

**Appeal No: VA17/5/1192**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**KEVIN, MARY, ORLAGH & EMMET DOOLEY**

**APPELLANTS**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 1335634, Retail (Shops) at Floors -1, 0, 1BE Magazine Road, Athlone, County Westmeath.

**B E F O R E**

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

**Deputy Chairperson**

**Dairine Mac Fadden - Solicitor**

**Member**

**Donal Madigan – MRICS, MSCSI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 21<sup>ST</sup> DAY OF FEBRUARY, 2020**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 13<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 €28,200.

1.2 The sole ground of appeal, in summary, 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 valuation is too high and may result in closure of the business.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €2,896

## **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 €44,400.

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 €28,200.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €28,200.

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 26<sup>th</sup> day of August, 2019. At the hearing the Appellant was represented by Mr. Andrew Carberry MSCSI, MRICS, RICS Registered Valuer of Power Property and the Respondent was represented by Ms. Roisin Casey BSc. Real Estate, 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**

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 This property is situated to the west of Athlone town centre on Magazine Road close to the intersection with Connaught Street. This is a secondary location opposite the army barracks.4.2 The property comprises a detached single storey (at street level) building with basement underneath which was built originally c.1800 as a canal store. It has car parking to the front for customers.

4.3 The property is occupied as a flower shop with ancillary stores, selling flowers, vegetables and other goods.

4.4 The net internal floor areas are agreed between the Surveyors as follows:

Ground Floor	207.30m <sup>2</sup>
Basement	<u>192.30m<sup>2</sup></u>
Total:	399.60m <sup>2</sup>

4.5 The property is freehold;

4.6 An unusual feature of the property is an open exposed spring in the basement from which a channel has been built to allow water to escape from the building.

## **5. ISSUES**

The sole issue in dispute between the parties is the quantum of the valuation.

## **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. Carberry, for the Appellant, contends for a valuation of € 16,870 which he calculates as follows:

	M <sup>2</sup>	€/M <sup>2</sup>	NAV €
Ground Floor	207.30	67.50	€13,992.75
Basement	192.30	15.00	€2,884.50
			€16,877.25
			Say €16,870

7.2 In support of his valuation, Mr. Carberry submits 13 comparable transactions and assessments over 12 properties including three rental type, full details of which are set out in Section A to the Appendix of this Determination. A redacted synopsis is set out below:

### 1. Connaught Street, Athlone.

This property was let on a 5-year lease from March 2017 at the rent of €8,400pa with a break option after two years. The rent devalues to €63.15 per m<sup>2</sup> overall.

### 2. Connaught Street, Athlone

This property comprises a retail store of 199.95m<sup>2</sup> with adjacent store of 29.55m<sup>2</sup> which was let in October 2015 at a rent of €18,000 per annum reflecting a net equivalent rent of €16,087.70 which devalues at €74.92 per m<sup>2</sup> overall assuming 50% weighting on the store. It closed in May 2018.

### 3. Old Galway Road, Athlone.

This property comprises a former retail property of 370.0m<sup>2</sup> located c. 600m from the subject property. This was let on a 4-year 9-month lease from May 2016 at a net equivalent rent of €18,500 per annum. This devalues at €50.00 per m<sup>2</sup> overall. The lease had rolling break options if the Landlord received planning permission to develop the site which contains a large yard. The lease also had a Tenant's break after 6 months and a Landlord's break after 3 years.

#### 4. Bastion Court.

This property is located close to the subject property and comprises a café/restaurant of 220.09m<sup>2</sup>. It ceased trading as a café/restaurant in 2016 and the replacement Tenant also failed within a year. This is assessed at an NAV of €20,300 which is calculated as follows:

		M <sup>2</sup>	€ per m <sup>2</sup>	€
Ground Floor	Retail Zone A	61.38m <sup>2</sup>	@ 200.00	12,276
	Retail Zone B	47.20m <sup>2</sup>	@ 100.00	4,720
	Retail Zone C	36.02m <sup>2</sup>	@ 50.00	1,801
	Store	75.49m <sup>2</sup>	@ 20.00	1,509.80
				20,306.80

The NAV breaks back at €93.23 per m<sup>2</sup> overall.

#### 5. Connaught Street, Athlone (\*also referenced as to rent at 2. above.)

This property is assessed at an NAV of €17,740 which is calculated as follows:

		M <sup>2</sup>	€ per m <sup>2</sup>	€
Ground Floor	Retail Zone A	36.51m <sup>2</sup>	@ 200.00	7,302.00
	Retail Zone B	38.43m <sup>2</sup>	@ 100.00	3,843.00
	Retail Zone C	38.43m <sup>2</sup>	@ 50.00	1,921.50
	remainder	86.58m <sup>2</sup>	@ 25.00	2,164.50
Basement	Store	29.55m <sup>2</sup>	@ 85.00	2,511.75
				17,742.75

The NAV for the ground floor breaks back at €76.17 per m<sup>2</sup> overall.

#### 6. Shop unit on Connaught Street, Athlone.

This property is assessed at an NAV of €13,720 which is calculated as follows:

		<b>M<sup>2</sup></b>	<b>€ per m<sup>2</sup></b>	<b>€</b>
Ground Floor	Retail Zone A	21.96m <sup>2</sup>	@ 200.00	4,392.00
	Retail Zone B	21.96m <sup>2</sup>	@ 100.00	2,196.00
	Retail Zone C	23.24m <sup>2</sup>	@ 50.00	1,162.00
	Store	56.90m <sup>2</sup>	@ 20.00	1,138.00
Basement	Store	56.90m <sup>2</sup>	@ 85.00	4,836.50
				13,724.50

The NAV breaks back at €71.64 per m<sup>2</sup> overall excluding the store on the ground floor.

#### **7. Insurance office on Magazine Road, Athlone.**

This property is assessed at an NAV of €26,000 which is calculated as follows:

		<b>M<sup>2</sup></b>	<b>€ per m<sup>2</sup></b>	<b>€</b>
Ground Floor	Retail Zone A	107.97m <sup>2</sup>	@ 150.00	16,195.50
	Retail Zone B	107.97m <sup>2</sup>	@ 75.00	8,097.75
	Retail Zone C	107.97m <sup>2</sup>	@ 37.50	4,048.88
	Store	12.81m <sup>2</sup>	@ 15.00	192.15
	Store	21.70m <sup>2</sup>	@ 18.75	406.88
	Less discount for width			
				26,051.16

The NAV breaks back at €73.14 per m<sup>2</sup> overall.

#### **8. Retail Showroom on Talbot Avenue opposite end of Magazine Road, Athlone.**

This property is assessed at an NAV of €4,100 which is calculated as follows:

		<b>M<sup>2</sup></b>	<b>€ per m<sup>2</sup></b>	<b>€</b>
Ground Floor	Store	92.24m <sup>2</sup>	@ 30.00	2,767.20
First Floor	Office	30.38m <sup>2</sup>	@ 30.00	911.40
	Store	14.18m <sup>2</sup>	@ 30.00	425.40
				4,104.00

### 9. Shop at Baylough, 1.75kms west of the subject property.

This property is assessed at an NAV of €25,400 which is calculated as follows:

		<b>M<sup>2</sup></b>	<b>€ per m<sup>2</sup></b>	<b>€</b>
Ground Floor	Retail Zone A	67.23m <sup>2</sup>	@ 150.00	10,084.50
	Retail Zone B	75.64m <sup>2</sup>	@ 75.00	5,673.00
	Retail Zone C	75.64m <sup>2</sup>	@ 37.50	2,836.50
	remainder	101.30m <sup>2</sup>	@ 18.75	1,899.38
	Store	128.26m <sup>2</sup>	@ 15.00	1,923.90
	Add + loading for off licence			3,074.00
				25,491.28

The NAV breaks back at €56.69 per m<sup>2</sup> overall or €50.01 per m<sup>2</sup> ignoring the off-licence loading.

### 10. Workshop on Patrick Street, Athlone.

This property is assessed at an NAV of €2,250 which is calculated as follows:

		<b>M<sup>2</sup></b>	<b>€ per m<sup>2</sup></b>	<b>€</b>
Ground Floor	Workshop	90.00m <sup>2</sup>	@ 25.00	2,250

### 11. Close to Connaught Street, Athlone

This property is assessed at an NAV of €23,900 which is calculated as follows:

		<b>M<sup>2</sup></b>	<b>€ per m<sup>2</sup></b>	<b>€</b>
Ground Floor	Retail Zone A	48.47m <sup>2</sup>	@ 200.00	9,694.00
	Retail Zone B	35.66m <sup>2</sup>	@ 100.00	3,566.00
	Office	5.56m <sup>2</sup>	@ 20.00	111.20
	Store	435.23m <sup>2</sup>	@ 20.00	8,704.60
Mezzanine				
	Store	369.55m <sup>2</sup>	@ 5.00	1,847.75
				23,923.55

## 12. Print shop close to Connaught Street, Athlone

This property is assessed at an NAV of €15,130 which is calculated as follows:

		M <sup>2</sup>	€ per m <sup>2</sup>	€
Ground Floor	Retail Zone A	68.34m <sup>2</sup>	@ 200.00	13,668.00
	Office	73.46m <sup>2</sup>	@ 20.00	1,469.20
				15,137.20

## 13. Workshop off Connaught Street, Athlone

This property is assessed at an NAV of €5,410 which is calculated as follows:

		M <sup>2</sup>	€ per m <sup>2</sup>	€
Ground Floor	Workshop	270.59m <sup>2</sup>	@ 20.00	5,411.80

7.3 In addition to his comparable evidence he submits, inter alia, and in summary that:

(a) high vacancy rates contribute to the difficulties in the area and he provides newspaper extracts from 2016 & 2018 in Appendix 3 of his submission in support;

(b) he highlights the deficiencies in the specification of the building with regard to basic finish, lack of insulation or heating and no natural light in most of the basement as well as an open natural spring which has a channel to allow water to run off;

(c) the Connaught Street area has been in decline for many years and is dominated by owner occupiers (some 42.9%) who are “holding on” which inflates the appearance of occupation in the street and he cites the closure of some 11 businesses since the effective date as an illustration of this decline;

(d) a significant number of properties on Connaught Street (over 50% in his view) were vacant at the effective date and thus where there is no incentive for owners to appeal against proposed valuations, he makes the point that this can skew the results of the emerging tone;

(e) there are only four other commercial units on Magazine Road, others having closed or been converted for residential use and development;

(f) whilst he accepts the approach of the Commissioner of Valuation to adopt overall rates to value the property (as opposed to zoning) he takes issue with the quantum of these, especially as Connaught Street is valued off a Zone A rate, generally, of €200.00 per m<sup>2</sup> and Magazine Road properties (that are zoned) are valued adopting a Zone A rate of €150.00 per m<sup>2</sup> and thus it should follow that the rate applied to non-zoned properties indicates a similar discount to these based on the analysis of the rates per m<sup>2</sup> overall, and

(g) the rate applied by the VO to the basement of €42.00 per m<sup>2</sup> seems out of line with the table of store comparators he provides giving a range of values of €15.00 to €25.00 per m<sup>2</sup>.

7.4 During cross examination Mr Carberry re-stated that the high level of vacancy was a factor in determining value particularly as vacant units were not usually appealed or contested. He did not agree that a level of €90.00/M<sup>2</sup> was appropriate for a retail unit in this location. He agreed that the basement has a reasonable ceiling height of approx. 8 ft but was compromised by the lack of natural light and the spring.

## 8. RESPONDENT'S CASE

8.1 Ms Casey, for the Respondent, contends for a valuation of €26,700 (a decrease on the figure in the Valuation List at €28,200) which she calculates as follows:

	<b>M<sup>2</sup></b>	<b>€/M<sup>2</sup></b>	<b>NAV €</b>
Ground Floor	207.30	90.00	€18,657.00
Basement	192.30	42.00	€8,076.60
			€26,733.60
			Say €26,700

8.2 In support of her valuation, M/s Casey submits seven comparable properties including four rental type, as detailed in Section B. of the Appendix to this Determination. A redacted synopsis is provided below.

### 1. Magazine Road, Athlone.

The property comprises a shop and basement of 231.04M<sup>2</sup> which was let from June 2004 on a 9-year 11months' lease with a rent review in June 2014. The rent is €24,000 per annum which

reflects a net equivalent rent of €23,163.60 and this devalues at a Zone A of €188.65/M<sup>2</sup> with €20/ M<sup>2</sup> for the ground floor store and € 50.00/ M<sup>2</sup> for the basement store.

This property is assessed at NAV €21,100 representing a Zone A of €150.00/ M<sup>2</sup>, €15.00/ M<sup>2</sup> on the ground floor store and €85.00/ M<sup>2</sup> on the basement store.

## **2. Abbey Road, Athlone.**

This property, comprising a total of 38.16M<sup>2</sup> was let on a lease for a term of 5 years from July 2012 at the rent of €7,800 p.a. The net equivalent rent is €7,566 per annum which reflects a Zone A rate of €214.70/ M<sup>2</sup>. This property is assessed at NAV €5,280 based on a Zone A of €150.00/ M<sup>2</sup>.

## **3. Arcadia Retail Park, Athlone.**

This property was let on a lease from November 2007, with a rent review at 2012 at the rent of €39,510 per annum. The net equivalent rent is €39,327.06 per annum which reflects a Zone A of € 691.89/M<sup>2</sup>. It has an overall floor area of 70.36M<sup>2</sup>. This property is assessed at NAV €15,910 based on a Zone A of €280.00/M<sup>2</sup>.

## **4. Connaught Street, Athlone.**

[\*Also cited by Appellant but with differing address-see Section A above comparable No. 2 & No. 5.]

This property, comprising a total floor area of 229.50M<sup>2</sup>, was let on a 10-year lease from October 2015 at the rent of €18,000 p.a. The net equivalent rent is €16,087.70 per annum which reflects a Zone A of €191.84/M<sup>2</sup>, €23.98/M<sup>2</sup> on the remainder, and €50.00 /M<sup>2</sup> on the basement store. This is assessed at NAV €17,740 based on a Zone A of €200/M<sup>2</sup>, ground floor remainder at €25.00/M<sup>2</sup> and basement store at €85.00/M<sup>2</sup>.

## **5. Magazine Road, Athlone.**

This is a property of 74.44M<sup>2</sup> and it is assessed at NAV €8,130 which reflects a Zone A of €150.00/M<sup>2</sup> plus €15.00/M<sup>2</sup> on the ground floor store.

## **6. Magazine Road, Athlone.**

[\*Subject to Valuation Tribunal Appeal\*]

This property is assessed at NAV €20,500 and comprises a total floor area of 191.40M<sup>2</sup> over ground and first floors. It is assessed at a Zone A rate of €150.00/M<sup>2</sup> which is discounted by 10% for frontage to depth ratio and with €85.00/M<sup>2</sup> on a first-floor store (95.88M<sup>2</sup>).

### 7. Magazine Road, Athlone.

This property, comprising a total floor area of 366.50M<sup>2</sup> over ground and basement, is assessed at NAV € 29,800 which is calculated as follows:

		M <sup>2</sup>	€ per M <sup>2</sup>	€
Ground Floor	Shop	295.60M <sup>2</sup>	@ 90.00	26,604.00
	Store	40.00M <sup>2</sup>	@ 15.00	600.00
Basement	Store	30.90M <sup>2</sup>	@ 85.00	2,626.50
				29,830.50

8.3 In addition to her comparable evidence M/s Casey submits, inter alia, in summary, that:

(a) in the rating area of Westmeath, out of 2,925 Valuation Certificates issued, 20% were subject to representations, 21% were changed on foot of these and 4.16% were subject to appeal to the Valuation Tribunal;

(b) four key rental transactions were relied upon by the Commissioner to inform the estimate of net annual value for the subject property with suitable adjustment to arrive at a net equivalent rent (NER) for each property at the valuation date of 30<sup>th</sup> October 2015;

(c) the approach taken in this case had been to adopt an overall rate of €90.00/ M<sup>2</sup> on the ground floor, taking this as being 60% of the applicable Zone A rate of €150.00/ M<sup>2</sup>, and in the case of the basement store to adopt € 42.00/ M<sup>2</sup> discounted back from €85.00/ M<sup>2</sup> to account for poor condition and no natural light;

(d) the revised valuation figure in the Valuation List of €28,200 was further reduced by her to €26,700 using the same unit values per square metre following a revision of the floor areas.

## **9. SUBMISSIONS**

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 Both Surveyors provided comprehensive reports which assisted the Tribunal. The reference to zoning is indirectly helpful as the subject property is not zoned in this instance but valued on overall rates for ground floor and basement. However, in the absence of sufficient commercial assessments on Magazine Road, the Surveyors had to have regard to the neighbouring street of Connaught Street to guide them. In the main most of the retail type properties cited were valued on the zoning basis and in Connaught Street this was at a Zone A of €200.00/ M<sup>2</sup> (or €120.00/ M<sup>2</sup> on an overall basis as submitted by M/s Casey) whereas the few retail properties on Magazine Road were either valued at a Zone A of €150.00/ M<sup>2</sup> or €90.00/ M<sup>2</sup> overall.

10.3 The Tribunal can only decide on the valuation based on the evidence put before it and in regard to the acceptance of a tone of the List it is not swayed by statistics indicating, ostensibly, some implied agreement or acquiescence to assessments where many properties are vacant and owners of such empty properties are not liable for rates in this particular rating authority area.

10.4 The general retail tone adopted for Magazine Road was arrived at by discounting the Zone A rates on Connaught Street from €200.00/ M<sup>2</sup> to €150.00/ M<sup>2</sup> a reduction of 25%. Several comparables submitted by the Surveyors for both Appellant and Respondent have to be ignored on the grounds of location, size, mode or category of use, character etc. and some others, where leases were granted some years ago with upward only rent reviews have to be similarly disregarded if it cannot be shown that, at the rent review date, the upward only basis prevented a downward change. Likewise, one comparable subject to a Tribunal appeal must be ruled out too.

10.5 One comparable which was relied on by both Surveyors is helpful in support of the adopted assessments in Connaught Street being no. 2 (a rental transaction) & 5. (an NAV analysis) in the Appellant's comparables in section A. and being no. 4 in the Respondent's comparables in section B. of the Appendix to this Determination. This rental is important as it was a lease granted in October 2015 which corresponds closely to the valuation date. The agreed net equivalent rent is €16,087.70 which devalues at a Zone A of €191.84/ M<sup>2</sup> (per Ms Casey for Respondent) Zone B at €95.92/M<sup>2</sup>, Zone C at €47.96 /M<sup>2</sup> with remainder ground floor at €23.98/ M<sup>2</sup> and basement at €50.00/ M<sup>2</sup>. Mr. Carberry for the Appellant devalues it as €74.92/ M<sup>2</sup> overall, on ground floor, with the basement at 50%. The Tribunal considers that a more appropriate analysis of this NER in respect of Connaught Street , adopting M/s Casey for the Respondent's Zone A of €200.00/m<sup>2</sup> and halving back in the usual way for zones B, C and remainder would give an overall unit value rate for the ground floor of premises in Connaught Street of €76.17/ M<sup>2</sup> and €28.99/ M<sup>2</sup> for the basement of premises in Connaught Street

10.6 Further, the Tribunal considers that the adoption of a unit value rate for basements of €85.00/M<sup>2</sup> cannot be easily reconciled with the relative values of ground floor stores and is thus disproportionate to the other components in the property's valuation. The indicators from the evidence is that the unit value rate per M<sup>2</sup> for basements should be significantly less and should equate more with the range of values for ground floor stores. The final adopted rate of € 42.00/ M<sup>2</sup> by M/s Casey for the subject property does still seem high, relative to the evidence, taking account of various stores at ground floor level.

10.7 Accordingly, as the most reliable evidence in Connaught Street points to a Zone A of €200/M<sup>2</sup> or retail ground floor of € 76.17/M<sup>2</sup> overall, then Magazine Road, based on the evidence must be discounted back to reflect location as well as the size of the property.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal allows the appeal and decrease the valuation of the Property as stated in the valuation certificate to **€17,800.**

This is calculated as follow:

	M <sup>2</sup>	€/M <sup>2</sup>	NAV €
Ground Floor	207.30	67.50	€13,992.75
Basement	192.30	20.00	€3,846
			€17,838.75
			<b>Say €17,800,</b>

And the Tribunal so determines.