

Appeal No: VA19/5/1556

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

FOCUS HEALTH AND FITNESS LIMITED

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5008376, Office(s) at Floor(s) 2, BS Clonard Village Centre, Wexford, County Wexford.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF JULY 2024**

BEFORE

Mr Raymond Finlay - FIPAV, MMII, ACI Arb, TRV, PC

Member

1. THE APPEAL

1.1 By Notice of Appeal received on the 13th 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 €19,940.

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: *“The current rent paid for use of the floor is €10,000. The property was valued at €19,940, almost double the amount. Next year the landlord will increase the rent by 3.5% Rent will total €10,350. This is the value that ought to have been determined as being the valuation of the property.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €10,350.

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 €19,940.

2.2 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €19,940.

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, 2019.

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. FACTS

4.1 The parties are agreed as to the following facts: the property is a second floor commercial unit within The Clonard Village Centre, which is a commercial neighbourhood centre comprising supermarket, retail units, office accommodation and apartments.

The property was constructed c 2007/8 and is serviced by on-site parking facilities.

It is located at Clonard Village, a suburb of Wexford Town, close to the N25 Dublin to Rosslaire route.

From photos supplied (31/1/24) the property looks to be in good general condition.

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5. ISSUES

There is one main issue together with a differential of opinion on this appeal.

The appellant is of the opinion that as he claims the passing rent of the premises is claimed to be less than the annual commercial rated valuation, therefore, the rate demanded is excessive.

The appellant also indicates his disagreement with the area under appeal and claims it to be inaccurate and higher than his understanding.

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 In a written precis to the Valuation Office of 13/10/19 the appellant stated the valuation was incorrect on the grounds of;

Rent being paid currently (13/10/19) as being E10, 000 pa agreed to rise to E10, 350 in 2020.

The appellant also indicated he felt he was overcharged previously on rates demand citing a variance of size of unit for review.

8. RESPONDENT'S CASE

8.1 The respondent in his precis of 1/3/24 sets out his opinion of value based upon; Introduction market evidence, developing a scheme of valuation, Evidence of equity and uniformity and to demonstrate these, enters three KRT (Key Rental Transactions) of similar property types within the same development. All with a NAV of E110 psm.

9. SUBMISSIONS

9.1 No Legal submissions received.

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 Wexford Co.Co.

Our task here is to determine a fair and equitable rent to be paid by a hypothetical tenant at the relevant valuation date.

Section 19.5 of the Valuation (Amendment) Act 2015 deals directly with tenants' comparison, particularly in relation to;

A. Correctness of value,

Uniformity of property.

To arrive at a fair and equitable determination, the Member is subject to supplied evidence only. We do not have recourse for questioning or seeking further clarification..

However our view in this matter must be driven by the facts shown to be proven.

The appellant has not proven, or even given acceptable evidence, that the area in question is other than the 181.35m as evidenced previously by the Valuation Office as per the revision of the property in 2016, at which time there was no dispute to the area.

The appellant appears to claim a sought area of 156.10m based upon an unclear property within the same block but this has not been confirmed to an acceptable level of confirmation, in our view.

We therefore must accept the relevant area under appeal as 181.35m².

To view the annual rent issue as of 15/9/17, the commercial rate of any commercial property is considered and set by the relevant body on a factor of estimates as rent per square metre, irrespective of what passing rent may or may not be agreed, currently or at the Valuation date, between landlord and tenant.

Whilst the appellant has cited an agreement of rental, it is noted that the lease agreement at the relevant date of valuation 15/9/17 was not supplied as supporting evidence but even if it had, it would have been viewed as moot.

The respondent has, on the other hand, supplied a number of directly NAV comparable properties within the subject properties location, with similar office/Gym usage, and of comparable size, this conforms to the expectations of Section 19.5 of the Act.

NAV Comparison 1, 2199808

NAV Comparison 2, 2199807

NAV Comparison 3, 5007991

All comparisons have been assessed at a rate of E110 psm. We understand these properties to be on the valuation list of properties within this rating area, Wexford Co Co.

We must therefore accept the contention that the same RPSM (Rate per square metre) is fair and equitable for the subject property.

The appellant has further cited some personal, human aspects to his valuation such as the length of time the property was vacant and the impact of Covit to the properties let ability, as regards these factors, as real as they may be, we have no discretion of value change therein.

On foot of these facts, we find the appellant has not proven his position in this matter.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

181.35 Metre (Floor area) X 110 psm (Rate per Square Metre) =
19,948.50 (Say E19, 940).

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.