

**Appeal No: VA19/5/0878**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**UNA JOY**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2101639, Retail (Shops) at Lot No118 Main Street, South Wexford, County Wexford.

**B E F O R E**

**Carol O'Farrell - BL**

**Chairperson**

**Annamaria Gallivan – FRICS, FSCSI, MPhil SEE**

**Member**

**Elaine Torpey – B.Sc. Hons, FSCSI, FRICS, ACI Arb**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 16<sup>th</sup> DAY OF FEBRUARY 2022**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 11th day of October 2019 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 €12,350.

1.2 The two grounds of appeal in the Notice of Appeal contend that the Respondent's 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) The valuation approach to the section of Main Street South between Henrietta Street and Harper's Lane is incorrect given that the remainder of Main Street South (past Harper's Lane) has been assessed at €300 psm Zone A and there is no

justification for rental values to depart from this level of assessment until east of Henrietta Street because retail values are unlikely to jump from €500 psm to €300 psm Zone A over a distance of 10 metres but would instead occur more gradually.

- (ii) The passing rent of the Property is €145 per week inclusive of rates. The net effective rent (NER) is €5,602 per annum which analyses at €250 psm Zone A.

The amount the Appellant considered ought to have been determined as being the NAV of the Property was revised from €6,770 as stated in the Notice of Appeal to €7,410 at the appeal hearing.

## **2. REVALUATION HISTORY**

- 2.1 On the 15th day of March 2019 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. The Appellant did not make any representations to the valuation manager and the final valuation certificate issued on the 10<sup>th</sup> day of September 2019 stating a valuation of €12,350.
- 2.2 The date by reference to which the value of the Property, was determined is the 15<sup>th</sup> day of September 2017.

## **3. THE HEARING**

- 3.1 The Appeal proceeded by way of an oral hearing, held remotely, on the 21<sup>st</sup> day of December 2021. The Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. Ltd. and the Respondent by Mr. Martin Fitzsimons of the Valuation Office.
- 3.2 In accordance with the Rules of the Tribunal, the parties filed and exchanged their respective reports and précis of evidence prior to the commencement of the hearing. At the oral hearing, each witness, having taken the oath, adopted his Précis as his evidence-in-chief in addition to giving oral evidence.

**4. FACTS.**

- 4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.
- 4.2 The Property is located on the ground floor of a three storey, mid terraced building on Main Street South in Wexford town. The postal address of the Property is 47 Main Street South however, it is identified in the Valuation Office records for rating purposes as Lot 118 Main Street South.
- 4.3 It is common case that Main Street North and South is the main trading street in Wexford Town and that retail value levels in Main Street South beyond the junction of Main Street with Harper’s Lane are lower than those on Main Street North. .
- 4.4 The Appellant is a co-owner of the Property and has let the Property under a Short Term Letting Agreement for a term of 3 years and 9 months from the 1<sup>st</sup> January 2016 at a weekly rent of €145 per week inclusive of rates. At the request of the Tribunal, Mr. Halpin provided an executed copy of the Short Term Letting Agreement following the hearing. Clause 4 of the Agreement provides that the tenant may terminate the Agreement on the expiration of 6 months from the commencement date subject to certain terms and conditions. By clause 2.4 the tenant’s repairing covenant is limited to maintaining the interior of the Property in good decorative condition and in the event of the tenancy continuing for 5 years or more at clause 2.20 to repaint all the interior woodwork in a proper and workmanlike manner at least every four years. Pursuant to clause 3.4 the landlords covenanted to insure the Property and the building of which the Property forms part of against loss and damage by any of the insured risks.
- 4.5 There was agreement in respect of the physical characteristics and dimensions of the Property. The Property is small extending only to 35.26 m<sup>2</sup>. The measurements of the floor area are agreed as follows.

<b>Area</b>	<b>m<sup>2</sup></b>
Retail Zone A	16.96
Retail Zone B	14.80
Store	3.50

- 4.6 The Tribunal sought clarification as to the length of the Main Street North and Main Street South and the number of retail units on the entire street. Mr Fitzsimons confirmed that

Main Street is 575m in length from King Street to Cornmarket/Common Quay. He confirmed that Main Street South from King Street to Harper's Lane is 220m in length with a total of 44 retail units. Main Street South from Harper's Lane to Anne Street is 180 in length and with a total of 39 retail units. Main Street North from Anne Street to Cornmarket/Common Quay is 175m in length with a total of 40 retail units.

## **5. ISSUES**

5.1 The matter at issue is 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. Halpin gave evidence that he fundamentally disagreed with the Respondent's valuation approach to the properties situated within the section of Main Street South between Henrietta Street and Perter Street/Harper's Lane which were valued at €500 psm Zone A. He pointed out in his Précis that the remainder of Main Street South has been valued at €300 psm Zone A.

- 7.2 Mr. Halpin considering the Property to be situated in a transition zone contended that any jump in retail values from €500 psm to €300 psm Zone A would be unlikely to occur over a distance of just 10 metres but would instead occur much more gradually.
- 7.3 Mr. Halpin outlined that the rent of the Property is €145 per week inclusive of rates and when analysed the NER per annum is €5,602 per annum or €227 psm Zone A when the rates payable for the year 2017 are deducted.
- 7.4 He argued that there is no justification for applying €500 psm Zone A to the retail properties located within the block of properties between Henrietta Street and Peter Street/Harper's Lane. Having regard to the passing rent of the Property at the valuation date it was his opinion that the Property should have been valued in line with the retail properties valued at €300 psm Zone A on Main Street South after the Peter Street/Harper's Lane junction than those that were valued at €500 psm Zone A on Main Street North up to that junction.
- 7.5 Mr. Halpin though accepting that the subject has a better location than the retail properties on the lower end of Main Street South was of the view that the rental market rarely has a hard break in rental levels as there is usually a transition from one rental level to another. In the case of Main Street, he considered that there should have been a transition area where rental values ranged between €400 and €300 psm Zone A in that section of Main Street between Henrietta Street and Peter Street/Harpers Lane.
- 7.6 Mr Halpin put forward four tone of the list comparisons. His first comparator ('C1') is situated at 53 Main Street South and is located 40m from the Property, at the corner of Harper's Lane and Main Street. He described C1 as a superior corner property measuring 41.85 m<sup>2</sup> with the benefit of a restaurant/take-away use. He contended that the Zone A valuation of C1 at €300 psm suggests that the hypothetical tenant would pay almost the double rent for the Property. Mr Halpin further asserted that the restaurant/ takeaway use of CI would yield a higher value.
- 7.7 The second comparison ('C2') is situated at 55 Main Street South and was described by Mr Halpin as a superior double fronted retail unit measuring 81.65 m<sup>2</sup> located within 50m of the Property. C2 is valued at a NAV Zone A rate of €300 psm Mr. Halpin observed that the assessment of C2 implied that the Respondent was of the view that the

hypothetical tenant would pay a 66% premium for the subject which he considered to be completely unsustainable.

7.8 The third comparison ('C3') is situated at 66 Main Street South within 50m of the subject and was described as a larger standard retail unit measuring 175.81m<sup>2</sup>. C3 is valued at a NAV Zone A rate of €300 psm. Mr. Halpin contended that if the hypothetical tenant could rent a ground floor retail unit of this size for €17,410, he would not rent the Property for €12,350.

7.9 The fourth comparison ('C4') is situated 68 Main Street South at a distance of 55m from the subject and was described as a standard shop unit measuring 166.2 m<sup>2</sup>. C4 is valued at a NAV Zone A rate of €300 psm and the store area at €65 psm.

7.10 Based upon his evidence Mr. Halpin requested the Tribunal to reduce the NAV of the Property to €7410. His valuation was set out as follows:

<b>Use</b>	<b>Area (m<sup>2</sup>)</b>	<b>NAV €(m<sup>2</sup>)</b>	<b>Total €(m<sup>2</sup>)</b>
Retail Zone A	16.96	300	5,088
Retail Zone B	14.8	150	2,220
Store	3.5	30	<u>105</u>
Total			€7,413

7.11 Under cross examination by Mr. Fitzsimons, Mr. Halpin accepted that on the ground, natural breaks can occur where there are side roads and that at the end of the block of properties situated between Henrietta Street and Harper's Lane shops face other shops that have been valued at a Zone A rate of €500 psm. Mr. Halpin reiterated that in his experience hard breaks in rental levels do not occur in the real world.

7.12 When Mr. Fitzsimons put to Mr Halpin that the retailers Dealz and Sports Direct are situated opposite the subject and attract footfall, Mr. Halpin, though accepting that Dealz and Sports Direct are well known high street retailers, outlined that the size, type and nature of the subject are characteristics closer in physicality to the retail properties situated further south along Main Street South.

7.13 In response to a question from the Tribunal about the condition of the Property, he confirmed it is an old property dating from the late 1800's and appeared to be in reasonable condition.

## **8. RESPONDENT'S CASE**

8.1 Mr Fitzsimons described the location of the Property as being at the southern end of Main Street which he said is regarded as the main retail hub for Wexford town. He observed that the absence of any shopping centre in Wexford town has assisted in keeping the pedestrian flow within the town centre. He identified the retailers occupying the southern end of Main Street as Sports Direct (opposite the Property), Specsavers, Costa Coffee being within 8 m of the Property, Dealz at a distance of 20m, Hore's Department store slightly further away at 35 m, Penneys at a distance of 60 m and Boot's Pharmacy at a distance of 115m all of which he said attracted a high footfall. Mr. Fitzsimons proffered the view that the Property benefits from a better location than the comparisons relied upon by Mr. Halpin as it is located in a prime retail area occupied by high-profile tenants. He confirmed that there are units to let on Main Street but that none of the retail units on the block where the Property is located are vacant.

8.2 By reference to photographic evidence, Mr. Fitzsimons pointed out that Sports Direct (Nos. 52, 54 & 56 Main Street South) which adjoins the Dealz unit is directly opposite the Property. He also asked the Tribunal to note that the Penneys store is within 60m and that Hore's Department Store and Penneys are both situated on the pedestrianised section of Main Street South. He acknowledged that on the ground there is a natural break in Main Street at its junction with Harper's Lane and Peter's Street and that there is significant difference between these retail units and those located at the farther southern end of Main Street but that the block of properties between Henrietta Street and Harper's Lane wherein the Property is located is occupied by some high-profile retailers indicating that the area is a prime retail area. He said that the prime retail occupiers in the immediate area of the subject Property are on the right hand side of the street.

8.3 Mr. Fitzsimons informed the Tribunal that when he spoke with the tenant of the Property on the 18<sup>th</sup> May 2021, he was told by him that he is renting the subject on a one year rolling lease at a weekly rent of €100 and that the letting details were not on the Property Price Register. The tenant, he said, also informed him that he knows the landlord, as they lived and grew up in the same area and that he had completed work experience with the landlord's company.

- 8.4 Mr. Fitzsimons confirmed that he reviewed the valuation history of 39 retail properties in the immediate area and that representations had not been made to the Respondent under s.26 of the Act by the owners or occupiers of 33 of those properties. Furthermore, he said that valuations remained unaltered despite representations made in respect of the 6 other properties while only two appeals had been made to the Tribunal, one of which concerns the subject.
- 8.5 Mr. Fitzsimons contended that the southern end of Main Street South comprises of different type of shops such as barbers, a gaming arcade and book makers which do not have the same draw as the main section of the street. He noted that the comparisons relied upon by Mr Halpin were located further south of the Property beyond Harper's Lane in an area of Main Street South which did not benefit from the same level of footfall.
- 8.6 Mr Fitzsimons stated that three items of market rental information were available to the Respondent to inform the valuation scheme which was used in estimating the NAV of the Property. The three Key Rental Transactions (KRT) put forward were
- (i) KRT 1 on Main Street North let on the 20th October 2017 for a term of 10 years at an annual rent of €36,000. The NER at the valuation date is €490 psm Zone A.
  - (ii) KRT 2 on Main Street North was let on the 1<sup>st</sup> December 2016 for a term of 20 years at an annual rent of €47,000. The NER at the valuation date is €600 psm Zone A.
  - (iii) KRT 3 on Main Street North was let on the 3<sup>rd</sup> October 2016 for a term of one year at an annual rent of €25,000. The NER is €640 psm Zone A.

Mr Fitzsimons stated that no representations were made in respect of each of the KRTs and that, as the NERS for the KRT's analysed between €490 and €640 psm, the Respondent decided upon a Retail Zone A rate of €500 psm.

- 8.7 In support of his valuation, Mr Fitzsimons also relied upon a number of tone of the list comparisons. NAV comparison 1 (N1) is situated at 117 Main Street immediately adjacent to the Property. Despite representations, no changes were made to the valuation. This property benefits from a frontage to depth allowance.



<b>Use</b>	<b>Area (m<sup>2</sup>)</b>	<b>NAV €(m<sup>2</sup>)</b>	<b>Total €(m<sup>2</sup>)</b>
Retail Zone A	14.76	500	7,380
Retail Zone B	3.25	250	812.50
Allowance		(779)	
<b>Total</b>	<b>17.01</b>		<b>€7,413</b>

8.8 NAV comparison 2 (N2) is 62 Main Street South. It is identified as a corner property situated on the opposite side of the street to the Property. It is valued at €500 per m<sup>2</sup> Zone A. No representations were made in respect of the proposed valuation.

<b>Use</b>	<b>Area (m<sup>2</sup>)</b>	<b>NAV €(m<sup>2</sup>)</b>	<b>Total €(m<sup>2</sup>)</b>
Retail Zone A	24	500	12,000
Retail Zone B	5	250	1,250
Store	13.16	42	552.72
Store	22.52	65	14,638

8.9 NAV comparison 3 (N3) is 51 Main Street South, with a retail Zone A of €500 psm. It is situated to the left of the Property. Representations were made by an agent, however no changes to the valuation were made, on foot of those representations.

<b>Use</b>	<b>Area (m<sup>2</sup>)</b>	<b>NAV €(m<sup>2</sup>)</b>	<b>Total €(m<sup>2</sup>)</b>
Retail Zone A	28.68	500	14,325.00
Retail Zone B	27.35	250	,6837.50
Retail Zone C	38.5	125	4,812.50
Retail Zone remainder	61.48	62.50	3,842.50
Store	25.65	42	1,077.30
Shop	43.96	85	3736.60
Store	54.29	65	3,528.85
Yard	328.93	20	6,578.60

8.10 NAV comparison 4 (N4) is 50 Main Street South which is in the same area as the subject (but on the opposite side of the street ) and overlooks Hore’s Department Store. It has a retail Zone A value of €500 psm. No representations were made.

<b>Use</b>	<b>Area (m<sup>2</sup>)</b>	<b>NAV €(m<sup>2</sup>)</b>	<b>Total €(m<sup>2</sup>)</b>
Retail Zone A	20.13	500	110,065.00
Retail Zone B	20.91	250	5,227.50
Retail Zone C	4.95	125	618.75
Store	4.76	50.00	238.00

8.11 Under cross examination, Mr. Halpin put it to Mr. Fitzsimons that a natural break occurs when a section of street is pedestrianised up to the point of crossroads. Mr. Fitzsimons did not dispute that but considered that a retailer would pay a higher rent for a property in a pedestrianised street with the pulling power of good anchor tenants. It was also mentioned by Mr. Fitzsimons, that though North Main Street is pedestrianised, it is open to vehicle deliveries at certain times.

8.12 Given that all three of the KRT properties are situated in the pedestrianised area of Main Street, Mr. Halpin asked Mr. Fitzsimons whether the fact that no representations were made was explained by the fact all three properties were valued by the Respondent well below the actual rents being paid for them and that the actual rents suggested a higher Zone A value of €600 psm. Mr. Fitzsimons’s response was they were the only properties in the basket of rents from which to estimate the NAV Zone A rate and that €500 psm Zone A was considered appropriate. When Mr Halpin pointed out to Mr Fitzsimons that the actual rents of the three KRT properties devalue to €640 psm Zone A and that all the retail shops from the junction of Main Street with Peter Street and Harper’s Lane to its junction with King Street are valued at €300 psm Zone A, Mr Fitzsimons said that the area beyond that junction was an inferior non pedestrianised retail area with parking at both sides of the street occupied by units that did not have the same pulling power.

8.13 Mr. Fitzsimons asserted that there was no rental evidence available in respect of the retail properties in the block between Henrietta Street and Peter Street/Harper’s Lane with the exception of the subject. Mr. Fitzsimons also clarified under cross examination that his understanding of the rent on the subject property as advised by the tenant is that the rent

increases, to reflect any downward fluctuations in the rates bill, reiterating that the parties to the lease are known to each other.

- 8.14 Mr. Fitzsimons was not prepared to accept Mr. Halpin's general assertion that smaller retail units can command a higher rent of between 10% and 15% as he said it would all depend on the particular circumstances as a small shop having disproportionate frontage to depth ratio for which a 10% allowance may be made.

## **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 Wexford County Council.
- 9.2 The Property has to be valued vacant and to let at the valuation date. The rental value to be estimated on a full repairing and insurance basis must, having regard to section 48 of the Act, be a figure at which the hypothetical landlord and tenant would be likely to agree upon following negotiations. Mr Fitzsimons contended the Property should be valued on a Zone A rate of €500 psm, in line with other retail properties, given its position in a parade of shops in a pedestrianised area of Main Street South, between Henrietta Street and Harper's Lane, whilst Mr Halpin contended that the premises should be valued in line with the retail properties valued at €300 psm Zone A, on Main Street South after the Peter Street/Harper's Lane junction having regard to the passing rent of the Property, at the valuation date, and that fact the property rental values along a main street, tend to transition rather than drop sharply.
- 9.3 In line with the statutory definition of 'net annual value' the Tribunal considered the rental evidence available. The Property was leased by the Appellant on the 1<sup>st</sup> January 2016 for a term of 3 years and 9 months at an annual rent inclusive of rates. Following deduction of the rates, Mr Halpin gave evidence the rent equates to €227 psm Zone A. However, little weight can be attached to the passing rent as the Lease terms do not comply with requirements of s.48 of the Act. Mr Fitzsimons furnished rental evidence in respect of three retail properties on Main Street North. The NERs of these properties at

the valuation date ranged between €490 and €640 psm Zone A. From a consideration of these rents the Respondent applied a Zone A rate of €500.

- 9.4 It is a basic principle of valuation that a valuer has to compare like with like. The passing rents of comparable properties can provide useful and reliable evidence of rent, where there is no rental evidence in respect of the property being valued, or where the passing rent is not dependable as a measure of rateable value. In the Tribunal's view the indirect rental evidence (i.e., the passing rent in respect of the three KRTs) may only be relied upon if those properties are comparable to the subject. The Tribunal finds that the KRT properties situated on Main Street North are superior double fronted properties far better configured for retail purposes and for that reason command higher rents. It is evident from the photographs adduced in evidence, that the Property is situated in an inferior block of properties, the age of which was indicated as circa. late 1800's, all with narrow frontages and occupied by more local traders compared to the larger amalgamated and more modern units in the opposite parade. It is not reasonable to compare the subject with these superior properties and expect equity and uniformity.
- 9.5 The Property is valued on a Zone A rate of €500 psm. The Appellant seeks a reduction to €300 psm. There is no available rental evidence in respect of the retail properties on that section of Main Street South between Henrietta Street and Peter Street/Harper's Lane. There are several retail properties within 50 metres of the Property, just beyond the junction with Harper's Lane, that have a Zone A rate of €300 psm. The Tribunal is persuaded by the Appellant's case, that the characteristics of the Property are closer in physicality to the properties further south along Main Street. The Tribunal has reviewed the evidence of comparable properties adduced by both valuers and is satisfied that an appropriate Zone A rate for the Property should sit somewhere between the Zone A value put forward based on the rental analysis of the KRTs and the Zone A values applied to properties further south along Main Street South given its inferior quality.
- 9.6 Taking all of the above into account, the Tribunal considers that despite its favourable position at the top end of Main Street South it is not appropriate to apply the higher Zone A value to the Property, given that it is much smaller and narrower than those occupied by the national traders. The Tribunal accepts Mr Halpin's evidence that in the real world there would not be a sudden or a sharp drop in Zone A values and that there would be a transition zone between the prime retail section, which commands a Zone A €500.00 psm and the retail units on the southern end of Main Street South, to which the Zone A rate of

€300.00 psm has been applied. In terms of the Property's location the Zone A rate of €300.00 psm is too low and so the Tribunal determines that the appropriate Zone A rate to be applied is €400.00 psm.

**DETERMINATION:**

(1) The Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €9,800. The revised valuation is therefore as follows:

Retail Zone A 16.96 sqm	@ €400 psm = €6,784
Retail Zone B 14.8 sqm	@ €200 psm = €2,960
Store 3.5 sqm	@ €40 psm = €140
	Total €9,884

SAY €9,800

(2) On the consent of the parties, the Tribunal directs that the address of the Property as stated on the valuation certificate be amended to 47 Main Street South, Wexford.