

Appeal No: VA17/5/870

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

McDonald's Restaurant of Ireland

APPELLANT

and

Commissioner Of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2110219, Retail (Shops) at 38BC/20 Tullamore Shopping Centre, Church Road,
Tullamore, County Offaly

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10th DAY OF May 2022**

BEFORE

Eoin McDermott - FSCSI, FRICS, ACl Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 12th 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 €77,000.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *“Pursuant to the Sections 35(A) (i) and (ii) and Sections 48 and 49 of the Valuation Act 2001 the valuation is incorrect and does not reflect the character, specification, size and location of the subject property and relatively to other properties.*

The Valuation is incorrect based on the levels applied.

Other relevant grounds; i.e. the Valuation – NAV is excessive and inequitable and may be bad in law (subject to obtaining advice from our Legal Advisors.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €57,800.

2. RE-VALUATION HISTORY

2.1 On the 3rd March 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 €77,000.

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

2.3 A Final Valuation Certificate issued on the 7th September 2017 stating a valuation of €77,000.

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

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. The Appellants summary was prepared by Mr. Adrian Power-Kelly BSc (Surv.) FRICS, FSCSI, ACI Arb. MIPFMA of Power-Kelly & Company and the Respondents summary was prepared by Ms. Fiona Mullins BSc. (Hons) Property Studies.

4. FACTS

4.1 The parties are agreed as to the following facts.

4.2 The property is located in the grounds of Tullamore Shopping Centre, which lies approximately 600m south-east of Tullamore town centre.

4.3 The subject property comprises a single storey detached property of modern construction in use as a drive thru restaurant.

4.4 The floor area of the subject property is agreed at 256 Sq. M.

5. ISSUES

The principal issue 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. Power-Kelly, on behalf of the Appellant, described the property and its location using photographs contained in his submission. He noted that the property was an external unit, with no direct interaction with the adjoining shopping centre or its car park. He also pointed out that the centre occupants are mainly local traders rather than multinational or national retailers, who are mainly found in the Bridge Centre, located closer to the town centre.

7.2 Mr. Power-Kelly developed his argument by noting that the Commissioner had valued similar drive thru restaurants in Kildare by using different NAVs for different parts of drive thru units, thereby differentiating between restaurant and ancillary uses. He put forward two properties as comparisons, PN 2202348 and PN 1737821 which he stated showed different NAV levels applying to stores and areas described as “other”. He noted that an NAV of €300 per Sq. M. had been applied to the entirety of the subject and argued that the Commissioner had departed from established practice by adopting this approach.

7.3 Mr. Power-Kelly also drew attention to the level of NAV sought (€300 per Sq. M.), which he argued was well in excess of the NAVs applied to other units within Tullamore Shopping Centre (€105 per Sq. M. to €144 per Sq. M.) and the nearby Bridge Centre (€217 per Sq. M. to €279 per Sq. M.).

7.4 Mr. Power-Kelly sought a NAV of €55,630, made up as follows: -

Use	Area (Sq. M.)	NAV/Sq. M.	NAV
Restaurant	245.56	€225.00	€55,251.00
Cold Room	11.25	€33.75	€379.68
Total NAV			€55,630.00

8. RESPONDENT'S CASE

8.1 Ms. Mullin, on behalf of the Respondent, described the property and its location using photographs contained in her submission. She noted that the property was in use as a drive thru restaurant and had a high profile on one of the main roads leading into Tullamore. Customers also had the advantage of being able to use the shopping centre car park. She also pointed out that the centre was anchored by Dunnes Stores.

8.2 Ms. Mullin addressed the two Kildare comparisons put forward by the Appellant and noted that in each case the main building was valued at a uniform NAV per Sq. M. irrespective of use, with areas outside the main building being valued at reduced rates. She confirmed that the same approach was taken with the subject property.

8.3 Ms. Mullin noted that there were only two drive thru restaurants located in Co. Offaly, the subject property and a nearby unit located at a separate retail Park, which was her comparison no. 1. She had therefore considered properties in other rating areas with the same valuation date as the subject property in preparing her valuation. She put forward the following six NAV comparisons: -

PN	Location	Use	Area (Sq. M.)	NAV/Sq. M.	NAV
2182388	Tullamore	Restaurant	345.40	€300	€103,620
2136240	Athlone	Restaurant	347.80	€300	€104,340
1332238	Athlone	Restaurant	334.00	€300	€100,200
2170283	Longford	Restaurant	302.80	€250	€75,700
		External Store	7.80	€25	€195
2177075	Carrick on Shannon	Restaurant	225.50	€250	€56,375
2210259	Roscommon	Restaurant	228.00	€250	€57,000

She noted that Comparisons 1 and 2 were currently awaiting hearings before the Tribunal and that the lower NAV levels in Longford, Carrick on Shannon and Roscommon were due to smaller populations in those towns.

8.4 Ms. Mullin sought an NAV of €77,000 calculated as follows: -

Use	Area (Sq. M.)	NAV/Sq. M.	NAV
Restaurant	121.80	€300	€36,540
Kitchen/Office	85.05	€300	€25,515
Store/Cold Room	11.25	€300	€3,375
Toilets	38.71	€300	€11,613
Total NAV			€77,043.00
Say			€77,000

9. SUBMISSIONS

There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

10.1 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 Offaly County Council.

10.2 The Tribunal finds that in this appeal, and in all appeals before the Tribunal, the onus of proof rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal's determination. In this appeal the Appellant has sought to demonstrate that the Commissioner has departed from previous practice in the approach to valuing the subject property. The Commissioners representative was able to demonstrate that this was not the case. In addition, the Appellant has argued that the NAV of €300 per Sq. M. is well in excess of that payable by other units with Tullamore Shopping Centre and the nearby Bridge Shopping Centre. This argument is not directly addressed by the Respondent but the Tribunal notes that the Respondents evidence is of similar properties to the subject. The Tribunal considers the Respondents approach to be more appropriate in this instance.

10.3 At the time of submission of the Respondents Precis, her NAV comparisons 1 and 2 were on appeal and awaiting Tribunal hearings. Since then, the appeal on Comparison 1 has been agreed between the parties, resulting in a lower NAV of €91,000 due to a reduction in floor area from 347.80 Sq. M. to 303.36 Sq. M., the NAV per Sq. M. of €300 remains unchanged. The appeal on NAV comparison 2 was withdrawn by the Appellant prior to the hearing, leaving the NAV per Sq. M. of €300 unchanged. The Tribunal sees no reason to depart from this level.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.