

Appeal No: VA17/5/341

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

O'BRIENS WINES LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2186791, Retail (Shops) at Unit 4 Inish Carraig Irish Carraig Business Centre, Irishtown, Athlone, County Westmeath.

B E F O R E

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Frank O'Grady – MA, FSCSI, FRICS, FIABCI

Member

Orla Coyne - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF NOVEMBER, 2019

1. THE APPEAL

1.1 By Notice of Appeal received on the 10th 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 €28,900.

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 :

1. *“The Valuation of the subject property is excessive and inequitable. The property’s value as applied by the Commissioner is not in line with its potential rental value.*

2. *PN 2201616 next door let on a 4 Year IRI lease from 1st April 2013 at €19,512 (€24,000 inclusive of VAT). This was subsequently reduced to €14,624 (€18,000 inclusive of VAT) in 2015. Devalues at ca. €115/m² Zone A or ca. €73/m² overall.*
3. *This development, particularly the units which face the link road are of very low value and pose extremely difficult to let. Unit 1 (PN 2201617) achieved a rent of just €65/m² for 125m² in early 2017*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €14,600.

2. REVALUATION HISTORY

2.1 On the 12th day of January, 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 €30,500.

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 €28,900

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €28,900.

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 30th day of July, 2019. At the hearing the Appellant was represented by Mr. Eamonn S. Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. Ltd and the Respondent was represented by Mr. Patrick Murphy M.A. (Mgm), BSc. (Surv), 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 a terraced ground floor retail unit located at Inish Carraig Business Centre, Irishtown on Golden Island in Athlone, Co. Westmeath.

4.3 The unit is held on a 25 year related parties lease from 1/1/2006 @ €65,000 pax. following a sale and leaseback of the property for €550,000 in June 2005.

4.4 The floor area has been agreed between the parties @ 176 sq.m.
(Zone A 66 sq.m.; Zone B 66 sq.m.; Zone C 44 sq.m.).

4.5 The 15 % Off Licence addition was agreed between the parties.

5. ISSUES

5.1 The matter at issue is quantum.

5.2 The Appellant claims that the valuation is excessive and inequitable and is seeking a reduction in the NAV to €14,540.

5.3 The Respondent states that the NAV is in line with the tone of the list for Co. Westmeath and requests the Tribunal to affirm same @ €28,900 in accordance with the Valuation Act.

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 for the Appellant adopted his precis as his evidence in chief and went on to describe the development constructed in 2005 as a tertiary retail location that never achieved its potential following the property collapse in 2007.

7.2 He described the actual location of the premises facing a roundabout on a busy road with raised footpath and guard rails making pedestrian access very difficult.

7.3 He believed that the Commissioner had over-assessed Inish Carraig, an island development, removed from the main shopping district and a tertiary location with low footfall. He stated that the Commissioner had applied a uniform rental level to the entire area of €230 /sq.m. without taking into consideration actual rental values in the development.

7.4 To support his case Mr. Halpin gave details of 4 adjoining premises (Appendix 1) which indicated the highest rent (€113.67 /sq.m.) as half the rate applied by the Commissioner to the development.

7.5 In addition, 3 NAV comparisons of suburban/non town-centre small shopping developments were supplied (Appendix 2) which indicated that the Commissioner had applied a uniform rate of €150 /sq.m. Zone A to other small centres.

7.6 In his summation Mr. Halpin stated that the development was more disadvantaged than the out of town-centre properties due to the lack of customer parking and the difficulty with pedestrian access.

7.7 He further stated that the use of a flat rate across the spectrum though uniform was not equitable as evidence of abated and lower rental levels as supplied were not taken into consideration by the Commissioner when assessing the NAV on the subject property.

7.8 Mr. Halpin contended that an NAV of €14,540 as fair and equitable.

Zone A 66 sq.m.@ €115 /sq.m. =	€7,590
Zone B 66 sq.m. @ €57.50 /sq.m. =	€ 3,795
Zone C 44 sq.m. @ €28.75 /sq.m. =	€1,265
Plus 15% Off – Licence	<u>€1,898</u>
Total	€14,548
Say NAV €14,540	

8. RESPONDENT'S CASE

8.1 Mr. Murphy for the Respondent adopted his precis as his evidence in chief and contended for an NAV of €28,900.

8.2 He confirmed agreement on the location, description, title and floor areas and stated that the property was a corner unit, had a good profile to John Broderick Street and was fitted out to a good standard.

8.3 He stated that a uniform rental level of €230 / sq.m. Zone A had been applied to the area surrounding the subject property and that had resulted in an NAV of €28,900.

8.4 He provided 4 Key Rental Transactions (Appendix 3) to support his case.

Property No. 1445739 was located within the same development and had not been contested or appealed to the Tribunal. The other 3 properties were of varying sizes located in the area and had not been appealed.

8.5 In addition Mr. Murphy introduced 3 NAV comparisons (Appendix 4), two of which were in the same development. All 3 properties had made representations but had not appealed to the Tribunal and were valued at the same level as the subject.

8.6 Mr. Murphy stated that the level as decided by the Commissioner at €230 / sq.m. was fair for the area and had been uniformly applied in accordance with the Valuation Act.

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 Westmeath County Council.

10.2 The Tribunal has examined the particulars of the property and considered the written and oral evidence adduced by Mr. Halpin on behalf of the Appellant who contended for a revised valuation of €14,540 and Mr. Murphy on behalf of the Respondent who sought confirmation of €28,900 NAV.

10.3 During cross examination it became very evident that both parties differed on the approach to the valuation and assessment of the various weightings applied to access, footfall, actual location and available rental evidence.

10.4 Mr Murphy applied a uniform level based on all the information available for Westmeath county and the town of Athlone ranging from €700 /sq.m Zone A for the main shopping centre units to €150 /sq.m. for out of town-centre shop units. These levels were applied to all shops in the various designated areas regardless of the size or actual position at street or mall location.

10.5 Mr Halpin made a big play on the actual location of the subject property and its position on the road network and footpath stating that it was a poor retail position and no allowance had been taken into consideration when compared to better locations within the designated area.

10.6 Mr. Halpin also stated that the Commissioner had not taken into consideration the actual rent paid in the development and the fact that the headline rents had been abated over the years to attract and or retain tenants.

10.7 The Tribunal notes both parties approach and while it does not favour either method over the other the uniform method applied by the Commissioner maybe uniform but has lost sight of equity. The actual and unique location of the property was not taken into consideration when calculating the NAV and the actual rental evidence was disregarded.

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 €19,000.

Calculation

Zone A	66 sq.m.	@	€150 /sq.m.	=	€9,900
Zone B	66 sq.m.	@	€ 75 /sq.m.	=	€4,950
Zone C	44 sq.m.	@	€37.50 /sq.m.	=	<u>€1,650</u>
					€16,500

Plus 15% Off – Licence	<u>€2,475</u>
	€18,975

Say NAV €19,000

And the Tribunal so determines.