

Appeal No: VA19/3/0006

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Mannix & Co.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of
Property No. 70308, Office(s) at 12 13 Castle Street, Upper Tralee, County Kerry.

B E F O R E

Stephen Byrne - BL

Deputy Chairperson

Frank O'Grady – MA, FSCSI, FRICS.

Member

Elaine Torpey – BSc (Hons), MSCSI, MRICS, ACI Arb

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF JANUARY, 2024

1. THE APPEAL

1.1 By Notice of Appeal received on the 15th day of August 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 €107.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *"The valuation is excessive and inequitable as the subject property is located in a weak commercial section of Castle Street Upper where there is a significant body of dereliction and vacancy."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €70.

2. VALUATION HISTORY

2.1 On the 13th day of June 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 €107.

2.2 A Final Valuation Certificate issued on the 26th day of July 2019 stating a valuation of €107.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing, held remotely, on the 22nd day of April 2021. At the hearing the Appellant was represented by Mr. Joseph B. Mannix and the Respondent was represented by Mr. John O’Brien BSc (Hons), H. Dip PVEA, MSCSI, MRICS of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The subject property is located on the southern side of Castle Street Upper on a secondary commercial street on the periphery of Tralee Town.

4.3 The subject property comprises a three-storey mid terraced refurbished office building with a shop front at ground level. The attic level (referred to as level 3) is used for office storage.

4.4 The entire property is used as an office and occupied by Mannix & Co. LLP Solicitors Practice.

4.5 The NIA floors areas have been agreed between the parties. The total NIA (over four levels) is 239.89 sq.m. as detailed in the Respondents evidence.

4.6 The property is owner occupied. It is understood that subject property is held under a Long-Leasehold Title in respect of the original property No.12 and a Freehold Title in respect of the section of the property formerly known as No.13.

5. ISSUES

5.1 The matter at issue is quantum.

5.2 The Appellant claims that the valuation is excessive, and the Rateable Value (RV) should be reduced to €70.00.

5.3 The Respondent states that the Rateable Value (RV) €107.00 is fair and reasonable and requests the Tribunal to affirm same in accordance with the Valuation Acts.

6. RELEVANT STATUTORY PROVISIONS:

The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.

7. APPELLANT’S CASE

7.1 Mr. Joseph Mannix acting on his own behalf outlined that the property is located on Castle Street Upper which is situated in a dated part of Tralee town. He highlighted that the buildings were historically built as single storey premises in the 17th Century and over the years the first floors and subsequent second floors were added on to the properties. By way of background, Mr. Mannix stated that No.12 Castle Street Upper was formerly a green-grocers with two storey

residential accommodation over-head. It had been vacant for circa. 1/2 years when he was acquired the property in circa. 1989. Mr. Mannix advised that he subsequently acquired the next door property No.13 Castle Street Upper in circa. late 2001. Thereafter, he sought the appropriate planning permission and fire certification to amalgamate the two buildings into the subject property now known as 12 Castle Street in circa. 2006.

7.2 Mr Mannix outlined that Castle Street Upper is a secondary street with a tenant mix of hairdressers, licensed premises, a clothes shop, and former butchers (vacant/ derelict). Mr. Mannix contended that the fabric of the subject building (as outlined in 7.1) and the location is not comparable to the Denny Street comparisons provided by the respondents representative Mr. O' Brien.

7.3 Mr. Mannix highlighted that the buildings on Denny Street are prime Edwardian and Victorian period properties of a superior construction. He contended that the street attracted a higher calibre of occupiers that included two hotels, AIB Bank, three Solicitors offices, two insurance companies and a dental practice.

7.4 Mr. Mannix introduced caselaw at the hearing that was not provided in his report. The Respondent advised that he was familiar with the case and confirmed with the chairperson that it was in order for the appellant Mr. Mannix to proceed with his deliberations. It was agreed that caselaw would be subsequently provided in writing.

7.5 Mr. Mannix outlined that the work environment has changed significantly over the years with zero hour contracts, flexi-time and people working from home. He contended that the two upper floors (i.e. level 2 (office) and level 3 (store)) is surplus space however, given the nature of their business as professional practice in a rural town they are not able to share the building.

7.6 Mr. Mannix highlighted that at the time of their refurbishment works he had to comply with planning and retain the upper floors in co-hessian with the adjoining properties and the format of the street.

7.7 Mr. Mannix considered three comparisons.

Comparison (1) **4 Greenview Terrace** is whereby he stated that this property is “equal to, if not greater, in floor area than the subject premises. It has an RV €43.17.”

Comparison (2) **49 Upper Rock Street** is outlined as “a large dental surgery with an RV of €38.09”.

Comparison (3) **9 Ashe Street** is identified by Mr. Mannix as being “similarly engaged in the provision of legal services and, if not quite the same floor area, nonetheless, is a significant building housing as it does a good number of personnel. It has a valuation of €27.00”.

7.8 Mr. Mannix submitted a cover letter of the 19th April 2021 with six photographs supplementary to his precis of the 13th April 2021. He outlined the nature of the three buildings as identified in the photos provided.

7.9 Under cross examination, Mr. O’ Brien raised the matter of the subject property being the appropriate primary evidence having regard to the ‘Tone of the List’ established for similarly circumstanced properties in Kerry County Council. Mr. Mannix submitted that he considered that the subject location had suffered and there are occupational issues with the property following the amalgamation of the property.

7.10 Under cross examination the description of the external façade of the property was identified as a ‘retail frontage’ as a contrast to the appellants comparisons provided, which the Respondents described as ‘office house type-properties’. Mr. Mannix considered that in the case of the subject property that this was dictated by the planners and whilst, Mr. O’ Brien chooses to describe it as retail frontage it is just the front of their office. The Respondent outlined the hypothetical tenant scenario and that the surplus space could be fully utilised. Mr. Mannix contended that as a professional practice, whilst they could have put in a double entrance and generated an income the reality is that they must have regard to their professional work and security within the building.

7.11 In summarising his position Mr. Mannix contended for a RV €70.00, no valuation analysis was supplied.

8. RESPONDENT'S CASE

8.1 Mr. John O' Brien for the Respondent adopted his precis as his evidence in chief and confirmed agreement with the location, description and floor areas.

8.2 To support his case he referred to his Precis of Evidence Section 5 'Comparable Properties- Section 48(1) – Tone of the List'. Mr. O' Brien outlined that he was mainly reliant upon the previous 2004/2005 valuation on the subject property RV €90.00 and as such, he has adopted the same levels per sq.m on each floor. He explained that the fundamental difference was the slight change in floor area, change in use and the inclusion of the attic accommodation (used for file storage).

8.3 Mr. O' Brien highlighted that in relation to his comparison no.2 **5 Denny Street** he considered that this has a similar front façade as the subject property, and it also used as an office. He highlighted that the ground floor offices were valued at €163.95 /sq.m however, he applied a lower rate of €136.62 /sq.m to the subject ground floor offices.

8.4 In relation to comparison no.3 **22 Denny Street** he outlined that this valuation was in respect of the 1st and 2nd floor offices which were occupied by a Solicitors practice and comparison no.4 **7 Day Place** is a Georgian office building.

8.5 Mr. O' Brien outlined that all of the four comparisons submitted (Section 5) demonstrate the established 'Tone of the List' that the ground floor offices are valued at €136.62 /sq.m to €163.95 /sq.m, 1st floor offices are valued at €81.97/ sq m to €95.64/sq m and 2nd floor offices are valued at €61.48/sq m to €75.15/sq m in Tralee Town.

8.6 Under cross-examination the Appellant raised the issue of the relevance of the comparable evidence provided. Mr. O' Brien contended that he considered the subject property (i.e., comparison 1) and applied the same levels, in doing so he is in line with the Tone of the List. There was limited cross-examination of Mr. O' Brien by the Appellant.

8.7 In summarising his opinion Mr. O' Brien requested that the Tribunal affirm the valuation of €107.00 be entered in the Valuation List as representing the Net Annual Value for the subject property in accordance with Section 48 of the Valuation Act 2001.

9. SUBMISSIONS

9.1 There were no legal submissions.

9.2 The Appellant later submitted details of an English High Court case *Telereal Trillium v Hewitt* (Valuation Office), at issue was the correct approach to the determination of the Rateable Valuation of an office building in the circumstances where the evidence showed at the relevant time a general demand in the area for comparable office buildings, but no actual tenant willing to pay a positive price for the building itself. It was stated that the building was not obsolete either in a functional or in a locational sense and that the RV was to be assessed based on general demand as evidenced by the occupation of other office properties in the area. Lord Carnwath LJ stated “that it was well established that the occupation under a hypothetical tenancy, a valuation tool for rating purposes, is based upon the concept of the value of the occupation and not necessarily market rental values. Should the property be not sterile or burdensome, actual rents agreed between landlords and tenants are not the test of value for rating purposes as one must assume a hypothetical letting to insure equality of treatment between all ratepayers.”

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 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 Kerry County Council.

10.2 The issue that arises in this Appeal is the quantum of value.

10.3 The Tribunal has examined the particulars of the property and has duly considered the written and oral evidence adduced by Mr. Mannix who contended that a rateable value of €70.00 and Mr. O’ Brien on behalf of the Respondent who sought confirmation of a rateable value €107.00.

10.4 The Tribunal is aware that under S50, of the Valuation Act, it must consider the hypothetical tenant which can include the current occupier and the fact that the rent is calculated on a year-by-year basis. It is noted that no occupational lease exists, and that the appellant occupies the entire property in this case.

10.5 Mr. Mannix provided little assistance to the Tribunal by way of providing a valuation analysis of his opinion of RV together with the appropriate supporting rental evidence from the immediate location. The legal case sighted above was examined and taken into consideration, however it did not assist the Tribunal in this case.

10.6 It was confirmed by Mr. O' Brien at the hearing that the three comparisons provided by Mr. Mannix which identified the RV figures only were dated pre 1988 valuations and therefore, they were considered of limited assistance to the Tribunal.

10.7 The Tribunal was dissatisfied by the evidence relied on by both parties to this Appeal. The Tribunal finds that the unit value rates per m² adopted by the Respondent is substantially in keeping with the Tone of the Valuation List in relation to the main elements of the subject property.

10.8 The Tribunal does not consider that there was sufficient strength in the evidence adduced by Mr. Mannix to overturn the established tone of the list and notes that in this, as in all cases before the Tribunal, the onus of proof in appeals rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal's determination.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and affirms that the valuation of the Property, as stated in the valuation certificate, at €107.

And the Tribunal so determines.

RIGHT OF APPEAL:

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

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