

Appeal No: VA17/5/464

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

JOHN FENNELLY

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

**In relation to the valuation of
Property No. 80396, Retail (Shops) at 22C High Street, Kilkenny, County Kilkenny**

B E F O R E

Dolores Power - MSCSI, MRICS

Rory Hanniffy - BL

Liam Daly - MSCSI, MRICS

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 31ST DAY OF JULY, 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 €19,350.

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 Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: The appellant believes the valuation is incorrect. His shop is not on High Street but is a small premises on Friary Street which is a side street off High Street and has nowhere near the same footfall as High Street.

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 €27,100.

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 of the Property was reduced to €19,350.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €19,350.

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 13th day of September, 2018. 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.

4.2 The subject property is located on Friary Street, in Kilkenny City close to High Street. Other occupiers on the street include Wallace Electrical Ltd, Bass Solicitors, A Slice of Heaven and Aroi Asian

4.3 The subject property is a retail unit.

4.4 The accommodation has been agreed between the parties;

Ground Floor

Retail Zone A :	35.92 sq. m
Retail Zone B :	18,20 sq. m
Store	33.77 sq. m

4.5 We are advised that the subject property is held freehold by the Appellant

5. ISSUES

5.1 The matter at issue is Quantum

5.2 The Appellant claims the Commissioner is overvaluing his property by aligning it with properties on High Street. It is the Appellants opinion that this is incorrect. The Appellant believes his property is located in substantial lessor trading location than High Street. The Appellant maintains his property cannot be seen from High Street and experience a lot less footfall.

5.3 The Appellant is contending for a valuation of €15,000.

5.4 The Respondent has relied on 4 Key Rental Transactions in arriving at valuation level of €400 per sq. m. to be utilised in determining the NAV. The transactions used are not subject to Valuation Tribunal Appeals. This gives an NAV of €19,350 for the subject property

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 adopted his precis as his evidence-in-chief. Mr. Halpin explained that the subject property retail unit located on Friary Street, Killkenny. The Appellant explained how his property does not compare with those on High Street in terms of trading location. The Appellant supported his claim that the property cannot be seen from High Street by introducing photographic evidence.

7.2 The Appellant described how the value of properties on Friary Street had reduced significantly in the last number of years. The Appellant explained a number of variables in the last number of years had contributed to the deterioration as a trading location. The nearby Friary Church no longer has the same mass attendance and increased parking restrictions have impacted on the areas appeal. The Appellant believed the situation was further compounded by the presence of an ESB substation adjoining his premises. This has an aesthetic impact on the subject property

7.3 The Appellant introduced three comparisons (See Appendix 1) within proximity of the subject property to support his case for reduction

7.4 It was the Appellants contention that if the subject property was to be let on the open market it would be in the region of €15,000 per annum. The Appellant referred correspondence from Fran Crincell Properties (included in the precis) to substantiate this.

7.5 Under cross examination the Appellant acknowledged that the Friary Street was within close proximity to High St (40 to 50 metres), however he reiterated his opinion about the lack

of visibility from High Street and the continued decline of activity on Friary Street. The Respondent highlighted the significant benefit to the Appellants premises of having a loading bay outside. The Appellant disputed this as he explained he did not have exclusive use to the loading bay, it was to the benefit of all occupiers within the vicinity.

8. RESPONDENT'S CASE

8.1 Mr. Devlin for the Respondent adopted his precis as his evidence-in-chief.

8.2 Mr. Devlin commenced his evidence by explaining that a valuation level of €400 sq. m (Retail Zone A) was applied to the subject property which arrived at a NAV of €19,350

8.3 Mr. Devlin stated that 4 key rental transactions were relied upon in arriving at the NAV for this valuation level of €400 sq. m (Retail Zone A). Of the 4 key transactions, none was subject to further consideration at representative stage or subject to a Valuation Tribunal appeal (See Appendix 2)

8.4 Mr. Devlin explained that equity and uniformity was utilised in compiling the NAV comparisons on the list (See Appendix 3). Mr. Devlin explained there are 74 retail properties valued at €400 sq. m (Retail Zone A) in the Killkenny City area. At least 21 of these properties are located within the vicinity of the subject property. A total of 13 properties valued at this level made representations at the proposed valuation certificate stage and the subject property is one of four which is under appeal to the Valuation Tribunal.

8.5 Taking all of this into consideration, Mr. Devlin requested that the Tribunal affirm the valuation of the subject property appearing on the relevant valuation list as representing its Net Annual Value in accordance with Section 48 of the Valuation Act 2001 and the requirements of section 19(5).

8.6 Under cross examination the Respondent restated his opinion that the process was fair, this was substantiated by the low number of appeals lodged. In terms of the comparables put forward by the Appellant, the Respondents did not accept these as been direct comparables. It was the Respondents opinion the NAV been applied to these units reflected their lesser value compared to the subject property. He stated the three properties were further away from High St than the subject and they were located at narrower section of the Friary Street

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 Kilkenny County Council

10.2 The Tribunal has examined the particulars of the property and considered the written and oral evidence adduced by the Appellant, who contended for a revised NAV of €15,000 and Mr. Devlin on behalf of the Respondent, who sought confirmation of the Valuations Office's determination of NAV €19,350

10.3 The Appellant presented evidence showing units within the vicinity being assessed by the Commissioner at a Zone A €200 per sq. m. It was argued by the Respondent that these properties were of lower value due to a number of variables, namely their position on Friary Street. The Respondent explained the units were in narrower part of the street and were further away from High St. than the subject property. The Tribunal acknowledges the impact of distance from High St and the street narrowing would have on letting values. It was however the Tribunal's opinion that the demarcation line appears to be arbitrary as to where values increase or decrease rather than on actual evidence. The Tribunal recognises that Appellants comparables are of lessor value but it is the Tribunal view they do not deviate radically from the subject property.

10.4 The Appellant stated it was his opinion that the location of the ESB substation adjacent to his property had an impact on the aesthetics of the streetscape, thus potentially impacting on subject property's rental potential. The Tribunal acknowledged this in their deliberation.

10.5 It was argued by the Respondent that the subject property had the additional benefit of having a loading bay space located to front of the unit. It was the Respondents opinion that this would be viewed favourably by a hypothetical tenant. It was however explained during cross examination by the Appellant, that the Appellant does not have exclusive use of the loading

bay. It was therefore the opinion of the Tribunal that although such facilities would be viewed favourably by the hypothetical tenant, it would not command a significant premium

10.6 The Tribunal is persuaded by the evidence put forward by the Appellant. The Appellant has shown the level of NAV been sought is not justified. The Tribunal acknowledges that the subject property has a more pivotal location on Friary Street, however the demarcation line is not sufficiently substantiated to show rationalisation for seeking an NAV of €400 (Retail Zone A). The Tribunal therefore deems it appropriate to reduce the valuation

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 €14,856.80 say €14,860.00

Level	Use	Area	€/per sq. m.	NAV
0	Retail Zone A	35.92	€300	€10,776.00
0	Retail Zone B	18.20	€150	€2,730.00
1	Store	33.77	€40	€1,350.80
			Total NAV	€14,856.80

Say €14,860.00

And the Tribunal so determines.