

Appeal No: VA17/5/1263

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

NICHOLAS RUSSELL

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 216779, Retail (Shops) at 3A.4A Main Street Graiguenamanagh County
Kilkenny.

B E F O R E

Hugh Markey – FRICS, FSCSI

Deputy Chairperson

Dairine Mac Fadden - Solicitor

Member

Caroline Murphy - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF FEBRUARY, 2021**

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 €8,080.

1.2 The sole ground 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 of the failure of the Valuation Office to apply any allowance or discount to reflect the susceptibility of the subject premises to flooding.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5,400.

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 €5,590.

2.2 Being dissatisfied with the valuation proposed, representations were made on 7th June 2017 to the valuation manager in relation to the valuation. Following consideration of those representations, the recommendation of the Valuer was to amalgamate PN 230166 and the subject property (the first floor and ground floor of the subject property). This resulted in the valuation increasing from €5,590 to €8,080.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €8,080.

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 a remote hearing on the 18th day of August, 2020. At the hearing the Appellant, Mr. Nicholas Russell B.C.L, A.I.T.I., BA, appeared in person 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 remote hearing, each witness, having taken the affirmation, 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 premises which are the subject of this appeal are situated on Main Street, Graignamanagh, Co Kilkenny, close to its junction with The Quay. The premises comprise a shop unit, in use as a solicitor's practice.

4.2 Floor Areas. The following areas (NIA) have been agreed by the parties:

Ground Floor 43.35 sq. m

First Floor 59.28 sq. m.

5. ISSUES

The sole issue in this appeal is one of quantum and whether the Respondent took into account the particular circumstances of the subject property i.e. the regular incidence of major flooding affecting the premises.

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 Russell outlined how this appeal involved a single net point and that was the failure, in his opinion, of the Respondent to “apply any allowance or discount to reflect the susceptibility

of the subject premises to flooding”. He suggested the Appellant was entitled to such an allowance.

7.2 He outlined how the Respondent had confirmed that no allowance had been made for the fact that the premises were at ‘high risk’ of flooding and should be treated in its own right and not simply a building in the town.

7.3 He outlined the history of flooding affecting the property. He explained how the nearby confluence of the rivers Barrow and Duiske led, in extreme circumstances, to the latter bursting its banks and flooding the Main Street. He suggested these flood waters pooled outside these premises exasperating the difficulties encountered. He went on to outline the flooding incidences – 1993 (before his ownership); c. 2001; 2008; 2016 and 2018.

7.4 He outlined how it had not been possible to effect insurance cover following the flood of 2008.

7.5 He further explained, in detail, and supported by photographic evidence, the effects of these incidents on the building and his staff. He said the main impact of flooding was felt at this (lower) end of Main Street.

7.6 In arriving at his estimate of rental value for the purposes of this appeal, Mr Russell had taken the capital value figure provided by a valuer in 2018, for mortgage purposes. He then adopted a yield which he had gleaned from a perusal of an article in the Irish Times regarding commercial property in Co. Kilkenny. From this exercise, he arrived at his opinion of the rental value - €5,400pa.

Cross Examination of Mr. Russell

7.7 In response to a question from Mr. Devlin, the Appellant accepted the Zone A figure of €160 per sq. m. applied to the ground floor of the appeal property.

7.8 He further accepted that the relevant valuation date was the 30th October 2015 and that S.48 meant that the premises had to be valued in its ‘actual state’ as at that date. He did not accept that the requirements of S 19 (5) in terms of the requirement for ‘equity and uniformity’ had been complied with.

7.9 He responded to further questioning by confirming he did not have any evidence of the inability to secure insurance; his suggestion of a 35% discount for the effects of flooding was his opinion and he did not adduce any comparables showing the differing levels as between properties which were susceptible to flood and those that were not – he posited that there were none, to his surprise.

8. RESPONDENT’S CASE

8.1 Mr Devlin outlined how this property is a retail property in use as a solicitor’s practice; it adjoins a SuperValu store. He explained how, in accordance with S. 48, the Respondent had arrived at the valuation figure. He explained the methodology adopted in arriving at a rental rate; how the Respondent had considered a number of lettings in two similar sized towns (Ballyragget and Castlecomer) in the county and had used these to inform the zone A rate applied to the subject and other properties on Main Street.

8.2 He outlined how there were about 150 properties valued at the level of €160 per sq. m. in Co. Kilkenny with at least 15 in the vicinity of the subject. He outlined that of these 15, 2 were subject to appeal, this being one; the other having been withdrawn unchanged. He said the valuations were amalgamated following representations.

Cross Examination of Mr. Devlin.

8.3 In response to a question from Mr. Russell as to whether the witness had taken account of the impact of flooding in arriving at his opinion of rental value, Mr. Devlin responded that he firstly considered the county and then the town, then the property itself; his opinion was based on rental evidence; this was the only appeal in the location. He suggested that the level of €160 per sq. m. was fair, based on all the information available to him.

8.4 With regard to a query as to whether he had completely disregarded the flooding effects or had decided they did not have an impact, Mr Devlin responded that he took these into account;

there had been a number of incidents and next door (SuperValu) was valued at the same level and had not been appealed; S.19 (5) required 'equity and uniformity'.

8.5 Under further examination by Mr. Russell, Mr. Devlin robustly defended the valuation placed on the property. He noted that other properties cited by the Appellant as being vacant were, in fact, rateable properties and fell to be valued. He said he was not familiar with the layout of the adjoining SuperValu premises when it was put to him that the floor level was 4ft above the street level outside and was therefore at less risk of flooding. He went on to suggest if flooding was a serious issue, the occupier would have appealed.

9. SUBMISSIONS

9.1 Mr. Russell, the Appellant, made a written legal submission to the Tribunal. In this, he suggested the Respondent had erred in law by their "failure to give an allowance/discount for flooding risk is not an assessment that complies with the legislative provision and is wrong in Law".

9.2 He relied on S27 of the Act to support this view, suggesting the valuation placed on the property "is both excessive and inequitable".

9.3 The Appellant relied on the judgment of another Division in the case of 'O Leary International Limited and The Commissioner of Valuations - Appeal No. VA10/1/029. He noted there were similar circumstances in that case which the Tribunal took into account in arriving at a decision.

9.4 Mr. Russell also drew the Tribunal's attention to the SCSi guide to flooding.

9.5 There was no legal submission from the Respondent.

10. SUMMING UP

10.1 Summing up the Appellant's case, Mr. Russell reiterated that flooding was a major issue and that S.48 needed to be considered. Consideration needed to be given to what a notional tenant would pay, bearing in mind the circumstances and the inability to secure insurance.

10.2 Mr. Devlin, for the Respondent, summed up by saying that the subject was valued in line with S.48 and with its condition in October 2015. He noted there were no other appeals in this location and that this suggested the valuations were fair.

10.3 He suggested the onus of proof lay with the Appellant and this had not been met in the instant case, no supporting information had been provided.

11. FINDINGS AND CONCLUSIONS

11.1 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

11.2 In any appeal against the valuation placed on a property by the Respondent, the burden of proof lies with the Appellant. In this case, while the Tribunal is not without sympathy for the Appellant, he did not provide the Division with any independent evidence of a factual or expert witness nature to support his contention that the valuation was excessive. No comparators were introduced which might have allowed the Members to consider the difference between a non-flooding location with the subject. The Appellant arrived at his estimate of rental value by taking a capital value of the premises, arrived at by a property professional for a different purpose and then adopted a yield which he had gleaned from a perusal of an article in the Irish Times regarding commercial property in Co. Kilkenny. This analysis was tenuous in the extreme – a different (and perhaps more appropriate) choice of yield would have resulted in a much higher rental valuation than that imposed by the Respondent.

11.3 It was open to the Appellant to introduce comparable evidence or expert valuation evidence but as this was not done; the Tribunal can only determine the appeal on the evidence placed before it. The Tribunal considered the Appellant's reference to another Tribunal judgment (O' Leary) but noted that in that case, the Appellant had provided comparable evidence and expert valuation evidence. Furthermore, it is not clear from the determination how much the fact that the premises were prone to flooding was a factor in the final decision. The Tribunal finds this judgment to be of little assistance.

11.4 The rate of €160 per sq. m., zone A applied to the ground floor by the Respondent was not disputed by the Appellant.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

And the Tribunal so determines.