

Appeal No: VA19/5/1536

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Lucey Dental

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2214375, Retail (Shops) at floor(s) 0, 1 2HJKL/4/UNIT 4A Rathdown, Lower Greystones/Delgany, County Wicklow.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF SEPTMEBER, 2023**

BEFORE

Killian O'Higgins - FSCSI, FRICS

Member

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 13th 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 ("the Property") was fixed in the sum of €21,100.
- 1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: "This unit operates as a Dental Practice, it has planning permission for Medical use, it does NOT operate as a Retail shop, and this unit does NOT have planning permission to operate as Retail shop. So, the use stated in the valuation certificate is incorrect, it should be Office Use."
- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €8,980.

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 €22,200. The Wicklow valuation date ("the valuation date") was 15th day of September 2017 and is the date on which the Net Annual Value (NAV) falls to be assessed.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager on the 23rd day of April 2019 in relation to the valuation requesting a valuation of €11,381.59 (amended to €8,980 on appeal to the Tribunal). Following consideration of representations, the valuation of the Property was reduced to €21,100.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €21,100 and an appeal was lodged with the Tribunal by the Appellant.

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. Following receipt of the Respondent's précis the Appellant requested and was granted permission by the Tribunal to submit a supplementary précis.

3.3 On notice to both parties, who were offered the opportunity to attend, the Tribunal inspected the Property on the 27th day of March 2023 with the Appellant in attendance only to facilitate the inspection of the Property. The Respondent elected not to attend. In addition, the Tribunal made an external inspection of each of the Key Rent Transactions (KRT) and comparative properties advanced in evidence by both parties.

4. FACTS

4.1 The parties are agreed as to the following facts.

4.2 The property is an external unit located in the Meridian Point Shopping centre in Greystones, situated to the west of Church Road. It is immediately adjacent to the car park access road.

4.3 The Property is over two floors with the main accommodation on ground floor in use as a dentist's surgery with associated storage at first floor. The property is in good condition and well maintained.

4.4 Although the table below describes the property as at Retail Zone A and Retail Zone B, the Appellant contends that the Property should be described as 'offices' to reflect the change of use to Doctor's/Dentist's surgery in 2013, and the description (offices) mainly applied to other doctors' and dentists' surgeries on the Valuation List in Greystones.

Floor	Description	Sq. M
0	Retail Zone A	51.78
0	Retail Zone B	13.32
1	Store	14.6
Total		79.7

4.5 The property is held under lease from November 2013 for a term of 15 years at a rent of €11,500pa with the tenant responsible for internal repairs, rates and a proportion of service charge and insurance. Rent reviews are at five-year intervals.

- 4.6 The property lay vacant for many years before it was occupied by the Appellant in 2013 following receipt of planning permission for change of use from retail to a doctor's/dentist's surgery.

5. ISSUES

- 5.1 The Appellant considers that the NAV of the Property should reflect the NAV of other doctor/dentist surgeries in and around Greystones, all described on the Co. Wicklow Valuation List as 'offices' and valued accordingly.
- 5.2 Nevertheless, the issue in contention, therefore, is the NAV psm to be applied to the ground floor of the Property, the Appellant having agreed that the first-floor store has a value of €80 psm as per the Valuation List and the Respondent's contention.

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 The Appellant is Dr. Lisa Lucey who submitted a précis of evidence.
- 7.2 Dr. Lucey said that whilst the Property was part of the Meridian Point Shopping Centre ("the Centre"), it is located at the rear of the shopping centre, with frontage only to the carpark access road, curvature of the building reducing visibility only to those entering the car park, and no direct access to the main retail plaza.
- 7.3 The use of the Property, as described by Dr. Lucey, is a Dental Practice with surgeries and associated back of house areas, including a storeroom at first floor and a staff room. Dr. Lucey stated that the use and NAV in the Valuation Certificate are inappropriate in the context that the Property has planning permission for Medical/Dental use only and it does not operate as a retail shop. Dr. Lucey maintained that the main use indicated in the Valuation Certificate - Retail Zone A and Retail Zone B was incorrect.
- 7.4 Dr. Lucey provided a copy of a "Notification to Grant" by Wicklow County Council (No.13/8546) dated the 28th day of August 2013, permitting a change of use at Unit 4A

Meridian Point Shopping Centre “...from existing vacant retail unit to a medical centre (doctor/dentist surgery)...”, describing the accommodation as two surgery rooms and supporting accommodation of 77 Sq. M gross floor area. The grant was subject to only two conditions – (1) development to comply with documents lodged, and (2) details of signage to be submitted and agreed in advance.

7.5 Dr. Lucey maintained that the NAV of the Property should be compared to the “Office Use” described in other medical and dental practices in the Greystones area.

7.6 Dr. Lucey stated that the Property had been vacant for many years before the change of use application was submitted to Wicklow County Council. According to Dr. Lucey, this was because frontage was to the car park access road only, there was no passing footfall and therefore it was not a viable unit for retail use.

7.7 The Property is held under lease for a term of 15 years with from the November 2013. Copies of “relevant sections” of the lease were supplied which described the “Demised Premises” as “ALL THAT Retail Unit No. 4A being part of Meridian Point...” The rent at commencement of the lease was €11,500pa with the tenant responsible for rates and a proportion of insurance and service charge for the Centre. The lease provides for five-year rent reviews.

7.8 Dr. Lucey provided details of ‘tone of the list’ comparative evidence, supplying copy extracts from the Wicklow County Council Rating List in relation to each comparison as outlined in Appendix 1 (n/a to public). Comparisons 2, 3 and 4 were close to the Property, comparison 6 a little further away to the east; Comparison 1 was at the northern entrance to the town (R761) and Comparison 5 to the south of the town off the R762.

7.9 Dr. Lucey maintained the comparative evidence classified each medical related use as Office or Offices, even where units were located in shopping centres. Rates psm for the uses classed as offices were between €90.00 psm and (mainly) €120.00 psm. Dr. Lucey stated that the Valuation Office approach in relation to the Property was inconsistent to other similar medical practices in Greystones - the valuation was incorrect, not appropriate, and inconsistent relative to other properties on the Valuation List in Greystones.

7.10 In the Notice of Appeal to the Tribunal, Dr. Lucey contended for the following valuation:

Level	Use	Area Sq. M	€/Sq. M	NAV
0	Office	51.78	€120.00	€6,213.60
0	Office	13.32	€120.00	€1,598.40
1	Store	14.60	€80.00	€1,168.00
Total				€8,980.00
			NAV	€8,980

8. RESPONDENT'S CASE

8.1 Mr. Liam Diskin B.SC. (Property Management & Investment) prepared and submitted his précis on behalf of the Respondent.

8.2 Mr. Diskin stated that the Property is located at Meridian Point Shopping Centre and that it occupied a 'slightly lower profile' next to the Centre's covered carpark entrance. The Centre, an uncovered shopping centre which opened in 2004 with the majority of units fronting the courtyard. Other tenants include Sports Direct, Costa Coffee, The Grafton Barber, An Post and a number of smaller retail and restaurant outlets.

8.3 Mr. Diskin described the Property as 'accessible from street level while not fronting the central courtyard' with a partially glazed frontage of 8.06m to the car park access road. Mr. Diskin also said that the property is "...part of the main body of the development..." with the frontage opposing more conventional units in the Centre". The first-floor accommodation lies to the rear of the mall units facing the central plaza. Mr Diskin stated that the property was in good condition and in use as a dental surgery.

8.4 Mr. Diskin noted that the agreed floor areas excluded amendments to the internal layout to permit amalgamation with an adjoining unit at rear which will face the main plaza on completion.

8.5 Mr Diskin provided details of tenure – a lease from 01 November 2013. The lease is for a term of 15 years with five-year rent reviews and the tenant responsible for internal repairs rates and a proportion of insurance and service charge. Mr Diskin indicated that the rent fixed in 2018 was €11,400pa although the return dated the 6th day of October 2017 indicates €11,500pa as confirmed in Dr. Lucey's précis. The S. 46 Revaluation Information Form, submitted by the Appellant at the Respondent's request, also indicated a break in October 2021.

8.6 Commenting on the evidence advanced by Dr. Lucey, Mr. Diskin said that the Property was only included in the Valuation List in 2014, after planning permission had been obtained and the lease executed – both occurred in 2013. Mr. Diskin said that the planning status is not a material factor when determining the NAV in the revaluation process.

8.7 In relation to each of the Comparisons advanced by Dr. Lucey, Mr Diskin offered the following comments:

Appellant Comparison 1 - PN 2214385

Not considered comparable. Dental surgery on the periphery of Greystones. No profile and no resemblance to a retail unit. €90 psm aligns with other similar offices in Greystones and not conventional retail units.

Appellant Comparison 2 - PN 630229

Not considered comparable. Formerly residential, converted to a dental surgery. No profile and at the end of a narrow cul-de-sac. The Commissioner of Valuation's approach was to adopt €120 psm in line with ground floor offices in Greystones.

Appellant Comparison 3 - PN 2181433

Not considered comparable. Formerly residential, converted to a dental surgery. The Commissioner of Valuation's approach was to adopt €120 psm in line with ground floor offices in Greystones.

Appellant Comparison 4 - PN 746163

Not considered comparable. Formerly residential converted to offices. Bears no resemblance to a retail unit. Limited profile and off main commercial pitch. The Commissioner of Valuation's approach was to adopt €120 psm in line with ground floor offices in Greystones.

Appellant Comparison 5 - PN 2182390

Not considered comparable. Modern, purpose-built, medical centre with attached pharmacy, in retail unit on periphery of Greystones. Accommodation over three floors with lift. The Commissioner of Valuation's approach was to adopt €120 psm in line with ground floor offices in Greystones.

Appellant Comparison 6 - PN 630776

Not considered comparable. Part of a former residential property in a residential estate well removed to west of Greystones. The Commissioner of Valuation's approach was to adopt €120 psm in line with ground floor offices in Greystones.

- 8.8 Mr. Diskin advised that 48 items of market information were available to inform the valuation scheme, certain transactions having been identified as complying with the requirements of s. 48 of the Valuation Act 2001, as amended. In relation to the Property, a valuation level of €380 psm Zone A was applied with a 10% allowance for frontage to depth to arrive at a NAV of €21,100. This evidence was arrived at by considering "similarly circumstanced" properties, sharing similar characteristics such as use size, location and construction whilst demonstrating correctness, and equity and uniformity.
- 8.9 Ten Key Rental Transactions (KRT's) used to estimate the NAV of the Property were supplied in evidence by Mr. Diskin (Appendix 2 – n/a to public)
- 8.10 Mr. Diskin also provided six Comparisons relative to the NAV's of properties considered comparable to the Property. (Appendix 3 – n/a to public)
- 8.11 Referencing authorities on the onus of proof resting with the Appellant Mr. Diskin quoted VA 00/2/032 Prounlane Ltd. t/a Plaza Hotel and VA07/3/054 William Savage Construction.
- 8.12 Mr. Diskin stated that his position was that the Property was a retail unit comparable to other retail properties and should be valued on a zoned basis. He stated that the application of a level of Zone A at €380 psm was appropriate and the Property was valued in line with other units at the Centre, with appropriate adjustments. Mr. Diskin submitted that the NAV for which he contended was in accordance with s.48 of the Act and the correctness, equity and uniformity required under s.19(5) of the Act. He countered that all the evidence supplied by Dr. Lucey was inappropriate as all comparisons were medical/dental surgeries operating from offices.
- 8.13 In providing his opinion of value at €21,400, Mr. Diskin requested the Tribunal to affirm this NAV calculated as follows:

Level	Description	Area Sq. M	€ psm	NAV
0	Retail Zone A	51.78	€380.00	€19,676.40
0	Retail Zone B	13.32	€190.00	€2,530.80
0	Allowance			-€2,220.72
1	Store	14.6	€80.00	€1,168.00
Total		79.7		€21,154.48
			NAV	€21,100

9 APPELLANT'S SUPPLEMENTARY PRÉCIS

9.1 Following receipt of the Respondent's précis Dr. Lucey requested, and was granted, permission by, the Tribunal to submit a supplemental précis - "Response to Valuation Office Report/Précis of Evidence" dated the 3rd day of August 2022.

9.2 Dr. Lucey submitted that the Property had been vacant since 2004 until it was Leased by Dr. Lucey in 2013. The vacancy was not a product of the economy or retail performance, according to Dr. Lucey, but because of poor positioning and profile it remained vacant when all other units were occupied. This period coincided with the height of the Celtic Tiger years.

9.3 Stating that the rent was lower than the rent of any other unit at the Centre, Dr. Lucey said that this was because it was not suitable for any form of retail use, which required footfall. At the most recent rent review in 2018, the rent was unaltered at €11,500pa. In addition, the Property operated as a dental practice and does not have planning permission for retail use.

9.4 Dr. Lucey said that the claim by the Respondent that the Property occupied "a slightly lower profile location within the centre" compared to its typical units demonstrated a lack of understanding of the Property and misrepresented the situation. Dr. Lucey stated that the Property fronted the vehicular access to the car park, which is negatively impacted by the curvature of the Centre. The pedestrian entrance to the Centre is located elsewhere – the Property has no opportunity to benefit from footfall. The Property is completely hidden from view other than for parties using the vehicular entrance to the car park. It is the only unit at the Centre with no frontage to the plaza.

9.5 According to Dr. Lucey, the photographs provided by the Respondent were dated April 2021, however Dr. Lucey maintained that the property in 2021, looked nothing like it appeared in those photographs. The reduction in value relative to properties facing the plaza is totally inappropriate and did not reflect the very poor profile. Dr. Lucey referred to KRT 2 and a 10% allowance for poor profile, but she said her photographic evidence demonstrated an excellent profile at the pedestrian entrance, yet it has received a 10% allowance for reduced profile – similar to that applied to the Property which has no frontage to the plaza.

9.6 For the avoidance of doubt, Dr. Lucey confirmed her valuation for NAV at €8,930.

9.7 Referencing the Respondents comments on her comparisons, Dr. Lucey commented:

PN 2195900: photographs provided demonstrating its use as a veterinary clinic, but it was clearly a prime retail unit at the entrance to the overall retail development – it is in no way comparable to the Property.

PN 2214385: One of the most prominent and successful retail developments in Greystones and currently being extended. It is a far better location compared to that of the Property.

PN 2182390: This is not the ‘purpose built medical facility’ described by Mr. Diskin. It is a converted hospitality building and the medical element was valued in 2017 as offices at €120 psm.

9.8 Referencing the Respondent’s KRT’s, Dr. Lucey commented said that Mr. Diskin advanced KRT’s on the basis that they were ‘similarly circumstanced’ sharing characteristics of use, size, location, and construction - all the KRT’s either front the plaza at the Centre or were on the main retail Street (Church Street) in Greystones. Dr. Lucey was of the opinion that none of the KRT’s are comparable to the Property.

9.9 Referencing the Respondent’s NAV Comparisons, Dr. Lucey stated that Comparisons N1, N2, N3, N4, N5, N6 and N7 do not accord with the location of these comparisons. All the properties can be considered good or prime retail locations. As Dr. Lucey was in the process of carrying out works at Comparison N4 she stated that it was unfair to include this unit as she had not had the opportunity to review the rateable valuation. N8 is on the opposite side of the road but with an expansive front façade and a vastly superior profile compared to the Property.

9.10 In summary, Dr. Lucey said that the property was not suitable for retail and spent almost ten years vacant until the change of use and subsequent occupation by Dr. Lucey. The Property is in a really poor position adjoining the vehicular entrance the Centre’s car park. Every unit in the Centre, presented as a comparison, has frontage to the plaza and two separate units are located on or close to the main shopping street, Church Road, in Greystones.

10. SUBMISSIONS

10.1 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 Co. Wicklow.

10.2 The location of the Centre and the Property is not in dispute. Whereas the Appellant disputed the described location of various KRT or Comparison evidence offered by the Respondent, in externally inspecting each of the properties identified as KRT or comparison evidence, the Tribunal has satisfied itself as to the precise location of the properties concerned.

10.3 In determining the rent at which it is estimated a relevant property might reasonably be expected to be let, the best evidence is lettings of comparable premises in the open market. Use of the rental method of valuation depends, however, on sufficient, appropriate, and reliable comparable evidence being available from the marketplace; if it is available then it is top of the evidential hierarchy.

10.4 The parties are not at odds with the physical description and size of the property. The parties differ significantly on the NAV psm to be applied to ground floor of the Property relative to the retail relationship hierarchy at the Centre. Contrary to the contention of the Appellant, the method of determining the property's value is not the use specified in the Valuation List but, generally, it is by estimating the NAV – which 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.... “ s.48(3) of the Act.

10.5 In analysing the KRT's presented the Tribunal comments as follows:

KRT 1 PN 2186347: a unit at the Centre fronting the plaza. Its rent is €25,000pa and NAV €21,800, It is notable that the rent at the Property is 46% that of KRT 1 yet the NAV contended by Mr. Diskin at €21,100 is only 3.2% less than that at KRT 1. Provides evidence of a NAV at 88.18% of passing rent.

KRT 2 PN 2186347: a unit at the Centre at a half level below the plaza level at the main pedestrian stairway entrance from Church Road. Although an unusual unit it has very good visibility. The rent is €15,000pa and NAV €34,600. It is notable that the rent is 60% that of KRT 1 yet the NAV is 157% of that at KRT 1. The rent differential between KRT1 and KRT 2 is prima facie evidence that KRT 1 is in a more superior position compared to KRT 2. KRT 2 is appealed to the Tribunal, therefore it is of no evidential value as to NAV.

KRT 3 PN P2195900: a unit at a shopping centre, 2km distant from the Property with a NAV which is 71.89% of rent. As a unit in a shopping centre, it is somewhat relevant but in the hierarchy of evidence less relevant than units at the Centre or perhaps closer the location of the Property.

KRT 4 PN 630585: a retail unit in Greystones' best retail location on Church Road as evidenced by Zone A rental level applied by the Valuation Office at €979 psm Zone A. The NAV is 49.8% of rent. Other than being located close-by, KRT 4 bears no comparison with the Property.

KRT 5 PN 1041011: a double fronted retail unit in Greystones' best retail location on Church Road close to KRT 4 although the Zone A rental level applied by the Valuation Office is €510 psm Zone A. The NAV is 104.4% of rent. Other than being located close-by, KRT 5 bears no comparison with the Property. KRT 5 is appealed to the Tribunal, therefore it is of no evidential value as to NAV.

KRT 6 PN 2191507: a retail unit in Greystones' amongst the best of retail locations on Church Road The Zone A rental level applied by the Valuation Office was €754.30 psm Zone A. The NAV is 70% of rent. Other than being located close-by, KRT 6 bears no comparison with the Property.

KRT 7 PN 5008756: a retail unit fronting the access road to the Centre (from Church Road). Although not located on Church Road, it has good visibility for those entering the Centre by car or on foot. The NAV is 84.2% of rent. Given its proximity to the Centre, it is somewhat relevant.

KRT 8 PN 5011904: a small unit fronting the northern extremity of the Church Road 'strip' with a NAV of 53% of rent. Other than being located close-by, and a smaller unit, KRT 8 bears little comparison with the Property.

KRT 9 PN 630240: has frontage to Hillside Road, a secondary location, off Church Road. It has a NAV of 69.70% of rent. Given its secondary location and proximity it is somewhat relevant.

KRT 10 PN 631471: a small unit and whilst prominent in its setting and close to Greystones harbour, it is well removed from the Property. Other than it being a small unit with a NAV of 77.50% given its distance from the Property it is of limited relevance.

10.6 The KRT's offered in evidence to illustrate the approach to devising the valuation scheme were extensive and Mr. Diskin said amounted to 10 of 48 items of market information. The KRT's are detailed at Appendix 2 (n/a to public). In reviewing same, the despite the various levels of relevance indicated the Tribunal analysed the information (exclusive of KRT 2 and KRT 5 - properties on appeal to the Tribunal) as follows:

Prop. Number		Rent	NAV	NAV % of rent	NER	NER % of rent	NAV % of NER
PN 2181671	KRT 1	€ 25,000	€ 21,800	87.20%	€ 22,045.23	88.18%	98.89%
PN 2195900	KRT 3	€ 18,000	€ 12,940	71.89%	€ 18,000.00	100.00%	71.89%
PN 630585	KRT 4	€ 60,000	€ 29,900	49.83%	€ 53,385.23	88.98%	56.01%
PN 5008756	KRT 6	€ 20,000	€ 14,010	70.05%	€ 19,219.74	96.10%	72.89%
PN 5008756	KRT 7	€ 45,000	€ 37,900	84.22%	€ 45,000.00	100.00%	84.22%
PN 5011904	KRT 8	€ 30,000	€ 15,930	53.10%	€ 28,209.48	94.03%	56.47%
PN 630240	KRT 9	€ 16,800	€ 11,710	69.70%	€ 15,338.49	91.30%	76.34%
PN 631471	KRT 10	€ 8,400	€ 6,510	77.50%	€ 7,887.72	93.90%	82.53%
	Average	€ 27,900	€ 18,838	70.44%	€ 26,135.74	94.06%	74.91%

Note that NAV as a percentage of rent averages 70.44%, NER 94.06%.

10.7 The table below illustrates the NAV as a percentage of rent contended by the parties, the NAV of the Property if based on the average from the table above (70.44%) and the NAV as a percentage of rent of the KRT 1 NAV to rent ratio when applied to the Property.

Prop. Number		Rent	NAV	NAV % of rent	Reference
PN 2214375	The Property	€ 11,500	€ 21,100	183.48%	Respondent
		€ 11,500	€ 8,980	78.09%	Appellant
		€ 11,500	€ 8,100	70.44%	Average
		€ 11,500	€ 10,028	87.20%	KRT 1 Centre Plaza Unit

10.8 Given the number of Key Rental Transactions presented, almost 21% of the basket of market information considered, the ten presented and eight analysed by the Tribunal are a very large sample and can be considered a representative example of the respondent's approach to developing the valuation scheme. KRT's 2 and 5 were under appeal to the Tribunal when the evidence was presented. Accordingly, the evidence of such NAV's is not reliable and was excluded in the Tribunal's analysis, as indicated above.

10.9 The Net Effective Rent arrived at by the Valuation Office in the context of the valuation scheme amounted to an average of 94.06% of individual properties passing rent. As Mr. Diskin pointed out "the NER equates to the basis of valuation set out in s.48 of the Valuation Act, 2001 (as amended) on the statutory valuation date". The evidence presented by Mr. Diskin is that the NERs under the valuation scheme are very closely related to passing rents.

10.10 It is also noted that NAV's as a percentage of rent also produced an average result of 70.44%. Equally interesting is to note that the KRT 2 and KRT 5 appeals to the Tribunal reflect instances where the NAV as a percentage of rent exceeds 100%.

10.11 In relation to the Property, the NAV as a percentage of rent is 185% compared to the 70.44% average in the eight of the ten KRT's analysed by the Tribunal.

10.12 What is most striking is the comparison between KRT 1, a unit of relatively similar size facing the plaza, which is the best location in the centre, and the Property:

KRT 1					
Level	Use	Area Sq. M	NER psm	NAV psm	NAV Total
0	Retail Zone A	36.00	€403.75	€400.00	€14,400.00
0	Retail Zone B	37.20	€201.87	€200.00	€7,440.00
Total		73.20			€21,840.00
				NAV	€ 21,800.00
				Rent pa	€ 25,000.00
				NER	€ 22,045.23
The Property					
Level	Use	Area Sq. M	NER psm	NAV psm	NAV Total
0	Retail Zone A	51.78		€380.00	€19,676.40
0	Retail Zone B	13.32		€190.00	€2,530.80
	Allowance				-€2,220.72
1	Store	14.60		€80.00	€1,168.00
Total		79.70			€21,154.48
				NAV	€ 21,100.00
				Rent pa	€ 11,500.00
				NER	

KRT 1 has a rent more than double that of the Property – 117% yet its NAV as a proportion of rent is 87.% whereas the same ratio at the property is 183%.

10.13 The NAV psm for the Property was assessed at only 5% less than KRT 1 NAV psm, although a 10% allowance was also applied to areas defined by the Valuation Office as retail. If the same NAV to rent ratio represented by KRT1 (87.2%) was applied to the property, the NAV would be €10,028. The KRT 1 has the highest NAV to rent ratio of the eight properties analysed.

10.14 Turning to the various comparisons advanced by Dr. Lucey (Appendix 1 – n/a to public), it is not necessary to expand in detail on the evidence presented. In summary, Dr. Lucey contended that the NAV psm at the Property should be equivalent to the NAV psm of similar medical or related occupiers in Greystones. Dr. Lucey presented evidence of five properties with doctors or dentist surgeries and a sixth occupied as an osteopathy and acupuncture clinic. In each instance the accommodation occupied by the various practices was described as offices and in five cases the NAV psm was €120. In one case the NAV psm was €90 psm. It is fair to say that Dr. Lucey cogently argued, and produced evidence to support, her position that doctor or dentist surgeries in Greystones occupy properties described as offices and are mainly valued at €120 psm. Accordingly, Dr. Lucey had adopted €120 psm at the Property apart from €80 psm for first floor storage in contending for a NAV of €8,980.

10.15 The level contended for by the Respondent is:

The Property				
Level	Description	Area Sq. M	€ psm	NAV
0	Retail Zone A	51.78	€380.00	€19,676.40
0	Retail Zone B	13.32	€190.00	€2,530.80
0	Allowance			-€2,220.72
1	Store	14.6	€80.00	€1,168.00
Total		79.7		€21,154.48
			NAV	€21,100

10.16 Addressing comparisons advanced by Mr. Diskin, listed at Appendix 3 (n/a to public), seven of the ten comparisons offered in evidence are units within the main body of the Centre.

Comparison N1 - PN 218 1480: a unit with frontage to the plaza in the Centre. This unit has a retail NAV Zone A of €400 psm for the retail area of 51.23 Sq. M and demonstrates that the Property, a demonstrably much inferior property in location and layout, with 65.1 Sq. M of retail and 14.60 Sq. M stores at first floor, was valued for retail at a level only 5% less than this unit. An allowance of 10% applied to Comparison N1 and the Property so the only difference between the two based on the retail Zone A is 5%. The overall NAV is €18,800 which is less than the €21,100 contended for the Property by the Respondent. This evidence is helpful to the Tribunal in placing the Property in the context of other NAV's in the Centre.

Comparison N2 – PN 2181482: a unit with frontage to the plaza in the Centre. This unit has a retail NAV Zone A of €400 psm for the retail area of 43.70 Sq. M and demonstrates

that the Property, a demonstrably much inferior property albeit with 65.1 Sq. M of retail and 14.60 Sq. M stores at first floor, was valued for retail at a level only 5% less than this unit. An allowance of 10% applied to Comparison N2 and the Property so the only difference between the two based on the retail Zone A is 5%. The overall NAV is €15,480 which is less than the €21,100 contended for the Property by the Respondent. This evidence is helpful to the Tribunal in placing the Property in the context of other NAV's in the Centre.

Comparison N3 – PN2181483: a unit with triple frontage (1) to the plaza in the Centre, (2) the secondary access to the plaza from the adjacent SuperValu car park and (3) the Centre's car park access road. The photographs provided by the Respondent alone demonstrate a very significantly more superior unit. This unit also has a retail NAV Zone A of €400 psm for the retail area of 68.66 Sq. M (with Shop/Kitchen in mezzanine of 28.22 Sq. M) and demonstrates that the Property, a much inferior property albeit with 65.1 Sq. M of retail and 14.60 Sq. M stores at first floor, was valued for retail at a Zone A level only 5% less than this unit. An allowance of 10% applied to Comparison N2 and the Property so the only difference between the two based on the retail Zone A is 5%. The overall NAV is €21,100 which is the same as the €21,100 contended for the Property by the Respondent. The two units bear no comparison to each other. This evidence is helpful to the Tribunal in placing the Property in the context of other NAV's in the Centre.

Comparison N4 – PN2214374: a unit with frontage to the plaza in the Centre. This unit has a retail NAV Zone A of €400 psm for the retail area of 52.14 Sq. M and demonstrates that the Property, a demonstrably much inferior property in location and layout, with 65.1 Sq. M of retail and 14.60 Sq. M stores at first floor, was valued for retail at a level only 5% less but no allowance was provided for this unit. The only difference between the two based on the retail Zone A is 5% but the lack of an allowance at this unit stretches the gap to 15%. The overall NAV is €18,800 which is less than the €21,100 contended for the Property by the Respondent. This evidence is helpful to the Tribunal in placing the Property in the context of other NAV's in the Centre.

Comparison N5 – PN2193097: a unit with frontage to the plaza in the Centre. This unit has a retail NAV Zone A of €400 psm for the retail area of 63.85 Sq. M and demonstrates that the Property, a demonstrably much inferior property in location and layout, with 65.1 Sq. M of retail and 14.60 Sq. M stores at first floor, was valued for retail at a level only 5% less, but no allowance was provided for this unit. The only difference between the two based on the retail Zone A is 5% but the lack of an allowance at this unit stretches the gap to 15%. The overall NAV is €19,480 which is less than the €21,100 contended for the Property by the Respondent. This evidence is helpful to the Tribunal in placing the Property in the context of other NAV's in the Centre.

Comparison N6 – PN2193097: a unit with frontage to the plaza in the Centre. This unit has a retail NAV Zone A of €400 psm for the retail area of 58.44 Sq. M and demonstrates that the Property, a demonstrably much inferior property albeit with 65.1 Sq. M of retail and 14.60 Sq. M stores at first floor, was valued for retail at a level only 5% less than this unit. An allowance of 10% applied to Comparison N2 and the Property so the only difference between the two based on the retail Zone A is 5%. The overall NAV is €17,760 which is less than the €21,100 contended for the Property by the Respondent. This evidence is helpful to the Tribunal in placing the Property in the context of other NAV's in the Centre.

Comparison N7 – PN2181516: a unit with frontage to the plaza in the Centre. This unit has a retail NAV Zone A of €400 psm for the retail area of 66.19 Sq. M (and stores of 42.41 Sq. M in the mezzanine) and demonstrates that the Property, a demonstrably much inferior property in location and layout, with 65.1 Sq. M of retail and 14.60 Sq. M stores at first floor, was valued for retail at a level only 5% less, but no allowance was provided for this unit. The only difference between the two based on the retail Zone A is 5% but the lack of an allowance at this unit stretches the gap to 15%. The overall NAV is €21,500 which is only 2% more than the €21,100 contended for the Property by the Respondent. This evidence is helpful to the Tribunal in placing the Property in the context of other NAV's in the Centre.

Comparison N8 – PN2181502: a unit directly opposite the property. The property's only connection to the main body of the Centre is the fact that it has frontage to the car park access road to the centre and has car spaces immediately outside. Customers have the opportunity to use the Centre's car park or the SuperValu car park. This unit has a retail NAV Zone A of €400 psm for the retail area of 143.62 Sq. M (with store of 16.31 Sq. M). The unit has significant presence relative to the Property and has a genuine retail shopfront and visibility for both pedestrians and those arriving by car. The Property, a demonstrably inferior property with 65.1 Sq. M of retail and 14.60 Sq. M stores at first floor, was valued at a similar retail level and an allowance of 10% applied to Comparison N8 and the Property. The overall NAV is €52,200 which is more than the €21,100 contended for the Property by the Respondent. Whilst the Tribunal recognises that it is opposite the Property, in comparison to the Property, Comparison N8 is a clearly defined retail unit with shopfront and parking to front. The Tribunal prefers the comparative information of units in the main body of the Centre (seven units) as providing the best evidence against which the Property should be measured.

Comparison N9 – PN 5008756: a unit fronting the road access to the Centre, from Church Road, albeit not on Church Road. It is a retail unit of 82.41 Sq. M valued at €550 Zone A. It is a prominent building with double shopfront facing the Centre's access road. NAV €37,100 a far superior unit compared to the property, better shop front and not hidden away as per the Property. The Tribunal prefers the comparative information of units in the main body of the Centre (seven units) as providing the best evidence against which the Property should be measured.

Comparison N 10 – PN 2207771: a very prominent unit located on the corner of Church Road and the access road to the shopping centre. Retail area of 34.09 Sq. M valued in line with Church Street rents in this location of €550 Zone A. NAV €15,960. This is a very much more superior location on the best retail street in Greystones. The Tribunal prefers the comparative information of units in the Centre (seven units) as providing the best evidence against which the Property should be measured.

- 10.17 It is clear that the property remained vacant for a period of approximately ten years post construction, only securing a tenant when a change of use occurred, and the Appellant secured a lease. The rent of the property at the commencement of the lease and at the valuation date was €11,500. At the rent review in 2018, although after the valuation date, evidence is that the rent did not change at rent review. Rent for any property will achieve its best level through interaction of the market forces. Locations considered leased at a rent

below the prevailing market rent, will attract bids from parties with the ability to pay more in rent. Landlords will seek to bring their properties into line with prevailing market rents at rent review, demonstrating comparable evidence or regearing rents by agreement with an occupier.

10.18 Given the volume of KRT information received, the Tribunal's analysis (excluding the two properties on appeal to the Tribunal) demonstrated that the Valuation Office assessment of NER as a percentage of rent reflected, on average, a figure of 94.06% of rent, indicating the NER is closely aligned with rental values as would be expected given s.48 and s.19.5 of the Act. Nevertheless, NAV reflected 70.56% of rent. Applying similar values to the Property (as a percentage to rent would produce a NER of €10,817 or a NAV of €8,114. Evidence is that the property proved difficult to let and no evidence was offered that the contracted rent of €11,500pa was too high or too low, as opposed to evidence submitted that the NAV is too high or correct.

10.19 The Respondent's evidence of the seven Centre units essentially demonstrate a Zone A rate €360 psm or €400 psm, the €360 psm applying where a 10% allowance has been made. It was not stated precisely why a 10% allowance was applied to some units but not the others. Nevertheless, the evidence substantially demonstrates similarly circumstanced properties and demonstrates correctness and uniformity of value have been achieved for the seven units. The analysis of the Tribunal's preferred evidence of the seven units in the Centre offered in evidence by the Respondent is set out below:

Respondent's Comparisons						
Prop. Number	Comparison	NAV	Size Sq. M	ITZA* Sq. M	Zone A	Zone A psm after All'ces*
PN 2181480	N1	€ 18,880	52.23	52.23	€ 400.00	€ 361.48
PN 2181482	N2	€ 15,480	45.70	43.01	€ 400.00	€ 359.92
PN 2181483	N3	€ 21,100	96.88	58.54	€ 400.00	€ 360.47
PN 2214374	N4	€ 16,270	52.14	40.68	€ 400.00	€ 400.00
PN 2214376	N5	€ 19,480	63.85	48.70	€ 400.00	€ 400.00
PN 2193097	N6	€ 17,600	58.44	49.35	€ 400.00	€ 356.64
PN 2181516	N7	€ 21,500	108.60	53.82	€ 400.00	€ 399.48
	Average	€ 18,616	68.26	49.47		€ 376.85

'ITZA' and 'Zone A after Allowances' are the Tribunal's analysis

10.20 By contrast the Tribunal's analysis of the Respondent's evidence in terms of zone A (ITZA) demonstrates that the Property is valued at a level which just 5% below that applying to a unit facing the Plaza as outlined in the table below:

Prop. Number	The Property	NAV/Rent	Size Sq. M	ITZA* Sq. M	Zone A	Zone A psm after All'ces*
PN2214375	NAV	€ 21,100	79.70	61.506	€ 400.00	€ 343.06
	Rent	€ 11,400	79.70	61.506		€ 185.35

'ITZA' and 'Zone A after Allowances' are the Tribunal's analysis

10.21 Both parties agreed that the Centre was developed in 2004. Evidence from Mr. Diskin, for the Respondent, is that the Property first appeared on the list in 2014. This aligns with

the statement from the Appellant that the Property remained vacant from 2004 until the Appellant signed a lease on the premises in November 2013, but only after a change of use from retail to a doctor/dentist surgery. The property remained vacant at the height of the mid 2000's economic boom. The rent of the property at the valuation date of the 15th of September 2017 was the initial rent from 2013 - €11,500pa. Albeit after the valuation date, unchallenged evidence from the Appellant was that the rent did not increase at the rent review in 2018.

10.22 Having inspected the Property the Tribunal finds it hard to reconcile the Respondent's characterisation of the Property with that which exists on the ground. Whilst an occupier might trade at the Property as a retailer, the position of the Property it is severely impaired as a retail location. Other units within the main body of the Centre with frontage to the car park access road, are units configured with a main access area fronting the Plaza. The Appellants photograph (précis, page 7) demonstrates a Google Street View image from May 2017 illustrating that, at that time, there was a loading bay immediately outside the Property bordering the footpath which is quite narrow in width. Use of this loading bay would completely mask the Property. The position of the Property is very significantly inferior to units with frontage to the plaza. The almost ten-year history of vacancy before the change of use to a doctor/dentist surgery is demonstrable evidence of little or no retailer interest in the Property over many years - to the extent that a change of use from retail was required to secure a tenant.

10.23 Other than having an address at the Centre, the Tribunal is of the opinion that the Property is not similarly circumstanced, and correctness, equity and uniformity have not been achieved in the Valuation Certificate and in evidence advanced by the Respondent. In the Tribunal's opinion, to achieve correctness, equity and uniformity a significant allowance is required. KRT 1 demonstrated that PN 2181671, a unit within the Centre fronting the plaza, had a rent of €25,000 and a NER of €22,045.23 and a NAV of €21,800. At KRT 1 the NER reflects 88.18% of rent and the NAV 87.20% of rent. If reflected at the Property this would reflect a NER €10,141 and a NAV of €10,028.

10.24 The Tribunal queries the appropriateness of using the ITZA zoning method of valuing the Property given its location within the Centre and lack of retail profile. Nevertheless, the Tribunal accepts that any rent can be analysed on zoning terms. As the Appellant has accepted €80 psm as appropriate rate psm for the storage area at first floor, it falls to the Tribunal to determine the appropriate value psm for the ground floor. The Tribunal considers the passing rent of €11,500 the best evidence and supported by an analysis of the Respondents KRT's and comparisons data, which could, in fact, be used to argue for a lower NAV. In applying a NAV of €11,500 the Tribunal is of the opinion that in correcting the NAV, equity and uniformity of the list is maintained, given the Tribunal's analysis outlined above.

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 **€11,500**.

The Tribunal's analysis is provided at Appendix 4 (n/a to public)