Appeal No: VA18/4/0042

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

HIGHLAND MOTOR LTD **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of
Property No. 2147448, Warehouse/Warerooms, Yard at 2K No Street, Letterkenny, Carnamogagh Lower, Letterkenny Urban T'Ferred Area, Letterkenny, County Donegal.

B E F O R E

Dolores Power - MSCSI, MRICS	**Deputy Chairperson**
Fergus Keogh - MSCSI, MRICS	**Member**
Sarah Reid - BL	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF APRIL, 2021

1. THE APPEAL

1.1 By Notice of Appeal received on the 30th day of November, 2018 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 €355.

1.2 The sole grounds 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 28(4) of the Act because:

1. *"The valuation is excessive, inequitable and bad in law.*

2. *The valuation does not reflect the Tone of the List of the property under review.*

3. *The property is not valued in accordance with the Valuation Act, 2001, (as amended)*

4. *The NAV has not been calculated in accordance with the relevant legislation.*

5. *Section 48 and Section 49 of the Valuation Act, 2001 (as amended) have not been complied with.*

6. *There are no grounds for changing the basis of assessment/arriving at the NAV from the first time this property was assessed.*

7. *Section 28 of the Valuation Act, 2001 (as amended) has not been complied with.*

8. *Quantum.*

9. *The Valuation Office have relied upon two comparisons. The subject property and another property. This second property was not identified. The valuation Office are unwilling to furnish the identification of this property and details of the properties used as comparison in arriving at the valuation of this second property."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €212.

2. VALUATION HISTORY

2.1 The property was valued in September 2000 by the respondent and a valuation of £85IR was applied at that time. A copy of the valuation, as relied on by the Appellant, is attached as Appendix 1 to this judgment, (n/a to public)..

2.2 Thereafter and by way of revision under Part 6 of the Valuation Act 2001 ("the Act"), as amended, the Respondent sent a copy of a valuation certificate proposed to be issued in relation to the Property to the Appellant on the 26th day of April, 2018 indicating a valuation of €355.

2.3 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.

2.4 A Final Valuation Certificate issued on the 5th day of November 2018 stating a valuation of €355.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 22nd day of October, 2020. At the hearing the Appellant was represented by Mr. Patrick McCarroll. The Respondent was represented by Ms. Fiona Mullins B.Sc. (Hons) of the Valuation Office. When asked by the Tribunal if he was a lay appellant or a qualified valuer, he responded by saying he was a retired agent.

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 their précis as evidence-in-chief in addition to giving oral evidence.

3.3 As the hearing progressed, and in the concluding stages of his cross examination, the Appellant's agent Mr. McCarroll put it to the Respondent's expert witness that she had included incorrect information in her précis of evidence, specifically that the floor areas in one of her comparisons (PN 1691476) were incorrect. In support of this, Mr. McCarroll relied on his personal knowledge of the property, having been involved in an appeal before the Tribunal in respect of that property. Mr. McCarroll could not provide specifics of the determination he was referring to when asked for same by the Tribunal and so the hearing was adjourned to allow Mr. McCarroll produce the said determination and to allow the Respondent a right of reply in relation to same and the allegation that she had included incorrect information in her précis of evidence, as sworn.

3.4 A recommenced hearing was then taken up on the 14th January 2021 in circumstances where the Tribunal determination VA08/3/029 dated 5th January 2009 had been circulated to all parties and Mr. McCarroll and Ms. Mullins had subsequently, and by mutual agreement, confirmed the floor areas of PN 1691476 were in fact as described in the Respondent's précis.

3.5 During this second hearing, Mr. McCarrol was again asked if he was a qualified valuer and he replied that he was a retired valuer. On subsequent questioning by the Tribunal he responded that he had appeared before the Tribunal on 'several' occasions.

3.6 The hearing proceeded to a conclusion on the 14th January 2021 with no further submissions made by the Appellant in respect of the issue.

4. FACTS

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

4.1 The property is a purpose-built commercial unit located on the N56 in Letterkenny approximately 3km outside Letterkenny town. It was constructed in the 1990's and was refurbished and extended in the late 2000's to provide a modern-day car showroom facility with ancillary service buildings.

4.2 The property is held freehold and originally operated as a Renault car franchise though has since expanded to incorporate Citroën, Dacia and Honda licences.

4.3 The building comprises of a car showroom, workshop, offices, 2 x car valeting bays, a tarmacadam surface display yard and a hardcore yard to the side for general car storage. The property areas at the date of revision were agreed between the parties as follows:

Use	**Area Sqm**
Showroom	668.03
Offices	54.18
Store	45.59
Workshop/ Valeting Bays	320.06
Yard (Tarmacadam)	2,000
Yard (Hardcore)	1,500

5. DISPUTED ISSUE

5.1The sole issue on this appeal concerns the appropriate valuation to apply to the subject property. Mr. McCarroll submitted that the valuation applied by the Respondent to the subject property in 2000 ought to continue and remained an appropriate valuation at the date of revision (i.e. 5th November 2018) as it established the tone of the list within the meaning of Section 49 of the Valuation Act, 2001. The Respondent considered both the property and market to have sufficiently changed since 2000 and that these factors justified the revised valuation as issued.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

> *"**49** (1) If the value of a relevant property (in subsection (2) referred to as the "first-mentioned property") falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property."*

6.2 The Appellant stated in their grounds of appeal that the Respondent failed to comply with **Section 48** of the Valuation Act 2001, as amended by section 27 of the *Valuation (Amendment) Act 2015* in respect of the method of determining property's value. Section 48 provides as follows:

> ***48.**—(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.

6.3 The Appellant stated in their grounds of appeal that the Respondent failed to comply with **Section 49** of the Valuation Act 2001 in respect of the method of determining a property's value under Section 28(4). Section 49 provides as follows:

> ***49.****—(1) If the value of a relevant property (in subsection (2) referred to as the "first-mentioned property") falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.*
>
> *(2) For the purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then—*
>
> > *(a) in case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20,*
> >
> > *(b) in case an existing valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988, but the amount estimated by those means to be the property's net annual value shall, in so far as it is reasonably practicable, be adjusted so that the amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act.*

6.4 The Appellant stated in their grounds of appeal that the Respondent failed to comply with **Section 28** of the Valuation Act 2001, as amended by section 13 of the *Valuation (Amendment) Act 2015* in respect of the revision of valuation lists. Section 28 provides as follows:

> ***28.*** *(1) In this section 'property concerned' means a property in relation to which a person, by virtue of his or her appointment under this section, is entitled to exercise the powers conferred by this section.*
>
> *(2) (a) The Commissioner may of his or her own volition appoint an officer of the Commissioner to exercise, in relation to such one or more properties as the Commissioner considers appropriate, the powers expressed by this section to be exercisable by a revision manager, and such an officer who is so appointed is referred to in this Act as a 'revision manager'.*
>
> *(b) A revision manager appointed under paragraph (a) or subsection (3) may assign to another officer of the Commissioner any of his or her functions under this section.*
>
> *(3) If an application under section 27 is made to the Commissioner, the Commissioner shall appoint an officer of the Commissioner to exercise, in relation to the property or properties to which the application relates, the powers expressed by this section to be exercisable by a revision manager, and such manager who is so appointed is also referred to in this Act as a 'revision manager'.*
>
> *(4) A revision manager, if he or she considers that a material change of circumstances which has occurred since a valuation under section 19 was last carried out in relation to the rating authority area in which the property concerned is situate or, as the case may be, since the last previous exercise (if any) of the powers under this subsection, or of comparable powers under the repealed enactments, in relation to the property warrants the doing of such, may, in respect of that property—*
>
> *(a) if that property appears on the valuation list relating to that area, do whichever of the following is or are appropriate—*
>
> *(i) amend the valuation of that property as it appears on the list,*
>
> *(ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4,*
>
> *(iii) amend any other material particular in relation to that property as it appears on the list,*

(b) if that property does not appear on the said valuation list and it is relevant property (other than relevant property falling within Schedule 4 or to which an order under section 53 relates), do both of the following—

(i) carry out a valuation of that property, and

(ii) include that property on the list together with its value as determined on foot of that valuation.

(5) A revision manager shall, if the property concerned is property that has been the subject of an application under section 27, within 6 months from the date of his or her appointment under subsection (3) in respect of that application—

(a) make a decision as to whether the circumstances referred to in subsection (4) exist for the exercise by him or her of the powers under that subsection in relation to that property,

(b) if he or she decides that those circumstances do exist, exercise those powers in relation to that property accordingly.

(6) If a revision manager exercises, in relation to the property concerned, any of the powers under subparagraph (i) or (iii) of paragraph (a) of subsection (4) or paragraph (b) of that subsection, he or she shall issue to the occupier of that property and to the rating authority in whose area the property is situate a new valuation certificate or, as the case may be, a valuation certificate in relation to the property.

(7) If a revision manager exercises, in relation to the property concerned, the powers under subsection (4) (a) (ii), he or she shall issue to the occupier of that property and to the rating authority in whose area the property is situate a notice indicating the manner in which those powers have been exercised in relation to that property.

(8) A certificate under subsection (6) or a notice under subsection (7) shall be issued no later than 7 days before the relevant amendment to the valuation list under subsection (10) is made.

(9) If a revision manager decides that the circumstances referred to in subsection (4) do not exist for the exercise of the powers under that subsection in relation to a property referred to in subsection (5) he or she shall, forthwith after the making of that decision, issue to the occupier who applied under section 27(1) in respect of the property, a notice of the decision.

(10) The revision manager concerned shall amend the relevant valuation list in the appropriate manner to take account of the exercise by him or her of the powers under subsection (4) in relation to a property.

(11) Without prejudice to the preceding provisions of this section, the Commissioner may, at any time, amend a valuation list so as to—

(a) correct any clerical (including electronic) error therein, or

(b) amend any other detail appearing on the list that in the opinion of the Commissioner is inaccurate (other than the valuation of any property).

(12) The Commissioner may also, at any time, amend a valuation list so as to take account of any alteration in a boundary that is made under or by virtue of any enactment.

(13) If the Commissioner exercises any of the powers under subsection (11) or (12) he or she shall, as soon as may be after the occasion concerned of their being exercised, issue to each occupier of a property that is affected by such exercise and to the rating authority in whose area that property is situate a new valuation certificate in relation to that property.

(14) An amendment of a valuation list made under subsection (10), (11) or (12) shall have full force for the purposes of the rating authority concerned making a rate in accordance with—

(a) section 29 of the Local Government Act 1946 (as substituted by section 45 of the Local Government Act 1994), or

(b) section 55 of the Fisheries (Consolidation) Act 1959, as appropriate, in relation to the property concerned by reference to that list as so amended.

7. APPELLANT'S CASE

7.1 The Appellant was represented by Mr. Patrick McCarroll at the hearing who adopted his précis into evidence and asserted that the tone of the list had been established in 2000 when the subject property was last assessed. Mr. McCarroll further argued that to vary that valuation, in the manner proposed by the Respondent, was to ignore the established tone that had been set in respect of the property and that this amounted to a breach of Section 49 of the Act. In support of this argument, Mr. McCarroll referred to the property's previous valuation as proof of the tone. No other comparisons were relied on in support of Mr. McCarroll's claim.

7.2 Mr. McCarroll submitted that subject property was last valued by the Respondent in September 2000, the details of which are set out in Appendix 1 (n/a to public), and at that time the following values were applied by the Respondent:

Use	**Value**
Showroom	€38.10 /m2
First floor Offices	€25.40/m2
Store	€25.40/m2
Workshop	€25.40/m2
Yard (Tarmacadam)	N/A
Yard (Hardcore)	€2.50/m2

7.3 Mr. McCarroll accepted in cross examination from Ms. Mullins that the subject property had been refurbished at some point in the late 2000's but was unable to provide an approximate date for same. Although Mr. McCarroll accepted that the property was extended, he disputed that this amounted to a significant improvement in the property and maintained his position that notwithstanding the refurbishment, the pre-refurbished values ought to apply.

7.4 Relying on the above valuation figures from 2000 as establishing the tone of the list, Mr. McCarroll submitted the following rates were appropriate and ought to be applied in the circumstances:

Use	**Area**	**Value**	**Total**
Showroom	668.03	€38.10 /m2	€1,376.00
First floor Offices	54.18	€25.40/m2	€25,450.00
Store	45.59	€25.40/m2	€1,158.00
Workshop	320.06	€25.40/m2	€8,128.00
Yard (Tarmacadam) less 20% circulation	2,000	€2.50/m2	€4,000.00
Yard (Hardcore) less 20% circulation	1,500	€1.90 /m2	€2470.00
		Total	42,582.00

		Say	**€212.00**

7.5 Mr. McCarroll further contended that the subject property was at a geographical, and consequently commercial, disadvantage given its location 3km from Letterkenny town centre. Mr. McCarroll further contended that other car dealers located proximate to the urban centre had better access to customer footfall which Mr. McCarroll did not. In addition, Mr. McCarroll sought to rely on the fact that the subject property had been previously considered outside the urban limits of Letterkenny (falling into the rural townland area of Letterkenny rather than Letterkenny Urban District area) and that this was further proof of its inferior location and attractiveness as a commercial unit.

7.6 In all the circumstances of the case, Mr. McCarroll contended that the Respondent's valuation was not reflective of the tone of the list and that same had been established by the property itself in 2000.

8. RESPONDENT'S CASE

8.1 The Respondent maintained that the valuation applied to the subject property was fair and equitable in the circumstances. In support of this, three comparison properties were relied on within three kilometres of the subject property and which were of similar stock: PN 2163592, PN 2005641 and PN 1691476 all of which had areas valued similar to the level of the subject property.

PN 2163592

Use	**Area (m2)**	**Rated**	**NAV**
Offices	133.4	€57.15	€7,623.81
Showroom	677.94	€76.20	€51,659.03
Workshop	9.6	€44.45	€426.72
Servicing Area	388.43	€38.10	€14,814.42
Car Wash	57.42	€38.10	€2187.7

		NAV	€**76,711.68**

PN 2005641

Use	**Area (m2)**	**Rated**	**NAV**
Showroom	543.89	€82	€44,598.98
Store	1492.85	€34.16	€50,995.76
Store	197.54	€20.50	€4049.57
Showroom	519.68	€51.25	€26633.60
Store	92.63	€41	€3797.83
Reception	69.55	€47.50	€3303.86
Workshop	424.9	€34.16	€14,514.58
Office	326.2	€41	€13374.20
Yard	1800	€4	€7200
		NAV	€**168,468.3825**

PN 1691476

Use	**Area (m2)**	**Rated**	**NAV**
Showroom	211.03	€88.83	€18,745.79
Store/Workshop	263.9	€41	€10,819.9
Offices	95.16	€41	€3901.56
		NAV	€**33,467.2549**

8.2 In response to Mr. McCarroll's argument that the earlier valuation from 2000 ought to prevail in this case, the Respondent described the subject property as a modern premises that had been valued as an older style showroom and workshop in 2000. Ms. Mullins stated that in light of its subsequent renovation and modernisation, the rate applied by the Commissioner reflected the property in its current state and that the rate applied was appropriate in light of the comparators relied on and the tone of the list that was evident therefrom.

8.3 In cross examination, it was put to the Respondent that the third comparison in her précis of evidence was incorrect insofar as the floor areas were misstated and further that the said property had been the subject of an appeal to the Tribunal which she had not brought to the Tribunal's attention. Upon resuming the hearing (for reasons outlined in section 5 above), no issue was taken with floor areas in the Respondents' précis and Ms. Mullins took no further issue with Mr. McCarroll's previous assertions in that regard.

8.4 In cross examination by Mr. McCarroll it was put to Ms. Mullins that the examples she was relying on were not in fact comparable to the subject property in circumstances where they were all within the Urban District Area of Letterkenny. The Respondent rejected the contention that the subject property was at a disadvantage or could be otherwise differentiated from her comparisons simply by virtue of the fact that they were 3km from the town centre of Letterkenny. Mr. McCarroll further put it to Ms. Mullins that the location had in fact declined since 2000 insofar as certain industrial activity in the area had been discontinued since then. Through the Chair, Mr. McCarroll was asked to comment on the upgraded N56 road that runs adjacent to the subject property and in particular a roundabout, proximate to the subject property, which would facilitate easy access for potential customers. Mr. McCarroll stated this road was of no great consequence given the declining industrial nature of the area.

8.5 Mr. McCarroll noted that the first comparison relied on by the Respondent was also a valuation from 2001 and on that basis it was open to the Appellant to seek to adopt the same approach in respect of their property. Mr. McCarroll further argued that Section 49 of the Act rendered this the best comparison in the circumstances. In reply, Ms. Mullins accepted that the values described for property PN 2163592 were from 2001 however the third comparison included in her précis PN 1691476 remained a valid example and a more recent one reflecting the tone of the list at the date the Final Certificate issued in this case.

8.6 In summing up the Respondent maintained the rate applied in the Final Certificate of Valuation was appropriate and fair having regard to the tone of the list, where the third comparison relied on was the most appropriate example having been valued in 2018 and therefore indicative of the tone of the list at that time.

9. SUBMISSIONS

9.1 There were no submissions of a legal nature and no distinct arguments were relied on in support of the Appellant's stated claim that the Respondent failed to comply with Sections, 28, 48 and 49 of the Valuation Act, 2001 as amended.

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 Donegal County Council.

10.2 The Appellant's case was exclusively based on the existence of a previous valuation of the subject property by the Respondent in September 2000 which it was submitted established the tone of the list in respect of the property. Where that was so, Mr. McCarroll argued the former values ought to be applied by the Respondent as determinative of valuation in November 2018. The Tribunal does not accept that a valuation issued eighteen years previously is determinative of the subsequent tone of the list. Instead, the Tribunal is tasked with considering whether the proposed valuation, as set out by the Respondent, is fair, equitable and reflective of the property as it stood at the relevant date of revaluation.

10.3 In the present case, the Tribunal accepts the Respondent's evidence that the subject property had been extended and refurbished since it was last valued and that the Respondent valued the property based on how it stood in 2018. Mr. McCarroll placed significant emphasis on the fact that though altered as a structure, the premises had not changed to the extent that an increased valuation was justified. The Tribunal is not concerned with the extent of any such renovations that took place but rather whether the property, as it stood on the date of inspection, is fairly reflected in the values subsequently applied by the Respondent in the Final Certificate of Valuation.

10.4 Mr. McCarroll argued that a material factor in the case was that the property was situated in an area formerly classified as a rural location. When asked by the Chair to expand on this point, specifically when the local authority rating areas were changed, Mr. McCarroll was unable to provide any details of same or indicate the date from which the property fell within the Letterkenny Urban District area. The Tribunal is bound to consider the facts as they

pertained on the relevant date, in this case at the date of revision in November 2018. The Tribunal therefore accepts the Respondent's evidence that the property was not considered a rural location, for the purposes of rating, at the date the Final Certificate of Valuation issued and does not see that Mr. McCarroll provided grounds to reject or otherwise challenge this.

10.5 Much of the dispute between the parties in this Appeal focused on the applicability and relevance of the Respondent's comparison properties. Mr. McCarroll relied on one property in their précis of evidence, that being the subject property itself and the valuation thereof in 2000. Ms. Mullins relied on three properties described above at paragraph 8.1.

10.6 In respect of the Respondent's first comparator, PN 2163592, this property was valued in 2001 and accordingly the Tribunal finds it to be of limited use in the context of establishing the tone of the list in 2018. The Tribunal also rejects Mr. McCarroll s' contention that this property confirms that the tone was set at this point and can be relied on as determinative of the issue in the present case. When asked why the Respondent was relying on this property's valuation given its vintage, Ms. Mullins explained that she was limited in terms of available evidence in respect of similar properties proximate to the subject property. The Tribunal does not consider property PN 2163592 to be of particular assistance in the present case.

10.7 In respect of the Respondent's second comparator, PN 2005641, Mr. McCarroll argued that this property had significantly greater road frontage and was not comparable because the subject property had no such presence. In support of this point Mr. McCarroll referred to a map drawing contained in his précis of evidence which showed a property (PN2147450) adjacent to the subject property which was described as being 'in front' of the Appellant's unit thereby reducing road frontage. The Tribunal then compared this drawing to the photographs of the subject property included in the Appellant's précis and noted that the adjacent property is in fact a surface level car yard with no building or structure obscuring the subject property. The locus being known to the Tribunal, Mr. McCarroll was invited to comment on the fact that the subject property was clearly visible from the N56 road adjacent to the property, in reply he stated that this offered little in the way of advantage to the property.

10. 8 In respect of the Respondent's third comparator, PN 1691476, Mr. McCarroll took issue with the Respondent's description of same in her sworn précis and informed the Tribunal that a determination had been issued in respect of this property which was relevant to the case at

hand. Details of this interaction are set out above at paragraphs 3.3 & 3.4. The Tribunal does not accept that the details provided in the Respondent's précis in respect of this property are incorrect. Indeed Mr. McCarroll subsequently confirmed the floor areas were as described in the evidence given. Consequently, the Tribunal makes no finding in respect of the sworn evidence of Ms. Mullins and notes Mr. McCarroll did not address the issue when the hearing was resumed.

10.9 Non-compliance with S.28 was listed as one of the Appellant's grounds of appeal but no evidence was given or argument made by Mr McCarroll to support this. The onus of proof rests with the Appellant and it goes without saying that to succeed in this appeal, the Appellant must establish facts on the basis of the balance of probabilities, from which the Tribunal can be satisfied that the requirements of section 28 of the Act have not been met, specifically the exercising of powers under subsection (4) of that provision. The Appellant has not discharged the burden of proof and so this ground of appeal must fail.

10.10 As regards the Appellant's complaint that the Respondent's determination contravenes section 48 of the Act, section 48 has no application to this case because section 49 of the Act requires that for the purpose of an appeal from a decision made by a Revision Officer under section 28(4), the value of the appeal property is to be determine by reference to the values, as appearing on the valuation list, of other properties in the same rating authority area, that are comparable to the appeal property.

10.11 The Tribunal feels obliged to state that they found the Appellant's Valuer unhelpful, disingenuous, at times evasive in how he presented his case. Further, his conduct in giving evidence fell well short of the expected professional standard, especially from a person of his experience. In particular, the Tribunal notes the following:

A. When asked about his credentials by the Tribunal Mr. McCarroll said he was retired agent, upon further prompting he revealed he was a valuer. When asked if he had ever appeared before the Valuation Tribunal, Mr. McCarroll indicated '*several times*' and when pressed he advised he had appeared between ten or twenty times and had worked in the Valuation Office previously.

B. Mr. McCarroll erroneously asserted that certain details in the Respondent Valuer's Précis were incorrect specifically contending that Comparison No. 3 had been the

subject of a Tribunal determination and the floor areas, as set out in the Précis, were incorrect based on that determination. He failed to produce the determination having made this allegation and informed the Tribunal that he learned of determination '*only recently'*. However, it subsequently became clear that he had not only acted for the appellant in that appeal, but that the Tribunal's determination had issued in 2009 so was of limited use in the context of a property valued, and inspected by the Respondent in 2018.

10.12 The Tribunal finds it entirely unacceptable for an expert witness to put a matter to a witness without substantiating same or being able to provide the Tribunal with details of the allegations being levied. In support of this the Tribunal relies on determination VA.17.5.664 in which the Tribunal found:

> *"10.2 In the Tribunal's view, if a party intends to rely on a particular document or piece of evidence at an appeal hearing, this should provide to the opposing party or their agent <u>in advance and form part of their précis.</u> It is a well-established principle of natural justice that a party should not be placed at a procedural disadvantage by reason of an opposing parties conduct and, in this instance, by virtue of the fact that he or she was unaware of an argument being relied on in the hearing. It is equally a breach of fair procedures to seek to cross examine a party on a document they have not seen. The Tribunal does not find any good reason why this public document could not have been exhibited by the Respondent and exchanged in advance to ensure fair procedures and enable the Appellant effectively prepare their case with an effective right of reply*."

10.13 In the present case, although the Appellant would not have been aware of the Respondent's comparators until exchange of their précis of evidence on the 14th May 2020, an Addendum précis was filed by the Appellant on the 7th August 2020. As such the opportunity arose to include Tribunal determination VA08/3/029 at that point, had Mr. McCarroll deemed it relevant yet he failed to address the issue at that time.

10.14 The Tribunal was disappointed by the evidence relied on by both parties to this Appeal and finds that the primary guiding property to which regard should be had is the Respondent's third comparison PN 1691476, valued in 2018. Having regard to this, the Tribunal finds that

the unit value rates per m^2 applied by the Respondent in respect of the subject property are not excessive when compared to this property. The Tribunal does not consider there was sufficient strength in the evidence adduced by Mr. McCarroll to overturn the established tone of the list and notes that in this, as in all cases before the Tribunal, the onus of proof in appeals rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal's determination.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and affirms that the valuation of the Property, as stated in the valuation certificate, is €355.

And the Tribunal so determines.