

Appeal No: VA17/5/112

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

O'KEEFE'S OF KILKENNY

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5010735, Retail (Warehouse) at Meubles (Ireland) Limited, Unit 12 Kilkenny Retail and Business Park, Smithlands Springhill, Kilkenny, County Kilkenny.

B E F O R E

Barry Smyth – FSCSI, MCI Arb

Deputy Chairperson

Rory Hanniffy – BL

Member

Frank O'Grady -MA, FSCSI, FRICS, FIABCI

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF NOVEMBER, 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 €317,000.

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:

- The valuation is excessive and inequitable.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €226,000.

2. REVALUATION HISTORY

2.1 On the 22nd day of 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 €317,000.

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 07th day of September, 2017 stating a valuation of €317,000.

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 the 03rd day of August, 2018. At the hearing the Appellant was represented by Eamonn Halpin B.Sc (Surveying) MRICS, MSCSI and the Respondent was represented by Terry Devlin BSc, 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

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

4.1 The property is located in a retail park in Kilkenny anchored by Woodies and with a number of 10 other retail warehouse premises a fast food outlet and car parking.

4.2 The property comprises an end of terrace, two-storey retail warehouse with an agreed Ground Floor area of 2,544.17 sq. metres and a First Floor of 2,333.80 sq. metres. The property is appropriately fitted out for the sale of Furniture and effects and incorporates a café in part of the first floor.

4.3 The property is held on Lease for a term of 25 years from November 2008 on a full repairing and insuring basis with the Tenant liable for all outgoings and at a commencing rent of €370,000 per annum.

5. ISSUES

5.1 The sole issue raised in this Appeal is whether the Net Annual Value of the property as determined by the Commissioner is correct and this was limited to dispute between the parties as to the appropriate Net Annual Value in Euro per sq. metre to be applied to the First Floor area, the Ground Floor being agreed between the parties.

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 Appellant in his written submission and oral evidence accepted that the Euro rate per sq. metre applied by the Commissioner to the agreed Ground Floor retail area at €65.00 per sq. metre was fair and reasonable. The Appellant argued that the Upper Floor was a fully developed Mezzanine and that it should be valued at a lower rate than the ground floor. He noted that in other Rating Authority areas the Commissioner has applied a lower rate of Euro per sq. metre to Mezzanine level accommodation than to the ground floor.

7.2 He stated that the market evidence was that tenants paid a lower rate per sq. metre on the Upper Floor than on the Ground Floor and as noted above stated that this approach had been adopted by the Commissioner in the revaluation of retail warehouse premises in other Counties and gave examples of NAV's in Co. Kildare where the Mezzanine retail was at 35% of the Ground Floor rent, Co. Leitrim where it was at 20% of the Ground Floor rent and Co. Longford where it was at 15% of the Ground Floor rent. He did argue for the application of the Euro rate per sq. ft. from these examples to the subject property as they are in different Counties but introduced them to show that the principle of the First Floor being at a different rate to the Ground Floor in retail warehouse premises was established elsewhere. He also noted that in the initial valuation of this subject property the rate applied to the First Floor was a little more than 50% of that applied to the Ground Floor but accepted in cross examination that this related to 1988 values and that that revision was on a tone of the list basis.

7.3 Mr. Halpin stated that the Mezzanine was less intensively utilised than the Ground Floor and that a Café had been introduced into the space. He acknowledged that there was a lift to the First Floor but it was primarily a Goods Lift and was difficult to find and available on request only and as regards customers was there to comply with disabled access requirements. He accepted that a number of the First Floor in Kilkenny have been dealt with at the same level as the Ground Floor in assessing NAV's and that same applied in the Retails Parks in Kilkenny, but he stated that this was wrong and that he could not condone the repetition of a mistake. He accepted that the subject First Floor was better than that in Ken Black/Smyth's Toys which is clearly a Mezzanine. He stated that in relation to the comparisons introduced from outside the local authority area that he was not using these values to apply to the subject premises but simply illustrating the principle of different levels for the two Floors.

8. RESPONDENT'S CASE

8.1 Mr. Devlin on behalf of the Commissioner acknowledged that there was agreement in relation to both the floor area and the applicable rate per sq. metre for the Ground Floor and that the dispute revolved totally around the treatment of the Upper Floor. He stressed that the Upper Floor was a proper First Floor and not a Mezzanine within the usual understanding of that word. He introduced two key rental transactions both in Kilkenny Retail Park, one showing a net effective rent on the Ground Floor of €73.93 per sq. metre and a NAV on that property of €75.00 per sq. metre and a larger premises where the net effective rent is €190.46 per sq. metre and the NAV is €65.00 per sq. metre. He also introduced five tone of the list comparisons showing NAV's applied on the Ground Floor of €65.00 per sq. metre in two cases and €75.00 per sq. metre in three cases, the variation being apparently dependent on the size of the unit. He also indicated that one unit, DID Electrical at a rate of €65.00 per sq. metre applied on the Ground Floor retail warehouse, the Ground Floor store and the First Floor store. He also introduced a property at Ormond Business Park where again the Ground Floor and the First Floor rates were the same at €65.00 per sq. metre and also a property on Dublin Road where the same rate applied on the Ground and First Floor offices.

8.2 In cross examination he acknowledged that the job in hand is to find the rental value of the property and therefore the key rental transactions were a starting point. He did not accept that the Woodies premises in view of its size was a direct comparison with the subject property. In relation to the differential in rates per sq.m. applied on Ground and First Floors in other Counties, he stated that Kilkenny had been treated on its own merits that rents had been looked at in Kilkenny and a policy decision was taken to treat both the ground and first floors the same. He stated that there was evidence from the key rental transactions to the appropriate rate to be applied on the Ground Floor and the same rate had been applied to the First Floor but acknowledged that there were no rents to support this stance.

8.3 In response to a question from the Tribunal in relation to the final page of his Precis where there was duplication of the descriptions of the Floors and the rate per sq.m. applied he stated that the lower figures related to the 2016 revision and therefore related to 1988 whereas the higher figures including the fact that the two Floors were treated at the same level was in relation to the current revaluation.

8.4 The Respondent contended for confirmation of the valuation on the list on the basis of Ground Floor 2,544.17 sq. metre at €65.00 per sq. metre and First Floor Retail Warehouse 2,333.8 sq. metres at €65.00 per sq. metre, which figure rounded came to €317,000.00.

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 Kilkenny County Council.

10.2 Net Annual Value is defined in the Act as being 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 and 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.

10.3 The Appellants expert opinion evidence was that First Floors in retail warehouse accommodation in the market place are treated at a lower level than the Ground Floor space. The Tribunal was unconvinced by the Respondent's position that a policy decision taken to apply a consistent approach across Co. Kilkenny and apply the same rent on the First Floor as the Ground Floor was reasonable. The Tribunal notes that in other Counties this policy was not followed but different levels applied to the First Floor than the Ground Floor. The Respondent stated that the decision was taken based on rental information but no rental information was supplied to the Tribunal to support this line of argument. The appellant's position that in the market there is a lower rate applied to first floor accommodation in retail warehouses was not disputed other than in relation to department stores of which no evidence was offered and is irrelevant in relation to retail warehouses. The Tribunal accepts that there is and should be a difference between the Ground Floor and First Floor rental values and that this is consistent with the definition of Net Annual Value in the Act and as quoted above

10.4 The Upper Floor is clearly a proper and complete First Floor and not a Mezzanine within the usual understanding of that word.

10.5 It is noted that the Ground Floor rate is agreed.

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 €226,000.00. This is calculated as follows:

Ground Floor:	2,544.17 sq. metres @ €65 per sq. metre =	€165,371.05
First Floor:	2,333.8 sq. metres @ €26 per sq. metre =	€ 60,678.80
Total	€226,049.85 say	€226,000.00

And the Tribunal so determines.