

Appeal No: VA19/5/0953

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Noirin Kinsella

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2104505, Retail (Shops) at 15.16/Unit 2 Selskar Street, Wexford, County Wexford.

B E F O R E

Majella Twomey - BL

Deputy Chairperson

Raymond J. Finlay – FIPAV, MMII, ACI Arb, TRV, PC

Member

Gerard O'Callaghan – MRICS, MSCSI

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 9TH DAY OF MARCH 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 €18,250.

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 :

“1. The subject property is let €12,000 per annum on a 3 year lease from 2016. Landlord pays everything apart from rates i.e. building insurance, internal and external repairs. FRI NER €10,800/annum.

2. Rents have been declining in this area over the past 3-5 years and continue to do so, as shown by further rents in the street on PN 2209390, 5014036 and 5012928. All of which point to a zone A level for the street of €250-300/m²”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €13,690

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 €18,250.

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 manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €18,250.

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

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 15th day of December, 2021. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. Ltd 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 had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The subject is situate at Unit 2, 15-16 Selskar Street, between North Main Street and Redmond Square.

4.3 The subject property is a ground floor, terraced retail unit.

4.4 The floor areas are agreed as follows;

Retail Zone A 32.33 m²

Retail Zone B 25.97m²

Store 3.24 m²

Total 61.54

5. ISSUES

5.1 On the 17th September 2019, The Commissioner of Valuation publishes the final certificate for the subject property at €18,250 NAV.

5.2 The Commissioner has adopted a level of €400/m² for the Zone A part of the subject property. The Appellant claims that this should be rate at €300/ m².

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 on behalf of the Appellant. He said that the property is let at €12,000 per annum on a 1 year, 3 month lease from 16th November 2018. The evidence was that the Landlord pays for everything apart from rates, for example building insurance, internal and external repairs. The evidence was that that the lease was renewed for a further year at €12,000 per annum from 15th February 2020.

7.2 The Appellant said that Selskar Street is a secondary retail location between North Main Street and Redmond Square.

7.3 The Appellant claims that a level of €400/m² does not represent the open market value of the street as defined by the rental evidence collected by the Appellant’s agent.

7.4 The Appellant submitted four properties on Selskar Street as KRT comparisons. The Appellant submitted that the NER comparator rents reflect a range of €205-298/m² for Zone A. Mr Halpin said that allowing 3-5% for the varying deductions for insurance and repairs, the NER ranges from €200-298/m². The Appellant said that this is substantially different to the Commissioners view of €400/m² Zone A.

7.5 In terms of tone of the list, the Appellant made the case that the Commissioner has 2 primary Zone A levels: - Prime €500/m² and Tertiary €200/m². He said that there is little doubt that Selskar Street is superior to the adjoining streets valued by the Commissioner at €200/m². However, the Appellant said that Selskar Street is equally inferior to the area of North Main

Street valued at €400/m². Mr Halpin said that the most comparable area in the list is the secondary section of South Main Street, valued at €300/m². He said that this tallies with the highest of the rents actually paid by the appellants. Mr Halpin said that the Appellants seek to have their NAV in line with the comparators, in the list, in terms of its actual rental potential.

7.6 The Appellant said that the best comparators were on Secondary South Main Street, which have a Zone A value of €300/m².

8. RESPONDENT'S CASE

8.1 Mr Diskin gave evidence for the Commissioner. He said that the subject property is about 300 metres from the prime retail area and has a frontage of 5.3 metres. He said the property had glazed windows and doors and it was in good order.

8.2 Four NER comparators were put forward by Mr Diskin.. Three of these properties are on Selskar Street and one is on Common Quay Street. The first NER comparator put forward by Mr Diskin has a NER Zone A of €428.54 per m². He said that this was 40 metres from the subject property and had a two-year lease at €13,498 per annum.

8.3 The second KRT comparator has a NER per Zone A at €750 per m². Mr Diskin explained that this was an outlier, and it is something that can be seen in certain businesses. The Tribunal asked Mr Diskin if it was a fast-food outlet with a takeaway licence and he said he did not know what the planning for the property was. Mr Halpin, on cross-examination, put it to Mr Diskin that this comparator was a complete outlier as it is a fast-food outlet with a takeaway licence. Mr Diskin said that given its proximity to the subject property that it was worth considering it. Mr Halpin put it to the Appellant that the said comparator had been a takeaway for 20 years and Mr Diskin said he did not know that.

8.4 The third KRT comparator which Mr Diskin relied upon was also on Selskar Street and had an NER Zone A of €172.50. He said that there was a short-term month- to- month lease for €9000 per annum. He said that the property was being used as a charity shop.

8.5 The final NER comparator put forward by Mr Diskin was situate on Common Quay Street with an NER of €470.88 for Zone A. This property, he said, was located 300 metres from the

subject property. Mr Halpin put it to Mr Diskin that this was in a totally different location to Selskar Street, and he agreed but said it had been grouped with Selskar Street.

8.6 Mr Diskin also submitted six NAV comparators, all situate on Selskar Street, all possessing a NAV of €400 for retail Zone A. Mr Diskin did not supply lease details for the NAV comparisons.

8.7 Mr Halpin asked Mr Diskin why the sum of €400 was chosen for all the properties on the street and Mr Diskin said that the Valuation Office does not rely too heavily on month -to-month leases.

9. SUBMISSIONS

9.1 No legal submissions were made.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must 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.

10.2 Having weighed and evaluated all the evidence before it, the Tribunal makes the findings set out below.

10.3 The Tribunal having considered all the KRT comparators put forward by the Respondent finds that three of them can distinguished from the subject property.

10.4 The first KRT which was put forward by the Respondent is on a corner location. The Tribunal having assessed the documentary evidence put forward by the Respondent, finds that this property is in a superior situation to the subject property given its corner location.

10.5 It is clear from an examination of KRT 2, that it is an outlier as it is a fast-food outlet and was valued at such. This fact became clear during to the Tribunal during the course of the Respondent's evidence. Consequently, this cannot be said to be a valid comparator to the subject property.

10.4 Having assessed the details of the Respondent's KRT 4, the Tribunal finds that this is in an entirely different location to the subject property. It is not situated on Selskar Street and, therefore, can be distinguished on this basis.

10.5 The Tribunal notes that Respondent's KRT 3, Zone A came in at €172.50 per m² and this property is only seven doors away from the subject property. This KRT supports the Appellant's argument for a lower Zone A rate for the subject property.

10.6 The Tribunal finds that the Appellant put forward a number of strong rental comparisons, in contrast the much weaker Key Rental Transactions comparisons offered by the Respondent. Furthermore, the Tribunal finds the Respondent failed to attach any real weight to the passing rents when assessing the NAV.

10.7 The Tribunal finds that the Appellant put forward clear and convincing rental evidence, to support the argument that the rental levels on Selskar Street range from €9000 to €12,000 per annum. The Appellant's own yearly rent is €12,000 per annum. The Tribunal accepts the evidence provided as to the open market rent for properties on Selskar Street.

10.8 Given the fact that the Respondent has failed to provide any compelling rental evidence on Selskar Street to support the argument that the subject property should be valued at €400 per m² for retail Zone A, coupled with the fact that the Appellant has provided clear objective evidence of the actual market rent, the Tribunal prefers the Appellant's evidence and finds that the Zone A, NAV for the subject property should be reduced to €300 per m².

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 **€13,690**.

Retail Zone A 32.33m² @ €300/m² = €9,699

Retail Zone B 25.97m² @ €150/m² = €3,896

Store 3.24m² @ €30/m² = €97

Total NAV €13,690

And so, the Tribunal determines.

