

Appeal No: VA21/4/0096

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

DEREK KENNEDY RETAIL LTD T/A EUROSPAR SWINFORD APPELLANT

AND

COMMISSIONER OF VALUATION RESPONDENT

In relation to the valuation of

Property No. 1362485, Property Type: Retail (shops), Address of Property: Market Street,
Swinford, County Mayo.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15th DAY OF AUGUST 2024**

BEFORE

Mr Allen Morgan - FSCSI, FRICS

Member

1. THE APPEAL

1.1 By Notice of Appeal received on the 23rd day of November, 2021 the Appellant appealed against the determination of the Respondent pursuant to which the rateable value of the above relevant Property was fixed in the sum of €170.00.

1.2 The valuation of the Property falls to be determined from a decision made by the revision manager under section 28(4) of the Valuation Act 2001 as amended ('the Act') that a material change of circumstance occurred since a valuation under section 19 of the Act was last carried out in relation to the rating authority area in which the Property is situate. Accordingly, the value of the Property must be ascertained by reference to values, as appearing on the existing valuation list for

the rating authority area wherein the Property is situated of other properties comparable to the Property.

- 1.3 The sole ground of appeal as set out in the Notice of Appeal is that the valuation of the Property is incorrect as it does not accord with that required to be achieved by section 49 of the Act because, quoting directly from the Appellant's Notice of appeal, that:

"To whom it may concern,

I am at a loss to understand how an increase of this size has been proposed for this property. I have traded here since 2004 and nothing much has changed since then other than the departure of the Mart and arrival of Tesco. This brought about a reduction of about 35% in turnover for this business and a drop in overall business for the retail units in the town. For the past 11 years it has just been a battle to keep the doors open and the lights on. To be honest we are technically insolvent but have remained open and trading thanks to the support of our main supplier, BWG, who have agreed to park our arrears and allow an extended line of credit to the business. Two years ago, the Post Office relocated into the shop so as to try and keep an office open in the town and hopefully increase our footfall. We have made some gains since then and are making inroads into our debt mountain but we still only trade at about 75/80% of our best days and have a very long road ahead before there will be any significant profit generated.

Swinford as a town has suffered over the years and like many a small rural town has plenty of doors closed on its streets. Parking for customers is not too plentiful, much of it being used by people for the day while they work/shop elsewhere.

Insurance, power, labour and service costs are all increasing of late, making it ever harder to offer value and retain a profit margin, a rates increase such as this could well be the 'straw that breaks the donkey's back'.

I am happy to pay my way and understand the need for rates and so on, but I also need to be able to operate at a level where the business can pay its debts and even put a little bit by for poorer times. This is an old building too that could do with a bit of re-investment to ensure it can operate into the future.

Please give my situation some further consideration as I really cannot see that the business can at the moment carry such an increase. There may be about 20 fewer people working here than in the old days but we still have about 25 between full and part time who get some income locally and if the business was to fail because of unsustainable costs would be a further loss to the overall viability of the town.

I realise that I have probably rambled on a bit here but unfortunately I didn't get the chance to meet the person who visited to do the assessment for the valuation. Should there be a chance for me to speak to someone directly please let me know or if there are any specific figures or information you require, I would be happy to help, just let me know.

Kind Regards

Derek Kennedy”

1.4 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €116.00.

2. VALUATION HISTORY

2.1 On the 14th of December 2021, a copy proposed valuation certificate issued under section 28(6) of the Act in relation to the Property was sent to the Appellant indicating a valuation of €170.00.

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 manager did it not consider it appropriate to provide for a lower valuation.

2.3 A final valuation certificate issued on the 2nd day of November 2021 stating a valuation of €170.00.

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 The Appellant, Derek Kennedy, trading as Kennedy's Eurospar Swinford, represented himself in submitting his appeal.

3.3 Mr. Terry Devlin, witness for the Commissioner of Valuation, represented the Respondents.

3.4 In accordance with the Tribunal's standard procedures, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. **FACTS**

4.1 The parties state that they are agreed as to the following facts.

4.2 **Location:** The property is located in Market Street, Swinford, Co. Mayo, approximately 100m south of Swinford's Main Street, which is also the N2 Foxford/Roscommon Road. Market Street is also the R330 road connecting to the N5 road, 26kms east of Castlebar.

4.3 **Description:** The subject is a terraced property comprising the three-storey building fronting onto Market Street, and with a two-storey property on each side of it. The rear of the property, facing onto St. Ita's Terrace is two storey and was stated to be a property which previously back on to the main building, and which was acquired and assimilated into the property. The building is entirely in supermarket, office, cold room and storage use, with a post office located to the front of the shop. The rear of the property faces onto St. Ita's Terrace where it is stated there is access to a small public car park on the opposite side of the street. It is stated that further parking is available on street at the front of the property on Market Street. The ground floor comprises of retail, featuring a food counter, off licence and post office, with entrances to both the front and rear.

4.4 **Floor Areas:** It has been confirmed to the Tribunal that the floor areas are agreed by both parties.

4.5 **Condition:** The Respondents state (and it is agreed by the Appellants) that the property is in good condition throughout. It has a large retail frontage, acoustic ceiling tiles, mixed fluorescent and spotlight lighting and tiled flooring on the ground floor. The upper floors are a mix of carpeted and vinyl flooring, with painted and plastered ceilings, in use as storage, offices and a canteen.

4.6 **Title:** The property is stated to be freehold, held under a lease agreement by the occupier.

5. **ISSUE(S)**

5.1 The single issue in this appeal is one of Quantum based upon Matters of Fact, and results from an increase in the assessed floor areas of the subject property as a consequence of the 2019 revision, which resulted in a corresponding increase in the total assessed RV of the property.

6. **RELEVANT STATUTORY PROVISIONS:**

6.1 All references 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.

6.2 Section 3(1) of the Act, defines "material change of circumstances" as meaning a change of circumstances that consists of:

(a) The coming into being of a newly constructed relevant property or of a relevant property or

(b) A change in the value of a relevant property caused by the making of structural alterations or by the total or partial destruction or other erection by fire or any other physical cause, or

(c) The happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or

(d) The happening of any event whereby any relevant property begins, or ceases, to be treated as a property falling within *Schedule 4*, or

- (e) Property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or
- (f) Property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property.

6.3 In this case the Respondents rely on (f) above.

6.4 Where a property falls to be valued for the purpose of section 28(4) of the Act that value is ascertained in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.

6.5 The Respondents state that the subject property has been valued in line with comparable evidence in terms of situation, condition and size.

7. APPELLANT'S CASE

7.1 The Appellant, who conducted his own appeal, has stated that his business has traded since 2004. He states that the commercial environment in the town has remained static since 2004 other than the departure of the Mart and the arrival of Tesco. He states that this brought about a reduction of about 35% in turnover for his business and a drop in overall business for other retail units in the town. In this environment he describes it as being *“a battle to keep the doors open and the lights on.”* He asserts that his business is technically insolvent.

7.2 He states that the town of Swinford like many small rural towns has experienced

many business closures.

- 7.3 He states that parking for customers is problematic due to long stay on-street parking.
- 7.4 He states that insurance, power, labour and service costs are all increasing of late, making it increasingly hard to offer value and to retain a profit margin. He states that in that context, rates increase of the quantum which has been assessed by the Respondents is unsustainable.
- 7.5 The Appellant states that he accepts the need for rates and an obligation to pay same but that the level of same must be sustainable relative to business profitability. In previous correspondence contained in his appeal – see Appendix 1 (N/A to public) – the Appellant refers to a rates bill of €7k to €8k being described as the maximum sustainable figure that his business could afford. This maximum figure appears to relate to the property in toto.
- 7.6 He concludes that if the business were to fail due to unsustainable costs that the closure of his business would increase local unemployment.
- 7.7 The Appellant has not adduced any Key Rental Informers and Comparators to support his appeal.

8. RESPONDENT'S CASE

- 8.1 Mr. Devlin states that a material change of circumstances occurred with the subject property as per definition (f) *“property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property”*.
- 8.2 That the subject property has been valued in line with comparable evidence in terms of situation, condition and size.
- 8.3 That the subject property was last revised in July 1999 where the ground floor area

was noted as being 508 sqm. First floor area was 151 sqm and second floor area was 75 sqm. Since that date, the store has expanded in piecemeal fashion with the amalgamation of adjoining properties taken into account.

8.4 That the ground floor area was noted at this revision as being 743.52 sqm an increase of 235.52 sqm while the first floor has increased in area by 17 sqm and the second floor area remains unchanged.

8.5 That the 2019 revision valuation was updated by continuing to apply the same NAV levels per sqm, as were applied to the property since the last revision of July 1999.

8.6 Mr. Devlin states that properties which are 'similarly circumstanced' are considered comparable. This means they share characteristics such as use, size, location and/or construction. In addition to the relevant market evidence which underpins the valuation scheme, Mr. Devlin's report sets out comparative evidence to demonstrate that both correctness and equity & uniformity of value have been achieved in this case.

KEY RENTAL INFORMERS AND COMPARATORS RELIED UPON

NAV Property 1. [Subject Property Pre-Revision]

Property Number	1362485
Occupier	Eurospar
Address	Chapel Street, Swinford, Co. Mayo
Total Floor Area	734.12 sqms
Rateable Valuation	€116.82

Level	Description	Area sqms	NAV € per sqm	Total €
0	Shop	393.35	41.00	16,127.29
0	Store	115.14	27.34	3,147.64
1	Store	150.75	20.51	3,091.32

2	Store	74.88	13.66	1,023.04
	Total NAV €			€23,389.28
	NAV @ .005			€116.95
	RV say			€116.82

NAV Property 2.

Property Number	13626328
Occupier	Gala
Address	Foxford, Co. Mayo
Total Floor Area	649.31
Rateable Valuation	€125.00

Level	Description	Area sqms	NAV € per sqm	Total €
0	Store	96.73	20.50	1,982.97
0	Supermarket	425.50	47.83	20,351.67
1	Office(s)	127.08	20.50	2,605.14
	Total NAV €			24,939.78
	NAV @ .005			124.70
	RV say			€125.00

NAV Property 3.

Property Number	2199036
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Occupier	Tesco
Address	Ballinrobe, Co. Mayo
Total Floor Area	3,119.78
Rateable Valuation	€677.00

Level	Description	Area sqms	NAV € per sqm	Total €
0	Cold Room	99.71	27.34	2,726.54
0	Office(s)	225.24	41.00	9,276.09
0	Store	(8.53)	27.34	(233.37)
0	Store	129.74	13.64	1,769.71
0	Store	686.44	27.34	18,768.12
0	Supermarket	1986.18	51.94	103,163.03
	Total NAV €			135,470.12
	NAV @ .005			677.35
	RV say			€677.00

NAV Property 4.

Property Number	1358293
Occupier	SuperValu
Address	New Street, Ballinrobe, Co. Mayo
Total Floor Area	497.13
RV	€260.00

Level	Description	Size sqms	NAV € per sqm	Total €
0	Supermarket	203.13	51.93	16,565.00
0	Supermarket	120.96	51.93	-6,281.39
1	Office(s)	294.00	41.00	12,058.70
	Additional Items c/f			44,440.00
	Total NAV €			66,782.31
	NAV @ .005			333.91

	RV say		€330.00
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NAV Property 5.

Property Number	1261530
Occupier	Mr. Price
Address	Barrack St., Swinford, Co. Mayo
Total Floor Area	947.00 sqms
Rateable Valuation	€171.41

Level	Description	Size sqms	NAV € per sqm	Total €
0	Entrance Porch	9.00	41.28	371.52
0	Shop	583.00	41.28	24,066.24
0	Store	14.00	27.52	385.28
0	Office	32.00	27.52	880.64
0	Meat Counter	60.00	41.28	2,476.80
0	Store	148.00	27.52	4,072.96
0	Cold Store	18.00	27.52	495.36
0	Store	83.00	13.76	1,142.08
	Total NAV €			33,890.88
	NAV @ .005%			169.45
	RV say			€171.41

Subject Property - Post-Revision

Property Number	1362485
Occupier	Eurospar
Address	Chapel Street, Swinford, Co. Mayo
Total Floor Area	33,019.91 sqms
RV	€165.00

Level	Description	Area sqms	NAV € per sqm	Total €
0	Shop	611.44	41.00	25,068.98

0	Stores	127.92	27.34	3,497.30
1	Stores	168.03	20.51	3,446.31
2	Store	73.74	13.66	1,007.32
			Total NAV	33,019.91
			NAV @ 0.005%	€165.10
			Rateable Valuation €	€165.00 **

** (see Appendix 2 (N/A to public) for explanation of €5 reduction)

9. FINDINGS AND CONCLUSIONS

- 9.1 On this appeal the Tribunal has to determine whether the value of the Property accords with that which is required to be achieved by section 49 of the Act, namely a value that is relative to the value of other properties on the valuation list of rating authority area of Mayo County Council, referred to as “Tone of the List.”
- 9.2 The Tribunal notes that in terms of ‘Relevant Authorities’ there is an onus on the appellant, taking account of the following Valuation Tribunal Appeals (VA00/2/032 Proudland Ltd t/a Plaza Hotel, VA07/3/054 William Savage Construction and VA09/1/018 O’Sullivans Marine Ltd) to provide evidence, by reference to values appearing on the valuation list, that the valuation should be amended.
- 9.3 The Tribunal notes that all material facts relating to the subject property are agreed between the parties, other than as to the quantum as applied to the subject property in the 2019 Revision.
- 9.4 The Tribunal notes that the Appellant is contending for a rates valuation for the subject that that reflects a sustainable level that the business can sustain, in the context of the commercial viability of the company.
- 9.5 The Tribunal notes that the Appellant has not identified any comparator evidence to support his contention for a lower RV under the 2019 Revision.

- 9.6 The Tribunal notes that the Respondents have identified 5 ‘Tone of the List’ Comparison properties in County Mayo in support of their assessment of rateable value for the subject under the 2019 Revision. Three of the five comparisons are located in other towns in Co. Mayo, whilst the two Swinford comparisons comprise the subject property prior to the 2019 revision, and another commercial premises in the town.
- 9.7 The Tribunal assumes that the three NAV comparisons relating to other towns in Mayo submitted by the Respondents are included to support the existence of a general Tone across the county for what they believe are comparable properties to the subject.
- 9.8 The Tribunal considers that the two NAV comparisons in Swinford are of more assistance, being more immediately relatable to the subject in terms of location.
- 9.9 The Tribunal notes that whilst two comparisons related to commercial property in Swinford are necessarily limited in terms of seeking to establish a Tone, one of these is also the subject property prior to the 2019 Revision and is relevant in that context. These two comparisons are listed by the VO at NAVs of €41 and €41.28 per sqm. respectively for the primary shop elements, and the secondary/ancillary areas proportionately less.
- 9.10 The Tribunal notes, turning to the issue of Tone of the List comparables, that the Appellant made passing reference in his evidence to the arrival into the town of a branch of Tesco on a site formerly occupied by the Mart, but that this Tesco property and details thereof, are not included the Respondents evidence. Given its location in the same town, the VO details of this property would have been of assistance to the Tribunal, for example details of location within the town, characteristics, car parking facilities etc.

10. DETERMINATION:

10.1 The Tribunal disallows the appeal and confirms the decision of the Respondent as set out below:

Subject Property Post-Revision

Property Number	1362485
Occupier	Eurospar
Address	Chapel Street, Swinford, Co. Mayo
Total Floor Area	33,019.91 sqms
RV	€165.00

Level	Description	Area sqms	NAV € per sqm	Total €
0	Shop	611.44	41.00	25,068.98
0	Stores	127.92	27.34	3,497.30
1	Stores	168.03	20.51	3,446.31
2	Store	73.74	13.66	1,007.32
			Total NAV	33,019.91
			NAV @ 0.005%	€165.10
			Rateable Valuation €	€165.00

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.