

Appeal No: VA17/5/1202

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Michelle Wei t/a OK Chinese Takeaway - APPELLANT

and

Commissioner of Valuation - RESPONDENT

In relation to the valuation of

Property No. 1444350, Retail (Shops) at,
16a Main Street, Moate, County Westmeath.

(‘the Property’)

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

BEFORE

Fergus Keogh – MSCSI MRICS - Tribunal Member

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 13th day of October 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value (‘the NAV’) of the above relevant property was fixed in the sum of €7,800.

- 1.2 The Grounds of Appeal are set out in the Notice of Appeal and quoting directly from the Notice of Appeal are stated as follows:

“The rate in which the elements are calculated inappropriately”

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5,511.20

2. RE-VALUATION HISTORY

- 2.1 On the 12th day of January 2017 a copy of a valuation certificate proposed to be issued under section 24 (1) of the Valuation Act 2001 ('the Act') in relation to the Property was sent to the Appellant indicating a valuation of €8,040.
- 2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations the valuation of the Property was reduced to €7,800.
- 2.3 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €7,800.

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.

- 3.3 In this appeal submissions on behalf of the Appellant, Michelle Wei trading as OK Chinese Takeaway, were made by Lai Wei. The Respondent was represented by Ms. Triona Mc Partlan SCSi RICS of the Valuation Office, ('the Parties').

4. **FACTS**

- 4.1 The Tribunal finds the following facts;
- 4.2 The Property is located on the northern side of Main Street, Moate, County Westmeath in the section between Station Road and The Grand Hotel, directly opposite Moate Library and comprises the ground floor section of a two-storey over ground floor terraced property. The Property trades as a Chinese takeaway restaurant.
- 4.3 From photographs submitted to the Tribunal the building appears to be constructed of traditional materials with a pitched roof, a painted cement rendered elevation and a timber shop front. The Property is divided into two sections, a public area used for the placing and collection of orders and a kitchen area to the rear separated by a partition wall. No photographs were provided of the kitchen area.
- 4.4 The Property is held in held under an occupational lease for a term of 35 years from the 31st May 2005 details of which are set out in Appendix 1 (n/a to public)

- 4.5 The Tribunal has been advised that the accommodation of the Property is agreed by the Parties as follows;

Accommodation	Size M²
Retail Zone A	28.67
Retail Zone B	28.67
Retail Zone C	23.10
Total	80.44

5. ISSUES

- 5.1 The issue in this Appeal is one of the quantum of the valuation of the Property. In the Notice of Appeal the Appellant contended for the valuation of the Property to be reduced to €5,511.20. The Respondent has requested the Tribunal to affirm the List Valuation of €7,800.

6. RELEVANT STATUTORY PROVISIONS:

- 6.1 The Valuation Act 2001 was amended by the Valuation (Amendment) Act 2015. The amendment of any provisions of the 2001 Act relevant to the determination of this appeal came into effect on the 8th June 2015. All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.

- 6.2 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.’

Section 48(3) of the Act sets out 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.,

- 6.3 S.19 (5) of the Act provides;

‘The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable) –

- (a) correctness of value, and
- (b) equity and uniformity of value between properties on that valuation list,

and so that (as regards the matters referred to in paragraph (b)), the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.’

7. APPELLANT'S CASE

- 7.1 In the Notice of Appeal the Appellant stated one ground of appeal which is set out in paragraph 1.2 above and attached to the Notice of Appeal a calculation of the Appellant's opinion of value of the Property in the sum of €5,511.20, calculated is as follows;

Accommodation	Size M ²	NAV Per M ²	€ NAV
Retail Zone A	28.67	€80	€2,293.60
Retail Zone B	28.67	€80	€2,293.60
Retail Zone C	23.10	€40	€924.00
Total	80.44		€5,511.20

- 7.2 In addition to the Notice of Appeal and attached calculation, the Appellant submitted correspondence by way of e-mail with photographs attached. In the e-mail the Appellant stated that the front section of the Property was primarily the counter area and used solely for customer food ordering and collection purposes. The Appellant said that this area was not utilised for dining purposes however it has been categorised at the highest rental rate per m². The Appellant considered that the applied rental rate was disproportionate to its function.

In arriving at its opinion of value of the subject Property the Appellant applied a rental rate of €80 per m² to the Retail Zone A area and adopted the Zone B and Zone C rental rates as used by the Respondent in its valuation of €80 per m² and €40 per m² respectively.

- 7.3 In its submission, the Appellant stated that that it accepted that the front parts of most shops are subject to the highest rental rate calculations however the Appellant considered that an exception should be made in this case as it considered that the front section of the Property was excessively large for its purpose and use.

- 7.4 The Appellant said that the design of the Property was established when the it first commenced to trade from the Property and stated that modifying the front area would require substantial financial resources due to the presence of numerous electrical wires in the vicinity. The Appellant considered that an adjustment reducing the rental rate applied by the Respondent would more accurately reflect the actual usage and functionality of the area.
- 7.5 The Appellant acknowledged that a précis of evidence was not submitted in the required format and stated that the complexity and costs associated with the appeal process was not anticipated at the commencement of the process.

8. RESPONDENT'S CASE

- 8.1 Ms. Mc Partlan for the Respondent adopted the zoning method of valuation and submitted that the subject Property should be valued at a rateable valuation of €7,800 based on an NAV value of €160 per m² being applied to the retail Zone A area, €80 per m² to retail area Zone B and €40 per m² to retail Zone C area as set out below. In her précis she appended a property location map, a floor sketch plan and both external and internal photographs of the building and the subject Property.

Accommodation	Size M²	NAV Per M²	€ NAV
Retail Zone A	28.67	€160	€4,587.20
Retail Zone B	28.67	€80	€2,293.60
Retail Zone C	23.10	€40	€924.00
Total	80.44		€7,804.80
		Say,	€7,800

8.2 Ms. Mc Partlan submitted details of three Key Rental Transactions ('KRT's) as valuation comparisons to support her opinion of value. The three properties are each located on Main Street in Moate and are each valued by the Respondent at the rate of €160 per m² Zone A. A summary of these KRT's is set out below with additional details set out in Appendix 2 attached (n/a to public)

- (i) KRT Number One PN 2190671 comprises the ground floor section of a two storey over ground floor property located at the eastern end of Main Street diagonally opposite the Grand Hotel with a total floor area of 31.32 m² and a Retail Zone A area of 20.18 m² valued at €160 per m².
- (ii) KRT Number Two PN 1488933 comprises the ground floor of a two storey over ground floor property located on the northern side of Main Street adjacent to the subject Property with a total floor area of 41.98 m² and a Retail Zone A area of 17.28 m² valued at €160 per m².
- (iii) KRT Number Three PN 2197341 comprises the ground floor of a two storey over ground floor property located at the eastern end of Main Street opposite *The Castle* with a total floor area of 181.39 m² and a Retail Zone A area of 58.87 m² valued at €160 per m².

8.3 In her précis Ms. Mc Partlan said that there are 54 properties valued in the vicinity of the subject Property which are valued at a Zone A rate of €160 per m² and to support her opinion of value and as evidence of Equity and Uniformity submitted details of three Net Annual Value Comparisons ('NAV's). The three NAV comparison properties are each located on Main Street in Moate and are each valued at the rate of €160 per m² Zone A on the Valuation List. A summary of these NAV's is set out below with additional details set out in Appendix 2 attached (n/a to public)

- (i) NAV Comparison Number One PN 1444346 comprises the ground floor section of a two storey over ground floor building located at the northern side of Main Street adjacent to the subject Property with a total floor area of 45.62 m² and a Retail Zone A area of 24.64 m² valued at €160 per m².
- (ii) NAV Comparison Number Two PN 1444346 comprises the ground floor section of a two storey building located at the northern side of Main Street adjacent to the subject Property with a total floor area of 53.96 m² and a Retail Zone A area of 30.80 m² valued at €160 per m².
- (iii) NAV Comparison Number Three PN 1444345 comprises the ground floor section of a two storey building located at the northern side of Main Street adjacent to the subject Property with a total floor area of 56.16 m² and a Retail Zone A area of 34.23 m² valued at €160 per m².

9. SUBMISSIONS

9.1 No legal submissions were made by the Parties.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the subject 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 Westmeath County Council.

- 10.2 The Property is required to be valued in accordance with sections 48 and 19 (5) of the Act by reference to the values of other comparable properties on the Valuation List. It follows that the Tribunal must consider the nature of the comparative evidence submitted by the Parties in their respective précis to determine whether it supports the argument advanced on behalf of the Appellant.
- 10.3 The submissions and précis submitted by the Parties have been considered by the Tribunal in arriving at this decision.
- 10.4 The Tribunal relies upon and decides on Appeals based on the evidence placed before it. It is a well-established principle that the onus rests with the Appellant to prove his / her case and provide evidence to the Tribunal that the Respondent's valuation of the property in question is incorrect and that the valuation should be amended. This valuation evidence is to be submitted by way of a précis of evidence the required content and format of which is set out in the Valuation Tribunal (Appeals) Rules 2019. A copy of this document is issued to all appellants.
- 10.5 In this appeal, the Appellant's submission did not contain any comparative valuation evidence related to the values of other comparable properties on the Valuation List. No valuation evidence was submitted by the Appellant for the Tribunal's consideration. The Appellant has failed to persuade the Tribunal that the Respondent's valuation should be disturbed.

DETERMINATION:

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

And the Tribunal so Determines.