

Appeal No: VA19/5/0020

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

PAWS Animal Rescue

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 883705, Retail (Shops) at 58A.57B (INCL 1 Mary ST) O'Connell Street,
Clonmel, County Tipperary.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 2ND DAY OF MAY, 2024**

BEFORE

Úna Ní Chatháin - B.L.

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 13th day of September, 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 €16,140.

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: *"We are a registered charity CHY12312. We assist Tipperary County Council by taking abandoned dogs from the pound and getting them new homes.*

When the council were dealing directly with the rates they always granted us a waiver as the total annual income from the sale of donated goods is usually between €15k and €18k."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.

2. RE-VALUATION HISTORY

2.1 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 €16,140.

2.2 A Final Valuation Certificate issued on the 10 September 2019 stating a valuation of €16,140.

2.3 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.

4. DOCUMENTS

4.1 The Tribunal had before it the following documents:

- (i) Notice of Appeal dated 13 September 2019;
- (ii) Statement of Gina Hetherington dated 5 December 2022;
- (iii) Email submission from Appellant dated 10 March 2023;
- (iv) 7 invoices from Southview Animal Hospital;
- (v) Précis of evidence of John Shaughnessy on behalf of the Respondent together with four appendices;

5. FACTS

- 5.1 The parties are agreed as to the following facts.
- 5.2 The Subject Property is a retail unit in good condition on the corner of O'Connell Street and Mary Street, Clonmel. The entrance to the unit is located on O'Connell Street. The unit consists of a sales area at ground floor level with a partition wall to the right of the property, a changing area, kitchen and toilet also at ground floor level, and a basement storage area.
- 5.3 The ground floor shop premises is operated as a charity shop selling books, clothing and bric-à-brac. The basement is used for storage of retail materials as well as donations for animals.
- 5.4 The respondent set out the following floor areas and the appellant has not taken issue with same:

RETAIL ZONE A	0	35.99
RETAIL ZONE A	0	-1.56
(Less)		
RETAIL ZONE A	0	-3.84
(Less)		
RETAIL ZONE B	0	6.40
RETAIL ZONE B	0	3.60
RETAIL ZONE B	0	9.35
RETAIL ZONE B	0	4.13
STORE	0	1.62
STORE	-1	30.25
STORE (Less)	-1	-2
Total		83.94

6. ISSUES

- 6.1 The single issue arising on this appeal is whether the Property ought to be included in the Valuation List or whether it is exempt from rating by reason of being a property falling within paragraph 16 of Schedule 4 of the act and used exclusively for charitable purposes and otherwise than for private profit.

7. RELEVANT STATUTORY PROVISIONS:

- 7.1 The provisions of the Valuation Act 2001 in so far as relevant to this appeal are set out below for ease of reference. 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.
- 7.2 Section 15 of the Valuation Act 2001 provides:
- (1) Subject to the following subsections and sections 16 and 59, relevant property shall be rateable
 - (2) Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable.
- 7.3 Schedule 4 of the Valuation Act 2001 sets out what is relevant property not rateable for the purposes of the Act. Paragraph 16 thereof provides:
- 16.—Any land, building or part of a building which is occupied by a body, being either—
- (a) a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit, or
 - (b) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit and—
 - (i) the principal activity of which is the conservation of the natural and built endowments in the State, and
 - (ii) the land, building or part is used exclusively by it for the purpose of that activity and otherwise than for private profit.

8. APPELLANT'S CASE

- 8.1 Gina Hetherington stated that PAWS Animal Rescue was a wholly Irish Charity (CHY12312)(CRA20035754) established in 1997, based in Mullinahone Co Tipperary, and dedicated to rescuing homeless and abandoned animals, primarily dogs from high-kill pounds and owners who can no longer care for them.
- 8.2 The Subject Property is a charity shop in Clonmel, Co. Tipperary occupied by the Appellant. Ms Hetherington described it as consisting of a small retail area and a basement which is only suitable for storage. The shop's income was low. It also served

as a drop-off location for food and bedding for the animals, an advice service to the public, and a place the public could drop in occasional donations.

- 8.3 Ms Hetherington stated that the shop was run “99%” by volunteers. The income from the shop was between approximately €25,000 and €30,000 per annum which covered electricity, water charges and €115 to a manager. The profits raised were wholly used for the care of abandoned dogs, many of which come to PAWS via the South Tipperary Dog Warden and are in need of veterinary care.
- 8.4 Ms Hetherington stated that if the charity had to pay the high rates “expected by” the Valuation Office, they would be unable to keep the shop open, and requested the Tribunal to “look at our position and reconsider the valuation on the property.”
- 8.5 In response to the comment in the Respondent’s précis that “[t]here was an absence of the described animal food sales or animal bedding on display or stored in the basement store area on inspection”, it was submitted that the shop did not sell food or bedding, but that food and bedding was dropped off for the dogs at the shelter. It was also clarified that the appellant was seeking that the valuation be reconsidered, “not a complete waiver”.

9. RESPONDENT’S CASE

- 9.1 Mr Shaughnessy described the location of the Subject Property as “one of the main shopping streets within Clonmel town centre” and “a primary retail area”. He said that the shop was in good condition.
- 9.2 Mr Shaughnessy stated that the Subject Property was operating as a charity shop where clothing and other items were to be dropped off and sold on again. On inspection he saw ornaments, books, pictures, CDs and videos on sale. He did not see animal food or bedding at the shop on inspection. He said that the shop was a retail shop, selling products similar to other shops on the street, and should not be treated differently to any other shop as it makes a private profit in the course of its business. The evidence of the appellant relating to medicine for dogs, related to the main purpose of the charity, was carried out at a different location, not the subject property which is a retail shop.

- 9.3 Mr Shaughnessy stated that the “tone of the list” for O’Connell Street was demonstrated by his 3 comparisons and that there was no deviation from the tone based on occupation or type. There were 3 other charity shops within 20 metres of the Subject Property on Mary Street which had not appealed their valuations.
- 9.4 NAV Comparison 1, PN880003 has a total floor area of 174.62 sq. m.: 41.72 sq m Retail Zone A valued at €340 per sq m, 40.82 sq m Retail Zone B valued at €170 per sq m, 16.12 sq m Retail Zone C valued at €85 per sq m and a store of 75.96 sq m valued at €60 per sq m. The NAV is €27,000. While the property is larger in Zone A and Zone B spaces than the Subject Property, it is located directly across from it and is an example of a property on the valuation list with the rate PSM set for O’Connell Street, Clonmel. NAV Comparison 2, PN 883703 is a vacant retail unit on O’Connell Street with a floor area of 56.78 sq m, Retail Zone A 26.84 sq m valued at €340 per sq m, Retail Zone B 5.33 sq m valued at €170 per sq m, and a store of 24.61, valued at €34 per sq m. Total NAV €10,860. NAV Comparison 2 is two doors away from the Subject Property, has a similar ground floor presence to the subject property and is of the same frontal design with a similar zone A area. NAV Comparison 3 located on Mary Street, PN883958 is a charity shop with a floor area of 83.10 sq m, 40.53 sq m of Retail Zone A valued at €260 per sq m and 42.57 sq m of Retail Zone B valued at €130 per sq m, for a total NAV of €16,070. Mr Shaughnessy stated that the property was within 70 metres of the Subject Property, on a secondary street, and had a slightly larger Zone A and Zone B than the Subject Property. The lower rate per sq m reflected its location on a secondary street.
- 9.5 Mr Shaughnessy restated that the retail unit was located on one of the main shopping streets in Clonmel, that the appellant admitted a profit was made in the Subject Property, that it was a relevant property as defined by the Valuation Act, that the shop on inspection contained only bric-a-brac, and that previous Tribunal decisions supported his submission that the Subject Property was not exempt. He asked the Tribunal to affirm the valuation of the Subject Property which was calculated as follows:

Floor	Use	Area (m2)	NAV € (m2)	Total NAV € (m2)
0	RETAIL ZONE A	30.59	€ 340	€10,400.60
0	RETAIL ZONE B	23.48	€ 170	€ 3,991.60
0	STORE	1.62	€ 34	€ 55.08
-1	STORE	28.25	€ 60	€ 1,695.00
Total NAV				€16,140

10. SUBMISSIONS

- 10.1 The appellant did not make any legal submissions.
- 10.2 In his précis, Mr Shaughnessy submitted that the appeal should be dismissed as the appellant's précis of evidence was not in compliance with the Valuation Tribunal Rules 2019.
- 10.3 Mr Shaughnessy referred to three decisions in his précis, *NCBI Retail – vs – Commissioner of Valuation* (VA 19/5/0333), *Limerick Animal Welfare Limited – vs – Commissioner of Valuation* (VA 18/1/0004) and *Veritas Company DAC - vs – Commissioner of Valuation* (VA 17/5/039), which he said were relevant to the question of a charity shop seeking exemption under paragraph 16 (a) Schedule 4 of the Valuation Act 2001 to 2020.
- 10.4 Mr Shaughnessy submitted that the description of the subject property and catalogue of items sold for the benefit of the charity are similar to those in *Limerick Animal Welfare Limited – vs – Commissioner of Valuation* (VA 18/1/0004), where a property used for retail activity as a charity shop well as for other charitable purposes, and the Tribunal found the property was not used exclusively for charitable purposes. Mr Shaughnessy also cited *NCBI Retail – vs – Commissioner of Valuation* (VA 19/5/0333), another appeal concerning the rateability of a charity shop, where the Tribunal determined that raising funds for a charity in a retail setting does not fall under Schedule 4 of the Valuation Act.

11. FINDINGS AND CONCLUSIONS

- 11.1 The appellant sought exemption for the Subject Property on the basis that the retail premises was operated on behalf of a registered charity, PAWS Animal Rescue. The Tribunal must decide whether the property should be excluded from the list on the basis that it is entitled to an exemption from rates as “relevant property not rateable” pursuant to Section 15 and Schedule 4 paragraph 16 the 2001 Act. To determine that issue the Tribunal must consider the use of the property and decide whether it, or any part of it, is used for charitable purposes and, if so, whether it is exclusively so used.
- 11.2 There is no real factual dispute between the parties. Both agree that PAWS Animal Rescue is based at a location other than the Subject Property. Both agree the Subject Property is a charity shop in Clonmel consisting of a retail area and basement store. In addition to its retail purpose, the shop serves as a drop-off location for donations for resale, animal food and bedding for the rescued animals, as well as an advice service for the public. The income from the shop is between €25,000 and €30,000 a year. After discharging bills and wages of a manager, any profit is used for the purposes of the charity.
- 11.3 Schedule 4 paragraph 16 of the 2001 Act is clear. The use of a property for charitable purposes is a necessary but not sufficient condition for a property to be deemed relevant property not rateable. In order to avail of the exemption, a property must be occupied by a charitable organisation, used for charitable purposes and it must be exclusively so used.
- 11.4 The Appellant submitted that the monies raised at the Subject Property are wholly used for the care of abandoned dogs i.e. for charitable purposes. The Tribunal has previously considered the issue of whether a retail property is rateable if the retail activity takes place to raise money for a charity. Three such decisions were cited on behalf of the Respondent: *NCBI Retail – vs - Commissioner of Valuation* (VA 19/5/0333), *Limerick Animal Welfare Limited – vs – Commissioner of Valuation* (VA 18/1/0004) and *Veritas Company DAC - vs – Commissioner of Valuation* (VA 17/5/039).
- 11.5 In *Limerick Animal Welfare Limited – vs – Commissioner of Valuation* (VA 18/1/0004), at paragraph 11.14, the Tribunal stated: “[the subject property] is also used for retail

activity on the ground floor where an assortment of items such as books, shoes and small items of giftware are sold. The basement is used as a storage facility associated with retail and, to some extent, the storage of foldable mesh crates for received animals. Applying to this set of facts the provisions of Schedule 4 paragraph 16 of the 2001 Act, interpreted in the light of the Oxfam judgment, the Tribunal finds that the Appellant does not use the building or any part of it exclusively for charitable purposes. While the sale of these items is connected with and supports the Appellant's charitable purposes, it cannot, to use the words of Lord Morris in Oxfam, 'be described as being the carrying out, or part of the carrying out, of the charitable purposes themselves.' Thus, the Appellant is not entitled to avail of the exemption conferred by Section 15 of the 2001 Act in connection with this property."

- 11.6 Similarly, in *Veritas Company DAC - vs – Commissioner of Valuation* (VA 17/5/039), while the subject property was used for charitable purposes, the sale of other items such as giftware removed the property from the scope of the exemption in paragraph 16 of Schedule 4. The Tribunal did not accept that the sale of other products was directly facilitating the carrying out of the appellant's charitable purposes, or that it was necessary or essential or an incidental part of carrying out the Appellant's charitable purposes.
- 11.7 Use of the Subject Property to dispense advice to members of the public and accept food and bedding for animals requiring care may well fall within the definition of use for charitable purposes. However, the Subject Property is primarily a charity shop used for retail activity and associated storage. Consequently, the property is not used exclusively for charitable purposes and does not come within paragraph 16 of Schedule 4.
- 11.8 The Appellant did not put further an alternative ground of appeal, in the event the claim for exemption from rating failed, that the valuation of the Property was incorrect. While the Appellant requested the Tribunal to reconsider the valuation, it has failed to adduce any evidence to challenge the valuation of the respondent. Mr Shaughnessy adduced 3 similarly circumstanced properties as comparators; two retail properties on the same street as the Subject Property valued at the same Zone A rate, and one retail property

(also a charity shop) on Mary Street valued at a Zone A rate of €260 per sq m to reflect its location on a secondary street.

DETERMINATION:

The Tribunal holds that the Subject Property is not used exclusively for charitable purposes and is rateable. The Tribunal disallows the appeal and confirms the decision of the Respondent

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.