

Appeal No: VA17/5/377

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

CATHERINE DERMODY

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1138282, Retail (Shops) at Floors: 0,1,2, 153/150 Tullow Street, Carlow, County Carlow.

B E F O R E

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Pat Riney – FSCSI, FRICS, ACI Arb, FIABCI, PC

Member

Claire Hogan - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF MARCH, 2019**

1. THE APPEAL

1.1 By Notice of Appeal received on the 12th 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 €13,350.

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

- Tullow Street Lower is no longer the town centre in respect of retail, as evidenced by poor footfall
- There are many vacant premises due to lack of trade and it is now essentially a social street for recreational activity

- In comparison with other towns of similar size i.e Dungarvan or Athy the rates applied are higher, and in particular when you move away from the “Town Centre” and to side streets.

1.3 The Appellant considers that the valuation of the Subject Property ought to have been determined in the sum of €10,781.

2. REVALUATION HISTORY

2.1 On the 11th day of May, 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Subject Property was sent to the Appellant indicating a valuation of €16,280.

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 Subject Property was reduced to €13,350.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €13,350.

2.4 The date by reference to which the value of the Subject 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 26th day of November, 2018. At the hearing the Appellant was accompanied by her husband Mr Seamus Dermody and the Respondent was represented by Mr Terry Devlin BSc, MSCSI, MRICS of the Valuation Office.

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

4. FACTS

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

4.2 The Subject Property is held freehold by the Appellant. It is currently in use as a Vape shop. A new one year lease from 12/3/2018 has been put in place with a rent agreed of €8,840. This is paid on a weekly basis, in the amount of €170.

4.3 At the hearing the Tribunal was informed that following inspection there were corrections made to the size of the Store areas of the Subject Property. They were reduced in size, which affected the overall NAV. The Total NAV contended for by the Respondent was €11,600 (rather than €13,350 which was the figure following representations, and instead of €11,900 which was the figure appearing in the Précis).

5. ISSUES

5.1 The main issue is whether the valuation level of €300 sq.m (Zone A) for the Subject Property was correct, or whether that should be reduced to the sum of €210 sq.m as contended for by the Appellant.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Subject 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 Mr and Mrs Dermody described a downturn in trade which they say Tullow Street, and the whole of Carlow has experienced. It was stated by Mrs Dermody that she recently counted 30 vacant premises on Tullow Street. It was argued that the retail centre is now Fair Green and the surrounding area.

7.2 The Appellant pointed to nearby Dublin Street, where the Zone A is €210 per sq.m, and stated that the bottom half of Dublin Street from the Potato Market junction back as far as Dublin Street should all be valued at this lower level.

7.3 Under cross-examination it was accepted by the Appellant that there are some good quality retail operators on the street, such as Shaws, Elverys and DNG McCormack. It was also accepted by the Appellant that she did not have statistics on footfall and vacant premises; it was local knowledge and her own observation which she was tendering.

8. RESPONDENT’S CASE

8.1 Mr Devlin for the Respondent provided ten Key Rental Transactions. Nine of these were from Tullow Street, one was from Potato Market (which adjoins Tullow Street). They were all close to the Subject Property. The NER per sq.m ranged from €169.47 at the lowest end, to €491.40 at the top. This basket of rents it was argued, provided evidence for the valuation of €300 per sq.m for Zone A retail. There were five properties whose NER was in the €300 per sq.m bracket.

8.2 The Respondent also provided six more of the list comparisons, which all showed a Zone A value of €300, or very slightly above in the case of Comparison 1 (€315). They were all on Tullow Street. It was contended by the Respondent that this showed uniformity and equity across the street and that it would be wholly unjust to all other ratepayers on the street for the Subject Property NAV to be reduced.

8.3 Under cross-examination, Mr Devlin was asked whether he had measured footfall. He said that he had not, and that he relied on rental evidence to show differentials in areas. He was

asked whether it was possible to negotiate with the County Council regarding actual payment of the rates. He said that was a matter for the local authority and that the Commissioner had no function in collecting payments. He was also asked about the discrepancy between the figure of €8,840 (the rent paid by the occupier) and €11,600 (the NAV). Mr Devlin stated that his rental evidence for Tullow Street showed that rents can vary up and down, but that drawing from that range a figure of €300 per sq.m was not unreasonable, and provided certainty and stability.

9. SUBMISSIONS

9.1 There was no legal submissions.

10. FINDINGS AND CONCLUSIONS

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

10.2 The Tribunal has sympathy for the Appellant regarding her perception of the fall-off in the level of trade and retail in Tullow. Nonetheless, the Tribunal is bound by the terms of the valuation legislation. As set out above, section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 points us towards consideration of rental evidence .

10.3 The Tribunal is satisfied that the rental evidence of the Commissioner for Valuation was ample for Tullow Street, and that it provided a basket of rents which supported the level of €300 per sq.m for Zone A of the Subject Property. The Appellant did not produce any evidence which compels the Tribunal to alter the level set and the Tribunal is satisfied that to do so would result in a lack of equity and fairness for others on the street in question.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent, at the level of **€11,600 NAV**, a revised figure provided at the hearing.

And the Tribunal so determines.