

**Appeal Nos: VA17/5/773 & VA17/5/936**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**HURLEY PROPERTY ICAV**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 5011448, Retail (Shops) at Unit 5 Athlone Town Centre, Mardyke Street, Athlone, County Westmeath & Property No. 2195121, Retail (Shops) at Unit 5 Athlone Town Centre, Mardyke Street, Athlone, County Westmeath.

**B E F O R E**

**Dearbhla M. Cunningham - BL**

**Deputy Chairperson**

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

**Member**

**Caroline Murphy - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 11<sup>TH</sup> DAY OF APRIL, 2019.**

**1. THE APPEALS**

1.1 By Notice of Appeals received on the 12<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 Properties were fixed in the sum of €119,400 (5011448) and €77,200 (2195121).

1.2 The Grounds of Appeal are fully set out in the Notice of Appeals. Briefly stated they are as follows:

- The valuation is excessive.
- Property numbers 5011448 & 2195121 should be amalgamated.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €39,000 inclusive of both property numbers.

## **2. REVALUATION HISTORY**

2.1 On the 12<sup>th</sup> 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 €143,500 (Ground and 1<sup>st</sup> Floor)

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 Property was subdivided into two property numbers.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €119,400 (5011448) and €77,200 (2195121).

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 12<sup>th</sup> day of December, 2018. At the hearing the Appellant was represented by the Mr John Algar BSc (Surveying), ASCSI, ARICS of GVA Donal O Buachalla and the Respondent was represented by Ms Triona Mc Partlan 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.

4.1 The subject property comprises a two storey retail unit at Athlone Town Centre S.C. in the middle of Athlone, Co. Westmeath. Athlone Town Centre is a regional shopping centre located on the east side of the town with access from Mardyke Street and Gleeson Street. The centre extends to 23,000 sq.m. over two floors and an underground car park for 1,200 cars. The tenants include Marks & Spencer, Next and H&M.

4.2 The unit is on two levels, is irregular in shape and has an entrance from both the shopping mall and the external courtyard (Civic Square). There is no separate access to the first floor area.

4.3 The unit is currently vacant. The last tenant, Elverys Sports vacated on 31<sup>st</sup> Jan 2016.

4.4 The floor areas are agreed between the parties:

Ground Floor	223.43 sq.m.
First Floor	<u>361.90 sq.m.</u>
Total	585.33 sq.m. (6,280 sq.ft.)

## **5. ISSUES**

5.1 The matter at issue is quantum for the amalgamated unit.

5.2 The Appellant claims that the valuation is excessive and unequitable and is seeking a reduction in the NAV to €60,300.

5.3 The Respondent states that the NAV is in line with the tone of the list for Co. Westmeath and requests the Tribunal to affirm same in accordance with the Valuation Acts.

## **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. Algar for the Appellant adopted his precis as his evidence in chief and went on to describe the location and uniqueness of the physical layout of the unit. He commented that the unit has been vacant since February 2016 apart from a short term period of 4 weeks in 2018 to cater for a pop-up fashion shop and that the Landlords were finding it difficult to attract a new tenant.

7.2 He described the shopfront and the restricted access to the unit, the staircase, escalator and the fact that 60% of the floor area is at first floor level. In addition the first floor had light voids and pillars which further impeded the circulation area.

7.3 To support his case full details of the rental schedule of the centre was provided and eight rental transactions were examined in detail. The most relevant comparisons are listed in Appendix 1.

7.4 The rental evidence ranged from 2013 to 2016 and varied from €215/sq.m. to €300/sq.m for mall units of circa 185 sq.m. All the evidence provided was for regular shaped units with single or double shopfronts to the main shopping mall. With regard to the first floor Mr. Algar provided one comparison of a small unit 53 sq.m. which was let @ €338/sq.m..

7.5 Mr. Algar stated that the restricted access and entrance together with the disjointed shopfront and the inferior and unusual layout of the unit required a considerable discount on the above figures in order to attract a tenant. He was of the opinion that the Zone A rental for the unit was €275/sq.m. and that the first floor had an overall rate of €60/sq.m.

7.6 He continued by stating that 16 units in the centre were under appeal to the Tribunal and therefore the tone of the list was flawed and not established.

7.7 Mr Algar concluded by stating that it would be very difficult to attract a hypothetical tenant to the subject property unless a substantial reduction was made to the NAV to allow for the uniqueness of the unit. He was of the opinion that the NAV should be €60,300.

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

8.1 Ms. Mc Partlan for the Respondent adopted her precis as her evidence in chief and contended for an NAV of €143,500.

8.2 The location, description and floor areas were agreed and confirmed.

8.3 To support her case Ms. Mc Partlan provided two key rental transactions:

1. Mall unit 196.60sq.m. let from March 2016 @ €75,000 pax.

Zone A 46.70 sq.m. @ €840 /sq.m.

Valued by the VO @ €550 /sq.m.

2. Double-fronted mall unit 381.15 sq.m. let from March 2013 @ €112,897 pax.

Zone A 82.35 sq.m. @ €543.75 /sq.m.

Valued by the VO @ €550 /sq.m.

8.4 She commented on the Net Effective Rent (NER) and confirmed that the Commissioner had applied a valuation level of €550 Zone A to Athlone Town Centre shopping centre and compared it with Golden Island shopping centre which had €700 Zone A.

8.5 In addition three NAV comparisons were introduced, all of which were not under appeal:

1. Unit 11 Athlone Town Centre. NAV €76,900

2. Unit 53 Athlone Town Centre. NAV €106,000.

3. Unit 15 Athlone Town Centre. NAV €47,600.

All three were ground floor mall units and had Zone A levels of €550 /sq.m.

8.6 In arriving at her opinion of value Ms. Mc Partlan confirmed that she had made an allowance of 11 % for the unusual layout of the unit. She further stated that she had not relied

on any rental evidence of units with Turnover provisions and confirmed that the tone of the list was emerging at a level of €550 /sq.m. and was valid.

8.7 With regard to the first floor an overall rate based on 60% of the Zone A level was used and an additional discount was also added to allow for the fact that there was no separate access. A rate of of €205.60/sq.m. overall was applied to the first floor.

8.8 Ms. Mc Partlan contended for the NAV to be affirmed at €143,500 as fair and reasonable and in accordance with the Valuation Acts.

## **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.

10.2 The Tribunal has examined the particulars of the property and considered the written and oral evidence adduced by Mr. Algar on behalf of the Appellant who contended for a revised valuation of €60,300 and Ms. Mc Partlan on behalf of the Respondent who sought confirmation of €143,500 NAV as fair and reasonable.

10.3 The Tribunal noted the location, layout and the two levels of accommodation of the unit. Both parties agreed that this was a unique property and not similar to other units in the centre.

10.4 In particular the restricted and limited access, the awkward layout, the fact that the majority of the frontage was to the exterior on the centre on Civic Square and that 60% of the accommodation was at first floor level, had to be taken into consideration. It was also agreed that a discount should be applied to the market rental level to compensate for the fact that there was no separate access to the first floor.

10.5 The availability of all the rental evidence in the centre as provided by the Appellant was of great assistance to the Tribunal and superceded the NER comparables offered by the Respondent. The fact that 16 other units in the centre were under appeal to the Tribunal does in some way undermine the tone of the list and was noted by the Tribunal.

10.6 Two pieces of rental evidence in particular were of assistance to the Tribunal, the Eurogiant unit dating from March 2013 which at 381 sq.m. showed an allowance for size/quantum @ €226 /sq.m. and the Tiger unit let from Nov. 2015 provided open market rental information @ €306 /sq.m. on an overall basis.

**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 **€93,900.**

**Calculation**

Ground Floor 223.50 sq.m. @ €266 /sq.m.	€59,451.00
Less Discount (for access, layout and frontage) @ 15%	<u>€8,917.00</u>
	€50,533.00
First Floor 361.90 sq.m. @ €160 /sq.m.	= €57,904.00
Less Discount (no separate access) @ 15%	
(layout, voids and pillars) @ 10%	<u>€14,476.00</u>
	<u>€43,428.00</u>
TOTAL NAV	€93,961.00
	<b>Say €93,900.00</b>

And the Tribunal so determines.