

Appeal No: VA19/5/1733

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

MANOR BOOKS LTD

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2184281, Retail (Shops) at Ground Floor (Manor House), 3 Church Road,
Malahide, County Dublin.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF MARCH, 2024**

BEFORE

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 5th day of October, 2019 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 € **48,600.00**.

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:

" Current rent stands at €33,000 per annum. i.e. €276 p.s.m. per annum. Landlord has stated that this rate will not increase. Valuation rent per annum as per Valuation Cert issued 10th September 2019 is at €48,600, Discrepancy of €15,600."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of € **33,051.80**.

2. RE-VALUATION HISTORY

- 2.1 This is a Revaluation appeal arising from the Fingal County Council revaluation which was undertaken as a result of the Valuation Acts 2001-2015 (Fingal County Council) Valuation Order 2017 that was signed by the Commissioner of Valuation on 6th October, 2017 and is for the Valuation List published on 17th September 2019.
- 2.2 The functions of the Commissioner of Valuation are now performed under the authority of Tailte Éireann with effect from 1st March, 2023 (S.I. No. 58/2023 - Tailte Act 2022 (Commencement) Order 2023).
- 2.3 On the 15th day of March, 2019 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 **€48,600.00**.
- 2.4 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 manager did not consider it appropriate to provide for a lower valuation.
- 2.5 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of **€48,600.00**.
- 2.6 The date by reference to which the value of the Property, the subject of this appeal, was determined is **15th day of September, 2017**.

3. DOCUMENT BASED APPEAL

- 3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.
- 3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.
- 3.3 As the appeal was made on 5th October, 2019, the Valuation Tribunal (Appeals) Rules 2019 apply to it as they came into effect for all rating appeals with effect from 16th September, 2019.
- 3.4 The Appellant was represented by Mr. Robert Redmond of Manor Books Limited, the rated occupier, and the Respondent, Tailte Éireann, was represented by Mr. Patrick Nolan, B.Sc.(Hons), MSCSI, MRICS, Rating Diploma, each of whom made written submissions to the Tribunal.

4. FACTS

From the submissions received the following appear to the Tribunal to be the background or undisputed facts:

4.1 The subject property is located on Church Road Malahide, opposite the junction with Heeley's Lane, 70 metres south of the junction with Main Street and The Mall. The property is situated 250 metres southeast of Malahide Rail Station.

4.2 The property comprises the ground floor of a two-storey building, trading as a bookshop.

4.3 The net floor areas of the property set out in the Valuation List are as follows:

Ground Floor	Retail Zone A	45.06m ²
	Zone B	45.06m ²
	Zone C	29.15m ²
		119.27m ²

4.4 The property is leasehold.

5. ISSUES

The sole issue arising in this appeal is the quantum of the valuation. The Appellant contends for a Net Annual Value of € **33,051.80** whilst the Respondent Valuer contends for a Net Annual Value of € **48,600**.

6. RELEVANT STATUTORY PROVISIONS:

6.1 All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified, or re-enacted by the Valuation (Amendment) Act, 2015 and other statutes.

6.2 In **Revaluation** type appeals, as in this appeal, sec. 37 provides that the Valuation Tribunal must reach a determination having regard to the provisions of section 19(5) inserted by section 7 of the of the Valuation (Amendment) Act 2015 as follows:

"The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable)

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list, and so that (as regards the matters referred to in paragraph (b) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area."

6.3 The Net Annual Value (the **NAV**) of the Property must be determined in accordance with the provisions of section 48 (1) of the Act, as amended, 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.”

6.4 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the basis 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 expected to let from year to year, on the assumption that the probable average 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. Robert Redmond, on behalf of Manor Books Limited, submitted a single page extract from a lease and a copy of a rates bill in his submission to the Tribunal. The lease extract referenced a rent of € 33,000 per annum, gave details of the Landlords and the Tenant and had the year 2021 indicated at the top but no other date, stamping or other information. The rates bill is dated 19th March 2021 and gave details of the valuation at € 48,600 and the ARV for Fingal County Council at 0.1796. Other details are outside the remit of the valuation and are therefore not referred to here.

7.2 In his Notice of Appeal, Mr. Redmond contended for a revised valuation calculated as follows:

Ground Floor	Retail Zone A	45.06m ²	@ € 420.00	18,925.20
	Zone B	45.06m ²	@ € 210.00	9,462.60
	Zone C	<u>29.15m²</u>	@ € 160.00	<u>4,664.00</u>
		119.27m ²		33,051.80

7.3 In his email to the Tribunal of 10th November, 2023 (at 12:53) Mr. Redmond stated that he is a bookseller and could not afford the present rates bill. He is aware that other retail outlets in the area pay similar rates charges, however, that by the nature of his business, that he does not yield the level of profits that those other local businesses may enjoy. He therefore appeals to have the current rates reviewed and set at a valuation that is in line with the current rent set by his landlord.

8. RESPONDENT'S CASE

8.1 Mr. Patrick Nolan is the expert witness for the Respondent, Tailte Éireann, in this appeal. He is a Senior Executive Valuer in Tailte Éireann who attests to having 16 years' experience in rating valuation. He submitted a precis of evidence in which, inter alia and in summary, he outlined the location and description of the property and the revaluation history, culminating in the provision of a valuation of € 48,600 which is calculated as follows:

Ground Floor	Retail Zone A	45.06m ²	@ € 650.00	29,289.00
	Zone B	45.06m ²	@ € 325.00	14,644.50
	Zone C	<u>29.15m²</u>	@ € 162.50	<u>4,736.88</u>
		119.27m ²		48,670.38 rounded to NAV € 48,600.

8.2 In support of his valuation Mr. Nolan relied upon the following key rental transactions (KRTs)-some details redacted, and comparable NAV assessments from the Valuation List:

(a) **KRT 1**

Church Road Malahide

Unit of 43.53m² let on lease from June 2018 at the rent of € 28,000 per annum equating to a net effective rent at the valuation date of €26,316.10 and which is valued at the NAV of € 23,900.

The rental analyses to show a Zone A rate of € 714.34 per m² and is valued based on the Zone A rate of € 650.00 per m².

No representations were made against this valuation and no appeal was made in respect of it.

(b) **KRT 2**

Church Road Malahide.

Unit of 41.38m² let on a lease from February 2017 at the rent of € 22,500 per annum equating to a net effective rent at the valuation date of € 21,594.79 and which is valued at the NAV of €17,000.

The rental analyses to show a Zone A rate of € 871.77 per m² and is valued based on the Zone A rate of € 650.00 per m².

No representations were made against this valuation and no appeal was made in respect of it.

(c) **NAV Comparable No. 1**

PN 2184280 Church Road Malahide

This is a unit of 90.88m that is assessed at the NAV of € 40,600 that is based on a Zone A rate of € 650.00 per m².

No representations were made against this valuation and no appeal was made in respect of it.

(d) NAV Comparable No. 2

PN 349027 Church Road Malahide.

This is a unit with first floor comprising in total 129.38m² which is assessed at the NAV of €38,600 that is based on a Zone A rate of € 650.00 per m².

No representations were made against this valuation and no appeal was made in respect of it.

(e) NAV Comparable No.3

PN 349028 Church Road Malahide.

This is a unit of 43.28m² which is assessed at the NAV of € 22,800 that is calculated based on a Zone A rate of € 650.00 per m².

No representations were made against this valuation and no appeal was made in respect of it.

8.3 Mr, Nolan further relied upon earlier Valuation Tribunal decisions to support his contention that the onus in these appeals rests with the Appellant to prove that the valuation in the certificate is incorrect, those being Proudlane Ltd VA 00/2/032, VA09/1/018 O'Sullivan's Marine and the case of VA07/3/054 William Savage Construction.

9. SUBMISSIONS

There were no legal submissions in this case.

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, equitable and uniform 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 Fingal County Council.

10.2 The chief authority for the Tribunal in deciding appeals is constrained by the provisions of sec.37 of the Valuation Act, 2001, as amended, and in these appeals the Tribunal can only reach a conclusion based on the evidence placed before it. In a Revaluation type appeal, such as in this case, the statutory direction is to ensure compliance with the requirements of sec.19(5) on the basis of a valuation mandated by sec.48(3) as set out in section 6. above, of this Determination.

10.3 The rules of the Tribunal are clear (especially rules 35 & 36) in what is to be expected of an Appellant to submit and support their case and further directs what is expected from the Respondent in the reply to any arguments for a changed valuation. However, as is the case here, the framework to properly determine an appeal falls away if insufficient information is provided by the Appellant to challenge the valuation appearing in the Valuation List, as that leaves the Respondent with inadequate information to consider a change to the valuation and also, consequently, denies the Tribunal an opportunity of exploring, fairly, the case being advanced for the Appellant.

10.4 The Appellant submits two pieces of evidence in his submission, the first being a one page extract from his lease of the Property and the second being the rates bill. The extract from the lease is not fully dated, or stamped, and is inadequate to form the basis of any meaningful review. The rates bill, as such, has no relevance here as the Tribunal has no overall function to determine the amount of a rates bill, as such, but only the **valuation** upon which it is based. The Tribunal is independent of the local rating authority and also of Tailte Éireann.

10.5 The Appellant calculates a valuation based on his analysis of the passing rent which was (apparently) fixed some three years after the valuation date and based on this he adopts a Zone A rate of € 420 per m² for his calculation, but he does not produce comparables in the form of other rents for shops in the area or other NAV assessments, demonstrating that this level of unit value per square metre was the prevailing unit value rate at the statutory valuation date of 15th September, 2017. He applies the floor areas used by the Respondent to calculate this alternative valuation and so the inference is that he has no issue with these.

10.6 The focus of his argument is the rent of his own Property as contrasted to the net annual value and, secondly, in his submission to the Tribunal, the contention regarding affordability of the rates bill resulting from the proposed valuation. The Tribunal is sympathetic to any business experiencing difficulty with issues of affordability but has no function under the Valuation Acts to entertain these, because the function of the Tribunal relates to determining the amount of the valuation, **only**, in accordance with the legal framework enunciated in section 6 above. The rent of the subject property should provide persuasive evidence for the correct assessment of net annual value, if the circumstances surrounding the fixing of that rent match the statutory assumption and usual rating principles, but cannot be considered in isolation as the decisive factor, if other rental evidence and comparable net annual values offer a contrasting level of value.

10.7 The Respondent Valuer has submitted two relevant key rental transactions in the immediate vicinity of the Property, one in June 2018 and one in February, 2017 both of which demonstrate rental values, on analysis, in excess of the adopted Zone A unit value per square metre of €650.00. The earlier part of Sec.19 (5) of the Valuation Act 2001, as amended, provides that:

(5) The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned,

and so, the rent from June 2018, is relevant in this instance even though it is after the valuation date (15th September, 2017) as it is **before** the date of issue of the Valuation Certificate on 10th September, 2019.

10.8 The Respondent Valuer also submitted three NAV comparables indicating a Zone A unit value of € 650.00 per m². In tandem with the two key rental transactions, it is notable that none of these valuations were subject to representation or appeal and all were assembled from the same street. Although these had differing uses they are all in the broad category of what can be appropriately labelled “retail”. Size differences between units are compensated somewhat by the use of zoning analysis as applied by the Respondent.

10.9 Having carefully considered the appeal the Tribunal cannot find grounds to apply a different level of unit value to the Property and, consequently, has no evidence before it to determine an alternative valuation to that advanced by the Respondent.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent at the Net Annual Value € **48,600**.

RIGHT OF APPEAL

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal’s determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.