

Appeal No. VA17/5/342

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

PEADAR KENNEDY AND LUCY KENNEDY

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2175481, retail (Shop) at 37B Circular Road, Tubbercurry, County Sligo.

B E F O R E

Carol O'Farrell - BL

Chairperson

Orla Coyne - Solicitor

Member

Eoin McDermott - FSCSI, FRICS, ACI Arb

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF FEBRUARY, 2019**

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th 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 €11,700.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the Respondent’s determination is not a determination that accords with that required to be achieved by section 19 (5) of the Act because:

“The rental rate per square metre is too high and not achievable in this locality.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5,559.

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 €11,700.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager. 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 7th day of September 2017 stating a valuation of €11,700.

2.4 The date by reference to which the value of the Property was determined is the 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 22nd day of November 2018. At the hearing the Appellant was represented by Mr. Roger McCarrick BA, FSCSI and the Respondent was represented by Mr. Liam Hazel MSc, BSc, Dip Acc. & Fin., MSCSI, MRICS, MIPAV (CV) 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. THE ISSUE

4.1 The sole matter at issue is quantum. The fundamental disagreement between the parties relates to how the Property should be valued. The Appellant contends that it should be valued in line with its actual rental value on an overall basis and not by reference to the retail zoning method adopted by the Respondent. The Appellants claim that the valuation is excessive and inequitable and seek a reduction in the NAV to €5,559 which equates to €29.40 m².

5. RELEVANT STATUTORY PROVISIONS:

5.1 The net annual value of the Property has to be determined in accordance with 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.”

5.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be considered 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.”

5.3 Section 37 (1) obliges the Tribunal when considering an appeal made to it under section 34 of the 2001 Act to achieve a determination of the value of the property concerned that accords with that required to be achieved by section 19(5).

Section 19(5) provides: (5) The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable)—

- (a) correctness of value, and
- (b) equity and uniformity of value between properties on that valuation list, and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

6. APPELLANTS’ CASE

6.1 Mr. McCarrick set out in great detail how the town of Tubbercurry fared during the collapse of the Irish Banking system and how the slow but steady recovery evident in the main cities of Dublin, Cork, Galway, Limerick and Waterford had not materialised to any significant extent in County Sligo and, in particular, Tubbercurry at the valuation date which continues to have an ongoing vacancy rate of approximately 18.8%.

6.2 He pointed out that the Property is not on the main street in Tubbercurry but on the busy Circular Road where it is not easy for vehicles to stop. He stated that SuperValu customers would

rarely ever cross the Circular Road to park in Supervalu's overflow car park because they would have to negotiate heavy traffic. He said that the main commercial area in Tubbercurry are Main Street, Teeling Street and Wolfe Tone Square and the location of the Property is at least secondary if not tertiary. In his view, the Property being in a secondary location, if sold or rented, would lie vacant for two to three years beforehand due to the fact that there is no foot fall on the Circular Road, the circular Road is extremely busy, and the adjacent Supervalu car park is rarely used due to the dangerous exit onto the road. He opined that the hypothetical tenant would initially let the Property on a free rent basis to see if occupation would be sufficiently beneficial.

6.3 Mr. McCarrick stated that the Property was built approximately 20 years ago. The ground floor retail area is located to the front of the Property, a work shop of a similar size is located to the rear of the retail space at a lower level that is accessed via steps. The main picture framing business is carried out in the workshop. Mr. Mc Carrick contended that the Property suffers a number of disabilities in that the staircase at the rear of the retail area giving access to the first floor has a turn on it, the rear of the Property is at a lower level, only the retail section to the front is wheelchair accessible, the Property is too big to rent as a single unit and the Property has no car parking spaces.

6.4 Mr. McCarrick pointed out to the dearth of rental evidence for properties similar in size in Tubbercurry. Nonetheless, he produced 18 rental comparators (detailed in Appendix 1) but decided at the appeal to withdraw five of them (Appendix 1, Nos. 1-5). He further accepted that 5 of his comparators were not truly comparable as they had been measured externally on a gross area basis rather than on a net internal area basis (Appendix 1, Nos. 6-10), that 3 of the comparators are much larger than the Property (Appendix 1, Nos. 11-13), that 2 comparators were former residential houses converted to Solicitors offices (Appendix 1, Nos. 14-15) . Of the remaining 3 comparator properties, two are located on Teeling Street Appendix 1, Nos 16-17), a primary retail location in Tubbercurry, and the third (Appendix 1, No. 18) is located in a secondary trading location within Tubbercurry.

6.5 Mr. McCarrick calculated the NAV of the Property by reference to all the comparators detailed in his precis of evidence. He accepted that the rate of €29.40 per m² would have to be adjusted given that he had withdrawn five comparator properties from consideration. In any event, he was unable to outline precisely how he had arrived at rate of €29.40 per m² as he had carried out the exercise when making representations to the Respondent following the issue of the proposed valuation certificate. He explained that his valuation methodology had regard to the actual weekly rents of properties as well as the rents potential tenant would pay for properties in the area. He was of the view that the determination of the NAV of a property is not an exact science, as other factors such as location and the advantages and disadvantages of a property to a potential tenant come into play. Mr. McCarrick relied in particular on the following retail comparators:

- a) PN1994284 – Sligo Road (Appendix 1, No. 11) Area 500 m² - Rent per m² €20
- b) PN1994329 - Teeling Street (Appendix 1, No 12) Area 287m² - Rent per m² €40.76

c) PN2200701 - Circular Road (Appendix 1, No 13) Area 1875 m² - Rent per m² €8.32

Mr. McCarrick pointed out that PN1994284 was originally a car showroom and was valued as an industrial building. He said that building was constructed in the later 1990's and to the best of his knowledge, Gorman Tool Hire ceased trading in 2013/2014. He said between 2010 and 2014 the property was used by second hand car sale operators but that in June 2017 planning permission (under planning register reference no.17/138) had been obtained for a retention and change of use from a car sales showroom to retail sales. He said PN1994329 was originally built circa. 2001/2002 as a builder's suppliers which provided all types of machines, equipment, tools, building supplies as well as compost and other garden supplies. Even though this property has the appearance of an industrial unit. Mr McCarrick stressed that it is not used for any purpose except for retail. When asked if the lease in respect of PN2200701 is a related party lease, Mr. McCarrick state the original owner had let the property to two staff members, one of whom was his nephew. He stated that for the past 3 years KPMG have been collecting the rent as Receivers.

6.6 When questioned by the Tribunal about his valuation methodology, Mr. McCarrick stated he approached the valuation from different angles as there is no one single approach and he considered the practice of zoning to assess the value of a shop as only a guideline. He said that valuers have to form their own professional views and bring their experience and expertise into account. There can be anomalies but no one method provides the answer; the key objective is to achieve equity and uniformity in value. Mr. McCarrick did not accept that the Respondents key rental transactions were comparable to the Property for the reasons that KRT1 is situated in Strandhill which area is not comparable to Tubbercurry given its closer proximity to Sligo town, KRT2 and KRT 3 have ceased trading and KRT 4 and KRT 5 are much smaller than the appeal Property and are situated on Teeling Street. Mr. McCarrick also did not accept that any of Respondent's NAV comparisons were comparable to the Property.

7. RESPONDENT'S CASE

7.1. Mr. Hazell accepted that Teeling Street is the primary retail location in Tubbercurry and that the Property is in a secondary location on the Circular Road. He said the properties relied upon by Mr. McCarrick were unreliable comparables pointing out that comparators (Appendix 1, Nos. 16, 17 and 18) are industrial showrooms much larger in size than the Property. He stated that is a property is categorised as a retail property, it will have a higher valuation than a property categorised as an industrial unit. He also pointed to the fact that retail premises are valued on a NIA basis and that the five of Appellant's comparator properties (Appendix 1, Nos. 6-10) were measured on a GIA basis.

7.2 In support of his argument, Mr. Hayes relied upon 5 key rental transactions (detailed in Appendix 2). Mr. Hayes confirmed that the Respondent had obtained rental information in respect of 15 retail premises located in primary locations in Tubbercurry. Only one retail premises

in a secondary location in Tubbercurry had furnished rental information and Mr Hayes believed that property had since closed. There had only been two returns of rental information in respect of retail properties situated in the secondary retail locations of Ballymore, Strandhill, Colooney, Ballisadare and Enniscrone. Mr. Hayes said that the Respondent had considered the secondary location of the Property and had made the appropriate adjustment to reflect that factor. He relied upon the following 4 comparator properties located in secondary locations within Tubbercurry:

- (i) PN2209995 - Mountain Road
- (ii) PN2148351 - Emmett Street
- (iii) PN1577913 - Humbert Street
- (iv) PN5008943 - Springvale

7.3 In relation to the 5 key rental transactions, Mr. Hayes stated that they demonstrate the appropriateness of the Zone A rate of €125 per m² applied by the Respondent to the Property as those 5 key rental transactions properties have similar characteristics to the Property, the main difference being, with the exception of KRT1, their location on Teeling Street. He pointed out that KRT1 is under appeal to the Valuation Tribunal Appeal. He was not aware that KRT2 had closed but accepted Mr McCarrick's evidence in that regard. Mr Hayes was unable to inform the Tribunal of the reason why KRT2 had been valued at €90 per m² Zone A given that it is situated on Teeling Street. He pointed out that the KRT3, KRT4 and KRT 5 are valued at a higher €175 per m² Zone A rate than the Property due to their superior locations.

7.4 In relation to his 4 comparisons, all of which are valued Zone A at €125 per m², Mr. Hayes was of the opinion that all of them are comparable to the Property due to their secondary trading locations. Mr. Hayes clarified that primary retail areas are situated within the main towns of County Sligo and that the secondary areas such as Strandhill, Enniscrone, Ballymote and Tubbercurry. He did not accept that PN2200701 on Circular Road (Appendix 1, No 13) is comparable to the Property given its much greater size.

7.5 Mr. Hazell accepted that the hypothetical tenant has to take a letting not just of the retail space but also the workshop and storage areas of the Property. Mr Hazell acknowledged that he had no comparable evidence for first floor storage but he was aware that first floor offices over shops having their own entrance were valued at €80 per m². He accepted an allowance of between 5 to 10% would be made for any property having a turn in the staircase similar to that in the appeal Property.

7.6 Mr. Hayes was of the view that the Respondent's evidence supported the calculation of the valuation of the Property and he submitted that Mr. McCarrick had produced no evidence to support his claim for a reduction in the valuation.

8. FACTS

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

8.2 The Property is located on the Circular Road which runs parallel to the main retail street in Tubbercurry, namely, Teeling Street. The Property is a two storey building comprising a ground floor retail unit with an ancillary workshop and WC to the rear and a first floor which is used for storage. The Property has no car parking spaces. The Property is in a secondary location, when compared to Teeling Street.

8.3 There is a SuperValu premises which has its own car park on the opposite side of the Circular Road to the Property. In addition, Supervalu has an overflow car park which is situated beside the Property.

8.4 The Net Internal Area measurements of the Property were agreed as follows:

| | |
|--------------|------------------------|
| Ground Floor | 60.28 m ² . |
| Lobby | 3.24 m ² |
| Workshop | 60.07 m ² |
| First Floor | 65.57 m ² |

giving an overall floor area of 189.16 m²

8.5 The date by reference to which the valuation of the Property was determined is the 30th October 2015.

8.6 The Property is held freehold and occupied by the Appellants.

9. CONCLUSIONS

9.1 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.

9.2 Mr. McCarrick's case hinges on the rents of various properties in Tubbercurry. However, the value of the Property has to be ascertained by reference to section 48 of the 2001 Act. It appears to the Tribunal that Mr McCarrick ascertained the average weekly rent of 18 properties and divided the resultant sum by the averaged area of those properties. Section 48 requires an estimate of the rent the Property would achieve if it were let at the valuation date. The underlying principles of rating which arise out of, or have relevance, to this appeal are equity and uniformity. The requirements of uniformity and equality are achieved by the individual valuation of each property and the application to all properties in the same rating authority area of the same measure of value (i.e. in accordance with section 48 of the 2001 Act) by reference to a statutory valuation date (the 30th

October 2015 for the rating authority area of Carlow County Council). As pointed out by Ms. Justice O'Malley in *Commissioner of Valuation v Carlton Hotel Dublin Airport Ltd & Ors* [2013] IEHC 170

“Like must be treated alike. However, there is a logically prior issue and that is whether liability to the tax in question has been properly assessed in the first place. There is no merit in the uniform application of a mistake.”

9.3 It is also important to point out that to achieve uniformity, all relevant properties are assumed to be vacant and available let on the terms set out in section 48(3) of the 2001 Act as amended. This means that the fact a property is not let but is occupied by its owner is immaterial. Shops are for the most part valued by the zoning method and the retail properties in the County of Sligo were valued by this customary method. The zoning method is based on the principle that the area closest to the front near to the display window (Zone A) is more valuable than the rear shop because of its proximity to pavement traffic. When a value per square metre is arrived at for Zone A, the valuer formulaically derives rates for the other zones and from that calculates the value for the shop. Zoning is not appropriate for larger stores such as department stores or supermarkets, but it is suitable for a shop of the Property's size. The rental information available was certainly limited and it probably was difficult for the Respondent to derive a Zone A rate from such limited information. But, having regard to the evidence on which the Respondent's valuer relied, it cannot be said, in the Tribunal's view that the Zone A rate was adopted at random or is excessive. Mr. McCarrick did not produce any evidence to show that retail rental values had changed following the collapse of the economy up to the valuation date. The three key comparators upon which he relied upon were larger in size than the Property. The rental evidence adduced in respect of PN1994284 on the Sligo Road, a property twice the size of the appeal Property, is unreliable as it is a rent agreed between connected parties. The rental evidence adduced for PN2200701 on the Circular Road, a property ten times the size of the appeal Property, is derived from a transaction that took place 10 months prior to the valuation date. In the Tribunal's view Mr. McCarrick's approach did not properly reflect the statutory assumptions by which the Property's value must be assessed.

9.4 The Tribunal, having considered the written evidence placed before it and oral evidence of the valuers for the Appellant and Respondent, prefers the evidence of Mr. Hazell in respect of the valuation of the ground floor based upon €125 per m² zone A and the ancillary accommodation comprising the lobby and workshop at €12.50 per m². It is customary to value ancillary accommodation in relation to the price per m² in terms of Zone A. In the Tribunal's opinion the storage accommodation at first floor should also have been valued at one-tenth of Zone A frontage area.

DETERMINATION

The Tribunal for the foregoing reasons assesses the Net Annual Value of the Property as follows:

| Floor level | Floor Use | Area m ² | NAV (€ per m ²) | NAV(€) |
|-------------|---------------|---------------------|-----------------------------|----------|
| 0 | Retail Zone A | 40.92 | 125.00 | 5,115.00 |
| 0 | Retail Zone B | 19.38 | 62.50 | 1,211.25 |
| 0 | Lobby | 3.24 | 12.50 | 40.50 |
| 0 | Workshop | 60.07 | 12.50 | 750.88 |
| 1 | Store | 65.57 | 12.50 | 819.63 |

TOTAL €7,937.26

SAY NAV €7,900.00

Accordingly, the Tribunal allows the appeal and decreases the value of the Property as stated in the valuation certificate to €7,900.00.

And the Tribunal so determines.