

Appeal No: VA23/5/0136

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

**OLIVIA D’AURIA GOSSEAU t/a
TASTY PIZZA**

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 1442761, Retail Fast Food Shop at Main Street, Lahinch, County Clare.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF SEPTEMBER 2025

BEFORE

Fergus Keogh – MSCSI, MRICS

Member

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 3rd 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 €16,180.
- 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 Act. The grounds of appeal are quoted from the Notice of Appeal and are set out below;

“zoning is incorrect. Kitchen area (food cooking and production) is 42.82 m². Retail zone A (customers accessible area) is 10.60 m² . Retail zone B (entrance to retail area) is 1.60 m². ”

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €6,272.80

2. RE-VALUATION HISTORY

- 2.1 This is a Revaluation appeal arising from the Clare County Council Revaluation which was undertaken as a result of the Clare County Council Valuation Order 2022, that was signed by the Commissioner of Valuation on 2nd 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 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 €20,200.
- 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 reduced to €16,180.
- 2.5 A Final Valuation Certificate issued on the 15th day of September 2023 stating a valuation of €16,180.
- 2.6 The date by reference to which the value of the Property, the subject of this appeal, was determined is 1st day of February 2022

3. DOCUMENT BASED APPEAL

- 3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and on the agreement of the Parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.
- 3.2 In this Appeal a submission was made on behalf of the Appellant by Ms. Olivia d’Auria Gosseau. The Respondent was represented by Ms. Ita McNally BSC (Hons) Masters, of Tailte Eireann (‘the Parties’).
- 3.3 In accordance with the Tribunal's directions, the Parties exchanged their respective précis of evidence and submitted them to the Tribunal.

4. FACTS

- 4.1 The subject Property is located in Lahinch County Clare. It is a two-storey corner property situated at the intersection of Marine Parade and Saddle Lane a short distance from the seafront promenade and beach.
- 4.2 The building is of traditional block wall construction with a smooth rendered and painted elevations and a pitched tiled roof. There is a timber shop front with a serving hatch onto the public pavement.
- 4.3 The ground floor section of the Property trades as a fast-food restaurant. The first floor is in residential use with separate access from Saddle Lane. The ground floor is divided into two sections. The section to the front and accessible from the street is used for public access and provides an area for queuing for service. The cooking of food takes place behind a serving counter. The area to the rear and not accessible to the public is used for food preparation and cooking, storage and staff facilities.
- 4.4 The entire ground floor extends to 98.09 m² with this area being agreed by the Parties.

4.5 The property is held under lease by the Appellant details of which are set out in Appendix 1 attached (N/A to public).

5. ISSUES

5.1 In this appeal the quantum of the valuation was in dispute and more particularly the treatment of the front area of the ground floor for valuation purposes. The Appellant contended that a large element of the ground floor front section has been erroneously categorised as Zone A Retail and said that it was a working kitchen which was not accessible to the public and accordingly a lesser valuation rate should be applied to this area similar to that of the rear kitchen area. The Respondent has adopted the Zoning Method of Valuation to value the Property and has treated the entire ground front section as Zone A Retail.

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, sec. 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 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.”

6.4 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be considered 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 In her submission to the Tribunal Ms. d’Auria Gosseau included a selection of photographs which indicated the physical layout of the front section of the ground floor and showed an area accessible to the public for food ordering, queuing and food collection purposes and an area separated by a high serving counter behind which food cooking took place in open view to the public.

7.2. Ms. d'Auria Gosseau submitted a written document setting out her arguments as to why she considered that the Appellant had erroneously categorised the ground floor zones. She said that the Respondent had categorised the building into three separate areas being Retail Zone A of 38.19m², Retail Zone B of 1.60m² and a rear Kitchen area of 14.62 m² and valued accordingly on a reducing euro rate per m² basis.

She contended that the lesser valuation rate that was applied to the rear kitchen area should also be applied to that section of the front shop behind the serving counter as she described it as a de facto working kitchen. She included a block plan which showed her interpretation of how she considered that the ground floor should be zoned. This plan indicated a Retail Zone A area of 10.60 m² located within the publicly accessible queuing area, a Retail Zone B area of 1.6 m² area also located within the publicly accessible queuing area at the entrance to the and immediately fronting to the public street and an area of 42.82m² which was titled 'Kitchen' and included the section behind the serving counter not accessible by the public and which was amalgamated with the rear kitchen area for identification purposes. A copy of this block plan is in Appendix 1 attached (N/A to public).

7.3 In her submission Ms. d'Auria Gosseau included an unsigned letter on plain paper dated 1st May 2024 from a named individual with the title of '*Environmental Health Officer*'. The letter confirmed that the Property was inspected by the individual on the 21st of March 2024. It states that the only area accessible to the public within the Property is an area measuring 1.4m by 7.0 m and that the public does not have access to the area to the left of the counter as this forms part of the food preparation area. The letter also stated that there was no seating provided on the premises.

7.4 Ms. d'Auria Gosseau did not submit any evidence of valuation comparisons.

8. RESPONDENT'S CASE

8.1 Ms. McNally contended for a valuation of NAV€16,800 which was an increase of the valuation assessment of the Property as it appeared on the Valuation List. Ms. McNally said

the increase in the assessment was as a result of the re-measurement of the Property following her inspection on the 14th of May 2024. She measured the Property to extend to the following;

| Description | Floor level | M² |
|---------------------------|--------------------|----------------------------|
| Retail Zone A | 0 | 25.92 |
| Retail Zone B | 0 | 18.07 |
| Retail Zone B (in Shadow) | 0 | 11.07 |
| Stores | 0 | 43.03 |
| Total | | 98.09 m² |

A copy of the block plan prepared by Ms. McNally is attached in Appendix 2 (N/A to public).

8.2 In her précis, Ms. McNally described the location, the size and the construction detail of the Property which she supported with internal and external photographs, a block plan and a location map. She referred to and described the 2023 *Reval* process and the relevant statutory provisions of the Act as they applied. She advised of the tenancy and rent payment details. The corrected annual rent payment is set-out in Appendix 1 (N/A to public) and also referred to the representations made by the Appellant and the considerations made which reduced the initial valuation assessment from €20,200 to €16,180.

8.3 In support of her opinion of value Ms. McNally provided details of two Key Rental Transactions (KRT's) summary details of which are set-out below and full details of which are included in Appendix 2 (N/A to public).

| KRT No. | Address | Lease Date | € NER @ Feb. 2022 | € NER per m² @ Feb. 2022 | € NAV |
|----------------|-------------------------|-------------------|--------------------------|--|--------------|
| 1. | Main Street, Lahinch. | 01/05/2019 | €27,464.00 | €938.50 per m ² Zone A | € 17,180 |
| 2. | Marine Parade, Lahinch. | 01/02/2019 | €12,675.96 | €686.00 per m ² Zone A | € 7,390 |

8.4 In support of her opinion of value and as evidence of equity and uniformity, Ms. McNally provided details of three NAV Comparison Properties which she said were similarly circumstanced properties and considered comparable to the subject Property as they shared characteristics such as use, size, location and construction. She said that in addition to the two KRT Comparisons of relevant market evidence which she said underpinned the valuation scheme, the NAV Comparisons set-out additional comparative evidence to demonstrate that both correctness and equity & uniformity of value have been achieved in this case. The details of these NAV Comparison properties are set-out below:

(i) NAV Comparison Number 1.

| | |
|------------------|----------------------------------|
| Property Number | 2208658 |
| Occupier | O’Connors Ice Cream |
| Address | Marine Parade, Lahinch, Co Clare |
| Total Floor Area | 168.91 m ² |
| NAV | €28,300 |

| Level | Description | Size m ² | NAV per m ² |
|-------|---------------|---------------------|-------------------------|
| 0 | Retail Zone A | 38.43 | €400 per m ² |
| 0 | Retail Zone B | 38.43 | €200 per m ² |
| 0 | Retail Zone C | 4.30 | €100 per m ² |
| 1 | Office | 87.75 | €55 per m ² |
| | Total | 168.91 | € 28,300 |

In commentary Ms. McNally said that his property was on the same side of Marine Parade, as the subject Property and located approximately four doors removed. There were no

Representations made to the Respondent in respect of the valuation assessment and no appeal made to the Valuation Tribunal.

(ii) NAV Comparison Number 2.

| Property Number | | 1992234 | |
|------------------|---------------|----------------------------------|------------------------|
| Occupier | | Seagrass Hairdressing | |
| Address | | Marine Parade, Lahinch, Co Clare | |
| Total Floor Area | | 89.16 m ² | |
| NAV | | €24,800 | |
| | | | |
| Level | Description | Size m ² | NAV per m ² |
| 0 | Retail Zone A | 35.29 | €400 m ² |
| 0 | Retail Zone B | 53.87 | €200 m ² |
| | Total | 89.16 | € 24,800 |

In commentary Ms. McNally said that his property was also on Marine Parade and close to the subject Property. There were no Representations made to the Respondent in respect of the valuation assessment and no appeal made to the Valuation Tribunal.

(iii) NAV Comparison Number 3.

| | | | |
|------------------|--|----------------------------------|--|
| Property Number | | 1992241 | |
| Occupier | | Lahinch Beauty Rooms | |
| Address | | Marine Parade, Lahinch, Co Clare | |
| Total Floor Area | | 25.92 m ² | |
| NAV | | €10,360 | |

| Level | Description | Size m ² | NAV per m ² |
|-------|---------------|---------------------|------------------------|
| 0 | Retail Zone A | 25.92 | €400 m ² |
| | Total | 25.92 | € 10,360 |

In commentary Ms. McNally said that this property is also located on Marine Parade and close to the subject Property. There were no Representations made to the Respondent and no appeal made to the Valuation Tribunal.

- 8.5 Subject to the foregoing Ms. McNally contended for a valuation of NAV €16,800 which she analysed in detail as follows with reference to the block plan in Appendix 2 attached (N/A to public);

| Level | Block | Use | | | Area m ² | € NAV per m ² | € NAV |
|-------|-------|--------------------------------|-------|------|---------------------|--------------------------|----------------|
| 0 | 1 | Retail Zone A | 4.25 | 6.1 | 25.925 | €400 | €10,370.00 |
| 0 | 1 | Retail Zone B | 4.25 | 0.97 | 4.1225 | €200 | €824.50 |
| 0 | 1 | Retail Zone B | 2.6 | 0.49 | 1.274 | €200 | €254.80 |
| 0 | 2 | Retail Zone B | 2.6 | 2.0 | 5.20 | €200 | €1,040.00 |
| 0 | 2 | Retail Zone B | 1.65 | 4.53 | 7.4745 | €200 | €1,494.90 |
| 0 | 3 | Retail Zone C (Shadow of B) | 2.443 | 4.53 | 11.06679 | €100 | €1,106.679 |
| 0 | 4 | Store & Staff Kitchen | 6.0 | 2.9 | 17.40 | €40 | €696.00 |
| 0 | 5 | Store | 2.6 | 3.4 | 8.84 | €40 | €353.60 |
| 0 | 6 | Store | 4.94 | 3.4 | 16.796 | €40 | €671.84 |
| | | Total Area | | | 98.09879sqm | | |
| | | Total (€) | | | | | €16,812.319 |
| | | Ratable Valuation | | | | Say, | €16,800 |

9. SUBMISSIONS

9.1 No legal submissions were by the Parties.

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.

10.2 The Property is to be valued in accordance with Sections 48 and 19 (5) of the Valuation Act 2001, as amended. The requirement in accordance with section 19(5) is to arrive at a Net Annual Value (NAV) and achieve both, insofar as is reasonably practicable,

(a) correctness of value and

(b) equity and uniformity of value between properties on that valuation list.

Section 48(3) defines NAV as meaning in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant.

10.3 The précis, appendices, commentaries submitted by Ms. d'Auria Gosseau and by Ms. McNally 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 into considered.

- 10.4 Dealing firstly with the Zoning issue and the treatment of the front area of the Property and Ms. d’Auria Gosseau contention that the lesser valuation rate that was applied to the rear kitchen area should also be applied to that section of the front shop behind the serving counter as she described it as being a de facto working kitchen. The Tribunal does not accept this argument as being correct and finds that Ms. McNally’s measurement approach to be correct. The installation of the serving counter, which is typical in similar fast food restaurants, does not give rise to a situation where the area behind the counter should be treated for valuation purposes in the same manner as the rear kitchen area. The Tribunal considers that Ms. McNally has correctly identified this area being Zone A Retail space as is conventionally defined by the surveying profession and the Code of Measuring Practice.
- 10.5 Turning the second element of this appeal Ms. d’Auria Gosseau did not provide any valuation evidence in support of her argument that the valuation of the subject Property was excessive. 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 or 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. In this appeal the Tribunal considers that due to the lack of valuation evidence the Appellant failed to support the argument that the Respondent’s valuation was incorrect.
- 10.6 Ms. McNally provided details of two Key Rental Transaction and though both were dated in 2019 there were of similarly sized properties in the general vicinity and comparable to the subject Property. Ms. McNally also submitted three NAV Comparison properties and whilst Comparisons Numbers one and two were larger than the subject Property and comparison three was smaller each were analysed on a zoning basis and supported Ms. McNally’s applied valuation of €400 Zone A Retail. The Tribunal is satisfied that these valuation assessments reflect equity and uniformity of properties on the Valuation List.

DETERMINATION

Accordingly, for the above reasons, The Tribunal disallows the appeal and confirms the decision of the Respondent and its valuation of the Property at NAV €16,800.

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.