

Appeal No: VA19/5/1298

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Natalia Mikulec T/A Shapeup Fitness

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2097408, Retail (Shops) at Ground Floor Unit 20-22 Abbey Square Shopping Centre, Enniscorthy, County Wexford.

B E F O R E

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

Frank O'Grady - MA, FSCSI, FRICS

Member

Barra McCabe - BL, MRICS, MSCSI

Deputy Chairperson

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF OCTOBER, 2025

1. THE APPEAL

1.1 By Notice of Appeal received on the 10th day of October, 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV)' of the above relevant Property was fixed in the sum of €18,040.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because : *"The appellant does not use the units as a shop. The previous owner used the units for retail purposes. There are no goods sold at this location. It is a small fitness studio for classes. The studio is bare. There is no fitness equipment held there. The appellant's income is extremely low, so much so that she is very often paying more money*

for rent and rates than her income. I only learned about the rates revaluation process when I queried why I couldn't pay my rates online. I did not receive any written notification of the revaluation process until it was emailed to me less than two weeks ago. In light of this information, I would gratefully request if you would consider cancelling the €95 appeal charge as I did not receive the notice in the post.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €1,000.

2. REVALUATION HISTORY

2.1 On the 15th day of March, 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €18,040.

2.2 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €18,040. The valuation was subsequently reduced by the Respondent in advance of the hearing of the appeal hearing to €16,230.

2.3 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September, 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 5th day of January, 2023. At the hearing the Appellant was represented by Ms. Natalia Mikulec and the Respondent was represented by Mr. Martin Fitzsimons of the Valuation Office.

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 evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The property extends to 117.15 m² on ground floor.

4.3 There are different tenants other than the Appellant trading from the unit now, who operate a retail grocery business. The property was in retail use before the Appellant took occupation of the subject Property.

4.4 Subsequent to the issuing of the final certification of valuation and before the hearing of this appeal, a 10% frontage to depth discount was applied by the Respondent, thereby reducing the Respondents estimate of the NAV of the Property from €18,040 to €16,230.

4.5 The Appellant leased the Property from the 4th April 2018 to the 5th April 2020.

5. ISSUES

5.1 The NAV is substantially too high for the Appellant who cannot afford to pay the rates due to a mix of circumstances, one of which is that she cannot work on a full time basis because she is studying.

5.2 The Appellant was unaware she had to pay commercial rates on the property.

5.3 The Appellant had to spend a significant amount of money on fitting out the Property to trade from, which she feels was a cost for the Landlord to bear.

5.4 The fitness studio that the Appellant used to run from the Property failed owing to the Covid pandemic which resulted in her having to close down her business.

5.5 The Appellant is carrying some debt which she is unable to clear at this time and she cannot afford to pay the historical rates owed during her time in occupation of the Property.

5.6 The Appellant only ever traded from the ground floor of the two storey unit.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

7. APPELLANT’S CASE

7.1 The Appellant, Ms Mikulec, adopted her précis and said had been a tenant in the studio for about two years. She brought the appeal because, the gym and fitness studio that she ran from the Property made very little income while she was in occupation. Ms Mikulec was aware that the Property had planning permission to trade as a shop, but she ran a very small fitness studio on the ground floor of the unit only, while another operator ran a gym from the first floor. The Appellant had no employees and only gave a few fitness classes per week. She did not sell any physical goods from her studio nor was any part of the Property used as a shop. The Property is located in a busy retail part of the town albeit it is detached and separate to the main retail promenade at Abbey Square Shopping Centre. The Appellant said she did not use or have the benefit of the shopping centre facilities because the fitness classes she gave were held mostly in the evenings. She had only two classes per week on one morning and every evening. The rent she paid was high for her especially as she had to undertake decorative works and prepare the ground floor of the Property, such as painting and bringing the specification up to the right condition, which she felt should have been a cost of the Landlord to bear. The ground floor of the Property had suffered from significant dampness and had experienced water damage owing to its close proximity to the river (Slaney) where it had flooded on a number of occasions, including once when the Appellant was in occupation of the Property. This resulted in the Appellant having to obtain sandbags in the middle of the night to protect the Property and her business. Overall the costs of readying, maintaining and repairing the Property that had been in a state of disrepair, had been a substantial one for Ms Mikulec to bear. She had hoped that her business would ramp up and become busier in the future, but after the first year of business when the financial health of her business was improving, the global Covid 19 pandemic hit and

the Appellant was forced to close the business under pressure from the Landlord to pay her rent and also because the close proximity of one to one fitness classes meant that the business was not able to start back again in earnest until a year or 18 months after the global pandemic first hit, something that was catastrophic for viability of the business. The Appellant closed the studio in March 2020 and the lease on the Property terminated on April, 5th 2020 leaving the Property in a much better condition than when she had first rented it, and some pictures of the Property were included in the Appellant's précis to illustrate this point regarding the condition of the Property. The Appellant is of the view that she was only renting the ground floor section of the two storey Property, which is now occupied by a supermarket that occupies both the ground and first floors of the subject Property. The ground floor section of the Property formerly occupied by the Appellant comprised a single open room in which the Appellant fitted mirrors and repaired the damaged walls. The Appellant currently has some debt, which she is unable to pay and currently she can only give two fitness classes a week at the gym. She is also studying as a result of which she is unable to take up full time employment.

7.2 The Appellant said that she valued the NAV of the Property at €1,000 with the assistance of her Accountant, who may have made a mistake because the Appellant wanted to seek a payment of €1,000 for rates and rent. She is not familiar with the Irish law on rates because she is from Poland and was only here two years before she opened her personal fitness business to try and make some money for herself, but she had no idea she would have to pay rates. It also transpired for the purposes of her business that the location of the Property adjacent to a retail hub brought no real new business, as she had thought it might, because she realised that most of her clientele came from social media and the internet.

7.3 Under cross examination by Mr Fitzimmons for the Respondent, the Appellant confirmed that her understanding was that the occupier prior to her occupation of the Property was a retail use. She said that, in spite of this, she did not know she was liable to pay rates and she had not retained the services of a professional advisor at any time during or after she negotiated the lease with the Landlord. Ms Mikulec acknowledged the provision in the lease she had held on the Property commencing on the 4th of April 2018 stated "Ground floor shop unit" and that she was aware that the Property has planning permission to trade as a retail unit, but she did not think about this because at the time there was already a separate gym trading from the first floor of the Property so she thought there was no issue trading as a fitness trainer from the ground floor of the Property.

7.4 In summary, the Appellant reiterated that she derived no business benefit from the location of the Property adjacent to the car park serving a shopping centre. She also did not know the law on commercial rates and was unaware that she would have to pay them. Ms Mikulec said that there is a separate gym operated from upstairs on the first floor separate to her personal fitness business on the ground floor. She said that she had been informed that the adjacent car park was free for her customers and that they complained when they had to pay a €1.00 per hour charge for parking. The Property was a separate structure to the main shopping centre that was prone to flooding, and there were some incidents of crime in the area and vandalism to the Property, for which she got no assistance from the shopping centre or the Gardaí. The Appellant returned to the proposal of paying €1,000 per annum towards rates and rent.

8. RESPONDENT'S CASE

8.1 Following the adoption the Respondent's précis, Mr Fitzimmons began by outlining the purpose for the revaluation and the process therein for the benefit of the Appellant, who was representing herself in the appeal. He then went on to provide a statistical analysis of the breakdown of the 2017 revaluation for County Wexford, followed by a description of the subject detached Property, including its location and that of the surrounding retail area comprising in the main car parking and Abbey Square Shopping Centre, the specification and condition of the Property, its size following the prior amalgamation of three separate units and its current use as a supermarket. Mr Fitzimmons made further submissions regarding equity and uniformity based on comparable properties with shared characteristics. He also explained that he applied the valuation level of ITZA €160 per m², which was the level that was put on all relevant units of the same type in the same area, to arrive at a NAV of €18,040, but he then adjusted this figure by 10% because of a frontage to depth allowance, and that therefore the NAV that he was now proposing was reduced to €16,230.

8.2 Mr Fitzimmons reviewed the Respondent's Key Rental Transactions ('KRT's'), a summary table of which is available at Appendix 1 (N/A to public). He informed the Tribunal that the Respondent's KRT's were used as the basis to ascertain Retail Zone A and Retail Zone B for the subject Property. 'KRT Comparison 1' ('KRT 1') the Respondent submitted, is in a good shopping area in Enniscorthy and is located at the opposite end and the opposite side to

the Main Street, but is the same distance from the Main Street as Abbey Square Shopping Centre. The subject Property is located between the rear of Abbey Square Shopping Centre and the Promenade next to the River Slaney. Mr Fitzimmons said that due to the similar equidistance to the Main Street as the subject Property, KRT 1 was a relevant comparable property. The Retail Zone A on KRT 1 is €160 with a NAV of €8,540. KRT 1 operates as a café at the moment and was leased on a one-year term with an annual rent of €6,600 but it is a smaller unit than the subject Property. KRT 2 is located on Duffry Gate and similar to KRT No.1, is smaller than the subject Property. Mr Fitzimmons said that while the rent of KRT 2 submitted by the occupiers of that property was €9,600, when the NAV was considered based on the type of property involved and its similarities to other type properties, the NAV of KRT 2 was calculated at €5,190. KRT 3, is located at the opposite end of Enniscorthy to the subject Property, but is a similar distance from the Main Street, and a similar type of retail property to the subject Property. It is currently in use as an NCBI unit and has trading shops on both sides of it. It is held under a four-year nine month lease on an annual rent of €7,200. The net annual value that was put on KRT 3 when a retail Zone A of €160 was applied the NAV was calculated at €4,270.

8.3 Mr Fitzimmons said he relied entirely on retail units at Abbey Square Shopping Centre for the Respondent's NAV Comparisons. The majority of the Respondent's NAV Comparisons are located at the back of Abbey Square Shopping Centre and face back onto the car park where the subject Property is located, with just one facing onto Park street, which is at the opposite entrance into Abbey Square Shopping Centre. NAV Comparison 1 ("NAV 1") has a floor area of 77.76 m² with a NAV of €11,140. The Retail Zone A of NAV 1 is €160 and the Retail Zone B is €80. Mr Fitzimmons submitted that NAV 1 is located in the same shopping centre as the subject Property and is slightly smaller in size to the subject Property and fronts onto the car park. There were no representations made on NAV 1 nor was the NAV appealed. NAV 2 is a smaller unit again to the subject Property, and the Retail Zone A extends to 39.96 m² with a Retail Zone A rate of €160 and a total annual NAV of €6,780. NAV 2 like NAV 1 and the subject Property, have control over their opening and closing hours as they have a separate entrance from the shopping centre. There was no representations received on NAV 2 nor was it appealed. Mr Fitzimmons said that the majority of images of the NAV comparisons that he included in this précis were taken on December 5th, 2022, which was the day he also inspected the subject Property. NAV 3 is much a smaller unit with a NAV of € 5,470 and again a Retail Zone A of €160 per m² was applied by the Respondent to calculate the NAV of this property.

There were no representations made on this property and no appeal to the Tribunal. NAV 4 is also located in Abbey Square Shopping Centre, but unlike NAV 1, and 2 that it faces onto Park Street, which is at the front of the shopping centre. NAV 4 is half the size of the subject Property with a NAV of € 7,250 where again a Retail Zone A of €160, Retail Zone B of €80 and so on, was applied by the Respondent. There were no representations on NAV 4 and it was not appealed.

8.4 Mr Fitzsimmons submitted that the emerging tone of the list in the location of the subject Property has been established at €160 Retail Zone A. He said that both the KRT's and the NAV Comparisons submitted in the Respondent's précis are of similar size and construction to the subject Property and are all located in close proximity to it. He further submitted that there are 92 retail properties in Enniscorthy that are considered to be of the same type as the subject Property. Of the 92, seven of them had made Representations and of this seven, six had minor changes due to floor areas and one had no change made whatsoever. To date none of the 92 retail properties on the list had any change made to the Retail Zone A, and of the 92 it is only the subject Property that went to appeal.

8.5 In reply to questions from the Division, Mr Fitzsimons confirmed that following a review of the file after the Final Certificate had issued, but before the hearing of the appeal, based on his own knowledge and experience, he felt the appropriate way to value the subject property was to apply a 10% discount based on the frontage to depth allowance notwithstanding that it was clear the Property could be redivided into three separate units again, if required. It was noted after some confusion that the valuation date was 15th September 2017 and not the date on which the final valuation certificates for County Wexford were issued namely, September 10th, 2019. Mr Fitzsimons confirmed that there were no examples of where the Retail Zone A level of €160 had been agreed for any retail property where the occupier had retained a professional agent to represent them. The Respondent was also unaware that there was a Revision application on the subject Property dated 14th May 2018 and Mr Fitzsimons advised the Tribunal that he dealt with the appeal on the basis of a Revaluation and not a Revision of the subject Property, and he was unaware as to whether the Property was in use as a gym when the Revision application was submitted. However, he submitted that regardless of the Revision application and regardless of whether the Property was in use as a gym or for personal fitness training, it would still be valued as a retail unit. This was because it was advertised and let as a retail unit and the most recent tenants of the Property who let both the ground and first floor,

held a retail lease on the Property. He said that the most recent tenants of the Property also understood it to be a retail premises and confirmed that if at the time of the revaluation, Mr Fitzsimons knew that the subject Property was in use as a gym, he still would have valued it as a retail property for the reasons outlined above and because it had planning permission from the County Council to trade as a retail unit. Mr Fitzsimons clarified that the main car park was owned by the shopping centre and just beyond that was a smaller car park owned by the county council, both of which levied charges..

8.6 In summary, Mr Fitzsimons said that the subject Property is undoubtedly a retail unit even though it may not have been in use as a retail unit in the strictest meaning of the term. He said it was not possible for the Respondent to inspect every unit every time it changed use or there was some other change in circumstances. The planning permission that was granted for the subject Property was retail use and therefore it is to be valued as a retail shop. It has always been used as a retail shop and just for the brief period where Ms Mikulec was in it, she chose to use it as a fitness studio, but that this makes no difference to the valuation of the Property as a retail unit. Mr Fitzsimons submitted that all of the comparisons used by the Respondent are of similar circumstances to the subject Property. He said that with the exception of one, all the NAV Comparisons were facing onto the car park and are all in the same scheme of valuation using a Retail Zone A of €160, that has been applied across the board to other similarly circumstanced retail properties. It was clear on inspection of the Property that at some time in the past it had planning permission to trade as three individual units and these were subsequently amalgamated into one single unit, which remained the situation on the valuation date as it does today. He said taking all that into consideration, he felt the Property deserved a 10% frontage to depth allowance. In conclusion, Mr Fitzsimons said the Respondent requested the Valuation Tribunal to affirm the NAV of €16,230 and for that to be entered onto the valuation list going forward.

9. SUBMISSIONS

9.1 There were no legal submissions.

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 County Wexford.

10.2 As a preliminary but significant finding from the point of view of the Appellant, the Tribunal finds that there seemed to be significant amount of confusion on the part of the Appellant about the role and powers of the Tribunal on appeal. In this regard the scope of the decisions that can be made by the Tribunal can be found at section 37 of the Valuation Act 2001 as amended. Outside the powers enunciated at section 37 of the 2001 Act, the Tribunal does not have a legal basis to decide on matters relating to rates arrears, ability of a rate payer to pay rates, rates relief or any matter other than the valuation of a commercial property for the purposes of assessing the rateable value of a property, pursuant to sections 19 or 28 of the 2001 Act.

10.3 The Tribunal finds that the Appellant provided no evidence of market transactions or NAV comparisons to support her contention that the NAV of the subject Property should be set at €1,000 or less. In the absence of any challenge to the KRT's and NAV Comparisons submitted by the Respondent, the Tribunal must rely on these as the only evidence submitted by both parties when considering the contentions of both parties.

10.4 While the Appellant's seeming lack of knowledge in respect of rates payable on the Property is unfortunate, this does not form a basis on which the Tribunal can reduce the NAV of the Property, without some evidence that the Respondent may have valued the Property incorrectly. Alternatively, the Respondent may have misinterpreted some piece of market evidence that would have an effect on the emerging tone of the list based on the principles of correctness of value and equity and uniformity of value between properties on the valuation list, as set out in section 19(5)(a) and (b) of the Valuation Act 2001. However, no such submissions were made by the Appellant either in her précis or verbally at the hearing of the appeal.

10.5 While a Revision application has been submitted that may be relevant to the period that the Appellant was in occupation of the Property this is not properly before the Tribunal, so that the current application is an appeal of the revaluation of the Property and not the revision.

10.6 After giving due consideration to the fact that the Tribunal cannot adjudicate on a number of matters raised by the Appellant in her appeal, in addition to the omission of market or NAV evidence submitted by the Appellant and the absence of any cogent argument as to why the NAV of the Property should be reduced, the Tribunal finds that in these circumstances it is unable to allow the appeal and reduce the NAV of the subject Property.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent that the correct NAV to be applied is €16,230.

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.