

Appeal No: VA17/5/382

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

MARTIN FLEMING

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 1036221, Retail (Shops) at Floors 0,1, 25 New Row, Naas, County Kildare.

B E F O R E

Dearbhla Cunningham - BL

Deputy Chairperson

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

Member

Patricia O'Connor - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 15TH DAY OF JULY, 2020

1. THE APPEAL

1.1 By Notice of Appeal received on the 10th 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 €11,050.

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 :

1. *“The Valuation of the subject property is excessive and inequitable. The property’s value as applied by the Commissioner is not in line with its actual and potential rental value.*

2. *The subject property's 1st floor is a poor store and should not be valued at a standardised 1st floor level – which would reflect good quality offices. The 1st floor store cannot be worth more than the ground floor store.*”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €6,020.

2. REVALUATION HISTORY

2.1 On the 10th 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 €15,420.

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 €11,050.

2.3 A Final Valuation Certificate issued on the 11th day of September 2017 stating a valuation of €11,050.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th 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 23rd day of September, 2019. At the hearing the Appellant was represented by Mr. Eamonn S. Halpin B.Sc. (Surveying) MRICS, MSCSI of Eamonn Halpin & Co. and the Respondent was represented by Ms. Fidelma Malone 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 their précis as their 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.

(a) The subject property is located at 25 New Row, Naas, Co. Kildare.

(b) Accommodation has been agreed as follows:

Retail (ground floor)	29.08 square metres.
Workshop (ground floor)	25.02 square metres
Store (first floor)	28 square metres
Store (mezzanine)	20.18 square metres

5. ISSUES

5.1 This appeal raised the sole issue as to whether the net annual value of the Property as determined by the Commissioner is correct.

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. Halpin stated at the outset that this was a slightly unusual situation in that the Appellant occupied three properties situated side by side and while all are under appeal, only one of them

is the subject of this appeal and the other two will be heard separately. He confirmed that the three properties were physically separate from each other.

7.2 Mr. Halpin relied on one key rental comparison and five Tone of the List comparisons which are set out fully in Appendix 2.

7.3 On cross-examination, Mr. Halpin disagreed that the property benefitted from a retail front and large display window, stating that that it had a small display and door although he accepted that it benefitted from an end wall and window. Ms. Malone put it to Mr. Halpin that there was return frontage to Rathasker Road at the rear of the property. Mr. Halpin replied that this area was known as “the alley” and there was no facility to stop or park there as it had double yellow lines.

7.4 Ms. Malone put it to Mr. Halpin that all the properties on New Road were in commercial use. Mr. Halpin agreed to the extent that the last residence on New Road was the middle property purchased by the Appellants for use in their business but he did not agree that all the properties in commercial use were similar to the subject property, given that some of them comprised of modern properties custom built in the 1990’s and 2000’s.

7.5 Mr. Halpin commented on his Rental Comparison Number 1 as follows:

This property was previously a carpet showroom and is now a fitness centre. It is a much larger property than the subject property with no retail frontage but still only generated rent of €8,800 per annum. He agreed that there was pedestrian access only from Main Street and felt that the property was central.

7.6 Mr. Halpin commented on his Tone of the List Comparisons as follows:

He described Comparison 2 as being the best of the three properties occupied by the Appellants but stated that it resembled a residence more than a shop. He stated that Comparison 3 had the advantage of parking over the subject property. Mr. Halpin accepted that Comparison 4 was partially disused. Mr. Halpin felt that the main advantage which Comparison 5 had was the shared parking to the front. He stated that this illustrated what he described as the “Commissioners’ standard practice of 20% loading for retail over stores”. He further stated that it showed that it was possible to have a large building with a modest NAV.

8. RESPONDENT'S CASE

- 8.1 Ms. Malone stated that the subject property was an end property with a profile to the front and rear access. She relied on three key rental transactions and 6 NAV comparisons, all of which are set out in Appendix 2. She stated that Comparisons 5 and 6 were situated on the opposite side of the road from the subject property.
- 8.2 Ms. Malone commented on Mr. Halpin's comparisons as follows:
Comparison Number 1 is not a retail property and is located on a pedestrianized lane so it was not directly comparable.
Comparison Number 2 is inferior to the subject property as it is more residential and the front is clearly altered.
Comparison Number 3 is removed from commercial activity.
Comparison 5 comprises an industrial workshop.
- 8.3 On cross-examination, Mr. Halpin asked how the level for the first floor valuation was established. Ms. Malone confirmed that that it was done in line with first floor over retail units. They gathered information for properties with first floor rentals and made allowances for internal access and use as stores and the valuation was derived from an analysis of rents for first floor units.
- 8.4 Ms. Malone did not accept that the ceilings in the subject property were very low, stating that they appeared adequate to her. Mr. Halpin queried whether any of her comparisons had a similar type staircase, which he pointed out was missing a handrail and Ms. Malone replied that she presumed that they did.
- 8.5 Ms. Malone disagreed with Mr. Halpin's contention that the property could not be used as offices or retail. She pointed out that the staircase served its' purpose of access to the first floor and that the first floor had access and light so could be used as an office. Mr. Halpin put it to Ms. Malone that the comparisons provided were vastly superior to the subject property and Ms. Malone stated that the subject property had been discounted for location.
- 8.6 Ms. Malone commented on the Appellant's Comparison Number 5 PN 1035650. She stated that this was an industrial type property with additional ground floor retail which was larger than the subject property. She disagreed with Mr. Halpin's contention that this was exactly what the subject property did stating that this property was not located on New Row, it was not a retail unit and it was not situated on the street.

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 Kildare County Council.

1. Mr. Halpin has contended that if treated as retail, the Zone A falls to be valued at €180/m². The level as applied to the rear workshop is agreed between the parties at €25 per square metre. Thereafter, the first floor and mezzanine (loft) storage cannot exceed the level applied to the ground floor workshop which is €25 per square metre.
2. In support of this contention, Mr. Halpin has relied on the Tribunal's decisions in VA17/5/318 (Raymond Healy), VA17/5/692 (Jim Williamson), VA17/5/154 (Eddie Corkery) and VA17/5/342 (Peadar and Lucy Kennedy).
3. In VA17/5/154 (Eddie Corkery) the Tribunal valued the storage area at 10% of the retail area. This Tribunal is not bound to follow the decision of another Division of the Tribunal. However, in the interests of comity and to avoid inconsistencies in decision making, the Tribunal will normally follow a prior decision where the properties are similarly comparable and the relevant circumstances are substantially the same, subject, to any later material change in circumstances.
4. In the present case, the Tribunal accepts the Tone of the List for retail as €180 per square metre. Accordingly, and following the determination in VA17/5/154, the Tribunal values the storage area at €18 per square metre, being 10% of the retail valuation.
5. It appears to the Tribunal that the staircase is not compliant with Building Regulations although this has not been clarified by either the Appellant or the Respondent.

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 €6727, broken down as follows:

Retail (ground floor)	29.08 metres square @ €180 equals €5,234.40
Workshop (ground floor)	25.02 metres square @ €25 equals €626.25
Store (first floor)	28 metres square @ €18 equals €504
Store (mezzanine)	20.18 metres square @ €18 equals <u>€363.24</u>
Total	equals €6727.89

Say €6727.

And so the Tribunal determines.