

Appeal No: VA17/5/461

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Michael Henebry, Silverspring Produce Ltd.

APPELLANT

and

Commissioner Of Valuation

RESPONDENT

In relation to the valuation of
Property No. 80328, Retail (Shops) at Floors: 0,1,6 Wolfe Tone Street, Kilkenny, County
Kilkenny.

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE DAY OF

13th JANUARY 2022

BEFORE

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th 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 €17,750.

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: *“Open market of rent being paid by tennent[sic] is €250 per week or 13,000 PA. First floor overvalued at €5,654.25.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €13,000.

2. RE-VALUATION HISTORY

2.1 On the 11th day of May, 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 €17,750.

2.2 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €17,750.

2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is the 30th day of October, 2015.

3. DOCUMENT BASED APPEAL

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

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. FACTS

4.1 The parties are agreed as to the following facts. Both parties provided written submissions which formed the basis of the Determination.

4.2 The subject property comprises a two detached storey building on 1 Johns Green/Wolfe Tone Street, Kilkenny

4.3 The floor areas are as follows:

Level	Use	M²
0	Retail Zone A	47.19
0	Retail Zone B	22.38
0	Store	21.49
1	Store	86.85

Total		177.91
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4.4 The ground floor comprises a retail area with a small store to the rear and the first floor comprises an office/store/canteen.

4.5 The property is located on John's Green, Wolfe Tone Street Kilkenny. John's Green is a one way narrow thoroughfare with limited commercial activity. It is close to John Street Upper.

5. ISSUES

The issue is one of quantum. The Appellants have relied on the passing rent of €13,000pa and argued that the first floor which is accessed from the rear is overvalued. The Respondents sought to have the proposed Net Annual Value of €17,750 affirmed based on market rental values and Net Annual Values provided.

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 Appellants represented by Mr Michael Henebry have relied on the passing rent of €13,000 with the landlord paying insurance of €795.00 and repairs and have argued that the proposed NAV of €17,750 is excessive as it includes the first floor accommodation at a high rate of €86.85/ m² where this floor area can only be accessed from the rear store.

7.2 They have argued that the market rental transactions relied upon by the Respondents refer to stronger retail locations and most of the market rental transactions referred to ground floor accommodation with only one reference to a first floor store. They also noted that the other comparisons where a first floor rate was available included premises which had direct street access.

7.3 No objections were made to the floor areas which are agreed.

7.4 The Appellants relied on an adjacent large department store and argued that the overall rate excluding car parking was €72.67/ m² which if applied to the subject property would provide a rate of €99.77/ m² which they regarded as unfair.

7.5 The appellants sought a reduction of the Net annual Value to €13,000.

8. RESPONDENT'S CASE

8.1 The Respondents represented by Mr. Terry Devlin stated the location was on Wolfe Tone Street close to John Street Upper and McDonagh Junction Shopping Centre with public car parking located close to the subject property.

8.2 They described the subject property as a retail shop with associated first floor stores /offices. It included a Zone A area of 47.19 m²; Zone B 22.38 m²; ground floor store 21.49 m² and first floor store 86.85 m².

8.3 They provided an aerial picture, an external photograph, two internal ground floor photographs and four internal first floor photographs.

8.4 They noted that the premises was held on a lease with an annual rent of €13,000.

8.5 They noted the proposed valuation of €17,750.

8.6. They rejected the Appellants ground of appeal based on the Department Store as they considered it was too large and did not regard it as comparable. They stated that they had relied on more comparable retail units in close proximity to the subject property.

8.7 They rejected the passing rent as a basis for the NAV as they regarded it as an informal month to month rent and they relied on five other rents on retail premises in Kilkenny City.

8.8 They did not accept that the ground floor Zone A was incorrect at €200/ m² as they said this rate had been applied to a number of similar properties and that this level had not been amended at representation stage or on appeal. They did not accept the claim that the first floor which was referred to at a rate of €88.85/ m² was stated incorrectly as it was actually valued at €65.00/ m² which they said was in line with other first floor accommodation rates.

8.9 The Respondents relied on five items of market information which informed the estimate of Net Annual Value. They provided details of these ‘Key Rental Transactions’ KRT’s , none of which were subject to Valuation Tribunal appeals.

8.10 The first KRT referred to a two storey premises on John Street which comprised 79.07 m² and was let for 4 years 9 months from 30/10/2016 at €18,600pa. They provided an NER as at 30/10/2015 of €17,590 with a Ground floor NER of €479.57/ m². The Nav analysis was provided as follows.

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	30.59	€200.00	€6,118.00
0	Retail Zone B	0.21	€100.00	€21.00
0	Store	20.50	€20.00	€410.00
1	Store	27.77	€65.00	€1,805.05
				€8,354.05
				Say €8,350.00

8.11 The second KRT referred to a ground floor premises on John Street which comprised 107.22 m² and was let for 4 years 9 months from 05/03/2015 at €13,208pa. They provided an

NER as at 30/10/2015 of €13,208pa with a Ground floor NER of €259.03/ m². The Nav analysis was provided as follows.

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	29.65	€200.00	€5,930.00
0	Retail Zone B	33.96	€100.00	€3,396.00
0	Store	43.61	€20.00	€872.200
				€10,198.20
				Say €10,190.00

8.12 The third KRT referred to a ground floor premises on Dean Street which comprised 58.08 m² and was let for 3 years from 10/06/2015 at €11,667pa. They provided an NER as at 30/10/2015 of €11,109.90pa with a Ground floor NER of €227.08/ m². The Nav analysis was provided as follows.

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	39.77	€200.00	€7,954.00
0	Retail Zone B	18.31	€100.00	€1,831.00
				€9,785.00
			Say	€9,780.00

8.13 The fourth KRT referred to a ground floor premises on Irishtown which comprised 51.86 m² and was let for 4 years 9 months from 23/06/2016 at €12,000pa. They provided an NER as at 30/10/2015 of €12,000pa with a Ground floor NER of €277.39/ m². The Nav analysis was provided as follows.

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	40.42	€200.00	€8,084.00
0	Store	11.44	€20.00	€228.80
				€8,312.80
				Say €8,310.00

8.14 The final KRT referred to a ground floor retail premises and store at Patrick Street which comprised 53.04 m² and was let for 1 years from 01/12/2012 at €12,000pa. They provided an NER as at 30/10/2015 of €11,640pa with a Ground floor NER of €343.52/ m². The Nav analysis was provided as follows.

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	30.87	€200.00	€6,174.00
0	Retail Zone B	2.00	€100.00	€200.00
0	Store	5.96	€20.00	€119.20
0	office	11.14	€20.00	€283.60
				€6,776.80
				Say €6,770.00

The Respondents provided the following NAV comparisons with details as follows.

8.15 Johns Green Kilkenny

Described as the closest retail unit to the subject property with a Zone A of €200/ m² and a first floor store at €65.00/ m².

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	50.63	€200.00	€10,126.00
0	Retail Zone B	50.63	€100.00	€5,063.00
0	Retail Zone C	77.03	€50.00	€3,851.50
0	Retail Zone remainder	14.40	€25.00	€360.00
1	Store	166.10	€65.00	€10,796.50
1	Offices	11.80	€65.00	€767.00
	Additional items			€4,756.80
				€36,468.80
			Say	€36,400.00

8.16 John Street Kilkenny

Described as in close proximity to the subject property with a Zone A of €200/ m² and a first floor store at €65.00/ m².

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	44.47	€200.00	€8,894.00
0	Store	28.37	€20.00	€567.40
1	Store	75.00	€65.00	€4,875.00

				€14,336.40
			Say	€14,330.00

8.17 John Street Kilkenny

Described as in close proximity to the subject property with a Zone A of €200/ m² and a first floor store at €65.00/ m².

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	30.59	€200.00	€6,118.00
0	Retail Zone B	0.21	€100.00	€21.00
0	Store	20.50	€20.00	€410.00
1	Store	27.77	€65.00	€1,805.05
				€8,354.05
			Say	€8,350.00

8.18 The Arches Barrack Street Kilkenny

Described as in close proximity to the subject property in a similar location.

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	56.85	€200.00	€11,370.00
0	Retail Zone B	11.66	€100.00	€1,166.00
				€12,536.00
			Say	€12,530.00

8.19 The Arches Gas House Lane Kilkenny

Described as in close proximity to the subject property in a similar location.

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	63.15	€200.00	€12,630.00
0	Store	12.35	€20.00	€247.00
				€12,877.00
			Say	€12,870.00

8.20 The Arches Barrack Street Kilkenny

Described as in close proximity to the subject property in a similar location.

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	56.53	€200.00	€11,306.00

0	Retail Zone B	19.48	€100.00	€1,948.00
				€13,254.00
			Say	€13,250.00

8. 21 Mr. Devlin on behalf of the Respondents concluded his submission and sought to have the proposed Net annual Value of €17,750 affirmed.

9. SUBMISSIONS

9.1 No legal submissions were made.

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 Kilkenny County Council.

10.2 The Tribunal finds that the Zone A and Zone B levels of €200/ m² and €100/ m² have been shown to be fair and equitable as evidenced from the market rental comparables and from the NAV comparisons provided by the Respondents. No substantive evidence was adduced by the Appellants to support any challenge to these rates and the comparisons with the Department Store was not accepted. The claimed that the market rental comparisons referred to dated that were 'at or shortly after the valuation date.' Having reviewed the dates the first is approx. 12 months after the valuation date, the second and third are approx. 7 months and 3 months before the valuation date while the fourth is approx. 9 months after the valuation date. The fifth refers to a date in December 2012 and is not considered relevant by the Tribunal. Consequently the dates do not undermine the established Zone A and B rates.

10.3 The main source for establishing the Net Annual Value arises from the Key Rental Transactions. The Commissioner referred to five items of market information to inform the estimate of the Net Annual Value and each transaction was investigated and analysed in accordance with Valuation Office policy having regard to the date of the transaction, any inducements and any other individual features of the transaction. Of the five open market transactions provided – KRTs, only one KRT 1 included first floor accommodation at €65.00/

m² whereas the ground floor store in the same building was valued at €20.00/ m². The Tribunal noted that this floor had independent street access from John Street which was not available to the subject property. None of the other KRTs provided any evidence of first floor accommodation but the ground floor stores and offices were valued at €20.00/ m² in two of them and no stores accommodation was included in the other two.

10.4 The six NAV's provided to the Tribunal included first floor values of €65.00/ m² in three of those provided. The Tribunal noted that each of these three had separate street accesses whereas the undisputed first floor access to the subject was from the rear store and no independent or street access was available to the upper floor accommodation. Independent access provides a facility to sub-let the upper floor accommodation, clearly an advantage whereas that facility was not available to the subject property.

10.5 Consequently the Tribunal finds that the rate of €65.00/ m² applied to the first floor of the subject property was set too high and it finds that the rate to be applied in this instance should be in line with the rate applied to various ground floor stores/offices at €20.00/ m².

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 €13,840.00.

Level	Use	M ²	NAV €/ M ²	NAV €
0	Retail Zone A	47.19	€200	€9,438.00
0	Retail Zone B	22.38	€100	€2,238.00
0	Store	21.49	€20	€429.80
1	Store	86.85	€20	€1,737.00
Total		177.91		€13,842.80

Say €13,840.00