

**Appeal No: VA17/5/343**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**JOHN GILLESPIE**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**IN RELATION TO THE VALUATION OF**

Property No. 1994299, Retail (Shops) at 11 Main Street Or Teeling Street, Tubbercurry,  
County Sligo.

**B E F O R E**

**John Stewart – FSCSI, FRICS, MCI Arb**

**Deputy Chairperson**

**Orla Coyne - Solicitor**

**Member**

**Frank O'Grady – MA, FSCSI, FRICS, FIABCI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 16<sup>TH</sup> DAY OF APRIL, 2019.**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 11<sup>th</sup> 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 €15,090.

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 rental rate per square metre is too high and not achievable in this locality.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €7,513.75.

## **2. REVALUATION HISTORY**

2.1 On the 16<sup>th</sup> day of March 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 €15,090.

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> day of September 2017 stating a valuation of €15,090.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> 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 25<sup>th</sup> day of February, 2019. At the hearing the Appellant was represented by Mr Roger McCarrick BA, FSCSI of REA McCarrick & Sons and the Respondent was represented by Mr Liam Hazel MSc, BSc, Dip Acc & Fin, MSCSI, MRICS, MIPAV (CV), ACI Arb 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.

4.2 The subject property comprises a ground floor retail premises on Teeling Street Tubbercurry Sligo. Tubbercurry is by-passed by the N17 to the north and is located between Achonry and Charlestown south west of Sligo.

4.3 The property comprises a ground floor retail premises in a two-storey mid terraced building adjoining SuperValu and extends to an agreed floor area of 159.61m<sup>2</sup>. There was no dispute on the zoning areas and the Commissioners sizes have been accepted. The premises have an overall frontage of approx. 10.68m to Teeling Street and a display window overlooks the SuperValu car park to the rear however no access is available from the car park. The retail area has a solid carpeted floor, plastered and painted walls and a suspended ceiling. Car parking is prohibited on Teeling Street in front of the subject property.

4.4 The ground floor includes two large supporting pillars and the access to the first-floor accommodation intrudes into the retail area and splits the retail frontage.

## **5. ISSUES**

5.1 This is a quantum issue.

## **6. RELEVANT STATUTORY PROVISIONS:**

6.1 The net annual value of the Property must 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 Mc Carrick on behalf of the Appellant provided a general economic background as it affected the west of Ireland and a more detailed commentary as to how it had impacted on Tubbercurry. He referred specifically to the closure of the Aurivo head office as well as the closure of the Achonry creamery and the loss of Palace Joinery, Moylough Furniture Ltd and the Basta door and window furniture factory. He argued that the town had suffered substantially from these losses which together with the increase in online shopping had badly affected the demand for retail premises in the town.

7.2 Mr Mc Carrick also argued that the SuperValu car park was private and not available to the high street shoppers.

7.3 In his submission to the Tribunal he relied mainly on two comparisons. The first referred to a Barber Shop on Teeling Street opposite the subject property. It comprised a ground floor retail unit approx. 105m<sup>2</sup> which had been let from 1<sup>st</sup> December 2016 at €500/per month which rate increased to €600 per month after 12 months. The letting included car parking accommodation.

7.4 The second main comparison referred to a bookmaker premises also on Teeling Street which comprised a ground floor unit let of 110m<sup>2</sup> let from August 2015 at €693.33 per month and the letting included car parking.

7.5 He further argued that retail lettings in the town were based on a rate per week or per month and that the size of the unit was not significant. He stated that the subject property would command a rent of €626.16 per month or €144.50 per week.

7.6 Mr McCarrick took issue with the use of a 'Retail Zoning' approach adopted by the Commissioner as in his professional opinion it was not appropriate or applicable for small towns and he argued that it should be confined to city properties. Quoting from the SCSI 'Retail Zoning for the Chartered Surveyor' he stated that the notes were for guidance only and that where zoning was used that it was also recommended that premises should be considered on an overall basis as there were instances where zoning could produce an anomalous result. He further argued that obtaining comparative rental evidence in small towns was difficult due to high levels of business turnover and many relatively unsophisticated operators. In his opinion

retail premises in small towns were generally let on a rate per week or month generally regardless of the size of the premises or in some instances for a period of time for no rent. He referred to the highest rent of €160 per week in the town which was substantially below the proposed level sought by the Commissioner at €300 per week.

7.7 Following a short adjournment to allow the parties to review the sizes of various comparisons the hearing reconvened and Mr Mc Carrick introduced 16 rental comparisons in support of his position.

1. A Barber Shop on Teeling Street comprised a ground floor shop and car park located opposite the subject property and was let from 1<sup>st</sup> December 2016 at €500/month for the first year and €600/month thereafter. The floor area was agreed at 87.38m<sup>2</sup> down from 105m<sup>2</sup>.

2. A bookmaker premises on Teeling Street comprised a ground floor shop and car park located opposite the subject property and was let from August 2015 at €693.33/month. The floor area was agreed at 87.38m<sup>2</sup> down from 110m<sup>2</sup>.

3. A Hairdressers on Teeling Street was let from July 2015 at €433.33/month or €100/week. The floor area was agreed at 35.44m<sup>2</sup> down from 65m<sup>2</sup>.

4. An Insurance premises on Teeling Street was let from June 2017 at €500/month or €115.38/week however the floor area was not agreed 85m<sup>2</sup> versus 62.24m<sup>2</sup>.

5. A phone shop on Teeling Street was let from May 2018 at €460/month or €106/week. The floor area was agreed at 43.6m<sup>2</sup> down from 60m<sup>2</sup>.

6. A second hand shop on Teeling Street located opposite the subject property which was occupied at €500/month up until Spring 2018. The floor area was agreed at 78.02m<sup>2</sup> down from 95m<sup>2</sup>.

7. A charity shop on Teeling Street five doors from the subject property was let from July 2016 at €600/month or €138.46/week. The agreed floor areas are shop 49.82m<sup>2</sup> and store 60m<sup>2</sup> as distinct from 100m<sup>2</sup> Overall.

8. A charity shop on Wolfe Tone Square was let from February 2018 at €500/month or €115.38/week. The floor area was 65m<sup>2</sup>.

9. A second Barber Shop on Teeling Street was let from June 2013 at €325/month or €75/week. The floor was not agreed 40m<sup>2</sup> versus 17.28m<sup>2</sup>.

10. A women's fashion shop on Teeling Street comprised a vacant shop premises close to the subject property with entrances from Teeling Street and SuperValu car park. It had been let up to Spring 2018 at €500/month or €115.38/week. The floor area was stated at 100m<sup>2</sup>.

11. A Tool Hire outlet on the Sligo Road was let from April 2015 at €10,000/pa for 500m<sup>2</sup> or €20/m<sup>2</sup>.

12. A motor factors on Teeling Street was let from March 2013 at €11,700 for 287m<sup>2</sup> or €40.76/m<sup>2</sup>.

13. A builder's supply company on the Circular Road was let from December 2014 at €15,600pa for 1,875m<sup>2</sup> or €8.32/m<sup>2</sup>.

14. A financial services company on Teeling Street was let from March 2017 at €6,900pa for 170m<sup>2</sup> or €40.50/m<sup>2</sup>.

15. A Solicitor on Emmett Street was let from June 2016 at €3,600pa for 75m<sup>2</sup> or €48.00/m<sup>2</sup>.

16. A second Solicitor's firm on Humbert Street was let from April 2013 at €5,200pa for 80m<sup>2</sup> or €65.00/m<sup>2</sup>.

7.8 The appellant stated that in his opinion the use of retail zoning was irrelevant in a small town such as Tubbercurry. As an estate agent working in the town, he stated that in his opinion there was no demand from any national operators for Tubbercurry and that over 50 years he noted that approx. 50% of tenants had failed within 2 years of opening. He confirmed that the subject property was larger than most of his comparisons but argued that as lettings in Tubbercurry took place on a rate per month or week basis that any direct comparison on a size

basis was not appropriate. He stated that in his opinion the optimum size for retail premises in the town varied from 40m<sup>2</sup> to 80m<sup>2</sup>.

7.9 In conclusion he stated that in his opinion the rental value of the subject property was €144.50/week or €7,514pa as this was equal to the highest rental for a business premises on Teeling Street or in the Town. He concluded by stating that the subject property could not be compared to a fast food outlet or restaurant in another town.

7.10 During cross examination the appellant confirmed that comparisons 11, 12 and 13 referred to retail warehouse/ industrial uses and nos. 14, 15 and 16 referred to offices and were not directly comparable to the subject property. When questioned as to whether a retail unit which varied in size from 20m<sup>2</sup> to 100m<sup>2</sup> would attract the same rent the appellant replied that shops in Tubbercurry were let on weekly or monthly rates and while the optimum size ranged from 40m<sup>2</sup> to 80m<sup>2</sup> size was not particularly relevant. When asked if he wished to review his opinion of value following the reduced floor areas in his schedule of comparisons he declined to so do.

## **8. RESPONDENT'S CASE**

8.1 The respondent adopted his submission and stated that in his opinion the subject property was in the best location in the town. He included a computer-generated block plan in his submission which showed two structural sections in zones A & B as well as the set aside for the hallway/stairs to the first floor also in zone A.

8.2 The respondent confirmed that the valuation levels adopted by the Commissioner had been derived from market evidence at the valuation stage and at representations. He noted that the appellant had relied on rates per square metre whereas the Commissioner had relied on the SCSI Retail Zoning method.

8.3 The respondent addressed 15 comparisons relied upon by the appellant as previously submitted and stated that in his opinion the industrial ones –were not comparable as they comprised a different property type. He also argued that the two solicitor's offices, and additional office premises should be disregarded as they referred to offices and were not shops.

8.4 In relation to the first Barber shop he stated that the property had not been subject to representations or appeal and that the floor area relied upon by the appellant at 105m<sup>2</sup> was

overstated and had been listed as 61.91m<sup>2</sup> whereas the correct measurement should be 87.38m<sup>2</sup> and that the Commissioner will correct the error under his powers under the valuation acts.

8.5 The respondent confirmed that the premises occupied by the Bookmakers had not been subject to representation or appeal but the rent on the property had been used in other representations but that the floor area relied upon by the appellants at 110m<sup>2</sup> was overstated and the correct floor area was 83.20m<sup>2</sup> which devalued at €191/m<sup>2</sup> on a zoning basis.

8.6 He also stated that the Hairdressers had not been subject to representation or appeal but that the rent had been made available to the Commissioner. He further stated that the floor area relied upon by the appellants at 65m<sup>2</sup> was overstated and the correct floor area was 35.44m<sup>2</sup> which devalued at €110/m<sup>2</sup> on a zoning basis. He stated that there was a difference of opinion in relation to the commencement date July 2015 and September 2014 and the rents €5,200 and €3,000.

8.7 in relation to the second Barbers he stated that it had not been subject to representation or appeal and that the rent had not been made available to the Commissioner. He further stated that the floor area relied upon by the appellants at 40m<sup>2</sup> was overstated and the correct floor area was 35.44m<sup>2</sup> and that the rent of €3,900pa devalued at €225/m<sup>2</sup> on a zoning basis. He pointed out that this was a small retail unit on Teeling Street in the centre of Tubbercurry.

8.8 The phone unit had not been subject to representation or appeal and the rent had not been made available to the Commissioner. He stated that there was a significant difference in the appellants floor area at 40m<sup>2</sup> which was overstated, and the correct floor area was 13.75m<sup>2</sup> and that the rent of €5,520pa devalued at €315/m<sup>2</sup> on a zoning basis.

8.9 The laundry unit had not been subject to representation or appeal and the rent had not been made available to the Commissioner. He referred to this property on Mountain Road as secondary but based on the appellants information had a Zone A level of €115/m<sup>2</sup>. He also argued that The ethnic Shop was also on a secondary location had not been subject to representation or appeal and the rent had been made provided to the Commissioner at representation stage but even so had a Zone A rent of €90.00.

8.10 He stated that the difference in the floor areas had arisen in previous unpublished hearings and stated that the appellant had acknowledged that the floor areas were ‘more than likely gross’.

8.11 The respondent maintained that the Sligo towns of Tubbercurry pop. 1,747; Ballymote pop. 1,539; Strandhill pop. 1,596; Collooney pop. 1,369; Ballysadare pop. 1,344 and Enniscrone pop. 1,223 had all been valued at the same valuation level of €175.00 Zone A and in the subject property that this amounted to an NAV of €16,070 for the subject property.

8.12 The respondent relied on 8 key rental transactions three of which were in Tubbercurry which he stated supported the Commissioners proposed level for the subject property of €175 Zone A.

<b>Location</b>	<b>M<sup>2</sup></b>	<b>Lease terms</b>	<b>NER @ 30/10/15</b>	<b>Zone A</b>
A Shoe shop Teeling Street Note under appeal to Tribunal	65.79	4 years 9 months from 01/10/14 @ €6,000/pa	€5,446.04	€177
A Pharmacy Teeling Street	68.38	1 years from 01/11/12 @ €7,800/pa	€7,800	€181
Bookmakers Teeling Street Note under appeal to Tribunal	83.20	4 years 9 months from 01/08/15 @ €8,320/pa	€7,604.48	€191
Pizza Shop Ballymote	82.09	1 year rolling lease from 01/05/14 @ €9,600pa	€9,312	€250
Italian take away Ballymote	76.06	4 years 9 months from 01/08/16 @ €12,682.92/pa	€12,302.43	€271
A fast food shop Enniscrone	58.78	4 years 9 months from 01/01/14 @ €9,600/pa	€8,912	€176
A restaurant Strandhill	212.78	10 years from 01/03/15 @ €31,000/pa	€30,070	€333

A Restaurant Main Street Collooney	46.18	2 years from 01/05/16 @ €10,400/pa	€10,080	€300
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8.13 The respondent also provided five NAV retail comparisons from Teeling Street wherein no representations or appeals had occurred and where the Zone A NAV was €175/m<sup>2</sup>.

8.14 In concluding his evidence the respondent confirmed that the floor area had increased from 137.37m<sup>2</sup> to 159.61m<sup>2</sup> and consequently the total valuation had increased from the reported level of €15,090 to €16,070 and he requested that the Tribunal confirm the valuation.

8.15 During cross examination the respondent confirmed that in his opinion the valuation was fair and equitable. He accepted that there were two large pillars in the retail area as well as the entrance hall for the upper floor which negatively impacted the retail space but disagreed that they were unusually large. He was shown two of his photographs and accepted that they showed no retail activity and agreed that car parking was not available in front of the premises. He also agreed that there was no rear entrance from the car park into the subject premises.

In relation to the SCSi zoning paper the respondent accepted that it was an information paper and not mandatory. When questioned as to the relativity of the various county towns referred to in his submission-Tubbercurry, Ballymote, Strandhill, Collooney, Ballysadare and Enniscrone he did not accept that there was a material difference between the towns. In relation to his first key rental transaction the respondent accepted that the lease had ended in December 2018. He did not accept that a pharmacy as per his second key rental transaction would have a premium rent and no particular planning was required. When queried as to his key rental transactions 4-8 the respondent agreed all four had either take away or restaurant planning which would attract a premium, but he pointed to the higher Zone A rents in three of the four comparisons. He conceded that the fifth comparison may have included a 2-bed apartment. The respondent confirmed that a Zone A rent of €175/m<sup>2</sup> had been accepted in five Teeling Street premises.

8.16 Mr Mc Carrick summarised his submission and stated that in his opinion no shop in Tubbercurry could support a rent of €300/week as there was no evidence and that a small town should be analysed on a retail zoning basis as this was a methodology for large cities and towns.

The respondent referred to his submission and stated that the valuation had been assessed on a fair and equitable basis and asked the Tribunal to confirm the valuation.

## **9. SUBMISSIONS**

9.1 No legal submissions were provided.

## **10. FINDINGS AND CONCLUSIONS**

10.1 On this appeal the Tribunal must 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 Sligo County Council.

10.2 This case was based on two opposing approaches. The Commissioner's approach has been established for many years and is based on the Society of Chartered Surveyors Retail Zoning for the Chartered Surveyor Information paper. This methodology had been used in most if not all rating cases in relation to retail properties. It seeks to provide a broad comparability matrix to allow for comparisons to be drawn between different retail units to arrive at an equitable and fair conclusion. As with any such homogenous approach there are winners and losers as with any form of averaging. The Retail Zoning method allows for a broad-brush methodology to synthesise a common value statement across the sector.

10.3 Mr McCarrick's approach was grounded in his experience of letting retail premises in small towns in Sligo. He argued that all such lettings were based on a rate per week or month and did not pay particular attention to the size and further stated that there was generally very little difference in the rents paid for shops between 40m<sup>2</sup> and 80m<sup>2</sup>. The Tribunal acknowledges this approach is grounded in transactions however during the submissions when challenged a substantial number of the retail comparisons produced by him were shown to have included over-stated floor areas and following a query from the Tribunal, he did not wish to adjust his opinion of valuation claimed for. While the adherence to the valuation as submitted supports the approach adopted it seems to the Tribunal that the lack of any connection with the size, no matter how large or small cannot reflect the reality of a functioning market. A large number of retail transactions with very different shapes and sizes was provided by both sides however the Tribunal finds in this case that the use of the Retail Zoning method was a fair and reasonable

method to adopt to allow for relative comparability. Therefore, the Tribunal finds that the request that the zoning method to be disregarded has not succeeded.

10.4 The Tribunal has taken account of the location and consequential negative effects that the two pillars and the entrance hallway have on the layout of the retail area and accordingly it has allowed for a 10% reduction on the retail valuation

10.5 The Tribunal has also noted the break in the retail frontage to accommodate the hallway to the upper floor and it has allowed for a reduction of 5% to compensate for this imposition.

**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 €13,400.

Description	M <sup>2</sup>	€/M <sup>2</sup>	NAV
Retail Zone A	64.19	€175.00	€11,233.25
Retail Zone B	62.46	€87.50	€5,465.25
Retail Zone C	20.80	€43.75	€910.00
Remainder	6.15	€21.87	€134.50
Store	6.01	€17.50	€105.17
		<b>Sub total</b>	<b>€17,848.17</b>
Less	Frontage to depth allowance 10%		-€1,774.30
Less	Allowance for pillars/hallway 10%		-€1,774.30
Less	Allowance for split retail frontage 5%		-€887.15
		<b>Total</b>	<b>€13,412.42</b>

**Say €13, 400**

And the Tribunal so determines.