

Appeal No: VA17/5/476

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

JOHN CASEY

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 956771, Retail (Shops) at 36,38, 40 Unit 4 St. Kieran Street, Kilkenny, County Kilkenny.

B E F O R E

Majella Twomey - BL

Deputy Chairperson

Liam Daly – MSCSI, MRICS

Member

Allen Morgan – FSCSI, FRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF NOVEMBER, 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 €26,500.

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 set by the Commissioner is not in line with its potential rental value.*
2. *This part of Kieran Street has been overassessed[sic] by the Commissioner, based on both actual rents – such as PN 2169923 and PN 2197303 both let at €15,000 per annum and the tone of the list, which shows: 1) That the value is almost 3x that applied at the Rose Inn Street end of Kieran Street and on Market Yard; 2) That the level applied is almost identical to High Street. This is completely inequitable. The subject property would not exceed €300/week on the market at the valuation date.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €15,440.

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 €26,500.

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 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 €26,500.

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 7th day of August, 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. 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 situate on St. Kieran Street, Kilkenny. St. Kieran street runs parallel to and is accessible form High Street. It is a pedestrianised street.

4.3 The subject property is a ground floor retail unit located and is fitted out as a retail shop.

4.4 The ground floor area is agreed at 70.36 sq.m

5. ISSUES

5.1 The issue in this case is quantum.

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 was represented by Mr. Halpin, who gave evidence in relation to the subject property. He said that the Valuation Office set the highest level in Kilkenny in High Street and that there was a dropping level as one moved away from High Street. He said that Kieran St, is a secondary street.

7.2 Mr Halpin said that all Zone A on High Street was valued at €560 previously, but that this is no longer the case. He said that several levels have already been reduced by agreements reached between the Commissioner of Valuation and a number of appellants. It was stated that Kieran Street is 300 metres long and that the values of the properties differ depending on which stretch of the street the property is on.

7.3 It was stated that the subject is on the ground floor and is let on a 21 year upward only lease. It was let by assignment in 2011 and the Landlord had to compromise the rent. He said that it was not a market rent and the property is currently vacant and to let. He said that the property has a small Zone A. It was stated that there were three Zone A levels on Kieran Street - €200, €350 and €560. It was stated that High Street is a very different street to Kieran Street and that they are not comparable. Mr Halpin said that the rate of €560 for Zone A on Kieran Street related only to the middle section of the street.

7.4 Mr Halpin said that the Butterslip, Zone A, is valued at €250 but that it was originally valued at €560. He said that it was reduced following representations made to the valuation manager as it is a pedestrian street.

7.5 Mr Halpin put forward a number of Key Rental Transactions comparisons. His first NER comparator is a property let on a 4 year lease from 2015, at €18,000 per annum, which consists of a very small shop. The rent devalues at €426 but the Zone A is €560. The second NER comparison is a property with a lease of 4 years and 9 months from 2014, at €12,500 per annum, which devalues at €201 per sqm for Zone A, albeit at the end of the street which Mr Halpin asserts, is a poorer location than that of the subject property. Mr Halpin referred to another NER comparison, number 3, which has a 2 year lease from June 2016 at €20,000 per annum, which devalues at €370 per sqm for Zone A. This property, situate at Market Yard was initially assessed by the Valuation office at €560 per sqm for Zone A but following representations made to the valuation manager, is now valued at €200 per sqm for Zone A.

7.6 In terms of tone of the list comparisons, Mr Halpin put forward five NAV comparisons. The first NAV comparison is situate on Kieran Street, immediately across from The Butterslip and around 35 metres from the subject property. It was previously valued by The Valuation Office at €560 per sqm but was subsequently agreed prior to an appeal hearing, at a level of €350 per sqm. Mr Halpin contended that there cannot be a difference of €210 per sqm in Zone A in such a short space, on the same street, as is suggested by The Commissioner.

7.7 The second NAV comparator is a property in the Butterslip, which was also agreed prior to hearing. It had previously had a Zone A valued of €560 per sqm but was subsequently reduced to €250 per sqm for Zone A. Mr Halpin, however, accepted that the units which front the Butterslip are inferior to those which front Kieran Street.

7.8 The third NAV comparison is a book shop on James Street, which is in a secondary location and had a valuation of €400 per sqm for Zone A, affirmed at Tribunal stage. A fourth comparison situate on Rose Street, another secondary location off High Street, had a level of €435 per sqm Zone A. The final comparison put forward by Mr Halpin was NAV comparison number 5, which is situate on High Street, which has a NAV of €560 per sqm for retail Zone A. Mr. Halpin said that this cannot be compared to the subject property as the hypothetical tenant would, *ceteris paribus*, be prepared to pay more, simply for being located on High Street.

7.9 Mr Devlin put it to Mr Halpin that he had not mentioned that Dunnes Stores was also located on Kieran Street and Mr Halpin said that Dunnes Stores backs onto Kieran Street, but with its primary frontage onto an adjoining street. Mr Devlin put it to Mr Halpin that the subject

property is located across the road from Dunnes Stores and Mr. Halpin agreed but he said that Dunnes is at a lower level and that there are steps down to Dunnes.

7.10 Mr Devlin put it to Mr Halpin that the stretch of the street where the subject property is located is the best part of the street. Mr Halpin said that this was not the case and that the best part of the street is where Lorimat jewellers is, as that is close to High Street.

7.11 Mr Devlin put it to Mr Halpin that the Rose End part of the Street is less valuable. Mr Halpin agreed with this. Mr Devlin also put it to Mr Halpin that only one property on Kieran Street is valued at €350 for Zone A, and Mr Halpin said that as far as he knew that currently there are six appeals in total on this street.

8. RESPONDENT'S CASE

8.1 Mr Devlin gave evidence that the subject property is located on Kieran Street and is a modern, standard retail unit, directly opposite Dunnes Stores.

8.2 Mr Devlin said that The Valuation Office looked at rental evidence in Kieran Street and in Kilkenny city. Mr Devlin put forward two key rental transactions. The first one is a property located on Kieran Street, with a total floor area of 26.73 sqm. It has a four year lease, which commenced in 2016, at a rent of €16,200 per annum, giving an NER of €668.87 per sqm for Zone A. The second KRT comparison is a property also on Kieran Street with a size of 46.42 sqm and a lease of four years which commenced in 2015, at a rent per annum of €18,000. This gives an NER of €426.34 per sqm for Zone A.

8.3 A number of NAV comparisons were also put forward by Mr Devlin. NAV comparison 1 is a property on Kieran Street, with a retail Zone A of €560 per sqm. It is located beside the subject property and he said has not been appealed.

8.4 NAV comparison 2, which was put forward by Mr Devlin is also situate on Kieran Street, located close to the subject property and has a retail Zone A of €560 per sqm. A further comparison, at 46 Kieran Street, has a retail Zone A of €620 and is also located on Kieran Street, opposite Dunnes Stores. Comparison 4 is a bridal shop which has a retail Zone A of €620 and is located on Kieran Street and is also opposite Dunnes Stores. Comparison 5 is

vacant, located on Kieran Street, and has a retail Zone A of €560 but is under appeal. The final comparison is a property located beside Dunnes and has a retail Zone A of €560.

8.5 Mr Devlin gave evidence that the first part of Kieran Street near Rose End Street is not so good and that is why the retail Zone A has been reduced. He said that, initially, all properties were €560 per sqm for Zone A. He said that the subject is opposite Dunnes Stores and near the biggest surface car park in Kilkenny.

8.6 Mr Devlin said that while there are appeals in relation to Kieran Street, that 2 off these are in relation to properties in The Market Yard and a third is in relation to a property called Frank Daltons, which was reduced as it is set back from the street and has a smaller frontage. Mr Devlin said that the Butterslip cannot be compared to Kieran Street as it is not a retail street but a laneway. Mr. Devlin said that there are, therefore, actually only three appeals in relation to Kieran Street.

8.7 Mr Halpin put it to Mr Devlin that 20 retailers challenged the retail Zone A valuation of €560 and Mr Devlin agreed. Mr Devlin was asked if the majority were on Kieran Street and he said he was not sure but that the NAV on Kieran Street remained unchanged at €560. It was put to Mr Devlin that the Frank Dalton property is on Kieran Street and that this was reduced and he agreed but he said that the circumstances for this reduction were specific to that property.

8.8 Mr Halpin put it to Mr Devlin that he had only produced two rents for Kieran Street. Mr Devlin said that rental evidence for the street was in short supply.

9. SUBMISSIONS

9.1 No legal 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 Kilkenny County Council.

10.2 The Appellant is looking for a reduction in valuation of the Zone A in the subject property from a level of €560 to €350 per sqm. The Respondent states that the correct level Zone A in the said property is €560, as per a number of other properties on Kieran Street.

10.3 The Appellant and the Respondent put forward a number of comparison properties on Kieran Street. Having assessed all of these comparisons, as outlined by the parties and set out above, the Tribunal finds that Appellant's NAV1 comparison, is the most relevant. This is a property which is situate on Kieran Street, approximately 30-35 metres from the subject property. The property i.e. NAV 1 was originally valued at €560 per sqm for Zone A but on appeal to the Tribunal a value of €350 per sqm for Zone A was agreed. The Respondent claims that the reason for this is that the property is set a bit back from the street and has limited frontage. The Tribunal notes that photographs of the said property were submitted and finds that it is located on Kieran Street and is in close proximity in terms of location to the subject property. In terms of frontage, the Tribunal has had the benefit of assessing the photographs of the subject property and NAV comparator 1 (Frank Dalton) and does not find any significant difference between both properties. The Tribunal finds that this comparison is most helpful as a value has been agreed between the parties and the property is similar in terms of size and location relative to the subject property.

10.4 The Tribunal finds that the comparators in the Butterslip are not relevant comparators as the Butterslip is not a retail street per se, but a laneway, and we accept Mr Devlin's evidence in this respect, having seen the photographs of same.

10.5 The Tribunal has taken the KRT comparisons of the Respondent into account and finds that they are much smaller in size than the subject property and, therefore, can be disregarded as being relevant comparisons in this case. The Tribunal notes that the number of KRTs in this case was scant and, the KRTS which were produced were of little value due to their size and location close to High Street. Therefore, the Tribunal focused more on the tone of the list comparators in reaching its decision

10.6 While the Tribunal is aware that there are other properties on Kieran Street in close proximity to the subject property with a NAV of €560 for retail Zone A, these have not been appealed, apart from one, which is currently under appeal. However, the property which has been appealed on Kieran Street to the Valuation Office and which is similar in size and location

to the subject, was reduced to €350 per sqm for retail Zone A. The Tribunal finds that this is a compelling piece of evidence which cannot be ignored. The sum of €350 was struck by The Valuation Office, taking into account the size, location and frontage of the property and, therefore, is a strong comparator in this case.

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 € 15,440

Retail Zone A 25.61 sqm @ €350 per sqm = €8,964

Retail Zone B 29.31 sqm @ €175 per sqm = €5129

Retail Zone C 15.44 sqm @ €87.50 = €1351

Total	€15,444 say €15,440
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And so the Tribunal determines