

Appeal No: VA17/5/470

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

DECLAN RYAN

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 1333291, Retail (Shops) at 7 Mardyke Street, Athlone, County Westmeath.

B E F O R E

Hugh Markey FSCSI, FRICS

Deputy Chairperson

Kenneth Enright Solicitor

Member

Allen Morgan FSCSI, FRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH 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 (“the Property” or “the subject property”) was fixed in the sum of €29,100.

1.2 The grounds 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:

“Valuation is not in accord with lower values of property in this area”

“Only ground floor area is for commercial use”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €15,556.

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 €31,100.

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 €29,100.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €29,100.

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 (“the valuation date”).

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 25th day of March, 2019. At the hearing the Appellant appeared in person and the Respondent was represented by Ms. Deirdre Brophy 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 Property is a vacant, ground floor shop premises located beneath a first-floor residence occupied by the Appellant and his wife, and above a domestic basement.

4.3 It is located on Mardyke Street, almost (but not directly) opposite the main pedestrian entrance to Athlone Town Shopping Centre.

4.4 Mardyke Street is a busy retail street. At the valuation date, traffic on the street was in two directions. More recently, a one-way, westbound, traffic system has been introduced.

4.5 There is no parking available on the street outside the Property.

4.6 The floor areas are agreed as follows:

Level	Use	Area sq. m
0	Retail Zone A	42.30
0	Retail Zone B	52.89
0	Retail Zone C	35.01
0	Other	2.25
TOTAL		132.45

5. ISSUES

5.1 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 The Appellant outlined to the Tribunal the fifty-year history of his business, the early success and gradual decline of which corresponded with retail trends in Athlone and elsewhere. The business started out as a newsagent – at a time, the Appellant said, when many customers still went about on bicycles – and gradually broadened in scope to sell toys and gifts, jewellery, glassware, and so on. The market for newspapers and magazines declined and, as consumer preferences turned towards online shopping and larger stores with on-site car parking, the Appellant’s business dwindled. He finally shut his doors on 31 December 2015.

7.2 The Appellant noted the number of vacant lots in the town centre, the absence of newsagents and the changing profile of the retail premises that remained.

7.3 The Chairman who, at the commencement of the hearing, had explained to the Appellant the way the Tribunal conducts its business and the evidential requirements, reminded the Appellant that the onus was on him to provide to the Tribunal evidence as to why the Commissioner’s valuation of the Property was wrong and why the Tribunal should change it. The Chairman enquired of the Appellant if he had any evidence of rental values in the town.

7.4 The Appellant said he had not but that the rents were low. He said the problem was that in a small area, out of a total of 80 to 90 shops there were 20 or 21 vacant. He said that rates were one element of the costs that were causing businesses to close.

7.5 The Appellant was of the view that the new one-way traffic system in the town – which had been in place, he said, for the previous couple of months – adversely affected the valuation of his premises. He referred to long queues of cars that built up from time to time which, he said, discouraged customers from visiting Mardyke Street.

7.6 The three large shopping areas within the central area of the town, Golden Island, Dunnes Stores and Athlone Town Centre had, the Appellant argued, a negative effect on his business.

7.7 The Appellant acknowledged, under a series of questions from Ms. Brophy that there were, in total, well over two thousand car parking spaces in the central area of the town – including those at Athlone Town Centre, Fair Green Car Park, St. Mary’s Square Car Park, Inis House, Golden Island and Dunnes Stores. The Appellant made the point that these were “ringed around” the Mardyke Street area rather than in it and that people tended not to venture far beyond the shopping centres immediately adjacent to where they parked their cars.

7.8 In the course of a reply to a question from the Chairman as to why he had not attempted to let the Property, the Appellant stated that he had spoken to an auctioneer who put a rental value on the Property at €500 per week which the Appellant thought, at €26,000 per annum, was low.

8. RESPONDENT’S CASE

8.1 Ms. Brophy for the Respondent accepted in general terms much of what the Appellant had said about the retail situation in Athlone. She acknowledged the large number of vacancies and the trends in the market identified by the Appellant. She also accepted that Mardyke Street was no longer the prime location it had once been. The new prime locations were Athlone Town Centre and Golden Island. She said, however, that the Commissioner had taken these matters into account in his assessment of the NAV of the Property.

8.2 Ms. Brophy presented four Key Rental Transactions (“KRTs”) as items of market information and seven NAV comparisons as evidence of equity and uniformity.

8.3 Full details of the KRT properties are set out in the Appendix, numbered as per the Respondent’s précis and as follows.

8.4 KRT 1 These premises are situated on Mardyke Street and the closest of all the comparisons to the subject property. Ms. Brophy pointed out that it is subject to the same conditions as the subject property in terms of nearby vacancies, traffic congestion, and so on. The date of the lease, 1 January 2015, is reasonably close to the valuation date. The headline rent is €19,800 with a net effective rent (NER) of €18,821.20 which devalues to a Zone A rent of €375. The Zone A NAV is likewise set at €375, the same as the subject property. Ms. Brophy confirmed

that the valuation was not subject to any representations but was reduced to this level in line with other similarly valued properties.

8.5 KRT 2 These premises are situated on Sean Costello Street, close to the subject property. The date of the lease is 1 August 2012. The headline rent is €20,400 with an NER of €19,194.36. The Zone A rent devalues to €592.41. The Zone A NAV is, like the subject property, set at €375. Ms. Brophy confirmed that valuation was not subject to any representations but was reduced to this level in line with other similarly valued properties.

8.6 KRT 3 These premises are also situated on Sean Costello Street, a little further away from the subject property than the previous comparison. The date of the lease is 13 October 2014. The headline rent is €10,000 with an NER of €9,603. The Zone A rent devalues to €387. The Zone A NAV is, like the subject property, set at €375. The valuation was subject to representations after which the NAV was reduced to this €375 Zone A level.

8.7 KRT 4 These premises are located close by and to the west of the subject property on The Bawn. The date of the lease is 1 August 2015, quite close to the valuation date. The headline rent is €10,680 with an NER of €10,048.81 which devalues to a Zone A rent of €575. The Zone A NAV is set at €375, the same as the subject property. Ms. Brophy confirmed that valuation was not subject to any representations but was reduced to €375 in line with other similarly valued properties.

8.8 Ms. Brophy referred to a summary of the Respondent's KRTs on page 18 of her précis. She said that the Commissioner, having had regard to these four items of rental information, set the NAV at the level of the lowest market rent at €375 Zone A (KRT 1). She said that the conditions that applied to all of these properties applied equally to the subject property, and the NAV fairly reflected the situation: the number of vacant premises in the vicinity, the traffic problems and the fact that the strip along which these properties were situated was no longer a prime retail location.

8.9 Ms. Brophy then turned to her NAV comparisons as evidence of equity and uniformity. She had noted in her précis that there were fifty properties in the vicinity of the subject property valued at €375 and that three of them including the subject property were under appeal.

8.10 Ms. Brophy referred to the map on page 19 of her précis. This map illustrated the different Zone A levels that the Commissioner had applied to retail properties in the vicinity of Mardyke Street, from €300 along the area highlighted pink on the map, to €325 in the yellow area and €375 in the orange. Golden Island was set at €700 Zone A and Athlone Town Shopping Centre at €550.

8.11 Ms. Brophy went through the details of each of the seven NAV comparisons contained in her précis. A summary of the comparisons was set out on page 34 of her précis, and is reproduced here as follows:

Number	Address	NAV €	Area sq. m.	Zone A €	Appealed
1333296	Lot 10.11 Mardyke St	17,620	109.38	375	No
1333335	37/ext. unit Mardyke St	34,300	170.02	375	No
1333336	38 Mardyke St	27,000	177.44	375	No
1333453	4a Irishtown	37,300	288.16	375	No
1333303	13.14/pt. Mardyke St	26,200	197.02	375	No
1333457	7.8.9/a Irishtown	37,500	309.02	375	No
1333284	4 Mardyke St	27,200	134.60	375	No

8.12 The Tribunal notes that all of the seven properties were located close to the subject property and five of them are on the same street. They were all set at an NAV of €375 per square metre.

8.13 The Appellant in his cross-examination of Ms. Brophy took issue with the statement in the Respondent's précis that the Property was "directly opposite the entrance to Athlone Town Centre." Ms. Brophy stated that when one exits the Athlone Town Shopping Centre one can clearly see the subject property across the road.

8.14 The Appellant, pointing to different photographs in the Respondent’s précis, asked Ms. Brophy if she was aware of the vacant buildings located beside or near a number of the comparison properties she had put forward. Ms. Brophy indicated that she was aware of the general level of vacancies. She went on to state that the landlords and tenants were likewise aware of the number of vacant properties in Athlone and this fact would be reflected in the rents achieved. Potential tenants, she said, had a choice of properties.

8.15 Ms. Brophy asked the Tribunal to confirm the Commissioner’s valuation, as follows:

Level	Use	Area sq. m	NAV €
0	Retail Zone A	42.30	15,862.50
0	Retail Zone B	52.89	9,916.88
0	Retail Zone C	35.01	3,282.19
0	Other	2.25	105.46
TOTAL		132.45	29,167.02*

*Rounded off at €29,100.

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.

10.2 As the Chairman of the Tribunal explained to the Appellant, it is incumbent on the Appellant to set out the basis on which he is challenging the Commissioner’s valuation. In the words of Section 35(a)(i) of the Act, the Appellant must show grounds as to why the valuation “is not a determination of [the Property’s] value that accords with that required to be achieved by Section 19(5).”

10.3 The Appellant provided the Tribunal with an interesting history of his business on Mardyke Street and the reasons for its decline which he placed within the context of the retail history of Athlone and certain broader economic trends and changes in consumer behaviour. Interesting as the Appellant's contribution was, it did not give sufficient reasons as to why the Commissioner's valuation of his property might not accord with that which is required to be achieved under Section 19(5) or why his own alternative valuation of €15,556 as set out in his Notice of Appeal might be more correct. The only view he expressed in regard to a rental value on the subject property was that an estimate of €26,000 per annum provided to him by an auctioneer seemed "low."

10.4 Ms. Brophy, for the Respondent, put forward in her four Key Rental Transactions specific rental evidence and the Tribunal notes her point that the Zone A NAV of €375 per square metre set by the Commissioner is set at the lower end of the rental scale. Ms. Brophy, moreover, through her seven NAV comparisons, presented an abundance of evidence as to the emerging tone of the list in Athlone and – given its size, nature and location – the subject property's proper place within it.

10.5 The Appellant did not dispute the rental or NAV details of the comparable properties produced by Ms. Brophy or give any reason as to why his own property might be distinguished from them. The Tribunal agrees with Ms. Brophy that, whatever conditions, for good or ill, apply to the nearby properties, they likewise apply to the subject property. Ms. Brophy in her evidence emphasised on a number of occasions that any issues associated with vacant shops, car-parking and congestion were evident to everyone at the time of the revaluation and were reflected in the rents contained in her KRTs and consequently in the Commissioner's valuations.

10.6 Given the aforesaid and the fact that the NAVs of the comparison properties presented by Ms. Brophy have been accepted by their numerous various occupiers it would not be appropriate, fair or equitable for the Tribunal to make any adjustment to the NAV of the subject property unless there were some evidence brought forward to show that the subject property was in some way exceptional. No such evidence was put before the Tribunal.

10.7 It was acknowledged by the parties that the change in the traffic system from two-way to one-way along Mardyke Street post-dated, by a number of years, the valuation date and

accordingly this was not a matter to be considered by the Commissioner in arriving at his valuation or a matter for the Tribunal.

10.8 The Appellant eloquently expressed his concern for the future of Athlone and put forward his view that if commercial rates were reduced it might encourage the re-opening of vacant shops in the town but these were not matters which the Tribunal could consider in the context of an appeal against the Commissioner's valuation.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent, as set out below, rounded off to an NAV of €29,100.

Level	Use	Area sq. m	NAV €
0	Retail Zone A	42.30	15,862.50
0	Retail Zone B	52.89	9,916.88
0	Retail Zone C	35.01	3,282.19
0	Other	2.25	105.46
TOTAL		132.45	29,167.02

And the Tribunal so determines.