

Appeal No: VA17/5/564

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

PAUL BYRON SHOES

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2147949, Retail (Shops) at 54.55/4 Stone Court Centre, Roscommon, County Roscommon.

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Michael Brennan – BL, MSCSI

Member

Patricia O'Connor - Solicitor

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF FEBRUARY, 2020**

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 €18,560.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

- *“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.*
- *The subject property is a treble unit, which is vastly in excess of the requirements of the hypothetical tenant for this location. The Stone Court Centre has been a retail failure*

with exceptionally low rental values for retail space, even in the context of Roscommon Town.

- *There is a historically misaligned service charge on the retail units in the stone court centre.*
- *There is an oversupply of retail property in Roscommon Town due to large amounts of space that had been added pre the 2008 recession.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €10,340.

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 €18,560.

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 €18,560.

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 17th day of October, 2019. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI and the Respondent was represented by Mr. Liam Diskin B.Sc. (Property Management & Investment) 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 ground floor retail unit (known as units 3,4 & 5) and is trading as a footwear store and is situated within an internal mall of the Stone Court Centre in Roscommon Town. The property was amalgamated from 3 smaller retail units hence the reason it is known as units 3,4 & 5;

4.3 The Stone Court Centre is a mixed use development and is located at The Square in Roscommon Town Centre. The ground floor comprises of a shopping mall and the property was originally constructed in 1740 and was redeveloped to its current use in 1999;

4.4 The floor areas have been agreed by the parties as follows:

Floor Area	Size (Sq M)
Retail Zone A	88.48
Retail Zone B	70.62

and

4.5 The subject property is occupied pursuant to a 35 year upward only lease from circa 2000 / 2001. The passing rent of €30,000 was abated to €25,000 per annum in June 2016 following a change of ownership of the subject property.

5. ISSUES

5.1 The main issue between the parties is the assessment of 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 Mr Halpin, for the Appellant, adopted his precis of evidence and contended for a valuation of €9,900, calculated as follows:

Level	Use	Area (Sq m)	Rate per Sq m	NAV
Ground	Retail Zone A	88.48	€80	€7,078
Ground	Retail Zone B	70.62	€40	€2,825
Total NAV				€9,903
Say				€9,900

7.2 Mr Halpin stated that the subject property comprised of a large retail unit situated in an internal mall of eight units with no street frontage. He said that there was a 35 year upward only lease in place and that the passing rent of €30,000 was abated to €25,000 upon the assigning of the landlord’s interest in the property in 2016.

7.3 Mr Halpin gave evidence that the nature of internal units within this retail mall results in the disadvantage of there being no street frontage.

7.4 According to Mr Halpin, all of the retail units within the mall are subject to excessively high service charges and that this is an additional disadvantage for occupiers and was not accurately reflected in the NAV set by the Commissioner. It was Mr Halpin's evidence that the annual service charge equates to €60 per sq m. He did state that although tenants are liable for the service charge they were not subject to additional insurance or repair charges. Mr Halpin pointed out that high service charges do not affect competing developments in the town which makes the subject property less attractive.

7.5 Mr Halpin commented that the Commissioner has assessed all secondary retail Zone A rents in the town at €150 per sq m and that this uniform approach is unequitable. Mr Halpin is of the view that the following unusual characteristics of the development affect the rental value: (1) that there is residential use on the upper floors; (2) that as it was redeveloped in 1999 and service charges are levied in excessively on the retail use; and (3) that the service charges cannot be amended on the retail element without the residential owners consent to vary. Mr Halpin's view is that the Commissioner has made an insufficient allowance for these factors.

7.6 Mr Halpin singled out a particular one-year letting from 15th October 2015 within the subject development as best evidence of rental value at the date of valuation. Details of this letting were set out at page 12 of Mr Halpin's precis and is summarised in Appendix 1 hereto. Mr Halpin devalues this to be a net effective rent ("the NER") of €2,815 per annum having regard to the stepped nature of the rent in year one and the rent free period. Mr Halpin devalues the NER on a Zone A basis to be €75 per sq m. Mr Halpin also confirmed to the Tribunal that the passing rent of this letting is €5,200 per annum effective from March 2016. He also confirmed that the tenant is overholding since July 2016 and continues to pay an annual rent of €5,200.

7.7 In further support of his valuation, Mr Halpin put forward additional market evidence in the form of two lease transactions (page 14 and page 16 of Precis), evidence of a property available to lease (page 13 of Precis), evidence of one sale transaction and evidence of one property that was available for sale (page 15 of Precis) which are set out in Appendix 1 hereto.

7.8 Mr Halpin also submitted two tone of the list comparisons in the form of a retail unit located on Castle Street with an NAV of €150 per sq m Zone A (page 17 of Precis) and an office unit located to the rear of The Square (page 18 of Precis) with an NAV of €80 per sq m. Details of these comparisons are set out in Appendix 1 hereto.

7.9 Under cross examination in relation to the market evidence that was submitted, Mr Halpin accepted that the comparisons detailed on page 13 and 15 of his precis were not representative as the NAV given that they were on the market. Mr Halpin also accepted that the lease detailed on page 14 of his precis was exempt under Schedule 4 of the Act. In relation to the evidence on page 16 of his precis, it was put to Mr Halpin that this was a business park location and Mr Halpin confirmed that it was a secondary location situated approximately 250 metres from the subject property. He further submitted that the subject did not have retail frontage so he considered the properties to be similar.

7.10 When cross examined in relation to his first tone of the list comparison, it was put to him that it was a secondary location. Mr Halpin accepted that it was a secondary location but it had street frontage. Mr Halpin accepted that his second tone of the list comparison was located to the rear of a building in an off-street setting, was in office use and was also a secondary location.

7.11 In summary, Mr Halpin said that small malls have fallen out of flavour as a retail location and that the service charge was disproportionate to the rental value and the rent should be discounted for this reason. Mr Halpin is of the opinion that the Commissioner had failed to take the Tribunal decisions in Appeal No: VA17/5//267 and Appeal No: VA 17/5/269 into consideration. Mr Halpin also stated that rents may have been analysed inclusive of Vat by the Commissioner which would distort the tone although no evidence was submitted in respect of this.

8. RESPONDENT'S CASE

8.1 Mr Diskin, for the Respondent, adopted his precis of evidence and contended for a valuation of €18,560, calculated as follows:

Level	Use	Area (Sq m)	Rate per Sq m	NAV
Ground	Retail Zone A	88.48	€150	€13,272.00
Ground	Retail Zone B	70.62	€75	€5,296.50
Total NAV				€18,568.50
Say				€18,560

8.2 Mr Diskin commenced his evidence by comparing the location of the subject property to all other retail areas of Roscommon Town that were valued by the Commissioner.

8.3 Mr Diskin described the property as being located within an internal mall of the Stone Court Centre. He stated that there is a car park located immediately to the rear of the subject development and that this car park primarily services the Castle View development. He also confirmed that there is a similar sized car park located at Tesco near Harrison Court. Mr Diskin contends that the subject property is centrally located and being situated between a large car park and the town centre has a natural footfall associated with it and is therefore a benefit to occupiers.

8.4 Mr Diskin confirmed that the Zone A rate for the Town Centre is €300 per sq m and that the subject property has been discounted to a Zone A rate of €150 per sq m which reflects a secondary location. In comparing the subject development to the neighbouring Castle View development which is also valued at €150 per sq m Zone A, it was his view that the subject is a superior development which can be supported by the fact that there is greater vacancy in Castle View with less units vacant in the Stone Court Centre.

8.5 In relation to the issue of the service charges, Mr Diskin confirmed that this would be deducted in the Commissioner's rental analysis only if the service charge is included in the rent. He confirmed that if the service charge is charged separately it will not impact the rent analysis. It was his view that the subject service charges did not require discounting from the rent as it was charged separately and paid for items such as cleaning, repairs and a sinking fund.

8.6 Mr Diskin stated that the subject development is well maintained with well-presented common areas and toilets which is attractive to shoppers in addition to being a route from the

main street to the car park. Mr Diskin also confirmed that the Stone Court Centre is the only development within the town that has an internal mall layout and is unique in this respect. He also stated that it has good levels of natural light as the mall sits below an atrium roof so in his opinion, the lack of street frontage and service charges did not warrant further deductions from the secondary Zone A rate of €150 per sq m.

8.7 It was Mr Diskin's view that notwithstanding the purported service charges within the development that they are not significantly deterring to occupants. In support of this position he provided evidence of two recent key rental transactions ("KRT") within the subject development referred to as KRT 1 and KRT 2 in his precis which are summarised in Appendix 2 hereto. He stated that there are eight units in total located within the internal mall and that in addition to the subject property only one other unit is under appeal.

8.8 In support of his valuation of, Mr Diskin put forward five key rental transactions (KRTs) ranging from €82 - €201.30 per sq m Zone A which are set out in Appendix 2 hereto. In relation to KRT 1 which is located within the Stone Court Centre, Mr Diskin analysed the net effective Zone A rate to be €82 per sq m. However, he was of the view that this NER was below the NAV due to inducements including a rent free period of two months and a stepped rent until month nine for the new letting. He confirmed the passing rent of €5,200 which became effective from March 2016 was in line with his NAV and the Zone A rate of €150 per sq m.

8.9 It is Mr Diskin's view that all of the KRTs are accurate and are very similar to the subject property. In addition to this he submitted four NAV comparisons from the Stone Court Centre, all of which are valued at €150 per sq m Zone A. It was his view that they are similar in nature and subject to the same occupancy conditions and demonstrate a tone of rents. Details of the both the KRTs and NAV comparisons are set out in Appendix 2 hereto.

9. SUBMISSIONS

9.1 No legal submissions were put forward by the parties.

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 Roscommon County Council.

10.2 The Tribunal considers that the property is located within a secondary area of the town for retailing and accepts the Commissioners decision to use the zoning method of valuation as fair and equitable for retail in Roscommon Town.

10.3 The Tribunal has assessed the comparable evidence submitted by the Appellant as set out in Appendix 1. While noting that they do indeed give information regarding the local market, with the exception of comparison 1, it finds that they are of limited value in ascertaining the NAV. This is due to the fact they have locational differences, relate to lettings that have not transacted and relate to properties that have sold or are for sale.

10.4 The Tribunal considers that Comparison 1 for the Appellant as set out in Appendix 1 hereto (and referred to as KRT 1 for the Respondent as set out in Appendix 2) to be very relevant given the timing of the letting and the fact it relates to an adjacent unit albeit smaller in size. While the Tribunal acknowledges that the NER for the one year letting is less than the NAV, it cannot overlook the fact that incentives can be specific to particular lettings and may not be representative of hypothetical lettings. It cannot ignore the full level of rent that becomes payable within 6 months of the valuation date when the incentives are exhausted. This is significantly in excess of the NER proposed by the Appellant. It is also persuasive in that despite the substantial level of vacant and available property in the town and despite that no binding contract exists and the existing occupier is free to leave, the letting continues to operate at the level of the NAV since March 2016.

10.5 The Tribunal has assessed all of the KRTs put forward by the Respondent. It finds that with the exception of KRT1 as set out in Appendix 2 hereto, the NER of each of these transactions are in excess of the general NAV of €150 per sq m Zone A for these secondary locations.

10.6 The Tribunal accepts that the subject property has unique attributes which have been asserted by the Appellant and acknowledged Respondent. It further accepts that internal mall

locations are suffering adversely in comparison to alternative retail locations. There is insufficient evidence to demonstrate that the secondary Zone A rate should be less than €150 per sq m Zone A. However, the subject property has unique attributes and is disadvantaged by a lack of street profile which would be a significant consideration for any hypothetical occupier. The Tribunal considers that a discount of 10% should be applied to the Zone A rate of €150 per sq m to reflect this inferior frontage and internal trading location.

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 €16,700.

Level	Use	Area (Sq m)	Rate per Sq m	NAV
Ground	Retail Zone A	88.48	€135	€11,944.80
Ground	Retail Zone B	70.62	€67.50	€4,766.85
Total NAV				€16,711.65
Say				€16,700

And the Tribunal so determines.