Appeal No: VA17/5/808

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

NOELLE GALVAN **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of
Property No. 2181871, Retail (Shops) at Floor 0,1, 63.64 John Street, Sligo, County Sligo.

B E F O R E

Stephen J. Byrne - BL	**Deputy Chairperson**
Donal Madigan – MRICS, MSCSI	**Member**
Michael Brennan – BL, MSCSI	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 26TH DAY OF MAY, 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 €15,610.

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 :

"After the property was reconstructed, the property was valued by your office and I was then informed by the Valuer that the Second floor was effectively unusable because of the restricted head-height and therefore excluded from the valuation. The property

- *has remained unchanged since. On what basis is the Second floor now being included in the Valuation?*
- *There is restricted parking immediately outside the building. Has this been taken into account?*
- *I am given to understand that the Ground floor has been assessed as "retail" space. Can you explain why this is so?"*

1.3 The Appellant considers that the valuation of the Property ought to have been determined was not completed on the Appeal form.

2. REVALUATION HISTORY

2.1 On the 16th day of March, 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 €17,910.

2.2 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €15,610.

2.3 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 Dublin Dispute Resolution Centre, Distillery Building, 145-151 Church Street, Dublin 7 on the 15th day of October, 2020. At the hearing the Appellant was represented by Mr. Patrick McEnroe and Mr. David Dodd BL (instructed by the Chief State Solicitor) appeared for the Respondent, who called Mr. Liam Hazel M.Sc., B.Sc., Dip. Acc. & Fin., MSCSI, MRICS, MIPAV (CV), ACI Arb 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

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 The property comprises a two storey mid-terrace property with converted attic and is located on the south side of John Street in Sligo Town close to the intersection of Charles Street.

4.2 The property was constructed circa 2004/2005 and was first occupied in August 2005.

4.3 The property is used as a solicitor's office and is let on a 15 year lease from 2nd Novemver 2015. This lease was also subject to a business sale agreement;

4.4 There was no dispute relation to the floor areas as follows:

Floor	**Size (Sq m)**
Ground Retail Zone A	27.40
Ground Retail Zone B	19.95
Ground Lobby	2.93
First	59.35
Attic	30.45
Total	**140.08**

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. The within Appeal was brought by Noelle Galvan. Ms. Galvan brought the Appeal in her capacity as occupier of the subject property. In her Notice of Appeal, Ms. Galvan names herself and Melvin Smyth as occupiers. Mr. Patrick McEnroe and Sally McEnroe are owners of the subject property.

7.2. Numbers 11 and 12 were at one time separate and distinct properties. At some point, estimated at in or about 2005, the owners demolished the structures then in place, Numbers 11 and 12, and put in their place a single property.The 'plan', such as it was and as evidenced by the Grant of Planning Permission as put before the Tribunal and which the Tribunal has considered, was to fit out the ground floor for retail use whilst retaining the first floor for use by Mr. Patrick McEnroe as a Solicitor's office.

7.3. The owners' efforts at deploying the ground floor as retail appear, in reality, to have resulted on even the most optimistic take in extremely limited success. Mr. McEnroe, when cross-examined by Mr. Dodd, gave evidence of the owners' retail endeavours. Mr. McEnroe referred in evidence to a café which had operated for in or about 11 months rent-free. A clothes shop operated sometime in 2009 and lasted less than a year. To the best of Mr. McEnroe's recollection, the clothes shop came after

the café. The impression as garnered from Mr. McEnroe's evidence concerning the retail use to which the property has been put by the joint owners is, overall, one of an absence of commercial viability.

7.4. The property's retail wings have been clipped. The property resigned itself to what might be viewed by some as the more mundane use as office at the outset used by Mr. McEnroe in connection with the operation by him of his practice as a Solicitor. Mr. McEnroe soldiered on using the ground floor for the purpose of running therefrom a Solicitor's practice. This use of the ground floor commenced in or about 2010.

7.5. The switch from 'retail' to 'solicitor's office' required works. As Mr. McEnroe put it in evidence, the ground floor had to be "*reconfigured*" and following its makeover, was transformed into an open plan office with kitchenette, conference room and office with reception area. The separation of the distinct areas comprised in the open plan arrangement was achieved by means of block/glass partitioning. Thus kitted out and /or reconfigured, Mr. McEnroe continued to use the ground floor in connection with the running of his practice as a Solicitor form 2010 onwards. He did so as a sole practitioner.

7.6. The evidence as adduced establishes to the satisfaction of the Tribunal that in or about the end of November 2015, the owners of the property being Patrick McEnroe and Sally McEnroe granted a lease of the property to Ms. Galvin and her business partner. Ms. Galvin is a practising Solicitor. The lease commenced in or about 2nd November 2015. The parties to the lease agreed an annual rent of €25,000. The term under the lease and as stated is 15 years.

7.7. Mr. McEnroe, in evidence, referenced the lessees' difficulties in meeting the amount of the rent as agreed as of commencement (€25,000 per annum). Mr. McEnroe made reference to a reduction of the rent by agreement between the parties in 2018 to €20,000 per annum. There was further evidence of the lessees and as of September 2020 paying a further reduced rent in the sum of €16,254.00 gross per annum. It has been stated in Mr. McEnroe's precis that this is in default of the lease terms.

7.8. The Tribunal notes and from Mr. McEnroe's precis, that Ms. Galvan and her business partner have served notice of termination effective from 31st October 2020. As has been noted above, the valuation date is 30th October 2015. The Tribunal cannot help but notice that the above mentioned lease commenced on 2nd November 2015. The lease as entered into between Ms. Galvan and her business partner as lessees and Patrick McEnroe and Sally McEnroe as joint owners appears to have been part and parcel of Mr. McEnroe's agreement to sell his (solicitor's) practice to Ms. Galvin. It is noted from Mr. McEnroe's precis that the lease is linked to a business sale agreement

7.9. The position taken by the Respondent vis a vis the rental being paid for this particular property by Ms. Galvan and her business partner, which said view is not, it seems, challenged by Mr. McEnroe, is that the lease having been made as part of an agreement which comprised the sale of Mr. McEnroe's practice as a Solicitor, cannot be relied upon as evidence of the 'true rent' which this property in its actual state might reasonably be expected to achieve.

7.10. Ms. Galvan and her business partner, having entered into possession of the property on foot of the lease, operated and/or used it as a Solicitor's office and continued to do so, up until 31st October 2020. This was the position on the ground (so to speak) when the proposed valuation certificate issued on 16th March 2017, which said proposed Valuation Certificate proposed a valuation on the property of €17,910. The proposed Valuation Certificate issued to Noelle Galvan as the occupier of the property. It appears to be accepted that Ms. Galvan was, in fact, at that time the occupier of the property and it is assumed, on a joint basis with her business partner.

7.11. Ms. Galvin, having, it seems, received the proposed Valuation Certificate, did not raise representation. In the period prior to the issue of a final Certificate (which the Tribunal notes was issued on 7th September 2017), the Commissioner had a further look at the properties whose rateable valuations were at the time under scrutiny (broadly speaking commercial properties in Sligo town). The Commissioner, had a further look, as it were, at those properties whose rateable valuation was up for consideration and decided to make the kind of adjustment that most, if not all

ratepayers welcome, that is to say a reduction and for reasons that are set out in the precis of evidence of Mr. Hazel and as follows:

"A reduction arose due to a decrease in valuation that was applied to the upper floors of all properties in Sligo Town."

7.12. Whilst Ms. Galvan did not make representations when served with the proposed Valuation Certificate, she was not, it seems, pleased with the rate as set per the final Valuation Certificate. Ms. Galvan, as is her entitlement, set in train an appeal to the Valuation Tribunal. Ms. Galvin prepared and filed a Notice of Appeal which is dated 12th October 2017. Briefly, in the Notice of Appeal Ms. Galvan:

(a) Claims that the valuation is incorrect.
(b) Claims that the property was not in use as a retail operation and should not, it follows, have been valued by the Respondent as though it were retail.
(c) The mezzanine space should not have been valued as an office having been used for storage.

7.13. The filing and service of the Notice of Appeal set in train a dialogue of between the parties to the Appeal, namely Ms. Galvan and the Commissioner acting through Mr. Hazel. This dialogue is as it should be in any situation where opposing parties have joined issue with the intention outwardly at least firm resolve and if necessary, to go to law. The dialogue as entered into between Ms. Galvan and Mr. Hazel resulted in an agreement as reached between the parties to the Appeal (Ms. Galvan and the Commissioner). The bona fides of Ms. Galvan on the one hand and the Respondent acting through Mr. Hazel in reaching this agreement has not been called into question and/or challenged in any meaningful way, not directly, in any event.

7.14. The Tribunal infers from this that the parties to the agreement (Ms. Galvan and Mr. Hazel) in reaching the agreement acted in good faith, each with a view to securing for themselves (in Mr. Hazel's case not personally for himself obviously but for the Commissioner of Valuation) a fair and reasonable outcome consistent with their respective and opposing interests. The agreement as reached between Ms.

Galvan and Mr. Hazel, had formally concluded in the sense that both had written to the Tribunal confirming the fact that the Appeal as commenced by Ms. Galvan had been agreed and confirming the amount by which the rating assessments were to be reduced.

7.15. Mr. Hazel confirmed the position by correspondence to the Tribunal dated 2nd December 2019. This correspondence is short and to the point. Ms. Galvan, by email/correspondence dated 3rd December 2019, evidences the fact that she has seen Mr. Hazel's correspondence dated 2nd December 2019. Ms. Galvan's email of 3rd December 2019, when read in conjunction with Mr. Hazel's correspondence of 2nd December 2019 is clear, leaving no room for equivocation or ambiguity. Ms. Galvan informs the Tribunal that she agrees with Mr. Hazel's understanding of the agreement as reached which, simply put, is that there is to be a reduction of the rating valuations from €15,610 to €14,040. In her correspondence Ms. Galvin "*confirms*" that she is the leaseholder and the rated occupier of the premises.

7.16. The Appeal had been scheduled for hearing on 19th December 2019. The parties, Ms. Galvan and the Commissioner as represented by Mr. Hazel are informed by email which was sent on 2nd December 2019 that notwithstanding that agreement had been reached, the parties had to attend in person "*to present the agreement*".

7.17. The Appeal as scheduled did not proceed on 19th December 2019. Enter Mr. McEnroe. Mr. McEnroe, in evidence, states that he first became aware of "*the existence of the purported agreement*" by letter dated 4th December 2019 from the Tribunal. He states that he and his co-owner had made attempts "*to get the necessary information relating to the purported agreement*". Such "*attempts*", according to Mr. McEnroe "*failed*". This failure in his attempt to get what he terms "*the necessary information relating to the purported agreement*" prompted Mr. McEnroe to write to the Tribunal, which he did by correspondence dated 17th December 2019. This correspondence articulated *"a wish to object to the proposed determination of the appeal*".

7.18. The coming together by mutual accord of the person who held herself out as leaseholder and rated occupier and Mr. Hazel in his capacity as rate setter, is, on Mr.

McEnroe's objection, abandoned. It is clear from the submissions as received and from the evidence as adduced that Mr. McEnroe is frustrated and perhaps slightly aggrieved at the fact that he as co-owner of the property has not been and from such detail and/or information furnished to him, in a position to come to an informed understanding of the basis upon which the Respondent, acting through Mr. Hazel, arrived in the first instance at a valuation and final certificate in the sum of €15,610 and thereafter, agreed a reduction with Ms. Galvan to €14,040.

7.19. Leaving aside for the moment the question of whether Mr. McEnroe's late entry is legally sustainable, Mr. McEnroe was, to all intents and purposes and from the point at which he involved himself in the process, treated as though he is a properly constituted bona fide Appellant. Such 'privilege' carries with it both entitlement and responsibility.Mr. McEnroe's entitlement is no more or less than each or every appellant who rightly or wrongly takes issue with the fact that he or she or it has been burdened with commercial rates per the amount of the valuations as set. Mr. McEnroe's responsibility as Appellant requires him to read and consider such material and/or documents that have been furnished to him.

7.20. Appellants such as Mr. McEnroe facing into a hearing by way of Appeal before the Valuation Tribunal, are, as a rule, furnished, and at a minimum, with a precis of evidence. Appellants, depending on the complexity of matters at issue may also be furnished with legal submissions and perhaps supporting Authorities. The precis of evidence as a routinely observed rule contains within it information and/or evidence which is, as a rule, designed to inform all or any interested parties and in particular, an appellant, *inter alia*, of the basis upon which the Respondent's professional witness has come to the particular position which he or she has concerning the rate as struck on the property concerned.

7.21. The Tribunal notes that Mr. Hazel's precis is dated 7th September 2020. The Outline Legal Submissions bear the same date. The precis of evidence and Outline Legal Submissions were and in the normal course of business served on Mr. McEnroe as 'de facto' Appellant and in advance of the date set for the within hearing.

7.22. Mr. McEnroe, as de facto Appellant, is taken to have read and considered the precis of evidence and the Outline Legal Submissions and so that he is as prepared as he can be for what has become, to all intents and purposes, his Appeal.

7.23. Having and prior to the date of the Appeal, read and considered Mr. Hazel's precis and the Outline Submissions, Mr. McEnroe ought and in the normal course of things, to have come to some kind of informed understanding as to why the Respondent, acting through Mr. Hazel has arrived at a rate for the subject property which Mr. Hazel puts forward as fair, reasonable, equitable and uniform.

7.24. At this point in this perhaps unusual coming together of Mr. McEnroe as (reluctant) Appellant and the Commissioner as Respondent, the Tribunal has no reason and/or basis upon which to conclude and/or determine that Mr. McEnroe, in his position as de facto Appellant, is uniquely and/or singularly disadvantaged and/or prejudiced in circumstances where, and on his own case and up until 4th December 2019, he had not been provided with any material and/or documentation which might assist him in coming to a clear and informed view of the rate as struck and/or the basis and/or method employed when striking same.

7.25. Insofar as the Tribunal is concerned, Mr. McEnroe as he presents before the Tribunal, journeys in the same boat as most, if not all, persons who face into the burden of paying commercial rates and who wish to exercise their statutory entitlement to appeal a decision which such persons are inclined to view as offending their interests.

7.26. It is clear from the material and documentation as put before the Tribunal that much of the discussion forward and back concerns the 'legitimacy' in the particular circumstances of this case of Mr. McEnroe's 'standing' (locus standi) to take over an appeal that he did not commence and had not and up until an advanced stage, any knowledge of and/or involvement in.

7.27. The parties before the Tribunal, that is to say, Mr. McEnroe and the Commissioner, agreed among themselves that the Tribunal did not have to consider and/or rule on and/or determine the question of Mr. McEnroe's entitlement and/or

standing to take over and run Ms. Galvin's Appeal. The Tribunal being satisfied that this was an agreement entered into between the parties in good faith, with a view to assisting the Tribunal and with a view to allowing the Tribunal concentrate on areas of substantive differences between the parties, is prepared to treat this Appeal as though it has been validly and properly commenced by Mr. McEnroe. The Tribunal is prepared to regard and treat Mr. McEnroe as a de facto and de jure Appellant.

7.28. Mr. McEnroe, having read and considered Mr. Hazel's precis and having read and considered the Respondent's Outline Legal Submissions, holds to the view that there is a paucity of information. He claims that such material and/or documentation as furnished to him, which said material and documentation is before the Tribunal, cannot and on any reasonable consideration of same support and/or sustain the rate which has been struck and which, in addition, resulted in the agreement as reached between Mr. Hazel and Ms. Galvan.

7.29. Mr. McEnroe's said claim is in part informed by the actual use to which the subject property has been put. On Mr. McEnroe's case, as of the valuation date, the property had been used for office purposes. It had been kitted out as and used in connection with the occupier's practice as a Solicitor. On Mr. McEnroe's case, this had been the position for a number of years.

7.30. Mr. McEnroe's assertion that the property, as of the valuation date, had been in use as an office for the purpose of operating therefrom a Solicitor's practice is not in issue. Mr. McEnroe, in exercising his entitlement to cross-examine Mr. Hazel, put all of this to Mr. Hazel. Mr. Hazel accepted all of this.

7.31. Mr. McEnroe observes and by way of criticism, that the property has and for rating purposes, been viewed and treated as though it were a property which is being used as and/or capable of being used as a retail property. On this observation, there is in truth no contest between the parties. Mr. Hazel, whilst fending off criticism, accepts the observations made, in other words, that the property has been treated for rating purposes as a property capable of being used as a retail property. Mr. McEnroe asserts that this approach, in the circumstances, is fundamentally flawed.

7.32. By viewing and/or treating the property which Mr. Hazel accepts is in actual use as an office although it were retail, Mr. Hazel has and insofar as Mr. McEnroe's argument goes, fallen into fundamental error. Such error is so fundamentally flawed that the Tribunal cannot and/or should not rely on and/or act on the core of Mr. Hazel's evidence.

7.33. The Tribunal has noted that in the course of his evidence Mr. McEnroe stated that in terms of use, John Street is capable of being divided as between (for convenience) a retail hub and a more sedate neighbourhood comprising offices and residential in which the subject property is situate. The impression given is that the 'hub' in which the subject property is situate is more sedate and/or sedentary, comprising a mix of offices and residences. Mr. McEnroe put this to Mr. Hazel. Mr. Hazel did not appear to take any great issue with this presentation.

7.34. Whilst asserting that Mr. Hazel's position is fundamentally flawed and cannot be relied upon, Mr. McEnroe has not put before the Tribunal any reliable evidence which might assist the Tribunal in coming to an informed decision on what is, in substance, the issue on appeal, that is to say, what, and on the Appellant's case, presents as a fair and/or proportionate and/or reasonable measure of rates for the subject property.

7.35. In his precis of evidence Mr. McEnroe sought liberty to include a figure of €11,300 as an alternative to the rate agitated for by Mr. Hazel. By way of oral submission at the hearing, Mr. McEnroe suggested that the rate as set for the first floor office (€100 per square metre) should be applied to the ground floor. The submission as to alternative value proffered by Mr. McEnroe was not backed up, as it were, by any expert and/or professional evidence.

7.36. The main issue which the Tribunal has to decide is whether Mr. McEnroe is correct when asserting, as he has done, that Mr. Hazel's approach to the valuation of the subject property is so fundamentally flawed that the Tribunal cannot and/or should not rely on it when coming to a decision as to whether the rate as struck is, in the circumstances, fair, proportionate and reasonable.

7.37. Whilst it is by no means unique, it is relatively speaking unusual for a disappointed ratepayer, when agitating for a reduction in rates, not to proffer or rely on evidence from an expert valuer, which said evidence, in the normal run of things, affords the Tribunal the luxury of considering and weighing in the balance alternative, competing, expert opinions on issues that matter such as the approach taken when striking a rate and the quantum arrived at.

7.38. There is, of course, no requirement on any individual appellant to proffer and/or rely on evidence from his or her own expert (valuer). In the absence of expert evidence from an appellant, the Tribunal when, as in this case, invited to ponder the integrity of the respondent's expert and in order to stay within the parameters of propriety and fairness, is necessarily required to find and as a starting point that the evidence of the 'unmarked' expert is in substance unchallenged.

8. RESPONDENT'S CASE

8.1. Mr Hazel agreed with the description provided Mr McEnroe and confirmed that the property was currently used as a solicitors office.

8.2 He stated that the property was joined by a butchers shop to the left hand side and a hairdresser to the right hand side. He confirmed that the ground floor was valued as a retail unit at a rate of €200 per sq m Zone A. He stated that €200 per sq m Zone A was the rate attributed to all retail units on John Street.

8.3 He stated that the prime retail rate for Sligo Town was €475 per sq m Zone A and applied to retail on O'Connell Street and the Wine Street car park. €275 per sq m Zone A was attributed to streets adjacent to the prime area and €200 per sq m Zone A was attributed to secondary streets such as John Street. Tertiary Streets that were located outside the town centre but within the Town Council administrative area were valued at €125 per sq m Zone A.

8.4 He confirmed the general process for valuations which included the assessment of rental evidence received on the back of s45 and s46 notices and other sources of market evidence. He then confirmed that this was analysed prior to inspection. If a property was

inspected there would be a further analysis exercise prior to issuing the Valuation Certificate.

8.5 He confirmed that the valuation of the first floor was amended following representations by Ms Galvan. He confirmed that there was just one other appeal in relation to John Street which related to a legal appeal refgarding their charitable status as occupier and that there was no dispute as to the quantum applied however.

8.6 Mr Hazel relied on three key rental transactions (KRT's)which are set out in detail in Appendix 1 hereto. In relation to KRT 1, Mr Hazel confirmed that it related to a retail letting on John Street at a net effective rent (NER) of €240 per sq m Zone A from March 2016 and was 20% higher than the NAV applied to the subject property. He also provided evidence of KRT 2 and KRT 3 which were let at a NER OF €260 and €240 per sq m respectively and related to secondary locations.

8.7 Mr Hazel in applying the NAV to the subject property confirmed that he relied on 11 pieces of market evidence and looked at the relativity to other streets for equity and uniformity. He was of the view that if one Zone a rate is lower than the remainder of the street that this would not be uniform nor equitable.

8.8 He stated that he reduced the valuation on the final certificate to €14,040 from €15,610. The reduction was in the form of a lower rate of €63 per sq m being applied to the attic and a 10% allowance for an adverse frontage to depth ratio. He stated that the ideal frontage to depth ration is 1:3 and that the subject property has a ration of 1:2. The attic was originally valued at €90 per sq m which is the rate more attributable to first floor accommodation.

8.9 Under cross examination Mr Hazel confirmed that it was appropriate to value the subject property as retail notwithstanding its current use as a solicitors office. He relied on the fact the the current partitioning of the building was non-structural and did not preclude a retail use by a hypothetical tenant.

8.10 Despite some debate with Mr McEnroe under cross examination, he was unequivocal in his opinion that the subject property was appropriately valued as a retail unit as it had

retail frontage and it was reasonable to assume that it would let as retail. He further stated that it was his opinion that if offered on the market to let with vacant possession that it would in demand by retail occupiers.

9. SUBMISSIONS

9.1. Outline legal submissions were made by Mr David Dodds BL on behalf of the Respondent and a number of legal authorities were submitted in support of the Respondent's submission that the existing use was not critical to determining the valuation approach

9.2 The Respondent submitted the authority of Harper Stores v Commissioner of Valuation [1968] I IR 166 and deemed this to be a leading case on the point along with other supporting authorities.

9.3 It was the Respondent's submission that as the subject property was designed by architects and obtained planning permission for retail use, the fact it was currently used as a solicitor's office was not decisive of the valuation approach.

9.4 Counsel for the Respondent also highlighted that the existing business or tenant items are disregarded for valuation purposes. He highlighted the fact that the physical make of the building is retail with a display window and is located on street parade amongst similar retail properties which he felt was a critical point.

9.5 Counsel for the Respondent also the fact that all similar properties were valued at the same rate which demonstrated uniformity and equity.

9.6 It was also submitted as part of the legal submission that the property was let on three previous occasions for retail use and despite the planning permission for change of use there was a subsequent retail use and no physically changes were made to the property in respect of this change of use.

9.7 It was Counsel's submission that all of the authorities support the valuation as retail based on the facts outlined.

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 Sligo County Council.

10.2. The Tribunal's attention is necessarily drawn to the fact that the rent as agreed between the parties to the lease has been agreed on a date which is as close to the valuation date as makes no difference.

10.3. In the normal course of things, evidence of the rent which is and as a fact being paid by a willing tenant to a grateful landlord on foot of a lease which is made on or close to the valuation date presents as, relatively speaking, a reliable, if not compelling indication of what the so-called hypothetical tenant would be willing to pay for the subject property, due and proper regard being had to the statutory assumptions as expressly provided for.

10.4. The Tribunal and in the circumstances, whilst it is alive to and has considered the arguments as advanced by Mr. McEnroe and having paid particular attention to attempts at challenge made by Mr. McEnroe through the privilege afforded to him as cross-examiner, is at the close of this Appeal, constrained to take the view that Mr. Hazel's expert evidence is, in substance, unchallenged.

10.5. It does not necessarily follow that the Tribunal is required to adopt this evidence without question. The Tribunal can, in its discretion, disregard Mr. Hazel's evidence, either in part or in its entirety.

10.6. In circumstances such as this, where Mr. Hazel's expert opinion has not been pitted against and/or peer reviewed by an opposing expert, the Tribunal has to be extremely slow to reject this evidence and can only do so where there are exceptional and compelling grounds advanced for so doing or where alternatively, Mr. Hazel's evidence, when fairly and critically assessed, is so demonstrably and patently out of

kilter that it would be plainly wrong for the Tribunal to attach any weight or credence to same.

10.7. The Tribunal, having considered the challenge as mounted by Mr. McEnroe and having entertained his attempt to deconstruct Mr. Hazel's evidence:

- concerning the manner and approach which Mr. Hazel adopted when setting what he (|Mr. Hazel) maintains is a fair proportionate and reasonable valuation for the subject property;
- concerning the amount of the valuation which is, on Mr. Hazel's account, fair, proportionate and reasonable;

finds that there is no merit and/or substance in Mr. McEnroe's conjoined assertions.

(i) That he (Mr. McEnroe) as owner has been left in the dark by reason of the paucity of information coming from the Respondent concerning the manner in which the Respondent has arrived at the figure for the valuation for rates.

(ii) That Mr. Hazel's evidence is so fundamentally flawed and out of kilter that the Tribunal cannot and should not act on it.

(iii) That Mr. Hazel's disregard of the actual use of the property when setting the unit rate of valuation is, in the circumstances, so fundamentally flawed as to render his evidence wholly unreliable.

10.8. Mr. McEnroe's challenge is, and in the Tribunal's view and in the circumstances of this Appeal, unsustainable. It is unsustainable, in the Tribunal's view, for the following reasons:

a) The Respondent is statutorily charged with deciding the valuations which should apply to all commercial properties in a particular area in this instance in Sligo Town.

b) When setting about this task, the Respondent has to consider and apply the provisions of Section 48 of the Valuation Act, 2001. Under Section 48(1) of the 2001 Act, a

value is determined by estimating what is termed the net annual value. Under Section 48(3) net annual value is defined as "*the rent which the property in its actual state might reasonably be expected to let from year to year and on the assumption that recoverable average annual costs 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 payable by or under any enactment in respect of the property are borne by the tenant*".

c) The Respondent is by law required to devise and as best he can a formula for assessing and determining the rents which all of the commercial properties in their actual state in a given area are likely to fetch from year to year on the statutory assumptions as expressly provided for.

d) The principles of equity and uniformity are well established and well recognised. Simply put, the Respondent having the responsibility for setting the valuations for a significant number of commercial properties in a given area, must when coming to a final decision on the amount of those valuations which are to be apportioned and insofar as it is possible to do so, ensure that ratepayers occupying similar and/or equivalent properties in terms of use, size and location are paying, give or take, the same amount of rates, based on those valuations.

e) The Respondent, when making a final decision on an individual ratepayer's share of the total tax burden for the area, must take account of and/or factor in any appreciable and relevant distinguishing features of an individual property, which said features when given proper consideration and attention merit an adjustment and ordinarily an adjustment by way of reduction.

f) The Tribunal, having considered Mr. Hazel's evidence, is satisfied that Mr. Hazel, on behalf of the Respondent, has held to and applied, where necessary, Section 48(1) of the 2001 Act and the above mentioned well established principles.

g) Mr. Hazel, when valuing the subject property, approached it as though it were retail.

h) When considering the external view of the property, as per the photograph which has been put in evidence, the Tribunal is constrained to conclude that Mr. Hazel is correct in this. The subject property does, in truth, have a retail façade. This was not disputed by Mr. McEnroe.

i) Further, Mr. Hazel, in evidence, states that the street on which the property is situate presents as a retail parade in the sense that there are retail properties on the street. Some of those properties are in use as retail. Others, whilst not in use as retail, nevertheless boast retail facades.

j) Support for profiling and/or advocating the subject property's potential for use as retail can be drawn from the evidence of Mr. McEnroe.

k) It is clear from that evidence that Mr. McEnroe was sufficiently convinced that the property has potential for use as retail to go to the trouble, expense and inconvenience of applying for a Grant of Planning Permission for retail use and to act on this retail 'hunch' by putting in place retail tenants.

l) The fact that this retail ambition did not hold up cannot and in the circumstances be viewed as a credible basis upon which to and at this remove, deny that the property has potential for use as retail.

m) The Tribunal notes that the subject property is not the only property on John Street which boasts a retail façade and which has been put to actual use as office or equivalent.

n) Further, it is noted that properties on John Street in actual use as office, boasting retail facades, have had applied to them the retail approach to rating, that is to say, a Zone A, Zone B etc. approach. For the purposes of clarity, the Tribunal refers to NAV comparisons 1 and 2 as set out in Mr. Hazel's precis of evidence at pages 19 and 20.

o) The ratepayers in the case of NAV comparisons 1 and 2 have not and insofar as the Tribunal is aware, taken any issue with the fact that they have been rated, not by

reference to their actual use, but by reference to their retail potential. The fact that neighbouring ratepayers occupying properties on the same street as the subject and putting those properties to the same use as the Appellant have not taken issue with the fact that they have been treated for rating purposes as though they were in use as retail, in the Tribunal's view provides some, albeit modest, support for the fact that Mr. Hazel, when approaching the task of valuing the subject property, was correct in approaching the subject as though it were retail and/or had retail potential.

p) Mr. Hazel emphasised in evidence the fact that the partitions in place with a view to keeping apart the areas comprising the ground floor of the subject property, are constructed of glass on block and significantly are, in Mr. Hazel's opinion, non-load bearing walls.

q) Mr. McEnroe was pressed on this point. Mr. McEnroe was asked whether he took issue with Mr. Hazel's claim that the internal "*walls*" were "*non-load bearing*". Mr. McEnroe, when pressed, accepted that this is, in fact, the position. The internal "*walls*" are non-load bearing.

r) This being so, the so-called hypothetical tenant being alive as he or she must to all commercial opportunities thrown up by his or her acquiring an interest in the subject property is unlikely and in the Tribunal's view to overlook the relatively-speaking ease of transition from actual use as a Solicitor's office to orthodox retail use.

s) The statutory requirement on the Respondent is to ensure that the valuation as struck on each individual rateable property comprised in a bundle of rateable properties up for consideration equates with the net annual value as defined by Statute. Whilst ensuring that the valuation as struck or proposed for each individual rateable property equates with the net annual value, the Respondent must, in addition, ensure that the valuation as proposed by the Respondent is equitable and uniform. In other words, that insofar as is reasonably achievable, ratepayers in rateable occupation of properties which are similar/equivalent in terms of size, location and use are paying an equivalent amount in terms of their individual and respective share of the regional rate of burden.

t) Further, the Respondent, when exercising the not so enviable task of attaching a tax to commercial properties, must consider and if appropriate, attach appropriate weight to and make adjustment as appropriate for individual characteristics in an individual property, which said individual characteristics are, on balance, likely to cause the so-called hypothetical tenant to pay appreciably less than, colloquially put, the going rate.

u) When appeals on quantum land in the lap of the Tribunal the Respondent, when challenged, has to satisfy the Tribunal that he has met the requirements which are placed on him and in summary:

(i) That the proposed valuation for the property in respect of which issue is taken equates to the net annual value as defined.

(ii) That the Respondent has taken all appropriate or reasonable steps to ensure that the valuation as proposed is equitable and uniform.

(iii) That the Respondent has considered and if appropriate, has attached appropriate weight to all or any individual characteristics of a particular property which are likely to play on the mind of the hypothetical tenant.

v) When matters arrive before the Tribunal by way of appeal, the Respondent invariably strives to meet the obligation as set out above by proffering and offering for examination/cross-examination expert evidence from one or other of the Commissioner's panel of experts whose daily meat and drink is the valuation of commercial properties in various regional locations, with a view to proposing a rate for each individual rateable property, which said rate, in the said expert's professional opinion, meets the requirements as set out above.

w) Mr. Hazel has been proffered and offered in this particular case. Mr. Hazel has been examined and cross-examined. He has, and in the Tribunal's view, come out of the other end of examination/cross-examination with the core and/or substance of his professional/expert/evidence/opinion intact.

x) In Mr. Hazel's professional and expert opinion, the retail approach to valuation is, in the particular circumstances of this case, the proper approach to adopt; the subject property is situate in a part of Sligo Town which Mr. Hazel views as predominantly retail; part of Sligo Town is not, in Mr. Hazel's opinion, one of the primary retail locations; such accolade has been reserved for streets which have greater retail appeal; the properties on John Street, Sligo, including the subject property, boast what is, in Mr. Hazel's view, a retail façade.

y) Mr. Hazel has not, and as suggested, erroneously overlooked and/or disregarded the actual use to which the property has been put, as of the valuation date. In the Tribunal's opinion, Mr. Hazel has considered the actual use of the property as an approach to valuation. Having considered such use, Mr. Hazel takes the view that the actual use approach is not appropriate when faced, as he sees it, with an array of rateable properties, which to his trained and expert eye, are in the main retail in that they are, in fact, used as retail or have retail potential.

z) It is, in the Tribunal's view, clear from the evidence as presented by Mr. Hazel that this was not an arbitrary leap of faith on his part, with the intention and/or purpose of doing down a ratepayer whose business is not retail; there are other properties on John Street with a retail façade in actual use as offices. Those properties have had applied to them the retail approach to valuation.

aa) Whilst Mr. Hazel has been criticised for adopting the retail approach to a property which is in actual use as an office (Solicitor's office), there is, and in the Tribunal's view and in the circumstances and for reasons as set out herein, no merit in this criticism.

bb) For fear that the Tribunal, when coming to a determination on this particular issue, might be criticised for failing to expressly acknowledge and/or refer to the numerous Authorities that have been helpfully laid out before the Tribunal by Mr. Dodd B.L., the Tribunal, as it is bound to do, acknowledges and accepts and applied the law as set out, in particular, in the case of ***Harper Stores Limited v Commissioner of Valuation*** [1968] IR at page 166, which said case is authority for the proposition that the person charged with imposing the amount for valuation for commercial rates (the Respondent

in this instance) is entitled to consider, not just the actual use to which a property is put, but also any appropriate and/or viable potential use to which the property in its actual state lends itself. The subject property's potential for use as retail can scarcely be in issue, having regard to the evidence unchallenged above and having regard to the fact that Mr. McEnroe evidently appreciated and attempted (vainly) to exploit the property's retail potential.

cc) Having satisfied the Tribunal that insofar as this particular property is concerned, Mr. Hazel was entitled to use the retail approach to valuation, Mr. Hazel has proffered evidence from which he invites the Tribunal to conclude that the Respondent, when proposing a valuation for the subject property, has met the statutory requirement that the valuation as proposed equates to the net annual value "*the rent which the property in its actual state might reasonably be expected to let from year to year*".

dd) The within appeal is concerned with the value as struck for the ground floor of the subject property. As stated above, the subject property as constructed presents with a retail façade. The property is situate on John Street, Sligo. In terms of retail allure, John Street is, in the Respondent's opinion, secondary.

ee) The ground floor of the subject property boasts a total net internal floor area of 50.28 square metres configured as follows:

ff) Retail Zone A – 27.40 square metres

gg) Retail Zone B – 19.95 square metres

hh) Lobby – 2.93 square metres

ii) The measurement of the ground floor of the subject property as set out above is not in issue.

jj) As stated above, the Respondent is by law required to calculate a value for the subject property which:

(i) Meets the requirements of Section 48 of the Valuation Act, 2001, a valuation which, in summary, represents the annual rent which a willing tenant, as close as possible to the valuation date, is prepared to pay year on year for the subject property in its actual state, due regard being had to expressly provided for statutory assumptions.

(ii) Is fair and equitable to, on the one hand, the individual ratepayer who, by way of appeal, takes issue with the quantum of the valuation as calculated and/or as proposed and on the other, to other and in particular neighbouring ratepayers, ensuring and insofar as this is achievable, that ratepayers occupying, broadly speaking, equivalent properties are paying an equivalent share of the tax burden.

kk) Having regard, therefore, to the requirements of Section 48, it might be asked what annual rent a willing tenant is likely to pay for the subject property at or close to the valuation date (30th October 2015).

ll) The only admissible evidence touching on this key consideration is that of Mr. Hazel. As stated above, Mr. Hazel is an expert and as such is entitled to give expert evidence. Mr. Hazel's evidence has not been challenged in the normal sense of things. There is no opposing expert opinion to which the Tribunal can have regard and hold in the balance when, as urged by Mr. McEnroe, considering whether to accept and/or reject Mr. Hazel's expert opinion. That said, Mr. McEnroe as Appellant is, in the Tribunal's view, entitled to put the Respondent on proof, as it were. The Tribunal is, in turn, obliged to pay close attention to the expert evidence as adduced and having paid close attention to that evidence, is obliged to consider and decide whether that expert evidence (unchallenged), among other things, meets the requirements of Section 48.

mm) Mr. Hazel has evidenced three, as he terms it, 'key rental transactions'. The Tribunal has noted in particular, the evidence relating to key rental transaction No. 1. The property as therein referred to is located on John Street, Sligo. It boasts a retail façade. This retail façade is, in truth, more "*in your face*" than the subject property. It

is a ground floor property. It is slightly bigger than the subject property, boasting a total floor area of 65.17 square metres.

nn) The Tribunal notes that this property (key rental transaction No. 1) has been leased with a lease in place for 4 years 9 months, commencing on 1st March 2016.

oo) The rent per annum is recited as being €15,000.

pp) Thus presented, there is evidence (unchallenged) of a tenant in place in a property which is on the same street as the subject property, occupying a ground floor which is slightly larger than the subject property and wherein the tenant on a date which is, give or take, four months from the valuation date, paying an annual rent of €15,000.

qq) As is clear from the evidence of Mr. Hazel, this rental figure has been adjusted downwards, yielding a figure of €14,200, which said figure, in Mr. Hazel's expert opinion, is equivalent to the rent which a willing tenant would, more likely than not, be willing to offer for the property as of the valuation date.

rr) Further and as is clear from Mr. Hazel's evidence, he has applied the retail/zonal approach. In his expert opinion, the rental evidence which he has in respect of this property allows Mr. Hazel to apportion an amount of €240 per square metre for Zone A and €120 per square metre to Zone B for the property which is featured in key transaction No. 1.

ss) Mr. Hazel has put before the Tribunal evidence in respect of two other, as he terms it, key rental transactions, being key rental transactions 2 and 3. These properties are on Quay Street and High Street respectively. These separate properties are put in evidence because the streets in question, in Mr. Hazel's opinion, are what he has termed secondary trading locations. Each of these properties, that is to say, key rental transactions 2 and 3, boast a retail façade. Having said that, it is difficult from the photograph as put in evidence in key transaction 2 (Quay Street) what, if any, retail activity operated from this particular property as of the date on which the photograph was taken.

tt) In addition to this, key transactions 2 and 3 are slightly larger than the subject property.

uu) While there is evidence which points to the rents being paid by actual tenants, the leases referred to, commenced in July and February 2013. Those leases and the rent being paid on foot of same cannot, therefore and in the Tribunal's view, be regarded as the most reliable indicators of the annual rent which a willing tenant would be prepared to offer for a relatively speaking equivalent premises in a relatively speaking equivalent location on 30th October 2015.

vv) The Tribunal is not and in the circumstances, prepared to accept key rental transactions 2 and 3 as reliable and/or persuasive indicators of the amount of annual rent which a willing tenant would be prepared to pay for the subject property on a date which is at or close to the valuation date.

ww) The question is then whether the Tribunal can and in the circumstances and mindful in particular of the fact that the Respondent has been put on strict proof, safely and/or confidently rely on key transaction 1 when coming to a decision on a matter of critical importance; i.e. the amount of annual rent which a willing tenant can reasonably be expected to pay for the subject property on or about 30th October 2015.

xx) In addressing this particular question, the Tribunal and at the outset, emphasises the following:

yy) Mr. Hazel is proffered by the Respondent as an expert witness.

zz) Mr. Hazel's qualifications/expertise have not been challenged in any meaningful way.

aaa) Mr. Hazel's bona fides when tendering this evidence and when making himself available for cross-examination has not been challenged in any meaningful way.

bbb) The Appellant, Mr. McEnroe, has elected not to engage and/or consult with an expert valuer.

ccc) As alluded to above, in circumstances such as this, the Tribunal can and should be slow to reject the unchallenged evidence of Mr. Hazel whose function is to assist the Tribunal in coming to an informed and fair view concerning the amount of the valuation from which rates are then calculated and which an individual ratepayer is, in law, required to pay.

ddd) Mr. Hazel's evidence and insofar as it has been put forward for the purpose of assisting the Tribunal to come to a decision on the amount of annual rent a willing tenant is likely to pay for the subject property on or about 30th October 2015, is and for reasons touched upon above, both reliable and persuasive on this point;being evidence of a tenant in place in a property which is on the same street as the subject property occupying a ground floor which is modestly larger than the subject property and wherein the tenant is, give or take four months from the valuation date paying an annual rent of €15,000.

eee) The Tribunal has, and for reasons above, decided that key rental transactions 2 and 3 cannot be relied upon to assist the Tribunal in coming to a decision on what annual rent a willing tenant would be prepared to pay for the property (in its actual state) as of the valuation date.

fff) Having said that, the Tribunal notes that the Respondent, when considering the rental evidence as drawn from key rental transactions 1, 2 and 3, decided that this evidence supported the view that key rental transactions 1 and 2 would, more likely than not, as of the valuation date, attract a rent of €240 per square metre Zone A and the property as represented by key rental transaction 3 would, more likely than not and as of the valuation date, attract a rent of €260 per square metre Zone A retail.

ggg) It is clear from the evidence of Mr. Hazel that this valuation prompted the Respondent to apply a net annual value based on a valuation of €200 per square metre in respect of Zone A retail in the case of each of the properties represented by key rental transactions 1, 2 and 3. While the evidence as presented in respect of key rental transactions 2 and 3 does not and for the reasons set out above, assist in coming to a decision on the annual rent likely to be paid by a willing tenant on or about the

valuation date, it does, in the Tribunal's view, support the Respondent's assertion that the Respondent, when striving to assess a value for properties in the functional area then under review, endeavoured to ensure that the valuation as calculated was uniformly applied.

hhh) Mr. Hazel, in evidence, introduced what are referred to in his precis of evidence as NAV comparisons.

iii) They are three in number.

jjj) All three properties are situate on the same street and/or locality as the subject property (John Street, Sligo).

kkk) All three have been treated by the Respondent as retail. A zoning approach to valuation has been deployed in respect of each.

lll) It is clear from the photographs as put in evidence that each of the properties has a retail façade. Two of the three properties (NAV comparisons 1 and 2) are in use as offices. The third property (NAV comparison 3) is situate next door to the subject property. It appears from the photograph as produced to promote itself as a purveyor of pork and bacon.

mmm) It is, in the Tribunal's view, clear from the evidence as put forward under the banner of NAV comparisons that each of the properties has been treated by the Respondent for rating purposes as though it were retail and has, accordingly, been subject to the zoning approach to valuation.

nnn) The Respondent, when applying the zoning approach, has taken the view that a unit rate of valuation of €200 per square metre should apply to that portion of each property characterised as Zone A retail for rating purposes, and a rate of €100 per square metre should apply to that portion of each property as Zone B retail for rating purposes.

ooo) The picture that emerges from a consideration of this expert evidence, which said expert evidence is, as stated above, unchallenged save for the odd blush here and there, is that the Respondent, when casting his eye over what is sometimes referred to as a 'bundle of properties', in this case properties situated on a secondary retail location (John Street, Sligo) has been both fair and uniform in his approach to each of the said properties.

ppp) Each property has been treated as though it were in use as retail. Each has had applied to it the retail approach to valuation. The retail approach and insofar as it is relevant for the purposes of this appeal applied to each property (including the subject property) a value of €200 per square metre in respect of retail Zone A.

Conclusion

In conclusion, the Appellant has, as is his entitlement, required the Respondent to prove to the Tribunal's satisfaction that the valuation as proposed by the Respondent in respect of the subject property has been lawfully determined. In other words, that the value which the Respondent has put on the property equates to the NAV as defined under Section 48 of the Valuation Act, 2001; and further that the Respondent, when coming to his decision on value, has met his dual obligations of equity and uniformity and further again, that the Respondent, when coming to his decision on value, has considered and attached weight as appropriate to any peculiarities and frailties pertaining to the subject property which might materially and adversely impinge on the amount which a hypothetical tenant is likely to offer by way of rent for the subject property.

The Tribunal, for reasons as set out in this decision, is satisfied as follows:

(i) That the valuation as submitted by the Respondent in respect of the subject property has been lawfully determined. The value which the Respondent has put on the property equates to the NAV as defined under Section 48 of the Valuation Act, 2001.

(ii) That the Respondent is entitled, and in the circumstances, when assessing the value to have regard to the fact that the subject property has retail potential and is, accordingly, entitled to adopt the retail/zoning approach to valuation.

(iii) That the Respondent when coming to his decision on value, has met his obligations of equity and uniformity.

(iv) There is no evidence to suggest that the Respondent in coming to his decision, has overlooked and/or failed to attach any or any significant weight to any peculiarities or frailties pertaining to the subject property which might materially and/or adversely impinge on the amount which a hypothetical tenant is likely to offer by way of annual rent for the subject property. For the avoidance of doubt, there is no evidence that the subject property has been struck by any frailty and/or peculiarity which might materially and/or adversely impinge on the amount the hypothetical tenant is likely to offer by way of annual rent for the subject property

DETERMINATION:

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

And the Tribunal so determines.

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