Appeal No: VA19/5/1448

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

Greystones Whale Theatre Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of
Property No. 2200628, Leisure at 1 Kiora/2 Theatre Lane Greystones/Delgany County Wicklow.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF OCTOBER 2024

BEFORE
Michael Brennan – BL MSCSI **Deputy Chairperson**

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th 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 €25,700.

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: *" I set out below the details of comparable letting for Ambassador Theatre Dublin which, although outside the local authority area of Wicklow is permitted for inclusion in the absence of comparable evidence from Wicklow itself, but with an appropriate adjustment made to reflect the difference between the two - most notably in terms of scale; catchment area . The relevant section in the 2001 Act being S.49(2)(a). Without Prejudice to the foregoing and the opinion of NAV put forward on the approach adopted by the Valuation Office, I have, following clarification with Liam Diskin of the Valuation Office, discovered that the approach taken elsewhere by them has been to apply a "rental rate per seat of between €100 and €200, depending on venue size etc". I was informed that the reason why this approach wasn't adopted for The Whale Theatre was because there was uncertainty surround the seating capacity. However, I have been informed that the relevant seating capacity is 130. On that basis, I would propose that the appropriate RV, based on this approach with a rental rate of €100 per seat, as being €13,000.*

The theatre only opened in 2017 and has been losing over €200k per annum since. It is not, and

was never envisaged that it will turn a financial profit and is funded personally and solely by the proprietor, Ross McParland - a social entrepreneur and patron of the arts. His personal mission is not business oriented or commercial but to bring the arts to life in Greystones. Indeed, ticket prices are akin to those charged in typical village productions and in no way aligned with those larger venues or regional theatre companies. Furthermore, with most events, a sizeable number of "free entry" allocation are made available. Mr McParland was recently awarded person of the year by Greystones municipal council for his efforts and at the heart of that is his continued willingness to open the theatre for social community events, school and club fundraisers and numerous charity evenings etc.

The Whale Theatre Supplemental Information – Property Reference Number 2200628
Comparisons (Dublin City as I've been unable to source any Wicklow Comparisons)
• Helix Theatre
o Property Number 2171317
o 9,123 sq m x €25.97 per sq m
o RV = €237,000

• Ambassador
o Property Number 740990
o 1,129.41 sq m x €84.26 per sq m
o RV = €95,000

• Grand Canal
o Property Number 2207051
o 11,748.45 sq m x €104.27 per sq m
o RV = €1,250,000

The Ambassador is particularly relevant as we now have the benefit of having secured confirmation of the new lease agreed by the tenant (Millennium Theatre Company Ltd. and represented by Lisney) and the landlord (Rotunda Hospital and represented by Bannon Commercial) with details below as follows:

Address: The Ambassador Theatre, Parnell Square, Dublin 1
Tenant: Millennium Theatre Company Ltd
Lease Term: 35 years from 24th October 2017
Rent: €125,000 per annum
Break Option: The Tenant has the option to terminate the Lease at the end of year ten, twenty and thirty, subject to providing the Landlord with six months written notice. There will be no rent penalty.
Rent Review: There is provision for upward/downward rent reviews at the end of each five-year period to market rent.
User Clause: Use as a Cinema or a Theatre or an Exhibition Space.
Repairs: Tenant to be responsible for repairs subject to a Schedule of Condition.
A breakdown of the rent of €125,000 per annum may be assessed as follows:

Ground Floor
Foyer (staircase included) - 1,350 sq ft x €10.00 = €13,500
Auditorium & Bar - 5,150 sq ft x €11.30 = €58,190
Stage - 1,100 sq ft x €10.00 = €11,000

Stores - 514 sq ft x €7.00 = €3,598
Loading - 170 sq ft x €6.00 = €1,020

First Floor
Circle & Bar - 3,354 sq ft x €10.00 = €33,540
Changing Room - 519 sq ft x €8.00 = €4,152

Total - 12,157 sq ft x €10.28 (overall) = €125,000

Having reviewed the Ambassador Theatre in detail, the VO have suggested that the RV (rent) which that property would have obtained as at the relevant valuation date for Dublin City Revaluation (as at April 2011) was €95,000 per annum, or €84.11 per sq m. The actual rent agreed at lease renewal in October 2017 (just one month post Wicklow Revaluation valuation date) for the superiorly located and substantially larger Ambassador Theatre was €110.65 per sq m (€10.28 per sq ft).

I would submit that a very significant discount to this rent should be made before it could be considered in any way applicable to The Whale Theatre from a rental perspective. I have therefore applied a NAV of €32.85 per sq m to the agreed floor area of 395.74 sq m to provide my opinion of RV for the subject property as being €13,000.

Without Prejudice to the foregoing, if the correct approach, which we understand has been adopted by the VO in other Theatre cases (but the evidence of which has not been shared with this office) is to apply €100 per seat rate, then the resultant NAV, taking account of the 130 seater capacity venue that is The Whale Theatre, would be €13,000 and therefore tallies with the rental approach set out above in providing a similar RV."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €13,000.

2. RE-VALUATION HISTORY

2.1 On the 7th day of June, 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 €31,600.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €25,700.

In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. **FACTS**

The parties are agreed as to the following facts pertaining to the property:

4.1 The subject property ("the property") is known as the Whale Theatre and is located at 2 Theatre Lane, Greystones, Co. Wicklow.

4.2 The property is located within the Theatre Lane development ("the development") which is a split-level mixed-use development comprising a parade of shops, three apartments and the property. The property is on the southernmost boundary of the development and is situated a level below the parade of shops that have frontage to Theatre Lane.

4.3 The street also named Theatre Lane, to which the development has frontage, has the characteristics of a laneway and connects Main Street (also known as Church Road) to Hillside Road. The development is located approximately 80 metres west of Main Street and 30 metres south of Hillside Road.

4.4 The parade of shops within the development are accessed directly from Theatre Lane. Access to the property from Theatre Lane is indirect, via external staircase, which connects to the rear of the Meridian Point Shopping Centre. The property also has direct access at street level, from the rear of the Meridian Point Shopping Centre, on the opposite side of the entrance car park.

4.5 The property is in use as a theatre and the floor areas are agreed by the parties as follows:

Description	**Floor**	**Size (Sq M)**
Theatre	Lower Ground	395.74

4.6 Title to the property is understood to be held freehold.

4.7 The accommodation within the property is comprised on one level, currently incorporating a flexible seating area with a capacity for 130 persons together with a toilet, bar and commercial kitchen.

4.8 The property has the benefit of a theatre licence.

5. ISSUES

5.1 The sole issue in this case concerns the net annual value of the 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."*

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 average 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."*

6.2 Section 19(5) (inserted by section 7(b) of the 2015 Act) of the 2001 Act provides:

> *(5) The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable) —*
>
> *(a) correctness of value, and*
>
> *(b) equity and uniformity of value between properties on that valuation list,*
>
> *and so that (as regards the matters referred to in paragraph (b) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.*

7. APPELLANT'S CASE

7.1 Mr McHugh for the Appellant, contends for a NAV of €13,000. Mr McHugh on page 14 of his précis outlines that he primarily relies on the rental per seat approach, which he stated was confirmed to him as being an applicable valuation approach by the Respondent. He also relies on a NAV per sq m approach to avoid any prejudice ensuing from adopting the former approach. His bases of valuation are as follows:

1. **Rent per square metre basis**

Description	**Rent per Sq M**	**Size (Sq M)**	**Total NAV**
Theatre	€32.85	395.74	€13,000

2. **Rent per seat basis**

Description	**Rent per Seat**	**Seating Capacity**	**Total NAV**
Theatre	€100.00	130	€13,000

7.2 Mr McHugh submitted that the property has limited capacity and trading potential and that this had a direct correlation to the rent that would be attainable for the property. He stated that the current operator limits ticket sales to 120 persons despite capacity being 130 persons. He explained that the purpose of this is to maximise the visitor experience.

7.3 Mr McHugh also stated that Greystones being a "satellite town" results in the property having a limited trading potential mid-week. Mr McHugh confirmed the following basis of operation at the property: a maximum of four performances per week; each performance requires the premises to be staffed for five hours; and the property is only open for 42 weeks out of 52. He stated that the proximity of residential uses to the property were also a limiting factor as well as the property requiring five, full-time staff.

7.4 In relation to the method of valuation, Mr McHugh noted that the Respondent applied a rate of €65 per sq m to the floor area of the subject property as the NAV. Mr McHugh made reference to an oral conversation that took place in July 2019 with the Respondent's valuer Mr Liam Diskin whom he stated was originally assigned to this property. Mr McHugh stated that during this oral discussion, Mr Diskin revealed that theatres in regional areas were generally valued on a "per seat" basis. He also stated that Mr Diskin was "unable to reference any such comparables" when asked by Mr McHugh during this conversation.

7.5 Mr McHugh also stated that he was informed by Mr Diskin in oral conversation that the property was valued having regard to "first floor offices rents in the town". Mr McHugh stated that his response to Mr Diskin to this valuation approach was that at that the property was not categorised as an office, had no natural light and was not comparable to a first floor purpose-built office. Mr McHugh was of the view that Mr Diskin accepted these latter points that were made to him.

7.6 In relation to the appropriate method of valuation, Mr McHugh at page 13 of his précis of evidence opined that section 49 of the Act, applied to the subject appeal and was to be interpreted as follows:

> *"The purpose of Section 49 is to ensure that valuations are made in such a manner as to maintain equity between rate payers so that each individual rate payer will bear a proper proportion of the total rates bill for the rating authority area concerned. In most circumstances, they shall be determined in accordance with Section 49(1) - in other words based on the "tone of the list." From time to time, however, situations may arise where there are no truly comparable properties on the valuation list and, in such circumstances, Section 49(2)(a) comes into play.*
>
> *When using Section 49(2)(a) it is implicit that there are no properties truly comparable to the property being valued on the relevant valuation list which is the case with the subject property. However, where there exists evidence of comparable properties in other rating authority areas then it may be appropriate to have regard to this evidence. Obviously, the weight to be accorded to such evidence will depend on a number of factors including the relevant Section 20 specified valuation date, proximity to the property concerned and the degree to which they are physically comparable in terms of property type, scale, location and other socio-economic factors which would have a bearing on rental value. It follows of course that the greater the similarities there are between the property concerned and such comparables and the closer the relevant valuation dates, the greater will be the weight to be accorded to this evidence."*

7.7 Mr McHugh also seeks to rely on a prior Tribunal decision in VA06/2/045 Orange Tree Limited, which relates to a revision appeal and he specifically referred a section of paragraph 33 of this decision, which he stated are relevant to this appeal:

> *"It is clearly the function of the valuer when valuing a property for the purposes of revision to first have regard to Section 49(1). Only when the valuer is satisfied that there are truly no comparable properties within the relevant Rating Authority area can Section 49(1) be rejected and 49(2) be considered."*

7.8 Mr McHugh also relied on a prior Tribunal decision on VA10/3/020 Square Management Limited, another revision appeal, and made specific reference to part of the Tribunal determination as follows:

> *"The proper basis of valuation is contained in Section 49(2)(a) by virtue of the fact that there are no properties truly comparable on the valuation list for South Dublin County Council rating authority area."*

7.9 Mr McHugh places reliance on section 49 of the Act and the two prior Tribunal decisions referenced in paragraphs 7.7 and 7.8 above. At page 14 of his précis of evidence, he made the following statement in relation to valuation approach:

> *"Having taken account of the above, and in support of my opinion of rateable value, I have had considered rental evidence and the established 'Tone of the List' in surrounding local authority areas - falling outside of the Wicklow local authority area - due to the fact that the only two other centres for the arts within Wicklow are publicly owned and not valued for rating purposes. I have then sought to compare that established RV by reference to the seating capacity which, in turn, provides a rent per seat analysis – the appropriate valuation approach for "regional theatres", such as The Whale Theatre."*

7.10 Mr McHugh stated that Mr Diskin made similar confirmations in September 2023 that were made to him in July 2023, as referred to in paragraph 7.4 above. In essence, he restated that the Respondent stated that they have adopted a rental per seat approach to regional theatre valuations but he was unable to obtain and comparable evidence of same, from them.

7.11 Mr McHugh stated that there is no NAV analysis available from the Respondent records for regional theatre properties that were included in the 2019 Revaluation for seven counties. Mr McHugh has included a single theatre property, located in Dublin 1 and is summarised as follows (full details of this comparison are provided in Appendix 1 hereto, N/A to public):

Summary of Appellant Comparison

Location	Dublin 1
Size	1,129.41 sq m
NAV as at April 2011	€95,000
NAV per sq m as at April 2011	€84.11
Seating Capacity	1,200
NAV rental value per seat	€79
Rent	€125,000 per annum
Rental Value per sq m	€110.65

Rental Value per seat	€104
Lease Term	35 years from 24th October 2017
Lease Rent Analysis **(Provided to the Mr McHugh by the agent of Landlord)**	Ground Floor Foyer (staircase included) - 1,350 sq ft x €10.00 = €13,500 Auditorium & Bar - 5,150 sq ft x €11.30 = €58,190 Stage - 1,100 sq ft x €10.00 = €11,000 Stores - 514 sq ft x €7.00 = €3,598 Loading - 170 sq ft x €6.00 = €1,020 First Floor Circle & Bar - 3,354 sq ft x €10.00 = €33,540 Changing Room - 519 sq ft x €8.00 = €4,152 Total Overall Analysis - 12,157 sq ft x €10.28psf = €125,000 (1,129.41 sq m x €110.65psm = €125,000)

7.12 Mr McHugh stated that he reviewed this comparison in detail and observed that the NAV per sq m at the 2011 revaluation date, equates to €84.11 per sq m. He noted that the actual lease date was one month prior to the relevant valuation date of the subject property and equates to €110.65 per sq m. He stated that a very significant discount of this should be made to make it applicable to the subject property. He noted that the physical characteristics of this comparison were ornate, it was located in a densely populated urban area, attracts international exhibitors and runs exhibitions for extended periods. He stated that this comparison is not subject to the trading limitations of the property and can operate late opening hours seven days per week. He stated that this comparison equates to a rent per seat basis of €104 when analysed at the passing rent of €125,000. He stated that the NAV rate of €198 per seat of the property is out of line having regard to the specific evidence of this comparison.

7.13 In response to the Mr Nolan's précis of evidence, Mr Hugh criticises the fact that the property was not inspected by Mr Nolan. Mr McHugh also stated that Mr Nolan made reference to the block plan contained in section 4.5 of his précis as being obsolete. Mr McHugh believed Mr Nolan erred in valuing the property on a per sq m basis, which was valued on such basis by him as the property had no fixed seating. Mr McHugh considered the category of the Respondent's three comparisons as office and retail use as lacking in equity and uniformity given the property's theatre categorisation by the Respondent. Mr McHugh did not consider that Mr Nolan's comparisons to be similarly circumstanced to the subject property.

8. RESPONDENT'S CASE

8.1 Mr Nolan for the Respondent, contends for a NAV of €25,700, as follows:

Description	Rent per Sq M	Size (Sq M)	Total NAV
Theatre	€65.00	395.74	€25,700

8.2 Mr Nolan stated that the property is the only rateable theatre on the valuation list for the Wicklow Local area and noted that controversy in this appeal centres on the method of valuation and the rate to be applied.

8.3 Mr Nolan noted that the subject property is the only privately owned theatre in area and is held on a freehold basis, therefore, relevant market rental evidence for theatres did not exist. For this reason, he stated that he relied on market rental evidence available on properties adjacent to the subject, though different in nature are adjusted to reflect these characteristics.

8.4 Mr. Nolan stated that properties which are similarly circumstanced are considered comparable. He stated that they share characteristics such as size, use, location, and construction. Mr. Nolan submitted two key rental transactions ("KRTs") and one NAV comparison in support of this valuation as follows (full details of these comparisons are provided in Appendix 2 hereto, N/A to public):

KRT 1 – Pilates Studio, Meridian Centre, Greystones, Co. Wicklow

Lease Commencement Date	1st August 2016
Lease Term	10 years
Rent Per Annum	€15,000
Size (sq m)	135.32
NER at Valuation Date	€13,113.26
NAV	€12,990
NAV per sq m	€96
Comments	Located above a shop/office unit Used as a pilates studio

KRT 2 – Retail Unit, Meridian Centre, Greystones, Co. Wicklow

Lease Commencement Date	10th August 2016
Lease Term	15 years
Rent Per Annum	€25,000
Size (sq m)	73.20

NER at Valuation Date	€22,045.23
NAV	€21,800
NAV per sq m (Overall basis)	€301.16
Comments	Retail unit in Meridian Centre

NAV Comparison 1 – Theatre Lane, Greystones, Co. Wicklow

Size (sq m)	305.81
NAV	€25,600
NAV per sq m	€84
Comments	Situated above the subject property

8.5 In relation to KRT 1, Mr Nolan applied a 33% discount on the NAV rate per sq m to the subject property referencing that KRT 1 has lift access and natural light. Mr Nolan stated that the property is valued significantly below the rate applied to his KTR 2, being approximately 22% of the rate that is applied to this retail unit. In relation to his NAV Comparison 1, Mr Nolan noted that the subject has been valued lower to reflect the lack of natural light.

8.6 Mr. Nolan noted that the subject property is a purpose-built theatre and live entertainment venue. He stated that the theatre operates using flexible seating layouts dependent on the requirements of events that take place.

8.7 Mr. Nolan stated that Mr McHugh's reliance on section 49 cannot be utilised in the subject case as it is solely applies for revision cases. Mr. Nolan stated that having regard to the Act, it does not allow for the consideration of evidence from other local authority area valuation lists. Specifically in relation to the Mr McHugh's comparison, he stated that this NAV is six years old having regard to the relevant valuation date in the subject case.

8.8 Mr. Nolan stated that that Mr McHugh has made several statements regarding the method of valuation that has been applied to the subject property and other theatres and believed that he has failed to support these statements with any evidence. Mr. Nolan regards these statements as being factually incorrect. Mr. Nolan noted that the original planning application cited a maximum capacity of 400 standing patrons or 180 - 200 seated patrons. He considered Mr McHugh's reference to the property having a maximum capacity of 130 patrons to be unsupported in evidence. He further stated that the flexibility offered by non-fixed seating is beneficial and is not available to many other theatres. He stated that the lack of fixed seating means it would be inappropriate to value on a per seat basis.

8.9 Mr. Nolan considered that Mr McHugh's opinion of NAV is not supported by any evidence and fails to meet the onus of proof which rests with the appellant. Mr. Nolan 4 stated that an NAV €100 per seat was not applied to all theatres that were valued as part of the 2019 revaluation.

8.10 In response to Mr McHugh's criticism of the lack of inspection, Mr. Nolan stated that the condition was apparent from the photographs and that the features of the property (such as the sound system) were published on a wide range of online sources. In relation to the criticism of the block plan submitted by Mr. Nolan, he stated that this block plan related to the relevant planning permission and there was no other planning permission since. Mr. Nolan confirmed that there are not any theater venues in the country that do not have fixed seating, that have been subject to a revaluation and are valued on an NAV per seat basis. Mr. Nolan stated that theatres with fixed seats are differentiated from those without. He stated that theatres with no fixed seating makes them suitable for valuation on a per seat basis and this is the common approach of the Respondent for this category of asset with this particular feature. In relation to Mr McHugh's comparison, Mr. Nolan confirmed that this property was valued on a rate per sq m basis and noted that the operators of this venue refer to the property as an exhibition centre.

8.11 In summarising his evidence, Mr. Nolan noted that only legislation that was referred to by Mr. McHugh was in relation to section 49 of the Act, which he stated is not relevant as the property is not being valued pursuant to a revision under Section 28(4). Mr. Nolan Stated that Mr McHugh's comparison does not have fixed seating for 1,200 patrons and has therefore been incorrectly analysed in relation to the NAV.

9. SUBMISSIONS

9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

10.1 In reaching a decision in this appeal, the Tribunal has had regard to the précis of evidence and appendices of both parties together with the responses to the précis of evidence by each party. The fact that the Tribunal does not make specific reference to any particular document or submission does not indicate that it has not been into taken account.

10.2 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 Wicklow County Council.

10.3 The relevant question on this appeal concerns the amount a hypothetical tenant would pay in rent for a tenancy of the Property on the terms set out in section 48 of the 2001 Act, as amended. The rent for which the Property might, in is actual state, be reasonably expected to let is measured by the rental value on a hypothetical tenancy of the Property on a year on year basis and not by reference to the actual occupier's business or financial means.

Findings of the Tribunal

10.4 The motives, style and mode of operation of the occupier of the property are not a relevant consideration under section 48 of the Act. Subjective references to the trading capacity and limitations of the current occupier are to be disregarded in this circumstance.

10.5 The Appellant has placed reliance on section 49 of the Act and on two prior Tribunal decisions specifically concerning section 49. Section 49 and the two decisions referenced therein concern revision valuations pursuant to section 28(4). This section is specific to revision valuations and contains a legislative restriction therein. This subject appeal relates to a revaluation under section 48. The consideration of section 49 is non-applicable to all revaluation appeals and the two prior decisions relied upon by the Appellant are also irrelevant considerations.

10.6 The direct evidence of Mr Nolan is that the property and all such properties which do not have fixed seating, are valued on a per sq m basis. There is an inherent logic to this approach. It was Mr Nolan's evidence that all theatres without fixed seating are valued on this basis which demonstrates equity and uniformity. Mr McHugh appeared to rely to a significant extent on various conversations with Mr Diskin, whom has not provided direct evidence. It is in effect hearsay evidence.

10.7 It is uncontroversial that in any appeal to the Tribunal, the relevant onus of proof rests on the Appellant. A single comparison has been submitted to support the Appellant's appeal. The NAV of the property as it stands on the list is supported by two KRT's and a NAV Comparison.

10.8 The Tribunal considers the Appellant's comparison to have negligible comparability except for its categorisation as a theatre for the following reasons:

(i) Location – the locational comparability of the Appellant's comparison with the property is distinct. The comparison has a high profile location in a relatively central position in Dublin City Centre. Consequently a higher value is obvious. However, the degree of dissimilarity is so disparate, that an exercise in relativity in order to apply a locational discount seems highly arbitrary.

(ii) Scale – the comparison is 2.85 times the size of the property. The alleged seating capacity of 1,200 is in dispute. There is no primary evidence of its seating capacity. The property has been analysed on a per seat basis by Mr McHugh, whereas it is apparent that there are large unseated areas in the Appellant's comparison. It is Mr Nolan's evidence that it has been valued on a per sq m basis. Notwithstanding this, it forms the entire basis of the Appellant's assessment of NAV. The assessment by the Appellant of the subject property on a per sq m basis is unsupported by comparable

evidence. In fact it appears to be per sq m analysis of the per seat valuation approach. The Tribunal further notes that the overall rate per sq m applied to the property is substantially lower than the rate attributable to the stores, loading area and changing room in the lease rent analysis of the comparison.

(iii) Physical characteristics - the comparison has been described as an ornate Georgian building whereas the subject is of relatively modern construction and are very dissimilar in this regard. There are apparent differences in design and functionality as well as trading style but no substantive evidence has been provided in relation to this or any valuation opinion in relation to its relativity. They are evidently incomparable in this regard.

(iv) Trading style – the comparison has an international quality due to the location, size, profile and style whereas the property due to its location, size, profile and style is more confined local productions. There is a clear differentiation in regard and this would naturally be reflected in a different type of hypothetical tenant.

10.9 In relation to the Respondent comparisons, the obvious differences between them is the fact that the property has a limited frontage and is of lower-level / basement configuration with inherently limited natural light and has a different use category. KRT 1 benefits from superior profile and has good natural light and is situated at first floor level. A 33% discount has been applied to reflect this. KRT 2 is a high profile retail unit at ground floor level. A 78% discount has been applied to reflect this. The most comparable is NAV Comparison 1, which is located directly above the property and is categorised as an office / studio and is similar in size. A 23% discount has been applied to reflect this.

10.10 In contrast to the Appellant comparison, the Respondent comparisons have locational proximity, the ages and construction type are similar, the size and scale are more proximate (particularly with regard to NAV Comparison 1) and the end users are local operators. Although the use category is not directly aligned, the discounted adjustments from these comparisons to the subject property appear reasonable and justifiable in the circumstances.

10.11 For the reasons outlined above, the Tribunal does not consider the Appellant's evidence to be sufficient to dislodge the valuation approach of the Respondent, the rate applied to the property and adjustments therein from their comparisons, to reflect the physical disparities of the property.

DETERMINATION:

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.