

Appeal No: VA17/5/1239

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

**DEREK CONRY ON BEHALF OF
SVP- VINCENT DE PAUL**

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

**In relation to the valuation of
Property No. 2175816, Retail (Shops) at 47/48 Tullow Street, Carlow, County Carlow.**

B E F O R E

Hugh Markey – FSCSI, FRICS

Deputy Chairperson

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

Member

Sarah Reid - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 29TH DAY OF AUGUST, 2019

1. THE APPEAL

1.1 By Notice of Appeal received on the 13th 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 €23,100.

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:

“Valuation rate too high – rent paid per month 1250 equating to €15,000 P.A.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €15,000.

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 Property was sent to the Appellant indicating a valuation of €23,100.

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 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 €23,100.

2.4 The date by reference to which the value of the property, the subject of this appeal, 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 9th day of August, 2019. At the hearing the Appellant appeared in person 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.

4.1.2 The relevant date for valuation of the present property is the 30th October 2015 as specified in the Valuation Order.

4.1.3 The property in question was occupied by the present tenant on the 30th October 2015 with the occupant paying a rent of €15,000 at that time (subsequently increased to €16,200 in September 2017).

5. ISSUES

5.1 The sole issue in this case is one of quantum. The Appellant argues that the NAV applied by the Respondent exceeds the rent actually paid by the tenant (both on the 30th October 2015 and presently) and as such should be rounded down to reflect the commercial reality of the situation. The Respondent denies that this is within their power and states the NAV must reflect, and does so reflect in this instance, the value a hypothetical tenant would pay by way of rent in accordance with Section 48.

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 represented the local St. Vincent de Paul Conference at the hearing. Included in his précis was a copy of the commercial lease applicable to the property in question. The basis for the Appellant's case was that the rent actually paid on the property did not match the estimated rent relied on by the Valuation Office in calculating the NAV and by extension the rates to be applied to the property.

7.2 Following his direct evidence, the Appellant was cross examined by Mr. Devlin for the Respondent and he accepted the band of rent for the street as set out in the Respondents précis. The Appellant further accepted that a figure of €300 per sq.m sits within the band of rents for Tullow Street and that properties are valued not on the rent actually paid but based on a basket of rents for the area in question.

8. RESPONDENT'S CASE

8.1 The Respondent was represented by Mr. Terry Devlin who adopted his précis into evidence and provided examples of ten key rental transactions along the street in question all of which were valued at the level of €300 per sq. m. zone A. In addition, the Respondent submitted that a total of 25 properties in the area had made representations at Proposed Valuation Certificate stage and the level of €300 per sq. m. zone A had not been adjusted in any of these. Further the Respondent stated that there were 10 appeals to the Valuation Tribunal, of which 6 had been agreed at the level of €300 per sq. m. zone A without amendment and one which, having proceeded to a hearing (VA17/5/377), confirmed the valuation at that level.

8.2 In cross examination the Appellant drew Mr. Devlin's attention to the picture of a closed business included as one of the rental comparators (73b Tullow Street – Key Rental Transaction number 6 as described on page 20 of the Respondent's précis). In reply Mr. Devlin stated that it was occupied at the relevant date and the fact that it was empty presently did not exempt it from commercial rates. Mr Devlin was also asked if it was within the Respondent's power to amend the areas in question (in order to reduce the overall rates bill the Appellant was liable for) to which he replied that the Respondent is obliged to value an entire property in order to be fair to other rate payers and unfortunately the fact that a charity was the tenant in the property, was irrelevant for the purposes of calculating the rates due and owing.

9. SUBMISSIONS

9.1 No additional submissions were made.

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 Carlow County Council.

10.2 Pursuant to the terms of the Valuation Act, 2001 the Tribunal is not empowered to consider the commercial reality of any one property as proof of rental value but must consider the hypothetical tenant as would rent the property. In the present case, notwithstanding the level of rent being paid by the tenant, the Respondent has provided evidence (and the Appellant accepted that evidence) to the effect that a figure of €300 per sq.m is appropriate.

10.3 The Tribunal is not without sympathy for the Appellant in the circumstances and appreciates that commercial rates necessarily reduce the available funds returned to the charity after trading expenses of the charity shop are deducted. Nonetheless, in the absence of evidence from the Appellant that the Respondent erred in their calculation of the appropriate valuation, or that the comparators provided did not reflect the tone of rental transactions on the street, the Tribunal is bound to make its determination based on the evidence and arguments put before it.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

And the Tribunal so determines.