

Appeal No: VA23/5/0900

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

TOWER HARDWARE LTD

APPELLANT

and

TAILTE ÉIREANN

RESPONDENT

In relation to the valuation of

Property No. PN 1362468, Shop at Main Street, Swinford, County Mayo.

B E F O R E

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

Ken Enright - Solicitor

Member

Gerard O'Callaghan - MRICS, MSCSI

Member

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

1. THE APPEAL

1.1 By Notice of Appeal received on the 17th 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 € **33,900**.

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 Valuation Act 2001, as amended, because :

"The proposed rates on this building for 2024 has over doubled since 2023 (present year).this seems to be incorrect valuation. As our overheads have also increased along with high interest rates ,energy costs, diesel labour and insurance costs. I would urge the local council to reconsider the proposed annual rate charges and seek a more balanced approach to our essential public services."

1.3 The Appellant considered, in the Notice of Appeal, that the valuation of the Property ought to have been determined in the sum of € **4,500**.

2. REVALUATION HISTORY

2.1 This is a Revaluation appeal arising from the Mayo County Council revaluation which was undertaken as a result of the Mayo County Council Valuation Order 2022 that was signed by the Commissioner of Valuation on 6th September, 2022 and is for the Valuation List published on 22nd September 2023.

2.2 The functions of the Commissioner of Valuation are now performed under the authority of Tailte Éireann with effect from 1st March, 2023 (S.I. No.58/2023 - Tailte Act 2022 (Commencement) Order 2023).

2.3 On the 23rd day of September, 2022 a copy of a valuation certificate issued under section 26 of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of € **24,200**

2.4 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 increased to € **33,900**.

2.5 A Final Valuation Certificate was then issued on the 15th day of September, 2023 stating a valuation of € **33,900**.

2.6 The date by reference to which the value of the property, the subject of this appeal, was determined is the **1st day of February, 2022**.

3. THE HEARING

3.1 The Appeal proceeded by way of a remote hearing by the zoom platform on line hosted by the Valuation Tribunal on the 30th day of January, 2025. At the hearing the Appellant was represented by Mr Liam Doyle, a Director of Tower Hardware Limited and the Respondent was represented by Ms Ciara Marron, MSCSI, MRICS Executive Valuer, of Tailte Éireann.

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/affirmation, adopted their précis as their evidence-in-chief, in addition to giving oral evidence.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following as the agreed or undisputed facts, partly ratified at the hearing from sworn testimony, as follows:

4.1 The Property is on the south side of Main Street situated opposite AIB, Bank of Ireland and diagonally opposite the Gateway Hotel in the centre of Swinford (population 1,452 Census 2022). Swinford is located near to the N5 and close to the Mayo/Roscommon border, and is approximately 28.4 kilometres north east of Castlebar and 13 kilometres south east of Foxford.

4.2 The Property comprises a two storey building of masonry construction to the front with retail and small stores at ground floor and storage at first floor. The shop has an internal frontage of 10.1 metres and a depth of 28.44 metres. To the rear there is a modern block and steel frame building with insulated cladding to the roof and walls. The modern store building has access to St. Ita's terrace. Access to the first floor is via a stairway within the shop.

4.3 The floor areas (agreed at the hearing) are as follows:

| | | |
|--------------|-----------|----------------------------|
| Ground Floor | Retail | 316.33m ² |
| | Store | 62.71m ² |
| | New Store | <u>134.34m²</u> |
| | | 513.38m ² |
| First Floor | Stores | <u>152.06m²</u> |
| | | 665.44m ² |

4.4 The ground floor is in good condition but the first floor is only fair having signs of damp.

4.5 The Property is freehold.

5. ISSUES

(a) The sole issue for Determination in this appeal is the amount of the valuation.

(b) The Appellant contends for a valuation of € 12,000 by reference to a valuation prepared by a local auctioneer (not in attendance at the hearing) whereas the Respondent contends for a valuation of € 33,900 as set out in the final Valuation Certificate.

6. RELEVANT STATUTORY PROVISIONS:

6.1 All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified, or re-enacted by the Valuation (Amendment) Act, 2015 and other statutes.

6.2 In **Revaluation** type appeals, as in this appeal, section 37 of the Act provides that the Valuation Tribunal must reach a determination having regard to the provisions of section 19(5) inserted by section 7 of the of the Valuation (Amendment) Act 2015 as follows:

“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.”

6.3 The Net Annual Value (the **NAV**) of the Property must be determined in accordance with the provisions of section 48 (1) of the Act, as amended, 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.”

6.4 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the basis 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 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.”

7. APPELLANT'S CASE

7.1 Mr. Liam Doyle, on behalf of the Appellant, outlined for the Tribunal that his business dates back to 1979 and is a hardware shop in the town of Swinford which has a population of around 1,400 persons. He had been shocked by the amount of the new valuation and had commissioned a valuation from a local auctioneer with knowledge of the town having an office in both Swinford and Claremorris. This was from Mr. Gerard Hanley of Sherry FitzGerald Hanley, for a valuation of € 12,000 which is roughly a third of the net annual value assessment placed on the property by Tailte Éireann [€ 33,900.] Mr. Doyle stated that the Respondent's valuation was not supported by rental evidence available Daft or My Home. The Respondent, he said, just used other net annual value assessments to justify its stance. He said his view on the valuation had also been endorsed by a local TD from Ballina who knows the town well. He explained that this is a small rural town and that between 5 and 6 businesses have closed in the town in the past year alone.

7.2 In the précis of evidence, prepared by Brendan & Liam Doyle, dated 17th November, 2024, they had submitted a copy of a one page valuation (referred to in 7.1 above) from Mr Gerard Hanley, MIPAV, MMCEPI, REV Principal of Sherry FitzGerald Hanley, Auctioneers, of Chapel Street, Swinford, dated 8th November, 2024. They also submitted comments on the increased cost of doing business with costs rising in various items such as electricity, fuel, labour, insurance, goods, marketing, maintenance, memberships, and vehicle expenses. They also cited the fact that Swinford has experienced an economic downturn in recent years. Unfortunately, in the last twelve months, they stated that five businesses have closed their doors in the town. This has only added to the declining footfall in the area in recent years. They contend that the economic appeal as a retail and business centre has diminished, leading to a reduction in customer volume for existing businesses. They further commented that the financial viability of commercial operations in the area is under strain, which is not, in their view, adequately reflected in the proposed rates [valuation]. They also submitted that the valuation proposed by Tailte Éireann did not comply with that authority's own rules "to provide accurate, up-to-date valuations of commercial and industrial properties".

7.3 In taking questions from the Respondent Valuer, Mr Doyle confirmed that the shop was smaller in the past than it is now and that it was only after representations were made that a Valuer from Tailte Éireann inspected and corrected this from the old records. He agreed a new store had been added in around 2021/22 but was unsure if that was taken into account. He further clarified that his auctioneer had inspected and measured the Property in like manner to the Valuer from Tailte Éireann and had arrived at his valuation overall of € 12,000 by considering each component part. He was asked if he knew there were two branch banks operating in the town and said that there were but the services in AIB were greatly reduced the other being Bank of Ireland. He did not know if this was typical or not for towns in Mayo generally.

7.4 In answer to questions from the Tribunal, Mr. Doyle said he was happy with the measurements /floor areas and he said that he did not provide rental transactions as he was reliant on the auctioneer to give his opinion with knowledge of the town having many properties on his books. He could not explain why the auctioneer had not used rental examples and said demand was poor in the town being an important factor in determining rental value, and that the lack of demand was demonstrated by the closure of 5 businesses that had not been replaced. He was asked about the compilation of the auctioneer’s report and could not offer any explanation as to why there were deficiencies with this in terms of the Tribunal’s rules, but submitted that his auctioneer should be best placed to give an opinion being highly knowledgeable about the town, not being from elsewhere. He clarified that the adjoining building (gift shop) at the front was not part of the present holding and that it had not been rented but had been a separate business that was closed in 2023.

8. RESPONDENT’S CASE

8.1 Ms Ciara Marron, the Valuer for the Respondent, having given the oath, set out in summary the basis of the valuation and other pertinent information from her précis of evidence. Ms Marron explained that the initial Proposed Valuation Certificate which was issued on 23rd September, 2022 had been based on the Valuation Office records dating back to the 1980s. This calculated the valuation at € 24,200 which had been calculated as follows:

| | | | |
|--------------|---------------|---|----------------------|
| Ground Floor | Retail Zone A | 61.61m ² @ € 180.00 per m ² | 11,089.80 |
| | Retail Zone B | 65.81m ² @ € 90.00 per m ² | 5,922.90 |
| | Retail Zone C | 9.04m ² @ € 45.00 per m ² | 406.80 |
| First Floor | Store | 152.06m ² @ € 45.00 per m ² | <u>6,842.70</u> |
| | | | 24,262.20 |
| | | | Rounded to € 24,200. |

Subsequent to the hearing, Ms Marron (as directed by the Tribunal) provided a copy of the actual Proposed Valuation Certificate to the Tribunal by email to vouch for the figures above provided in oral testimony. This confirmed that the total size of the Property, based on the old records, was 288.52m² an area considerably less than the 665.44m² confirmed by the Valuer’s inspection before issuing the Final Valuation Certificate at the consequently higher valuation of € 33,900 on 15th September, 2023.

8.2 Ms Marron had provided a detailed précis of evidence in which she outlined, inter alia, the location, description, tenure and other aspects of the Property in addition to providing the basis of valuation, some local statistics for the rating authority area and commentary on the grounds of appeal and her opinion with supporting comparables, which were supplemented by maps, photographs and a block plan of the building. She made reference to the determination of the Tribunal in VA.00/2/032 Proudlane Limited t/a Plaza Hotel and Commissioner of Valuation issued on 12th January, 2001 and attached that decision in the Appendix to her précis.

8.3 Ms Marron submitted a valuation of € 33,900 as the net annual value of the Property as at 1st February 2022 which she calculated as follows:

| | | | |
|--------------|---------------|---|-----------------|
| Ground Floor | | | |
| | Retail Zone A | 61.45m ² @ € 180.00 per m ² | 11,061.00 |
| | Retail Zone B | 67.03m ² @ € 90.00 per m ² | 6,032.70 |
| | Retail Zone C | 69.40m ² @ € 45.00 per m ² | 3,123.00 |
| | Remainder | 118.45m ² @ € 22.50 per m ² | 2,665.13 |
| | Store | 134.34m ² @ € 22.00 per m ² | 2,955.48 |
| | Store | 62.71m ² @ € 20.00 per m ² | 1,254.20 |
| First Floor | | | |
| | Store | 152.06m ² @ € 45.00 per m ² | <u>6,842.70</u> |
| | | | 33,934.21 |
| | | Rounded to | € 33,900. |

8.4 In support of her valuation she relied upon the following five comparable NAV assessments from Swinford:

Comparable Number 1

PN 1362440

NAV € 15,720.

Hospice Shop

Located at the junction of Main Street and Market Street

This property comprises a ground floor unit of 203.00m² is valued at a Zone A unit value rate of € 180.00 per m², halving back for two other zones, and with a ground floor store/kitchen valued at € 20.00 per m².

Comparable Number 2

PN 1362517

NAV € 18,740.

Pharmacy

Located around the corner from the subject property on Market Street

This property comprises a two storey building with retail on ground and stores at first floor with a total size of 415.77m² and it is valued at a Zone A unit value rate of € 180.00 per m², halving back for two other zones and a remainder area with a store valued at € 20.00 per m² and first floor store valued at € 45.00 per m².

Comparable Number 3

PN 1362454

NAV € 27,800.

AIB Bank

Located diagonally opposite the subject property on Main Street

This property comprises a three-storey bank building with banking hall on ground and two floors of offices above with a total floor area of 435.50m² and it is valued at a Zone A unit value rate of € 180.00 per m² with the banking hall valued at an overall unit value rate of € 108.00 per m² and the ground floor offices valued at € 20.00 per m². The first and second floor offices are valued at unit value rates of € 45.00 and € 30.00 per m² respectively.

Comparable Number 4

PN 1362545 [corrected from previous PN at the hearing]

NAV € 32,500

Now vacant

Located on Barrack Street/Bridge Street a short distance south east of the subject property

This property comprises a total of 594.97m² spread over ground and two upper floors. It is valued at a Zone A unit value rate of € 160.00 per m² with a ground floor store valued at € 20.00 per m² and upper floor stores/office at € 45.00 per m² and second floor offices at € 31.50 per m².

Comparable Number 5

PN 1362536

NAV € 29,200

McDonnell Kitchens

Located further along Barrack St/Bridge Street from Comparable Number 4

This property comprises a ground floor retail unit plus a modern workshop with a total of 530.55m² and is valued at a Zone a unit value rate of € 160.00 per m², halving back for Zone B and with the workshop (323.47m²) valued at a unit value rate of € 16.00 per m².

None of the above comparable net annual values were subject to representations by ratepayers, no agents were involved and they were not subject to appeals to the Tribunal.

8.5 Ms Marron provided the Standard Declaration and Statement of Truth in her written evidence in full compliance with Rule 41 of the Valuation Tribunal (Appeals) Rules 2019.

8.6 In taking questions from the Appellant, Ms Marron confirmed that she had not submitted rents in her evidence; that the scheme of valuation for the town had been developed by looking at rents across Mayo and discounting these, being rents mainly from the larger towns, for the smaller towns. This led to adopting a Zone A unit value rate of € 180.00 per m² for Main Street & Market Street, Swinford with a lesser Zone A rate of € 160.00 per m² for Barrack Street. She was asked about the population of Castlebar which she said was considerably larger than Swinford and confirmed that the Zone A level for the prime street in that town was € 420.00 by contrast to Swinford. She clarified that for Charlestown the prime Zone A rental is € 160.00 with other secondary streets valued at € 160.00 Zone A.

As to how the Zone A level was determined, she said information in a Revaluation is requested from ratepayers and after analysis of these rents an appropriate level is struck to represent the rental value levels at the valuation date [1st February, 2022]. The Appellant asked her if she considered his auctioneer's report to be wrong, to which she responded that she could not ascertain what the auctioneer's opinion was based on. She confirmed that she did not contact the auctioneer for clarification on the figure adopted in his report. She confirmed that if he had made reference to comparables in his report that she would have investigated those but that he had not done so.

8.7 In taking questions from the Tribunal, Ms Marron confirmed that in regard to her comparables she said:

Comparable Number 1 is a hospice shop with a corner location and that it was zoned from Main Street. It had much greater frontage than the subject and further she was not aware of any rent for it. No details were sent to Tailte Éireann on the rent for this property.

Comparable Number 2 is a pharmacy on another street with a large store to the rear and assumes it has a physical division (solid wall) between the shop and store to account for the unit value rate of € 20.00 per m² as they normally adopt a rate which is a percentage of the applicable Zone A rate. The first floor store is valued at € 45.00 per m² in line with the Tailte Eireann approach for such areas and she explained that the reason for the difference between the ground floor stores at € 20.00 versus first floor stores at € 45.00 is partly due to the fact that upper floor stores tend to be a combination of stores and offices and thus it is more in the nature of a "general" unit value rate.

Comparable Number 3, the AIB bank, contains a rear office that is valued at € 20.00 per m² with the first floor offices valued at € 45.00 per m² (the same level applied to the first floor in the subject Property). Notwithstanding, Ms Marron regards the first floor in the subject as inferior to the offices over a bank and accepts the distinction

Comparable Number 4 is currently vacant but was retail before, possibly a pub, and as clarified by the Appellant, it was a Centra about 12 years ago, but has not been in use for some time.

Comparable Number 5 is a corner building (kitchen showroom) and although it is a good quality building it is located on an inferior street and could possibly be valued higher because of dual frontage. It adjoins a car park.

With regard to the subject Property, Ms Marron clarified the reason for the increase in the initial valuation of € 24,200 to € 33,900 which is set out in paragraph 8.1 of this Determination. In answer to further questions she confirmed that for her Comparable Number 1 an allowance had not been made for return frontage. She said Market Street and Main Street are the best retail locations in the town but disagreed with the Chair that where the streets intersect (Market Street, Main Street and Barrack Street) was as good because it heads into Barrack Street. Much of this is due to the locations favoured by the two banks. It would appear that two other properties in the town of similar scale to the subject Property were not provided but might yield useful information as they appear on the Valuation List to be valued at a Zone a level of € 160.00 per m². [see paragraph 8.8 below]

She confirmed that the access to the first floor in the subject Property is internal only, from the shop. She said that the access to the first floor over the pharmacy unit (Comparable Number 2) is separate. This was confirmed by the Appellant. With regard to her Comparable Number 5 no allowance has been made for return frontage. She said that Tailte Eireann might usually add 10% or so for that feature. The workshop in this Comparable Number 5 is valued at € 16.00 per m² contrasted to € 22.00 per m² in the subject Property and Ms Marron felt that this is partly due to the size differential but she was not sure when the other store was built. She agreed that the PN number for Number 4 is not as shown but is PN 1362545. She said that she did not include rents from other towns and would find it difficult to directly compare the towns. She said several nearby towns are inferior with higher levels of vacancy with corresponding lower net annual values. She said that the lowest level applied in Mayo is Charlestown at Zone A of € 140.00 per m².

8.8 At the hearing the Tribunal directed that the Respondent provide a breakdown of the valuations for PN 1362485 Eurospar and PN 1362530 Mr Price as these properties appeared to share similar characteristics to the appeal property but had not been advanced in evidence by either party. The Respondent provided these details subsequently, by email, which the Appellant was offered an opportunity to comment on but no comments were received by the Tribunal from him. In summary, the details provided by the Respondent are as follows:

PN 1362485 Eurospar NAV € 41,500.

| Level | Use | Area (m2) | NAV (€ per m2) | NAV (€) |
|-------|--------------------------|-----------|----------------|------------|
| 0 | STORE | 61.44 | €20.00 | €1,228.80 |
| 0 | RETAIL ZONE A | 69.69 | €160.00 | €11,150.40 |
| 0 | RETAIL ZONE B | 104.75 | €80.00 | €8,380.00 |
| 0 | RETAIL ZONE C | 105.75 | €40.00 | €4,230.00 |
| 0 | RETAIL ZONE REMAINDER | 317.94 | €20.00 | €6,358.80 |
| 1 | STORE | 174.95 | €45.00 | €7,872.75 |
| 2 | STORE | 74.88 | €31.50 | €2,358.72 |

In regard to the valuation of Eurospar, the Respondent states that this is an error as surrounding properties are valued at the Zone A level of € 180.00 per m².

PN 1362530 Mr. Price NAV € 43,500.

| Level | Use | Area (m2) | NAV (€ per m2) | NAV (€) |
|-------|--------------------------|-----------|----------------|------------|
| 0 | STORE | 166.56 | €20.00 | €3,331.20 |
| 0 | RETAIL ZONE A | 103.7 | €160.00 | €16,592.00 |
| 0 | RETAIL ZONE B | 103.7 | €80.00 | €8,296.00 |
| 0 | RETAIL ZONE C | 99.48 | €40.00 | €3,979.20 |
| 0 | RETAIL ZONE REMAINDER | 381.65 | €20.00 | €7,633.00 |
| 1 | STORE | 83.46 | €45.00 | €3,755.70 |

In the note from Tailte Éireann confirming these details they provide an overall unit value rate for the ground floor (retail plus store) of € 46.58 per m².

9. SUBMISSIONS

There were no legal submissions in this case.

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, equitable and uniform 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 Mayo County Council.

10.2 This is a Revaluation appeal, the determination of which seeks to establish a correct, equitable and uniform net annual value for the Property as at 1st February, 2022, being the valuation date specified in the Valuation Order. It is usual in Revaluation type appeals to consider appropriate rental evidence from actual leasing/letting transactions, in addition to comparable net annual value assessments to best guide that exercise. Neither party, Appellant or Respondent, submitted **actual rental transaction** evidence in support of their opinions.

10.3 The main ground of appeal in this case is partly centred on the amount of rates payable which it is evident was primarily as a result of some change in the rates payable on account of the Revaluation, and then, subsequent to an inspection of the Property, by a further increase in the valuation because of a correction to the floor area that was previously relied upon by Tailte Éireann for valuing the property. In order to explain fully what has occurred here it is worth outlining that prior to the revaluation coming into effect in January 2024, the property would have been assessed on the old system which calculated a Rateable Value based on the net annual value as at 1st November, 1988 and to this would be applied a reducing factor to derive a rateable value. This would be, in relation to modern Revaluation figures, a correspondingly low figure and an annual

rate on valuation (**ARV**) applied to it would thus be higher-in this case € 78.42. A review of his rates bill for 2023 should provide clarity. Accordingly, with the Revaluation and the establishment of an updated system, that old system and the records upon which the valuation was based are consigned to history. Whilst valuations increase across the rating authority area following a revaluation, the annual rate on valuation is correspondingly brought down, in line with a statutory formula limiting the level of this ARV, which results in the ARV for 2024 being 0.2350. By making representations in connection with the original proposed valuation of € 24,200 at the Revaluation, the Appellant invited an examination of the facts and floor areas on which that was based, which were shown not to include areas that were previously not valued (new build and expansion) thereby causing the valuation to be increased to € 33,900 following inclusion of the up to date physical position containing the larger retail area and new stores.

10.4 Accordingly, it will be appreciated that the commercial rates bill that a ratepayer receives contains two distinct components; a **valuation** and an annual rate on valuation (**ARV**), the latter being fixed by each rating authority area every year. The Valuation Tribunal's scope of authority is in the determination, on appeal, **only** of the valuation. It is worth stating here for clarity that this Tribunal is independent of both Tailte Éireann and the rating authority, Mayo County Council, and is not a party to any communications between these bodies and the ratepayer. The Valuation Tribunal is only empowered to set a correct **valuation** for the property; it has no function with the adjudication of rates bills, as such, nor can it provide other remedies to assist in payment concessions, business supports or the like. The Tribunal only becomes involved in this process once an appeal is made and has no access to prior records of rates payments or other information, historic or otherwise, which is held either by the local authority or Tailte Éireann.

10.5 The Tribunal decides on the appeal having regard to the grounds of appeal as further amplified in the Appellant's précis of evidence and oral testimony and the responses to that by the Respondent. The Tribunal is not concerned with exchanges between the parties in the timeframe leading up to the hearing and such information from those negotiations is inadmissible as it represents parties engaging in what are deemed to be confidential "without prejudice" discussions, because if such were to be admitted they could distort the independent determination that would otherwise be reached by the Tribunal. At the conclusion of the hearing in this appeal, the Appellant attempted to refer to email exchanges with Ms Marron which the Deputy Chairperson ruled as inadmissible, in case privileged information that might be qualified could be revealed, and wrongly introduced, which would be contrary to normal practice in the conduct of rating appeals.

10.6 The implied acquiescence of ratepayers to the level of valuation applied to their properties must be cautiously evaluated, where they have not mounted initial representations or subsequent appeals against the net annual value fixed by Tailte Éireann, **especially in the early stages** of a Valuation List, where the general tone of values has not been afforded the opportunity to be fully tested. This is because, in the case of unrepresented ratepayers, their primary interest will, most probably, be in the amount of the ultimate rates bill, rather than any concern with the niceties of the valuation itself. If, following a revaluation, their liability (i.e. amount of rates payable) is reduced or remains the same as before, they would have no compelling reason or incentive to seek to challenge the level of the **valuation**. As a consequence, they may not then seek professional

advice, either, thus leaving the veracity of the valuation unquestioned. Evidence of unchallenged net annual values appearing on the Valuation List must be closely examined, as the mere fact that representations or appeals have not been made in respect of them, should not lead, inevitably, to the conclusion that those valuations are sacrosanct or above question.

10.7 Before dealing in some depth with the pure valuation aspects of this appeal, the Tribunal finds that other aspects of this appeal, being, in summary the amount of rates, (explained in paragraph 10.3 above), increases in outgoings generally; decline in rural towns such as Swinford, and correct application of the law and rules to be factors affecting all ratepayers, to the extent that the advantages and disadvantages of any town and demand in that town should be reflected in the level of rents that are achievable. In this appeal, however, as neither party submitted actual rental transactions, the exercise is necessarily confined to a consideration of the opinions expressed and to the comparable net annual values appearing on the Valuation List cited in evidence.

10.8 The Appellant included a very brief opinion of the valuation from a local auctioneer in his précis of evidence. This amounted to less than half an A4 page giving a brief view of the property, floor area and providing a rental value of € 12,000 per annum. No calculations were shown in this report to indicate how this valuation had been arrived at (customarily expected to be a unit value per square metre for each component part of a property) and no supporting comparables, be that rental or other net annual value assessments from retail premises in Swinford, were submitted either. This report was deficient in many respects but most notably failed to comply with Rules 34-41 of the Valuation Tribunal (Appeals) Rules 2019. As the author of the report was not called by the Appellant to give evidence in person, it was not possible for him to be cross examined by the Respondent or to take questions from the Members of the Tribunal. Any Valuer instructed to provide a valuation report for the Tribunal should, not unreasonably, be expected to consult the appropriate legislation relevant for that basis of valuation; undertake adequate research by reading other determinations of the Tribunal website and, at the minimum, to consult the rules. Likewise email interventions by others such as local politicians cannot be admitted to influence either the Respondent Valuer or the Tribunal itself. Both parties, Appellant and Respondent, must be allowed have equal voice before the Tribunal in the interests of fair procedures, with the Tribunal assisting, within normal modes of operation, a degree of flexibility in that conduct as regards unrepresented Appellants.

10.9 Accordingly, in reviewing the evidence the Tribunal finds as follows:

Appellant. The report lodged by the Appellant from his auctioneer was deficient in that it failed to state the basis of valuation from the valuation Act 2001 but referred to a current open market rental value; rather than a valuation on the valuation date of 1st February 2022; it did not provide calculations; it did not provide adequate text on the usual factors to be found in such a report; it did not contain the standard declaration and statement of truth required to comply with the Tribunal's rules, it did not contain any supporting comparables indicating how such an opinion was grounded. Aside from this report no other evidence such as rents were submitted and the comments by the Appellants regarding other matters to be considered were matters that would affect all ratepayers, equally, in that location. Much reference was made to rents but no specific examples were put forward that might allow the Respondent Valuer investigate or the Tribunal examine. The onus in rating appeals lies with the Appellants to make their case; it is not for the

Respondent to do so. If an expert is engaged by an Appellant it is expected they would be prepared to attend a hearing to give sworn testimony and to take questions on their report.

Respondent. The Valuer for the Respondent provided a fully compliant précis of evidence and offered an opinion with calculations to demonstrate how her opinion at € 33,900 had been arrived at. She provided five comparables from the Valuation List in support of her opinion and attended the hearing to be cross examined by the Appellant on those and to answer questions from Tribunal members.

Comparable Number 1. NAV € 15,720.

This indicates a retail level of € 180.00 Zone A but with no allowance for return frontage giving it better profile than the subject. Store and kitchen at ground level valued at € 20.00 per m² and this property is much smaller (at 203.00m² overall than the subject at 665.44m²). Similar location but better profile. The Respondent analyses this NAV, of € 15,720, alternatively, at an overall unit value rate of € 77.44 per m² which she states is much higher than the corresponding overall unit value rate for the ground floor of the subject (excluding the new store) at € 57.33 per m². This valuation assessment was not subject to representations or an appeal. The Tribunal calculates the overall unit value for the ground floor of the subject-but excluding the new store of 134.34m², at € 63.68 per m² (Zones A-C plus remainder 316.33m² plus old store of 62.71m² equals 379.04m²; values of these summated at € 24,136,03 being € 11,061.00 +€ 6,032.70+ € 3,123.00 + € 2,665.13 + € 1,254.20 then divided by 379.04m²).

Comparable Number 2. NAV € 18,740.

This is a pharmacy on the neighbouring street exhibiting similar location characteristic to Main Street. The property is retail on ground with stores at first floor comprising a total size of 415.77m² and it is valued at a Zone A unit value rate of € 180.00 per m², halving back for two other zones and a remainder area, with a store valued at € 20.00 per m² and a first floor store valued at € 45.00 per m². The Tribunal is not persuaded that the first floor in this property is similar to the first floor in the subject having, as far as can reasonably be established, separate access from the front, rather from the subject, where the first floor is only accessible from within the shop. Both first floors are valued at € 45.00 per m².The Respondent gives an overall unit value rate for the ground floor (including store) being an area of 277.27m² of € 45.12 which contrasts with the overall unit value rate on the ground floor of the subject at € 63.68 [recalculation by Tribunal]. This valuation assessment was not subject to representations or an appeal.

Comparable Number 3. NAV € 27,800.

This property comprises a three storey bank building with banking hall on ground and two floors of offices above with a total floor area of 435.50m² and it is valued at a Zone A unit value rate of € 180.00 per m² with the banking hall valued at an overall unit value rate of € 108.00 per m² and the ground floor offices valued at € 20.00 per m². The first and second floor offices are valued at unit value rates of € 45.00 and € 30.00 per m² respectively. The difficulty in comparing this to the subject arises from the treatment of part as banking hall with a slight departure from normal zoning metrics. The Respondent has given an overall unit value rate for the ground floor being 153.11m²

of € 109.14 per m² contrasted to the level applied to the ground floor of the subject at € 63.68 per m² [recalculated by the Tribunal].

Comparable Number 4 NAV € 32,500.

Located on Barrack Street/Bridge Street a short distance south east of the subject property and looks to be inferior location when compared with the subject Property. It is vacant.

This property comprises a total of 594.97m² spread over ground and two upper floors. It is valued at a Zone A unit value rate of € 160.00 per m² with a ground floor store valued at € 20.00 per m² and upper floor stores/office at € 45.00 per m² and second floor offices at € 31.50 per m². The Respondent provides an overall unit value for the ground floor of € 66.32 [€ 66.35] which contrasts with the value of the ground floor in the subject at € 63.68 per m² [recalculated by the Tribunal]. By cross check with the figures for this property on the Valuation List some values appearing in the precis are not in keeping with those on the List and as the values total € 32,554.20 on the List and the metrics are correct, the Tribunal adopts those as being correct. Likewise, Zone B is 69.54m² not 69.34m². Doubts were expressed over what this property was used for at the valuation date and it could be that the valuation was based on old records but it at least shows an intent by Tailte Éireann to value a retail property in this location at a Zone A rate of € 160.00 per m². This valuation assessment was not subject to representations or an appeal.

Comparable Number 5 NAV € 29,200.

Located further along Barrack St/Bridge Street from Comparable Number 4. This is on the periphery of the town and therefore it is clear why a Zone A level less than € 180.00 has been adopted. It comprises a ground floor retail unit plus a modern workshop with a total of 530.55m² and is valued at a Zone a unit value rate of € 160.00 per m², halving back for Zone B and with the workshop valued at a unit value rate of € 16.00 per m². The workshop accounts for approx.. 61% of the total size. No allowance has been made in the valuation for return frontage which appears strange. Although the location is inferior to that of the subject, being close in size overall to the subject (530.55m² versus 665.44m² in the subject) makes it relevant. The Respondent offers the view in her precis that the ground floor overall (including the workshop) equates to €55.10 per m², despite 61% of the building being valued at just €16 per m². This valuation assessment was not subject to representations or an appeal.

Further Comparables identified by the Tribunal

PN 1362485 Eurospar Market Street and PN 1362530 Mr Price NAV

Whilst the Appellant did not introduce these other two important comparables that were identified by the Tribunal, it would seem appropriate to take these into account, given the provisions of section 37 and section 19(5) of the Valuation Act 2001, as amended, and the fact that these properties are most similarly circumstanced to the subject Property. However, given the Respondent's explanation that, the valuation of PN 1362485 (Eurospar) is a mistake, that valuation must be dismissed. This leaves the other comparable PN 1362530 (Mr Price) which is a similar large size (total floor area 938.55m² versus subject Property total floor area 665.44m²) to the subject Property and occupies, in the views of the Tribunal, a better or equal location in the town. This comparable then is of assistance, given the absence of rental evidence or the availability of tested/agreed net annual values that might guide the Tribunal.

PN 1362530 Mr Price Barrack Street NAV € 43,500.

This comprises a total of 938.55m² with ground floor retail being 688.53m²; a ground floor store of 166.56m² and a first floor store of 83.46m². It is valued at a Zone A unit value rate of € 160.00 halving back for two other zones plus a large remainder area with the ground floor store valued at € 20.00 per m² and the first floor store at € 45.00 per m². Whilst the address is Barrack Street on the valuation list it is at the intersection of Market Street and Main Street and faces up Main Street. Although in total at 938.55m² it exceeds the total size of the subject property of 665.44m² by some 41% it is close enough in size to be worthy of consideration there being a clear paucity of comparables. The total NAV is € 43,500 contrasted to the subject Property at NAV € 33,900 even though the retail area within it is 688.53m² contrasted to the pure retail area in the subject Property of only 316.33m². Thus considering the locational advantages of this comparable it offers far better value to the hypothetical Tenant than the subject. The unit value rate for the ground floor area overall (retail plus store) is given as € 46.58 per m² which contrasts with the ground floor in the subject Property (excluding the new store) of € 63.68 per m².

10.10 (a) Taking a careful review of the available evidence, it seems clear to the Tribunal that, firstly, in regard to the retail element in the Property, it is evident that a Zone A unit value rate could be applied to a standard type of shop in Main Street of € 180.00 per m² as the Respondent has done but the difficulty is that this Property is not standard. It is much larger than the typical shop when the stores elements are added in, thus making it less appealing, overall, to the hypothetical tenant on the open market on 1st February 2022. Consequently, the Tribunal considers that some small discount must apply to the Zone A rate to reflect the overall size and character of the Property. It is considered that a Zone A unit value rate of € 170.00 per m² would be appropriate to apply in the circumstances, which represents a discount from the € 180.00 level of 5.56%. This adjustment brings the overall unit value rate on the ground floor (retail plus store of 379.04m² i.e. excluding the new store) to € 60.33 per m². This better aligns the value in the range of overall ground floor unit value rates best shown by Comparables 1 and 2 and Mr Price of € 77.44 (area of 203m²) greater profile with return frontage; € 45.12 per m² (area of 277.27m²) and € 46.58 per m² (area of 855.09m²).

(b) Secondly, the Tribunal cannot find grounds to adjust the unit value rates that have been applied by the Respondent to the two stores at ground level. These are fairly valued in line with other properties.

(c) Finally, in regard to the first floor stores, it appears to the Tribunal that these are overvalued, being caught in the category of first floors that seem to include a range of stores at one end of the spectrum to offices at the other end. This is due to the fact that only a small portion of properties can be inspected for a Revaluation as resources are limited. The area at first floor is purely stores and is accessed only from a staircase within the shop and has limited use potential demonstrated by the fact it is not in active use at present. A unit value rate that has been applied of € 45.00 per m² seems to go against accepted valuation practice as that puts it in excess of the level applied to ground floor stores and, furthermore, represents a unit level equal to the existing level of value

applied to retail Zone C in this location. Accordingly, the Tribunal adopts a unit value rate on this part of the Property of € 20.00 per m².

10.11 In conclusion the Tribunal wishes to address the point made by the Respondent Valuer in her submission concerning the onus of proof being on the Appellant and reliance being placed on the decision of the Tribunal in VA.00/2/032 Proudlane Limited t/a Plaza Hotel and Commissioner of Valuation. That principle is often quoted and is accepted by the Tribunal. The Appellant here has demonstrated that the valuation is excessive because, having “opened the door”, so to speak, to enquire into its compilation, that brings the expertise of the Tribunal panel to bear on the calculations of the valuation and how those values are grounded.. The Tribunal, by reviewing the evidence and any other comparable on the Valuation List, consider that the valuation must be adjusted. In other words the mandate of the Tribunal from sec. 37 and 19(5) of the Valuation Act 2001, as amended, cannot be supplanted, as otherwise errors would prevail to distort the integrity of the Valuation List. Difficulties can arise in interpreting the pattern of net annual values for various reasons, including the update position on records for each property examined, but the Tribunal seeks to act fairly in reviewing the information but is nonetheless confined to consider what is laid before it as well as what it can reasonably uncover, with time and limited resources, in its quest to fulfil the role assigned to it.

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 **€ 28,850**

This is calculated as follows:

| | | | |
|---------------------|---------------|---|-----------------|
| Ground Floor | | | |
| | Retail Zone A | 61.45m ² @ € 170.00 per m ² | 10,446.50 |
| | Retail Zone B | 67.03m ² @ € 85.00 per m ² | 5,697.55 |
| | Retail Zone C | 69.40m ² @ € 42.50 per m ² | 2,949.50 |
| | Remainder | 118.45m ² @ € 21.25 per m ² | 2,517.06 |
| | Store | 134.34m ² @ € 22.00 per m ² | 2,955.48 |
| | Store | 62.71m ² @ € 20.00 per m ² | 1,254.20 |
| First Floor | | | |
| | Store | 152.06m ² @ € 20.00 per m ² | <u>3,041.20</u> |
| | | | 28,861.49 |
| | | Rounded to NAV | € 28,850 |

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.