

Appeal No: VA22/3/0030

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

PAURAIC TALBOT

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1359996, Property Type: Shop, Address of Property: Blacksod, Ballina,
County Mayo

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30th DAY OF APRIL 2025**

BEFORE

Dairine Mac Fadden - Solicitor

Deputy Chairperson

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 4th day of July, 2022 the Appellant appealed against the determination of the Respondent pursuant to which the rateable value of the above relevant Property was fixed in the sum of €15
- 1.2 This is a revision appeal. As per section 28 (4) (a) of the Act, the valuation of the Property was revised, on the basis that a Material Change of Circumstances (MCC) within the meaning of the Act had occurred, since the last valuation had been carried out, namely that an extension of the Property had taken place in the intervening years. It was also established on inspection that it had been divided into two units, one of which was operating a fast food takeaway service. Revised valuation certificates were issued for the Property and the adjoining unit under new PN 5005552. On the revision valuation, the valuation manager decreased the valuation on the Property from RV €24 to RV €15.

- 1.3 The sole ground of appeal as set out in the Notice of Appeal is that the valuation of the Property is incorrect as it does not accord with that required to be achieved by section 49 of the Act because:
- “Property is no longer a commercial property and never will be in the future. Commercial rates should not apply. Property has been vacant for 10 years approximately[sic]. Last business use of this building failed circa 2012/2013. Commercial use in this area no long viable + building will not be used again commercially. Property has been vacant since my ownership in 2016 and also prior to TMAAT circa 2013”*
- 1.4 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.

2. VALUATION HISTORY

- 2.1 On the 28th day of May, 2018 an application was made to the Respondent for the appointment of a revision manager to exercise powers under section 28(4) of the Act in relation to the Property on the basis that by reason a material change of circumstances had occurred since a valuation under section 19 of the Act or of comparable powers under the enactments repealed by the Act, was last carried out in relation to the rating authority area of County Mayo, in relation to the Property, the valuation of the Property ought to be amended.
- 2.2 On the 26th day of November, 2021 a copy of the proposed valuation certificate issued under section 28(6) of the Act in relation to the Property was sent to the Appellant indicating a valuation of €24.
- 2.3 A final valuation certificate issued on the 16th day of June, 2022 stating a valuation of €15.

3. DOCUMENT BASED APPEAL

- 3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.
- 3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. **FACTS**

- 4.1 From the evidence adduced by the parties, the Tribunal finds the following facts:
- 4.2 The Property is located in the village of Aughlea, Blacksod, Co. Mayo.
- 4.3 The Property is a partially semi-detached, single storey, flat roof building with concrete block walls.
- 4.4 Currently the Property is vacant and not in use but was previously in commercial use.
- 4.5 The floor areas submitted by the Respondent and which were not challenged by the Appellant are as follows:

	Sqm
Shop	107.08
Store	24.04
Total	131.12

- 4.6 The tenure of the Property is freehold.
- 4.7 The Property was capable of beneficial occupation on the date of the revision valuation.

5. **ISSUE(S)**

The Appellant contends that the Property should not be rateable as it has been vacant for a long time, that a commercial shop is not viable in this locality and therefore should be excluded from the valuation list. The Appellant did not challenge the actual valuation applied. The Respondent contended that while the photo evidence submitted by the Appellant illustrated the vacancy of the Property, that was not sufficient evidence to render the Property “Relevant Property non rateable” in accordance with Schedule 4 of the Valuation Act 2001, as amended.

6. **RELEVANT STATUTORY PROVISIONS:**

- 6.1 All references to a particular section of the Act refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.
- 6.2 Section 13 of the Act provides for the valuation of all relevant properties. The definition of what constitutes a “Relevant Property” is set out in Schedule 3 of the Act. This lists categories of properties at sub-paragraphs (a) to (n) which are to be valued provided the

condition set out in paragraph 2 of that schedule is also complied with. The category includes a sub-paragraph (b) “buildings” and the Property falls within that category.

6.3 Paragraph 2 of Schedule 3 provides as follows:

2.—The condition mentioned in paragraph 1 of this Schedule is that the property concerned—

- (a) is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property, or*
- (b) is unoccupied but capable of being the subject of rateable occupation by the owner of the property.*

7. APPELLANT’S CASE

7.1 The Appellant submitted a précis and the sole ground set out in same was that the Property had been vacant since 2013 and that it had not been in commercial use since then. He included 11 photographs in support of his position that the Property was vacant and not in commercial use.

8. RESPONDENT’S CASE

8.1 The Respondent contended that the Appellant’s evidence simply went toward proving vacancy of the Property and that it has suffered from vacancy for a long period. The Respondent contended that the Appellant had not provided sufficient proof as to substantial physical dilapidation or deterioration of the Property or obsolescence, to the extent that it is completely incapable of occupation. Nor had he provided evidence that the Property could not ever be used as a commercial unit again for an alternative commercial use or that it would require enormous cost to renovate and make good again. The Appellant had failed to prove that the valuation was incorrect or should not be rateable.

8.2 Notwithstanding that the Appellant did not challenge the actual valuation applied, the Respondent provided the following properties as comparables to show that the valuation was correct and in line with the tone of the list:

Type	Property No	Occupier	Address	NAV € (sq.m)	NAV (€)
Subject	1359996	Pauraic Talbot	Aughleam, Blacksod, Ballina, Co. Mayo. F26 K759	€27.34	15.00
Comparison 1	5005552	M U Jan T/a Pizza House	Aughleam, Blacksod, Ballina, Co. Mayo. F26 K759	€27.34	€6.00
Comparison 2	5005556	An Sean Siopa	Aughleam, Blacksod, Ballina, Co. Mayo. F26YW65	€41.00	€7.00
Comparison 3	2164956	Margaret Connor	Ballina Road, Belmullet, Co. Mayo.	€41.00	€4.00
Comparison 4	2210058	Damien Lavelle T/a Lavelle's Pharmacy Ltd	Bangor Eris, Ballina, Co. Mayo. F26 AW27	€40.98	€10.00

8.3 Taking all of the foregoing into account, the Respondent's valuer stated that his opinion of the correct NAV for the Property was €15 calculated as below, which he submitted also was valued fairly compared to the other properties which he had submitted as comparables:

Level	Use	Area	NAV/sqm	Total NAV
0	Shop	107.08	27.34	2,927.57
0	Store	24.04	20.50	492.82
Total NAV				3,420.39
NAV @ 0.05%				17.10
Rateable Valuation				15.00

9. FINDINGS AND CONCLUSIONS

9.1 On this appeal the Tribunal has to determine whether the value of the Property accords with that which is required to be achieved by section 49 of the Act, namely a value that is relative to the value of other properties on the valuation list of County Mayo rating authority area.

- 9.2 The sole ground of appeal by the Appellant is as set out in paragraph 1.3 above. The Appellant did not contend that an MCC had not occurred. His sole contention was that as the Property was no longer in commercial use and never would be as commercial use in that location was no longer viable, that commercial rates should not apply.
- 9.3 In rating appeals the onus is on the Appellant to show that the valuation of property which is under appeal is incorrect and not determined in accordance with section 49(1) of the Valuation Act 2001 as per the authorities cited by the Respondent's Valuer in his précis of evidence at paragraph 7.2.
- 9.4 There is an extensive line of cases on the concept of rateable occupation which incorporates the concept of beneficial occupation. Beneficial occupation does not mean that the property must yield or generate a profit for the owner. In *Fibonacci Property ICAV v Commissioner of Valuation* [2020] IEHC 3, the High Court said at paragraph 27: *"...in deciding whether an owner is in beneficial occupation one does not look only at the question of pecuniary benefit or whether a profit may be made but may also look at the wider question as to whether it is in 'immediate use and enjoyment of the land' (as characterized in Sinnott v Neale [1984] (IR JUR. REP. 10), even though in that case the defendant was not in occupation of the property) or whether the occupation was of value (O'Malley v The Congested Districts Board 2 [1919] IR 28)"*
- 9.5 Accordingly, all that is required is that the property must provide some benefit or value to its owner. If the property satisfies this low threshold, then it is "Relevant Property" for the purposes of Schedule 3 of the Act and the Respondent has a duty to determine its net annual value to a hypothetical tenant holding under a hypothetical annual tenancy at the valuation date. If the property is incapable of beneficial occupation, it is not liable to a rate and does fall to be shown in the valuation list.
- 9.6 In addition to the foregoing, when considering whether a property is incapable of beneficial occupation, an oft cited concept is whether the property is 'struck with sterility in any and everybody's hands'. This phrase was discussed in *London County Council v Erith Churchwardens* [1983] AC 562 as follows:
"...if land is 'struck with sterility in any and everybody's hands' whether by law or by its inherent condition, so that its occupation is and would be of no value to anyone, I should quite agree that it cannot be rated to the relief of the poor. But I must demur to the view that the question whether profit (by which I understand is meant pecuniary profit) can be derived from occupation by the occupier is a criterion which determines whether the premises are rateable, and at what amount they should be assessed; and I do not think that a building in the hands of a school board is

incapable of being beneficially occupied by them, and is not so occupied because they are prohibited from deriving pecuniary profit from its use.”

9.7 The Appellant has submitted photographs to show that the Property is vacant which is not in dispute, but as contended by the Respondent’s valuer, the Appellant has not shown that the Property is incapable of rateable occupation. The fact that a property is vacant does not of itself mean that the property is not “occupied” within the meaning of condition 2 of Schedule 3. The fact that the Appellant derives no pecuniary benefit from the Property is not of itself sufficient to satisfy the test that the Property is incapable of beneficial occupation. The subjective intention of an owner of property is not relevant. The situation must be considered and assessed objectively by reference to the physical state of the property at the valuation date. No evidence was adduced by the Appellant to prove that the Property was of no use to any party and incapable of rateable occupation.

9.8 The Tribunal finds that the Appellant has not proven that the Property is incapable of rateable occupation such as to exclude it from the valuation list and disallows the appeal.

10. DETERMINATION:

10.1 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.