

Appeal No: VA17/5/664

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

KIM KELLEHER T/A JINGLES

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1036088, Retail (Shops) at Floor 0,1, 7 Main Street North, Naas, County Kildare.

B E F O R E

Eoin McDermott – FSCSI, FRICS, ACI Arb

Deputy Chairperson

Thomas Collins – PC, FIPAV, NAEA, MCEI, CFO

Member

Sarah Reid - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF OCTOBER, 2020

1. THE APPEAL

1.1 By Notice of Appeal received on the 12th 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 €17,260.

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 set by the Commissioner is not in line with its potential rental value.

2. The subject property’s 1st floor is a low headroom store with very limited rental value. It would not exceed the value of the ground floor store.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €14,500.

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 €19,400.

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 €17,260.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €17,260.

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 a remote hearing on the 29th day of September, 2020. At the hearing the Appellant was represented by Mr David Halpin BA (Mod), MA (Real Estate) of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr John Doorly MSCSI, MRICS, MSc, BSc (Hons) 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 The Property comprises a two-storey retail premises on Main Street Naas, with a single on street access. It was described as a cottage in the proceedings having been constructed between 1860-1900. It has a National Inventory of Architectural Heritage number 11814050.

4.2 The floor areas of the Property are agreed as follows:

Retail Zone A: 21m²

Retail Zone B: 23m²

Retail Zone C: 9m²

Ground floor store: 10.24m²

First floor: 35m²

4.3 The Property is held freehold with the Appellant as an owner occupier.

5. ISSUES

5.1 The sole issue on this appeal concerns the appropriate rate/m² to apply to the first-floor area of the premises, the ground-floor values having been agreed. The Appellant sought a reduction of the Respondent's first-floor applied rate from €110/m² to €37.50/m² based on the fact that the said space was used as a store and could therefore only be valued at the same rate as the ground floor store.

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 parties were agreed that the figure of €375/m² was the appropriate rate for Zone A in the subject property and a level of €37.50, being 10% of this, was appropriate for the ground floor store. Mr. Halpin, for the Appellant, argued that based on these figures, the first-floor area, being also a store, ought to be valued and rated in line with the ground floor store. Mr. Halpin further argued that the sole means of accessing the first floor in the property was by a non-regulation staircase which further restricted the use and viability of this space for anything other than a store.

7.2 In support of his argument, the Appellant relied on three decisions by the Tribunal in the same rating authority where the value of the first floor levels were reduced on appeal in line with the ground floor areas for those properties (VA17/5/382, VA17/5/384 and VA17/5/318). Three additional Tribunal decisions were referred to in support of this general approach, but these were outside the relevant rating authority.

7.3 Mr. Halpin gave evidence of six properties where the store area was valued at 10% of Zone A, and one example where, on appeal, the Tribunal found that the first floor space in question, though used as a store, could have an ancillary use and the value was increased to 15% of zone A to reflect this. Of these comparisons, three were immediately proximate to the subject

property, though only comparison one (PN 1036221 and PN 1036223) had first floor accommodation. Where these units were vacant and to let, Mr. Halpin argued the hypothetical tenant would not take the subject property with first-floor stores valued €110 m² over a premises with ground floor stores valued at €37.50 /m². The Appellant contended that the Tribunal has established in their decisions that the ground floor rate for stores ought to be applied or otherwise reflected in the rate applied to first floor stores where both spaces were used for the same purpose and the only distinguishing factor was their location within the property. The Tribunal notes however that the Appellants only evidence for first floor storage in Naas was in New Row which is a tertiary location. The other comparisons in Naas that were provided to the Tribunal were ground floor only.

7.4 In summing up Mr. Halpin argued that the issue was whether a first-floor ancillary area was of significantly higher value than ground floor equivalent accommodation and in his view there were no grounds to support the contention that it was. He said the approach taken by the Respondent flew in the face of reality and this had been affirmed by the Tribunal on successive occasions, being the Tribunal decisions noted above. Mr. Halpin further argued that most of the Respondent's key rental transactions were office spaces and therefore purpose built as such but that these were not comparable to the subject property which was a store.

8. RESPONDENT'S CASE

8.1 Mr. Doorly, for the Respondent, provided three examples of properties proximate to the subject property which showed a level of €110/m² being applied consistently for first floor level office use (PN1036154, PN1039123 and PN 1039106). Mr. Doorly also argued that of 24 similarly constructed properties on Main Street in Naas, the present one was the only property under appeal. On this basis, he contended that the level applied to the subject property was uniform and equitable and ought to be maintained.

8.2 In cross examining Mr. Halpin, Mr. Doorly put it to him that the space could well be used as an office, to which Mr. Halpin replied that you could use any space as an office if someone wanted to. Mr. Doorly also asked Mr. Halpin to confirm or deny the existence of any statutory restrictions that would prevent the first floor being used as an office but the witness was unable to do so.

8.3 In addition to the three examples above, Mr. Doorly argued that the most appropriate way to value the first-floor area of the subject property was to compare it to alternative uses and weigh it accordingly. In support of this Mr. Doorly relied on three further properties (PN 1038984, PN 1039056 and PN 2169045 the details of which were exhibited as Appendix 4 to his précis), which demonstrated a rate of €120 /m² being applied for first floor office accommodation on Main Street Naas. Following on from this and responding to a question from the Chair, Mr. Doorly gave evidence that first floor retail use in the subject property would attract a level of €130/m². As an office with its own entrance over a shop, an appropriate level would be €120 /m². An office/house would attract a rate of €112 /m² and if it were classified as a store, the space would be valued at €110/ m² on the basis that the Commissioner had not previously applied a rate below €110 /m² to comparable properties and so this was the level that would prevail in those circumstances.

8.4 The Respondent argued that the first floor of the subject property was capable of retail and/or ancillary use outside the confines of a store and further that there was a possibility that the first floor could be occupied by a distinct tenant who would then share ground floor access with the ground floor tenant. The Tribunal expressed their concern that this would require a separate access to the first floor and there was no photographic evidence provided by either party that would assist the Tribunal to consider the viability of this proposition. Mr. Doorly then proceeded to electronically share an image with the hearing participants (Mr. Halpin included) showing the staircase in question and maintained his view that a hypothetical tenant could take the first floor as a distinct unit with access traversing the ground floor ‘unit’.

8.5 In his summing up, Mr. Doorly stated that the Respondent had been guided by the checks and balances required of him, namely he had taken a basket of rents and supported these by key rental transactions. It was further contended that the Commissioner had regard to the SCSI Retail Zoning guidelines in not valuing first floor areas relative to ground floor/ Zone A levels and in the present case a proportionate rate of 51% had been achieved which was appropriate in the circumstances. Mr. Doorly also argued that to apply a blanket 10% rate to the first floor area contravened the SCSI Retail Zoning guidelines.

9. SUBMISSIONS

9.1 There were no submissions of a legal nature.

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. Furthermore, the role of the Tribunal is to value the property on the basis that it is vacant and to let. That being so, the Tribunal considers that the first floor of the subject property could be used as retail, office or storage, depending on what the hypothetical tenant wanted to use the property for.

10.2 The Tribunal finds that in this case, and in all cases before the Tribunal, the onus of proof in appeals rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal's determination. In the present case the Appellant presumed that the first floor of the property could only be used as a store yet no definitive or supporting evidence was provided for this contention. Indeed, in response to the Appellant's assertion that the staircase was non-regulation in width, and when asked in cross examination to confirm whether the staircase complied with relevant building regulations, Mr. Halpin was unable to provide an adequate answer. It is therefore the Tribunal's view that the Appellant failed to support his contention that the dimensions of the staircase in the subject property rendered the first floor area unusable and/or unsuitable as anything other than a store and no evidence was proffered to substantiate this claim.

10.3 The Tribunal is of the view that the Appellant in this case has done no more than show that the first floor of the property is currently used as a store. However, no expert evidence was adduced to substantiate or otherwise confirm that it could only be used as a store to the exclusion of another commercial use. No statutory grounds were advanced or provided in evidence and Mr. Halpin relied on his own view as determinative of the point.

10.4 The Tribunal also notes that the Appellants only evidence for first floor storage in Naas was in New Row which is a tertiary location. The other comparisons provided to the Tribunal in Naas were ground floor only. In a tertiary location demand for retail space will, by its very nature, be poor and this is then reflected in the rents for that space. It follows that there will be even less demand for first floor space in such a tertiary location. The subject property is located in, to quote the Appellant, "*a primary on street retail location, in the centre of town.*" The

Tribunal is of the view that demand for retail space will be stronger in that setting and similarly the demand for ancillary space will also be stronger.

10.5 As a matter of law, and taking the Appellant's case at its highest based on the evidence adduced, there is nothing before the Tribunal to prove that the first floor of the subject property is incapable of beneficial occupation if it were vacant and to let. For that reason, this Tribunal does not accept the Appellants' presumptive contention.

10.6 Notwithstanding the above finding, the Tribunal does not accept the Respondent's contention that the first floor would be attractive to a hypothetical tenant as a distinct and separate unit given the single-entry shared access this would require. Furthermore, the Respondent provided evidence of separate entry, first floor over shop accommodation proximate to the subject property which were valued at a rate of €120 m/2 (PN 1038984 and PN 1039056) and the Tribunal finds that these properties would be deemed far superior to the present one, should a hypothetical tenant seek such accommodation.

10.7 In respect of the subject property, the Tribunal is of the view that the use of the first floor should be connected with the use of the ground floor but would be subsidiary and ancillary to that use. It could be used as an office in connection with retail use downstairs, it could be used as a store for the retail use downstairs or, indeed, it could be in retail use as an extension of the downstairs shop.

10.8 The Tribunal is most dissatisfied with the Respondent's position that the appropriate value for a first-floor store in this setting ought to be €110 /m² simply because the Respondent has not applied a rate below that to comparable properties along Main Street, Naas. This approach appears to prioritise consistency in valuation over a meaningful consideration of the accommodation itself. The Tribunal would draw the Respondent's attention to the SCSI Information Paper 'Retail Zoning for the Chartered Surveyor', which they sought to rely on in their evidence, and in particular the introductory section of same which say:

"Where zoning is applied, it is also recommended that the premises be considered on an overall basis as there are instances where zoning can produce an anomalous result."

10.9 The Tribunal acknowledges that the said Information paper specifically states its purpose is to provide ‘Practice based information that provides users with the latest information and/or research’ and does not therefore have the same mandatory status or authority as other SCSI documents. Nonetheless and in circumstances where the Respondent sought to place reliance on the fact that it had complied with this guidance, the Tribunal wishes to make the point that the document should be read as a whole.

10.10 The Tribunal is of the view that in preparing their précis of evidence, it is incumbent upon both parties to include all evidence that is intended to be relied on at the hearing of the matter. In the present case, the Respondent failed in their obligation to provide evidence to the Appellant in advance of the hearing. Specifically, during the course of the hearing Mr. Doorly proceeded to ask Mr. Halpin to comment on SCSI guidelines for rating properties without having exhibited same in his précis. Indeed, when asked by the Tribunal to identify where this document was contained in his evidence Mr. Doorly sought to rely on a letter from the Commissioner of Valuation which merely referenced the said guidelines.

10.11 As a general rule, the Tribunal believes that the SCSI Information Paper ‘Retail Zoning for the Chartered Surveyor’ should form part of the précis for any appeal hearing of a zoned retail property.

10.12 Based on the foregoing, the Tribunal is of the view that the Appellant has not proved his case, that the Respondent has justified his figures and that we dismiss the appeal and confirm the valuation.

DETERMINATION:

The Tribunal disallows the appeal and confirms the decision of the Respondent.

And the Tribunal so determines