts an appreciably and/or significantly higher level of rates.

5.47 This is a flavour of the kind of question and/or issue which has been raised and which emerges from a consideration of the evidence as introduced by the Appellant. They are not, and in the Tribunal's view, issues that can be lightly dismissed.

5.48 Having said all of that, the Appellant has not put before the Tribunal and by means of appropriate expert opinion, evidence which puts the Tribunal in a position to safely and/or reliably conclude that the Tribunal can, and with good reason, depart from what, in ordinary course, presents as the primary (orthodox) (best evidence) means of assessment of NAV, that is to say, evidence which can be gleaned from a consideration of rent which has in fact been paid by and/or demanded in respect of properties which are, broadly speaking, comparable to the subject property and which said rent is being paid and/or demanded at or close to the valuation date.

6. CONCLUSION

6.1 The fact of an appeal, together with the grounds as advanced for same, without more, put in issue and require the Respondent to stand up the assessment of NAV as set by the Respondent. The Tribunal, and for reasons as set out above, concludes that the Respondent's approach to assessment of NAV:

- Does not sustain and/or support the figure as put forward by the Respondent as NAV.
- Does not meet the statutory prescription wherein NAV in respect of an individual property equates to "*rent to which the property in its actual state might reasonably be expected to let from year to year and on the assumption etc. etc. etc.*"

6.2 The Tribunal cannot and without good and/or sufficient reason, ignore and/or disregard the following:

- (a) The Appellant's immediate neighbours are paying and without, it seems, question or quibble, rates which are on a par with the rate which the Respondent maintains the Appellant ought, and in the circumstances and by law, to pay.
- (b) As has been stated, the Tribunal is constrained by law to have regard to evidence of the bona fide intention on the part of the Respondent to strike a rate, which rate, in the broad scheme of things, treats neighbouring ratepayers occupying, broadly speaking, comparable properties and putting those properties, broadly speaking, to comparable use equally requiring each to take on his or her fair/proportionate/equal share of the 'tax burden' for the rateable authority which is being revalued.
- (c) The Tribunal is entitled, if not required, to take cognisance of the fact that the Appellant's immediate neighbours have accepted their lot, as it were, and are, in principle, satisfied that the rates as struck for them present as an acceptable imposition. The Tribunal is entitled, if not required, to infer from this that the rate as struck is, in the circumstances, fair, proportionate and reasonable and thereby prima facie compliant with the statutory requirement as per Section 48(1) of the 2001 Act.

(d) Further, the Tribunal is not, in law, entitled to upset and/or radically depart from the equilibrium which has crystallised and following the periodic carrying out by the Respondent of the process of revaluation unless the Tribunal is satisfied and on evidence presented by an individual appellant that such upset and/or such radical departure is, in the circumstances, warranted and/or justified.

6.3 This “stricture” in turn requires an appellant and/or his agent and/or representative to put before the Tribunal a coherent, reliable structure and/or scheme which presents as a credible/reliable alternative to that offered by the Respondent and which allows the Tribunal and in an informed way, to:

- Conclude that the rate as struck by the Respondent in respect of the Appellant’s property is in law incorrect.
- Posit a credible and sustainable alternative.

6.4 (a) The Respondent accepts, as he must, that it is a fundamental requirement of the assessment process that an individual property be “*screened*” for “*relevant individual considerations*” with a view to considering whether or not those “*relevant individual considerations*” merit adjustment of a rate which is, in principle, viewed as equitable and/or uniform.

(b) The Tribunal is satisfied that this Appellant has advanced evidence which is likely to give a potential tenant pause for thought and present as, by any measure, “*relevant individual considerations*” worthy of consideration.

6.5 The Appellant has, and by evidence, established:

- * Age and/or physical condition/fit-out of the subject property capable of being viewed as “*relevant individual considerations*” worthy of contemplation and potentially meriting an adjustment in the rent being asked for and/or being sought in respect of this particular property at or close to the valuation date.

In addition, the Appellant has, by evidence, satisfied the Tribunal that on or about the valuation date there was a volatility and/or uncertainty in the property market comprising the Appellant's immediate neighbourhood which is likely to have weighed significantly on the mind of any prospective and/or potential tenant to the point of that potential prospective tenant insisting on a reasonably significant reduction which might otherwise present as the market rate for this particular neighbourhood. The assertion by the Appellant that there was volatility and/or uncertainty in the relatively confined retail hub that comprises Market Yard off Bishop Street, Newcastle West is borne out by the Respondent's evidence pertaining to key rental transaction 1 wherein rent has been reduced by almost 50% over a relatively short period of time, which said period of time encompasses the valuation date. This consideration, whilst in principle relevant, cannot be viewed as individual. It presents as an impairment which afflicts each of the properties in that particular sweep and cannot, for that reason, be viewed as an individual consideration. It would not, in the circumstances and on the evidence, be safe for the Tribunal to attach any appreciable weight to same.

6.6 It appears to the Tribunal that the Respondent did not consider the age and/or physical condition, structure and/or fit-out of the property, or alternatively, having considered them, concluded that they were not relevant individual considerations and further concluded that such matters did not, in the circumstances, merit an adjustment of the rate viewed by the Respondent as equitable, uniform and fair.

6.7 Whichever of these alternative positions is correct, the Respondent, in the Tribunal's view, is mistaken.

6.8 The physical age, structure, condition, fit-out of the subject property at or close to the valuation date are likely, in the Tribunal's view, to have given a prospective tenant, intent on acquiring an interest in the subject property, pause for thought and are likely to have put him or her in a position to ask for and to receive an appreciable reduction in the 'asking price' and as such, present as "*relevant individual considerations*" relating to the subject property worthy of adjustment in NAV.

6.9 In coming to a decision on the level of adjustment, the Tribunal has, and as alluded to above, to be careful that such adjustment does not, in the circumstances, present as a radical

departure from the equilibrium which has come into being by reason of the Respondent striking a rate, which said rate has been uniformly applied to and tolerated by the Appellant's immediate neighbours.

6.10 Such radical departure from the equilibrium as thus struck is not, and for reasons as set out and in the circumstances of this appeal, sustainable.

6.11 The Tribunal is, and in the circumstances, charged with striking a balance which is at one and the same time fair to the other ratepayers who come within the Respondent's remit and whose interests the Respondent is required to protect and/or safeguard and fairness to this individual Appellant who, and for reasons above, is entitled to an adjustment.

6.12 Taking all of these matters into account, the Tribunal is of the view that a reduction of one quarter of the NAV €14,720 as levied by the Respondent, strikes this balance.

6.13 And the Tribunal so determines. Accordingly, the NAV as set by the Respondent ought and in the circumstances and in the Tribunal's view, to be reduced by 25%.

6.14 The total NAV as set by the Respondent in the sum of €14,720 requires to be adjusted with a reduction of 25% (€2,944), yielding an NAV on adjustment of €11,776 **SAY €11,780.**

And the Tribunal so determines.