

Appeal No: VA23/2/0017

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

QUALITY PRINT

APPELLANT

and

TAILTE ÉIREANN

RESPONDENT

In relation to the valuation of
Property No. 5023915, Shop at 5 Union Quay, Cork, County Cork.

B E F O R E

Mr Donal Madigan - MRICS, MSCSI

Ms Sarah Reid - BL

Mr Paul McElearney - FSCSI, FRICS, FCI Arb

Deputy Chairperson

Member

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF MARCH, 2025

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 4th day of May 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 Rateable Value € 135.
- 1.2 The grounds of appeal as set out in the Notice of Appeal are that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 28(4) of the Act because:

“1. The parties are fundamentally divergent on the type and nature of the subject property. The Commissioner insists that the property is retail and must be valued

by reference to retail comparisons. The appellants are equally insistent that the subject property is an office in use as a printworks and should be valued by reference to other offices or printworks. Short of the Commissioner conceding on this point, the appellants have little choice but to request that the Tribunal carries out an inspection of the subject property as a preliminary matter to determine the appropriate category prior to the writing of quantum precis, such that appropriate comparison can be advanced by both parties.

2. The appellants further rely on the points raised at representations in order to define the appropriate quantum.”

- 1.3 As the Notice of Appeal makes reference to reliance on the grounds advanced at Representation stage, it is appropriate to outline those here too, for completeness, as follows:

1. The subject property is not a retail unit. The subject property is an office in use as a

printworks and should be assessed by the Commissioner as such. The Commissioner has used purely retail comparisons, none of which are directly comparable to the subject. Indeed, the comparisons define the Zone A at a maximum of €163.95/m² (IR £12/sq.ft.). The subject property cannot possibly be worth more than a zoned retail equivalent overall (€95.29/m²).

2. The subject property was previously occupied by the Courts Services and was sold to the occupiers per the attached advertisement. Again, this clearly outlines the subject property as an office and was purchased for €190,000 in 2020.

Comparisons: PN 175027 - PN 894663- PN 894664- PN 894605- PN 175004

[Note – The said advertisement that is referred to has been seen by the Tribunal but is not replicated here.]

- 1.4 The Appellant considers that the valuation of the Property ought to have been determined in the sum of Rateable Value € 80.

2. VALUATION HISTORY

- 2.1 On the 2nd day of February, 2023 a copy of a valuation certificate proposed to be issued under section 28 of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a rateable valuation of €135.
- 2.2 Being dissatisfied with the valuation proposed, representations were made to the Revision Manager in relation to the valuation. Following consideration of those representations, the Revision Manager did not consider it appropriate to provide for a lower valuation.
- 2.3 A Final Valuation Certificate issued on the 14th day of April 2023 stating a rateable valuation of €135.
- 2.4 The current appeal against the Final Valuation Certificate was received by the Tribunal on 4th May 2023.
- 2.5 In revision appeals, as in this case, where the rating authority area has not been revalued before, the base date for the calculation of the net annual value is 1st November 1988 and the calculation of the rateable value involves the application of a reducing factor to that NAV to bring it into line with the historic established rateable values on the Valuation List.

3. THE HEARING

- 3.1 The Appeal proceeded by way of an oral hearing held remotely via Zoom, on the 19th day of June 2024. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying) MRICS, MSCSI of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Mr. Conor Murphy, Valuer, of Tailte Éireann.
- 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.

- 3.3 Each Expert Witness provided a standard Declaration and Statement of Truth in their précis in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules 2019.

Post hearings direction

- 3.4 At the appeal hearing and subsequently by way of written directions, the Tribunal sought confirmation of the full valuation history of this Property from the Respondent because (a) it was not clear why a material change of circumstances had been invoked; (b) as Cork city has not been revalued to date, the value applying previously (to this exact relevant property) would have been on the same basis as currently and therefore pertinent, and (c) to ascertain the valuation calculation previously applied to the Property, outside of the period when it was noted to be exempt specifically where it had been occupied for some time by the Courts Service, as that would usefully guide the Tribunal in its consideration of the appeal.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts:

- 4.1 The Property is situated on Union Quay in Cork city close to the intersection with Anglesea Street, and to the west of Parnell Bridge.
- 4.2 The Property comprises the ground floor only, of an old two storey building, the remainder being occupied by The Cork Full Gospel Fellowship (now PN 175003 being exempt)
- 4.3 The floor areas of the Property are agreed as follows:
- | | |
|-----------|--------------------------|
| Main Area | 152.25m ² |
| Canteen | <u>5.61m²</u> |
| | 157.86m ² |
- 4.4 The Property is occupied by the Appellant, Quality Print, who are the freeholders having acquired it in 2020 for € 190,000.

5. ISSUES

- 5.1 The primary issue arising in this appeal is the quantum of the valuation based on the contrasting assertions of the Valuers as to the correct designation for the Property (in guiding that valuation) as either “Office” as contended for by the Appellant, or as “Shop” as contended for by the Respondent.
- 5.2 The Appellant contends for a Rateable Valuation of €80 and the Respondent contends for a Rateable Valuation of €135.

6. RELEVANT STATUTORY PROVISIONS:

- 6.1 The principal Act for rating valuation and appeals is the Valuation Act 2001. All references herein to a particular section of the Valuation Act 2001 (‘the Act’) refer to that section as amended, extended, or modified by the Valuation (Amendment) Act, 2015 and other subsequent Acts.
- 6.2 As this is a Revision type appeal, the initiator of the process of valuation is the occurrence of a material change of circumstances (abbreviated to MCC) which is defined in Section 3(1) of the Valuation Act 2001 as:

(a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or

(b) a change in the value of a relevant property caused by—

(i) the making of structural alterations to that relevant property, or

(ii) the total or partial destruction of any building or other erection which forms part of that relevant property, by fire or any other physical cause, or

(c) the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or

(d) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4, or

(e) property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or

(f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property, or

(g) the fact that relevant property has been moved or transferred from the jurisdiction of one rating authority to another rating authority (other than in accordance with the Local Government Act 2019), or

(h) relevant property or part of any relevant property becoming licensed or ceasing to be licensed under the Licensing Acts 1833 to 2011;

6.3 A property may be listed for revision by the making of such a request to Tailte Éireann and that application can be made by an occupier of that property; by the rating authority; by an interest holder of that property and by any other occupier in that rating authority area. If the Valuer in Tailte Éireann acting as Revision Manager is satisfied that an MCC has occurred, then they will value the property accordingly and issue a valuation certificate forthwith.

6.4 In this appeal, 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.”

- 6.5 As this is a Revision ~~type~~ appeal, as opposed to a Revaluation appeal, the Tribunal is constrained to only consider the **relative** Net Annual Value of the subject Property to the other comparable properties in the rating authority area. 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 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.”

- 6.6 Rule 89 of the Valuation Tribunal (Appeals) Rules 2019 which provides:

Subject to the Second Schedule of the Act, a Tribunal may regulate its own procedure and conduct the appeal in the manner it considers fair and proportionate to the importance of the appeal, the anticipated costs and the resources of the parties. The following Rules do not restrict that general power. A Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses as far as appropriate to clarify the issues or elicit the evidence. A Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.

7. APPELLANT'S CASE

7.1 Mr. Eamonn Halpin provided a précis of evidence to the Tribunal supplemented by oral evidence. His précis outlined the location and description of the Property supplemented by photographs and maps in addition to his opinion, supporting comparables and the background to the appeal.

7.2 Mr. Halpin provided a valuation of the Property at the Rateable Value of €80 which he calculated as follows:

Main Area (Office)	152.25m ² @ € 82.00 per m ²	12,485
Canteen	<u>5.61m² @ € 54.68 per m²</u>	<u>307</u>
		12,792
Reducing factor X 0.0063		80.586 say RV € 80.

7.3 In support of his valuation Mr. Halpin made reference to the following comparables which are presented here following clarification of the details and breakdown, consequently obtained from the Respondent Valuer's evidence.

Comparable Number 1 (PN 175027)

Hacketts, 5 Copley Street, Cork

This property is valued at the Rateable Value of € 150 which is calculated as follows:

<u>Ground Floor</u>		€
Shop	47.32m ² @ € 81.97	3,878.82
Offices	13.00m ² @ € 54.64	710.32
Store	140.00m ² @ € 47.81	6,693.40
Workshop	199.29m ² @ € 41.00	8,170.89
Yard	288.00m ² @ € 6.83	1,967.04
<u>First Floor</u>		

Offices	47.32m ² @ € 54.64	<u>2,585.56</u>
	446.93m ²	24,006.03
Reducing Factor X 0.0063		151.23 say, RV € 150.

This property is located approx..340 metres from the subject property on the same triangular island of buildings formed by Union Quay, Anglesea Street, and Copley Street. It is a printing works containing a retail portion and internally the walls dividing the areas are solid which results in each use being valued separately as part of the whole.

Comparable Number 2 (PN 894663 PN 894605 & PN 894664)

Units 1-3 , 7 Union Quay, Cork

This property comprises three separate purpose built office units and car spaces in the mixed use Dun Laoi development each valued at an RV of € 54.60 and located just 50 metres west of the subject property. Each Rateable Value is calculated as follows:

Office	57.00m ² @ € 136.58	7,785.06
Car Space	1 @	<u>889.00</u>
		8,674.06
Reducing Factor X 0.0063		54.64 say, RV € 54.60

Comparable Number 3 (PN 175004)

Zazzle, 6 Union Quay, Cork

This property is immediately adjacent to the subject property and comprises the other part of the former margarine factory, and, similar to the subject, the property was also converted to office use, though at considerably greater expense for solicitors Henry PF Donegan. It was bought by an American multi-national, Zazzle, in 2014. It is valued at the RV of € 457.11 which is calculated as follows:

<u>Ground Floor</u>		
Offices	421.30m ² @ € 99.06	41,733.97
<u>First Floor</u>		
Offices	455.40m ² @ € 68.32	<u>31,112.92</u>
	876.80m ²	72,846.89
Reducing Factor X 0.0063		458.93 say, RV € 457.11

7.4 In addition to the comparable evidence Mr. Halpin made the following points which are taken in summary, *inter alia*, as follows:

(a) The Property is an office, not a shop, as contended by the Commissioner of Valuation (Tailte Éireann) and irrespective of whether you classify it as a shop or office, the key point is the relative value of it in that location in November 1988

(b) That the rigid system imposed by Tailte Éireann has greatly increased the value leading to this being an error on the Valuation List

(c) The Property was originally a coal store (1865) and subsequently part of a margarine factory in the 1920s and just before his Client's occupation, it had been occupied by the Courts Service

(d) There has been no change to the Property as an office over many years and the internal partitions are believed to date from the time of the occupation by the Courts Service

(e) The Property was purchased for € 190,000 in the open market in 2020 and no structural alterations have been undertaken since then and therefore it is a stretch to call this property a shop as no retail activity is carried on therein.

(f) It was marketed as an office by the selling agent in 2020.

(g) There are no other retail properties to the west along Union Quay as these are offices and one of the public houses adjoining it became a café in the 1990s. Union Quay is predominantly an office location

(h) The remainder of the building is in use as a church and whilst it is possible for a church to occupy a retail type unit, it is highly unlikely that it would be the highest and best use thus pointing to the entire building being more an office than otherwise

(i) If the Property is to be treated as a shop then the question arises as to why it has not been zoned in common with the usual practice for retail properties in Cork by Tailte Éireann.

7.5 In cross examination, Mr Halpin stated that he was surprised that part of Hacketts (Appellant Comparable Number 1) had been valued as retail but said this discovery further endorsed his view that this was the closest comparable to the subject Property, but he drew attention to the fact that the retail part of Hacketts has been valued at only € 81.97 per square metre.

7.6 In answering queries from the Tribunal Mr. Halpin accepted that, from a planning viewpoint, the last use was office but that what you call it is less important than what value it attracts. He was asked which location he would prefer, Union Quay or Copley Street and he said that, personally, he preferred Union Quay (ignoring the difference in size) as a location compared to Copley Street but said there was not much in the differential as neither are good retail locations, in his view. Historically, being the docks area, the location had attracted more pubs than retail uses as such. He agreed that, on the basis of an overall rate as submitted by him at the representation stage, (and replicated by reference to this in the Notice of Appeal) that if it was zoned, and then broken down, and an overall unit value rate applied, that it would not exceed € 95.00 per square metre (as stated as €95.29 per m² zoned retail equivalent overall at representation stage) based on his experience of valuing in Cork. He said he was very conscious of one factor in forming his view which is that, in 2020 the Property was bought for €190,000 contrasted with what the Respondent is

contending for of an NAV of over €21,000 in November 1988 and to his mind there was no way you could rent this for over €21,000 in 1988 if it could be bought in 2020 for €190,000 and he felt this was borne out by the distressed sale of Zazzle (Appellant Comparable Number 3) in 2014 for €1.5m which had been previously sold by Guinness in 2008 for €3.5m. He was unable to find out if any medical use had been undertaken in the actual property.

- 7.7 Mr. Halpin was asked if members of the public are able to visit the property, without an appointment, and he responded that, yes, he imagined that was possible as they undertook a design service for customers, but that, in his opinion, this would not really constitute a retail function, as for example, there is no cash register and it is not that type of set up, or that type of retail. He was further asked by the Tribunal what a member of the public could purchase at the Property and walk away with (such as a biro, pen or notepad) and he said in reply that one might commission a sign or brochure and return at a later stage to collect it, but that he did not see anything on offer (such as a biro, pen or notepad) that a person could buy and walk away with. He agreed with the Tribunal member that the premises of Hacketts was probably related if not the same as that in Baggot Street, Dublin but confirmed he had not internally inspected the Hacketts in Cork. He was asked by the Tribunal on the reason for the MCC (it being indicated as a sub division) and he responded by stating he could not ascertain that reason himself.

8. RESPONDENT'S CASE

- 8.1 Mr. Conor Murphy, Valuer for Tailte Éireann, provided a précis of evidence to the Tribunal supplemented by oral evidence in which he confirmed the location, description, size, tenure of the property in addition to providing further detail and comments on the valuation history and on the points made by the Appellant Valuer, both at Representation stage and at appeal stage. He supplemented his report with maps and photographs as well as a block plan showing the internal configuration of the property.

8.2 Mr. Murphy provided a valuation of the Property at the Rateable Value of € 135 which he calculated as follows:

Main Area (Shop)	152.25m ² @ € 140.00 per m ²	21,315.00
Canteen	<u>5.61m² @ € 81.96 per m²</u>	<u>459.79</u>
		21,774.79
Reducing factor X 0.0063		137.18 say, RV € 135.

8.3 In support of his valuation, Mr. Murphy relies on the following three comparables:

Comparable Number 1 (PN 175001)

Union Grind, 4 Union Quay, Cork

This property immediately adjoins the subject property on the eastern side and comprises a restaurant, kitchen and store of 39.99m² that is valued at the RV of € 37. The valuation is calculated as follows:

<u>Ground Floor</u>		
Restaurant	33.70m ² @ € 163.95	5,518.00
Kitchen	4.00m ² @ € 81.96	330.00
Store	<u>2.30m² @ € 54.65</u>	<u>126.00</u>
		5,975.00
Reducing Factor X 0.0063		37.64 say, RV € 37

Comparable Number 2 (PN 175050)

Daybreak, 1-2 Anglesea Street, Cork

This property is located approx.. 70 metres around the corner from the subject property and comprises a retail unit of 123.91m² which is valued at the RV of € 90. The valuation is calculated as follows:

<u>Ground Floor</u>		
Shop	67.50m ² @ € 150.29	10,144.57
Store	56.41m ² @ € 81.97	<u>4,623.93</u>
		14,768.50
Reducing Factor X 0.0063		93.04 say, RV 90.

Comparable Number 3 (PN 175063)

Alan O'Brien, 8 Anglesea Street, Cork

This property is situated at the far end of Anglesea Street close to the intersection with Copley Street, approx.. 230 metres from the subject property. It comprises a retail unit of 26.00m² that is valued at the RV of € 25.39 which is calculated as follows:

		€
Shop	26.00m ² @ € 158.75	4,127.50
Reducing Factor X 0.0063		26 say, RV € 25.39

- 8.4 In regard to the categorisation of the property as either retail or office, Mr. Murphy also provided in his précis a copy of the judgment of the Valuation Tribunal in the appeal case of **VA.20.1.0016 Maguire Dental & Commissioner of Valuation**. He states in his précis that the grounds in this appeal were, in summary, that (a) The property should be valued as a dental surgery, not a retail shop and (b) all other dental practices in town have not been named as retail, rather offices and medical. He cites from that Determination the following paragraph:

“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.”

And further from part of the next paragraph of that decision:

“10.5 The Respondents relied upon several strong tone of the list comparables from within the same parade as the subject property and accordingly the Tribunal affirms the Valuation of €30,200”

- 8.5 In taking questions from the Tribunal it was put to Mr. Murphy (see the below at paragraph 8.9) that it would be helpful to have (a) the previous rating valuation history for this appeal property and (b) that it would be of assistance to have the breakdown of the valuation for the property adjoining Daybreak in Anglesea Street (his Comparable Number 2) appeared interesting in that it seemed similar in some respects to the appeal property, being PN 175051 described as offices, but also having a retail frontage and a Rateable Value of €120. Subsequent to the hearing Tailte Éireann provided the replies to these two requests, rearranged slightly here for presentation, as follows:

(a) Brief valuation history of PN 5023915

The subject lot was created and listed for Revision by Cork City Council on 15/06/2021 to be valued as a new property under the parent Lot PN:542142. PN 175003 was also listed. PN 542142 was amalgamated into PN 175003, which falls to be considered under Schedule 4 of the valuation Act 2001, as amended being an area for religious worship. The subject lot, as created by Cork City Council, accounts for the area occupied Quality Print, the subject of this appeal.

(b) Breakdown of Valuation for PN 175051

<u>Ground Floor</u>		
Offices	25.81m ² @ € 136.62	3,526.16
Store	21.30m ² @ € 41.00	873.30
<u>First Floor</u>		
Offices	85.00m ² @ € 95.23	8,094.55

<u>Second Floor</u>			
Offices	83.70m ² @ €	81.87	<u>6,860.89</u> [6,852.52]
			19,354.90
Reducing Factor X 0.0063			121.93 say, RV € 120

- 8.6 The Appellant Valur, Mr. Halpin, issued an observation to this information in an email of 23rd July 2024 at 09:06 in which he stated that:

“Dear Mr. Knox,

Further to previous correspondence, we now comment as follows:

1) On the subject of rating history, this is a matter for the Tribunal and the respondent.

2) On the subject of PN 175051, we note that the ground floor has a total size of 47.11m² and a total NAV of €4,399.46. This devalues at €93.39/m² overall.

Kind regards,

Eamonn”

- 8.7 The relevant MCC in this appeal is not as originally submitted in the précis of the Respondent and Mr Murphy stated, by way of clarification, that the property had not been previously valued and hence the reason for the MCC was not a sub division but rather the coming into being of a relevant property per Section 3(1) (a) of the Act.

- 8.8 In addition to the comparables properties relied upon he also made, in summary, inter alia, the following points:

(a) The subject property is a retail unit with typical retail frontage valued in line with others on Union Quay and Anglesea Street.

(b) The unit is valued in accordance with sec. 49 of the Valuation Act 2001.

(c) The Appellant's contention on valuation for a Rateable value of € 80 would not achieve equity and uniformity as mandated by the Act .

(d) The onus of proof rests with the Appellant and he considers that the Appellant has not met this threshold in this case.

(e) He referred to the case cited of VA.20.1.0016 Maguire Dental & Commissioner of Valuation as supporting his case on the correct designation of the Property in this appeal.

8.9 In cross examination, Mr. Murphy confirmed that the three comparables cited by him are the best indicators to inform the valuation of the appeal property, although he agreed that his first comparable, (Respondent Comparable Number 1 Union Grind) albeit only around a quarter the size of the subject property, is nevertheless of similar retail use, with similar frontage and is located just next door, but that the difference in size is reflected in the different unit value rate per square metre which is €163.95 per m² that is applied to it contrasted to the unit value rate applied to the subject property, of € 140.00 per m². He conceded that it operates as a restaurant. When asked about the kitchen he said he could not confirm if it is a full commercial kitchen or not. It was put to him that the Appellant had originally sought a Zone A unit value level of €163.95 per m² for the appeal Property at the representation stage and that, as things turned out, this is what the Commissioner of Valuation (Tailte Éireann) has, in fact, done, but he rejected this, stating that it had not been zoned but valued on an overall unit value rate. He accepted that most retail properties in the centre of Cork would have probably been zoned but as Cork had not been revalued and that it is more common in counties that have been revalued for zoning to apply. It was put to him that it is almost 40 years since Cork was valued and there have been numerous revisions since then and that zoning is applied to retail properties but he said, in response, that the subject Property and the comparables cited by him had been valued on an overall unit value rate.

8.10 In regard to his comparable number 2, (Respondent Comparable Number 2) Daybreak, he accepts that the Anglesea Street location would be better than Union Quay because of

higher traffic footfall passing it and being right next to the Courts. It was put to him that if you analyse the two portions of the unit together (an area of 123.91m²) that you derive a unit value rate of €119 per square metre overall. He said in response that there is a distinction here between the shop and store, the latter being valued at a lower level per square metre to reflect, normally, a division such as a solid wall but he confirmed that he had not inspected this comparison himself, however, he did have access to the survey of the property. He was asked if the area of 67.50m² constitutes essentially the Zone A area in this comparable but he thought it was possible but that there was also a small element of Zone B in that too. He accepted that it is smaller than the subject Property; on a different street and is operated as a convenience store.

8.11 With regard to the last comparable (Respondent Comparable Number 3) he accepted in answer to questions that this is on a different street to the subject; is only an eighth the size of the subject property; is in the same vicinity as the subject and on the same block; is on a prominent corner with Copley Street and it is in retail use. He confirmed that he believed this to be comparable to the subject, but he ranked it third in sequence for preference, out of the three which he cited. It was put to him that if the unit value rate used in this last comparable of € 158.75 was applied to the subject, (as, contended by the Appellant Valuer, as a Zone A rate) and the rest of the unit zoned, would it not equate to the value proposed by the Appellant in his submission, but Mr. Murphy explained, in reply, that there had been an allowance made in the overall unit value rate adopted between the two properties with the subject, being larger, valued at the lower level of € 140.00 per m² overall. He conceded that if the subject was zoned the result would indeed be similar to what the Appellant Valuer suggested.

8.12 Mr. Murphy was asked to clarify what he saw on his inspection of the Property and he said it was a shop as illustrated by his photographs with retail frontage and signage and inside, he observed a carpeted floor and acoustic tiled ceiling; a retail counter and electronic payment device; corridor that leads to the canteen and further offices, divided throughout by partitioned walls and glazing between these walls. He confirmed that he observed a retail frontage with a sign above the door and decals on the glass. He confirmed that there

is signage of a religious nature over the remainder of the building. He agreed that there is a front area of about 3 metres depth and then the first partitioned office (which he said is a non-structural wall) with digital printers and a payment device. It was put to him that the existence of a payment device would not necessarily make it retail and therefore would this require planning for a change of use but he said planning would not solely determine the approach by Tailte Éireann as it would be determined by its use and appearance relative to other similarly circumstanced properties. He further responded by saying the Property would be valued on its frontage deemed to be retail in line with the property bedside it, Union Grind (Respondent Comparable number 1).

- 8.13 It was put to him that the Property has been in use for the past 15-20 years as offices which he agreed has been the case, taking account of Courts Service occupation noted from 2009. He was asked where the concept of retail had come from, and Mr. Murphy responded by stating that the key point here is that the frontage of the subject is deemed to be retail similar to the property beside it. It was put to him that this issue has arisen before in Tribunal cases and is it not the case that one must consider the property rebus sic stantibus and consider the mode and category as well as what one views physically. Mr. Murphy responded by stating that it had presented as being a retail unit with decals on the windows; a large amount of glazing to the front and the fact that someone can walk in from the street without an appointment, being essentially an open door.
- 8.14 It was put to Mr. Murphy that, in the case of Zazzle (Appellant Comparable Number 3), is it not the case the Commissioner of Valuation treated this as an office, despite the fact that it was converted from a warehouse, but will not do the same with the subject Property, to which Mr. Murphy responded by stating the subject has been valued as a retail unit because it is in retail use with its retail frontage with glazing and an open door allowing customers to freely enter along with other similar circumstanced properties.
- 8.15 It was put to him that in the case of Hacketts (Appellant Comparable Number 1) that part of this was treated as retail and valued at € 81.97 per m² and the remainder, being offices and stores were valued at only €54.64 and € 41.00 per m² and so, if combined, that gave

rise to a much lower unit value overall. Mr. Murphy stated that these units were in a larger property and in a different location to the subject.

- 8.16 He was asked as to the state of the market in November 1988 which he said he could not confirm but accepted that it was bought for € 190,000 in 2020 but would not be able to relate this back to a corresponding [capital] value in 1988. It was put to him that if it sold for €190,000 in 2020 that, having regard to massive increase in values since 1988, would it not be the case that it was only worth a fraction of that back in 1988 and that the NAV proposed in excess of € 21,000 as at 1988 conflicts with the later sale price reality in 2020 and Mr. Murphy said that whilst he understood the point being made that, nonetheless, this is being valued relative to the other comparable net annual values. He reiterated that he cannot comment on a hypothetical capital value back in 1988 compared to a sale price in 2020.
- 8.17 Mr. Murphy was asked as to the reason for the MCC which he said it appeared that it was not previously valued arising from the fact the Courts Service had been there previously (who are exempt) and it was put to him that as the factory only closed in 1989 that it must have been valued previously but he said he could not ascertain that.
- 8.18 In taking questions from the Tribunal, Mr Murphy confirmed that, as per a photograph of the Property put in evidence, signage over the building showed 'Hyland Johnson' as a previous occupier and he offered to try and find out the history to assist the Tribunal which was appreciated. Mr Murphy confirmed that when he inspected the building following the revision request that he had noted the relatively new occupation of Quality Print and the religious use in the remainder of the building.
- 8.19 In taking further questions from the Tribunal, Mr Murphy confirmed that by reference to the photographs put forward by both Valuers, that there has been little or no change since 2020. He was asked what someone could purchase and walk away with, to which he responded by saying that he cannot answer that definitively but knows that the operation has printing materials such as booklets, tee shirts etc but he cannot say 100% what you

could buy there although he noted that there is a payment device. It was put to him if he could indicate other premises of this nature being retail but only 3 metres deep and he stated that there are other uses such as a barbers that might operate in such a space but that the depth of the front area is only to a partitioned wall that can easily be moved without involving structural alteration.

8.20 Mr Murphy agreed with the Tribunal member that the location, historically, is of a sea faring port and that the long-established use next door is as either a café, restaurant or public house and he confirmed that he believed this was relevant in establishing the rental value of the subject Property. With regard to his second comparable, Daybreak, he was asked if he thought the difference in the level of value of €150.29 per m² compared to the subject at €140.00 per m² is adequate, which he said was the case. He was asked that, assuming he was a retailer offered the choice of the two properties, which he would prefer, and he responded that he would probably prefer the location of Daybreak for that type of use, as he explained the subject property, in contrast to Daybreak, does a more bespoke type of business and different in its nature of retail and that a retailer would prefer the location on Anglesea Street for an operation such as Daybreak, primarily on the grounds of footfall and profile.

8.21 Finally, it was put to Mr. Murphy by the Tribunal that as the reason for the MCC was unclear it would be useful for the Tribunal to have the previous valuation history for the Property since 1988 as that might prove relevant and it was also drawn to his attention the existence of a further property with a Rateable Value of €120 (identified for him as PN 175051 being next door to his Comparable Number 2 Daybreak) the details of which might assist the Tribunal too, being offices with a retail type frontage which he stated he would provide. Mr Murphy confirmed that when he researched his comparables that none of them were zoned and he confirmed that none of either party's comparables are subject to appeal.

9. SUBMISSIONS

There were no legal submissions in this case.

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 uniform 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 Cork City Council.
- 10.2 The Tribunal recognises the difficulty for Appellants and/or their Agents in mounting an appeal as the search for precise details of other comparable net annual value assessments (which, in this appeal, where there are comparable properties, is the restriction, in the case of revision appeals, imposed by sec.49 of the Act) is made onerous by the lack of detail shown on the Valuation List on the Tailte Éireann website for other property's valuations, where, as in this case, the rating area has not been revalued. This is unlike the case of properties in rating areas that have been revalued, where the breakdown of valuations is provided on the Tailte Éireann website map for all properties, that are valued by the comparative method as distinct from those by reference to, for example, receipts and expenses, where such information is omitted on the grounds of preserving confidentiality. Notwithstanding that, the Respondent, as in this appeal, has examined the other comparables submitted by the Appellant and provided the breakdown of those valuations in his response. Whilst that usefully gives the Tribunal a better overall picture, it proffers a doubt, especially where the number of comparables cited is low, whether there are other illuminating comparable assessments that might yield further direction to the Tribunal on the appropriate pattern of values, or, as is more commonly known as, the established Tone of the List. The integrity of the tone of the Valuation List can best be demonstrated by the inclusion of other net annual value assessments and the strongest evidence is from valuations that have been agreed with other professional Valuers experienced in rating valuation.
- 10.3 There were several exchanges at the hearing on the subject of the activity carried on at the Property, as to how that might best be described, to guide the Tribunal on the most likely

occupier of the Property having regard to long established rating valuation principles such as the assumption of a hypothetical letting, the basis of the assumed tenancy and taking the Property as is (the *rebus sic stantibus* assumption or the reality principle) on the basis that it is considered to be “vacant and to let” at the valuation date.

- 10.4 Furthermore, there was much discussion at the hearing on the reason for the material change of circumstances and identifying **which** material change had occurred to prompt the revision valuation (these material change of circumstances being limited to a number under the Act as set out above in section 6 of this Determination). The Tribunal now accepts that the reason for the MCC is not what was originally set out by the Respondent Valuer in his précis but is more properly, as he later helpfully clarified, the coming into being of a relevant property that, for one or other excuse, was not valued before, but most likely, as far as can reasonably be established, arises from the fact it had at one time been occupied by a state authority (The Courts Service) and therefore exempt at that time. Without further conclusive information being put forward by either party, the Tribunal accepts that an MCC has occurred to cause a revision valuation to be made and a valuation certificate to be raised in respect of the Property. This acknowledgement is further endorsed by the absence of any ground of appeal being cited by the Appellant in the Notice of Appeal disputing the justification for a material change of circumstances.
- 10.5 It will be appreciated that the designation or categorisation of a property for valuation purposes in rating is not mandated by the provisions of the Valuation Act 2001 but is a function of valuation practice and the exercise of the proper skill and judgment of the Valuer. The only statutory direction to the Valuers and to the Tribunal is that, in a revision type appeal, as in this case, the ascertainment of that value is to be made by reference only to the values of comparable properties appearing on the Valuation List of that rating authority area (where such comparable properties exist). Property is not a homogenous product in that no two properties are identical and thus much dialogue is focussed in valuation practice on defining these similarities and differences and the consequent adjustment of unit values per square metre, or by allowance (be that either a fixed amount or percentage) to reflect same.

- 10.6 The Tribunal considers that, in the light of the evidence, that this Property can be described as falling into what might be best termed quasi-retail in that the retail function appears ancillary to the main use but, on the other hand, this retail element is nonetheless essential to the operation of the unit overall, as it is a property that is accessible for members of the public without a prior appointment to enquire and make purchases. It is a long-established principle in rating valuation that classifications or designations for types of property are not to be narrowly construed. A shop is valued as a shop but not as any particular type of shop as outlined by the UK Lands Tribunal in *Fir Mill Ltd v Royston UDC and Jones (VO)* [1960] R & IT 389 later ratified by the UK Court of Appeal in *Scottish & Newcastle (Retail) Limited v Williams (VO)* [2000] R.A.119. Rating practice prefers to consider classes of property that fall into the same mode or category of use rather than focus on a narrow user designation. From the testimony of both Expert Witnesses herein and later further explored during cross examination, it became obvious to the Tribunal that there was a risk this appeal might embark unnecessarily on a route or path to define user, instead of focusing on the actual unit value derived from the evidence to apply in this case.
- 10.7 In terms of the usual spectrum of retail uses this Property falls somewhere at the further end of the spectrum in that it is not food, fashion, pharmacy, hardware, footwear, café or similar but comes in to the other end of the spectrum of uses in terms of what might be grouped in, for example, estate agents' offices, dry cleaners, opticians, and importantly here, print/copy shops. In terms of a purported office use, then it is an office in a retail type unit with retail frontage albeit the street might be classed as tertiary retail in character. The key test here is not the actual user, narrowly defined, but the value that the actual unit would attract, vacant and to let, as between a hypothetical landlord and a hypothetical tenant, on the letting market as at 1st November 1988, but **only** as measured by the indications from the relative value of comparables.
- 10.8 The parties' valuers are agreed on the floor area of the Property and also agree upon the division of this into two separate components (but are not agreed on the primary designation of the main larger area as either retail or office) and so we have the larger area

(152.25m²) valued by the Appellant Valuer at a unit value rate of €82.00 per square metre and the ancillary canteen area (5.61m²) valued at a unit value rate of €54.68 per square metre whilst in contrast we have the main area valued by the Respondent Valuer at a unit value rate of € 140.00 per square metre and a corresponding unit value rate of € 81.96 per square metre on the ancillary canteen area. Both Valuers adopt lower unit value rates for the small area, being the canteen, with the Appellant Valuer valuing this at €54.68 per m² corresponding to some 66.68% of the main area rate whilst the Respondent Valuer values this part at €81.96 per m² corresponding to some 58.54% of his main area rate.

- 10.9 Taking each of the comparables, in turn, with the Appellant's comparables' details as clarified by the Respondent, the following are the Tribunal comments and observations on those:

APPELLANT

Comparable Number 1

Hacketts, 5 Copley Street, Cork

PN 175027 Rateable Value € 150

The Tribunal considers this a highly relevant comparable in that the user of the property closely mirrors that of the subject Property, it is in the same immediate location and exhibits characteristics that bear similarity with the subject, apart from the fact that, overall, it is larger than the subject being some 446.93m² contrasted to the subject at 157.86m². (The difference being that this property is 2.83 times the size of the subject or, put another way, the subject is only 35.32% of it.) Close examination of the breakdown of the NAV reveals that the retail part, on the ground floor, comprising 47.32m² is valued at a unit value rate of € 81.97 per m².

Comparable Number 2

Units 1-3 , 7 Union Quay, Cork

PN 894663 PN 894605 & PN 894664 Rateable Value € 54.60 (each suite plus car space)

The Tribunal considers this to be less relevant to informing the value than the previous comparable but does not dismiss it because of certain similarities in location and use but

accepting that, like the previous comparable, it is not easily capable of comparison on the grounds of size, each suite being only 57.00m² valued at an NAV of € 136.58 per m² excluding the additional car space value. The difference in size being that this property is only 36.11% of the subject or, put another way, the subject is some 2.769 times the size of each of these suites.

Comparable Number 3

Zazzle, 6 Union Quay, Cork

PN 175004 Rateable Value € 457.11

As this immediately adjoins the subject, it is somewhat relevant, though the disparity in size is quite evident being a total of 876.80m² contrasted to the subject at 157.86m² and it is also spread over two floors, whereas the subject is at ground floor only. The ground floor part of 421.30m² is valued at the NAV of € 99.06 per m². The difference in size is that this property is some 5.55 times the size of the subject or, put another way, the subject is only 18% of this property.

RESPONDENT

Comparable Number 1

Union Grind, 4 Union Quay, Cork

PN 175001 Rateable Value € 37

This property immediately adjoins the subject on its eastern side and comprises a unit of 39.99m² which is a restaurant, kitchen and store and the front part of 33.70m² is valued at an NAV unit value rate of € 163.95 per m². Although much smaller than the subject (which is 157.86m²) it is a useful comparable to guide the Tribunal notwithstanding the contrast in use.

Comparable Number 2

Daybreak, 1-2 Anglesea Street, Cork

PN 175050 Rateable Value € 90

This is a convenience store located just around the corner from the subject Property and thus in the same general location and comprises a total of 123.91m² (comparable with the subject at 157.86m² though slightly smaller than it). The user here would be regarded by the Tribunal as being of higher value than the subject. The retail part comprises 67.50m² and is valued at an NAV unit value rate of € 150.29 per m².

Comparable Number 3

Alan O'Brien, 8 Anglesea Street, Cork

PN 175063 Rateable Value €25.39

This is a unit which is much smaller than the subject being 26.00m² the subject being some 6.07 times it in overall size or put another way this comparable is only 16.47% of the subject's size. It is located further south on Anglesea Street at what might be considered a busy or prominent junction. The entire is retail and is valued at an NAV unit value rate of € 158.75 per m².

- 10.10 In addition to the foregoing properties put in evidence, and arising from the below property being visible in a photograph included in evidence before the Tribunal, a further comparable property was identified by the Tribunal as potentially similarly circumstanced to the Subject Property under appeal, namely:

Thomas Coughlan & Sons, Anglesea Street

PN 175051 Rateable Value € 120

This is described as offices spread over three floors with a total of 215.81m² and the ground floor which has a retail type frontage has the offices of 25.81m² valued at the NAV unit value rate of €136.62 per m². The size differential is that this comparable is some 1.37 times the size of the subject or, put another way, the subject is 73.15% of this property.

- 10.11 The Tribunal does not accept that the store area in the Subject Property can be assumed to be combined with the retail area as suggested by the Appellant Valuer in his analysis of this to derive an overall unit value rate of €93.39 per m² (i.e. total NAV of €4,399.46 for ground floor retail and store. divided by total size of ground floor 47.11m²) as the

presumption must be, in the absence of contrary evidence, that the differing uses are valued thus to reflect a proper physical division internally.

- 10.12 Proceeding from the comments in section 10.8 above, the Tribunal accepts that all six comparables plus the further one identified by it provide useful context to make an accurate determination here, but further distillation of the comparables brings the focus to the pattern of values evolving from the most relevant (in the opinion of the Tribunal) aspects of those as follows:

Appellant Comparable 1

Although a total of 446.9m² this comparable shares many characteristics similar to the subject Property and taking the retail area here of 47.32m² gives a NAV per square metre of €81.97.

Respondent Comparable Number 1

Though smaller than the subject the retail part of 33.70m² gives an NAV of €163.95 per m².

Respondent Comparable Number 2

The retail part of the convenience store of 67.50m² is valued at € 150.29 per m².

Further Comparable PN 175051

The ground floor offices (in a building with retail frontage) of 25.81m² is valued at an NAV of €136.62 per m².

- 10.13 Thus, for unit size of between 25.81m² to 67.50m² the range of unit values is between €81.97 per square metre and €163.95 per square metre. Taking just the two larger units above, of 47.32m² and 67.50m² the range of NAV unit values is between € 81.97 per m² and € 150.29 per m². Taking account of the increased size of the subject Property the Tribunal considers that the appropriate unit value rate for the main area is, initially an average of these unit value rates at € 116.085 per m² but subject to further adjustment for

it being at the lower end of the spectrum of retail uses, in a tertiary location, referred to earlier, which warrants a reduction of 20%, in the view of the Tribunal to derive a unit value over the main area of € 92.87. The Valuers adopted unit value rates on the canteen of between 58.54% and 66.68% of the main area rate and taking this at 60% derives a unit value for this ancillary area of €55.72 which is just in excess of the office portion of Hacketts (appellant Comparable number 1) and that appears to fit the pattern of values. In those circumstances the Tribunal is satisfied that this figure is appropriate.

10.14 The Tribunal takes note of the case cited by the Respondent Valuer in support of his contention on the correct designation of the property for valuation purposes, being VA.20.1.0016 *Maguire Dental & Commissioner of Valuation* which was a document only appeal issued on 9th November 2022. This was a Post Revaluation Revision appeal regarding Unit 2, Green Road, Mullingar, Co. Westmeath for PN 5019423, which had obtained planning permission for change of use to a dental practice. The said unit, is located in a retail area adjacent an Aldi and Eurospar supermarket together with other smaller retail units. The base valuation date for this unit as per the Westmeath Valuation Order is 30th October, 2015 and the Final Valuation Certificate issued on 12th December, 2019. Having reviewed this determination, the Tribunal is not persuaded that this decision in **Maguire Dental & Commissioner of Valuation** sets a precedent for the current appeal because:

- (a) the setting for the unit in that case is unmistakeably retail in character,
- (b) the unit was purpose built for retail,
- (c) the location can best be described as a neighbourhood centre on the edge of the town,
- (d) the Appellant was not professionally represented in that appeal (in contrast to the Respondent who filed both valuation evidence and legal submissions),
- (e) the Appellant did not offer a robust argument or supply any evidence to support the grounds of appeal.

10.15 By way of clarification, the Tribunal will address the concerns raised by the Respondent following the Directions issued with regard to (a) the rating history for the appeal Property

PN 5023915 and (b) the valuation details for the other property PN 705151 (per paragraph 3.4 above). In the case of (a) the Tribunal considers that the previous valuation of the property is relevant to the determination of the valuation as this same point was endorsed by the Court of Appeal in *Dayhoff v Commissioner of Valuation* where it was held that the previous valuation of a property prior to the occurrence of an MCC is cogent evidence in a revision appeal.

10.16 In respect of (b) from the photographic evidence before it, a unit was visible (PN 175051 - immediately adjacent to a comparable property being relied on) which had retail frontage but appeared to be used as a solicitor's office. Neither the Appellant nor the Respondent's valuer were in a position to confirm the details of the said property and where the subject Property also benefited retail frontage but was operated as a non-retail in the strict sense, this unit appeared to the Tribunal to be of similar circumstance and further information was requested to clarify matters. The Tribunal is tasked in this appeal with identifying a correct determination as mandated by Section 37 of the Act. The Valuation Act does not preclude the investigation of other net annual values especially where, in this case, it is not known to either party when the question was put to the parties by the Tribunal, whether that information will assist either case. The Tribunal is of the view that in order to interrogate the Net Annual Value of a Property under appeal, further information can be sought, including other properties that appear to be similarly circumstanced to the Property and, once the information is provided it can be examined for relevance and applied or discounted accordingly. Further, if either party feels, upon consideration of such information that they wish to address the Tribunal on any issue arising, that is entirely open to them.

10.17 The Tribunal is not an advocate for either party in seeking information that would assist form a view of the valuation of a property under appeal. Instead, the Tribunal simply engaged in the exercise of interrogating any relevant information that might assist it in eliciting all available evidence as would have a bearing of the NAV of the subject Property. In the particular circumstance of the present appeal, where only three comparables were advanced by each party, and further where the property on which information was sought,

was clearly identifiable in a photograph put before the Tribunal in evidence, the Tribunal was entitled to seek further information on this, potentially similarly circumstanced property.

- 10.18 In this regard the Tribunal refers and relies on Rule 89 of the Valuation Tribunal (Appeals) Rules 2019 which provides:

Subject to the Second Schedule of the Act, a Tribunal may regulate its own procedure and conduct the appeal in the manner it considers fair and proportionate to the importance of the appeal, the anticipated costs and the resources of the parties. The following Rules do not restrict that general power. A Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses as far as appropriate to clarify the issues or elicit the evidence. A Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.

The two final sentences of that Rule are especially apt in this current appeal.

- 10.19 Finally the Tribunal wishes to note that the Respondent's Valuer's conduct and presentation of evidence was particularly helpful at the hearing and the Tribunal found this to be of great assistance where there was no reluctance or hesitation expressed by him in seeking to fully answer questions to aid the Tribunal. However, in a subsequent direction from the Tribunal to the Respondent / Tailte Éireann (22nd July 2024) further information was sought in respect of the rating history of the Property and it is disappointing to note that no further response was received from the Respondent in this regard. The lack of engagement from Tailte Éireann on this issue is both surprising, unfortunate and entirely unhelpful as it leaves the Tribunal without salient information on the valuation history, which is or ought to be within their possession, and would guide and/or instruct the correct and fair valuation of the Property, required under Section 19(5) of the Act.

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 **€91**.

For rating authority areas that have not been revalued, as in this case with Cork city, the exercise of ascertaining Net Annual Value is to calculate this as at the valuation date of 1st November, 1988 and to apply a reducing factor (a multiplier of .0063) to the result to achieve a figure of Rateable Value, in order to align it and reduce it downwards to the established historic level of other rateable values in that Valuation List for Cork City.

This is calculated as follows:

Main Area	152.25m ²	@ € 92.87 per m ²	14,139.46	
Canteen	<u>5.61m²</u>	@ € 55.72 per m ²	<u>312.59</u>	
			14,452.05	
Reducing factor X 0.0063		91.05	say, RV €91 .	

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.