Appeal No: VA19/5/0910

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

Viva Vape Limited T/A Hale Vape **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of
Property No. 2193364, Retail (Shops) at 20A Charlestown Shopping Centre, St. Margaret's Road, Finglas, County Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF AUGUST, 2023

BEFORE

Donal Madigan - MRICS, MSCSI **Deputy Chairperson**

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th day of October, 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value (the 'NAV') of the above relevant Property was fixed in the sum of **€16,540.**

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 : *"Valuation is excessive"*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of **€8,000**.

2. RE-VALUATION HISTORY

2.1 On the 15th day of March, 2019 a copy of a Proposed Valuation Certificate was issued under section 26 of the Valuation Act 2001 ("the Act") in relation to the Property to the Appellant indicating a valuation of **€23,400**.

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 **€16,540**.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of **€16,540**.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is the 15th day of September, 2017 in accordance with the Valuation Order for Fingal County Council. The publication date for the Valuation List in respect of the relevant properties to which this Order relates is 17th September, 2019.

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents only without the need for an oral hearing and, accordingly, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 Mr. Paul Kelly, MRICS, MSCSI, MCIArb of Mason Owen and Lyons submitted a precis on behalf of the Appellant and M/s Rachael Ruane, Valuer, of Tailte Eireann (Valuation Office) submitted a precis on behalf of the Respondent.

3.3 In accordance with the Tribunal's directions, the parties' experts exchanged their respective summaries of evidence and submitted them to the Tribunal. Both Surveyors/Valuers issued a Declaration and Statement of Truth to the Tribunal in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules 2019.

4. FACTS

From the documents submitted the following are the agreed or undisputed facts:

4.1 The Property is located within the Charlestown Shopping Centre in Finglas within the functional area of Fingal County Council. Charlestown Shopping Centre is located at the junction of St. Margaret's Road and Charlestown Place, approx. 1.5Kms north of Finglas Village and close to, and to the South of, Junction 5 of the M50. The Centre, which has a tower block of 285 apartments above it, opened in 2007 and now has various retail shops with a total of 14,680m^2 and a Dunnes Stores of 6,750m^2 which is the anchor. Other tenants include Sports Direct, Boots, Eddie Rockets and Ulster Bank. Phase two of the shopping Centre opened in 2015 which consisted of a 9-screen cinema and a Leisureplex. There is a car park at basement level. The subject unit is located in a central position on the east section of the mall opposite the St. Margaret's Road entrance and backing onto the former Bagel Factory restaurant;

4.2 The Property comprises a ground level unit (kiosk) of 23.08m^2;

4.3 The unit was used at the valuation date for computer repair purposes;

4.4 The unit is leased and the terms of that Lease are set out in the Appendix to this Determination. At the valuation date the unit was let on licence and those details are also set out in the Appendix (n/a to public).

5. ISSUES

The sole issue arising in this appeal is the quantum of the valuation. The Appellant Surveyor contends for a Net Annual Value of **€ 6,925** whilst the Respondent Valuer contends for a Net Annual Value of **€ 16,540**.

6. RELEVANT STATUTORY PROVISIONS:

6.1 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 and other statutes.

6.2 In Revaluation type appeals, as in this appeal, sec. 37 provides that the Valuation Tribunal must reach a determination having regard to the provisions of Section 19(5) inserted by section 7 of the of the Valuation (Amendment) Act 2015 as follows:

"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."

6.3 The Net Annual Value (the **NAV**) of the Property must be determined in accordance with the provisions of section 48 (1) of the Act as amended 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."

6.4 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the basis 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 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."

7. APPELLANT'S CASE

7.1 Mr. Paul Kelly, Surveyor for the Appellant, submitted a precis of evidence in which he outlined the location, description, floor area, etc of the Property together with maps, photographs and a plan of the unit and of the Centre.

7.2 Mr. Kelly provided his opinion of the net annual value of the Property, as at 15th September, 2017, as being € 6,925 which he calculated as follows:

Retail Kiosk 23.08m^2 @ € 300.00 per m^2 = 6,924 say, NAV € 6,925.

7.3 Mr. Kelly relied on the following comparables in support of his valuation:

1. **The subject property**. He produced a table showing the rental history of the unit full details of which are set out in the Appendix to this Determination (n/a to public). In summary, inter alia, this records that the unit was let on a licence to two separate occupiers leading up to and from three months after the valuation date, on an inclusive basis which yielded a net income of approximately
€ 12,000 per annum. Accordingly, he concludes that the rental history demonstrates that a net rent of €12,000 per annum in 2017 was not sustainable and is clear evidence that the rental value of the premises in 2017 was below this level.

2. **Unit 20b Charlestown Shopping Centre**. PN 2193341.
This unit traded as The Bagel Factory (now vacant) but was in use for computer repairs at the valuation date. It comprises a unit of 96.20m^2 which is assessed at the NAV of € 20,200 that is calculated as follows:

Restaurant	96.20m^2 @ € 210 per m^2	=	20,202.00
		Say,	€ 20,200

He submits that this comparable adjoins the subject property but enjoys excellent profile to the meeting junction of the two malls, the focal point of the Centre and to the entrance / exit of Dunnes Stores. He states that this comparable is over four times the size of the subject property, but that, notwithstanding the size difference and better profile, it has an NAV that is only 22% greater than the subject property. Although the subject property was in use as a computer repair shop at the date of valuation, it is now (at date of submission) in the same use as this comparison, a restaurant, selling hot drinks, pastries, and snacks. He suggests that if the unit value NAV per square metre of this comparison was applied to the subject premises it would equate to an NAV of €4,846 or less than a third of the current NAV of €16,540. He states that the NAV of this unit prior to the Re-Val was €76,900 and was reduced by 74% on Re-Valuation.

3. **Unit 2b Charlestown Shopping Centre**. PN 2193342

This unit trades as Specs 4 Less and comprises a shop of c. 52.43m^2 which is assessed at the NAV of € 13,740 that is calculated as follows:

Retail	Zone A	34.83m^2 @ € 350.00 per m^2 =	12,190	
	Zone B	17.60m^2 @ € 175.00 per m^2 =	3,080	
Less allowance			1,527	
			13,743	say, € 13,740.

Mr. Kelly states that this comparable is located centrally on the southside of the east mall and has profile to the entrance / exit of Dunnes Stores. He says that this comparable is 52.43m^2, being twice the size of the subject property, but that it has an NAV which is 17% less than the subject property. He clarifies that an allowance of €1,527 was applied to this unit, which effectively reduces the Zone A rate per m^2 to €315. He submits that if this actual Zone A NAV of € 315 per m^2 is applied to the subject property, that it would equate to an NAV of €7,270, which, he contends, is only 44% of the current NAV of €16,540. He states that the NAV of this unit prior to the Re-Val was €31,400 and was reduced by 56% on Re-Valuation.

4. **Unit 1b Charlestown Shopping Centre**. PN 2193352

This unit trades as Scrumdiddly Ice Cream Parlour and is a shop of 57.08m^2 which is assessed at the NAV of € 17,090 that is calculated as follows:

Retail	Zone A	51.46m^2 @ € 350.00 per m^2 =	18,011	
	Zone B	5.62m^2 @ € 175.00 per m^2 =	983	
Less allowance			1,899	
			17,095	say, € 17,090.

Mr. Kelly states that this comparable is centrally located on the northside of the east mall and has profile to the central mall area of the Centre. This property is 57.08m^2 which is over twice the size of the subject property but it has a NAV only 3% higher than the subject property. An allowance of €1,899 was applied to this unit, which effectively reduces the Zone A rate per m^2 to €315. He submits that if this Zone A NAV per m^2 is applied to the subject property that it would equate to a NAV of €7,270, which, he asserts is only 44% of the current NAV of €16,540. He states that the NAV of this unit prior to the Re-Val was €37,300 and was reduced by 54% on Re-Valuation.

5**. Unit 1a Charlestown Shopping Centre.** PN 2193362

This unit trades as Healthy Trends and comprises a shop of 57.51m^2 which is assessed at the NAV of € 18,650 that is calculated as follows:

Retail	Zone A	46.15m^2 @ € 400.00 per m^2 =	18,460
	Zone B	11.36m^2 @ € 200.00 per m^2 =	2,272
<u>Less</u> allowance			2,074
			18,658 say, € 18,650.

Mr. Kelly states that this comparable enjoys one of the best pitches in the Centre immediately adjacent to the entrance / exit to Dunnes Stores. This comparable is 57.51m^2 which he contends is over twice the size of the subject property but that it has an NAV only 12.5% higher than the subject property. An allowance of €2,074 was applied to this unit, which effectively reduces the Zone A rate per m^2 to €360. He submits that if this Zone A NAV per m^2 is applied to the subject property, that it would equate to an NAV of €8,309, which is half the current NAV of €16,540. He states that the NAV of this unit prior to the Re-Val was €41,800 and was reduced by 55% on Re-Valuation.

7.4 Mr. Kelly provides a summary table in his Precis of the five comparables (including the subject Property) which, in summary and in broad terms, provide the following analysis:

1. Subject Property. 23.08m^2 Rent per m^2 € 260 (2014) € 520 (2016) € 520 (2017)
€ 347 (2021) € 498 (2021)

NAV € 16,540.

2. PN 2193341

96.20m^2 NAV per m^2 € 210

NAV € 20,200.

3. PN 2193342

52.43m^2 NAV per m^2

ITZA 43.63m^2 ITZA € 350; ITZA after Allowance € 315

NAV € 13,740

4. PN 2193352

57.08m^2 NAV per m^2

ITZA 51.00m^2 ITZA € 350 [correction to precis]; ITZA after allowance € 315

NAV € 17,090.

5. PN 2193362

57.51m^2 NAV per m^2

ITZA 51.83m^2 ITZA € 400; ITZA after allowance € 360

NAV € 18,650.

7.5 Mr. Kelly also made reference in his submission to footfall statistics which are reproduced in the Appendix 2 to his submission (n/a to public). From this document for September 2017, identified as ShopperTrak, he says that only 19.12% of the customers to the Centre entered via the St Margaret’s Road entrance and that the majority of customers, 69.15%, enter the Centre through the south mall via the travellators & lift from the basement car park, or via the south mall entrance off Charlestown Place.

7.6 Mr. Kelly contends that although the Property enjoys good profile to the east entrance off St Margaret’s Road, that it has no profile to the central mall and footfall between Dunnes and the travellators, which, according to him, are the main customer access route into the Centre.

He asserts that the location and shape of the Bagel Factory premises completely blocks the view of unit 20a from the central mall. He submits that surrounding retail uses in the mall are non-primary, comprising a bank, an optician, and a fast food restaurant and that, in particular, the bank frontage is dead with no active shop front, which is made worse by the security lobby entrance.

7.7 Mr. Kelly outlined the rationale for his approach to the valuation by referring firstly to his rental history of the subject Property as set out in Section 7.2.1 and the Appendix to this Determination (n/a to public) and thus, reflecting on this, the net result is that, as of the valuation date, the Property was let at a net effective rent of €12,000 per annum, but the tenant could not afford this level of rent, arrears built up and the licence was terminated; clear evidence, in his view,

that the €12,000 was an excessive rent for the unit. He submitted that the current rent is €11,500 per annum, which was set almost 4-years after the valuation date and must be discounted to reflect the increase in rental value over this period. Furthermore, he confirmed that in contrast to his comparative evidence, the NAV of the subject Property was only reduced by 17% on Re-Val, while the NAVs of his comparisons were reduced by between 54% and 74%. He outlined the overall unit value rates for the comparables as follows:

Unit	Property No.	Occupier	Details	€ per m^2
Unit 20b	2193341	Bagel Factory	NAV per m overall	€ 210
Unit 2b	2193342	Specs 4 Less	ITZA after Allowance	€ 315
Unit 1b	2193352	Scrumdiddly	ITZA after Allowance	€ 315
Unit 1a	2193362	Healthy Trends	ITZA after Allowance	€ 360

He clarified that an ITZA was not applied to unit 20b due to its shape and an overall NAV of €210 per m^2 was applied instead. The other three comparable units listed above were valued on a ITZA basis with effective Zone A unit value rate per m^2, after any allowance, of €315 & €360. The highest value relates to unit 1a, which in his opinion is the best positioned unit in the Centre, immediately adjacent to the entrance / exit to Dunnes Stores. He stated that the average of these four net annual values, per m^2, is €300, and that this is the rate he has applied to value the subject property. He submitted that this is 43% higher than the rate applied to unit

20b, which, in his view, reflects the quantum discount for the size of 20b. He confirmed that it is 5% lower than the ITZA rate per m^2 on units 1b & 2b, reflecting the better location and

profile of 1b & 2b, and 17% less than the ITZA rate on 1a, reflecting it superior position and profile, in his view. With regard to the letting history of the subject unit, he submitted that the rate which he has adopted of €300 per m^2 is representative of the value as of the valuation date on a sliding scale between the 2014 letting at €260 per m^2 and the 2021 letting at €347 per m^2. He asserts that due to the position and profile of the property that no additional value should be added on the basis that the unit is considered to be a kiosk. He acknowledges, however, that a kiosk loading is appropriate for the kiosks located in the central mall because those experience the strong footfall to and from the travelators and the Charlestown Place entrance.

7.7 In his Counter Submission dated 19th January 2023, Mr. Kelly clarified with regard to the Respondent's submission that the Centre has only one level of retail shops although he explained that there are also four kiosks at basement level. He provided a further mall plan of the unit and confirmed, regarding the rent summary details provided by the Respondent Valuer, that the rent for the subject unit for the licence fixed in December 2016 of € 18,000, was inclusive of rates, service charge and insurance which therefore requires to be netted down to € 12,000 per annum. With regard to the Respondent Valuer's comparables he stated that, in respect of Numbers 1-3 that these are in superior locations in the Centre to the subject Property and therefore comparison with the subject without making appropriate adjustments would be inequitable. With regard to Numbers 4 and 5 he stated that these are both valued at a flat rate of € 12,000 (being under $10m^2$) and the resultant unit values per square metre are € 1,249 and € 2,515. With regard to Numbers 6 and 7 he stated that these are both at basement level and that for Number 6 that, although this kiosk enjoys a high level of footfall with the majority of customers accessing the Centre via the basement car park, that the Respondent has applied a rent per m^2 that is 40% less than that applied to the kiosks on the central mall at ground floor. He believes that this is an even bigger discount than applied to the two kiosks in the basement lobby which were valued on a zoned basis at an ITZA of €350 per m^2 compared to €400 per m^2 on the central mall retail units. As regards the Respondent Valuer's final comparable, Number 7 in sequence he stated that, as this kiosk is under $10m^2$ that the Respondent has applied a flat rate of €12,000, which equates to a rate per m^2 of €1,365. He submits that, unlike comparison Number 6, the Respondent has not applied any discount in comparison to the kiosk on ground level in the central mall. He considers that this reflects an inconsistency of approach to the valuation of units in differing locations within the Centre.

7.8 In his Counter Submission he also sets out the NAVs for the entire Centre and his understanding of the valuation scheme adopted by the Respondent for the Centre and supplemented this by providing individual valuation reports from the Valuation list to verify same. This scheme can be summarised here as follows:

Central Mall Retail Units €400 per square metre ITZA
Central Mall Double / Large Units €360 per square metre ITZA
East & West Mall €350 per square metre ITZA
East & West Mall reduced Depth Units €315 per square metre ITZA
Café Restaurants East & West Mall €210 per square metre overall
Central Mall Kiosks under $10m^2$ €12,000
Central Mall Kiosks over $10m^2$ €500 per square metre plus €5,000
Basement Retail Units €350 per square metre ITZA
Basement Kiosk over $10m^2$ €300 per square metre plus €5,000
Basement Kiosk under $10m^2$ €12,000

8. RESPONDENT'S CASE

8.1 M/s Rachael Ruane, Valuer for the Respondent, submitted a precis in which she outlined, inter alia, the basis of valuation, the profile of the rating authority area, appeals statistics and background on the revaluation together with an outline of the location, description, size of the Property supplemented by maps, a plan and photographs. She outlined the rates history of the unit confirming that it was reduced, at representations stage, from a Net Annual Value of € 23,400 to € 16,540 and she explained that the base value of € 5,000 was unchanged but that the additional unit rate per square metre was reduced from € 800 to € 500. She had the benefit of the licence agreements from the Tenant/Licensee for this purpose.

8.2 M/s Ruane provided her opinion of the net annual value of the Property, as at 15th September, 2017, as being € 16,540 which she calculated as follows:

Retail Kiosk		€
	Base rate	5,000

	$23.08m^2$ @ € 500.00 per m^2	11,540	
		16,540	say, NAV € 16,540.

8.3 M/s Ruane relied on the following comparables in support of her valuation:

1. **Unit 9a Charlestown Shopping Centre** PN 2193355

This property comprises a kiosk of $14.75m^2$ which is assessed at the NAV of € 12,370 that is calculated as follows:

Ground Floor	NAV per m^2	€	
Kiosk base value		5,000	
Retail	$14.75m^2$ @ € 500.00 per m^2	7,375	
		12,375	say, NAV € 12,370.

This is situated on the mall that is accessed by Charlestown Place and was subject to representations by Mason, Owen & Lyons but no further appeal.

2. **Mall Kiosk 8, Charlestown Shopping Centre**. PN 501448

This property comprises a kiosk of $12.96m^2$ which is assessed at the NAV of € 11,480 that is calculated as follows:

Ground Floor	NAV per m^2	€	
Kiosk base value		5,000	
Retail	$12.96m^2$ @ € 500.00 per m^2	6,480	
		11,480	say, NAV € 11,480.

This is situated on the mall that is accessed by Charlestown Place and was also subject to representations by Mason, Owen & Lyons but no further appeal.

3. **Mall Kiosk, Charlestown Shopping Centre (Thunders)**. PN 5014621.

This property comprises of a kiosk of 15.50m^2 which is assessed at the NAV of € 12,750 that is calculated as follows:

Ground Floor		NAV per m^2	€	
Kiosk base value			5,000	
Retail	15.50m^2 @ € 500.00 per m^2		7,750	
			12,750	say, NAV € 12,750.

This is situated on the mall that is accessed by Charlestown Place and was not subject to representations.

4. **Mall Kiosk, Charlestown Shopping Centre**. PN 5014546

This property comprises of a kiosk of 9.61m^2 which is assessed at the NAV of € 12,000 that is calculated as follows:

Ground Floor	
Kiosk	€ 12,000

This is situated on the mall that is accessed by Charlestown Place and was not subject to representations.

5. **Mall Kiosk, Charlestown Shopping Centre.** PN 5014545

This property comprises of a kiosk of 4.77m^2 which is assessed at the NAV of € 12,000 that is calculated as follows:

Ground Floor	
Kiosk	€ 12,000

This is situated on the mall that is accessed by Charlestown Place and was not subject to representations.

6. **Basement Kiosk, Charlestown Shopping Centre.** PN 5010437

This property comprises a basement kiosk of 32.58m2 which is assessed at the NAV of € 14,770 that is calculated as follows:

Basement	NAV per m^2		
Kiosk base value		5,000	
Retail	$32.58m^2$ @ € 300.00 per m^2	9,774	
		14,774	say, NAV € 14,770.

This property was subject to representations and subject to an appeal to the Tribunal.

[The appeal to the Tribunal was withdrawn in May this year, i.e. after submissions were made]

7**. Basement Kiosk, Charlestown Shopping Centre.** PN 5015802

This property comprises a basement kiosk of $8.79m^2$ that is assessed at the NAV of € 12,000 which is calculated as follows:

Basement

Kiosk € 12,000

This property was not subject to representations or an appeal.

8.4 M/s Ruane commented with respect to the Appellant Surveyor's evidence that his comparables are: PN 2193341 which has been valued as a restaurant on an overall level of 60% of the Zone A level and property numbers 2193342, 2193352 and 2193362 which are retail units that have been valued on a zoned basis. She says that the Appellant Surveyor has provided figures for Footfall by entrance and that these figures show that 19.12% of visitors access the shopping centre by St. Margaret's Road which is only slightly less than those that enter via Charlestown Place (23.57%). The subject property had a license agreement in place at €18,000 p/a from December 2016 as detailed from her own precis. She submitted that all of the kiosk units on the ground floor Mall in Charlestown Shopping Centre have been valued on the same basis. A base level of €5,000 was applied and for any kiosk units over $10m^2$ an additional €500 per m^2 was applied.

8.5 M/s Ruane further explained in her submission that Properties which are ‘similarly circumstanced’ are considered comparable. She stated that this means they share characteristics such as use, size, location and/or construction. She said that her report sets out comparative evidence to demonstrate that both correctness and equity and uniformity of value have been achieved in this case. She contended that the Appellant Surveyor’s comparisons are retail units that have been valued on a zoned basis and therefore are not comparable for this type of property. She submitted that she has included all the kiosks situated in Charlestown Shopping Centre as comparable evidence to show the scheme of valuation. In her view, the subject Property has been valued on the same basis as the other kiosk units in the Mall in the Centre. She confirmed that there are eight kiosks in Charlestown Shopping Centre including the subject property and that only two of these have been appealed to the Valuation Tribunal including the subject. She concluded her submission by requesting that the Tribunal affirm the valuation of the subject property appearing on the relevant valuation list as representing its Net Annual Value in accordance with Section 48 of the Valuation Act 2001 and the requirements of section 19(5).

9. SUBMISSIONS

There were no legal submissions in this appeal.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is both correct, and equitable and uniform 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 Fingal County Council.

10.2 Both experts provided very detailed and comprehensive submissions for which the Tribunal is grateful.

10.3 Much of the facts and other elements such as location, size etc appear to be undisputed and it is simply the measure of the value that is contested between the Appellant Surveyor and the Respondent Valuer. The inherent complication with valuing kiosks as a category of property is that it is difficult to make them fit a precise unit value per square metre as often the retailer will be willing to pay a pitch fee irrespective of the precise size of the unit. Accordingly, both experts here have had a challenge in analysing what the market was indicating at the valuation date. Thankfully, all the evidence adduced is from within the Charlestown Shopping Centre. The Respondent Valuer has adopted a base value and then added a value calculated on a unit rate per square metre whilst the Appellant Surveyor contends for a unit rate per square metre without any base value being applied. The valuation scheme applied by the Respondent Valuer seeks to deal with the kiosk conundrum by adopting a flat rate (or spot value) of € 5,000 and then applying a unit value rate per square metre of € 500 (23.08m^2 X € 500 = € 11,540) to derive the NAV of € 16,540. By contrast, the Appellant Surveyor does not invoke a base value but applies a unit value rate per square metre only (23.08m^2 X € 300 = € 6,924) to derive his NAV of € 6,925.

10.4 Taking the Appellant's case first, as the onus is on his representative to prove the appeal, the case put forward rests, firstly, with the rental history of the subject Property and secondly, with the valuations of four other properties in the centre. The rental history is persuasive because it concerns the actual Property that is the subject of the appeal. The history of letting is uncontested by the Respondent Valuer and it appears to the Tribunal that the letting in December 2016 provided a net rent of € 12,000 and not € 18,000 as the licence fee was stated by the appellant Surveyor to be inclusive of rates, service charge and insurance, being not unusual for a kiosk licence. The subsequent lettings in 2021 are viewed as of much less weight being too far removed from the valuation date of 15th September 2017 to be an accurate read out of the market in 2017 and by the mere fact that they occurred during the onset of the Covid-19 pandemic. Although it is acknowledged that the licence fee was inclusive of rates, service charge and insurance, no precise details were supplied to indicate how the figure of € 11,974 was computed. The Appellant Surveyor's next comparable is the unit (20b) immediately adjoining it which comprises 96.20m^2 that is assessed at the NAV of € 20,200 that breaks back to a unit value rate of € 210 per m^2 overall. If the rating hypothesis is to be closely followed it would infer that this user is of relevance in that the subject Property is currently let for a very similar use and therefore adopting the rating principle of assuming the subject Property to be "vacant and to let" on the valuation date, this endorses that type or class of potential hypothetical tenant being able to bid for the unit. Placing each unit and corresponding NAV side by side does highlight a certain inconsistency, notwithstanding size differences, thus:

Unit 20a NAV € 16,540 23.08m^2 (devalues overall at € 716.64 per m^2)

Unit 20b NAV € 20,200 96.20m^2 (devalues overall at € 210.00 per m^2)

The Appellant Surveyor then submitted the other three comparables which comprise units nearby and not kiosks, as such, being units of 52.43m^2 , 57.08m^2 and 57.51m^2 all being substantially greater in size than the subject unit at 23.08m^2 and the Tribunal notes that, in addition to the ITZA analysis provided by the Appellant Surveyor, these other units devalue at unit values per m^2 <u>overall</u> of € 262.06, € 299.00 and € 324.29 respectively, by simply dividing the Net Annual Value by the total floor area of the unit. As indicators of value these three comparisons point to a level between (in round figures) a unit value per square metre of € 262-324. The larger other comparable, 20b, at 96.20m^2 falls into this pattern, or trend, approximately, at an overall unit value rate of € 210 per m^2. As the locations are very close one considers that the adjustment that requires to be applied is in respect of (a) kiosk versus unit and (b) size. A reasonable approach might imply that a discount be applied to kiosks compared to units to account for their open nature and security issues but on the other hand a premium for size might be in order too, if demonstrated by the evidence.

10.5 The Appellant Surveyor faces a complex task in relying on comparison with units as opposed to other kiosks, and making reference to Zone A unit values in isolation is incomplete and a look at overall unit value rates as set out in 10.4 above is warranted and makes the exercise more meaningful. However, in the Tribunal's view, he does make a compelling case by citing the rental history of the Subject Property and by reference to the net annual value of the adjoining unit 20b. He has also referred to the relativities occurring from a comparison with the assessments of NAV for the previous Valuation List. The Tribunal does not consider that approach of assistance because relativities can change on Revaluation to account for changes in types of demand, the prevailing economic climate, as well as physical and environmental circumstances.

10.6 The Appellant Surveyor provided much further information in his Counter Submission than would normally be permitted as admissible, being more than a commentary on the Respondent Valuer's submission, but because he provided this in totality, rather than selective extracts, to indicate the net annual values overall as well as the understanding of the valuation scheme methodology on the shopping centre, the Tribunal considers that it must allow the import of same into the determination process as being a necessary amplification of the facts.

10.7 The Respondent Valuer did not submit rental evidence in support of her case which is unusual in a Revaluation type appeal, and a cursory search of the PSRA Leases Register for the relevant years indicates that, at that time, there was indeed leasing activity at the Centre. Neither did she contest the rental history of the subject Property other than to confer importance to the level of rent reserved under the licence in 2016 which can now be taken as being a **gross** figure that requires to be netted down to the level of € 12,000 per annum or € 11,974 as per earlier in the precis of the Appellant Surveyor. Her comparables were all kiosks ranging in size from 4.77m^2 (valued at a flat rate of € 12,000) up to 32.58m^2. Her first two comparables are kiosks and were subject to representations by the Appellant Surveyor's own firm which were each valued on the same basis as the subject Property with a base value of € 5,000 plus a unit value rate per square metre of € 500. This would seem to indicate, in the absence of information to the contrary, that the Respondent's approach in those two cases was accepted or not actively challenged or pursued further. The third comparable was similarly assessed and was not subject to representations. Her fourth and fifth comparables are small kiosks that were valued at a flat rate of € 12,000 each. The sixth comparable is at basement level and was subject to appeal at the time her submission was made but that appeal has since been withdrawn. This is a larger kiosk (32.58m^2) valued at a base value of € 5,000 plus a unit value rate of € 300 per m^2. The seventh comparable is a kiosk at basement level that is also valued at a flat rate of € 12,000.

10.8 Difficulties can arise in the rigid application of a mathematical valuation scheme as leasing activity does not always follow logical patterns and accordingly the human input of a Surveyor/Valuer in interpreting the market, and levels of net annual values, must always ultimately prevail in the decision-making process, bringing their experience and knowledge to estimate a figure taking account of reality. This exercise is commonly called the "stand back and look" approach which is the self-check that the Expert should conduct before signing off on his/her final opinion. That procedure is very relevant in valuing kiosks for rating and in this appeal one can witness where the scheme departs somewhat from reality if one looks, for example, at the contrast between the Respondent's Comparable No. 2. PN 5014480 which comprises a kiosk of **12.96m^2** that is valued by reference to the formula (€ 5,000 plus € 500 per m^2 to yield an NAV of € 11,480) whereas other kiosks in this location that are <u>under</u> $10m^2$ in floor area are valued **higher** at a flat rate of € 12,000.

10.9 Having reviewed all the submissions the Tribunal believes that the issues that emerge after close examination of the evidence put forward by both parties can be distilled down to (a) the importance or weight to be attached to the rent (licence) fee for the subject unit back in 2016; (b) the comparability with unit 20b, and (c) the comparability with the other ground floor kiosks in the central mall.

10.10 In the case of (a) the rent in 2016, or, more precisely, the licence fee of approx.. € 12,000 was fixed for 12 months from 1st December, 2016. What information we have points to this being very close to the statutory basis outlined in sec. 48 (3) of the Valuation Act 2001-as amended being:

"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."

In other words a short term licence is close to, but not exactly on a par with, the year to year tenancy postulated by this section of the Act. Previous case law has indicated that the type of tenancy to be envisaged for rating purposes will have a reasonable prospect of continuance too. This is persuasive but not conclusive because the earlier objective in the Valuation Act 2001 directs, by virtue of sec. 19. (5), that the net annual value must fulfil the criteria of correctness, equity and uniformity and the language used in this section realises the difficulty of combining these elements by the use of the phrase:

(insofar as is reasonably practicable)

Furthermore, the rent/licence fee level for kiosks in a shopping centre might be less weighted to maximum values as good asset management will impose a duty to avoid vacancies in order to keep units open and trading such that the centre remains vibrant and to protect the long term security of rents from the larger units. Tenants will baulk at paying rent and service charge if there are several vacancies, even of kiosks. As estate management strategy it will be more prudent to be flexible on the level of rent for a kiosk than incur a major loss of a larger retail unit and thus the tendency, considering all the circumstances, will be <u>not</u> to hold out for the maximum level of rent but simply to obtain a reasonable rent in order to keep a kiosk open and trading for the benefit of the rest of the centre.

In the case of (b) comparability with Unit 20b this would appear to be very relevant with the relative size being the only major contrast. This other unit is in the same location but has more visibility and profile than the subject Property. [At the time of writing this appears to be vacant and details of the leasehold interest had been circulating on the internet].

In the case of (c) comparability with other kiosks in the central mall, it would appear that the Appellant Surveyor accepts the application of the Respondent's formula approach (i.e. € 5,000 plus unit rate per square metre of € 500) to these but <u>not</u> to the subject Property. The Tribunal considers that comparison can be made with these other central mall kiosks but some adjustment should then be made for the inferior location of the subject unit which is partially endorsed by the relatively lower Zone A unit value rates per m^2 for East & West malls compared to the main mall.

10.11 Accordingly, the Tribunal considers that it is appropriate to endorse the formula for the kiosks employed in the valuation scheme but to adjust this for location and to reflect more appropriately the weighting for the actual rental evidence from the subject Property itself and to endeavour to capture the valuation levels from the tone of net annual values by reference, in particular, to Unit 20b and the other kiosks. This results in the input of the base vale of € 5,000 and the addition of a unit value rate per square metre of € 400, being a reduction on the level adopted by the Respondent Valuer of -20% and an increase on the level proposed by the Appellant Surveyor of +33.33% to adequately reflect these factors. A cross check on this approach is to compare the resultant overall unit value rate per m^2 (i.e. inclusive of the base value) with the overall unit value rates on the other ground floor kiosks that are in excess of $10m^2$. This gives an overall (NAV) value per square metre of € 616.63 versus levels of € 838.64, € 885.80 and € 822.58 per m^2 for those other kiosks indicating a discount of 27.37% (€ 616.63 / average € 849.00 = 0.7263 X 100 = 72.63% ; 100% minus 72.63% = 27.37%). Whilst this overall level seems at first high compared to the level of NAV per square metre on Unit 20b, the disparity can be attributed to the relative difference in floor area as between these two units. This final level represents an upward adjustment of the 2016 licence fee/rent of some

18.6% which is still within reasonable bounds of probability, having a “stand back and look” approach and taking account of the comments above (see 10.10(a)) regarding the most pragmatic interpretation of value levels from kiosk licence fees/rents.

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 **€ 14,230**.

		€	
Retail Kiosk			
	Base rate	5,000	
	$23.08m^2$ @ € 400.00 per m^2	9,232	
		14,232	say, **NAV € 14,230.**