

Appeal No: VA17/5/236

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

PADDY MOORE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1545246, Retail (Shops) at 2 (Ground Floor Left and Rear) Market Square, Bagenalstown (Muine Bheag), County Carlow.

B E F O R E

Carol O'Farrell - BL

Chairperson

Thomas Collins - PC, FIPAV, NAEA, MCEI CFO

Member

Claire Hogan - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF DECEMBER, 2018.**

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th 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 €15,280.

1.2 The grounds of appeal set out in the Notice of Appeal are that the valuation is incorrect because:

“1. *The Valuation of the subject property is excessive and inequitable. The property's value as set by the Commissioner is not in line with its actual rental value.*

2. *The subject property was let on a 25-year lease from 1999. The current rent is €7,800 per annum – €150/week. The actual rent indicates that for shops over 80m² or so, there is no extra rent payable in Bagenalstown. Indeed, the rear of this particular shop is actually a negative for the hypothetical tenant. In short, consumers simply do not go beyond about the first 40ft. inside the door. As such, there is real world cost (light, heat etc.) with carrying the rear of the shop with no advantage whatsoever.*
3. *The economy in Bagenalstown has all but collapsed and there is, as a result, very low demand for retail units. The Commissioner has totally failed to grasp the reality of the situation.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €7,460.

2. REVALUATION HISTORY

2.1 On the 11th day of May 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 €18,030.

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 €15,280.

2.3 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €15,280.

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 30th day of November 2018. At the hearing the Appellant was represented by Mr Eamonn S. Halpin BSc

(Surveying) MRICS, MSCSI and the Respondent was represented by Mr. Terry Devlin BSc, MSCSI, MRICS.

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. ISSUES

4.1 The fundamental disagreement between the parties relates to how the Property should be valued. The Appellant contends that it should be valued in line with its actual rental value on an overall basis and not by reference to the retail zoning method.

5. RELEVANT STATUTORY PROVISIONS:

5.1 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.”

5.2 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.”

6. APPELLANT'S CASE

- 6.1 Mr Halpin said the Property is set apart from the majority of retail units in Bagenalstown due to its size and shape.
- 6.2 Mr Halpin argued that the letting of larger retail properties is very difficult and that he was not aware of any retail property ever being let on a zoned basis. He pointed out that the Appellant had partitioned off the store to the rear to reduce outgoings as the shop was simply too large for the market.
- 6.3 He stated that the Property's passing rent is €7,800 per annum which for a unit measuring 214 m² devalues at €36 per m². He said this rent was backed up by rents of larger retail properties in Bagenalstown and that the Property should be assessed on an overall basis using €36 per m².
- 6.4 Mr. Halpin's sought to support his proposed valuation of €7,725.60 by reference to valuations, rather than rents, determined in respect of the properties occupied by Regent Flooring, the Bank of Ireland and Kearney Auctioneers. The first comparable property put forward is an industrial style unit with a very wide street frontage in a secondary location on Regent Street. It has an area of 274.17 m² and is valued as a showroom at €24 per m². Mr Halpin pointed out that this property had previously been valued as a retail unit at €19,660 and that by the simple expedient of re-classification that property's value was reduced significantly. The second comparable is the Bank of Ireland premises which is on a prominent corner position on Main Street. The property has an area of 437 m² and is valued on an overall basis at £120 per m². The third comparable is a smaller property on Market Square having an area of 45.09 m² which is valued at the Zone A rate of €200 m².
- 6.5 Alternatively, Mr. Halpin contended that the Property should be assessed using the Zone rate of €200 per applying a 50% end allowance to take account of the shape and size of the Property. Using this method, he arrived at a valuation of €7,643.60. On the whole Mr. Halpin was critical of the use of the zoning method in the valuation of large retail properties as he said it can lead to anomalies and in his opinion, there was little or no justification for applying a Zone A rate of 200 per m² to the Property.

6.6 The Tribunal was invited by Mr Halpin to disregard the three key rental transactions relied upon by the Respondent. He contended that the Takeaway transaction should be excluded as an outlier and that the other two transactions did not support the Zone A rate of 200 per m².

7. RESPONDENT'S CASE

7.1 Mr Devlin pointed out that there were 59 retail properties in the rating authority area of Carlow Town and that 27 of those properties are located in Bagenalstown.

7.2 Mr. Devlin produced details of rents of five retail premises, three of which are located in Bagenalstown, and two in Tullow. The net effective rents of the Bagenalstown properties at the valuation date varied between €171.14 and €314.58 for properties between 33.96m² and 73.17m² in area. Although there was no clearly consistent pattern, from an analysis of these rents, the Respondent derived the Zone A rate per m² of €200.

7.3 In the light of this evidence, the Property was valued at €200 per m² for zone A. 50% of that rate was applied to Zone B, 25% to Zone C, the remaining retail area and store area were not included in the zoned areas but were valued according to their relative worth at €25 and €20 respectively.

7.4 Mr. Devlin disagreed with Mr Halpin's argument that the Property should not be valued in accordance with the zoning method and under cross-examination disagreed that the use of the method was arbitrary or uniformly incorrect. He said it was an internationally recognised measure for the valuation of retail property and that the zoning method worked well for properties with greater depth as the method notionally divides a shop into parallel zones starting at the street frontage and working backwards to the rear of the shop. As Zone B is taken to be half the value of Zone A, Zone C as half the value of Zone B, this "halving back" is fair and equitable. He indicated that by dividing a shop into standard zones account can be taken of differences in shapes and sizes and that the use of this uniform method of valuation helps ratepayers' understanding of the valuation process. He gave evidence that the Zone A rate had been derived from the rental information gleaned in respect of retail properties located in all the towns within County Carlow.

7.5 Mr. Devlin emphasised the differences between the Property and the comparable properties relied upon by the Appellant. He said that if he had applied the overall method applying the rate of at €74 per m² (the rate resulting from the devaluation of the ground floor of the Bank of Ireland) rather than the zoning method, he would have arrived at a higher rate of €15,880 for the Property.

7.6 In his opinion the passing rent of the Property was too far removed from the valuation date.

8. FACTS

8.1 From the evidence adduced by the parties, the Tribunal finds the following facts. The Property is situated on Market Square in Bagenalstown in County Carlow and comprises the ground floor of a two storey premises. It is in a commercial location near Main Street and other occupiers in the locality comprise the Bank of Ireland, Roosters Takeaway, Donohue Properties, Kearney Auctioneers and Healy's Pharmacy. The Property is used for the sale of merchandise.

8.2 The Property has a frontage of 6.05m and is 28.5m long. The width narrows to 6.01 and then widens to 9.10m and there is a storage area to the rear. It is divided by a partition to form a storage area to the rear. The parties have agreed floor areas of

Zone A	36.17 m ²
Zone B	35.91 m ²
Zone C	51.22 m ²
Retail Remainder	15.04 m ²
Store	76.26 m ²

giving an overall floor area of 214.60m².

8.3 The Property was leased to the Appellant on a 25-year FRI lease from 1999. The current passing rent is €7,800 per annum (€150 per week) having been varied by consent in 2012.

9. FINDINGS AND CONCLUSIONS

9.1 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 Carlow County Council.

9.2 Mr. Halpin's case hinges on the passing rent of the Property. The value of the Property has to be ascertained by reference to section 48 of the 2001 Act. The value of a relevant property is not automatically the actual rent paid by the tenant of the property as that rent may not accord with the statutory test in section 48. Section 48 requires an estimate of the rent the Property would achieve if it were let at the 31 October 2015. The Tribunal is not satisfied that the actual rent passing on the Property must be taken as the appropriate starting point in determining its value. That rent was agreed a significant time before the valuation date. That it is not to say that the actual rent is irrelevant but other evidence needs to be adduced to show the likely rent a hypothetical tenant would reasonably be expected to pay. The Appellant did not adduce any evidence as regards the circumstances of the rent agreed and so the Tribunal did not have before it any evidence to show that the rent agreed in 2012 satisfied the requirements contained in section 48.

9.3 Shops are for the most part valued by the zoning method. This method is based on the principle that the area closest to the front near to the display window (Zone A) is the most valuable part of the shop. When a value per square metre is arrived at for Zone A, the valuer formulaically derives rates for the other zones and from that calculates the value for the shop. Zoning is not appropriate for larger stores such as department stores or supermarkets, but it is suitable for a shop of the Property's size. In Bagenalstown, three Zone A rates apply depending upon the shop's location; €200 per m² for primary, €170 per m² for secondary and €100 per m² for tertiary locations. The rental information available was certainly limited and it probably was difficult for the Respondent to derive a Zone A rate from the limited information. But, having regard to the evidence on which the Respondent's valuer relied, it cannot be said, in the Tribunal's view, that the Zone A rate was adopted at random. In Mr. Halpin's alternative valuation using the zoning method, he applied an end allowance of 50% to reflect the property's disadvantages in terms of size and shape but the Tribunal can place no weight on that valuation given that there is no proper basis to make an end allowance for size when the zoning method is appropriate for the valuation of the Property.

9.4 There have been changes in the pattern of retail in the past 10 years. The downturn in the economy, the growth of online shopping, discount supermarkets and out of town shopping centres have had adverse impact on retail spending and had caused shops to close and the demand for shop premises to dry up. However, the Appellant's ground of appeal concerning the alleged fall in rental values in respect of open market lettings of comparable properties and the low demand for retail units in Bagenalstown have not been made out on clear evidence of rental transactions, shop closures and lack of demand for retail units in Bagenalstown.

9.5 In the absence of such evidence, therefore, the Tribunal is satisfied that the Respondent's determination of value of €15,280, based on a rate of 200 per m² Zone A, is not excessive.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal.

And the Tribunal so determines.