

Appeal No: VA19/5/1011

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Clarke Machinery Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5017497, Retail (Shops) at Unit 1 Moynehall Retail Park, Ballinagh Road, County Cavan.

B E F O R E

Hugh Markey - FSCSI FRICS

Allen Morgan - FSCSI FRICS

Martin Connolly - MAgrSC, M.Sc., MSCSI, FCInstArb

Deputy Chairperson

Member

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF MAY, 2024

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th 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 €**14,030**

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: "The subject property is one of two 'shops' which adjoin Moynehall Retail Park, along Kesh Road...despite being smaller than the retail park units, are not significantly different in overall value, being away from the retail park and hence significantly poorer.

The subject is let at €9,000 per annum IRI on a 3 year lease from 21st August 2017. This devalues at €58/m² overall (or €74/m² Zone A). The unit next door is vacant and to let asking €9,000 per annum."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €8,640

2. REVALUATION 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 €14,030.

2.2 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €14,030

2.3 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September, 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 14th day of November, 2023. At the hearing the Appellant was represented by Mr Eamonn Halpin B.Sc. (Surveying) MRICS MSCSI. of Eamonn Halpin & Co and the Respondent was represented by Ms Ciara Marron 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 made an affirmation, 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. Unit No. 1 (Local No. 12) comprises one of two single storey retail units located on the Kesh Road approximately 2 kilometres from the centre of Cavan town. It was developed as part of the Moynehall Retail Park which comprises a series of retail warehouse units located to the rear and overhead. The roof of the property forms part of the car park of the retail park above.

The agreed floor area is 149.19 sq.m.

5. ISSUES

The sole issue in this instance is one of quantum.

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, in opening the case on behalf of the Appellant suggested that there was no reference to ‘rental values’ but only to similar properties. He stated that it essentially came down to whether the Respondent had established the values for the subject property without reference to the rental values pertaining in the development but had instead relied solely on Key Rental Transactions (KRTs) which were described as ‘similar’. He questioned whether the KRTs used to establish the NAV were better than the actual evidence from the immediate locality. He also questioned whether the comparisons constituted valid comparables, and if not, that they could not be relied upon to establish the value for the subject. He said that the Act required that correctness of value should be placed first and this was to be followed by uniformity.

He drew the Tribunal’s attention to his evidence that the adjoining Unit 12 was let within one month of the valuation date at €9,000 on an IRI basis, whilst Unit 11 was vacant and was let at €9,600pa in January 2020, also on an IRI basis.

He said both rents are at significant variance with the Commissioner’s assessment.

He also emphasised the Respondent’s approach to his NAV Comparison 5 (PN 2188153) which he suggested was better located and of similar size. It had been valued as a retail warehouse by the Respondent at an overall rate of €50psm.

7.2 He went on to describe the subject property as being part of the retail warehouse development which was developed along with 50% of the retail park. He suggested that due to the topography of the retail park complex, the subject has a lower profile being a single storey unit located underneath a section of the main retail warehouse park. It shares the same car park as the retail warehouse park. He drew the Tribunal’s attention to the photograph at page 8 of his précis of evidence. He went on to outline that this unit had been vacant and available for letting at a quoting rent of €9,000 per annum at the date of the revaluation.

Mr. Halpin suggested the best evidence was the lettings in the retail park. He said that there was a differential between the smallest and the largest units of 20%; this was a difference of €10 per square metre. He suggested that the appropriate methodology to arrive at a valuation of the subject was to take the base level for the retail warehouse units and add a premium of 20% to allow for the smaller scale of the unit under appeal.

7.3 He then went on to consider how the subject property might be valued i.e.as a retail warehouse, a shop or an office. He suggested the categorisation of the subject property was secondary and that it was immaterial whether it was valued on an overall or zoned basis, provided the NAV did not exceed €9,000 and he said the Appellants sought to have the NAV fixed in line with the comparables and in line with the actual rental potential.

Mr. Halpin outlined his supporting rental comparisons these are included at Appendix 1 to this judgment (N/A to public). The brief details are as follows:

7.4 Appellant's rental comparisons:

1. Unit at Moynehall Retail Park

He noted that this unit (retail warehouse – 268.72sq. m + mezz store 166. sq.m) in the retail park had been let on a 4year 9month lease on 1st March 2018 at €13,000pa on an IRI basis. He said this was rental evidence within six months of the valuation date and which suggested a maximum level of €43psm overall, broadly in line with the Respondent's assessment at €50psm. He suggested an adjustment of 20% would be appropriate to reflect the smaller size of the subject property.

2. Unit at Moynehall Retail Park

Mr. Halpin noted that this unit (retail warehouse 242sq.m + level 1 retail warehouse 176sq.m) was let on a month to month verbal agreement at €13,000 per annum on an IRI basis. He noted that this suggested a maximum level of €41.60psm, broadly in line with the Respondent's assessment at €50psm. He suggested a premium of 20%, i.e. a level of €60 psm, would be appropriate for the smaller units.

Mr. Halpin introduced 5 NAV comparisons. These are as the set out below:

3A) Unit 1 Moynehall Retail Park

PN 2187635

€16,120 NAV

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	RETAIL WAREHOUSE	242.00	50.00	12,100.00
1	RETAIL WAREHOUSE	201.00	20.00	4,020.00

Additional Items (€)None

3B) Unit 7 Moynehall Retail Park

PN 2206376

€27,900 NAV

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	RETAIL WAREHOUSE	444.55	40.00	17,782.00
1	RETAIL WAREHOUSE	637.51	16.00	10,200.16

Additional Items (€)None

3C) Unit 5 Moynehall Retail Park

PN 2187639

€15,920 NAV

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	RETAIL WAREHOUSE	268.72	50.00	13,436.00
MEZZ	SHOWROOM	166.20	15.00	2,493.00

Additional Items (€)None

3D) Unit 3 Moynehall Retail Park

PN 2187637

€16,020 NAV

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	RETAIL WAREHOUSE	242.00	50.00	12,100.00
1	RETAIL WAREHOUSE	196.00	20.00	3,920.00

Additional Items (€)None

3E) Unit 2 Moynehall Retail Park

PN 2187636

€14,110 NAV

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	RETAIL WAREHOUSE	242.00	50.00	12,100.00
MEZZ	STORE	201.00	10.00	2,010.00

Additional Items (€)None

Mr. Halpin outlined how the Respondent had valued the smaller units, those of approximately 250 sq.m., at €50psm and the larger units, those of approximately 450 sq. m., at a level of €40 psm. He said he was contending that the same logic be applied to the subject i.e. a differential of €10 psm be applied for a smaller unit.

Mr. Harper further introduced 3 NAV comparisons of properties classified as offices. These are as follows:

4A) Unit 3 Aeta Place

PN 2206386

€6,120 NA¹

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	OFFICE(S)	76.62	80.00	6,129.60

Additional Items (€)None

4B) Units 1 & 2 Aeta Place

PN 2206385

€38,400 NA¹

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	OFFICE(S)	153.61	80.00	12,288.80
1	OFFICE(S)	380.97	56.00	21,334.32
MEZZ	OFFICE(S)	241.29	20.00	4,825.80

Additional Items (€)None

4C) Units 4-6 Aeta Place

PN 5009218

€19,230 NAV

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	OFFICE(S)	240.41	80.00	19,232.80

Additional Items (€)None

Mr. Halpin suggested that while the above had been constructed with full planning as retail and commercial, the Respondent had classified them in the offices category. He suggested the Respondent had the power to analyse these on a zoned retail basis but the Appellants did not.

NAV Comparison 5

PN 2188153

€7,620 NAV

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	RETAIL WAREHOUSE	152.48	50.00	7,624.00

Additional Items (€)None

The witness outlined that this retail warehouse property is located approximately 1 kilometre from the subject and one kilometre from the centre of the town. He suggested that one of the primary arguments advanced by the Respondent was that the subject property is not a retail warehouse but that it is approximately the same size as this comparison. He noted this was a ground floor only unit and virtually the same size. He said it was in a superior location and suggested that it was completely unsustainable for the Respondent to suggest that the subject property is worth double this property; his opinion was that €60 psm was more than adequate.

Appellant's Valuation

Mr. Halpin contended for a valuation of €9,350 as follows:

Level	Area sq. m.	Rate psm/€	Total NAV	
0	149.19	60	8,461	NAV €8,950

In the alternative he proposed a valuation based on the zoning methodology as follows:

Level		Area sq. m.	Rate psm/€	NAV/€
0	Zone A	84.79	80	6,783
0	Zone B	64.40	40	2,576

Total: €9,359,

NAV say €9,350

7.5 Cross examination of Mr. Halpin

Mr. Halpin responded to a question from Ms. Marron by saying that he did not see the need to consider evidence of retail outlets in Cavan Town by saying he was familiar with the town and did not consider it necessary.

He replied that the best evidence was from within the retail park itself. He responded that the location was a mixed one on the periphery of the town with some industrial units close by.

When asked whether this was a thriving location, he responded in the negative saying only one of the original tenants was still trading in the park, and that there had been many changes of tenants.

8. RESPONDENT'S CASE

8.1 In opening the Respondent's case, Ms. Marron outlined the purposes of the revaluation and the statutory provisions grounding the process.

She went on to outline how the Respondent had assessed market information of rentals gleaned from ratepayers who are required, by law, to provide specific information. Further market information was sourced from such as the Revenue Commissioners and the Commercial Leases Register.

From the assessment of the market rents, a 'scheme of valuation' was put in place, the purpose of which was to ensure correctness, equity and uniformity as between individual properties.

8.2 Location.

Ms. Marron outlined the location of the property noting that it comprised a semi-detached retail unit with off street car parking. She said it was opposite a Texaco Filling Station and was below Moynehall Retail Park. She noted it was in a 'tertiary' location.

She also noted that Unit 1 (Local No. 12) is a retail unit in use as a hair salon. It is a single storey unit of concrete construction under a flat concrete/ asphalt covered roof and is finished to a good standard. Structurally, the roof of the unit also forms part of the car park of the overhead Retail Park.

8.3 Tenure

She noted that at the date of the revaluation, the property was let on a lease for a term of 3 years from 1st September 2017, at a rent of €9,000pa, on an internal repairing and insuring basis.

8.4 Appellant's Basis of Appeal

She suggested that it was flawed to value the subject in line with retail warehousing, that to do so would compromise the valuation list. She said one of Mr. Halpin's comparisons is not a market transaction, rather a month to month letting. She noted one of the grounds of appeal was that that this unit had been let in September 2017 at a rent of €9,000pa. The Appellant had analysed the letting as representing a rate of €58psm on an overall basis or €74psm zone A.

Tribunal Note: The terms of the lease, a copy of which was included at Appendix 111 of the Appellant's evidence, indicate that it was in, in fact, a full repairing and insuring lease. An extract from the lease were also included in the Respondent's précis of evidence.

8.5 Key Rental Transactions

Ms. Marron outlined how the scheme of valuation had been arrived at by an assessment of market transactions – 'Key Market Transactions' (KRTs). This allowed the Respondent to arrive at an NAV for each property in line with s.48 of the Act. In the instant case, a rate of €120psm zone A was applied.

The KRTs relied upon are included in Appendix 2 to this judgment (N/A to public). She also introduced 4 NAV comparisons to support the Respondent's opinion of value for the subject. These are included at Appendix 3 to this judgment (N/A to public).

She said it would be unusual to value retail as a retail warehouse, those properties most similar in location to the subject were valued at €120psm; there were 6 properties in Cavan Town valued at €120psm and this was the lowest level applied.

8.6 Opinion of Value

The witness confirmed her opinion of the NAV of the subject as follows:

PN: 5017497 Unit 1 (Local 11)

Level		Area sq. m.	Rate psm/€	NAV/€
0	Zone A	84.79	120	10,174.80
0	Zone B	64.40	40	3,864

Total €14,038.80

NAV say €14,030

9.

9.1 Cross Examination of Ms. Marron

9.1.1 In response to a question from Mr. Halpin, the witness said the availability of the adjoining unit and the quoting rent 'had been taken into consideration when assessing the NAV, that the asking rent was not definitive (as to value) and the lowest level (zone A) was taken - €120'.

She responded that while the ‘scheme’ was important, they had looked at the subject in the context of the town.

9.1.2 As regards her KRTs, she confirmed that KRT1 was in a better location – Mr. Halpin had suggested to her that it was an ‘outlier’ as the NAV was 38% lower than the actual rent. He further suggested that this is a convenience store on the road to Cavan General Hospital and asked the Respondent’s witness to consider the possibility that the letting may have been as a ‘going concern’. She confirmed that she was unaware of the background to the letting.

9.1.3 She responded that her KRT2 was simply ‘an informer’, (i.e. a guide) when asked about the disparity between the rental level and that of the NAV – the latter being lower.

9.1.4 Mr. Halpin queried the use of ‘labels’ by the Respondent - retail warehouse/retail etc. Ms. Marron answered that the subject was a retail unit.

Ms. Marron was unable to assist the Tribunal in supplying a definition of retail warehousing.

10 SUMMING UP

10.1 The Appellant

In his summing up, Mr. Halpin said it was important to consider the evidence from the immediate vicinity, irrespective of how the Respondent had chosen to classify the property. He struggled to understand the adoption of KRTs which had rentals in excess of the NAVs applied and were clearly better located. He said the first step (in establishing the NAV) was correctness and then uniformity. He said the best evidence was from within the Park. He accepted there should be some adjustment for larger sizes.

10.1.2 He drew the Tribunal’s attention to his NAV Comparison 5 - PN 2188153. This property is approximately the same size as the subject but is labelled ‘retail warehouse’ by the Respondent. It is valued at an overall rate of €50psm.

10.1.3 Mr. Halpin closed by saying that the primary concern is one of correctness; the rents were persuasive.

10.2 The Respondent

10.2.1 In her summing up, Ms. Marron suggested that the subject cannot be described as a retail warehouse as defined in the code of measuring practice. She said the subject could not be described as such nor could it be called an office. She said the location was busy, close to Lidl and CIT.

11. FINDINGS AND CONCLUSIONS

11.1 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 Cavan County Council.

11.2 The retail sector of the property market is particularly nuanced and is affected by various factors. These include among others, location, footfall, profile, catchment and adjacencies. Not all of these would apply, for instance, to the industrial or office sector of the property market.

11.3 For the above reasons, great care needs to be taken in assessing the rental value or NAV of a retail property, particularly when there is a dearth of comparable evidence which could be analysed and which would form the basis for a considered assessment of its rental value.

11.4 In the present appeal, the Tribunal was presented with evidence of the adjoining unit's availability to let, in or about the relevant date for assessment, at a rent of €9,000pa on an IRI basis. The Appellant also provided details of the letting of the unit, in January 2020 at a rent of €9,600. This was after the relevant date but is informative as to rental levels.

11.5 It was suggested by the Respondent that Mr. Halpin's evidence of somewhat larger units (but not significantly so) units within Moynehall Retail Park and which had been valued at €50psm, were not relevant. Mr. Halpin had adopted a 25% differential to reflect the differing sizes. The subject property has better profile as it has frontage to Kesh Road, and has commercial occupiers immediately opposite and thus requires a further positive allowance to reflect this factor. Furthermore, it is not a retail warehouse and should not be valued as such. The Tribunal finds that these comparisons are of assistance.

11.6 The Tribunal also finds Mr. Halpin's similarly sized NAV Comparison 5 (PN 2188153) to be helpful. This is a better located retail outlet (albeit classified for rating purposes as 'retail warehouse') of similar size to the subject and valued, on an overall basis at a rate of €50psm.

11.7 None of the Appellant's office comparisons were found to be of assistance. The appeal property is very clearly a retail unit and would, possibly, require a change of use planning for conversion to offices.

11.8 The Respondent relied heavily on the 2 Key Rental Transactions. This was an unusually small base on which to develop the overall scheme of valuation for this category of retail properties, particularly in the context of the Tribunal's comments at 11.2 above.

11.9 The Respondent submitted 4 NAV comparisons. The first, PN. 1558748, is situated opposite the subject and adjoins a petrol filling station and another retail outlet. It is smaller than the subject and was valued at €120psm zone A. In the Tribunal's view this is a superior location given the immediate adjacencies.

11.10 The Respondent's other NAV comparisons were convenience stores located some distance from the subject and the Tribunal considers these not to be of assistance.

11.11 In any appeal to the Tribunal, the onus is on the Appellant to introduce evidence to support the view that the NAV placed on the Property by the Respondent should be disturbed. In the instant case, it is the view of the Tribunal that the Appellant has provided such evidence.

11.12 The Tribunal believes that in striving to achieve equity and uniformity in the list, the need for correctness has been overlooked. The NAV placed on the property by the Respondent is clearly out of line with the Property's rental capacity as demonstrated by the evidence adduced. Accordingly, the Tribunal finds that the Property's NAV should be adjusted.

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 €9,900.

Level	Area sq.m.	Rate psm	
0	Zone A 84.79	€85.00	€7,207.15
	Zone B 64.40	€42.50	€2,737.00
	Total 149.19		€ 9,944.15

NAV €9,900.00

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.