Appeal No: VA17/5/1187

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

KEVIN, MARY, ORLAGH & EMMET DOOLEY **APPELLANTS**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of
Property No. 1334555, Retail (Shops) at 11 Connaught Street, Athlone, County Westmeath.

B E F O R E

Dolores Power – MSCSI, MRICS	**Deputy Chairperson**
Raymond J. Finlay – FIPAV, MMII, ACI Arb, TRV, PC	**Member**
Úna Ní Chatháin - BL	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF FEBRUARY, 2020

1. THE APPEAL

1.1 By Notice of Appeal received on the 13th 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 €20700.

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. The reasons advanced may be summarised as that the valuation is incorrect as it bears no relationship to the market rental value of the Property.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €8,400.

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 €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 of the Property was reduced to €20,700.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €20,700.

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 26th day of August, 2017. At the hearing the Appellant was represented by Mr. Andrew Carberry MSCSI, MRICS, RICS, Registered Valuer of Power Property and the Respondent was represented by Mr. Patrick Murphy 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 Property is a ground floor double fronted end of terrace retail unit currently operated as a charity shop and located on Connaught Street, Athlone, to the west of the River Shannon and the town centre. The Property is adjacent to and redeveloped as part of a mainly residential development known as Bastion Court, completed in 2008. Connaught Street is a predominantly retail street. The Property is fitted out with painted and plastered walls, laminate wooden flooring, and suspended ceilings. The floor area is agreed at 133.02 sq. m. The unit is almost twice as wide as it is deep, at approximately 16m wide and 8.5m deep.

4.3 The Property is held on a 5-year lease dated March 2017 (see Appendix 1).

5. ISSUES

5.1 The one issue in dispute in this appeal is the quantum of the valuation of the 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 Mr. Carberry MSCSI, MRICS, RICS, on behalf of the Appellants, outlined four issues with the quantum of the Property's valuation. Firstly, the Appellants had been unable to let the property for a period of nine years up to 2017. Secondly, Connaught Street had been in commercial decline for a period of twenty years. Thirdly, the impact of the NAV as assessed and of the rates would render the Property commercially unviable. Finally, the actual rent paid was less than half of the NAV assessed by the Respondent.

7.2 Mr. Carberry stated that the NAV did not take into account the market dynamics on Connaught Street at the date of valuation, and was excessive and inequitable in comparison with market rents at the date of valuation, and when compared with similar properties in the vicinity of the Property.

7.3 Mr. Carberry stated that the property had been vacant and available to let since its redevelopment in 2007/2008 to the date of letting in March 2017, almost 18 months after the 30th October 2015, the date by reference to which the value of the Property was determined. The tenants required a break clause after two years, which Mr. Carberry said reflected the poor state of the rental market on Connaught Street. He stated that the NAV as assessed does not have sufficient regard to the actual letting of the subject property and the fact that it had been vacant for 9 years prior to its letting. Mr. Carberry gave evidence that Connaught Street was derelict and largely vacant. At the valuation date, it had a vacancy rate of over 50% and insufficient account had been taken of that fact. Since the valuation date, 11 of 50 properties have become vacant, with only one being partially re-let. A "tone" for Connaught Street could not be relied on at present as any emerging tone was skewed by the large number of vacant properties, which do not attract any liability for rates at present in Co. Westmeath if available to let on the market. Owners of such properties have no incentive to appeal a rateable valuation. Mr. Carberry further stated that the Respondent did not "stand back and look" at the valuation of the Property in the context of Connaught Street, which resulted in an unfair valuation of the Property which was out of kilter with the rest of the street.

7.4 Mr. Carberry gave evidence that the Property is a particularly wide and shallow unit, and that the Respondent, when assessing the property, did not have sufficient regard to the SCSI Professional Guidance – Retail Zoning for the Chartered Surveyor – Information Paper published by the Society of Chartered Surveyors Ireland in May 2015.

7.5 The Appellants did not challenge the Retail Zone A rate of €200 applied for the purposes of valuing the Property.

7.6 Mr. Carberry produced three market rent comparators and five NAV comparators in support of his contention that the NAV as assessed was incorrect. The rental comparators are detailed in Appendix 2. Market Rent Comparison 1 (Appendix 2, No. 1) is the subject property. The rental transaction dates from March 2017, almost 18 months after the valuation date, and the net effective rent (NER) is calculated at €63.15 per sq. m. on an overall basis. Market Rent Comparison 2 (Appendix 2, No. 2) is a common comparator of both parties and is a (now vacant) retail unit on Connaught Street which measures 199.95 sq. m. with a store of 29.55 sq. m. The rental transaction dates from October 2015 and the NER is calculated at €74.92 per sq. m. on an overall basis assuming a 50% weighting on the store. Market Rent Comparison 3 (Appendix 2, No. 3) is an office building measuring 150 sq. m. over three floors on O'Connell Street, Athlone, approximately 115m from the Property. The rental transaction dates from July 2015 and the NER is calculated at €40 per sq. m. on an overall basis or €60 per sq. m. assuming a weighting of 50% on the upper floors.

7.7 Mr. Carberry stated that the NAV as assessed for the Property at €20,700 breaks back on an overall basis at €155.62 per sq. m. and submits that on the rental evidence outlined above, market rents on Connaught Street around the valuation date were not at the level suggested by the NAV as assessed, and that the valuation of the Property was accordingly inequitable.

7.8 Mr. Carberry adduced five NAV comparators, four valued at €200 sq. m. (Retail Zone A) (NAV Comparisons 1,2,3 and 5) and one valued at €280 sq. m. (Retail Zone A) (NAV Comparison 4). NAV Comparison 1, PN2201622, Connaught Street, is part of the Bastion Court development and is located 50m from the Property. It is a common comparator of both parties. It was in use as a café at the valuation date but is now vacant. It has a floor area of 220.09 sq. m. including store, was valued at €200 sq. m. (Retail Zone A) giving a valuation of €20,300, and the NAV breaks back at €93.23 per sq. m. on an overall basis. NAV Comparison 2, PN 1334617, Connaught Street is a vacant unit located opposite the Property and has an area of 199.95 sq. m. excluding store. It is a narrow, deep unit in contrast with the Property, a wide, shallow unit. NAV Comparison 2 was also valued at €200 (Retail Zone A), giving a valuation of €17,740, and the NAV breaks back at €76.17 per sq. m. overall, excluding store. NAV

Comparison 3, PN 1334716, Pearse Street, is a pharmacy located c. 100m from the Property on a marginally better street and has a floor area of 75.37 sq. m. It was valued at €200 sq. m. (Retail Zone A) giving a valuation of €8,780, and the NAV breaks back at €116.49 sq. m. overall. NAV Comparison 4, PN 1334499 is a retail unit on St. Peter's Square which has a floor area of 146.88 sq. m. and is closer to the town centre than the Property. It was valued at €280 sq. m. (Retail Zone A) giving a valuation of €16,030, which breaks back at €109.14 per sq. m. overall despite the higher zone A rate. NAV Comparison 5, PN 1334602 is a retail unit on Connaught Street which has been vacant for many years and has a floor area of 124.06 sq. m. It was valued at €200 sq. m. (Retail Zone A) giving a valuation of €13,720, which breaks back at €71.64 per sq. m. overall, excluding basement store.

7.9 Mr. Carberry stated that all of the NAV comparisons broke back at a much lower NER than the Property (between €71.64 and €116.49 sq. m., as compared with €155.62 sq. m.) despite the fact that NAV Comparisons 1, 2, 3 and 4 were all either superior units or in superior locations, or both, and despite the fact that NAV Comparison 5 was a similar unit in an inferior condition.

7.10 Mr. Carberry stated that while the zoning method of valuation was a valid one, it cannot be slavishly adhered to where, as for the Property, it produces anomalous results, as it produces an NAV far higher than other similar properties if one "stands back and looks". He cited the introduction on p.5 of Retail Zoning for the Chartered Surveyor published by the Society of Chartered Surveyors Ireland in May 2015: "Where zoning is applied it is also recommended the premises be considered on an overall basis as there are instances where zoning produces an anomalous result." He went on to cite p. 5, para. 2, "Quantum discount for frontage to depth ratio":

> "It has become apparent that the application of zoning can at times overvalue relatively wide premises and at the same time undervalue narrow deep premises. In terms of frontage to depth a ratio of 1:3 is felt to be ideal. For the purpose of discounting the Zone A rate it is suggested that a discount in the region of ±10% be applied to units with a frontage to depth ratio of less than 1:2. This is a guideline figure only and will vary depending on the actual configuration of the unit. It is being suggested as a guideline figure and not as one to be applied rigidly. For example where a unit is particularly wide and shallow, a substantially larger discount may be appropriate."

7.11 Mr. Carberry stated that the frontage to depth ratio of the Property is 1: 0.53, and that the Respondent applied a 10% discount to the zone A rate after representations were made. He suggested that as the Property was "particularly wide and shallow", this was a case where "a substantially larger discount" would be appropriate. He pointed out that the professional guidelines suggested a ±10% discount for units with a frontage to depth ratio of less than 1:2, or in other words, a ratio that was 1.5 times less than the ideal ratio of 1:3. He stated that the Property had a frontage to depth ratio that was 5.66 less than the ratio of 1:3 and accordingly that a substantially larger discount would be appropriate.

7.12 Mr. Carberry gave an example of a hypothetical property, also with a floor area of 133 sq. m., but 18.3 m wide and 7.27 m deep. If that hypothetical property was valued at €200 sq. m. (Retail Zone A), it would result in a valuation of €15,520. He suggested, on that basis, that an appropriate discount to allow for the particularly wide and shallow configuration of the Property would be 35%, giving an NAV of €15,000, which would break back at €112.76 sq. m., which would still be higher than all market rent comparators and all but one NAV comparator.

7.13 Mr. Carberry clarified in cross-examination that he was not challenging the zoning method nor the €200 sq. m. (Retail Zone A) rate, but that the issue was the discount to be allowed. He agreed that breaking back NAV per square metre could lead to variance and that it was difficult to assess NAV on a square meter basis, but said that it was necessary to look at the range of values of the Appellants' comparators, all of which were far below €155 per sq. m. A stand back and look approach to outliers was required. When asked to agree that dual frontage was an advantage, Mr. Carberry stated that what the Property had was not dual, but wide frontage, and that such had no material impact on a street like Connaught Street with a vacancy rate of 50% at the valuation date, as the wideness or narrowness of a unit was immaterial to rent levels. He said that this was proved by the Property being let at a low rent after 9 years of vacancy.

7.14 Mr. Carberry agreed on cross-examination that that he was not aware of any property in Athlone which had been given a discount of more than 10%. He did not agree that the configuration of the Property was good, being rectangular. He stated that the shop had less wall space due to the wide front.

7.15 Mr. Carberry concluded by stating that the Respondent's evidence was weak and based on an erroneous application of the zoning method, in that the Respondent had not considered professional guidance, had not stood back and looked in a meaningful way, and had applied an arbitrary 10% discount to the Property when a larger discount was appropriate.

8. RESPONDENT'S CASE

8.1 Mr. Patrick Murphy MSCSI, MRICS stated that the Retail Zone A rate for Connaught Street had been reduced from €230 to €200, and that an additional discount of 10% had been applied to the Property to reflect its configuration.

8.2 Mr. Murphy adduced three Key Rental Transactions to support the NAV as assessed. Key Rental Transaction 1 (Appendix 3, No. 1) is a common comparator [Market Rent Comparison 2 (Appendix 2, No. 2)], a retail unit measuring 229.5 sq. m. including store and has an NAV of €17,740. The property was let on 1st October 2015 for 10 years at an annual rent of €18,000 or a NER of €16,087.70, or €216.64 NER per sq. m. Zone A. Key Rental Transaction 2 (Appendix 3, No. 2) is a unit on Connaught Street of 98.46 sq. m., in use as a takeaway. The unit was let in August 2015 for a period of 3 years and 9 months, at an annual rent of €20,800 and an NAV of €10,780. The NER is €20, 176, or €449.89 NER per sq. m. Zone A. Key Rental Transaction 3 (Appendix 3, No. 3) is a café on Bastion Street with an area of 39.31 sq, m. The unit was let in July 2013 for a term of 4 years and 9 months at an annual rent of €12,000, or a NER of €11,640, or €309.59 NER per sq. m. Zone A. The NAV of the unit is €6,880.

8.3 Mr. Murphy analysed the Key Rental Transactions and stated that the NER per sq. m. Retail Zone A for each was between €216.64 and €449.89, and that all had been valued at €200 sq. m. Retail Zone A.

8.4 Mr. Murphy stated that 74 properties in the vicinity of the Property had been valued at €200 per sq. m. (Retail Zone A), of which 17 had been the subject of representations to the Commissioner of Valuation. Four valuations had been appealed to the Valuation Tribunal, including that of the Property. One had been agreed at a Retail Zone A rate of €200, one had had that rate affirmed by the Valuation Tribunal, and one appeal remained to be heard.

8.5 8.2 Mr. Murphy adduced three NAV Comparisons to support the NAV as assessed. NAV Comparison 1, PN1334896, is a vacant property on O'Connell Street, Athlone, comprising retail unit, offices and store, with an area of approximately 325 sq. m. over four floors, valued at €200 per sq. m. Retail Zone A. NAV Comparison 2 is a unit in use as a takeaway on Connaught Street of 98.46 sq. m. including approx. 49 sq. m. of store. It was valued at €200 per sq. m. Retail Zone A giving an NAV of €10,780. NAV Comparison 3, PN2201622 is a unit in use as a restaurant on Connaught Street with an area of 220.09 sq. m. including 75.49 sq. m. of store. It was also valued at €200 per sq. m. Retail Zone A giving an NAV of €20,300. It is a common comparator of the parties (NAV Comparison 1 of the Appellants) and has wide street frontage. Mr. Murphy confirmed that it was significantly deeper than the Property, extending to a significant Zone C.

8.6 When asked, Mr. Murphy confirmed that he understood the appellant was not challenging the Zone A rate, and that the issue was the method of application of the zoning method. He confirmed that each individual property was carefully considered when applying the zoning method. He stated that the 10% discount was applied to the Property to reflect its configuration. He gave evidence that the discount generally applied by the Respondent in such situations was 5% or 10%. While a frontage to depth ratio of 1:3 was ideal, if the ratio was below 1:2, a discount of 5-10% was applied. He confirmed that he had inspected the street but could not say whether the occupiers of the Respondent's NAV Comparisons were still in business as he had not been there in 18 months. He did not dispute that two of the three comparators had ceased trading. When asked what level of commercial activity he had observed on Connaught Street, he stated that he had looked for key rental transactions.

8.7 When asked to describe the location of the Property, Mr. Murphy commented that it was a retail location and not a prime location, but a secondary one. When asked whether it was a good or poor secondary location, he stated that it was difficult to say. The highest Retail Zone A applied in Athlone was €230 per sq. m. He agreed that there was a high vacancy rate on Connaught Street. When asked whether regard was had to the letting of the Property in arriving at the NAV, Mr. Murphy stated that as the lease was entered into in March 2017, the lease details were not available at the time, but that regard was had to all lease details submitted. He agreed that the market rose slightly between 2015 and 2017. When asked whether the rent achieved on the Property in March 2017 reflected the weakness of the rental market, Mr. Murphy stated that that was only one rent, and that he had submitted other rental evidence demonstrating the fairness of the NAV arrived at. He agreed that the 10% discount had not been applied to the Property initially and that it was fair to apply it. When asked whether he thought a discount of 20% was warranted by the Property's configuration, he said that it was not warranted on the evidence. He stated that the general approach was to allow a discount of 5% where the frontage to depth ratio of a property was 1:2 or 1:1, and to allow 10% below that. He stated that the Respondent had "stood back and looked".

8.8 Mr. Murphy did not dispute that the occupier of Key Rental Transaction 1 (Appendix 3, No. 1) had ceased trading, but did not agree that that warranted an adjustment in the calculations of a fair market rent on the street. When asked why the NER per sq. m. of Key Rental Transaction 2 (Appendix 3, No. 2) was so far out of kilter, at €449.89 Retail Zone A, he replied that one finds outliers both high and low when analysing rents. When asked whether he agreed with p. 6, para. 4, "Unit Sizing" of SCSI Professional Guidance – Retail Zoning for the Chartered Surveyor (Society of Chartered Surveyors Ireland, May 2015) that "greater weight [should] be applied to evidence derived from units which are closer in size to the premises being valued. A guideline of ±50% is suggested.", he stated that that was part of the "stand back and look" approach. When asked whether a high vacancy rate affected the number of appeals lodged against valuations in an area, Mr. Murphy replied that he had not found that to be the case.

8.9 When asked about the small size of NAV Comparison 2, and whether an allowance had been made for that, Mr. Murphy stated that the zoning method was applied, whereby any allowance was made at the "stand back and look" stage. He stated that valuation on an overall basis resulted in inconsistency but that the zoning method led to consistency.

8.10 Mr. Murphy stated that the 10% discount applied was not arbitrary but was the discount applied where the frontage to depth ratio of a property was less than 1:1. A larger discount would lead to an undervalue. Frontage was an advantage over other retail units. Mr. Murphy submitted that the valuation of the Property was correct and should be affirmed.

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 Connaught Street is a secondary retail location in Athlone with a high rate of vacancy. The Property is a wide and shallow unit, having a frontage to depth ratio of 1:0.53. The valuation of the Property at €200 per sq. m. Retail Zone A is not in dispute. The primary issue between the parties is the appropriate discount to reflect the configuration of the Property.

10.3 The relevant rental information available to the Tribunal was of limited assistance. Of the Appellants' evidence, Market Rent Comparison 1 was the Property, and the rental transaction postdates the valuation date by almost 18 months. The Tribunal does not find Market Rent Comparison 3 to be a useful comparison, being an office building on a different street. Market Rent Comparison 2 of the Appellant/Key Rental Transaction 1 of the Respondent has now closed, having operated for 2.5 years of a ten year lease, as well as being significantly larger than the property (50% larger at 199.95 sq. m. as opposed to 133.02 sq. m.) Key Rental Transaction 2 of the Respondent is a very small takeaway restaurant, at only 50 sq. m. excluding store. Key Rental Transaction 3 is a very small unit, located on a different street far from the Property.

10.4 Similarly, the NAV comparators were limited in their usefulness as the central issue is the appropriate discount to be applied to the Property. NAV Comparison 2 of the Appellants and NAV Comparisons 1 and 2 of the Respondent were too different in size to the Property to be useful comparators as greater weight ought to be given to a comparator closer in size to the Property. NAV Comparisons 3 and 4 of the Appellants were not on Connaught Street, and the unchallenged evidence was that they and NAV Comparison 5 of the Appellant were either significantly superior or inferior units to the Property.

10.5 Of the NAV comparators adduced by both parties, a common comparator, NAV Comparison 1 of the Appellants and NAV Comparison 3 of the Respondent, PN2201622, appears to the Tribunal to be the most useful comparator. It is located on Connaught Street and is the only unit of similar size to the Property (133.03 sq. m.), at 144.6 sq. m. excluding store of 75.49 sq. m. It was valued at €200 per sq. m. Retail Zone A giving an NAV of €20,300. The unit also has wide frontage, although not as wide as the Property. It was confirmed in evidence that the unit is much deeper than the Property, extending to three retail zones plus store.

10.6 The zoning method is an established method of obtaining rental values for the majority of retail premises. However, the configuration of a particular retail unit should be taken into account in establishing the NAV of any property, in much the same way as location.

10.7 The Tribunal is obliged to take into consideration the substantial frontage of the Property and also the frontage to depth ratio of the Property. The Tribunal considers that where a property has large frontage but is shallow, allowance should be made for that in valuing the property. The SCSI professional guidance Information paper on retail zoning for the chartered surveyor (Society of Chartered Surveyors Ireland, May 2015) suggests at p. 5, para. 2 that "in terms of frontage to depth, a ratio of 1:3 is felt to be ideal". It is suggested that a discount in the region of ±10% on the Zone A rate should be applied to units with a frontage to depth ratio of less than 1:2. The guidance clarifies that that is a guidance figure only, and not one to be applied rigidly. It goes on to give as an example that "where a unit is particularly wide and shallow, a substantially larger discount may be appropriate." The frontage to depth ratio of the Property is 1:0.53. It seems to the Tribunal that a substantially larger discount than the suggested discount of ±10% is warranted by the respective disparities between 1:3 and 1:2, and 1:3 and 1: 0.53.

10.8 The Tribunal, having considered the written and oral evidence before it, considers it appropriate that the valuation of the Property be reduced by a discount of 20%.

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 €18,470.

Use	Area (sq.m.)	€ per sq.m.	NAV
Retail Zone A	97.90	200.00	€19,580.00
Retail Zone B	35.12	100.00	€3,512.00
			€23,092.00
Less discount 20%			€4,618.40
			€18,473.60

SAY €18,470

And the Tribunal so determines.