

**Appeal No: VA23/5/0196**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**DEBBIE ALLEN DANCE SCHOOL**

**APPELLANT**

**and**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 1545445, Dance Studio at Rear 2 Arbourfield Terrace, Windy Arbour, Dundrum, County Dublin.

**B E F O R E**

**Barra McCabe - BL, MRICS, MSCSI**

**Liam Daly - FSCSI, FRICS**

**Sarah Reid - BL**

**Deputy Chairperson**

**Member**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 11<sup>TH</sup> DAY OF OCTOBER, 2024**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 5<sup>th</sup> 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 €45,400.

1.2 The grounds 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 it is:

*“1. Excessive, inequitable and bad in law.*

*2. Incorrect categorisation as 'office or house'. The property is a 'Dance Studio' and user is limited by planning permission. A letter was sent to state this to the valuation office at first appeal September 2022 but seems to have been overlooked.*

*3. The area of the building is less than reckoned by the commissioner.”*

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €12,000.

## **2. REVALUATION HISTORY**

- 2.1 On the 23<sup>rd</sup> day of September 2022 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 €45,400.
- 2.2 The Appellant, being dissatisfied with the valuation proposed, made representations to the valuation manager in relation to the Property’s valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.
- 2.3 A Final Valuation Certificate issued on the 15<sup>th</sup> day of September 2023 stating a valuation of €45,400.
- 2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is the 1<sup>st</sup> day of February 2022.

## **3. THE HEARING**

- 3.1 The Appeal proceeded by way of an oral hearing in the Valuation Tribunal, Hollbrook House, Dublin 2 on the 15<sup>th</sup> day of March 2024. At the hearing the Appellant was represented by her husband and co-owner of the Property, Mr. Robert Haughton and the Respondent was represented by Ms. Triona McPartlan B.Sc, MSCSI, MRICS Executive Valuer of the Valuation Office (now Tailte Eireann) and Mr. David Dodd BL.
- 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 their précis as their evidence-in-chief in addition to giving oral evidence.

## **4. FACTS**

- 4.1 The Appellant is the co-owner and occupier at the valuation date of a building adjacent to Dundrum Business Park in Dublin 14. The Property is located on a small road (described by the Appellant, though disputed by the Respondent as a laneway) close to the entrance of Dundrum Business Park and sits at the rear of front facing retail units on Dundrum Road.
- 4.2 The Property fronts onto the road /laneway and has two car park spaces directly in front of the Property assigned for staff parking. The adjacent properties on the road /laneway have mixed uses including industrial (car mechanics) and commercial retail where the

immediate neighbour to the subject is the rear access to a convenience shop on Dundrum Road.

- 4.3 The Property was built in 1997 as a single-story unit and acquired by the Appellant and her husband in 1998. Planning permission was sought by the Appellant to change the use of the Property from 'light industrial' so as to allow the Property be used as a dance studio and same was granted for a three year period under planning reference D98A/00980 on 20<sup>th</sup> May 1998 with the permission continued thereafter.
- 4.4 In 2008 the Property was extended, and a first floor was added housing a second studio space. Despite its changed accommodation, the Property has only ever been entered on the Valuation list (the 'List') as a single-story unit.
- 4.5 As a commercial unit, the Property was classified by the Respondent as 'industrial' and entered on the Valuation List with a designation of 'Offices'.
- 4.6 The floor areas were measured on a net internal area (NIA) basis by the Appellant as follows:

	m2
Ground floor studio	79.20
Porch/stairs	8.60
First floor studio	76.56
Stairwell	6.78
Total	<b>171.14</b>

- 4.7 The Respondent adopted a gross internal area (GIA) basis of measurement as follows:

	Floor	m2
Showroom	0	95
Showroom	1	90
	<b>Total</b>	<b>185</b>

- 4.8 The Respondent's Valuer conceded that the Property was incorrectly designated as 'Office' and sought to classify the Property as 'light industrial' and a 'Showroom' for the purposes of the present valuation. At the hearing of the matter, the Respondent confirmed that a revised NAV was being sought in the sum of €23,300 which reflected the change of classification.

## 5. ISSUES

- 5.1 This appeal concerns the appropriate method of valuation to apply when valuing the Subject Property.

- 5.2 The Appellant claims that where no similarly circumstanced properties exist on the Valuation List, as would reliably instruct a true and fair valuation of the Property, the Receipts and Expenditure method of valuation (hereafter 'R&E method') is appropriate and should be applied in the circumstances.
- 5.3 The Respondent disputes that there are no similarly circumstanced properties and relies on industrial units in the same rating area which were used and/or occupied at the valuation date, for similar purposes to the Appellant. On that basis the Respondent maintains the standard method of valuation, being the rental evidence method, was warranted and appropriate and accordingly the Respondent's valuation ought not to be disturbed.
- 5.4 The question to be determined in this appeal is whether, based on the evidence put before the Tribunal, the Respondent erred in applying the rental evidence method of valuation for the subject Property.

## **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 As to the method and approach to valuation, Section 37(4) of the Act provides:

*"(4) For the avoidance of doubt, neither subsection (1)(a) or (2)(b)(ii) (so far as it relates to section 19(5)) nor section 19(5) shall require the Tribunal to achieve the determination of the value of a property concerned by reference to any particular method of valuation and the Tribunal may arrive at its determination by reference to whatever method of valuation or combination of methods of valuation as the Tribunal, in its discretion, may deem appropriate."*

## 7. APPELLANTS CASE

- 7.1 The Appellant was represented by her husband, and co-owner of the Property, Mr. Robert Haughton. Both parties were sworn in and adopted their précis of evidence. Mr. Haughton confirmed that he was appearing as co-owner of the Property in the appeal and accordingly any submissions made were made in his personal capacity. Mrs. Haughton gave evidence of her tenure teaching dance classes in the Property, the nature of the industry and her experience of the seasonal realities regarding the demand for classes.
- 7.2 The Appellant's business accounts were opened to the Tribunal and a three-year period 2019 – 2021 being the three immediate years prior to the Valuation date, were set out with the Appellant's costs and expenditure accounted for therein. The Appellant provided her 2019 Self-Assessment form, as submitted to the Revenue Commissioners and gave evidence that with the restrictions imposed on the business in 2020 and 2021 due to Covid, the 2019 accounts were the most reliable indicator of the trading circumstances of the business. Based on the figures put before the Tribunal the Appellant maintains that the projected net income from licencing the use of the dance studio for September 2023 to August 2024 would be in the order of €8,000 - €9,000 assuming no significant increase in commercial rates, and that same would support a NAV below €12,000, as contended.
- 7.3 The Appellant relied on two comparators in support of her valuation, both of which were the subject of Tribunal Appeals and both were made available to the Tribunal at the hearing of the appeal. In the first instance VA04.1.060 – Studio Lot 50/2, Kill Road, Deansgrange, County Dublin, was relied on. This appeal concerned a reconstructed garage built to the side of a domestic residence. The property comprised a reception area, W/C, passage, store and photographic studio to the rear. The evidence in that case was that the Property was affixed with planning conditions restricting the operation of the studio to a member of the immediate family of the occupier in the main dwelling. In the present appeal, the Appellant argues that being a studio with planning restrictions, this property is similarly circumstanced to the subject Property and a NAV of €5,163.85 was determined by the Tribunal.
- 7.4 The second comparison property relied on by the Appellant was VA13.3.002 - PN2211318 in Bray County Wicklow. The Appellant noted that this property was used as an artist's studio and therefore similarly circumstanced to the subject Property and the NAV of €9,727.56 was determined by the Tribunal.
- 7.5 The Appellant took issue with the Respondent's calculation of the Property's floor areas which they maintained were incorrect and overstated. The Appellant's calculation of the floor areas is set out at paragraph 4.6 above.
- 7.6 The Appellant took issue with Respondent's classification of the Property as 'Offices' where the sworn evidence was that the Property was used as a dance studio and restricted to that use per its planning permission. The Appellant further argued that this use was highlighted to the Respondent prior to their issuing the final certificate of valuation but the incorrect classification was maintained, meaning the valuation proceed on an entirely incorrect basis. The Appellant argued that the Respondent ought

to have classified and/or characterized the Property as ‘Miscellaneous – Studio’ and posits that the incorrect classification as ‘Office’ may account for the increase in NAV from €9,960 previously to €45,500 in the present Revaluation exercise.

- 7.7 As regards the Respondent’s comparison properties, the Appellant disputes the relevance and appropriateness of these. In the first instance, the Appellant argues that none of the properties are dance studios and in fact have other uses rendering them irrelevant to the task of valuing the subject Property. Where the Respondent has confirmed to the Appellant by way of discovery request, that no other dance studios are entered on the List for the relevant rating authority, the Appellant argues this confirms that there are no similarly circumstanced properties, and accordingly the properties relied on by the Respondent are neither relevant nor reliable in the circumstances.
- 7.8 At the hearing of the appeal, the Appellant sought to give evidence of having visited the Respondent’s comparison properties in the weeks prior to the hearing. The Respondent objected to this evidence on the basis that it was being sprung on them and in any event related to occupancy and/or vacancy subsequent to the valuation date rendering it outside the scope of the appeal in any event.
- 7.9 The Appellant and her husband were both cross examined by Mr. Dodd BL and Mrs. Haughton confirmed that her business was a ‘labour of love’ and a ‘passion project’ operating initially in rented halls and buildings before moving to the Property in 1998. Mrs. Haughton’s evidence was that the industry was a challenging one with little or no demand for dance classes outside of the school term time. In those circumstances the classes did not run for 52 weeks of the year but as long as the business wasn’t making a loss, she was happy with the venture. Both the Appellant and Mr. Haughton were asked about their qualifications and expertise in the areas of commercial rating practices, and both confirmed they held no formal qualifications, nor were they there to provide expert evidence in that respect.
- 7.10 The Appellant submitted formal legal submissions and Mr. Haughton spoke to these orally, at the hearing. These are dealt with below. In summing up the Appellant’s case, Mr. Haughton argued the Property was not valued in its actual state (*rebus sic stantibus*) as it does not comprise office use and in fact the only permitted use was as a dance studio. Further, he noted the areas relied on for calculating NAV were incorrect, resulting in an increased valuation and finally where there were no dance studios on the List as would provide reliable comparable evidence, it was the Appellant’s case that the R&E method of valuation, permitted under Section 37(4), ought to be applied. When approached on a ‘stand back and look’ basis having regard to the current licencing arrangement in place for the Property and adopting the certified trading figures for 2019, the Appellant argued that the appropriate NAV for the Property was €12,000.

## **8. RESPONDANTS CASE**

- 8.1 The Respondent was represented by Ms. McPartlan, Executive Valuer in Tailte Eireann. Having adopted her précis of evidence Ms. McPartlan described the Property, its location, and valuation history. Ms. McPartlan gave evidence that she took over the file from a colleague and conducted her own review of the facts, concluding that the

Property was incorrectly classified as ‘Offices’ and a revised valuation based on light industrial / showroom use was more appropriate. Accordingly, for the purposes of the present appeal, the Respondent was conceding to an extent the question of quantum, but maintained a view that the Respondent’s approach to valuation, namely their reliance on rental evidence, adjusted to the net effective date, was the best evidence of value under section 48 of the Act.

8.2 The Respondent identified three key rental transactions (KRT) within the same rating area as the subject Property, which instructed their calculation of the NAV of the Property and can be found at Appendix 1 below (N/A to public).

8.3 In addition to the above, the Respondent relies on three NAV comparison, which also instructed their calculation of NAV of the subject Property. These are as follows:

#### NAV 1

Property Number	2111495
Total Floor area	233.75 m2
NAV	€37,500

Level	Use	Size (m2)	NAV /m2
0	Warehouse	233.75	€105
Mezz	Mezzanine	185.40	€42
0	Parking space	2 spaces	€1,250.00
	Total	233.75	€37,330.55 Rounded €37,300

#### NAV 2

Property Number	2161869
Total Floor area	595.20 m2
NAV	€59,500

Level	Use	Size (m2)	NAV /m2
0	Offices	148.80	€100
0	Warehouse	372.00	€100
1	Store	74.40	€100
	Total	595.20	€59,520 Rounded €59,500

#### NAV 3

Property Number	2161872
Total Floor area	1203.97 m2
NAV	€90,900

Level	Use	Size (m2)	NAV /m2
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0	Warehouse	880.57	€100
Mezz	Store	143.40	€20
	Total	1023.97	€90,925 Rounded €90,900

8.4 Ms. McPartlan confirmed that the Property was incorrectly valued by the Respondent as an office and having been reclassified the NAV was accordingly significantly reduced. It is the Respondent's case that the Property is a light industrial unit in current use as a dance studio. Further, notwithstanding the fact the Appellant does not offer classes 52 weeks a year, the Respondent maintains that the Property is available to operate all year round and where that is so a hypothetical tenant would achieve a rent which exceeds the current NAV.

8.5 Taking the above evidence into consideration, and having regard to the use to which the Property could be put by a hypothetical tenant, Ms. McPartlan contended for a valuation as follows:

Level	Use	Area m <sup>2</sup>	NAV m <sup>2</sup>	NAV
0	Showroom	95	€126	€11,970
1		90	€126	€11,340
			NAV	€23,300 (rounded)

## 9. SUBMISSIONS

Written submissions were filed on behalf of both parties in this appeal and were read by the Tribunal in advance of the hearing. Oral submissions were made at the hearing of the matter and the parties' outline arguments were as follows:

### Appellant's submissions:

9.1 The Appellant relies on the principle of *rebus sic stantibus* and the requirement that the Respondent is obliged in law to value the Property in line with its use and the actual state it is found. *Poplar Assessment Committee v. Roberts* [1922] 2 AC 93 and *Townly Mill Company Ltd v. Oldham* (1937) A.C. 419 HL were relied on in that regard, along with the more recent decision in *Dawkins (Valuation Officer) v Ash Bros and Heaton Ltd* [1969] 2 AC 366, HL where Lord Wilberforce recognised that the hypothetical occupier:

“...would take into account, not only any immediately actual defects or disadvantages (such as planning restrictions) but disadvantages, or advantages, which he can see coming.”



- 9.2 Insofar as the principle of *rebus sic stantibus* has been considered in this jurisdiction, the Appellant opened the decision of Henchy J. in *Harper Stores Ltd v Commissioner of Valuation* [1968] 1 I.R. 166 relying on the following paragraphs therein:

*“Sect. 11 of the Act of 1852 required the Commissioner, in arriving at the valuation, to have regard to two contrasting matters, (a) the hereditament in its ‘actual state,’ ‘subject to (b) a hypothetical letting from year to year. The use of the words ‘actual state’ in reference to the hereditament does no more than apply to the subject matter of the valuation the principle of rebus sic stantibus. As Lord Parmoor said in Great Western and Metropolitan Railway Companies v. Kensington Assessment Committee: ‘the hereditament should be valued as it stands and as used and occupied when the assessment is made.’ While the tenant and the tenancy are imaginary or hypothetical, the hereditament may not be looked upon as anything other than the actuality or reality which it is.*

*As Lord O’Brien, L.C.J., said in Armstrong v. Commissioner of Valuation: ‘The words ‘actual state’ were introduced to ensure that the hereditament or building was valued such as it was, rebus sic stantibus, and to prevent speculation as to mere contingencies, speculations as to what the value of a house might be under conditions different from those subsisting.’ If it is a house in a slum area, it may not be valued as if it were standing in a fashionable road; if it is a shop, it may not be valued as a factory; if it is a garage, it may not be valued as a cinema. It seems to me that the words ‘actual state’ connote all the existing factors that go to make up the premises as they are currently occupied and used or ‘all that would affect the rent that would be paid by a hypothetical tenant’—per Lord Ashbourne C., in Armstrong’s Case, at p. 501. This includes all the advantages and disadvantages, legal and otherwise, attaching to the premises which would affect the mind of the hypothetical tenant from year to year in deciding what rent he would pay.’”*

- 9.3 The Appellant further relied on decision of Hyland J in *Fibonacci Property ICAV v. Commissioner of Valuation* [2020] IEHC 31 when the High Court confirmed:

*“47. No law has been identified by the Commissioner that indicates that there is an obligation on the Tribunal to look at the question of occupation over 10 or 20 years in deciding whether a hypothetical tenant is likely to take occupation of the Property. Indeed, it appears to me to be contrary to the principle that premises should be valued in their actual state or ‘rebus sic stantibus’.”*

- 9.4 Based on these, and other decisions included in their books of authorities, the Appellant argues that if the hypothetical tenant used the subject Property at the valuation date for any use other than that of a dance studio, they would be committing an offence under the Planning Acts. In those circumstances the Respondent’s estimation of NAV under s.48(3) which relies on a hypothetical tenant using the property unlawfully (that is other than as a dance studio) is fundamentally flawed and incorrect in law.

- 9.5 The Appellant argues that an estimation of NAV should be based on what the Property might reasonably be expected to let from year to year as a dance studio. Where that is so, the Respondent is not entitled speculate on potential rental for other uses beyond

those permitted under planning. The Appellant argues that accordingly, the Respondent's reliance on comparator properties which are let for other uses, is incorrect as the said properties are not similarly circumstanced to the Subject. The Appellant argues that absent any relevant or useful comparators, the NAV should be established using the R&E Method based on the Appellant's figures as outlined to the Tribunal.

Respondent's submissions:

- 9.6 The Respondent maintains that the general, approved and preferred approach to valuation is to seek rental evidence from comparative properties to estimate the NAV. In support of this the Respondent relies on Tribunal determination VA17/5/533 Glanway Ltd, when the Tribunal held:

*"In determining the rent at which it is estimated a relevant property might reasonably be expected to be let, the best evidence would be evidence of lettings of comparable premises in the open market. Use of the rental method of valuation depends, however, on sufficient, appropriate and reliable comparable evidence being available from the marketplace; if it is available then it is top of the evidential hierarchy."*

- 9.7 The Respondent further argues that this position is long standing, citing Scott LJ in *Robinson Bros (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee* [1937] KB 445 wherein the Court observed:

*"Where the particular hereditament is let at what is plainly a rack rent or where similar hereditaments in similar economic sites are so let, so that they are truly comparable, that evidence is the best evidence and for that reason is alone admissible: indirect evidence is excluded not because it is not logically relevant to the economic inquiry but because it is not the best evidence. Where such direct evidence is not available, for example, if the rents of other premises are shown to be not truly comparable, resort must necessarily be had to indirect evidence from which it is possible to estimate the probable rent which the hypothetical tenant would pay."*

- 9.8 In rejecting the Appellant's call to value the Property on an R&E basis, the Respondent argues that if the vast majority of properties are determined by reference to rental evidence in the rating authority area, equality of treatment – and uniformity and equity – suggest that departures from rental evidence ought to be amply justified. Any appellant can identify the contractor basis or the R&E to advocate for a lower R&E, but if rental evidence is available the appellant ought be treated and valued the same as the other occupiers. Further, the profits of an individual occupier, be they low or above that expected, ought not determine the NAV where comparable rents are available.

- 9.9 The Respondent also opened and relied on the decision in *Harper Stores* noting the ratio of that decision was the adoption by Henchy J of the 'The relevant intention' per Wright J. in *London County Council v. Hackney Borough Council* [1928] 2 K.B. 588, which "must, I think, have regard to employment of the premises in the rating year, and to an employment for which they were suited or readily capable of being suited in their than actual condition.". The Respondent argues that if the Appellant were correct, it

would result in similar and comparable buildings on the List being valued differently based on their current use, including at the election of the current occupier.

- 9.10 The Respondent notes that the Tribunal has on multiple occasions considered the question of comparable properties and upheld as sufficient, properties with differing uses to the property under appeal. In that regard the Respondent cites Tribunal decisions: *VA02/2/059 – Woodstown Nursery and Montessori Ltd* which concerned a creche in a unit in a shopping centre. *VA14/5/497 Pride and Joy Limited* which concerned a retail unit in a shopping centre used as a store, *VA14/5/453 ZZSEL Limited* which endorsed the view that section 48 requires the valuation to be assessed based on property itself not the current use or current business occupying it and *VA14.5.669 Finnegan Menton* wherein the Appellant's ground floor accommodation was valued as a shop notwithstanding its use as offices.

## 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 Dún Laoghaire-Rathdown County Council.

### *Onus of proof*

- 10.2 The Tribunal has found on several occasions that the onus of proof rests with the Appellant in an appeal (See *Proudlane Ltd. t/a Plaza Hotel* (VA00/2/032) and *AIB Group PLC v Commissioner for Valuation* (VA20/4/0053)). The position was expanded on in Tribunal decision *FGM Properties v Commissioner for Valuation* (VA19/5/1091) wherein it was held: "*The onus of proof rests on the Appellant to demonstrate, through cogent evidence that the Respondent has erred.*"
- 10.3 Arising from these decisions, in order to succeed in their appeal, an Appellant must demonstrate, through cogent evidence, that the Respondent has erred in their valuation of the property under appeal. In that respect, the Appellant was obliged to satisfy the Tribunal, through evidence, that the Respondent's valuation was incorrect and the Commissioner's approach to valuation resulted in an incorrect valuation of the Property.
- 10.4 The Tribunal believes that the two comparators relied on by the Appellants are of little assistance in circumstances where one comparator was outside the local authority area (PN2211318) and the second one was connected to, or otherwise linked with a domestic premises, and therefore not similarly circumstanced to the Subject Property. The Appellant maintained (and had confirmed to them by letter dated 3<sup>rd</sup> January 2024 from the Respondent), that no other dance studios were entered on the Valuation List for Dún Laoghaire-Rathdown County Council and so the Appellant maintained that the two properties relied on, were the best evidence available to them in the circumstances. Further, it was the Appellant's case that the lack of dance studios on the List was proof of and justified the need to adopt a R&E method of valuation in respect of the Property.

### *Measurement of areas*

- 10.5 The Tribunal accepts the Respondent's floor areas for a number of reasons. In the first instance the method adopted by the Respondent was universally applied across all comparisons provided by them. Secondly the Tribunal understands that Gross Internal Area (GIA) is the standard measurement method for light industrial buildings.

### *Method and approach to valuation*

- 10.6 The Respondent asks that the Tribunal dismiss the present appeal on the basis that the Appellant's reasoning is misconceived and fails to appreciate that it is the property that is valued by the Commissioner, not the business in occupation of the property. 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 what the hypothetical tenant would pay one year with another, for the property in its actual state being a light industrial unit, notwithstanding the present and/or restricted use as a dance studio. The Tribunal also notes that the Respondent original position was that the subject property was potentially suited to office use, subject to planning permission and fit out. While the Respondent subsequently valued the subject property based as a 'Light Industrial Showroom', it was on the basis of office use that the Respondent firstly valued the subject property.
- 10.7 From the evidence presented as to the characteristics of the building, more specifically, its use as a dance studio, the Tribunal was not convinced by the Appellant's argument that the subject property should be valued on a R&E basis. The Tribunal found the comparators used by the Respondent better reflected the level of rent that a hypothetical tenant would pay.

### *Classification of the property as 'industrial' and the 'actual state' of the Property*

- 10.8 The parties fundamentally disagree as to whether there are comparable properties to the Subject Property, as would justify a valuation based on rental evidence. This in turn seems to flow from the dispute as to the proper classification of the property, namely whether it should be considered 'Light Industrial Showroom' given its use as a dance studio, a use the Appellant maintains is restricted by planning permission.
- 10.9 The Commissioner views and classifies properties based on the use to which they could be put by a hypothetical tenant. Further, as was evidenced in this case, there is flexibility on the part of the Respondent's valuers to amend their classifications where the Respondent's expert witness, Ms McPartland, reviewed the Appellant's case and changed the designation from 'Industrial – Office' to 'Light Industrial – Showroom' when she took over the file.
- 10.10 The Appellant argues that the Property should be viewed in its actual state, as per the principle of *rebus sic stantibus* and where that is so, the use of the Property, should prevail. That is to say, it is the Appellant's case that the restricted and/or prescribed use

of the Property in terms of planning permission, means it must be taken as a dance studio to the exclusion of all other uses. The Respondent argues that the hypothetical tenant would consider the subject property for ‘Light Industrial Showroom’ use and the existence of planning conditions does not materially change that position or potential eventuality.

- 10.11 The decision of Harper Stores was opened and relied on by both parties in this appeal, (see paragraph 9.2 above in that regard). The Appellant asks that the Tribunal reads the above decision to the effect that the seasonal nature of their business (operating only 32 weeks a year given the reduced demand for dance classes outside school term time) and the limitations prescribed in law (i.e. planning permission) mean its actual state is a dance studio and there are no other dance studios entered on the List. The Respondent disputes this reading of the decision and argues that while there are no dance studios to compare the Property to, there are several light industrial units (with 3 KRT’s and 3 NAV comparisons cited in that regard) which are similarly circumstanced to the Property and therefore relevant for the purposes of estimating NAV.
- 10.12 The words “actual state” for rating purposes have been considered by the Superior Courts in this and our neighbouring jurisdiction and the maxim “*rebus sic stantibus*” has been interpreted as having two limbs, notably (a) the existing use of a property and (b) its physical state. In VA14/5/087 *David Wally v. Commissioner of Valuation*, the Tribunal expanded further on the concept of ‘use’ of the subject property as follows:

*“Simply put, when attempting to determine the estimate of the “hypothetical bid”, one must have regard to “the physical state and/or condition of the property” (as of the date of valuation) and “the use to which the building is put” (as of the date of valuation). Insofar as “use” is concerned, the Authorities suggest that uses other than the existing use may be taken into account when arriving at the estimate of the net annual value.”*

In *Harper*, Mr. Justice Henchy dealt with the concept of physical state of a premises wherein he stated (at page 174):

*“He must of course make the valuation on the premises in their ‘actual state’ but since ‘actual state’ connotes the premises as it stands with its potentialities and disabilities, he may, in order to achieve a correct assessment, have to look at past, present and future.”*

- 10.13 The Tribunal finds that ‘actual state’ in valuation law should not be confused with ‘actual use’ of a property. That is, although the exercise of valuation requires a valuer to view the property as they find it, a particular use, even where same is a restricted use, is not necessarily determinative of the actual state of the property for the purposes of Section 48 of the Act. In this regard the Respondent urged the Tribunal to consider decisions such as *Finnegan Menton* VA14.5.669 wherein the actual state of that property was a retail shop, but its use was that of an office. The Tribunal is persuaded by this and does not feel the Appellant has provided sufficient evidence to suggest a different approach should be adopted in the present appeal.

*Planning restrictions on the use of the Property*

- 10.14 The Tribunal notes that the Property presently has planning permission to be used a dance studio. While this planning restriction does bind the current occupier to a particular use, the Tribunal does not accept, based on the authorities on this issue that it necessarily follows that this use is attached to the property in perpetuity. Further, if that was the case being made then it is incumbent on the Appellants to prove this with for example, evidence from a planning expert or some such confirmation from the relevant planning authority of the restricted use to the exclusion of all other uses for the Property.
- 10.15 The Tribunal finds that it cannot be taken as a given, nor was evidence advanced that the current planning permission should apply into perpetuity nor that any other possible use could be made of the Property by a subsequent hypothetical tenant. Having regard to the location and layout of the Property, the Tribunal is of the view that it could be used for 'Light Industrial Showroom' purposes by a hypothetical tenant. The Tribunal notes that certain properties are, by virtue of their layout or other features, restricted as to use and for those properties, a valid question arises whether the hypothetical tenant would take such a unit for other purposes. However, that is not the case in the present appeal and the Subject Property is a modern, well-maintained unit capable of other uses outside the present use of the owner and/or the occupier.

*Requirement of expert evidence:*

- 10.16 The Appellant and her husband, as owners of the Property, represented themselves in this appeal. No expert evidence was advanced in respect of the Property's valuation and the Appellant and her husband were both asked, and accepted, that they had no qualifications in the area of rating, as would enable them give expert opinion evidence before the Tribunal.
- 10.17 The Tribunal, while an expert body in matters of commercial valuation, nonetheless requires expert evidence to be put before it, so as to determine matters in a given appeal. In the absence of such expert evidence, the Tribunal must weigh the respective parties' evidence and determine the weight to attach to each. In the present appeal, the Appellant brought her appeal, assisted and advised by her husband who made legal submissions in respect of rating law and the application of various legal principles therein. As outlined above, Mr. Haughton appeared before the Tribunal in his personal capacity and made legal submissions before the Tribunal which were accepted and noted. These submissions addressed the legal matters in the case, and no expert evidence was proffered in respect of the property's valuation and/or industry methods and approaches to estimating NAV.
- 10.18 The Appellant advanced her appeal on the basis that the method of valuation applied by the Respondent and resultant valuation in respect of the Property was incorrect. In those circumstances, it was incumbent upon her to satisfy the Tribunal, with appropriate

evidence, that this was so. The crux of the appeal, and question to be determined, was whether the Respondent erred in relying on the properties, outlined above in paragraphs 8.2 and 8.3, as relevant or similarly circumstanced properties to the subject.

- 10.19 Where the Appellant maintained the Respondent's comparison properties were not similarly circumstanced (by virtue of their not being dance studios), evidence was required from a suitably qualified expert in that regard. Instead, reliance was placed on the fact that planning restrictions confine the use of the Property to a dance studio and discovery confirmed that no other dance studios are entered on the Valuation List for the rating area.
- 10.20 The Appellant relies heavily on these two eventualities in support of their appeal but for reasons outlined above in the absence of evidence, the planning question is not accepted as determinative and the Tribunal does not accept that there being no other dance studios on the Valuation List, means there are no similarly circumstanced properties on the List against whom the Subject Property can be compared.

#### **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 €23,300, calculated as follows:

Level	Use	Area m/2	NAV m/2	NAV
0	Showroom	95	€126	€11,970
1		90	€126	€11,340
			NAV	€23,300 (rounded)

## **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.