

Appeal No: VA23/5/1334

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

ANTHONY HONAN

APPELLANT

and

TAILTE ÉIREANN

RESPONDENT

In relation to the valuation of
Property No. 1210005, Retail (Shops) at 21 Abbey Street, Ennis, County Clare.

B E F O R E

Barra McCabe- BL, MRICS, MSCSI

Deputy Chairperson

Fergus Keogh- MSCSI, MRICS

Member

Allen Morgan- FSCSI, FRICS

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 the 18th 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 €37,900.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because:

(a) The Valuation is Incorrect

1. The subject property's valuation is excessive and inequitable.

2. The subject property is in a central position in the street. However, the property is only in moderate repair. It requires major roof repairs, part of the roof comprises old asbestos sheeting which is nearing the end of its useful lifespan. Considerable water is entering the structure making the two upper floors of very little value in their actual state. The ground floor accommodation is in use as storage and is poorly fitted.

3. The application of the standard €450/m² Zone A, which is applied to the best property's in the street, without allowance for the actual state of the property is inequitable. Given the letting to "Liberty" of the former Shoe Zone property on a 10 year lease from 15th October 2021 at €31,000 per annum i.e. for a good quality property in the best part of the street, it is inconceivable to think that the subject property could reach in excess of €30,000 in its actual state'

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €30,000. However, following a review of the calculation of the floor area and the Appellant's proposed end allowances, this was subsequently amended to €31,000.

2. REVALUATION HISTORY

2.1 On the 15th day of September, 2022 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €41,300.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €37,900.

2.3 A Final Valuation Certificate issued on the 15th day of September, 2023 stating a valuation of €37,900.

2.4 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 an oral hearing held remotely on the 22nd day of July, 2025. At the hearing the Appellant was represented by the Mr. Eamonn S Halpin B.Sc. (Surveying) MRICS MSCSI of Eamonn Halpin & Co. Ltd and the Respondent was represented by Kathy Farrelly B.Sc.(Hons) Real Estate Management 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, adopted their précis as their 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 tenure of the Property is freehold.

4.3 The agreed floor areas are as follows:

	Floor	Sq.m
Retail Zone A	0	38.72
Retail Zone A	0	38.66
Retail Zone A	0	34.69
Remainder	0	12.22
Store	1	65.59
Store	2	57.17
Total	-	247.05

4.4 The Parties are agreed on the following NAV applies before discount:

	Floor Areas (Sq.m)	NAV per Sq.m €	NAV €
Retail Zone A	38.72	450	17,424.00
Retail Zone A	38.66	225	8,698.50
Retail Zone A	34.69	112.50	3,902.63
Remainder	12.22	56.25	687.38
Store	65.59	65	4,263.35
Store	57.17	45.50	2,601.24
Total			37,983.43

5. ISSUES

5.1 The Appellant is seeking an end allowance to be applied to the Property due its condition and the amount of repair work require, which includes roof repairs, water ingress and water damage, damage arising out vandalism and a poorly fitted ground floor unit, as a result of which it is used for storage purposes only.

6. RELEVANT STATUTORY PROVISIONS:

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

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

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

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

7. APPELLANT’S CASE

7.1 Mr Halpin brought the Tribunal through details about the Property including, description, location, use, the market, principles of measurement and rating along with an external image and a number of internal images of the Property along with location map and the Appellants proposed NAV valuation. He also submitted into evidence details of a single key rental transaction of similar type property in close proximity to the subject Property, details of which are included at Appendix 1 of this determination (N/A to public). In respect of the concept of *rebus sic stantibus*, Mr. Halpin referenced the High Court decision to grant leave to Judicially Review the Valuation Tribunal’s decision in ‘*Boland*’, VA14/5/045 to argue that when an issue of condition arose it was not sufficient to assume the property was of a standard to be occupied as any other.

7.2 As part of his review of the internal images of the Property Mr. Halpin said it was possible to see hole in the roof of the Property where water had been pouring in and down the blinds and onto the floor and onto the carpet. He said there was an image of the downstairs area where antiques are stored and it was possible to see the old ceiling where some of the lights are falling out of the ceiling. He said there were many items of antiques in storage between areas displaying water leaks. He said on the top floor, the ceiling was damaged by water ingress and there was a picture of a small kitchenette on that floor, which was full of rubbish and debris. Mr. Halpin said the Property was entered by unknown parties who vandalised it and removed some flashings from the roof and graffitied the premises. There was also a photograph of the ground floor area with a view up to a mezzanine level above at the first floor level, where it was possible to see an open void over part of the ground floor.

7.3 Mr Halpin said the subject Property is a shop located in Abbey Street, Ennis and is in a central section along Abbey Street. However, the property is only in moderate repair and requires

major roof repairs. Sections of the roof comprise old asbestos sheeting which is near the end of its useful lifespan. He said the fundamentals of the Appellant's case is one of '*rebus sic stantibus*' and an end allowance. The Appellant does not take issue with the level of the value applied by the Commissioner, which is Zone A of €450 per sq.m with the upper floors valued at €65 per sq.m and €45 per sq.m respectively, but that this assumes the property to be in a good state of repair. However, he asserted that the actual condition of the Property means that the hypothetical tenant would not pay full value as they would have to significantly renovate the premises to occupy it.

7.4 Mr. Halpin posited that traditionally cases involving '*rebus*' have been fought over fundamental capacity of occupation and in the majority of cases such properties are ultimately found to be where beneficial occupation can occur. The Appellant is only using the property for storage, but he submitted that a property capable of storage is not equivalent to a property capable of retail in value terms. He said this has been dealt with by the High Court in the *Boland* case JR 215 No. 461, which had been decided by the Tribunal, which emphasised that where there is an issue of condition it is not sufficient to assume the property was the same standard of occupation as any other. He said in practical terms, the *Boland* case was ultimately resolved by the application of an end allowance by the Commissioner following referral back from the court. Mr. Halpin claimed that the appeal was referred back to the Valuation Tribunal, but it was agreed between the parties before the matter was re-heard before the Tribunal. He said this begs the question in the current appeal as to what allowance would be appropriate and whether an overall allowance or itemised allowances are more appropriate, as the property is substantially impaired by its asbestos roof resulting in substantial water ingress into the building which was affecting it from top down. To this end he submitted that his clients believe that the hypothetical retail tenant would discount the second floor by two-thirds as being largely worthless, the first floor by one-third as basic storage, and the ground floor by 10% to take account of the money required to put the property into a state to retail. This equates to a 19% overall allowance which would be rounded to 20% adopting an overall approach.

7.5 Mr. Halpin stated that in theory the subject property could be taken out of the retail category altogether and valued as storage. He said that aligning the Appellant's proposed NAV of the Property with the tone of the list on this basis was difficult as the Property was located in a central retail terrace and despite the money that would have to be spent it still had retail

potential. He said there was no category in the valuation list for retail property only for storage, hence one would have had to use an industrial storage level, an increase rather than a retail level reviews.

7.6 Under cross examination by Ms. Farrelly, Mr. Halpin confirmed that he did not have a structural or engineers report and he was relying solely on what he saw on inspection and also his discussions with his client at the time of preparing the appeal. He said in 2022 there were no antiques stored in the upper floors, but since then lower quality antiques were stored in the upper floors.

7.7 In respect of the single key rental transaction submitted as evidence by the Appellant, Mr. Halpin said this was very similar to the subject Property but that the fit out and condition of that property was a lot better. When asked where he had derived his end allowance calculations, Mr. Halpin said that he relied on his own knowledge, experience and skill. He said that the rationale was that the ground floor was the least disturbed area though not in good condition. He said it was old-fashioned but could possibly be put right with minimal expenditure. He was of the view that a figure that some incoming tenant might accept might be a 10% discount, which seemed reasonable.

7.8 In his own direct experience, having undertaken lettings over the last 25 years, he said it was conceivable in country towns that if one put a property on the market to let, where the ground floor extended to 200 square metres, for example, and another property down the street also had 200 square metres on the ground floor, but had more space to let on the first and second floor, the second property derived little extra rent from the upper floors, because these floors tended to have much lower value.

7.9 In the case of the subject Property, Mr. Halpin said in the subject appeal it was slightly different because the Appellant accepted that an appropriate level could be applied as that applied by the Respondent if the building was in good repair, but given the actual state of the subject Property, he submitted that nobody would pay the level of rent at which the Respondent had valued the Property. However, that was not to say a hypothetical tenant would pay nothing on the basis they could derive some small value from it.

7.10 It was Mr. Halpin's opinion that there was some value on the first floor of the subject Property where the Appellant proposed to apply an end of allowance reduction of approximately one third off and was being valued at two-thirds of the level proposed by the

Respondent to allow for the condition. Mr. Halpin applied a two-thirds allowance reduction to the top floor because it was virtually worthless.

7.11 Mr. Halpin also said he believed that the Appellant had maintained the Property to a reasonable standard, but that it was an old property. He said he was quite surprised that the front section of the Property had an asbestos roof because it was not what one would expect in this location, where most of the buildings have slate roofs. In Mr. Halpin's opinion, he thought the roof probably fell into bad repair at some stage, possibly in the 1940s or 1950s, and somebody applied single skin-asbestos on to it. However, taking into account the age of the asbestos, the difficulty in removing and replacing it and the cost associated with that, and the fact that the building was entered by unknown people who had removed some of the flashings and caused damage to the room, that it was clear that the roof needed to be replaced.

8. RESPONDENT'S CASE

8.1 Ms. Farrelly brought the Tribunal through her précis including, description, location, use, the market, principles of measurement and rating along with an external image and a number of internal images of the Property along with location map and the Appellants proposed NAV valuation. She also submitted into evidence and discussed details of the same single Key Rental Transaction to that of the Appellant contained at Appendix 1 (N/A to public), and five NAV comparisons, a summary of which is included at Appendix 2 of this determination (N/A to public).

8.2 In respect of the concept of *rebus sic stantibus*, Ms. Farrelly also made reference to the High Court decision in '*Boland*', VA14/5/045. She said initially the Valuation Tribunal ruled in favour of the Respondent, but the Appellant subsequently pursued a Judicial Review resulting in the case being referred back to the Valuation Tribunal by the High Court. She said the property in question is located in Clanbrassil Street in Dublin 8, and prior to the rescheduling of a hearing the parties reached an agreement on a valuation. Ms. Farrelly said it is important to note that the property is situated in Dublin 8 and falls outside the jurisdiction of Clare County Council's local authority. Notwithstanding the above, she had not inspected the property referred to and therefore could not comment any further.

8.3 Ms. Farrelly said the Property was located in one of the main shopping areas in Ennis and there was car parking available close by at the rear of Abbey Street, the Friary Car Park and

the Cloisters. She said there were double doors leading into the Property and it had two large display windows, and the retail frontage was 6.5 metres. On the day of her inspection on the 9th of April 2025 the ground floor was full of antiques, and she said there were little internal passages formed through the antiques and there was a lot of brass ornaments on the first floor with other antiques stored there too. She said she was unable to get into the rear room on the top floor as it was so full of chairs stacked high up to the actual door of the property. She said that the condition of the property was fair throughout.

8.4 Ms. Farrelly said that not every single property is inspected during a revaluation process, but the Respondent assumed that properties would be kept at a reasonable standard of condition. She said the Respondent does not penalise occupiers for having their properties in very good condition and by the same time should not reward occupiers for having their properties in poor condition.

8.5 On inspection she found that the ground floor of the unit was like any typical retail unit. It has frontage measuring 6.5 metres and a depth of 21 metres, and there were two large display windows out onto Abbey Street.

8.6 She said while the Appellant claimed that the roof requires major repairs because it is nearing the end of its useful life and requires significant renovations to be occupied for retail use, no evidence was submitted as support for this claim. She said the Appellant also referred to substantial water ingress to the building however, on the day of her inspection of the Property notwithstanding it was a dry day, there was no evidence of any water ingress at the Property. She said the subject Property is a standard retail unit like any other on Abbey Street and it appears to be in a similar condition to the other retail units on the street except it was not open for retail trade purposes. She said she had seen previous filed photographs of the Property dating back to May 2014 as shown in the Respondent's précis, which shows the Property was in very similar condition then as it was on inspection in 2022 and 2025.

8.7 Ms. Farrelly said the Appellant had not provided any evidence to support any contention that there was sufficient issue with the condition of the property to warrant an alteration to the valuation scheme.

8.8 Ms. Farrelly stated that the Appellant had not provided any evidence to support the application of an end allowance for the levels applied let alone allowances to the extent referred to in the Appellant's submissions. The Respondent's position was that the subject Property was a retail

unit in a retail setting with the majority of the neighbouring properties in retail use. The antiques on the ground floor of the subject property were arranged out for display, facing outwards to the paths/aisles in the shop, as similarly displayed in the owner's other shop in Abbey Street and as set out in NAV comparable 1 included in the Respondent's précis.

8.9 In respect of the single key rental transaction submitted, the lease on that property commenced three months before the valuation date, and the property was located on the same street as the subject Property under appeal. The KRT property has a ground floor area of 142.60 square metres, including store area of 53 sqms and first floor area of 49 sqms. This KRT property had a net retail frontage of 6.6 metres which was slightly larger than that of the subject Property and the ground floor area too was slightly larger. There were no Representations received in respect of the KRT property and it was not being appealed to the Valuation Tribunal

8.10 Ms. Farrelly said that in respect of the tone of the list the NAV comparable property provided by the Respondent at Appendix 2 (N/A to public) was operated by the Appellant as an Antiques Retailer. Therefore the Appellant had a second unit on the street located across the road and two doors up from the subject Property. This property had a slightly smaller retail frontage of 5.59 meters whereas the subject Property has retail frontage of 6.5 meters and this valuation was not appealed by the Appellant. She also observed that the Appellant sold similar antiques from this property as were sold from the subject Property under appeal.

8.11 Under cross examination and in respect of the High Court's decision in *Boland*, Ms. Farrelly said the judgment only referred the case back to the Valuation Tribunal and did not give a reason of why they affirmed the Respondent's case.

8.12 In respect of the condition of the Property, Ms. Farrelly said the Respondent assumed that the property was kept in a reasonable state of repair and condition so for example, if there was a leak in the property the occupier or landlord would repair the leak in order to avoid water damage.

8.13 She said the Property was not open and trading as a retail unit on the date of her inspection but that this was the choice of the Appellant.

8.14 Ms. Farrelly said the Respondent took multiple rents and factors into account and not just the single KRT submitted by both parties in their respective précis.

8.15 In respect of adjustments /allowances made by the Respondent to the valuation of the subject Property, Ms. Farrelly said new rental evidence was taken account, it was received at representation stage, but after that there was no further allowance, and the Zone A was adjusted

from €500 to €450 per square metre. She said the Respondent's view was that the Property had been allowed to fall into a state of disrepair by the occupier / owner, but that the level of disrepair did not warrant an additional allowance to be made to the valuation of the Property.

9. SUBMISSIONS

9.1 There were no legal submissions

10. FINDINGS AND CONCLUSIONS

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

The Tribunal relies upon and decides on appeals based on the evidence placed before it. It is a well-established principle that the onus rests with the Appellant to prove his / her case and provide evidence to the Tribunal that the Respondent's valuation of the property in question is incorrect and should be amended. It follows that the Tribunal must consider the nature of the evidence submitted to determine whether it supports the argument advanced on behalf of the Appellant

The précis, appendices, commentaries and oral evidence adduced by Mr. Halpin and by Ms. Farrelly have all been considered by the Tribunal in arriving at this Determination, which can only set out a summary of the evidence placed before the Tribunal. The fact that the Tribunal does not make specific reference to any particular document, argument, submission or piece of evidence does not indicate that it has not been taken into account.

10.2 The Tribunal is not convinced based on the evidence and submissions of the Appellant that the required burden of proof has been reached to apply an additional allowance to the NAV proposed by the Respondent. This is because it seems clear that the occupier / owner failed to undertake the most basic of routine repairs to protect the condition of the building and effectively let it fall into its current state of repair.

10.3 While the Tribunal is conscious that an allowance *can* be made for the state of repair of a building, normal wear and tear or ordinary disrepair is assumed to be repaired by the hypothetical tenant and no allowance is made for it. An allowance is only justified where the property is in exceptional disrepair, derelict or incapable of beneficial occupation at the valuation date, such that this would materially reduce the rent a hypothetical tenant would pay. The Tribunal does not believe this to be the case with this Property.

10.4 The Tribunal finds that the case has not been made out adequately that the Appellant uses the Property solely for storage purposes. However, if the Tribunal is wrong in this conclusion and the Property is used solely for storage purposes, then the Tribunal finds that on the balance of probabilities this is due to the choice of the occupier and not as a result of the condition of the Property. This conclusion is drawn from the fact that the Appellant uses another retail property in very close proximity to the subject Property as his main unit for the sale of antiques, something which the Appellant failed to reveal to the Tribunal in their evidence.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.