Appeal No: VA17/5/478

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020

Sean Dooley **APPELLANT**

and

Commissioner Of Valuation **RESPONDENT**

In relation to the valuation of
Property No. 1334541, Retail (Shops) at Floor 0,1,1 Magazine Road, Athlone, County Westmeath.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF JANUARY 2022

BEFORE

Hugh Markey –FRICS FSCSI, **Deputy Chairperson**

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th 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 €20,500.

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 :

- *"I feel the NAV is too high in comparison to other business locally.*
- *The NAV is significantly higher than my uncles[sic] shop across the road.*
- *The goods lift to bring stock upstairs has been condemned.*
- *The street is extremely neglected.*
- *Valuation is based on rental income we have no intention to rent our shop.*
- *The increased costs have a serious threat to our staff levels."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €2328.97

2. RE-VALUATION HISTORY

2.1 On the 12th day of January, 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €22,300.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €20,500.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €20,500.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is the 30th day of October, 2015.

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. **FACTS**

4.1 The parties are agreed as to the following facts.

4.2 The floor areas have been agreed as comprising Ground Floor 95.52 sq. m. and First Floor 95.88 sq. m.

5. ISSUES

The sole issue arising in this appeal is one of quantum.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

"The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value."

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

"Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant."

7. APPELLANT'S CASE

7.1 Mr Andrew Carberry MRICS MSCSI RICS Registered Valuer, Director, Power Property submitted a précis of evidence and a counter submission on behalf of the Appellant. His evidence can be distilled down to his opinion that the Respondent's use of zoning as applied to the subject was unfair and created an anomalous situation whereby a much large shop opposite with 10 car spaces had a lower NAV than the subject of this appeal.

He did not dispute the Respondent's Zone A rate applied to shops on this street, rather, he posited that its application was flawed and the resultant NAV was unfair and inequitable..

He suggested a correct course of action for the Respondent to adopt was not just to arrive at an NAV based on zoning, but to stress test the result by considering the value on an overall basis as a check to ensure fairness, equity and uniformity.

In outlining what he perceived as the anomalies that can arise by a reliance on zoning, he cited the example of a shop directly opposite with an NAV of €17,800. This was despite the fact that it is detached, has 10 car spaces and is larger on the ground floor (207.3 sq. m. vs 95.52 sq. m.).

The building opposite has a lower ground/basement floor of 192.3 sq. m. – the subject has a first floor of 95.88 sq. m., in use as a storage area.

Mr Carberry introduced 3 market rental comparators from nearby Connaught Street which, he suggested, is a better retail location. He analysed these at overall rates of between €63.15 and €123.34 – he explained the latter as having being let as offices which use commanded higher rents. He also analysed these letting on a zoned basis as rents of €72.75 -€176.83 per sq. m. zone A on a net effective rent (NER) basis. He said none of these rents supported the level of €200 per sq. m. applied by the Respondent to Connaught Street and, as a different Division found in VA17/5/1192, an adjustment was necessary before applying these rents to Magazine Road.

The witness submitted 8 NAV comparables. Considering those which the Tribunal to be of assistance:

Comparable 1 PN 133563 This is the property immediately opposite and which the witness analyses the NAV as representing €67.50 per sq. m. with €20 applied to the lower ground/basement.

The second, PN 1335648, is of some assistance. It has 3 full zones and is valued at €150 per sq. ft. zone A. This is analysed as an overall rate of €72.54 as opposed to €130.07 for the subject.

The third, PN 1335814 is of little assistance insofar as it valued as a store but the rate applied to the first floor offices (€30 per sq. m.) is informative.

The next comparator PN 2201636 is a convenience store valued at €150 zone A. Mr. Carberry analyses this as €50.03 per sq. m. on an overall basis. This has 3 full zones and a significant 'remainder'.

Comparator No. 5 PN 1334675 was introduced to demonstrate the rate applied to what he described as 'superior stores' with better access than the subject, yet were valued at €20 per sq. m as opposed to the €85 per sq. m applied to the store in the subject.

Comparator No 6. PN 2184098. In this case, Mr. Carberry suggests the Respondent has adopted a ‘hybrid’ method of valuation by applying a zone A rate of €200 per sq. m. to part of the ground floor (one zone) and the balance (offices) valued at €20 per sq. m.

Comparator No 7. PN 1334543. The witness highlighted the fact the ground floor office element of this retail property is valued at €20 per sq. m.

Comparator No. 8. PN 1335022 is a small retail unit with a single zone, valued at €150 per sq. m., while the store on the ground floor is valued at €15 per sq. m.

By way of counter submission, Mr Carberry put forward the follow:

For the Respondent to achieve both (a) correctness of value and (b) equity and uniformity of value between properties on that valuation list, Mr Murphy should have adopted a ‘stand back and look’ approach to the subject.

He suggested the rate of €85 per sq. m. applied to what he described as the dismal condition of the first floor of the subject property was more in line with 1st floor offices in good condition in Athlone Town Centre. He identified 3 such properties by way of illustration: PN No. 5009029; PN 2150247 and PN 2150250, all located in Athlone Town Centre and valued at €85 per sq. m.

He suggested the Respondent was mistaken in suggesting the first floor had independent access and introduced to illustrate, that while there was a doorway, this gave access to a store and in turn to the first floor. He also disputed the description of the goods lift noting ‘it was a small capacity goods lift only capable of transferring a small amount of goods unaccompanied to the first floor’.

Mr Carberry dealt, at some length and in some detail with the issue of zoning and how, in his view, it can result in anomalous results, particularly for wider or shallow units.

He referenced and quoted from the SCSI Professional Guidance - Retail Zoning for the Chartered Surveyor - Information Paper - May 2015 to support his view.

At some length, he commented on the Respondent’s KRT comparables noting the first was evidence from 2004: the second is a common comparison which he analyses, on an overall basis at €74.92 per sq. m. on the ground floor, having allowed a 50% ‘weighting’ for the stores. He said this level (€74.92per sq. m.) compares with the rate of €130.07 overall applied to the subject.

He suggested KRT’s 3 & 4 should not be considered as they were food users and as such were in a different category.

He commented on the Respondent’s NAV comparisons as follows:

NAV Comparison 1 - Appealed by a Lay Appellant and a poorly presented case.

NAV Comparison 2 – Also a restaurant/take away. He noted the actual zone A rate was €450 per sq. m. and posited that the occupier was quite happy to accept the valuation. He noted the ground floor store which is valued at €20 per sq. m. It is divided structurally from the retail space which he suggested 'is no worse than the structural separation of one floor over another'.
Comparison 3 -also a restaurant on Connaught Street. Mr Carberry noted the store in this property is at ground floor level and yet is assessed at €20 per sq. m.
Comparable 4 – He suggested that due to ownership issues this may not have been appealed. He noted the store in this property is at ground floor (street) level with an electric roller shutter door and ramped access to a large rear garden that has vehicular access of Patrick Street and yet is assessed at €20 per sq. m.
Comparable 5 – Mr. Carberry asked that this comparison be ignored due to its status as a former bank and doubts over the areas. He did note the valuation of the ground floor store at €20 per sq. m.
Comparison 6 – This is a restaurant trading over two levels, with the upper level capable of independent trading.
Comparison 7 -Mr. Carberry acted for the appellant in this case and commented that the Zone A level of €200 for Connaught Street is not being disputed in this case.
He suggested Mr. Murphy had referred to an allowance for the frontage to depth ratio and noted the allowance was doubled on appeal from 10% to 20%.
Comparable – 8- Mr Carberry disputed the Respondent's zoning and noted that it is valued at €72.54 as opposed to €130.07 for the subject. He further notes that this property has never been in retail use but is used as an office.
Comparison 9 - He notes this property is substantially smaller and better configured than the subject.
Comparable 10 – Mr. Carberry suggest this comparison is substantially smaller than the subject.
In summary and inter alia, Mr. Carberry commented 'This slavish adherence to a practice or method of valuation is not uncommon in the Valuation Office and it means that there is generally an unwillingness to consider alternatives even where there is a valid argument for such alternatives. In the case of the subject property, it is undeniable that the valuation imposed creates a result on an overall basis which is way out of kilter with any 'tone' the Valuation Office would refer to'.

Witness Opinion of Value

Mr Carberry submitted that a net annual valuation of €9,500 was fair and reasonable having regard to the location, size, configuration, use and nature of the subject property.

Level	Use	Area (m²)	NAV (€ per M²	NAV (€)
0	Shop	95.52	80.00	7,641.60
1	Store	95.88	20.00	1,917.60
			Total (€)	**9,559.20**
			Valuation (€)	**9,500.00**

8. **RESPONDENT'S CASE**

8.1 The Respondent was represented by Mr. Patrick Murphy MA (Mgm) BSc. (Surv) MRICS MSCSI. Mr. Murphy submitted a Statement of Evidence, outlining his opinion of the net annual value (NAV) and supporting evidence.

Mr. Murphy outlined how the property's valuation level per sq. m. was derived from an analysis of Key Rental Transactions in the area which he outlined in his evidence. He noted that a rate of €150 zone A had been applied to retail units on the street that were suitable for zoning and that a rate of €200 had been applied to those on the adjacent Connaught Street. He further noted that the subject was located on the corner of the two streets. He said the rate of €200 per sq. m. had been affirmed in two Tribunal appeals viz VA 17/5/170 and VA 17/5/1187. Mr. Murray outlined how zoning is 'an established method of obtaining rental values for the majority of retail premises'. He noted how an allowance of 10% had been made to reflect the frontage to depth ratio of 1:0.46. And how this was 'in line with the RICS/SCSI guide on zoning'.

He suggested the retail building opposite (used by the Appellant as a comparator) was not zoned because 'both parties valued the property on an overall basis'.

The witness said the first floor had been valued in line with other first floors in the area; it had natural light and street and internal access. He suggested it was not appropriate to compare it with a basement with no natural light and an exposed spring.

In considering the Appellants comparators, Mr. Murphy noted they were variously valued at levels of €200 and €150 per sq. m. zone A depending on their location while noting that Comparison 3, 1335814 was valued as industrial.

In summary, he suggested there was no reason the ground floor should not be zoned and no evidence had been provided to show that it was unsuitable to be zoned.

Mr. Murphy introduced 4 ‘comparisons’ which he suggested informed the Respondent’s estimate of NAV. The zone A rates derived from these lettings varied from €188.65 to €449.89. He introduced 7 comparisons all valued at €200 zone A and noted there are 8 properties in the vicinity valued at €150 per sq. m. Two of these were subject to representations and the subject is the only one subject to an appeal.

Witness Opinion of Value

Mr. Murphy confirmed his opinion of the NAV as €20,500 as follows:

Floor Level	Floor Use	Area (M²)	NAV (€ per M²)	NAV (€)
0	RETAIL ZONE A	88.55	150.00	13,282.50
0	RETAIL ZONE B	6.97	75.00	522.75
1	STORE	95.88	85.00	8,149.80
0	RETAIL ZONE A	-1.00	1,380.52	-1,380.52
	Additional Items			None
			Total (€):	**20,574.53**
			Valuation (€):	**20,500.00**

9. **FINDINGS AND CONCLUSIONS**

9.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Westmeath County Council.

The Tribunal appreciates the great assistance provided in the substantial body of evidence put forward by the valuers.

The parties are agreed on the Zone A rate to be applied but the manner of its application is disputed. The Appellant suggests the application by the Respondent results in an unfair and unrealistic NAV, while the Respondent relies on the use of zoning as its sole method of valuation.

It is therefore worthwhile for the Tribunal to consider the background to the application of zoning as far as the ascertainment of the rental value of retail units is concerned.
Zoning was originally used by rating practitioners in an attempt to establish uniformity of value. It has, in recent decades, been adopted more widely by valuers and rent review specialists; initially in prime retail locations and latterly more broadly. The Information Paper prepared by the SCSI Working Party (cited by both valuers) was an attempt to bring some form of standardisation to the use of zoning but it is exactly as it is described – an Information Paper and does not have the same imperative as to use as such as a Guidance Note, the former being purely for information and the latter being mandatory for the chartered surveyor and from which guidance they should not deviate without good cause.

The basic principle of zoning is that a retailer will sell 50% of the product in zone B as they would in Zone A etc.

Zoning in valuation terms is a tool of analysis and the basic premise applies –'as you devalue, so shall you value'. In other words, it would be incorrect to use the application of the zoning rate derived from the analysis of a retail unit with standard frontage and 4 equal zones to a retail unit of equal size, with greater frontage and 1.25 zones. This is the reason the Information Paper suggests that an overall rate be used as a check. An example of a situation where the blanket application of zoning can be misleading is where there are two shops of equal size, with one having a 50% wider frontage. If these were to be zoned, totally different rentals results would be arrived at – the wider unit having the greater ITZA (floor area expressed in zone a terms) and therefore the higher rental despite being the same size.

Where zoning can be particularly misleading is when it is applied to units without at least 3 full zones. This can lead to a particularly misleading result – as, in the view of the Tribunal, happened in this instance.

While the Respondent relies heavily on zoning in a retail context, this reliance can lead to results which may produce anomalies. Certain of the Respondent's NAV comparisons only have one or two zones.

The Tribunal would find it helpful if retail areas were quoted on an overall floor area basis as well as a zone A rate per sq. m. This would be helpful in order to compare and as an aide in arriving at a position of 'equity and uniformity' as between hereditaments.

Turning to the instant case where the ground floor has a very small area in Zone B, The Tribunal is of the view that a better approach to use in arriving at the NAV is the application of an overall rate – it is questionable as to whether it is an appropriate configuration for zoning, given its layout. While it is possible to apply a adjustment to the zone a rate used, this would be, by its very nature, subjective.

The Appellant has analysed 3 market rental transactions on Connaught Street at rates between €74 and €123 per sq. m. overall. The Tribunal regards these lettings as primary evidence of the rental values pertaining on an adjoining, slightly superior street and further regards a rate of €90 per sq. m as being appropriate to apply to the entire ground floor.

The Tribunal notes that an overall approach was taken by the Respondent in valuing a retail building opposite (VA17/5/1192) and this was explained as '*both parties adopted this approach*'. This displays a lack of consistency of approach; zoning has been used on a 'broad brush' basis without being sense checked by a consideration of the rental value on an overall basis.

Turning to the first floor to which the Respondent has applied a rate of €85 per sq. m.; the Tribunal accepts the evidence put forward by Mr Carberry that this rate is applicable to modern offices in a good location the town.

There were a number of comparators introduced by the Appellant where various rates were applied to the stores - €15/20/30 per sq. m. The stores element of the Respondent's NAV comparisons were variously valued at €15/18.75/20/85 per sq. m.

The Tribunal believes the appropriate rate to apply to the first floor stores is €20 per sq. m.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to **€10,500**

Level 0 Retail 95.52 sq. m @ €90 per sq. m. = €8,596.80

Level 1 Stores 95.88 sq. m. @ €20 per sq. m. = €1,917.60

Total €10,514.40

NAV say €10,500