

Appeal No: VA17/5/398

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

JOE CONCANNON

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

**In relation to the valuation of
Property No. 1333264, Retail (Shops) at 7a Dublin Gate Street, Athlone, County Westmeath.**

B E F O R E

Majella Twomey - BL

Deputy Chairperson

Pat Riney – FSCSI, FRICS, ACI Arb, FIABCI, PC

Member

Frank O’Grady – MA, FSCSI, FRICS, FIABCI

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF JULY, 2019**

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th 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 €11,480.

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

1. The property is overvalued.
2. There is no on street parking, and the property is located on a “Bottleneck”
3. There is at least a dozen hairdressers in the immediate vicinity of the subject property

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €8,100.

2. REVALUATION HISTORY

2.1 On the 12th 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 €12,250.

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 €11,480.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €11,480.

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 24th day of October, 2018 and on the 26th day of June, 2019. At the hearing the Appellant was represented by the Mr. Daragh Hayden LLB 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.

4.2 The subject property is the ground floor of a two-storey terraced mixed use building, located on Dublin Gate St.

4.3 The property is currently in use as a hair studio.

4.4 The floor areas are agreed as Retail Zone A at 29.89 sq.m and Retail Zone B at 1.47 sq.m.

5. ISSUES

5.1 The sole issue before the Tribunal is quantum.

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. Concannon was taken through his evidence by his Solicitor, Dara Hayden. He said that the subject property was ground floor hair salon, which was rented out since the 2nd of March 2015 for a rent of €8,100 per annum.

7.2 Mr. Concannon confirmed that the lease was an arms-length lease and that it took a considerable period of time for it to be rented. He rented it through an auctioneer and he had to wait for a year and a half for it to be leased out. It is currently rented for a sum of €675 per month.

7.3 Mr Concannon was taken through the comparators put forward by The Valuation Office. In relation to KRT 1, The Bawn, Athlone (set out in Appendix 1), which was put forward by Ms. McPartlan, and which devalues at €375 per Retail Zone A, Mr Concannon said that this was on the Main Square and could not be compared with the subject property. He said that KRT1, as put forward by Ms McPartland is situate in a much busier thoroughfare than the street where the subject property is.

7.4 In relation to KRT2 of The Valuation Office's comparators (Appendix 1), situate in Mardyke Street, Mr. Concannon said that this property is beside Ulster Bank and near the entrance to the shopping centre. He said there was much more footfall there than there would be near the subject property.

7.5 Mr. Concannon was asked for his views on KRTs 3 &4 (Appendix 1) of The Valuation Office's comparators and he said that these properties are across the road from Dunne Stores and adjacent to The Golden Island Shopping Centre, therefore, putting them in a superior location.

7.6 Mr. Concannon put forward a number of his own comparators. He referred to his first comparator being Hynes Auctioneers, which has an overall NAV of €225. He accepted that this was not rated on a zone basis but he said that the location was superior and that it benefited from passing trade.

7.7 A further comparison of a barber shop situate on Lloyd's Lane was put forward and this is rated at an overall NAV of €230 per sq.m. Mr. Concannon said that this was a better location than the subject property as there is a car park at the end of that street.

7.8 A third NAV comparator called Sheffield's Jewellers was put forward and Mr. Concannon said that this property was far superior to the subject as it was situate on the Main Street. He said that this had a NAV of €290 per sq.m for Retail Zone A.

7.9 Mr. Concannon also put forward a fourth comparator, that being Clooney's Pharmacy. He said that this is a new building in the Athlone Town Surgery, with an overall NAV of €231.

7.10 In cross examination, Mr. Concannon said that he understood that his property was zoned and that he was aware that the old system of rating was extinguished when every property was re-valued. However, he said that not every property jumped so high in terms of valuation as his did.

8. RESPONDENT'S CASE

8.1 Ms McPartlan said that the floor areas are agreed and that the property is a ground floor hair salon.

8.2 Ms McParlan said that the property is being leased at €8,100 per annum since the 2nd of March 2015.

8.3 The evidence was that the property was rated at a Retail Zone A level of €375.

8.4 Ms McPartlan put forward four NAV comparators, all of which have a Retail Zone A of €375 and all of which are situate at Dublin Gate Street, Athlone.

8.5 Four KRTs were also put forward by Ms. McPartlan, all of which devalued at a Retail Zone A value of €375 per sq.m. These are set out in Annex 1.

8.6 In cross examination, Ms McPartlan was asked by Mr. Hayden why Hynes Auctioneers was not zoned even though it is in the same area as the subject property and she said that Hynes was not a standard property and it had a lot of solid walls.

8.7 It was put to Ms. McPartlan that there is an actual tenant in situ in the subject property and that this is good evidence of what the market rent actually is. She said that she looked at the lease but that the rent was too low in comparison to other rents in the area. She described the rent for the subject property as an outlier.

8.8 Ms. McPartlan was asked by Mr. Hayden, how she could possibly look beyond the lease which is in existence and she said that a landlord could be renting to a brother, for example. She re-iterated that the rent appeared to be an outlier.

8.9 The Tribunal asked Ms. McPartlan if she accepted that the lease was an open market transaction and she confirmed that it was.

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 West Meath.

10.2 The Tribunal notes that there is an actual lease on this property, with a set rent from one year to another and that this was agreed in 2015, as being €8,100 per annum. The Appellant provided a copy of the said lease to the Tribunal, to confirm his oral evidence.

10.3 The Tribunal finds that although Ms McPartlan was of the opinion that the rent on the subject property is an outlier that it was, in fact, an open market transaction and a lease which was made at arms- length.

10.4 That being so, the Tribunal finds that it cannot discount the actual rent which is being paid for the subject property in question. The Tribunal notes, in particular, that Mr. Concannon gave evidence that he rented the property through an auctioneer and that it took a year and a half to rent it out. The Tribunal, therefore, finds that the actual rent of the property is a relevant consideration when deciding upon the NAV.

10.5 The Tribunal notes the scheme adopted by The Valuation Office in valuing commercial properties in Athlone. The evidence was that some properties are rated on a zone basis and others are rated on an overall basis, if they are not conducive to zoning. Ms McPartlan said that zoning is not relevant depending on the property.

10.6 The Tribunal notes, in particular, that the zoning method was not used to calculate the rates in Hynes Auctioneers, which was rated on an overall sq.m basis.

10.7 Taking the Valuation Office's own methodology into account, the Tribunal has assessed the subject property and notes that the size of the property is relevant. The Tribunal notes that the overall size is just over 30 sq.m with a Retail Zone B of a mere 1.47 sq.m.

10.8 Having weighed and evaluated the evidence and in particular the fact that there is an actual open market rental value on the property, which existed at the date of final valuation, coupled with the fact that the Zone B area of the property is less than 1.5 sq.m, the Tribunal finds that the Retail Zone Methodology is not conducive to this property and that an overall valuation should be attributed to it, as was used in Hynes Auctioneer.

10.9 The Tribunal finds that by applying this methodology that an NAV to coincide with the actual rental evidence can be arrived at.

10.10 Taking the NAV of €225 per sq.m which was placed on Hynes Auctioneers, on an overall basis, into consideration, the Tribunal finds that an NAV of €275 per sq.m is more fair and equitable for the subject property given its size along with the fact that there is an actual lease in being, which the Tribunal can refer to and which is, in effect, objective evidence of an open market rent.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the decreases the valuation of the Property as stated in the valuation certificate to €8,624.

| Area(sq.m) | € per sq.m | NAV |
|------------|------------|-------|
| 31.36 | €275 | €8624 |
| SAY | | €8620 |

And so the Tribunal determines.