

Appeal No: VA19/5/0893

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Fiona Dempsey

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2172553, Retail (Shops) at 27F Crossfarnogue, Kilmore Quay, County Wexford.

B E F O R E

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Liam Daly – MSCSI, MRICS

Member

Kenneth Enright - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 17TH DAY OF MAY, 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 €9,020.

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 zoning model appears to be distorting values in Kilmore Quay for non-conventional shops. PN 2172553 is let on a 2 year lease from 27th March 2018 at €65/week (€3,380/annum), which nominally devalues at €75/m2 Zone A. PN 2172552 is let on a month to month basis at

€100/week since 2007 and the rent has never been reduced, despite consistent attempts by the tenant. Even at this elevated rent, it devalues at €117/m² Zone A. The larger the unit, the larger the distortion.

2. The subject property is a former workshop with an asbestos roof notionally converted to 2 retail units. Consideration should be given to valuing under the industrial showroom category as the values may be more appropriate than attempting to adjust by 50%+ off the Zone A level in the vicinity. 3. Kilmore Quay is a seasonal location with limited trade for ca. 9 months of the year.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €3,400.

2. REVALUATION HISTORY

2.1 In 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 €9850.

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 €9020.

2.3 A Final Valuation Certificate issued on the 17th day of September, 2019 stating a valuation of €9,020.

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. The Statutory Effective date is 31st day of October, 2019.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 20th 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 Ms. Angelina Scanlan 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 property is in the south Wexford village of Kilmore Quay. The subject unit is located adjacent to the marina. Kilmore Quay is located approximately 20km from Rosslare in Co Wexford.

4.3 The subject property is a single storey semi-detached retail unit with mezzanine store area. The property is accessed from the street, with the rear of the property facing the marina. There is public parking available in a carpark to the side of the property and also along the marina to the rear.

4.4 The floor areas have been agreed between the parties:

Ground Floor	Retail	43.89 sq. m.
Mezzanine	Store	7.50 sq. m
Total Floor Area		50.39 sq. m.

4.5 The property is held leasehold

5. ISSUES

5.1 The sole matter at 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. Halpin, on behalf of the Appellant, described the subject property as being a “hybrid” between retail and industrial. The unit comprised an industrial shell but in retail use. Mr. Halpin explained this type of property is not dissimilar from a number of other units in Kilmore Quay.

7.2 It was Mr. Halpin’s opinion that rental evidence had not been reflected in the value being placed on the subject property by the Commissioner. Mr. Halpin explained that the subject property had been let on the 27th March 2018, just six months after the valuation date, at a rent of €3,380 per annum. He cited the adjoining unit, which he noted was also subject to appeal (VA19/5/0889), was let in 2007 at a rent of €5,200 per annum. This, Mr Halpin explained, would give a maximum range of €75 per sq. m - €120 per sq. m. overall.

7.3 Mr. Halpin argued that the zoning model being utilised by the Commissioner was in direct contradiction of the rents. Mr. Halpin explained that he had significant reservations about the Zone A €220 per sq. m. being applied to the property when Comparison 3 (Appendix (N/A to public) 2) has been valued by the Commissioner at Zone A €41 per sq. m. and €132 per sq. m. overall.

7.4 Mr. Halpin introduced twenty NAV Comparisons which are included in Appendix (N/A to public) 2 hereto. It was Mr. Halpin's opinion that these comparables illustrated the different levels applied by the Commissioner where industrial and retail properties are in close proximity. Mr. Halpin stated these properties are valued by the Commissioner as industrial showrooms and valued at approximately 25% of the prevailing Zone A rate in that location. This, Mr. Halpin explained, would result in a value of approximately €55 per sq. m. for the subject, which is below the expected range based on the rent. Therefore, it was Mr. Halpin's opinion that the appropriate relationship in this case is 40% of the Zone A rate - €88 per sq. m , which he believed also tied in with the average of the overall and lower zoned rate - €86.50 per sq. m. ($€132 + €41 = €173/2 = €86.50$).

Cross Examination of Mr. Halpin:

In response to questions from the Respondent, Mr. Halpin confirmed there was public car parking near the unit. Mr Halpin also confirmed that the six comparisons (PN 2214705, PN 2214706, PN 2214704, PN 2214707, PN 2214702, PN 2159958 – Appendix (N/A to public) 2) are opposite the subject property and include the Key Rental Transaction being used by the Respondent. Mr Halpin also accepted that all six NAV comparables (Appendix (N/A to public) 4) used by the Respondent are all zoned retail,

8. RESPONDENT'S CASE:

8.1 Ms. Scanlan, on behalf of the Respondent gave the following oral evidence.

8.2 Ms Scanlan noted the location and condition of the Property and stated that one key rental transaction was relied upon in arriving at the valuation scheme from which the NAV of the Property (Appendix (N/A to public) 3) was derived. A valuation level Zone A €220 has been applied to the subject property.

8.3 Ms Scanlan was of the opinion that the rental evidence presented by the Appellant was not deemed as suitable comparable evidence. Ms. Scanlan noted that details pertaining to the subject property lacked necessary rental information. For example, comparison 1 PN 2213461

(Appendix (N/A to public) 1) was dated 10 years prior to the valuation date, and comparison 2 PN 2009314 (Appendix (N/A to public) 1) did not include rental information.

8.4 Ms Scanlan also commented that the Appellant was now contradicting himself in how he was describing Comparison 2 PN 2009314 (Appendix (N/A to public) 1), describing the property now as “being modern purpose built conventional retail structure”, whereas in the Notice of Appeal submission, the property is referred to as “a former domestic premises with no commercial shop front.”

8.5 Ms. Scanlan referenced the Appellant’s contention that the Commissioner was contradicting himself by applying a Zone A €41 per sq. m to Comparison 3 (Appendix (N/A to public) 2) and applying Zone A €220 to the subject property. Ms. Scanlan stated that this was clearly an anomaly and it is under review by the Commissioner. Ms. Scanlan said such anomalies should not be relied upon as evidence of value.

8.6 During the course of her evidence, Ms Scanlan made the following comments regarding the Appellant’s comparisons

Rental Comparisons.

- Comparison 1: Property No. 2213461 (Appendix (N/A to public) 1) The rent submitted for this unit was set in 2007 which is 10 years prior to the Valuation Date. This property is located next door to the subject property and is valued at the same Zone A rate per square metre as the subject property
- Comparison 2: Property No. 2009314 (Appendix (N/A to public) 1). The appellant has quoted this comparison as a rental comparison however no rental information has been provided in order for it to be considered as a rental comparison. Ms. Scanlan commented earlier on how the Appellant was contradicting himself on how he described the property. A 10% allowance applied to this property was due to the frontage to depth ratio of the property. The same allowance was applied to the subject property at representation stage.
- Comparison Property Nos. 2214704-2214707 (Appendix (N/A to public) 2). Ms. Scanlan noted the Appellant’s comments that there is a 535% differential between the Zone A applied to this property and the subject property. Ms. Scanlan explained this is

an anomaly requiring review. Such anomalies should not be relied upon as evidence of value.

- Comparison Property No 2214702 (Appendix (N/A to public) 2). This property has been quoted as a Key Rental Transaction and a Comparison as part of the Commissioner's Precip of Evidence. Representations were submitted on this property and a frontage to depth allowance of 10% was applied at this stage. No appeal to the Valuation Tribunal was submitted.
- Comparison Property No 2159958 (Appendix (N/A to public) 2). The Zone A/€/psm applied to this property is the same as the Zone A/€/psm applied to the subject property.
- Comparison PN2009313 (Appendix (N/A to public) 2). Ms. Scanlan referenced the Appellant's comments that the Commissioner did not apply the zoning model to this property, instead choosing to value it at €132/m² on the retail area. Ms. Scanlan explained an overall rate per square metre was applied to the retail areas of this property due to the fact that the retail areas are separated by a solid wall going down the centre of both retail areas.
- Comparison PN2008778 (Appendix (N/A to public) 2). This is not a relevant comparison as it is an industrial showroom. Located on the outskirts of a village circa 23km from the subject property.
- Comparison PN2008780 (Appendix (N/A to public) 2). Located on the outskirts of a village circa 23km from the subject property, this is a retail unit which has been valued on an overall basis. It has no street frontage and is located in a converted bungalow to the rear of two other retail units. It is accessed via a corridor/passageway from the front of the building. It was Ms. Scanlan's opinion this is not a relevant comparison.
- Comparison PN2008779 (Appendix (N/A to public) 2). Located on the outskirts of a village circa 23km from the subject property. Ms. Scanlan's opinion was that this is not a relevant comparison.
- Comparison PN2008781 (Appendix (N/A to public) 2) Located on the outskirts of a village circa 23km from the subject property, it was Ms. Scanlan's opinion this property was not a relevant comparison.
- Comparison PN2007848 (Appendix (N/A to public) 2). This is not a relevant comparison as it is an industrial showroom. Located in a village circa 40km from the subject property.

- Comparison PN2205629 (Appendix (N/A to public) 2). Located in a village circa 40km from the subject property. This location is inferior to the village of Kilmore Quay.
- Comparison PN2008867 (Appendix (N/A to public) 2). Located in a rural area of Gusserane circa 36km from the subject, this property is not a relevant comparison as it is an industrial showroom.
- Comparison PN2104551 (Appendix (N/A to public) 2). Located circa 24km from the subject property, this property is not a relevant comparison as it is an industrial showroom located in Wexford Town.
- Comparison PN2104543 (Appendix (N/A to public) 2) Located circa 24km from the subject property this property is not a relevant comparison as it is an industrial showroom located in Wexford Town.

Cross Examination of Ms. Scanlan.

The Appellant asked how could Ms. Scanlan justify a Zone A €220 when the Commissioner had applied a much lower Zone A €41 on similar properties. Ms. Scanlan referenced her earlier evidence where she had explained that this was an anomaly requiring review and that such anomalies should not be relied upon as evidence of value. The Appellant questioned how Ms. Scanlan could accept a Zone A €220 as the uniform level when only one Key Rental Transaction had been utilised in the process. Ms. Scanlan responded by saying the Valuation Office used the Key Rental Transaction together with a basket of comparables throughout the county. This data was then analysed and a suitable NAV was derived, in this case, a NAV of €220. The Appellant asked should an allowance be made for the property having an asbestos roof. Ms. Scanlan answered no.

9. SUBMISSIONS

9.1 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 Wexford County Council.

10.2 It was the Appellant's contention that the Commissioner was contradicting himself in how he was determining a suitable NAV for the premises. It was the Appellant's opinion that the rental evidence demonstrated this. The Respondent disputed this, they were of the opinion that the rental evidence submitted was either out of date or lacking in sufficient detail to deem it as comparable evidence. From the precis of evidence and oral evidence, the Tribunal has formed the same opinion. For rental evidence to be considered it should be within a reasonable timescale of the subject and should include sufficient lease information.

10.3 The Appellant highlighted the variance in Zone A levels being applied in the village of Kilmore Quay, specifically making reference to Comparison Property Nos. 2214704-2214707. The Respondent explained this was an anomaly requiring review. The Tribunal accepts that this was an anomaly and therefore it should not be relied upon as evidence of value.

10.4 The Appellant relied on twenty-one comparisons within his precis of evidence. The Tribunal accepted the Respondent's arguments relating to these properties. Having regard to the different uses of these properties, their variance in size or their distance from the subject property, the Tribunal could attach little weight to them as suitable comparisons.

10.5 The burden of proof rests on the Appellant. Insufficient evidence was adduced by the Appellant to cast doubt on the valuation set by the Commissioner for Valuation. In particular, there was little relevant evidence brought forward of rents or NAVs applying to comparable properties in a way that suggested the Commissioner's valuation had failed to achieve that which is required of him under Section 48 of the Act: "(a) correctness of value and (b) equity and uniformity between properties on that valuation list." The Tribunal is of the view that the Commissioner's valuation is reasonable and appropriate to the subject property having regard to its size, use, location and condition.

DETERMINATION:

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

