

Appeal No: VA23/5/0638

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Bambinos

APPELLANT

and

Commissioner of Valuation

RESPONDENT

**In relation to the valuation of
Property No. 1210846, Shop at 2 O'Connell Street, County Clare.**

B E F O R E

Hugh Markey –FRICS FSCSI,

Deputy Chairperson

Annamaria Gallivan – FRICS, FSCSI, MPhil SEE

Member

Avril Sheridan – Solicitor

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15th DAY OF AUGUST, 2024**

1. THE APPEAL

1.1 By Notice of Appeal received on the 19th day of October, 2023 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 €37,800.

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: *“Extreme rise in rates from €4,000. Its doubled and neighbouring business are paying a lot less. This rise will close my business.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5,000.

2. REVALUATION HISTORY

2.1 On the 25th day of May, 2023 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 €44,100.

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 €37,800.

2.3 A Final Valuation Certificate issued on the 15th day of September, 2023 stating a valuation of €37,800.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 1st day of February, 2022.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing, held remotely on the 24th day of July, 2024. At the hearing Ms. Martina Grogan D’Auria and Mr. Alfonso D’Auria represented the Appellant and the Respondent was represented by Mr. Conor Murphy of Tailte Eireann.

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 made an affirmation, adopted their précis as their 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.

The property under appeal is a ground floor retail unit at the northern end of O Connell Street, in the centre of Ennis, close to the O Connell monument. There is a storage area and toilet accommodation to the rear. Arthur’s Row runs alongside and leads to the Temple Gate Hotel, Friar’s Walk car park and a coach park.

4.2 The floor areas have been agreed as set out in the table below:

Description	Level	Sq. m
Retail Zone A	0	35.56
Retail Zone B	0	38.53
Retail Zone C	0	15.72
Store	0	15.25
Total		105.06

5. ISSUES

The sole issue in this appeal is one of quantum.

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 In opening her evidence, Ms. D'Auria outlined how the situation on the ground with road works going on for approximately 2 years meant that, in reality, her business was struggling. She said that trade in the town had been hit excessively and if the proposed valuation, which meant an increase of 100% in the rates payable, was implemented, she would have to close her doors.

7.2 The Appellant's husband, Mr. Alfonso D'Auria reiterated the points made by his wife and outlined the situation with regard to a number of businesses on O Connell Street. He suggested some of these were international companies or franchisees of larger retailers and were in a position to afford the increases in rates proposed. These properties were;

PN 1210851 – 14 O Connell Street, Ennis

PN 1210768 – 57 O Connell Street, Ennis

PN 2160524 – 4 O Connell Street, Ennis

7.3 In response to a question from the Respondent as to 2 of the comparisons of adjacent properties put forward in support of their appeal and as to whether they were valued at the same rate per sq. m. Ms. Grogan D'Auria responded that this was unfair as these buildings were 2/3 storey and the businesses were more established.

8. RESPONDENT'S CASE

8.1 Mr Murphy, in opening the case for the Respondent outlined the lease on which the appeal property was held – a 10 year lease from 2016 at a rent of €40,000pa for 4 years and €42,000 in the 5th year. He confirmed the Appellant's opinion of NAV as being €20,000. In relation to the 3 comparables introduced by the Appellant, he noted that two were valued at the same rate as the subject - €600 per sq. m. and the third at €450 per sq. m. This lower level was to reflect the position on the street. He then dealt with the various ground of appeal as follows;

- 1/ The effect of an increase in rates did not fall to be considered under s. 48 of the Valuation Act.
- 2/ The roadworks affecting the Appellant's business are temporary.
- 3/ The contention that the building is in poor structural condition was not supported by evidence.

8.2 He went on to say the property had been valued in accordance with the provisions of s.48 of the Valuation Act 2001. He suggested the rental payable under the lease of €40,000pa gave support to the NAV of €36,100 contended for by the Respondent.

8.3 Mr Murphy closed by saying that the onus of proving that the valuation as proposed should be disturbed lay with the Appellant and commended his valuation of €36,100 to the Tribunal.

9. SUBMISSIONS. There were no submissions of a legal nature.

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 Clare County Council.

10.2 In any appeal to the Tribunal, the onus is on the appellant to demonstrate reason that the valuation placed on the property should be disturbed. This is a well-established principle and one from which the Tribunal cannot depart.

10.3 This case was presented by the lay Appellant. While the Tribunal attempts to take into account the fact they are not professionally represented, particularly in explaining matters of procedure, this assistance cannot extend to any departure from the principle cited at 10.2.

10.4 The comparisons adduced by the Appellant did not lend any weight to the appeal and indeed some supported the rental level placed on the ground floor by the Respondent. While this level was applied to ground floor retail on this part of the street, the Tribunal was uneasy that it was derived from a single Key Rental Transaction.

10.5 Absent the submission of any real comparative evidence to the contrary, or any other substantive grounds, the Tribunal is left with no choice but to disallow the Appeal and confirm the valuation placed on the property by the Respondent.

DETERMINATION:

Accordingly, for the above reasons, 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.