

Appeal No: VA17/5/122

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

GORETTI DWYER

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2183650, Unit 1A & 2 Castle Street, Roscommon, County Roscommon

B E F O R E

Carol O'Farrell - BL

Fergus Keogh - MSCSI, MRICS

Sarah Reid - BL

Chairperson

Member

Member

**DETERMINATION OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF DECEMBER 2021**

1. THE APPEAL

1.1 By Notice of Appeal received on the 4th 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 €17,820.

1.2 The grounds of appeal set out in the Notice of Appeal are that the Respondent's determination of the NAV does not accords with that required to be achieved by section 19 (5) of the Valuation Act 2001 ('the Act') because:

1. *"The Valuation of the subject property is excessive and inequitable. The property's value as applied by the Commissioner is not in line with its actual rental value. Units are available in this development for as low as €100/week for entire properties.*

2. *The subject property was purchased for €55,000 in May 2016. The Commissioner's estimate of net annual value implies 3 years purchase which is completely out of line with expected yields in such property.*
3. *The location of the subject property is poor, being to the rear of Stone Court and a significant distance from the retail centre of Roscommon Town.*
4. *This is a failed development with almost all units in this section vacant and to let or for sale.*
5. *There is a measurement issue in relation to the property."*

1.3 The amount the Appellant considered ought to have been determined as being the valuation of the property was revised downwards to €5,340 from the figure of €6,500 stated in the Notice of Appeal.

2. THE FACTS

2.1 From the evidence adduced by the parties' representatives, the Tribunal finds the following facts.

2.2 The Property is located at Castle View, Castle Street, in Roscommon Town. It is a two-story end of terrace premises constructed in or about 2007 as part of the Castle View development. The development as constructed consisted of twenty-two independent commercial units, of which 11 were ground floor units and 11 were first floor units, each unit having separate own door access.

2.3 In May 2016, the Appellant purchased the ground floor and first floor units, which were known as unit 1 and unit 2 Castle View. Prior to the purchase, the upper unit was unoccupied and had not been valued by the Respondent.

2.4 The ground floor (unit 1) together with the adjacent ground floor (unit 3) were formerly occupied by one Mike Mulrennan who traded as Apache Pizza and had been valued together in accordance with the provisions of the Act. At the date of the hearing the only other units in Castle View valued for rating purposes were units 5, 6, 7, 19, 21 and 22.

2.5 Upon acquisition of the Property the Appellant carried out internal works to facilitate access from the ground floor to the upper floor via an internal staircase. The ground floor area measures 78.96m². The upper floor area measures 77.10m².

- 2.6 The Appellant occupies and uses the ground floor of the Property as a Pilates studio and the upper floor as a physiotherapy clinic.
- 2.7 On the 26th January 2016 the Respondent made a Valuation Order pursuant to section 19(1) of the Valuation Act, 2001 as amended, appointing a valuation manager to organise and secure the carrying out of a valuation of relevant property situate in the rating authority area of Roscommon County Council. The date by reference to which properties in that rating authority area were to be valued was the 30th day of October 2015.
- 2.8 On the 12th January 2017 a valuation certificate proposed to be issued under section 24(1) of the Act in relation to *51/unit 1A and 2 Castle Street Roscommon* was sent to Mike Mulrennan (the former occupier of those units) indicating a valuation of €17,820.
- 2.9 The Appellant, not having received any information concerning the valuation of her Property, contacted the Valuation Office to make an enquiry and in response to her enquiry received on the 22nd June 2017 a copy of the proposed valuation certificate that had been issued to Mike Mulrennan trading as Apache Pizza as the occupier and the property as 51/Unit 1A & 2 Castle Street Roscommon, County Roscommon.
- 2.10 Following receipt of the proposed valuation certificate, the Appellant engaged the services of Mr. Halpin. He carried out an inspection of the Property on the 26th June 2017 and made representations to the valuation manager on the Appellant's behalf on the 28th July 2017 contending that the proposed valuation was incorrect. In making his representations using the template form provided by the Respondent to ratepayers for that purpose, Mr. Halpin identified the Appellant as the occupier and informed the valuation manager that the Appellant had acquired the Property in May 2016, but Mr Halpin did identify or clarify the extent of the Appellant's Property.
- 2.11 Furthermore, Mr. Halpin did not raise any issue in respect of the description or the measurements of the Property. He ticked the boxes on the Representation Form confirming the floor levels, uses and areas upon which the valuation in the proposed certificate was based to be correct. He did not tick the box to indicate that the valuation was incorrect based on its physical elements and despite the Form warning that "*If any element of your property is not represented in the table provided with your proposed Valuation Certificate, you must include it in your opinion of value at Section 5 below*" the

first-floor area of the Appellant's Property was not included in his opinion of value in Section 5 of the Representations Form. Following consideration of those representations and assuming that all property details as stated in the proposed valuation certificate were correct as no issue have been taken with those details as stated other than valuation, the valuation manager did not consider it appropriate to reduce the valuation.

- 2.12 A final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €17,820. The final valuation certificate identified Mike Mulrennan trading as Apache Pizza, as the occupier and the property was described as 51/Unit 1A & 2 Castle Street Roscommon, County Roscommon.
- 2.13 The valuation list for the rating authority area of Roscommon County Council was published by the Respondent on the 15th September 2017. The valuation date for those relevant properties is the 30th October 2015.
- 2.14 Mr Diskin informed the Tribunal by email of the 30th October 2020 that the adjacent ground floor (unit 3) was sold and is now owned and occupied by Mr. Qing Cheng Xie T/A Likee Noodle Box & Asian Food.

3. THE HEARING

- 3.1 The Appeal proceeded by way of a remote hearing, on the 3rd November and the 30th day of November 2020. The Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. and the Respondent was represented by Mr. Liam Diskin B.Sc. (Property Management & Investment) of the Valuation Office.
- 3.2 In accordance with the Rules of the Tribunal, the parties exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. Each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.
- 3.3 When the appeal was opened before the Tribunal on the 3rd November 2020, the Tribunal had a general discussion with the parties' valuers given the somewhat unusual positions adopted by each of them in their respective précis of evidence due to the fact that the unit of valuation was not correctly identified for the purpose of the valuation. The appeal was initially adjourned to the 24th November but as it was unable to proceed on that date it was further adjourned to the 30th November to afford the valuers an opportunity to

consider their respective positions in light of the nature and extent of the Tribunal's jurisdiction to hear appeals under s.34 of the Act.

- 3.4 The Respondent corresponded with the Tribunal on 17th November 2020 to indicate a view that the appeal should proceed on the basis that the Tribunal has jurisdiction under s.37(2)(b)(vi) of the Act to subdivide property into two relevant properties and to determine the value of each subdivided property. By email of the same date, Mr Halpin indicated his view that the Tribunal should issue a preliminary judgment outlining the course of action given that the Respondent was renewing its request for subdivision of the Property. At the resumed hearing, neither party was legally represented.
- 3.5 By email dated the 17th November 2020 the Tribunal was informed that the Respondent intended to file and exchange an amended Précis of Evidence. The Respondent was advised that the Tribunal had not given leave to either party to file additional evidence. Notwithstanding this communication, the Respondent proceeded to file an addendum précis of evidence on the 23rd November 2020 and the following day sought the leave of the Tribunal to do so. When the hearing resumed on the 30th November 2020, the Tribunal did not admit the Addendum as it detailed matters that were already known or could be inferred from the documents appended to the witnesses' précis already in evidence before the Tribunal and as to the one new matter that was raised consisting of an alleged breach by the Appellant of s.46 of the Act, the Tribunal's jurisdiction to hear appeals is prescribed by s.34 and a complaint alleging breach of s.46 is outwith its jurisdiction.

4. THE ISSUES

- 4.1 The sole issue on the appeal is whether the Respondent has determined the correct Nav of the Property.

5. RELEVANT STATUTORY PROVISIONS:

- 5.1 Under S. 13 of the Act the Respondent must determine the value of all relevant properties (other than relevant properties specified in Schedule 4) in accordance with the provisions of the Act. Section 15 of the Act provides that, subject to sections 16 and 59, relevant property shall be rateable. S. 14 (1) provides:

“A provision of this Act providing that relevant property shall be rateable shall be construed as a provision to the effect that the property is property in respect of which a rate may be made and like provisions of this Act shall be construed accordingly.”

- 5.2 The meaning of relevant property is important to the issue arising on this appeal. Section 3 of the Act requires that relevant property be construed in accordance with Schedule 3. If a property falls within one of the categories of properties listed in paragraph 1 of Schedule 3 and complies with the condition referred to in paragraph 2 of that Schedule, the property is rateable. The first category of property in paragraph 1 is buildings.

The condition in paragraph 2 of Schedule 3 is:

“(a) is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property, or

(b) is unoccupied but capable of being subject of rateable occupation by the owner of the property”

- 5.3 The net annual value (NAV) of a property has to be determined in accordance with the provisions of s.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.”

and the following factors set out in subsection (3) are to be considered 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.”

5.4 Section 19 of the Act as amended by Section 7 of the Valuation (Amendment) Act 2015 provides:

(1) The Commissioner, after consultation with the Minister for the Environment, Community and Local Government and the rating authority concerned, may make an order (in this Act referred to as a ‘valuation order’) specifying a rating authority area as being an area in relation to which the Commissioner proposes to appoint a person under subsection (2) to organise and secure the carrying out of a valuation of relevant property situate in that area (other than any property specified in paragraph (a) or (b) of that subsection).

(1A) A valuation order may specify that the valuation of a rating authority area, or a portion thereof, shall be carried out in accordance with regulations made under section 26B.

(2) As soon as may be after the making of a valuation order, the Commissioner shall appoint a person to organise and secure the carrying out of a valuation of every relevant property on the valuation list situate in the rating authority area specified in the order and any relevant property entered on that list between the making of the valuation order and the publication of the list, other than—

- (a) any relevant property the subject of an order under section 53, or*
- (b) any relevant property specified in Schedule 4. 27*

(3) The person so appointed is referred to in this Act as a "valuation manager".

(4) For the purposes of subsection (2) a valuation manager shall, in accordance with subsection (5), arrange for –

- (a) the carrying out of a valuation of each property concerned by one or more officers of the Commissioner (who may include that valuation manager), and*

(b) the drawing up and compilation of a valuation list for the rating authority area concerned.

(5) The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable) –

(a) correctness of value; and

(b) equity and uniformity of value between properties on that valuation list,

and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

(6) Where the person proposed under subsection (1) is not an officer of the Commissioner, the Commissioner may, with the consent of the Minister, enter into an arrangement (with such conditions as may be agreed between the parties) with that person (who may be assisted by other persons) to perform that function.

(7) Where subsection (5) applies and the Commissioner considers it appropriate, an officer of the Commissioner may assist the valuation manager.

5.5 Section 34 of the Act as amended by Section 18 of the Valuation (Amendment) Act 2015 provides:

(1) In relation to a property, a specified person may appeal in writing to the Tribunal against—

(a) a determination under section 19 or 28 of the value,

(b) any other detail stated in the relevant valuation list,

(c) any decision under this Act to include or not to include the property in the relevant valuation list or to exclude the property from that list,

(d) any decision by the revision manager under section 28(4)(a) or (b),

(e) in the case of a decision by the revision manager concerned to so exclude the property, any detail stated in the notice concerned issued under section 28(7), or
(f) any decision of the revision manager concerned that the circumstances referred to in section 28(4) do not exist for the exercise of the powers under that section in relation to the property.

(2) An appeal under subsection (1) shall be made within 28 days from the relevant date.

(3) A person who fails to supply information specified in a notice served under section 45(1) prior to the issue of –

(a) the valuation certificate pursuant to section 24 or 28,

(b) a global valuation certificate, or

(c) a notice under section 28, shall not be permitted to ground or support an appeal to the Tribunal by reference to information that the person has so failed to supply.

(4) In this section— ‘relevant date’ means, as appropriate—

(a) the date of the relevant valuation list being caused to be published under section 23,

(b) the date of issue under section 28(6) of a valuation certificate in relation to the property, or

(c) the date of issue under section 28(7) or (9) of a notice in relation to the property.

‘specified person’ means—

(a) an occupier of property, in respect of that property,

(b) an occupier of relevant property, in respect of any other property, situate in the same rating authority area as that relevant property is situate,

(c) a rating authority, in respect of any property situate in its area, and

(d) a person, in respect of any property in relation to which he or she is an interest holder.

5.6 Section 37 of the Act, as amended by Sections 20 of the Valuation (Amendment) Act 2015 in material part provides:

“(1) The Tribunal shall consider an appeal made to it under section 34; in considering the appeal, unless the issues in the appeal do not relate to the value of property, the Tribunal shall achieve a determination of the value of the property concerned that accords —

(a) with that required to be achieved by section 19(5), or

(b) in the case of an appeal from a valuation made under section 28, with that required to be achieved by section 49.

(2) Having considered the appeal, the Tribunal may, as it thinks appropriate

(a) disallow the appeal and, accordingly, confirm the decision of the Commissioner, valuation manager or revision manager, as appropriate, or

(b) allow the appeal and, accordingly, do whichever of the following is appropriate

—

(i) decide that the circumstances referred to in section 28(4) existed for the exercise of the powers under that section,

(ii) in accordance with the matters set out in section 19(5) or 49, as appropriate, increase or decrease the valuation as stated in the valuation certificate,

(iii) decide that the property ought to be included in the relevant valuation list, and determine the valuation in accordance with the matters set out in section 49,

(iv) decide that the property, ought to be excluded from the relevant valuation list,

(v) decide to amalgamate relevant properties, the subject of 2 or more appeals, and determine the valuation of the amalgamated property, in accordance with the matters set out in section 49,

(vi) decide that the property ought to be subdivided into 2 or more relevant properties, and determine the valuation of each such subdivided property in accordance with the matters set out in section 49,

(vii) amend any detail, other than the valuation, as stated in the valuation certificate,

(viii) amend any detail stated in the notification made under section 28(7).

6. APPELLANT'S CASE

- 6.1 Mr Halpin adopted his précis of evidence and described the Property as comprising a two-storey corner unit with surface level parking in a development of 22 own door commercial units, half of which are above shop. He confirmed that the Appellant appealed against the Respondent's determination of value.
- 6.2 Mr. Halpin gave evidence that although the Property was misdescribed as comprising only ground floor areas, that did not strike him as overly concerning or unusual as he had previous experience of a proposed certificate being incorrect on its face, for example, by misdescribing the levels in a property. Instead, he looked to the overall floor areas which, when compared with his own measurements of the Property, were broadly similar. On this basis, Mr. Halpin said he did not see any grounds to raise any objection to the floor areas when making representations on the proposed valuation.
- 6.3 In respect of the first-floor area, Mr. Halpin argued that by reason that the former first floor unit had never previously been valued, it ought not to be valued on the appeal as it did not constitute 'relevant property' within the meaning of Schedule 3 of the Act. When asked to identify the provision in the Act upon which he relied in support of his argument that the upper unit was not relevant property not having been previously entered on the valuation list, Mr. Halpin pointed to s.19(2) of the Act.
- 6.4 Mr. Halpin relied on 5 comparisons proximate to the Property in support of his argument that the general economic market in Roscommon, at the valuation date, was not reflected in the value applied by the Respondent. He relied upon five comparison properties. He furnished the following property numbers for his second, third, fourth and fifth comparisons: PN 2189926, PN 2191243, PN 2187646, and PN 2180364.
- 6.5 The first comparison is situated in Castle View in close proximity to the subject Property. It was held on a one-year lease from February 2015 at €3,600 per annum (i.e., €300/month). Following the expiry of the lease, Mr. Halpin stated the property has been continuously occupied at the same rent but on a month-to-month basis. He said the gross rent devalued on an overall basis as follows: $78.96\text{m}^2 @ €43.80/\text{m}^2$ (Estimated Zone A at €65/m²).
- 6.6 The second comparison (PN 2189926) was vacant and to let at an asking rent of €6,200 per annum in 2017/2018. Mr. Halpin observed that this property was unable to attract a

tenant despite being offered to let for a period of almost a year. The asking rent devalued as follows: Retail 87.23m² @ €71/m².

- 6.7 The third property (PN 2191243) was taken on a one-year lease from 20th July 2015 at €2,716 per annum. Mr Halpin gave evidence that this property attracted a stepped rent, two months' rent free, then seven months at a rate of €50/week and the final three months at a rate of €100/week. He said that the net effective rent devalued as: Zone A 23.79m² @ €75/m², Zone B 23.43m² @ €37.50/m² and (retail overall 47.22m² @ €58/m²). He observed that this property had been the subject of a Tribunal determination (under Appeal Reference VA17/5/549) and the NAV was determined as: Zone A 23.79m² @ €135/m², Zone B 23.43m² @ €62.50/m².
- 6.8 The fourth property (PN 2187646) was described by Mr. Halpin as a superior, modern property that has also been subject to an appeal before the Tribunal (Appeal Reference VA17/5/267) and the NAV of the ground floor retail element was determined as: Zone A 51.49m² @ €135/m², Zone B 65.27m²@ €67.50/m².
- 6.9 The fifth property (PN 2180364) was also the subject of an appeal before the Tribunal (Appeal Reference VA17/5/269) arising from which the NAV was determined as Zone A 57.95m² @ €100/m², Zone B 56.68m² @ €50/m² and Zone C 16.12m² @ €25/m². Mr. Halpin further noted that the Tribunal's determination equated to an overall value of €67.92/m² and a yield of 13.66% on the purchase price which rendered it a more attractive option than the subject Property in the circumstances. Mr. Halpin contended that this property's location is superior to that of the subject Property.
- 6.10 Based on the general trends shown in Roscommon town, and relying on the above comparisons, Mr. Halpin contended for a NAV of €5,340 for the subject Property, which devalues as follows:

Level	Use	Area (sq.)	€/per m ²	NAV
0	Retail Zone A	35.96	€100	€3,596.00
0	Retail Zone B	37.95	€50	€1,898.00
0	Store	5.05	€10	€51.00

- 6.11 Whilst maintaining his claim that the first-floor accommodation in the subject Property did not fall to be valued on a without prejudice basis, in the event the Tribunal were to

take a contrary view, Mr Halpin contended for a valuation of the first floor of the Property area of 77.10m² at a rate of €25/m² which would increase the NAV of the entire Property to €7,272.50.

- 6.12 Mr. Halpin argued that the Valuation Office had failed on an administrative level in their dealings with the Appellant and that it was entirely unfair to deflect criticism from themselves and to pass blame onto her for what was really their mistake. Mr. Halpin said that the Appellant was a *bona fide* purchaser of the Property and had acquired the Property unaware that the Respondent had previously valued the ground floor together with the adjacent ground floor unit and had continued to value it in that manner on foot of the Valuation Order on the mistaken assumption that the ground floor continued to be occupied as a double unit connected to the adjacent ground floor unit. Furthermore, Mr. Halpin argued that his own measurements were broadly similar to those provided by the Respondent and so no obvious or immediate red flags were raised with him when he inspected the Property.

7. RESPONDENT'S CASE

- 7.1 Mr. Diskin, for the Respondent, adopted his précis of evidence. He outlined the valuation history of the unit 1 and unit 3 Castle Street. He explained that the ground floor of the Appellant's property, prior to her occupation, had been previously occupied with unit 3 as a ground floor double unit and is now occupied with the upper unit by the Appellant. Accordingly, and in the absence of the different floor areas being flagged when representations were made, the Respondent was not aware that the Appellant occupied a unit of valuation that was materially different from that described in the Valuation Office records.
- 7.2 Mr Diskin maintained that the onus was on the Appellant, and/or her agent, upon receipt of the proposed valuation certificate to raise the issue of incorrect floor areas. He stated that it was or ought to have been obvious to Mr. Halpin that the property identified in that certificate did not in fact correspond to the units occupied by his client.
- 7.3 He accepted that the Appellant has no material interest in the adjacent ground floor unit (unit 3), and requested the Tribunal to subdivide the property, as it appears in the List, into two properties and proceed to value both the subject Property and the 'new' adjacent ground floor unit separately.

- 7.4 Mr Diskin contended that the ground floor valuation of €150/m² Zone A, as applied in the final valuation certificate, was appropriate notwithstanding the discrepancy in the Property's footprint as stated therein. In support of his valuation, Mr. Diskin relied on three key rental transactions (PN 2202749, PN 5007086 and PN 2210777) each of which had a net effective rent ('NER') in excess of €150/m² Zone A at the valuation date.
- 7.5 His first key rental transaction property (PN 2202749) was taken on a ten-year lease on the 1st April 2007, as reviewed 1st April 2012, with an annual rent of €14,000. The NER calculated on 30th October 2015 was €13,560.68 analysed as follows: Retail Zone A €235.80 per m². Retail Zone B €117.90 per m². The NAV for this property is €8,260.00.
- 7.6 The second key rental transaction property (PN 5007086) was taken on a five-year lease on the 1st December 2014 with an annual rent of €9,620. The NER calculated on 30th October 2015 for this property was €8,772.53 analysed as follows: Zone A €170.20 per m² / Zone B €85.10 per m² / Zone C €42.55 per m². The NAV for this property is €7,680.00.
- 7.7 The third key rental transaction property (PN 2210777) was taken on a one year rolling lease on the 1st June 2011 with an annual rent of €8,840. The NER calculated on 30th October 2015 for this property was €9,105.20 analysed as follows: Zone A €170 per m²/ Zone B €85 per m² / Zone C €42.50 per m² The NAV for this property is €7,990.00.
- 7.8 In addition to these key rental transactions, Mr. Diskin relied on three 'NAV' comparisons, close to the subject Property, all of which had a Zone A rating of €150 per m² (PN 2191243, PN 2191245, PN 2189928). Of these, only one, PN 219124, had first floor accommodation.
- 7.9 The first NAV comparison (PN: 2191243) was shown to have Retail Zone A at €150.00 and Retail Zone B at €75.00 This property was located within the same development as the subject property.
- 7.10 The second NAV comparison relied on by the Respondent (PN 2191245) was shown to have Retail Zone A at €150.00, Retail Zone B at €75.00 per m² and first floor office use at €45.00 per m². This property was also located within the same development as the subject property. When asked in cross examination by Mr. Halpin what evidence was relied on to support the figure of €45.00, Mr. Diskin confirmed he had none but that the

occupier in question had accepted that figure and he considered it to be fair and reasonable. Mr. Diskin further stated the value of similar accommodation in better locations would be €50 per m².

7.11 The third NAV comparison (PN 2189928) was shown to have Retail Zone A at €150.00, Retail Zone B at €75.00 and Retail Zone C at €37.50. Mr. Diskin noted that although not within the same development as the subject Property, this property was approximately 50 meters from it.

7.12 In respect of the approach the Tribunal should take when valuing the Appellant's property, Mr. Diskin maintained his position that the Tribunal had jurisdiction under Section 37(2)(b)(vi) to subdivide the property as it appeared on the List, and value it along with the newly separated adjacent ground floor unit. In this regard, Mr. Diskin sought valuations of the two properties as follows:

The subject Property (PN:2183650)

Level	Use	Area m ²	€/per m ²	NAV
0	Retail Zone A	35.96	€150	€5,394.00
0	Retail Zone B	37.95	€75	€2,846.25
0	Store	5.05	€15	€75.75
1	Office	77.10	€45	€3,469.50
Total NAV				€11,785.50

The final figure ('Total NAV') provided by Mr. Diskin in his Précis was incorrectly calculated. The Tribunal has therefore amended that figure in the table above to €11,785.50.

The 'adjacent unit'

Level	Use	Area m ²	€/per m ²	NAV
0	Retail Zone A	35.96	€150	€5,394.00
0	Retail Zone B	37.95	€75	€2,846.25
0	Store	5.05	€15	€75.75
Total NAV				€8,316.00

8. FINDINGS AND CONCLUSIONS

8.1 Regrettably, mistakes were made on both sides in the valuation of the Property, the subject of this appeal. There clearly was no inspection of the Appellant's property prior to the issue of either the proposed or the final valuation certificate by a valuation officer.

The Appellant's agent was remiss in not informing the Respondent of the correct measurements of the Appellant's Property or of the fact that the Appellant occupied a ground floor and upper floor unit. Despite being informed that the Appellant was the occupier, the Respondent issued a final valuation certificate to her which named the former occupier of unit 1 and 3 as the occupier.

- 8.3 Section 26 affords ratepayers who are dissatisfied with a proposed valuation, or any other material particular stated in a copy valuation certificate, the opportunity to make representations to the valuation manager. The name of the occupier, the address of the property and the measurements of the property are material particulars. While the Tribunal has no doubt that the Appellant's agent did not intend to misrepresent or mislead the valuation manager, his explanation for not seeking to correct the floor areas as stated in the copy valuation certificate is simply unsatisfactory. It should have been obvious that the Zone A and Zone B area measurements (161.50m²) used by the Respondent to calculate the valuation indicated a ground floor area of much larger size than the ground floor area of the Appellant's property which measures 78.96m². If ratepayers or their agents do not point out errors on a proposed valuation certificate or a valuation manager is not able to accept information provided by, or on behalf of, ratepayers at face value without having to undertake time consuming investigations, his or her ability to maintain an accurate list is seriously prejudiced.
- 8.4 On an appeal against a valuation made under s. 19, the Tribunal has to determine the value of the property the subject matter of the appeal so as to achieve, as far as is reasonably practical, a valuation that is correct and equitable and relative to the value of other comparable properties on the valuation list in the relevant rating authority area.
- 8.5 Mr Halpin's approach to the valuation of the Property was to value the ground floor only on the basis that the upper floor was not 'relevant property' within the Act, as it had never been entered in the valuation list. In this regard he relied upon s.19(2) which provides:

(2) As soon as may be after the making of a valuation order, the Commissioner shall appoint a person to organise and secure the carrying out of a valuation of every relevant property on the valuation list or existing valuation list situate in the rating authority area specified in the order and any relevant property entered on that list between the making of the valuation order and the publication of the list, other than —

- (a) any relevant property the subject of an order under section 53, or*
(b) any relevant property specified in Schedule 4.

- 8.6 The Tribunal cannot agree with this argument. It is clear from s.19 that the valuation manager must value every property on the valuation list, including properties entered in the list in the interval between the making of a Valuation Order and the publication of the valuation list thereafter. The provision captures relevant properties not previously valued. The Tribunal is satisfied that the Property, was entered on the list (albeit the floor areas were not properly valued) between the making of the Valuation Order and the publication of the list.
- 8.7 This Appeal relates solely to the Property (units 1 and 2 combined) that is owned and occupied by the Appellant. It is this Property that falls to be considered by the Tribunal and the Tribunal is satisfied that it is 'relevant property' in accordance with the provisions of the Act and that the Appellant is the rateable occupier. Unit 3 Castle Street is a separately owned property and is not occupied by the Appellant. There is no appeal before the Tribunal in respect of unit 3 and accordingly the Tribunal has no jurisdiction to make any orders in respect of unit 3.
- 8.8 Mr Diskin's approach to the valuation of the Property was to request the Tribunal to subdivide the property formerly known as unit 1 and unit 3 and to value the Appellant's property and unit 3 separately pursuant to s.37(2)(b)(vi). This provision enables the Tribunal to decide that a property ought to be subdivided into 2 or more relevant properties and to determine the valuation of each subdivided property in accordance with the matters set out in section 49.
- 8.9 We are unable to agree with Mr. Diskin's argument that the Tribunal has power to subdivide the properties and value the subdivided properties in accordance with s.49 by virtue of s.37(2)(b)(vi). S.34(1) identifies the decisions that may be appealed to the Tribunal. The appeal comes before us in respect of a determination of value made under s.19 of the Act not section 28. There was no application made to the Respondent under s.27 of the Act for the appointment of a person under s.28(3) in respect of units 1 and 3 Castle Street and accordingly there is no decision by a revision manager to subdivide them and value them separately.

- 8.10 The reference in s.37(2)(b)(vi) to the subdivision of a property into 2 or more properties and the valuation of each in accordance with s. 49, is a jurisdiction that can only be exercised by the Tribunal when a determination is made pursuant to s.28 of the Act which has been appealed to the Tribunal. This is evident by the reference in s.37(2)(b)(vi) to s.49. S.49 provides that if the value of a relevant property falls to be determined for the purpose of s.28(4) (or on an appeal from a decision under that section) the valuation of that property must be made by reference to the values as appearing on the valuation list (i.e., by reference to the tone of the list). A determination of value made pursuant to s.28(4) can only arise when a revision manager considers that a material change of circumstances has occurred since a valuation under s. 19 was last carried out in the relevant rating authority area or since the last previous exercise of powers under s.28(4).
- 8.11 While noting that both valuers put forward several properties as being comparable to the subject Property and those properties provided some information regarding the local market, the Tribunal finds that these are of limited value in estimating the NAV is due to the fact they have locational differences, were historic transactions, relate to short term lettings of no more than a year or by reason of insufficient information as to the terms upon which they were let.
- 8.12 Having regard to the evidence before it, the Tribunal finds as follows:

Ground floor: The Tribunal determines a rate of €135 per m² Zone A is appropriate in the circumstances. The subject property is based in a tertiary location that does not attract a wide range of retail or office occupiers. The intended use of the properties in the Castle View development for retail, has morphed into service use.

Upper floor: In respect of the upper floor of the property, neither Mr. Halpin nor Mr. Diskin adduced any rental evidence to support or justify their respective valuation of the upper floor as €25.00 per m² and €45.00 per m², respectively. Notwithstanding this, evidence was adduced in Mr. Diskin's second comparison (PN 2191245) that the first-floor office in that property was entered on the list at €45 per m² and as there is no other evidence before the Tribunal, we have applied that figure.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal amends the name of occupier on the valuation certificate to Gorette Dwyer and allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €10,940.00 as follows:

Level	Use	Area m²	€/per m²	NAV
0	Retail Zone A	35.96	€135	€4,855.00
0	Retail Zone B	37.95	€67	€2,543.00
0	Store	5.05	€15	€75.75
1	Office	77.10	€45	€3,469.50
Total NAV				€10,942.50
				Say €10,940.00