

Appeal No: VA21/3/0006

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

BREAMORE CAPITAL PARTNERS LP

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 872688, Property Type: shop, Address of Property: 106 in Thomas Davis Street, Mallow, County Cork.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF OCTOBER 2025**

BEFORE

Martin Connolly MAgrSC, MSc, MSCSI, FCInstArb

Member

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 21st day of September 2021 the Appellant appealed against the determination of the Respondent pursuant to which the rateable value of the above relevant Property ('the Property') was fixed in the sum of €60.
- 1.2 The valuation of the Property falls to be determined from a decision made by the revision manager under section 28(4) of the Valuation Act 2001 as amended ('the Act') that a material change of circumstance ('MCC') occurred since the last previous exercise of powers under section 28(4) or of comparable powers under the enactments repealed by the Act in relation to the Property. Accordingly, the value of the Property must be ascertained by reference to values, as appearing on an existing valuation list for the rating authority area wherein the Property is situated of other properties comparable to the Property.

1.3 The sole ground of appeal as set out in the Notice of Appeal is that the valuation of the Property is incorrect as it does not accord with that required to be achieved by section 49 of the Act because:

(a) *The Valuation is incorrect. The proposed Valuation details were not provided to the Appellant, and representations were frustrated due to covid-19 restrictions,*

1.4 In the Notice of Appeal the Appellant considered that the valuation of the Property ought to have been determined in the sum of €12.70. In subsequent correspondence, in response to the Respondent's précis, this figure was increased to €45.

2. VALUATION HISTORY

2.1 There is no evidence in the documents provided of when or by whom an application was made to the Respondent for the appointment of a revision manager to exercise powers under section 28(4) of the Act in relation to the Property on the basis that by reason an MCC had occurred since the last previous exercise of the powers under section 28(4) or of comparable powers under the enactments repealed by the Act in relation to the Property, the valuation of the Property ought to be amended.

2.2 On the 9th day of December 2020 a copy proposed valuation certificate issued under section 28(6) of the Act in relation to the Property was sent to the Appellant indicating a valuation of €60.

2.3 A final valuation certificate issued on the 30th day of August 2021 stating a valuation of €60.

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 Mr Rob Reardon represented the Appellant and Mr Andrew Cremin, Tailte Éireann represented the Commissioner of Valuation, the Respondent.

3.3 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal and Mr Reardon submitted a response to the Respondent's précis.

4. FACTS

4.1 The parties are agreed as to the following facts.

4.2 Mr Cremin states at page 8 of his précis that what he describes as the *corrected floor areas* were agreed with the Appellant and are shown in the table below.

Level	Use	Area (m ²)
0	Retail Zone A	34.22
0	Retail Zone B	18.89
0	Toilets	7.36
1	Café	31.03
	¹ Total	93.39

5. ISSUE(S)

5.1 The issue is quantum.

6. RELEVANT STATUTORY PROVISIONS:

6.1 All references to a particular section of the Act refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.

6.2 Section 3(1) of the Act, so far as material to this appeal, defines *material change of circumstances* as meaning a change of circumstances that consists of:

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

(i) *the making of structural alterations to that relevant property.*

6.3 If a revision manager is satisfied that an MCC as defined by section 3 of the Act has occurred since a valuation under section 19 of the Act was last carried out in the rating authority area in which the Property is situated, or, as the case may be, since the last previous exercise (if any) of the powers under section 28(4) of the Act, or of comparable powers under the repealed enactments, the revision manager has power under section 28(4) of the Act to

(a) *if the property appears on the valuation list relating to that area ...*

(i) *amend the valuation of that property as it appears on the list,*

¹¹Note the typographical error. Total area should read 93.5 m². This was subsequently corrected in the calculation of Rateable Value at Paragraph 7.3, Witness Opinion of Value, page 23 of the précis.

6.4 Where a property falls to be valued for the purpose of section 28(4) of the Act that value is ascertained in accordance with the provisions of section 49 (1) of the Act which provides:

- “(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.*
- (2) For purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then-*
- (a) In case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20,*

7. APPELLANT'S CASE

- 7.1 The Appellant provided floor plans of the Property, details of email correspondence with the Respondent, the Tribunal and the Rating Authority, and a response to the Respondent's précis.
- 7.2 In the correspondence the Appellant pointed out that the proposed valuation was five times the original and contended for a value of €12.70 in the Notice of Appeal.
- 7.3 In his response to the Respondent's précis the Mr Reardon questioned the inclusion of the lobby in the Zone A area and also the area of the mezzanine. He also stated that the Appellant believed that the RV should be €45.
- 7.4 There was in addition correspondence that appeared to refer to without prejudice negotiations, and to which the Tribunal will not have regard.

8. RESPONDENT'S CASE

- 8.1 Mr Cremin provided a summary of his case that included his response to the Appellant's case, commentary on the revision process, the valuation history of the Property, a location map, a block plan and photographs in support of his description of the subject property, details of tenure and his proposed valuation.
- 8.2 The Property is described as being located at the eastern end of Main Street, Mallow². It comprises a two storey terraced structure in use as a café. It was completely refurbished sometime after 2018 and now incorporates part of an adjoining building. The ground floor comprises a café, food preparation area, and toilets. The first floor mezzanine is a seating area with a large void. The Property is in good condition and decorative order, both externally and internally.
- 8.3 The Property is held under licence, the details of which are set out in Appendix 1 (N/A to public).
- 8.4 The Respondent put forward six NAV comparisons to assist the Tribunal.

Comparison 1

Property No. 872683

Use: Retail, Beauty Salon

Address 102 Main Street, Mallow.

Level	Use	Area (m ²)	NAV/m ²	Total NAV
0	Canteen	10.75	€54.66	€587.60
0	Retail Zone A	29.60	€218.64	€6,471.74
0	Store	12.92	€54.66	€706.21
Total NAV				€7,765.55
RV@ 0.5%				€38.83
Rateable valuation				€39.00

This property is described as a small retail unit with a traditional shop front located close to the Property.

² The Property is described in the Notice of Appeal as being at 106 Thomas Davis Street, Mallow, which is also the street name on the Ordnance Survey map. However, the Tribunal accepts that Main Street is in general usage.

Comparison 2

Property No. 2213102

Use: Beauty/Hair Salon

Address Apt 2, Rear of 72 Main Street, Mallow

Level	Use	Area (m ²)	NAV/m ²	Total NAV
1	Beauty/hair salon	10.75	€54.66	€1,102.35
Total NAV				€1,102.35
RV@ 0.5%				€5.513
Rateable valuation				€5.00

This property is described as being across the street from the Property and is used to illustrate first floor value.

Comparison 3

Property No. 871122

Use: Retail

Address 74 Main Street, Mallow.

Level	Use	Area (m ²)	NAV/m ²	Total NAV
0	Retail Zone A	48.80	€245.92	€12,000.90
0	Retail Zone B	29.60	€218.64	€6,471.74
0	Retail Remainder	198.06	€61.48	€12,176.73
Total NAV				€30,178.07
RV@ 0.5%				€150.89
Rateable valuation				€150.00

This property is described as a larger ground floor than the Property and illustrates higher Zone A values on the Main Street.

Comparison 4

Property No. 871133

Use: Restaurant

Address 83 Main Street, Mallow.

Level	Use	Area (m ²)	NAV/m ²	Total NAV
0	Restaurant	22.53	€218.69	€4,927.02
0	Restaurant	25.11	€109.34	€2,745.46
0	Kitchen	198.06	€61.48	€12,176.73
1	Restaurant	24.62	€82.01	€2,019.14
1	Store	2.28	€82.01	€186.99
Total NAV				€12,243.02
RV@ 0.5%				€61.229
Rateable valuation				€61.22

This property is described as being in close proximity to the Property. It illustrates restaurant values, including first floor and kitchen.

Comparison 5

Property No. 871119

Use: Retail

Address 73 Main Street, Mallow.

Level	Use	Area (m ²)	NAV/m ²	Total NAV
0	Retail Zone A	44.50	€245.92	€10,943.44
0	Retail Zone B	44.50	€122.96	€5,471.72
0	Balance	103.60	€61.48	€6,369.33
Total NAV				€22,784.49
RV@ 0.5%				€113.92
Rateable valuation				€110.00

This property is located across the street from the Property, is in good condition, with a wider street frontage.

Comparison 6

Property No. 871100

Use: Retail/Restaurant

Address 62 Main Street, Mallow.

Level	Use	Area (m ²)	NAV/m ²	Total NAV
0	Shop	36.80	€273.27	€10,056.34
0	Shop	15.00	€137.98	€2,069.70
1	Café	20.90	€68.35	€1,428.20
1	Restaurant	24.62	€82.01	€2,019.14
1	Kitchen	26.00	€54.70	€1,422.20
Total NAV				€14,976.75
RV@ 0.5%				€74.88
Rateable valuation				€69.84

This property is described as being on the Main street with bakery and café user over ground and first floor.

8.5 The Respondent cited Tribunal judgements VA00/2/032, Poundlane Ltd, t/a Piazza Hotel; VA07/3/054, Willaim Savage; and VA09/1/018, O’Sullivan Marine Ltd to support his contention that the onus of proof was on the Appellant.

8.6 The Respondent contended for Rateable Valuation of €56, reduced from the value on the list, €60, calculated as follows:.

Level	Use	Area (m ²)	NAV/m ²	Total NAV
0	Retail Zone A	34.22	€218.60	€7,480.49
0	Retail Zone B	18.89	€109.30	€2,064.68
0	Toilets	7.36	€38.26	€402.30
Mezz	Cafe	<u>31.03</u>	€32.26	<u>€1,187.21</u>
		91.50	Total NAV	€11,134.67
RV@ 0.5%				€55.67
Rateable valuation				€56.00

9. FINDINGS AND CONCLUSIONS

- 9.1 On this appeal the Tribunal has to determine whether the value of the Property accords with that which is required to be achieved by section 49 of the Act, namely a value that is relative to the value of other properties on the valuation list of County Cork rating authority area.
- 9.2 The Appellant contended for a Rateable Value of €12.70 in the Notice of Appeal, which was subsequently increased to €45 in correspondence. However, no evidence of the values of *other properties comparable to the Property* on the valuation list was put forward in support of the proposed value.
- 9.3 Mr Cremin described Main Street as the main trading area in Mallow and the Property as a ground floor café with a wrap around mezzanine containing customer seating.
- 9.4 Six comparison properties were put forward by Mr Cremin to support his proposed valuation, all close by on the Main Street. Of these, Comparison Nos 2, 3 and 5 with floor areas of 20.16 m², 295.66 m², and 192.6 m² or 22%, 323% and 210% of those of the Property respectively were outside the range, +/- 50%, recommended by the Society of Chartered Surveyors for comparative evidence for retail valuations³. Consequently, less weight is attached to these Comparisons. Of the remaining three, Comparison Nos 1 and 4 have Zone A rates of c. €218.60/m², while Comparison No 6, which appears to be a particularly attractive property based on the photographic evidence, has a Zone A rate, although not specifically described as such in the précis, of €273.27. The first floor evidence for restaurant properties, Comparison Nos 4 and 6 is of €82.01 and €63.85/m² respectively. However, Mr Cremin contends, correctly in the Tribunal's view, that the mezzanine space in the Property, because of its configuration and limited potential user, should be valued at lower rate than the first floor space in these Comparisons.
- 9.5 In summary, Mr Cremin put forward evidence of the values of a number of properties in the immediate vicinity of the Property. The Tribunal found this evidence persuasive. Mr Reardon put forward no such evidence to support his proposed valuation.
- 9.6 The Tribunal has found on several occasions that the onus of proof is on the Appellant, including the cases put forward by Mr Cremin at Paragraph 8.5. The position was expanded on in the Tribunal decision *FMG Properties v Commissioner of Valuation (VA20/4/0053)* wherein it was held: *The onus of proof rests on the Appellant to demonstrate through cogent evidence that the Respondent has erred.* The Tribunal is satisfied in this case that the Appellant has not put forward the required evidence to prove that the Respondent erred.

³ SCSI Professional Guidance. Retail Zoning for the Chartered Surveyor, page 6.

10. DETERMINATION:

10.1 Accordingly, for the above reasons, the Tribunal allows the appeal and decreases valuation of the Property as stated in the valuation certificate to €56, as calculated in the table below.

Level	Use	Area (m ²)	NAV/m ²	Total NAV
0	Retail Zone A	34.22	€218.60	€7,480.49
0	Retail Zone B	18.89	€109.30	€2,064.68
0	Toilets	7.36	€38.26	€402.30
Mezz	Cafe	<u>31.03</u>	€32.26	<u>€1,187.21</u>
		91.50	Total NAV	€11,134.67
			RV@ 0.5%	€55.67
			Rateable valuation	€56.00

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.