

Appeal No: VA19/5/1663

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

The Bridge

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2208171, Retail (Shops) at 14A/ UNIT 1 BALLINA QUAY BALLINA
(TIPPERARY) CO. TIPPERARY

B E F O R E

Barry Smyth – FRICS, FSCSI, MCI Arb

Deputy Chairperson

Michael Brennan – BL, MSCSI

Member

Elaine Torpey – BSc (Hons), MSCSI, MRICS, ACI Arb

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19th DAY OF JANUARY, 2022

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th 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 €12,050.

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 pay €750 +VAT for my lease every month. Next door business pays €700 +VAT. New revaluation for my business will increase my rates by over 78% from €1419.25 to €2530.50. New revaluation for the next door business will increase they*

rates by 48% from €1020,63 to €1476,3. When I talked to the Valuation Officer in Nenagh he told me that the main thing for valuation is annual rent. How that it works in my case? I have a different type of business and my turnover won't be even a half of the turnover from next door business so for me it will be a huge expense which won't help me to run a small business. Increasing the rates won't help to all small businesses especially when good few small businesses were closed down recently in our area."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €9,000.

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 indicating a valuation of €12,050.

2.2 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €12,050.

2.3 The date by reference to which the value of the property, the subject of this appeal, was determined is 15th day of September 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 18th day of October, 2021. At the hearing the Appellant appeared in person and the Respondent was represented by Mr. Viorel Gogu 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 affirmed, 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 subject property comprises a ground floor retail unit which is currently in use as a gift shop, art gallery and art tutorial workshop.

4.2 The floor areas have been agreed by the parties as follows:

| Accommodation | Size (Sq m) |
|----------------------|--------------------|
| Retail Zone A | 49.25 |
| Retail Zone B | 46.36 |
| Retail Zone C | 11.60 |
| Total | 107.21 |

4.3 The subject property is located near to the entrance to a modern mixed use development known as ‘Ballina Quay’ which is located on the western side of Ballina village close to Lough Derg Marina. Ballina Quay is accessed from Lakeside Drive and the subject property is located on the periphery of this development.

5. ISSUES

5.1 The Appeal is concerned with the quantum of the valuation only and whether the NAV of the Property as determined by the Respondent is excessive.

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 Baczkowski, the occupier of the subject property, appeared in person as a lay appellant.

7.2 It was Mr Baczkowski’s evidence that he took occupancy of the subject property in December 2018 which had the benefit of a fit-out that was installed in 2010. He confirmed that he was currently paying a rent of €750 per month on a rolling basis which equated to €9,000 per annum.

7.3 It was Mr Baczkowski’s argument that the NAV of €12,050 could not be correct if he was paying the equivalent of €9,000 per annum. He stated that this was the rent that was in place for the previous occupier since September 2016 which was confirmed by the Respondent when later questioned by the Tribunal on this point. Mr Baczkowski implied that as he was paying rent on a monthly basis, this was demonstrable of the market rent for the property and that the lack of rental inflation since 2016 contradicts the NAV as assessed by the Respondent.

7.4 Mr Baczkowski raised concerns as to equity that existed in the assessment of the NAV by reference to the adjoining occupier. He stated that although he only pays €40 per month more in rent than his adjoining occupier, the rateable valuation is significantly more, and implied that this was inherently due to the fact that no allowances were made for quantum in the Respondent’s assessment of the NAV of the subject property.

7.5 Mr Baczkowski stated that he was concerned as to his ability to pay the rates based on the NAV as assessed by the Respondent and also tried to submit arguments relating to business turnover and profitability. Mr Baczkowski was informed by the Tribunal that this was not a relevant consideration in the assessment of the NAV. He confirmed to the Tribunal that he learned how the rates were calculated following conversations with Tipperary Co Co and the Valuation Office.

7.6 No questions were put to Mr Baczkowski under cross examination.

7.7 Upon summarising his evidence, Mr Baczkowski stated only his predecessor and two of the KRTs relied upon by the Respondent were in occupation since 2010 which was reflective of the turnover of tenancies. He said that NAV Comp 6 was in a different location than was being relied on by Mr Gogu. He stated that NAV Comp 5 was no longer occupied and that NAV Comp 6 was possibly never occupied. He proffered the view that there was a high turnover of occupiers generally within Ballina Quay and that the landlord would request an increase of €750 per month if the market was there to pay for it.

8. RESPONDENT'S CASE

8.1 Mr Gogu, having made his affirmation, adopted his Précis as his evidence-in-chief in addition to giving oral evidence and contended for a valuation of €12,050.

8.2 Mr Gogu commenced his evidence by stating that the onus was on the Appellant to prove that the valuation as set out by the Respondent was incorrect and he referred the Tribunal to a extracts of previous Tribunal decisions in VA00/2/032, VA07/3/054 and VA09/018. He also made reference to section 36 of the Valuation Tribunal (Appeals) Rules, 2019 with regard to the documents that an appellant must include in their précis.

8.3 Mr Gogu stated that the Appellant did not submit documentary evidence to substantiate facts to be relied on for relevant market evidence. He stated that the Appellant is relying on his current lease as evidence but that the lease document itself was not provided. He stated that the information received pursuant to section 45 and section 46 of the Act, was submitted by the previous occupier. In relation to the Appellant's reliance on the existing rent as evidence of the NAV, he stated that the actual rent is not in itself conclusive of the NAV and referred the tribunal to section 19(5) and 48 of the Act.

8.4 Mr Gogu submitted details of three key rental transactions (hereinafter referred to as "KRT" or "KRTs") and six NAV comparisons (three of which related to the KRTs) in support of his valuation as follows (see **Appendix 1** hereto for detailed schedule of comparisons):

KRT 1 (Also relied on as a NAV Comp 1)

| | |
|-----------------------|--|
| Location | Ballina Quay |
| Size | 45.49 sq m (ITZA 43.97 sq.m) |
| Lease | 1 year from June 2014 (reviewed 1 st October 2015) |
| Rent per annum | €8,400 |
| NER per annum | €8,064 |
| NER ITZA | €177.27 |
| NAV / NAV ITZA | €7,030 / €160 |

KRT 2 (Also relied on as a NAV Comp 2)

| | |
|-----------------------|----------------------------------|
| Location | Ballina Quay |
| Size | 31.78 sq m (ITZA 26.56 sq.m) |
| Lease | 1 year rolling from January 2011 |
| Rent per annum | €7,200 |
| NER per annum | €6,984 |
| NER ITZA | €262.95 |
| NAV / NAV ITZA | €4,250 / €160 |

KRT 3 (Also relied on as a NAV Comp 3)

| | |
|-----------------------|--|
| Location | Derg Court |
| Size | 84.32 sq m (ITZA 75.46 sq.m) |
| Lease | 21 years from 1 st January 2014 |
| Rent per annum | €13,000 |
| NER per annum | €12,610 |
| NER ITZA | €149.55 |
| NAV / NAV ITZA | €12,070 / €160 |

NAV Comp 4

| | |
|-----------------------|---------------|
| Location | Ballina Quay |
| Size | 47.96 sq m |
| NAV / NAV ITZA | €5,790 / €160 |

NAV Comp 5

| | |
|-----------------------|---------------|
| Location | Ballina Quay |
| Size | 43.62 sq m |
| NAV / NAV ITZA | €5,870 / €160 |

NAV Comp 6

| | |
|-----------------------|---------------|
| Location | Ballina Quay |
| Size | 44.02 sq m |
| NAV / NAV ITZA | €7,040 / €160 |

8.5 Under cross examination by Mr Baczkowski, it was put to Mr Gogu that the stated occupier of NAV Comp 5 had since vacated this property, to which Mr Gogu stated that it was a relevant comparison having regard to the date of valuation which he stated was 15th September 2017. Mr Baczkowski questioned as to how Mr Gogu derived the net effective rent (the “NER”) and he confirmed that he made discounts of 3% for landlord repairs and circa €600 for insurance in accordance with the information supplied by the previous occupier. It was put to Mr Gogu that his KRT comparisons comprised of different types of occupiers and he stated that they all comprised of retail use.

8.6 The Tribunal put some questions to Mr Gogu in relation to the measurement and use of the property. In relation to whether the property was measured on a net internal basis, Mr Gogu confirmed that the wc’s and partition walls were excluded from his retail measurement. The Tribunal asked Mr Gogu if the property comprised entirely of retail accommodation and he stated that it was entirely retail including the area that is used for workshops, galleries and tutorials. The Tribunal also asked Mr Gogu if there were only three KRTs relating to Ballina Quay and he confirmed to the Tribunal’s surprise that there were approximately 20 KRTs in the pool of evidence for the entire of Co Tipperary but he chose to rely on the three KRTs submitted. It was his evidence that these were the only three pieces of market evidence for this area. The Tribunal also asked Mr Gogu if the retail zoning method of valuation was utilised by occupiers or whether it was a form of analysis. He confirmed that it was not a method used by occupiers and it is a form of analysis used by the Valuation Office.

8.7 The Tribunal put a number of questions to Mr Gogu in relation his application of a NAV €160 Zone A to retail across the board in Ballina Quay. It was put to Mr Gogu that his KRT 1 was almost entirely Zone A and had the benefit of dual frontage. It was also identified as a significantly smaller unit than the subject property but yet it was valued at the same rate as the subject property. When asked if it was a reasonable comparison Mr Gogu stated that the rate of €160 applied to the subject property and KRT 1 shows balance and uniformity. In respect of KRT 2, it was put to Mr Gogu that the subject property was approximately four times larger and it was strange that there was no adjustment was made to reflect this. He did not respond to this question specifically but did say at a later stage when questioned that the market in Ballina Quay was unpredictable. In relation to KRT 3, Mr Gogu confirmed that this was located beside a retail franchise and petrol filling station. Mr Gogu confirmed that it was his understanding NAV Comp 6 was occupied and qualified the uncertainty by stating that he was relying on the valuation principle that it was vacant and available to let.

8.8 The Tribunal also directed Mr Gogu to a calculation error within his précis at page 39. Mr Gogu acknowledged the error and stated for the NAV of Zone A to be corrected to €7,880 from €7,080 in his précis.

8.9 The Tribunal put it to Mr Gogu if there was a location hierarchy within Ballina Quay. Mr Gogu confirmed with some certainty that the location of KRT3 was the best location due to its proximity to what he referred to as the shopping centre. It was then put to him as to how the subject property could be valued at the same rate if the location of KRT3 was better. He responded in a somewhat contradictory fashion to his earlier statement by stating that there was no evidence that the subject property has a locational disadvantage. It was then put to him that the rent of €9,000 per annum was potentially evidence of this. He initially stated that he had not received a copy of the written lease but did state that he had no reason to believe that Mr Baczkowski's evidence of the rent he is paying to be false when asked by the Tribunal. He stated that he was relying on KRT1 to defend his position on the NAV. He further stated that he had no knowledge as to the vacancy at the time of inspection. He did not agree that evidence of what the subject property was let at was a relevant consideration when the question was put to him. He also confirmed the valuation date of 15th September 2017 in relation to a contradictory date which appeared in his précis.

8.10 In summarising his evidence, Mr Gogu requested the Tribunal to affirm his valuation of €12,050.

9. SUBMISSIONS

9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine the value of the Property to achieve, insofar as is reasonably practical, a valuation that is correct and equitable.

10.2 The relevant question on this appeal concerns the amount a hypothetical tenant would pay in rent for a tenancy of the Property on the terms set out in section 48 of the 2001 Act as amended and not by reference to the actual occupier's business or financial means nor necessarily the rent the occupier actually pays:

(1) 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.

(2) Subsection (1) is without prejudice to section 49.

(3) 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 expected to let from year to year, on the assumption that the probable average 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.

10.3 The Appellant relies on evidence of the rent that he currently pays as best evidence, which is a rolling monthly lease at a rent of €750 per month and equates to €9,000 per annum, a rent that has been paid in equivalent yearly amounts since September 2016. Despite initial assertions from the Respondent with regard to the failure to produce written documentation to corroborate this, Mr Gogu has accepted that the Appellant's predecessor paid the same rent and that the Appellant has occupied the property since December 2018 on a rolling monthly basis at a rent of €750 without a written lease.

10.4 Rental evidence is rarely ever available at the specific valuation date and it is uncommon to find a property with a lease rent that completely satisfies the statutory terms. In some cases, lease rents are of little evidential use either because they are not market rents or because they cannot be made to conform to the rating hypothesis. However, in this case, the actual rent of the property is of assistance. The rent passing on the Property at the valuation date could be considered to reflect the best evidence of the terms of the hypothetical tenancy under section 48 of the Act for the following reasons: it is an arm's length lease; the lease terms were contemporary with the valuation date; there were no apparent market anomalies such as a period of temporarily high or low rents; and there were no unusual or onerous lease terms that would make it difficult to interpret a net effective rent.

10.5 On behalf of the Respondent, Mr Gogu considered three key rental transactions as his best evidence. Market rents of similar properties generally provide the best evidence if the actual rent is of no assistance. However, when the actual rent of the property is of assistance and is in all likelihood the best evidence, market rents of similar properties can provide a check and balance and assist with an objective analysis. Irrespective of the usefulness of the actual rent, when analysing markets rents, care needs to be taken to ensure unique characteristics of particular transactions are reflected. Once these rents are ascertained they can then be analysed and reduced to a comparative basis such as €/sq m ITZA for retail properties.

10.6 Mr Gogu has applied a blanket valuation across the board for retail in Ballina Quay. However, in doing so, he has failed to adjust for factors that are relevant to ensure correctness. In relation to KRT 1, this property has dual frontage to Lakeside Drive and more importantly to Ballina Quay. In comparison to the subject property, it has a frontage and locational benefit as the subject property sits on the periphery of Ballina Quay with frontage only to Lakeside Drive. In addition, no allowance has been made for quantum to reflect the fact that KRT1 is only 42% the size of the subject property. The application of €160 per sq m ITZA for KRT1 and the subject cannot be correct for these reasons. In relation to KRT2, this property is located towards the centre of Ballina Quay which is arguably a better trading location due to the proximity of other retailers and car parking as was obvious from the photographic evidence. Additionally, no adjustment was made for quantum as KRT2 is only 29% the size of the subject property which is by no means insignificant. In relation to KRT3, this is obviously the best retail location due to the proximity to the convenience store and petrol filling station. Indeed,

this was admitted by Mr Gogu under questioning from the Tribunal. Mr. Gogu has made no adjustment to reflect the location differential

10.7 The failure to have regard to the obvious frontage, locational and quantum issues in the application of the KRTs to the subject property is incorrect and the same applies in respect of their applicability as NAV comparisons. The Tribunal has applied no weight to the NAV Comps 4-6 as they are significantly smaller than the subject property and appropriate quantum discounts should have been applied. In respect of the dates of the leases pertaining to the KRTs relied on by the Respondent, it is apparent that KRT1 and KRT2 continue to operate on a rolling basis which also serves to illustrate how relevant the subject lease is, as evidence of a hypothetical lease of the subject property. The passing rent in this instance is the best evidence and the comparisons are of limited assistance due to the aforesaid issues and we therefore determine the NAV at €9,000

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 €9,000.