

**Appeal No. VA17/5/069**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015  
VALUATION ACTS, 2001 - 2015**

**LA COMMUNICATIONS LTD**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2206889, Retail (Shops) at Floors: 0,1, 4 to 12 / 4 Local No. 51C, Flr 0 +1 St,  
Kieran Street, Kilkenny, County Kilkenny.

**B E F O R E**

**Mr Rory Lavelle - FRICS, FSCSI, ACI Arb**

**Deputy Chairperson**

**Mr Frank O’Grady – MA, FSCSI, FRICS, FIABCI**

**Member**

**Mr Michael Connellan Jr – Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 27<sup>TH</sup> DAY OF JULY, 2018.**

**1. THE APPEAL**

1.1 By Notice of Appeal dated the 4<sup>th</sup> October 2017 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 €17,610.

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 :

- “1. *The Valuation of the subject property is excessive and inequitable. The property’s value as applied by the Commissioner is not in line with its actual rental value.*
2. *The subject property is leased at €12,500 per annum on a 4 year 9 month lease from 27<sup>th</sup> February 2013.*

3. *The 1<sup>st</sup> floor of the subject is overassessed. The Commissioner is placing a higher value on the 1<sup>st</sup> floor than the ground floor, which is not in keeping with the rent. All other properties surrounding the subject are leased and the lease rents tally with the respective NAVs. This property has already been to the Valuation Tribunal under VA11/3/018 and the relationship between the floors was 1:0.22 (i.e. the 1<sup>st</sup> floor 22% of the value per m<sup>2</sup> of the ground floor Zone A). Though the base date of the valuation has now changed, the relationship between the floors has not.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €13,360.

## **2. REVALUATION HISTORY**

2.1 On the 22<sup>nd</sup> June 2017 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 €17,610.

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 manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> September 2017 stating a valuation of €17,610.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is 30<sup>th</sup> October 2015.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on 20<sup>th</sup> February 2018. At the hearing the Appellant was represented by Mr David ES Halpin M.Sc. (Real Estate) Ba. (Mod) and the Respondent was represented by Mr Terry Devlin BSc, SCSI, RICS of the Valuation Office.

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 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.

The floor area of the premises is agreed as is its location and condition. The Zone A rent used for the Ground Floor is also agreed.

Level	Use	Area Sq.M.
0	Retail Zone A	43.44
0	Retail Zone B	10.76
1	Restaurant	53.51
1	Store	42.59

#### **5. ISSUES**

5.1 This case revolves around the treatment of the first floor with the Appellant claiming that the presence of a larger first floor than the Ground will distort the rent achieved. The Respondents position is that this is a new valuation and is consistent with the Tone applied to other Units.

#### **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 The Appellants case relies on the valuation history of the premises with particular reference to an appeal to the Tribunal on the previous valuation of the premises VA11/3/017&018 where a reduction in the rate applicable to the first floor was accepted. Mr. Halpin referred to the actual rental history of the premises and a 4-year 9 month letting at €12,500 in February 2103. The Statutory Valuation Date for the subject property is 30<sup>th</sup> October 2015. The actual lease of the premises was sought by way of a Section 46 and was not provided by the occupier. The Tribunal sought a copy of the lease, signed by all parties, together with a stamp certificate for the subject property. Mr. Halpin reverted stating that the lease is with his Clients Bank and they have been unsuccessful in their efforts to obtain a copy.

7.2 Mr. Halpin refers to the unique nature of the Unit where the majority of the physical property is located at the first floor. Mr Halpin includes five comparisons all of which are NAVs. Swans Chinese restaurant, High Street, first floor 95sq.m. at €95psm and second floor 50sq.m. at €54psm. Michael Dore, 67 High Street where the first floor restaurant is assessed at €95psm. 86 High Street first floor office 35.38sq.m. at €75psm. 15 Dean Street retail zone A on the ground floor of €200psm and first floor office at €65psm. Kilkenny People, 34 High Street Ground Floor Zone A €730psm and first floor office €65psm. Mr Halpin refers to the superior location.

## **8. RESPONDENT’S CASE**

8.1 The Respondent case is that this is a new valuation list and the historical situation is not relevant. The rents of a number of properties were looked at not just the subject and Mr Devlin states that the Appellant has not proved their case for a reduction in rents applied to the first floor.

Whilst the Zone A rent is not in dispute Mr Devlin refers to five key rental transactions two on St Kieran Street, one on Patrick Street and two on John Street. Only one of these comparisons has a first floor John Street PN79396 store 27.77sq.m. at €65psm. 5 NAV comparisons are included PN 80158 St Kieran Street at €200 Zone A and first floor shop 19sq.m. at €85psm. PN 2206887 which adjoins the subject is ground floor Zone at €200psm, 44sq.m. and first floor shop at €85psm for 38.49sq.m. PN80065 Rose Inn Street has a ground floor zone A of €435psm. PN78252 St Kieran Street has a ground floor 23.27sq.m. zone A of €620psm and first floor stores 34.82sq.m. at €65psm. PN894825 St Kieran Street is first floor shop 61.77sq.m at €85psm and second floor store 65.38sq.m. at €45psm

## **9. SUBMISSIONS**

9.1 No legal submissions were made.

## **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 Kilkenny.

10.2 The parties do not disagree on the Zone A Ground Floor rent and the Appellants argument is that the relative size of the first floor means there should be a discount applied. Whilst the Respondents case is that this is not proven however the floor area argument was accepted by the Tribunal in an Appeal under the previous system. For the Tribunal to accept the respondent's arguments it would mean ignoring or contradicting the previous Tribunal findings on the same building. The Tribunal is persuaded by Appeal VA11/3/017&018 that there should be an adjustment for the first floor as sought by the Appellant. The Tribunal sought and did not receive a copy of the relevant lease that the Appellant relies heavily on and this does not assist the Tribunal in reaching a decision.

## **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 €16,000 (Sixteen Thousand Euro)

Level	Use	Area Sq.M.	€psm	NAV
0	Retail Zone A	43.44	€200	€8,688
0	Retail Zone B	10.76	€100	€1,076
1	Restaurant	53.51	€65	€3,478
1	Store	42.59	€65	€2,768
			NAV	€16,010
			Say	€16,000

And the Tribunal so determines.