

Appeal No: VA17/5/093

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Anne Penrose.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1447271, Retail (Shops) at 7 Main Street, Ballynacarrigy, County Westmeath.

B E F O R E

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

Eoin McDermott - FSCSI, FRICS, ACI

Member

Claire Hogan - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF JUNE, 2018.**

1. THE APPEAL

1.1 By Notice of Appeal received on the 4th day of 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 €10,180.

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 remotely in line with its potential rental value.*
2. *Business in the village has been so poor that part of the property has now been converted into domestic. Property requires re-inspection by the Commissioner’s representative to confirm matters of fact.*
3. *The Ballynacarrigy has a resident population of 277 people (2016 census). It is one of the smallest villages in Westmeath. The village has a total of 7 shop units, 2 functioning pubs and a small automated filling station. Fundamentally, the issue with the valuations of shop units in the village comes from the zoning model itself. The units are ‘all Zone A’ but this is meaningless in a village the size of Ballynacarrigy as units like the subject are too large for their economic use. For example, the post office (PN 1447273) is fairly assessed at €1,200 NAV, based on a zone A value of €150/m².*

However, the fallacy is in assuming that a Zone A shop of the subject's size now at 63m² is therefore 9x more valuable in this location. The appellants are not aware of any lettings in the village on an open market basis. Nonetheless, based on the actual population of the village and the potential for trade we are quite certain that none of the units could attract more than €100/week (€5,200 per annum) on FRI terms, if indeed anyone could be convinced to rent them. Penrose's has been for sale or to let for nigh over 5 years with no interest and there is scarcely any stock on the shelves as there is no business for it. The other two grocery shops are stocked but it is obvious that there is very limited turnover.

4. *The Zone A level of €150/m² applied by the Commissioner is the same as vastly superior trading locations such as Main Street, Kinnegad (2,745 population): Main Street, Kilbeggan (1,288 population) and Main Street, Rochefortbridge (1,473 population) as well as secondary retail in both Athlone and Mullingar. It is completely inequitable for Ballynacarrigy to be directly compared with any of these locations."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5,200.

2. REVALUATION HISTORY

2.1 On the 12th day of January, 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 €11,330.

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 €10,180.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €10,180.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th day of 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 1st day of May, 2018. At the hearing the Appellant was represented by Mr David ES Halpin MSC (Real Estate) Ba, (Mod) and the Respondent was represented by Ms Triona McPartlan, B. Sc. Honours (Estate Management), MSCSI, MRICS 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 location and description of the property are agreed between the parties. The floor area of the property is agreed at 58.86 M², all Zone A

5. ISSUES

The principal issues are whether the Respondent was correct to value the property on a zoned basis and whether the respondent was correct to apply the same Zone A rate per M² to differing towns and villages in Westmeath, irrespective of their location and population.

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 described the properties location as being in a small village, with a population of 277, located 16km northwest of Mullingar and 18km northeast of Ballymahon. The subject property comprises the ground floor retail portion of a two storey premises, with the remainder of the property being used as a residence. The retail portion of the property had expanded into the residential area previously, but this expansion was reversed in recent times. The agreed area reflects the current layout, which is significantly wider than it is deep.

Mr. Halpin queries whether the zoning method is suitable for use in locations such as Ballynacarrigy, which has a limited retail offer. He notes that zoning applies significant value to frontage and queries the relevance of this in a location with limited retail demand. He refers to a recent decision (VA15/5/010) where the Tribunal stated

“The Tribunal finds that any occupier in this location is likely to be confined as to the level of rent they will pay and that the use of zoning and rents applied per sq. m. to the individual parts of the building will lead to distorted and inflated rents where there is actually no market functioning on this basis.”

Mr. Halpin notes that the market is so poor in the location that the occupiers have reduced the size of the shop. He also believes that the retail market in the subject location would not bear a rent of more than €100/week (€5,200 per annum) in rent, irrespective of the general size or layout of the unit.

Mr. Halpin also queries the Respondents retail rental levels in Westmeath. He states that almost every village and town in the county appears to be valued at €150/ M² Zone A, irrespective of population size or actual location.

Mr. Halpin gave evidence of retail lettings in Castlepollard Shopping Centre (population 1,163), Inish Carraig Business centre in Athlone and Ballymahon (Longford – population 1,877) as well as quoting rents in Ballinalack (population 137) and Ballymahon. The rents (both actual and asking) devalue from €50/ M² to €120/ M² on an overall basis. The majority of rents are under €5,200, which is effectively a rent of €100 per week. Half the units are smaller than the subject and half are larger. He also provided Tone of the List comparisons from Mullingar and Kinnegad.

Mr Halpin has adjusted his estimate of NAV to €4,700 (58.86 M² @ €80/ M²) to take account of the revised agreed area.

7.2 In response to questions from the Respondent, Mr. Halpin accepted that the occupiers had effectively chosen the size and layout of the property following the recent conversion works. He also accepted that the Valuation Tribunal case quoted referred to a former dance hall with an unusual layout and not a standard retail unit. He further accepted that the Ballymahon comparisons were in a different rating area.

8. RESPONDENT'S CASE

8.1 Ms. McPartlan described the properties location as being in a small village in North West Westmeath, with a population of 277, located 16km from Mullingar. She confirmed that she had inspected and measured the property, which has a width of 10.9M and a depth of 5.4M.

Ms. McPartlan outlined her experience in dealing with the Westmeath revaluation and noted that limited information was available to the Respondent outside the major population centres in the county, possibly due to the high number of owner occupied properties. Her opinion was that what little evidence existed appeared to indicate that there was not much difference in retail rent levels across the county. She put forward rental evidence from Collinstown, Kilbeggan, Rochfortbridge and Tyrellspass, together with NAV comparisons from Ballynacarrigy, to support her views.

Ms. McPartlan has adjusted her estimate of NAV to €7,946 ((58.86 M² @ €150/ M²)-10%) to take account of the revised agreed area. She has allowed 10% for the frontage to depth ratio as per SCSI guidelines.

8.2 In response to questions from the Appellant, Ms. McPartlan stated that the difference between the rent and NAV in Comparison 1 was due to the rent being inappropriate for a town of the that size. She also accepted that both Kilbeggan and Rochfortbridge were better retail locations than Ballynacarrigy. She further accepted that comparisons 3 & 4 of her NAVs were vacant, but did not consider this relevant. Her rental evidence showed Zone A rents ranging from €160/ M² to €315 M² while the NAV evidence was predominantly at €150/ M² Zone A.

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 Westmeath County Council.

The first question that the Tribunal has to consider is whether the Respondent was correct to value the property on a zoned basis. Zoning is a tool of analysis of rental values of retail units whereby the rents derived from an analysis of a letting of a shop unit are applied to a similarly configured shop. Allowances must be made for differences in size, frontage, configuration etc. In addition, the premises should also be considered on an overall basis, as there are instances where zoning can produce an anomalous result. There is no evidence that the Respondent checked the valuations on an overall basis and she specifically stated under cross examination that she had not done so in respect of the Kilbeggan comparison. While the Tribunal is not convinced that Zoning is the proper method to use in small villages, it does not believe that the Appellant has adequately proved its case that the use of Zoning was incorrect in this instance.

The Tribunal notes that the Respondent allowed 10% for the layout of the property, reflecting the frontage to depth ratio. This is considered normal practice when the frontage to depth ratio is less than 1:2. In this instance the ratio is 2:1 and accordingly the Tribunal has increased the allowance to 20% in accordance with SCSI guidelines.

The Tribunal has heard the evidence of the parties and is persuaded by the Appellants arguments regarding the populations and locations of the villages referred to. The Tribunal accepts that the lack of market rental evidence in such locations makes it particularly difficult for the Respondents to produce an accurate scheme that is applicable for all the villages. The Tribunal considers that a reduction for population size should be allowed when comparing Ballynacarrigy to Kilbeggan and Rochfortbridge and accordingly reduce the zone A rent by 20% to €120/ M².

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 €5,650.

Use	Area	€/ M ²	NAV
Retail Zone A	58.86	€120	€7,063.20
Less frontage to depth allowance		20%	<u>-€1,412.64</u>
			€5,650.56

Say €5,650

And the Tribunal so determines.

Appendix 1 – Rental Comparisons

Appellant

Property	Lease Date	Overall Area (M ²)	Rent	Rent per M ²	Comments
Main St. Ballinalack	02/2017	40	€4,800	€120	Quoting rent. Adjoining petrol station
Unit 2, Castlepollard SC	03/17	94.72	€5,000	€53	6-month lease @€2,500
Unit 4, Castlepollard SC	09/16	49.93	€4,800	€96	6-month lease @€2,400
Unit 6, Castlepollard SC	04/16	128.56	€6,450	€50	1-year lease
Unit 9, Castlepollard SC	12/16	N/A	€5,200	N/A	1-year lease
Unit 5, Innish Carraig Business Centre, Athlone	07/13	116.17	€7,200	€62	6 year 9 month lease. Based on VO evidence the property was subsequently re-let from 10/16.
Unit 7, Innish Carraig Business Centre, Athlone	09/13	84.06	€5,200	€62	5-year lease.
Main Street Ballymahon, Longford	12/14	40.74	€4,227.64	€103.75	One year rolling lease.
Main Street Ballymahon, Longford	11/14	35.73	€4,320	€120.90	One year rolling lease.

Respondent

Property	Lease Date	NER Zone A/M ² @10/15	NAV Zone A	Comments
Main St. Collinstown	01/15	€315.75	€150	5-year 9-month lease. Possibly let as a business.
Riverview, Kilbeggan	10/14	€167.74	€150	2-year lease
Bagnall SC. Rochfortbridge	09/11	€185.69	€160	4-year 9-month lease. Good profile
Main St. Rochfortbridge	05/15	€160.20	€150	4-year, 7-month lease. Let as restaurant.
Main St. Tyrrellspass	01/16	€195.95	€150	1-year lease.