

Appeal No: VA17/5/170

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

MARY BOYLAN

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1334896, Retail (Shops) at Floor -1,0,1,2, 8, 9/1 O' Connell Street, Athlone,
County Westmeath.

B E F O R E

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Liam Daly – MSCSI, MSCSI

Member

Caroline Murphy – BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF OCTOBER, 2018

1. THE APPEAL

1.1 By Notice of Appeal received on the 5th day of October, 2018 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 €22,900.

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:

“The NAV (€ per m²) is not realistic as to what’s currently being achieved in the immediate area/ Athlone on commercial property”.

“Floor 1 ie the basement. The adjacent building has legal shared access through same”.

“The right of way access dramatically reduces the value of floor -1 ... if any value is achievable on the open market for same”.

“Building is in poor state of repair – requires financial investment before being suitable to present to open market for letting”.

“Current market rent in the area considerably lower”

“No car parking”.

“Shared access – right of way”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €9,000.

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 €25,200.

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 €22,900.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €22,900.

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 12th day of July, 2018. At the hearing the Appellant was represented by Ms Tina Boylan and the Respondent was represented by Ms Gillian Beale BSc (Hons) Property Studies, ASCSI, ARICS 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 her précis as her 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 subject property is located at 16/18 O'Connell Street in Athlone, in the County of Westmeath.

4.3 The subject property is a three storey mid terrace property located to the west of the River Shannon close to Athlone Castle and the Left Bank Area of Athlone. It is a short walk from the town centre. The subject property was formerly two adjoining properties but is now one which is laid out over four floors which comprise of a ground floor, first and second floors over a basement/lower ground floor. The main access is from O'Connell Street however there is rear access via a laneway from Pearse Street, however this lane is subject to a right of way.

4.4 The accommodation includes retail space and offices on the ground floor with structural steps up to part of the rear of the retail space. There is a ramp that provides access to the basement/ lower ground level stores. The first and second floors are set out as offices.

4.5 The subject property is currently vacant and is advertised on the open rental market.

4.6 The floor areas are agreed between the parties.

4.7 The Tribunal has been advised the Appellant is the owner and the subject property is held freehold.

5. ISSUES

5.1 The matter at issue is quantum. The Appellant claims that the correct valuation should be set at €15,000 taking into account a number of other similar type properties in Athlone as comparators.

5.2 The Respondent claims that the valuation should be set at €32,200 taking into account a number of other similar type properties in Athlone, as comparators.

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 Ms. Boylan, the Appellant’s representative said that her mother purchased the subject property in December 2016 She claimed that the subject property needed financial investment to bring it up to modern standards, including structural work to the roof and the fire stairs.

7.2 She claimed that access to the office is through the front of the building only and that the lift is not in operation so the stairs must be used to access the back office space. She claimed that the building needed to be reconfigured for retail or office space and that there is no car parking attached to the subject property. She stated that the adjoining building, No. 14 O’Connell Street has a right of way over the laneway belonging to the subject property. Wheelie bins are brought along this laneway and as a result it cannot be used and is effectively only storage space. She gave evidence that she had painted the subject property since it was purchased in 2016.

7.3 Ms. Boylan gave evidence that the subject property was vacant prior to purchase and it is still vacant now. She advised that the subject property has been on the market to let for a few months. She said the property is being advertised by her estate agent but was not entirely sure what the asking rent was. Ms. Boylan said she had not agreed a minimum value with her estate agent prior to him advertising the subject property to let. Ms. Boylan confirmed no figure was discussed in relation to what rent was being sought. She confirmed that the asking price to buy the property is €250,000 but that it was not in a fit condition to rent on the open market. She claimed that this may require a significant rent free period to be granted by the Appellant as landlord if the work is to be undertaken by a new tenant. In the Appellants precis, by letter dated 18th July 2017 her estate agent, Oliver Moore of Sherry Fitzgerald O'Meara values the rental income for the property at €10,000 to €12,000. By letter dated 25th June 2018 Mr. Moore values the rental income for the property at €15,000.

7.4 Ms. Boylan put forward the following comparator:

1. 14 O'Connell Street, Athlone in the County of Westmeath.

Ms. Boylan claimed that this comparator is a modern fully fitted office building in excellent condition. She submitted a copy of the lease signed in July 2015 at €6,000 per annum. This building is a mid-terrace office building which is arranged over ground and two upper floors. The total floor area for this building is 1,614sqft. She submitted the details from the Valuation List in relation to this property. Ms Boylan's evidence was that this property and the subject property are situated on the west side of Athlone which has suffered in recent years with many buildings remaining vacant. She said that there was a vast difference in what was being achieved as open market rent in comparison to that of the NAV.

7.5 In relation the Respondent's Third Key Rental Transaction she said it is a high-profile unit and not an exact comparison.

In addition to the comparator detailed in her evidence, Ms. Boylan includes an excerpt from the Valuation Office with the following valuations:

1. 8 O'Connell Street, Athlone, County Westmeath (Shop): €4,750.
2. 7A (FL 0) O'Connell Street, Athlone, County Westmeath (Shop): €8,610.

3. -1,0,1,2 O'Connell Street, Athlone, County Westmeath (Shop): €22,900.
4. 10-11/1 O'Connell Street, Athlone, County Westmeath (Shop) €3,820.
5. 10/11/2 O'Connell Street, Athlone, County Westmeath (Shop): €3,580.
6. 12A O'Connell Street, Athlone, County Westmeath (Shop): €14,580.
7. 12D O'Connell Street, Athlone, County Westmeath (Shop): €4,770
8. IN 13.14a O'Connell Street, Athlone, County Westmeath (Shop): €8,540
9. 12bce/1 O'Connell Street, Athlone, County Westmeath (Shop): €7,150
10. -1,0,1 17A, (9) O'Connell Street, Athlone, County Westmeath (Office, House): €9,490
11. Floors -1,0,1, 17B O'Connell Street, Athlone, County Westmeath (Shop, Office):€19,880.
12. 19a O'Connell Street, Athlone, County Westmeath (Pub): €21,000.

In addition to the above, there are two excerpts from the Property Services Regulatory Authority:

1. Unit 21, Golden Ireland Shopping Centre, Athlone, County Westmeath (Retail): Date of Lease: 18/08/2015, 10 years @ €35,000.
2. 17 O'Connell Street, Athlone, County Westmeath (Office): Date of Lease: 06/11/2015, 4 years 9 months €10,400.

7.6 Ms. Boylan confirmed in her evidence that she believed the valuation should be set at €15,000 bearing in mind the nature and condition of the property, the location generally and rental prices achieved for similar units in the Athlone area in the recent past for the purposes of estimating the annual rental value of the subject property as at 2015.

8. RESPONDENT'S CASE

8.1 Ms. Gillian Beale appeared to give evidence on behalf of the Respondent. She gave evidence that representations were examined and all evidence submitted was considered and the terms of the valuation certificate for the subject property was amended in line with the valuation levels on similar properties in the area/ category. The valuation of €25,200 was amended to €22,900. Ms. Beale indicated that all properties on O'Connell street were reduced at representations stage following further rental evidence that valuation level €230/m² Zone A was too high and reduced to €200/m².

8.2 To support her case Ms Beale relied on three market comparisons (Appendix 2). In respect of the subject property the property valuation level of €200/m² Zone A was applied to arrive at the NAV of €22,900:

1. Property Number: 1334617. The NER at 30th October 2015 is €16,087.70.
2. Property Number: 1334623. The NER at 30th October 2015 is €20,176.00.
3. Property Number: 1334453. The NER at 30th October 2015 was €11,640.00.

Ms. Beale submitted that all three key rental transactions and retail properties are valued at the same level as the subject property at Zone A €200/m². All three properties are situated on streets that are a continuation of O'Connell Street.

8.3 In addition, three NAV Comparisons were put forward;

1. Property Number: 1334895
Retail (Shops)
14 O'Connell Street, Athlone in the County of Westmeath.
NAV: €8,610.
2. Property Number: 1334614
Retail (Shops)
51 Connaught Street, Athlone in the County of Westmeath.
NAV: €15,360
3. Property Number: 1334671
Retail (Shops)
High Street, Athlone in the County of Westmeath. NAV: €18,750.

8.4 Ms. Beale gave evidence that she couldn't get access to the subject property from the agents of the Appellant in late 2016 and early 2017. She gave evidence that she carried out a cursory inspection, where she essentially stood outside the property and inspected it. She was able to carry out an internal inspection on the 15th day of June 2018. Following this inspection, the Respondent proposes:

1. Reconfiguration of ground floor areas and zoning increasing the valuation to the ground floor,

2. Inclusion of the 1st floor offices which were not previously valued under Revaluation as St. Vincent de Paul had formerly occupied administration offices on the first floor,
3. There are approximately 7 steps (structural) in part of the retail space on the ground floor between Zone B and Zone C and it is proposed that the area between Zone B and Zone C should be included in Zone C.
4. The Basement/ lower ground floor; Block 1 is incapable of beneficial occupation. Block 3 is an area in the Appellants ownership however there is a Legal Right of Way with the adjoining property and this block should not be valued.

8.5 For these reasons as set out in Ms. Beale's altered witness statement the Respondent is contending for a higher valuation. The Respondent requests that a valuation of €32,200.00 be entered in the Valuation List as representing the NAV for the subject property in accordance with Section 48 of the Valuation Act 2001 and the requirements of section 19(5).

8.6 Ms. Beale had not seen a rental brochure for the property. She gave evidence that the property had been painted but you could see the downstairs retail area is quite old and the property is hindered in part by the steps from a retailing point of view. The basement is old and there's no head height. Ms. Boylan owns the lane but there is a right of way she noted is used for wheelie bins. She claimed that the property is not air conditioned but does lend itself to good quality accommodation and that somebody's going to rent it. She said the lack of air conditioning has been reflected in the valuation.

8.7 Ms. Beale said that the comparison properties were rated on a Zone A basis and given the nature of the street location information on the ground is limited. Ms. Beale was asked by the Tribunal if she would agree that because no rental transaction information was available on the ground it was because the properties were an unoccupied. She agreed and said that occupancy is higher on the far side of Athlone with the shopping centre located there too. She said the west side of Athlone is more vacant but there is less retail on that side with houses, pubs and pop-up shops. She said that there was lower occupancy than on other side of the river and for that reason valuation levels are up to €400//m² on that side of the town and this is reflected in the rents. Following evidence being given in relation to the comparisons, the Chairperson requested a summary of the key rental transactions be presented in a table form including the measurement of each comparable key rental property going forward. Ms. Beale said she would advise the Commissioner of Tribunals request.

8.8 Ms. Beale submitted that the subject property is a high profile building valued accordingly and the Revaluation Order of 2015 is a good reflection of this. She said she gathered as much information as was possible and the first floor was eventually picked up when at the internal inspection in June 2018. She claimed that the Local Authority would have eventually picked it up and in those circumstances the NAV of €32,200 is fair and equitable.

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 Westmeath County Council.

Notice of Appeal

10.2 The Appellant has appealed the Final Valuation Certificate of €22,900. The Respondent now contends for a valuation of €32,200. At the hearing the Appellant put forward that the valuation of the Property ought to have been determined in the sum of €15,000.

10.3 Under Section 20 of the Valuation (Amendment) Act 2015 the Tribunal is required to achieve a determination of the value of the property, the subject of the appeal, that accords with that required to be achieved by section 19(5) [inserted by section 7(b) of the 2015 Act]. Section 19(5) provides that the Tribunal's decision must achieve (i) correctness of value, and (ii) equity and uniformity of value between properties on that valuation list and section 37(2)(ii) provides that in accordance with the matters set out in section 19(5), the Tribunal may increase or decrease a valuation as stated in the valuation certificate.

10.4 The first floor of the property is part of the relevant property that fell to be revalued under the statutory provisions. The NAV of the property as determined by the Respondent in the Final Valuation Certificate is inaccurate as it did not attribute any value to part of the first floor. The proposed valuation also makes a number of increases and reductions following the internal inspection of the property. It is clear that correctness of value and equity and uniformity

are the guiding principles and that the Tribunal has power to increase a valuation. The Tribunal must value the Property in accordance with section 19(5) so as to ensure that the value corrects any inaccuracies or mistakes that exists in the valuation determined by the Commissioner.

10.5 In the High Court decision of *Commissioner of Valuation v. Carlton Hotel Dublin Airport Limited & Ors* [2013] IEHC 170 Ms. Justice O'Malley [at para. 61] clarified that logically the prior issue for consideration is whether the NAV of the Property has been properly assessed in the first place as there is no merit in the uniform application of a mistake. This comment was made in the context of the methodology used to ascertain the NAV of the property, however it seems that it is a generally applicable principle. Furthermore, Ms. Justice O'Malley also confirmed [at para. 69] that appeals to the Tribunal have always been *de novo* hearings and the Court could not see anything in the 2001 Act to alter that understanding. All matters of fact and law are determined afresh albeit in the context of the grounds of appeal stated in the notice of appeal in a *de novo* hearing.

10.6 In light of the above the Tribunal concludes it has jurisdiction to value part of a 1st Floor omitted by the Respondent when determining the property's NAV. The Tribunal has power to increase or decrease a valuation under section 37(2) of the Valuation (Amendment) Act 2015 as the Tribunal's determination must achieve correctness of value and equity and uniformity of value between properties on that valuation list under section 19(5) of the said Act. The Tribunal will now consider the proposed valuation of €32,200.

Proposed Valuation of €32,200

10.7 In considering the valuation the Commissioner contends for of €32,200.00 the Tribunal, having weighed and evaluated all of the evidence before it, comes to the following conclusions:-

10.8 The Appellant put forward 14 O'Connell Street, Athlone as a comparator. The Tribunal found this property the most comparable as it is a mid-terrace property adjoining the subject property. In terms of location, this property is therefore the closest in proximity to the subject property of all the properties put forward by the parties. It comprises of a ground floor and two upper floors with the subject property comprising of a ground floor, two upper floors and a lower ground/basement floor. Both properties appear from the photographs produced by the

Respondent to have similar frontage with the windows at the same level. The subject property has wider frontage to No.14 O'Connell Street. This property is leased as an office and offers consistent comparison with the subject property.

10.9 The Appellant put forward Unit 21, Golden Ireland Shopping Centre in Athlone. This property has been leased since the 18th day of August 2015 at €35,000 per annum. The Tribunal does not attach much weight to this property as it is on the other side of the town and is located within a shopping centre. The Appellant did not give evidence in relation to the comparators listed in her precis of evidence as above.

10.10 The Respondent also relied on 14 O'Connell Street as its first NAV comparison. As outlined above, in all the circumstances the Tribunal found 14 O'Connell Street the best comparator.

10.11 The Second NAV comparison relied on by the Respondent is located on Connaught Street in Athlone and has a NAV of €15,360. The Third NAV relied on by the Respondent is located on High Street in Athlone and has a NAV of €18,750. These properties are helpful in that they are situated within close proximity to the subject property and on the west side of Athlone.

10.12 The Tribunal finds that the first, second and third Key Rental Transactions put forward by the Respondent are of some assistance to the Tribunal in that all three properties are situated on streets that are a continuation of O'Connell Street located on the west side of Athlone, the location of the subject property. All three properties are valued at the same level as the subject property at Zone A €200/m². The first and second are mid-terrace properties similar to the subject property. The third Key Rental Transaction is the least comparable as it is a corner property that has dual frontage onto two different streets. The Tribunal placed some weight on the examples put forward by the Respondents and their NER at the 30th October 2015. In particular, the first Key Rental Transaction which operates as a shop and lease commenced on the date of the Valuation date in October 2015 with a NER of €16,087.70 was of assistance.

10.13 The Appellant could not say what the subject property was currently being advertised for rent at. The Tribunal notes that the property is not leased presently. The Appellant put forward No. 14 O'Connell Street as a comparator and submits that it has been leased since July

2015 at €6,000 per annum. Ms. Boylan states that No. 14 is a modern office building. Although No.14 is the best comparator it is a smaller building and does not have a ground floor basement.

10.14 The Appellant said the subject property needed financial investment to include structural work however no evidence was adduced in relation to this or any costs of same. The property had been occupied previously and has been painted since. No evidence was put forward in relation the subject property being without car parking. Having assessed all the comparators, No. 14 O'Connell Street is the best comparator. The Tribunal does not agree with the Appellants claim that the NAV "is not realistic as to what's currently being achieved in the immediate area/ Athlone on commercial property or that the current market rent in the area is considerably lower". The Tribunal is satisfied that a reduction has been given for properties located on the west side of Athlone including the subject property and therefore is in line with the other properties on the valuation list.

10.15 The Tribunal accepts the evidence that there is no head height on the lower ground floor and therefore agrees with the Respondent that part of the basement/lower ground floor is incapable of beneficial occupation and Block 1 should not be valued accordingly. The Tribunal accepts the evidence from the parties that Block 3 is an area in the Appellants ownership and that there is a Right of Way with the adjoining property and this block should not be valued. The Tribunal accepts the evidence by the Respondent that the steps to the rear of the retail space on the ground floor should be included in Zone C. The Tribunal accepts the evidence from the Respondent that there should be an increase in the valuation to the ground floor due to reconfiguration of ground floor areas and zoning following internal inspection of the subject property. The Tribunal accepts the valuation of the Respondent in relation to the First Floor. No particular evidence was put forward by the Appellant in relation to the increases proposed by the Respondent only that it wasn't in line with what rent was currently being achieved in the immediate area. The Tribunal did not accept this position as set out at paragraph 10.14. The Tribunal agrees with the Respondents contention that the NAV should be set at €32,200.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and increases the valuation of the Property as stated in the valuation certificate to €32,200.

Floor		Floor Use	Area (m2)		NAV
0	4,5,9	Retail Zone A	62.65	€200.00	€12,530.00
0	9,10	Retail Zone B	32.61	€100.00	€3,261.00
0	10	Retail Zone C	12.95	€50.00	€647.50
Ortn	6	Retail Zone C	19.20	€50.00	€960
Ortn	7.8	Office	18.84	€20.00	€376.80
2	12.14	Office	37.44	€60.00	€2,246.40
-1	2	Store	26.78	€85.00	€2,276.30
1	11,15,18	Office	116.72	€85.00	€9,921.20
-1	1	Store	30.15	€0	€0
-1	3	Store	17.82	€0	€0

Total: €32,219.00

Say NAV €32,200