

Appeal No: VA19/5/0108

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Margaret and Damien O'Donnell

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5016455, Store at 1.2 Middle Quarter, County Tipperary

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF FEBRUARY 2023**

BEFORE

Barry Smyth, FRICS, FSCSI, MCI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 27th day of September 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 €5,660.

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 recently received a revaluation notification for the afore mentioned property. This yard has been vacant for the past 12 years despite advertising locally on numerous occasions. I believe that my inability to rent this property is firstly due to the fact it is prone to flooding. The issue of flooding in the village is noted in the Tipperary County Council 'Strategic Flood Risk Assessment 2017'. Draft flood maps produced under Suir CFRAMs Study have indicated that lands in Newcastle village are at risk of flooding. While the study has not been published to date, regard has been made to same and the Council has taken a pre-cautionary approach to the zoning of land. Secondly the restrictive size and location of the site the store is on makes it unattractive to potential tenants. I believe the location, size, my inability to rent it for over a decade and flooding issues have not been taken into consideration in the valuation process and hence I am making this appeal. Given the current circumstances I would like to understand how the valuation was reached. "

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €1,020.

2. RE-VALUATION 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 €5,660.

2.2 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €5,660.

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, 2019.

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.

4. FACTS

4.1 The parties are agreed as to the following facts.

4.2 The location of the property at Middlequarter, Newcastle, Co. Tipperary

4.3 The accommodation comprises a store of 265 sq. meters and a gravel yard of 495 sq.meters

5. ISSUES

The sole issue between the parties to be determined by the Tribunal is the correct Net Annual Value of the property.

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

The Appellant submitted a summary of the appeal by email dated 30th October 2021 including the following points:

7.1 That the property is located in a flood risk area and the Appellant included a copy of the flood risk map for the Newcastle area which had previously been provided the Valuation Office with video evidence of flooding to the subject building and yard in 2013. In the view of the Appellant this limits the commercial use of the building and yard to temporary/seasonal/ad hoc storage only.

7.2 That the property and its immediate neighbour had been valued as one prior to the 2019 valuation exercise and that the total annual cost of rates had risen from €432.59 in 2018 to €1,671.30 an overall increase of 386%. The Appellant further noted that the adjoining property no. 1803076 had a Valuation of €2,040 NAV with an annual cost of €293.61 (2021) and that the property under appeal no.5016455 with its proposed NAV of €5,660 would have an annual cost of €1,377.69 (2021).

These figures show an inconsistent “amount on valuation” applied to the NAVs which is dealt with below under Findings 10.2

7.3 That the appeal property is a single storey storage shed and yard previously used for the sale and repair of farm machinery.

7.4 In the Notice of Appeal to the Valuation Tribunal, the Appellant gave his opinion of net annual value as €1,020 being 50% of the NAV of €2,040 on the adjoining property. The analysis of that Valuation was provided by the Respondent’s Valuer and was calculated on the basis of the workshop 88.2 square meters at €22 per square meter and the concrete/tarmac yard 45.5 square meters at €2.20 per square meter totalling €2,040.50, say €2,040.

8. RESPONDENT’S CASE

The Respondent provided a written precis dated the 11th November 2021 and noted the following:

8.1 That the property is a semi-detached single storey industrial unit plus a gravelled yard and that it is in good condition and had been added to an existing industrial building circa 1985. Photographs of the building and the yard and the general location as well as an internal view of the building were provided.

8.2 That as no written precis had been received from the Appellant and as such the Appellant had not complied with the Valuation Tribunal (Appeals) Rules 2019, the onus of proof has not been met by the Appellant and that the appeal should be disallowed.

8.3 In support of the Commissioner’s opinion of Net Annual Value the respondent’s valuer provided one Key Rental Transaction and 4no. NAV comparisons as follows:

Key rental transaction

Full details in the appendix (N/A to public)

Workshop 252.48 sq. meters	Net Effective Rent €19.20/sq. m	NAV €17/sq. m
Yard 760 sq. meters	Net Effective Rent €1.92/sq. m.	NAV €1.70/sq. m.

NAV comparisons

No.1 Chapel Street Borrisoleigh Co Tipperary
Warehouse 220 sq.m. @ €18/sq.m. NAV €3,960

No.2 Newport, Nenagh, Co Tipperary
Warehouse 454.3 sq.m. @ € 18/sq.m. NAV €8,170

No 3. Main Street, Cloughjordan, Co. Tipperary
Workshop 578.08 sq. m @ €18/sq. m.. NAV €10,400.

No.4 Middlequarter, Middle Quarter, Co. Tipperary. This property adjoins the subject.
Workshop 88.2 square meters @ €22 per square meter. Yard (concrete/tarmac) 45.5 square meters at €2.20 per square meter. NAV €2,040

8.4 The Respondent quoted three relevant authorities to support his opinion that the onus of proof on appeals before the Valuation Tribunal rests with the Appellant.

VA00/2/032, Proundlane Limited, trading as Plaza Hotel
VA07/3/054, William Savage Construction and
VA09/1/018, O'Sullivan's Marine Limited.

8.5 The Respondent's opinion of the correct NAV at €5,660 is calculated as follows.

Store: 265 sq. metres	@ €18 per sq. metre.	€4,470
Yard: 495 sq. metres.	@ €1.80 per sq. metre.	€ 891
Total:		€5,661, say €5,660.

8.6 The Respondent stated that there are three relevant properties including the subject on the site where the subject property is located, one consisting of petrol pumps associated with the shop across the road while the other two are categorised as industrial-workshop and industrial-store (the subject). As the other property on the site property no. 1303076 is not subject to representation or appeal to the Valuation Tribunal he said that it is fair to say that there is an "emerging tone" for this category of property.

8.7 In relation to the issue of flooding, he stated that this was considered in VA10/3/029 Momentum Creative Marketing Services, property no. 2203801 where it was found by the Tribunal that section 49 of the Valuation Act 2001 must be complied with having regard to the tone of the list and he provided a copy of that Judgement in an appendix (N/A to public)

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 Tipperary County Council.

10.2 There appears to be a mathematical error in the Appellants calculation of total rates payable for properties 1803076 and 5016455 following revaluation. The “annual rate on valuation” in Tipperary for 2019 is 0.1919 thereby giving rise to annual rates based on the undisputed NAV and the NAV the subject of this appeal of €391.48 and €1,086.15, total €1,477.63 and not €1,671.30 as in the Appellants precis.

10.3 From the evidence adduced it is clear that this is a small store/workshop with a relatively large, gravelled yard. From the photos taken on the 27th October 2021 by the Respondent’s valuer, the property is clearly occupied with vehicles on the yard area and the building utilised for the maintenance of tractors and vehicles. There was only one incident of flooding in 2013 submitted in evidence and no convincing evidence that the flood risk is such that the property is not capable of being occupied or let. The Tribunal is not persuaded that the decision of the Tribunal in the revision case VA10/3/029 means that flood risk must be ignored in all cases. The frequency and nature of the risk are matters that might well affect a property’s Net Annual Value as defined in the Valuation Act 2001 as amended.

10.4 It is surprising that only one key rental transaction was available for the assessment of the NAV of this subject property and particularly that the rental position in relation to the immediately adjoining property, which it is implied is let, was not provided. The Key Rental Transaction is for a period of only 1 year and 2 months.

10.5 The one key rental transaction is of a very similar size property with a net effective rent on the building of €19.20 per square meter and NAV of €17 per square meter and NER on the yard of €1.90/sq. m. and NAV €1.70/sq. m. Of the 4No. NAV comparisons, three of them are at €18 per square meter NAV and the immediately adjoining smaller property is at €22 per square meter NAV with the yard at €2.20 per square meter. The Tribunal does not accept that the fact that there was no representation or appeal in relation to the adjoining property means that there is an emerging tone of the list.

10.6 In the opinion of the tribunal, the Respondent’s reduction from €22 per square meter on the adjoining property to €18 per square meter NAV of the subject seems reasonable and is supported by the three other NAV comparisons. It is well established that in an appeal the onus of proof is on the appellant and in this instance the Tribunal is satisfied that the Appellant has not proven the Respondent’s figure of valuation to be incorrect nor provided evidence that the Appellant’s opinion of NAV is correct.

DETERMINATION:

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

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice