

Appeal No: VA19/5/1635

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Dave Doherty (Insurance Brokers) Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1278426, Retail (Shops) at 11 Stockwell Lane, Drogheda, County Louth.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF FEBRUARY 2024**

BEFORE

Sarah Reid - BL

Member

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th 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 €14,570.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

“The Property is occupied Solely as Offices and has been for over 40 years. It is being rated as " Category - Retail Shops: Use Shop (Offices)

There is no Shop in the property and there never has been. Louth Co. Council advise that as it has " retail frontage" , it should be valued as Retail. There is no logic to this point of view and whilst we do have a " shopfront", the windows have frosted glass at eyelevel. Passers -by cannot see in to the property. Retailers use their Shopfront to display their goods. Our business (Insurance Brokers) is not a Retail business. We are Financial Advisers to our Clients.

In addition, I would point out that there are several examples in Drogheda of Premises occupiers as Offices (e.g, Auctioneers) , who are being rated solely as Offices.

The property should be rated as Offices - Zone A - 36.72 @ NAV € 120.0000 = € 4,406.40

Zone B - 35.42 @ NAV € 120,000 = € 4,250.40

Zone C - 8.35 @ NAV € 62,500 = € 521.88 Store - 17.97 € NAV € 25.000 = € 449.25 "

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €9,627.

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 €19,820
- 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 €14,570
- 2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €14,570.
- 2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is September 15th, 2017.

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 legal submissions on the part of the Respondent, and submitted these to the Tribunal.

4. FACTS

The parties are agreed as to the following facts.

- 4.1 The Property is a mid-terrace ground floor retail unit situated in Drogheda Town Centre. It fronts onto Stockwell Lane in a row of three other commercial units and consists of a

ground floor open plan area with store, kitchenette & WC's to the rear. The Property has full glass window panes facing onto the street and own door access directly from the path.

- 4.2 The Property is one of several commercial units on Stockwell Lane and is occupied and used by the Appellant exclusively as offices.
- 4.3 The Property is held freehold.
- 4.4 The following floor areas are agreed between the parties:

Zoned	Floor	M2
Retail Zone A	0	36.72
Retail Zone B	0	35.43
Retail Zone C	0	8.35
Store	0	17.97
	Total	98.47

5. ISSUES

- 5.1 This appeal concerns the Respondent's classification of the Property as a shop and whether the resultant valuation of the Property is thereby incorrect where the Appellant uses and occupies the Property as offices.

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.”

6.3 Rule 34 (b) of the Valuation Tribunal (Appeals) Rules 2019 relates to documents required in a Document based appeal and provides:

Timetable

34. (b) Documents relating to a document-based appeal under the Act must be delivered pursuant to the following timetable –

(i) Within 10 working days of receiving a written direction from the Valuation Tribunal the appellant shall deliver to the Valuation Tribunal his précis of evidence together with any supporting documents.

(ii) The Registrar shall send a copy of the document received from the appellant to the other party and the party to whom such documents are sent shall, within 10 working days of receipt of the documents from the Registrar, deliver to the Valuation Tribunal its précis of evidence in reply together with any supporting documents;

(iii) The Registrar shall send a copy of the documents received under Rule 34(b) to the other party to the appeal.

(iv) The Tribunal may if it thinks fit require any party to furnish in writing further particulars of the grounds of appeal relied on and of any relevant facts or contentions.

(v) Where the Tribunal requires a party to furnish further particulars, the Registrar shall, following receipt, send a copy of such particulars to the other party to the appeal.

(vi) A party shall, within 10 working days of receipt from the Registrar of a copy of the particulars referred to in paragraph (v), deliver to the Registrar any further information he or she wishes to provide by way of response.

(vii) As soon as reasonably practicable, after all documents have been received, the Tribunal will consider whether it is appropriate to determine the appeal based on the written documentations submitted. The Tribunal may at any time direct that the appeal be determined at a hearing.

6.4 Rules 35, 36 & 39 of the Valuation Tribunal (Appeals) Rules 2019 pertain to the format and content of précis of evidence in an appeal and provide:

Précis of Evidence

35. The appellant's précis of evidence must state in a precise but comprehensive way -

(a) each ground of appeal relied on by the appellant;

(b) the argument relied on in support of each ground of appeal;

- (c) the facts relied on in support of each ground of appeal; and*
- (d) any authorities relied on in support of each ground.*

36. The appellant's précis must include the following documents:

- (a) where appropriate, a copy of the relevant valuation certificate or notification of the valuation manager or revision manager;*
- (b) a copy of any written record of the decision appealed;*
- (c) a copy of the notice of appeal to the Tribunal;*
- (d) maps and photographs of the property the subject of the appeal and of all comparator properties relied upon. Photographs must be dated and titled. Maps must be to scale, with north-point, road names, the property the subject of the appeal and the comparator properties clearly marked;*
- (e) where appropriate, all relevant market evidence relating to the property the subject of the appeal and a copy of any lease affecting that property;*
- (f) a copy of any other document verifying facts or particulars relied upon by the appellant.*

39. Any précis of evidence on behalf of any party as to the value of the property the subject of the appeal must include particulars of -

- (a) the location of the property the subject of the appeal and the nature of the location, for example, residential, retail park, commercial, office, industrial;*
- (b) an accurate description of the property the subject of the appeal (for example, single storey, workshop building, hotel, public house);*
- (c) the size of the property the subject of the appeal measured in square metres, and where appropriate dimensions, height, and frontage, as agreed between the appellant and the respondent;*
- (d) the general condition of the property the subject of the appeal;*
- (e) the title of the property the subject of the appeal and, if leasehold, the details of the lease to include the names of the landlord and tenant, any side letter or concession letter pertaining to the lease, details of any additional relationship or association between the landlord and tenant, commencement date, term of the lease, the rent and when agreed or fixed, rent review pattern, repairing liabilities, insuring liabilities, break-options, rent-free periods, capital contributions or concessions;*
- (f) the comparator properties that he or she considers to be similarly circumstanced to the property the subject of the appeal and relevant to the assessment of its net annual value and giving such details of the comparators as specified in subparagraphs (i) to (v) above;*
- (g) the witness's opinion on the valuation of the property the subject of the appeal and how such opinion is supported by the comparator evidence.*

(h) The précis of evidence of each party must be signed by the person who has written the précis.

7. APPELLANT'S CASE

- 7.1 The Appellant was invited to submit a précis of evidence in support of his appeal and by letter dated 28.09.2023 was advised of the Valuation Tribunal (Appeals) Rules 2019, and in particular rule 34 (b) which sets out the timeframe for the submission of evidence from all parties in addition to Rules 35, 36, 39 and 41 which set out information relating to what should be included in a précis of evidence in an appeal to the Tribunal. The Appellant was forwarded a copy of the Rules and spoke with a member of the Tribunal's administrative staff on 14.12.2023 but elected not to submit formal documentation in support of his appeal.
- 7.2 Accordingly, the documents before the Tribunal in this Appeal, and on which the Tribunal bases its decision, are as follows:

7.2.1 Email from the Appellant to the Tribunal dated 03.10.2023 as follows:

Dear Kieran,

Thank you for your email hereunder.

The basis of my appeal is quite simple. As outlined in my appeal in October 2019 when the revaluation was carried out.

The Property is occupied Solely as Offices and has been for over 40 years.

It is being rated as " Category – Retail Shops : Use Shop (Offices).

This is not a " Retail Shop" and therefore it is wrongly Categorised.

There is no Shop and never has been.

Louth Co Council responded " as it has retail frontage it is valued as a retail unit for rateable valuation".

There is no logic to this point of view .Whilst the front of our premises does has the appearance of a " Shopfront", the windows have frosted glass at eye level so that passersby cannot see in.

Retail Shops display what they are selling to passers by.

Our business (Insurance Brokers) is not a Retail business. We are Financial Advisers to our Clients. In 2019 I also did some research and found examples in Drogheda of similar looking Non retail properties being rated as offices.

I enclose a copy of the 2003 Valuation Certificate following an inspection of the Property – OFFICES. It is exactly the same today as it was then.

•
The Property should be rated as Offices :

Zone A - 36.72 @ NAV €120,000 = € 4,406.40

Zone B - 35.42 @ NAV € 120,000 = € 4,250.00

ZoneC - 8.35 @ NAV €62,500 = € 521.88

Store - 17.97 @ NAV € 25,000 - € 449.25

Total € 9,627.53

I trust that you will find some merit in my appeal.

Should you not see any merit in my appeal, I feel that I should be entitled to a full refund of all rates paid by me from 1984 to mid 90's when it was rebuilt. During those years the outward appearance of the Property was a terraced dwelling house. It just had a plaque on the front door "Dave Doherty- Insurance Broker".

However, I paid rates as an Office as that was the actual occupancy of the Property. Obviously, one way or the other, I don't envisage this. I am stating this in an effort to reinforce my point.

I await hearing from you.

7.2.2 In response to the Respondent's legal submissions, which were forwarded to the Appellant in compliance with section 36(2) of the Valuation Act, 2001, the Appellant responded by email dated 13.12.2023 as follows:

Dear Mr Holland,

Thank you for your email.

I do recall speaking to you some time ago on this matter

I note the allegation that my "failure to submit etc etc" is grounds for rejection.

I made a simple submission that this premises is an office (Louth Co Council agree)
I made an appeal simply that it should be rated in the appropriate category accordingly.

All I needed is an answer to the question – Are Louth Co Council right? – Yes or No.

I would take issue with some of their comments, but I do not presently have the time or inclination to begin to address same.

I note their threat to recover costs from me.

I paid a fee to lodge this appeal and that should be the end of that.

I have decided to withdraw this appeal, unless they intend doing so.

If so, I intend employing the services of a Professional Firm to process my appeal further and respond fully to them.

I await hearing from you.

7.3 Thereafter and by email dated 14.12.2023, the Appellant confirmed his wish to let the Appeal proceed. No further documentation was submitted by the Appellant.

8. RESPONDENT'S CASE

- 8.1 The Respondent argues that the Property was, and should be, valued on a vacant and to let basis, and where that is so, notwithstanding the Appellant's use of the Property as an office, it should be rated in line with similarly circumstanced properties, i.e. retail - shops.
- 8.2 The Respondent relied on two key rental transactions (KRT's) to support its valuation of the Property, and these are as follows:

Comparative Analysis of Rent and NAV

Level		Size (sq.m)	NER per sq.m	NAV per sq.m
0	Retail Zone A	33.42	€601	€340
0	Retail Zone B	19.78	€300.50	€170
0	Store	19.16	€60.10	€34
	Total	72.36	€27,180.83	€15,370

Comparative Analysis of Rent and NAV

Level		Size (sq.m)	NER per sq.m	NAV per sq.m
0	Retail Zone A	25.14	€300	€340
0	Retail Zone B	17.61	€150	€170
0	Retail Zone C	10.21	€75	€85
	Total	42.96	€10,1990.25	€11,550

- 8.3 In addition to the above, the Respondent submitted four NAV comparisons for properties adjacent to the Subject Property in Stockwell Lane, each showing a NAV of a €250/m² which the Respondent argued were similarly circumstanced properties and confirmed uniformity and equity in respect of the Property. The Respondent also relies on the Subject Property and its NAV @ €250/m².

Summary of Comparisons

Property Number	Address	NAN per	NAV
2171425	Unit S2 Stockwell Lane (Drogheda Town Centre)	€250/m ²	€22,600
2171426	Unit S3 Stockwell Lane (Drogheda Town Centre)	€250/m ²	€13,980
2171427	Unit S2 Stockwell Lane (Drogheda Town Centre)	€250/m ²	€12,390
1308873	10 Stockwell Lane, Drogheda	€250/m ²	€17,450

8.4 The Respondent submitted formal legal submissions to the Tribunal, set out below, but separately referenced the Tribunal’s determination *ZZSEL limited Vs Commissioner of Valuation* (VA. 14.5.453) in their précis which concerned an appeal grounded on similar arguments to the present one, namely that the ‘retail’ category applied by the Respondent was incorrect where the Property was used, in that case, exclusively for manufacturing purposes. The Respondent asks that the Tribunal in this appeal, follows the decision in VA. 14.5.453 wherein it was found:

“... Evidence from the emerging tone of the List was also included, including the adjoining unit where €200 per square metre was applied and €60 per square metre for the Store. The Respondent particularly referred to the valuation being assessed not on the business that is run out of the property but on the actual property itself and on the basis of equity and uniformity that this is the correct application”.

8.5 In the circumstances the Respondent’s valuer opines that the Property, when vacant and to let, would be viewed as a shop and accordingly should be valued as follows:

Use	Floor	M2	NAV (€)
Retail Zone A	0	36.72	€250
Retail Zone B	0	35.43	€125
Retail Zone C	0	8.35	€62.50
Store	0	17.97	€25
	Total	98.47	€14,570

9. SUBMISSIONS

9.1 The Appellant submitted in their grounds of appeal that the property was incorrectly valued and ought to be valued as an office but made no further submissions on the lawfulness or otherwise, of the Respondent’s approach to valuation in the circumstances.

9.2 The Respondent submitted written legal submissions in support of the position that the correct valuation approach had been adopted in valuing the Property and argued that the property has been valued as retail where it has a retail front alongside other units in the parade of shops (being the comparison properties relied on) and that same demonstrated equity and uniformity.

9.3 In respect of the requirement to value the property in its ‘actual state’, the Respondent argued that the Property was valued based on its potential use which was as a shop. It was noted that the property had a shop frontage and although the Property’s windows were partially frosted by the Appellant and no goods were displayed, it was the Respondent’s case that this made no difference. Further, the Respondent argued that though the actual

use of a Property may not be considered ‘retail’, same was irrelevant where the potential for such use existed to a hypothetical tenant.

- 9.4 In answer to the Appellant’s claim that other properties in the same rating authority area were categorised and rated as office premises though they were similarly circumstanced to the Appellant, the Respondent maintained that the categorisation of alternative premises is a matter specific to any such premises and their potentialities. Further, objection was taken to the Appellant making vague assertions in that regard without identifying any specific premises for the purposes of this appeal or providing the details of same before the Tribunal.
- 9.5 As to the legal parameters of the Tribunal’s discretion, the Respondent relied on *Nangles Nurseries v Commissioner of Valuation* [2008] IEHC 73 and the requirements of statutory interpretation set out therein. In addition, the Respondent relied on *Proudlane Ltd. t/a Plaza Hotel* (VA00/2/032) and *AIB Group PLC v Commissioner for Valuation* (VA20/4/0053) in support of the onus of proof resting with the Appellant in an appeal and quoted Tribunal decision *FGM Properties v Commissioner for Valuation* (VA19/5/1091) wherein it was held: “10.13 The onus of proof rests on the Appellant to demonstrate, through cogent evidence that the Respondent has erred.”
- 9.6 As to the format and content of the Appellant’s evidence before the Tribunal, the Respondent referred to the Valuation Tribunal (Appeals) Rules 2019, specifically Rule 36(d) which requires comparator evidence to be included in an Appellant’s précis, and the Respondent argued the absence of this in the present case ought to be considered fatal. In support of this position, the Respondent relied on Tribunal decision *Maguire Dental Care v Commissioner of Valuation* (VA20/1/0016) wherein the Appellant argued that a dental practice should be valued as ‘medical’ and ‘office’ use rather than ‘retail’ use but the Tribunal held:

“10.3 The onus of proof in appeals before the Tribunal rests with the Appellant following VA00/2/032 Proudlane Ltd t/a Plaza Hotel; VA07/3/054 William Savage Construction and VA 09/01/018 O’Sullivan’s Marine Ltd.

10.4 While the Tribunal is cognizant of the fact that lay Appellants do not always have the technical insights or on occasions the resources of the Respondent, they are nonetheless bound by the rules of the Valuation Tribunal. In this case the Appellants did not provide any comparable evidence, nor did they provide any valuation methodology to support their claim. They did not provide any supporting evidence to show that dental practices were valued as offices whereas the Respondent provided evidence to show the opposite was the case.”

- 9.7 The Respondent asks that the Tribunal dismisses the present appeal on the basis that the Appellant's reasoning is misconceived and fails to appreciate that it is the subject property that is valued by the Commissioner, not the business in occupation. The Respondent argues that under s. 48(3) of the Act, the NAV of the subject property is “*the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year...*” and the Act requires the reader to consider a hypothetical tenant and what they would pay one year with another for the property in its actual state, as was confirmed by the Tribunal in *Centre Operators Ltd v Commissioner of Valuation* (VA04/3/040).
- 9.8 The Respondent relies on the Tribunal’s decision in *Finnegan Menton Ltd v Commissioner of Valuation* (VA.14.5.669), which considered the Commissioner’s approach of valuing an estate agency as a retail premises and in which the Tribunal upheld the approach, albeit allowing a reduced NAV in the circumstances. Further, in support of its valuation, the Respondent argued that the Commissioner was entitled to value the Property in line with retail properties which are “similarly circumstanced” and therefore considered comparable. It was the Respondent’s submission that “similarly circumstanced” means they share characteristics such as use, size, location and/or construction.

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 Louth County Council.
- 10.2 The Appellant did not submit a formal précis as required by the Valuation Tribunal (Appeals) Rules 2019 but cited in his grounds of appeal in the Notice of Appeal that the valuation was incorrect and expanded on this saying the classification as ‘retail-shop’ did not reflect the actual use of the Property as an office. As regards what he considered the correct valuation for the Property to be, the Appellant outlined a calculation of NAV, described above at para 7.2.1, however no further evidence was put before the Tribunal to support the contention that an incorrect approach to valuation had been applied or that the NAV rates contended for, were in line with existing office properties entered on the Valuation List for Drogheda.
- 10.3 The Tribunal finds that the onus rests with an Appellant in all appeals before the Tribunal. Further the comments of the Tribunal in *FGM Properties v Commissioner for Valuation* (VA19/5/1091) refer wherein it was confirmed that in order to succeed in their appeal, an Appellant must demonstrate, through cogent evidence, that the Respondent has erred. In advancing their case in this appeal, the Appellant was obliged to substantiate their grounds of appeal that the Respondent’s valuation was incorrect and the Commissioner’s approach to valuation resulted in an incorrect valuation of the Property. In that regard, arguments

potentially including legal arguments, were needed and should have been advanced before the Tribunal so the issue could be given full consideration.

- 10.4 Insofar as the Appellant seeks a valuation of € 9,627.53 as the appropriate calculation of NAV for the Property, the Tribunal finds that this figure was unsupported in evidence. The Appellant set out a calculation of rateable areas and corresponding NAV (outlined in paragraph 7.2.1) but no evidence as to the basis for these rates or the commercial information that informed them was put before the Tribunal. Instead, the Tribunal was asked to accept the Appellant's calculations directing these be entered on the Valuation List.
- 10.5 The Tribunal, while an expert body knowledgeable in matters of rating, is not at large to blindly approve NAV figures presented to it. The Tribunal relies on the parties and looks to the evidence put before it to instruct what is a fair and accurate valuation for a property given its circumstances and the valuation of similarly circumstanced properties in the rating area. No evidence was proffered by the Appellant in this appeal as would explain or otherwise justify the NAV levels sought, and accordingly the Tribunal did not have before it, evidence that was reliable or capable of being tested.
- 10.6 The task of valuation is to apply a NAV to a property that reflects the building on a vacant and to let basis and the use to which that property could be put. To that end, for the purposes of rating, a property is valued rather than the business operated in the property however the Appellant takes issue with this approach to valuation as it applied to the subject property. The practice of occupying what might otherwise be a retail premises / shop and using same as an office has been considered by the Tribunal on several occasions and it was open to the Appellant to refer to those cases in support of their case or to distinguish previous decisions of the Tribunal from the present case. No such legal arguments or submissions were advanced in this Appeal and so the Tribunal is not in a position to make any determination in that regard.
- 10.7 Accordingly, and for the reasons outlined above, the Tribunal finds that the Appellant has not made out their case.

DETERMINATION:

The Tribunal disallows the appeal and confirms the decision of the Respondent.

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.