

Appeal No: VA17/5/135

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

N J KELLY LTD. T/A KELLY'S NEWSAGENTS

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2175209, Retail (Shops) at 6/1.2.3.4.5.6.7/Unit 1 Monasterevin Shopping Centre, Monasterevin, County Kildare.

B E F O R E

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Donal Madigan – MRICS, MSCSI

Member

Kenneth Enright - Solicitor

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF SEPTEMBER, 2019**

1. THE APPEAL

1.1 By Notice of Appeal received on the 4th 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 €21,100.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal which are as follows:

- The valuation of the subject property is excessive and inequitable. The property’s value is not in line with actual rental values.
- The Commissioner’s approach to the subject property is flawed. The subject property is a shop with a solid walled store. The store requires assessment at 10% of the retail level in line with the Commissioner’s practice in Kildare retail property

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €17,050.

2. REVALUATION HISTORY

2.1 On the 10th 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 €21,100.

2.2 Being dissatisfied with the valuation proposed, representations were made on the 15th April, 2017 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 €21,100.

2.4 The Appellants lodge an appeal to the Valuation Tribunal seeking a reduced assessment on 25th September 2017.

2.5 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 21st day of November, 2018. At the hearing the Appellant was represented by Mr David Halpin MSc (Real Estate), BA (Mod) of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr Sean Donnellan 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.

The subject property is a standard ground floor retail unit situated at Monasterevin Shopping Centre, Monasterevin, Co. Kildare.

5. ISSUES

5.1 The main issue between the parties is the method of measurement for valuing the subject property (zoning apportionment).

5.2 The Respondent stated that the floor area of the subject property, and the neighbouring units, are analysed by the 'Retail Zoning Method' of comparison. Retail properties less than 1,000 sq.m are generally valued for rating purposes by reference to the Retail Zoning Method, and this method is applied having regard to Valuation Office policy and the Society of Chartered Surveyors Ireland (SCSI) professional guidance note. The Zone A of the subject property was measured to a depth of 6.1 metres in accordance with the Valuation Office Code of Rating Measuring Practice and the SCSI Code of Measuring Practice. The Respondent contended that zoning guidelines and measuring practice guidelines in relation to the subject property were followed correctly.

5.3 The Appellant said that the method for valuing the subject property differs between the parties as a result of disagreement over the way in which the property can be zoned. It is agreed that this unit is a standard retail unit, but there is a 250 mm solid concrete block wall erected internally which separates the unit to give a retail area with ancillary stores as follows:

Retail Zone A:	59.16 sq.m @ €210 per sq.m
Retail Zone B:	39 sq.m @ €105 per sq. m
Stores:	25.53 sq.m.@ €21 per sq.m
Total NAV:	€17,050 (rounded).

5.4 The Respondent contends for the following zoning of the unit:

Retail Zone A:	72 sq.m @ €210 per sq.m
Retail Zone B:	57 sq.m. @ €105 per sq.m
Total NAV:	Say €21,100 (rounded).

5.5 The Appellant requested that the Tribunal look at the original plans for the Shopping Centre, particularly in relation to the subject property/unit. The Respondent raised no objection.

5.6 It was clear from the original plan that the subject property was an open plan unit showing what appeared to be two supporting pillars within the subject property, but not the concrete block wall.

5.7 The Appellant stated that the subject property has only ever had one occupier and the solid wall has been in place since the construction of the unit. The occupiers had no hand in its installation.

5.8 The Appellant stated that the area behind the concrete block wall has no natural light and is set back c. 1.8 metres from the frontage of the unit. He contended that the Respondent proposed a zoning method which disregarded a solid wall dividing the unit.

5.9 The Appellant stated that the main issue between the parties was the dispute in respect of zoning/measurement of the stores and ancillary areas of the subject property or ‘when is a wall not a wall’. The Appellant also contended that the Respondent is seeking to redefine ‘rebus sic stantibus’.

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 Mr. Halpin, on behalf of the Appellant, stated that the Commissioner cannot ‘reimagine’ the unit as he would like it to be. He contended that if there are solid obstructions, he must take them as he finds them.

7.2 Mr. Halpin contended that the Respondent is treating the solid wall in the subject property as if it were a partition. It is the appellant’s case that a solid concrete wall is not a partition wall, and therefore cannot be ‘zoned through’.

7.3 Mr. Halpin submitted for comparison purposes a list of 19 retail units in Monasterevin which have ground floor ancillary areas (stores/offices) valued by the Respondent at €18/€20 per sq.m.

7.4 Mr. Halpin, on behalf of the Appellant, contends that the subject property should be valued on a *rebus sic stantibus* basis given the evidence of the 19 other retail units valued in Monasterevin and listed in his precis of evidence. This, in his opinion, would be the correct uniform approach to take to such units.

8. RESPONDENT’S CASE

8.1 Mr. Sean Donnellan, on behalf of the Respondent, submitted 3 Key Rental Transactions to show evidence of equity and uniformity of approach in Monasterevin, Co. Kildare, one being in Monasterevin Shopping Centre. However, it was not clear to the Tribunal if any of these rental transactions had a division internally of any kind.

8.2 Mr. Donnellan also gave evidence of 3 NAV Comparisons, all within Monasterevin Shopping Centre, and all having a Zone A level of €210 per sq.m.

8.3 Mr. Donnellan stated that the Zone A of the subject property was measured to a depth of 6.1 metres in accordance with Valuation Office Code of Measuring Practice and the SCSI Code of Measuring Practice, and contended that the subject property was measured correctly in accordance with accepted practice.

8.4 Mr. Donnellan contended that the accepted practice for measurement of Retail Units in Shopping Centres is the NIA (Net Internal Area) and that the correct Zone A approach was used by the Respondent in arriving at the NAV in accordance with Section 48 of the Valuation Act 2001 and the requirements of section 19 (5).

9. SUBMISSIONS

9.1 No legal submissions.

10. FURTHER MEETINGS OF THE TRIBUNAL

10.1 Following the Hearing, and having discussed the matter in detail, it was decided by the Tribunal that a site visit would be of benefit in respect of this particular premises.

11. SITE VISIT ON 15TH AUGUST 2019.

11.1 The Tribunal inspected the subject property. It was noted on inspection that the wall was of solid concrete block construction and divided the main Retail Area from the ancillary spaces used for Storage, small staff Kitchen, Office and separate W.C. & W.H.B. for staff use.

11.2 Further, it was obvious to the Tribunal that these areas had no natural light of any kind.

12. FINDINGS AND CONCLUSIONS

12.1 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 Kildare.

12.2 The Tribunal is satisfied that the Respondent has valued this unit on the correct basis having regard to the Code of Measuring Practice of both the Valuation Office and the Society of Chartered Surveyors and would have to find exceptional reasons to depart from that practice.

12.3 The Tribunal is satisfied that the unit was built with pillars supporting the upper level and no evidence was submitted by the Appellant to demonstrate that the current dividing wall has any greater function than being of a dividing or partitioning nature.

12.4 The Tribunal considers that if, as postulated by Section 48 of the Valuation Act 2001, as amended, the unit is to be considered vacant and to let, that the hypothetical Tenant would consider the unit as a retail unit overall and not feel fettered by the presence or otherwise of a dividing wall to suit the needs of one occupier. To do otherwise would be to take the principle of 'rebus sic stantibus' too far.

12.5 As the Appellant has agreed that the value on a Zoning basis is properly achieved by reference to Zone A unit rate of €210 per sq.metre, the conclusion of the Tribunal must be to apply the zoning basis adopted by the Respondent accordingly (See Appendix 1).

DETERMINATION:

For the above reasons, the Tribunal disallows the appeal and affirms the valuation of the property as stated in the Valuation Certificate at €21,100.

And the Tribunal so determines.