

Appeal No: VA23/5/1052

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

SARAH GLEESON

APPELLANT

and

TAILTE ÉIREANN

RESPONDENT

In relation to the valuation of

Property No. 1085122, Retail (Shops) at 2 Henry Street, Kilrush, County Clare.

B E F O R E

Barra McCabe – BL, MRICS, MSCSI

Killian O'Higgins – FSCSI, FRICS

Fiona McLafferty – Solicitor

Deputy Chairperson

Member

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF APRIL 2026

1. THE APPEAL

1.1 By Notice of Appeal received on 19th 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 €18,100.

1.2 The 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 Valuation Act 2001 (as amended) because:

"(a) The Valuation is Incorrect

(b) Details stated in the relevant Valuation List are incorrect

In relation to the overall valuation of our property, the breaking up of the property into different Retail Zones is applicable in large urban and shopping centres. To apply such techniques to some small market towns is unnecessary and results in distorted rental levels. Given the vacancy levels within the Kilrush market currently is 24.7%. A rental of level of Eur18,100 is not possible.

On the valuation certificate the Floor Level 1 - Store has been given a rate Euro per m2 great than [sic] Retail Zone C and Retail Zone Remainder, it is a first-floor store with no retail use, no direct access to the street, accessed by internal stairs and is not used for anything but a store. As an example, 31/32/33 Hector Street, Kilrush, Co Clare - Property Number 1085399 Tailte Eireann applies a rate of Eur25 per m2. This is a ground floor store with direct access to the street.

Based on the above information, a rate of Eur10 per m2 should be applied.

The aim of the Reval 2023 was to reflect the current rates paid but to bring the rateable valuation system into the 21st century. Our current rates bill is Eur 2,780.19 with the proposed Eur2,862.13. I believe the above is a fairer and equalable [sic] valuation for our property and we ask that rule in our favor[sic].

On the valuation certificate - Floor 1 is greater in size to Floor 0, which is technically impossible. Both floors are identical in size and take up the same footprint. Floor 1 - Store is 128.12 m2 not the 144.30m2 stated on the certificate. Floor 0 is 129.32 on the certificate. Tailte Eireann should remeasure Floor 1'

1.3 The Appellant considered that the valuation of the Property ought to have been determined in the sum of €11,448.50.

2. REVALUATION HISTORY

2.1 On 23rd September 2022 a proposed valuation certificate issued under section 24(1) of the Valuation Act 2001 in relation to the Property was sent to the Appellant indicating a valuation of €18,100.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation on 31st October 2022 with an opinion of value of €5,972.40. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A final Valuation Certificate issued on 15th September 2023 stating a valuation of €18,100.

2.4 The Appellant lodged an appeal with the Tribunal on 19th October 2023 with an opinion of value of €11,448.50, revised in the Appellant's submission to the Tribunal to €12,256.34.

2.5 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 ('the valuation date').

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on 15th October 2025. At the hearing the Appellant was represented by Mr Paul Gleeson, and the Respondent was represented by Mr Conor Murphy of Tailte Éireann.

3.2 At the hearing, Mr. Gleeson and Mr. Murphy both agreed to amend the title of the Respondent to Tailte Éireann from the Commissioner of Valuation.

3.3 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 affirmation, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

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

4.2 The Property is situated on the east side of Henry Street, Kilrush, which forms part of the N67 national road leading to Kilkee and Killimer. Henry Street is the prime retail street in the town of Kilrush.

4.3 The property comprises a two-storey shop with retail hardware use on the ground floor and stores on first floor. There is no independent access to the first floor from the street, instead there is internal access only.

4.4 The floor areas agreed between the parties are as follows and represent a reduction to the first-floor area contained in the final certificate.

	Floor	M ²
Retail Zone A	0	33.36
Retail Zone B	0	28.76
Retail Zone C	0	32.5
Retail Zone Remainder	0	38.82
Store	1	117.86
Total		251.3

5. ISSUES

5.1 The only issue in the appeal is the quantum of the valuation on the first floor. The NAV of the ground floor is agreed between the parties.

6. RELEVANT STATUTORY PROVISIONS

6.1 All references to a 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.

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

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

6.3 Section 48(3) of the Act provides the following meaning of ‘net annual value’:

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

6.4 Section 20(1) of the Act provides:

“A valuation order shall specify one date by reference to which the value of every relevant property, the subject of the valuation mentioned in the order, shall be determined.”

6.5 Section 19(5) of the Act provides:

“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. Gleeson affirmed that he had provided a single document to the Tribunal, which was a letter dated 28th June 2025, and adopted this letter as his evidence in chief.

7.2 Mr. Gleeson stated that he had a short submission to make. He and others had attended several meetings in relation to the Co. Clare revaluation. He understood that the purpose of the revaluation was not to increase rates but to update the basis of valuation to provide a more efficient method of revaluing property in the future. Mr Gleeson said that it was very difficult for a small business in a small town to take a 50% increase in rates liability from €2,885.73 to €4,325.50.

7.3 Mr. Gleeson said that he accepted the approach of the Respondent in relation to the ground floor. His issue was the approach taken on the first floor. Mr. Gleeson stated that the Respondent had identified a rate €55 per square metre (psm) for the entire of the first floor. Mr. Gleeson accepted that it was a store but, probably, it was full of family antiques of over 50 years vintage. It had next to no commercial value yet made up almost one-third of the NAV based on Mr. Murphy's analysis at section 6.2 of his précis of evidence.

7.4 Mr. Gleeson contended that the Property is the only premises in Henry Street that has a first-floor storage space. The first floor is accessed in the middle of the ground floor; it has no direct access to the street and can only be used as a storage space connected with the shop.

7.5 Mr. Gleeson referenced the sliding scale approach (zoning) that the Respondent adopted on the ground floor, right down to the "remainder" of the retail zone, at a rate of €22.50 psm for the "very, very back of our shop" which, he stated, was long and narrow. Mr Gleeson questioned the logic used in applying a rate of €22.50 psm to the rear of the retail area whilst attributing €55.00 psm on an area of the first floor that is of no retail value and is only used as a store.

7.6 Mr. Gleeson questioned the fairness and logic of the €55.00 psm approach on the first floor. Mr. Gleeson stated that, in his opinion, at a minimum the NAV on the first floor should be lower than the €22.50 psm that Tailte Éireann had included in the valuation of the retail "remainder" zone on the ground floor.

7.7 Mr. Gleeson suggested that halving the “remainder” rate at ground floor would be appropriate and therefore the NAV should be €11.25 (€22.50 x 50%) psm which would bring the overall NAV down to €12,256.34, which was the level he was contending for the Property.

7.8 Mr. Murphy declined the opportunity to cross-examine Mr. Gleeson on his evidence.

8. RESPONDENT’S CASE

8.1 Mr Murphy stated that the Property was a centrally located, two-storey, mid-terraced, hardware shop with overhead accommodation, situated on Henry Street, one of the principal shopping streets, in Kilrush, Co. Clare.

8.2 Mr. Murphy said that the Property comprises of a highly visible retail unit with a first-floor store. The ground floor of the Property is open throughout with stairwells at the midpoint and also at the rear. Both stairwells lead to the first-floor store. There was a high volume of passing pedestrian and vehicular traffic.

8.3 Mr. Murphy pointed to photographs in his précis and specifically the first floor. The Property, according to Mr. Murphy, appeared to be in good condition throughout.

8.4 Mr. Murphy stated that the floor areas had been agreed with the Appellant and that the property was held freehold.

8.5 Mr. Murphy offered two Key Rental Transactions (KRT’s), details contained in Appendix 1 (N/A to public).

8.6 Mr. Murphy offered four NAV comparisons summarised as follows with details contained in Appendix 2 (N/A to public).

Property Number	Address	NAV per sq.m	NAV
1085210	40 Henry Street, Kilrush	€180 Zone A/FF - €55 psm	€8,900
1085378	2 Frances Street, Kilrush	€180 Zone A/FF - €55 psm	€14,370

1085155	Henry Street, Kilrush	€180 Zone A/FF - €55 psm	€13,040
1085177	24A Henry Street, Kilrush	€180 Zone A	€6,340

8.7 Three of the four comparative properties offered were on Henry Street and the other nearby at “Frances Street”. In respect of each of the NAV comparison, Mr. Murphy stated that no representations were received from the occupiers, no agents were retained and there was no appeal to the Tribunal.

8.8 Addressing the Appellant’s evidence Mr Murphy stated that the Appellant's précis was very limited and contained no evidence of any comparable property on the list, although in the appellant's Notice of Appeal listed an industrial store PN1085399 as a comparable 198 sq.m at €25.00 psm with a NAV of €4,950. Mr Murphy contended that this was a property which differs materially in both character and type from the subject property. It did not share sufficient similarity to be considered a valid comparison.

8.9 According to Mr. Murphy, the Property was primarily a retail unit with first floor accommodation in use as a store, and not a standalone purpose-built industrial store.

8.10 Mr Murphy said that access to the first floor from the ground floor retail area is not unusual and offers an enhanced use of the first floor to provide for further retail space. It also provided good access to potential stores and office. The rate of €55 psm was derived from office over the shop comparables with appropriate adjustments for units with internal access only. Valuation levels were derived from analysis of relevant market information in respect of comparable properties and applied to the Property.

8.11 The floor areas of the Property had been updated and agreed post inspection as there was as a factual difference to the areas that were on the list. This was resolved to the Appellant’s satisfaction.

8.12 Mr. Murphy said that the Property had been valued in line with the NAV comparisons listed in his précis with particular attention to his NAV comparison 1, 2 and 3, which have first floors valued at €55 psm which is the same as the Property.

8.13 Mr. Murphy stated that the onus of proof lay with the Appellant. The Appellant provided just one piece of comparable evidence to support his contention for a first-floor valuation level of €11.25 psm. However, this comparable was industrial in nature and is not comparable to the subject property.

8.14 Mr. Murphy affirmed his opinion of value as follows:

Use	Level	Floor Area (sq.m)	NAV per sq.m	NAV
Retail Zone A	0	33.367	€180	€6,006.06
Retail Zone B	0	28.757	€90	€2,588.13
Retail Zone C	0	32.503	€45	€1,462.64
Retail Zone Remainder	0	38.824	€22.50	€873.54
Store	1	117.864	€55	€6,482.52
	Total NAV			€17,412.89
	NAV, Say			€17,410

Cross Examination

8.15 Mr. Murphy agreed with Mr. Gleeson that the first floor had been valued at €55 psm whether it was an office, store or another use. Mr. Murphy agreed that the first floor of the Property could not be used as offices due to its current condition, but it had natural light.

8.16 Mr. Murphy said that it had been valued in line with similar type properties in the local authority area. The NAV psm level whether first floor store or office over the shop was €55 psm which Mr. Murphy agreed with Mr. Gleeson that he had not offered evidence of first floors in Kilrush but said that the evidence offered was on the list in Co. Clare and therefore relevant evidence.

8.17 Mr. Murphy said that his KRT2 provided evidence of a first floor where both offices and store were office valued at €55 psm.

8.18 Mr. Murphy agreed that Ennistymon was a different town to Kilrush but said that both were in Co. Clare, the same local authority area. Mr. Gleeson said that the comparison was about as relevant as Crumlin was to South Anne Street in Dublin. Mr. Gleeson said that as a convenience

store trading from 7am to 9pm every day, the rental level for a convenience store would be higher than a hardware store.

8.19 Mr. Murphy contested Mr. Geeson's assertion that the KRT2 was not comparable to the Property saying it was in the same local authority area and a similar sized town. Whilst a different location it was deemed to be comparable to the Property in that it is a town of somewhat similar size, albeit not a main town, it was a peripheral or a smaller town. Mr. Murphy stated that the evidence in Ennistymon offered strong support for his NAV valuation psm at first floor. Mr. Murphy rejected Mr. Gleeson's observation that as a convenience store, possibly with an off-licence, the KRT2 was not comparable to the Property. Mr. Murphy said that the Respondent was valuing the property, not the business. He also stated that opening hours were a matter for the individual occupiers and that off-licences are separately valued as outlined in the KRT2 comparative analysis.

8.20 In relation to Mr. Murphy's NAV Comparison 1, Mr. Gleeson contended that the first floor was a fully fitted commercial kitchen, valued at €55.00 psm. Mr. Murphy responded that he had not inspected the property but a colleague at Tailte Éireann would have done so in the past. Mr. Murphy accepted Mr. Gleeson's evidence that it was a commercial kitchen. Mr. Gleeson stated that his half-finished store across the road, at first floor, was valued the same as a property with a commercial kitchen. Mr. Murphy responded that a hypothetical tenant, if they were to move into the Property, could potentially refit the first floor, to convert it to office or kitchen use, at some cost. Two stairwells made the space more accessible.

8.21 Mr. Gleeson said that he was fully familiar with the occupier and use of the first floor at Mr. Murphy's NAV Comparison 2, and the occupier operated a retail store from the first floor, with a separate entrance from the street, valued at €55.00 psm. It was not an office as stated in Mr. Murphy's evidence. Mr. Murphy confirmed that he had not inspected the property in person and could not refute Mr. Gleeson's contention and did not propose to contest the position put forward by Mr. Gleeson. Mr. Murphy stated that a colleague from Tailte Éireann would have inspected NAV Comparison 2 in the past, when it was in office use.

8.22 In relation to Mr. Murphy's NAV Comparison 3, Mr. Gleeson said that it was at the residential end of Henry Street, was a furniture store, and has been vacant for 18 years as it has not proved possible to let the shop and there was a 'To Let' sign board on the property. Mr Gleeson considered it unfair to use the vacant property as a comparison. Mr. Murphy said he was not aware that the property had been vacant for such a long period and the records showed it as a retail unit. There was no record of any revision request, and no representations were received and there was no appeal to the Tribunal and therefore the property was validly on the list.

8.23 In relation to NAV Comparison 4 Mr. Murphy agreed that there was no first floor valued and its relevance related to the ground floor valuation, which was not in contention as it was agreed by Mr. Gleeson.

8.24 In relation to queries from the Tribunal Mr. Murphy:

8.24.1 Confirmed that at NAV Comparison 1 both the ground floor store and office were valued at €20 psm and that he could not be certain that it was part of the valuation scheme that had been applied across the local authority area, but it applied to Kilrush. He stated that if it was an office or store behind a structural wall at ground floor it would be valued at a lower level as it would be considered ancillary to the retail space.

8.24.2 Accepted that the Respondent must value the property as it is found on the valuation date in its existing condition, and that further information up to the date of the issuing of the final certificate could be considered.

8.24.3 Confirmed his statement at paragraph 5.4 2 of his précis that the rate of €55 psm "*....was derived from office over the shop comparisons with appropriate adjustments for the unit's internal access only*". Mr. Murphy said that adjustments were made in arriving at the scheme of valuation for retail properties in Co. Clare. Mr. Murphy confirmed that no adjustment had been made to the first floor at the Property.

8.24.4 Agreed that the first floor at the Property was not an office and stated that the same approach had been adopted in other first floor above shop properties in Kilrush,

whether office or stores. He accepted that the Appellant would have to spend money to make the area more habitable as an office. He accepted that the Property was a store but said it was valued in line with market evidence and other properties in Kilrush.

- 8.24.5 Agreed that his KRT 1 offered no evidence in relation to the matter in contention, namely the first floor. He did not know the number of retail properties identified as KRT's in Co. Clare.
- 8.24.6 Agreed that at KRT 2, both offices and stores at first floor were valued at €55 psm pointing out that any aspect could be repurposed. He agreed that no adjustment was made to reduce the value psm of the store relative to the offices. He agreed that the Respondent must value the property as it was found, on the valuation date, in its existing condition.
- 8.24.7 Did not dispute Mr. Gleeson's contention that the NAV Comparison 1 first floor was a fitted commercial kitchen. He agreed such a fitted kitchen would have a higher rental value compared to a store. However, he said that the first floor was valued in line with other first floors on the valuation list. He agreed with Mr. Gleeson's observation that there was separate access from the street to the first floor. He accepted that no adjustment had been made for separate access.
- 8.24.8 Could not refute the Tribunal's observation in relation to NAV Comparison 2 that there appeared to be separate access to the first floor from the street, although postulated that it could be residential access, even though there was no residential on the upper floors according to his own description. Mr. Murphy said that he had no first-hand knowledge of the Property.
- 8.24.9 Acknowledged Mr. Gleeson's help in clarifying a response to the Tribunal that NAV Comparison 3 had no separate access to the first floor.
- 8.24.10 Agreed that NAV Comparison 4 was not now relevant as it offered no first-floor evidence.

9. SUMMARIES

9.1 Mr. Gleeson stated that the rates revaluation was not to increase his rates by substantial amount but to recalibrate the basis that the County Council had for evaluating properties. His rates had increased by 50% and that is primarily due to the fact that he was being charged €55 psm for the entire first floor of the Property, which is now agreed at 117 sq.m. The first floor was one-third of the NAV resulting in a large increase in the NAV and therefore rates.

9.2 Mr Gleeson stated that the Act says that the NAV of the property is to take into account the expected rent given the state of the property at the time, less all the various expenses. The Property consists of a ground floor shop with a first-floor store, which is in very poor condition, with no direct access out onto the main street. The only access to the first floor is from the shop. In its present form the first floor is of no use other than a retail store. In the transactions and evidence provided by Mr. Murphy, inaccuracies were identified and corrections were accepted by Mr. Murphy. The KRT's and NAVs were not comparable with the Property for the reasons outlined in evidence, comparisons were made with first floors with direct access from the street and properties that were commercial kitchens and retail outlets.

9.3 Mr. Murphy stated that in accordance with section 19(5) of the Valuation Act 2001, as amended, a property must be valued correctly, and fairly and equitably (insofar as is reasonably practicable) relative to comparable properties on that valuation list. The Property is located on Henry Street in the centre of Kilrush and has been valued in line with the NAV comparison listed in this précis with particular attention to NAV Comparison 1, 2 and 3 which have first floors valued at €55 psm which is the same as the subject property.

9.4 Mr Murphy stated that the onus of proof, as with all appeals, lies with the Appellant. The Appellant provided one piece of comparable evidence to support his contention for a first level of €11.25 psm. It must be noted that this is industrial in nature and is not comparable to the subject property.

9.5 According to Mr Murphy, having regard to all the market and comparable evidence cited, the valuation levels of Zone A at €180 psm on the ground floor, and €55 psm on the first floor is

considered appropriate for this Property. Mr. Murphy believed the evidence he had provided in his précis supports this through his KRTs, particularly KRT 2, and his NAV comparatives all of which are within the town of Kilrush.

9.6 Mr Murphy stated that the floor area was to be amended from 273.62 sq.m to 251.3 sq.m and hence it is requested to amend the valuation from €18,100 to €17,410, commending the level of €55 psm at first floor.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Clare County Council.

10.2 The NAV of the Property means the rent which the Property might, in its actual state, be reasonably expected to let from year to year on the terms set out in section 48(3) of the Act. The rent is measured on a hypothetical tenancy of the Property and not by reference to the actual occupancy circumstances of the existing operator. There are different methods of valuation designed to assist in determining the NAV. The objective of the valuation exercise is to achieve correctness, and equity and uniformity of value between properties on the valuation list. Multiple factors can influence valuation, and no single factor is conclusive. All the characteristics of a property have to be evaluated and assessed against comparable properties. This involves an exercise in relativity regarding the physical nature, age, location and quality of the property as well as market characteristics for same. The date by reference to which the value of a property is to be determined is the specified valuation date.

10.3 At the hearing, Mr. Gleeson contended for a NAV of €12,256.34. As the ground floor NAV is agreed at €10,930.37, the balance of €12,256.34 is the first floor at €1,325.97 or €11.25 psm. However, Mr. Gleeson presented no supporting evidence to the Tribunal. The only evidence offered was from Mr. Murphy, confirming that at representation stage Mr. Gleeson submitted details of PN 1085399, €25 psm for a 198 sq.m, self-contained, detached, ground floor store. The

Tribunal agrees with Mr. Murphy that this is not comparable to the Property and is of no assistance to the Tribunal.

10.4 Examining the evidence offered by Mr. Murphy:

10.4.1 KRT 1 - a retail property in Kilkee. It was of no assistance to the Tribunal as it referenced ground floor retail which was not in contention. KRT 1 contained no first-floor evidence.

10.4.2 KRT 2 - a retail property in Ennistymon with offices and stores on the internally accessed first floor valued at €55 psm. This is of some assistance to the Tribunal.

10.4.3 NAV Comparison 1 – a retail property in Kilrush, with first floor commercial kitchen, as conceded by Mr. Murphy valued at €55 psm. Separate street access to first floor. This is of some assistance to the Tribunal.

10.4.4 NAV Comparison 2 – a retail property in Kilrush, with first floor retail as conceded by Mr. Murphy, valued at €55 psm. Separate street access to the first floor. This is of some assistance to the Tribunal.

10.4.5 NAV Comparison 3 – a retail property in Kilrush, with internally accessed first floor store; shop and upper floors vacant for many years, as conceded by Mr. Murphy. First floor store valued at €55 psm. This is of some assistance to the Tribunal.

10.4.6 NAV Comparison 4 – a retail property in Kilrush. It was of no assistance to the Tribunal as it referenced ground floor retail which was not in contention. NAV 4 contained no store or first floor evidence.

10.5 It appears to the Tribunal that in establishing an appropriate NAV for first floors in Co. Clare a blended or conflated approach has been adopted. A first floor accessed separately from the street would have a higher value than a first floor accessed internally from a ground floor. In most instances, an office or commercial kitchen at first floor would have a higher value than a store. A ground floor store would usually be more valuable than a first-floor store. However, the evidence at this hearing, offered by the Respondent, suggests that these uses are valued on the same basis.

10.6 Although Mr. Justice Collins (*Hibernian Wind Power Limited -v- Commissioner of Valuation* [2023] IECA 121) was commenting in a different context his observations are apposite:

“In contrast to those who enter the Inferno of Dante, those entering the world of rating law may not be required to abandon all hope. However, as this appeal illustrates, it certainly helps if they are prepared to relax their grip on reality. It is, as the Valuation Tribunal aptly observed, a world where “fiction prevails over fact”, in which the basic “rating construct” – the calculation of the net annual value (“NAV”) in accordance with what is now section 48 of the Valuation Act 2001 (as amended, the “2001 Act”) – is premised on a hypothetical or “imaginary” tenancy, negotiated between an imaginary landlord and an imaginary tenant.”

10.7 Ms Justice O’Malley (*Commissioner of Valuation -v- Carlton Hotel Dublin Airport Limited and Ors* [2013] IEHC 170) stated at paragraph 61 of her judgment:

The Commissioner is certainly correct in saying that uniformity and equity are essential to the administration of the rating system, as they are in relation to any tax. Like must be treated alike. However, there is a logically prior issue and that is whether liability to the tax in question has been properly assessed in the first place. There is no merit in the uniform application of a mistake.

10.8 The valuation assessments applied in the comparison properties of Mr Murphy are based on the adoption of the Respondent’s scheme of valuation. The Respondent states in the précis of evidence (paragraph 6.12 of his précis) *“It is important to note that the application of the scheme is only the starting point. Following application of the scheme values if there are any relevant individual considerations in relation to the subject property, relative to that group, further adjustments may be made to the subject property’s estimate”*. The Tribunal considers that the strict application of a scheme of valuation may give rise to uniformity, but the statutory requirement also refers to equity and further, that correctness of value should not be sacrificed to ensure uniformity. Mr. Murphy in his evidence in chief (paragraph 5.4 of his précis) further stated *“The*

rate per square metre of €55psm was derived from office-over the shop comparables with the appropriate adjustments for the unit's internal access only."

10.9 However, Mr. Murphy could not identify any adjustment made in respect of the first floor of the Property, valued at €55 psm, or indeed at any of the properties in his KRT or NAV comparisons – all were at a uniform rate of €55 psm regardless of the internal access or use. It was clear from his responses that Mr. Murphy was not familiar with the properties offered in evidence on behalf of the Respondent.

10.10 The Tribunal was greatly impressed with candour with which Mr. Murphy responded to Mr. Gleeson's cross examination, the Tribunal's questions and indeed throughout the proceedings. Professionally Mr. Murphy truly understood his role as an Expert Witness before the Tribunal, whilst vigorously pursuing the case on behalf of the Respondent.

10.11 The Tribunal considers that Mr. Gleeson, in his cross examination of Mr. Murphy, proved his case and considers that the evidence elicited in the Appellant's cross examination and the Tribunal's subsequent questioning, suggests that the NAV of the Property has not been properly assessed in the first place, as per Ms. Justice O'Malley in the *Carlton Hotel* decision.

10.12 It falls to the Tribunal to determine the NAV of the first floor of the Property. The Tribunal notes the evidence as follows:

NAV Comparison 1 – Ground Floor Store – €20 psm

NAV Comparison 3 – Ground Floor Remainder – €22.50 psm

The Property – Ground Floor Remainder - €22.50 psm (agreed)

10.13 Although first floor stores were valued at €55 psm in respect of Mr. Murphy's KRT 2 and his NAV Comparison 3, Mr. Murphy could not identify any allowance against his stated benchmark of office-over the shop comparables with the appropriate adjustments for internal access only. In any event, the view of the Tribunal is that offices over shops are not directly comparable with stores over shops.

10.14 Although it could be argued that first floor stores should be valued less than ground floor stores, the Tribunal adopts a rate of €20 from Mr. Murphy’s NAV Comparison 1 evidence (ground floor) in respect of the first-floor store at the Property. First floor stores, logically, should have a lower NAV compared to a first floor with offices or a fully fitted commercial kitchen or a first-floor retail outlet, valued at €55 psm and with separate external access from the street (respectively Mr. Murphy’s NAV Comparison 1 and NAV Comparison 2). The ground floor NAV of the Property was agreed between the parties.

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 **€13,250**.

Use	Level	Floor Area (sq.m)	NAV per sq.m	NAV
Retail Zone A	0	33.367	€180	€6,006.06
Retail Zone B	0	28.757	€90	€2,588.13
Retail Zone C	0	32.503	€45	€1,462.64
Retail Zone Remainder	0	38.824	€22.50	€873.54
Store	1	117.864	€20	€2,357.28
	Total NAV			€13,287.65
	NAV, Say			€13,250

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.