

**Appeal No: VA23/5/0684**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Jim Burke**

**APPELLANT**

**and**

**Commissioner of Valuation (Tailte Éireann)**

**RESPONDENT**

**In relation to the valuation of**

Property No. **5018895**, Retail (Shops) at Unit 9 Bóthar Bhreandain Uí Eithir, Forster Court, Galway City.

**B E F O R E**

**Donal Madigan, MRICS, MSCSI**  
**Frank O’Grady, MA, FSCSI, FRICS**  
**Emma Slattery, BL**

**Deputy Chairperson**  
**Member**  
**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 24<sup>TH</sup> DAY OF OCTOBER, 2024**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 17<sup>th</sup> day of October, 2023 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 € **50,900**.

1.2 The grounds of appeal are as set out in the Notice of Appeal, and state 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 valuation is excessive based on comparisons of adjacent properties. The property has a significant locational disadvantage being situated on a cul-de-sac residential road which is concealed from passing traffic. A reduction of approx. 40% was granted by the Valuation Tribunal (VA21/4/0098) in the rate per square metre by way of comparison to adjacent properties to allow for size and inferior location.”*

1.3 The Appellant, in the Notice of Appeal, considers that the valuation of the Property ought to have been determined in the sum of € **30,500**.

## **2. REVALUATION HISTORY**

2.1 This is a Revaluation appeal arising from the Galway City Council revaluation which was undertaken as a result of the Galway City Council Valuation Order 2022 that was signed by the Commissioner of Valuation on 6<sup>th</sup> September, 2022 and is for the Valuation List published on 22<sup>nd</sup> September 2023.

2.2 The functions of the Commissioner of Valuation are now performed under the authority of Tailte Éireann with effect from 1<sup>st</sup> March, 2023 (S.I. No.58/2023 - Tailte Act 2022 (Commencement) Order 2023).

2.3 On the 23<sup>rd</sup> day of September, 2022 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 € **63,700**.

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 of the Property was reduced to € **50,900**.

2.5 A Final Valuation Certificate issued on the 15<sup>th</sup> day of September, 2023 stating a valuation of € **50,900**.

2.6 The date by reference to which the value of the property, the subject of this appeal, was determined is the **1<sup>st</sup> February, 2022**.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely via Zoom on the 23<sup>rd</sup> day of August, 2024. At the hearing the Appellant was represented by Mr. David Molony of Hennigan & Company and the Respondent was represented by Mr. Kevin O’Doherty of Tailte Éireann.

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 taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

3.3 Both Valuers submitted précis containing the Standard Declaration and Statement of Truth in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules 2019.

## 4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 The Property is situated on Forster Place just off Bóthar Bhreandain Uí Eithir north east of Eyre Square. This road connects Prospect Hill with Forster Street and is a one way traffic thoroughfare. Forster Place leads into a residential cul-de-sac.

4.2 The Property comprises Unit 9 on the ground floor of a three storey mixed commercial and residential block, the upper floors being residential and therefore excluded from this appeal.

4.3 It is understood that the building was erected around 1992 by O'Malley Construction.

4.4 The net internal floor areas are agreed as follows:

### Ground Floor

Retail	Zone A	76.60m <sup>2</sup>
	Zone B	70.43m <sup>2</sup>
	Zone C	55.27m <sup>2</sup>
Remainder		<u>14.73m<sup>2</sup></u>
Total:		217.03m <sup>2</sup>

4.5 Mains services are connected to the Property.

4.6 The Property was vacant at the statutory valuation date of 1<sup>st</sup> February, 2022.

4.7 The Appellant is the owner of the Property, having acquired it in 2016.

4.8 The Property and parts of adjacent Units 7 & 8 Forster Court have been let, subsequent to the valuation date, to a company engaged in the electronic cigarette and vaping industry on a 10 year lease from 7<sup>th</sup> May 2024 at the initial rent of € 20,000 per annum for use as light storage. There is a fixed rent review in year 6 of the lease to € 32,000 per annum. There is a Tenant's option to break at the expiry of the fifth year of the lease on giving 6 months' prior notice in writing. The Tenant is required to undertake certain specified works (plastering, floor repair and covering, installation of ceiling and utility metering provision). The lease is drafted on an effective full repairing and insuring basis with a service charge payable in addition.

## 5. ISSUES

The issue arising in this appeal is regarding the quantum of the valuation wherein the Appellant Valuer contends for a valuation of € 30,500 and, alternatively, € 20,000 on the basis of storage use, whilst the Respondent Valuer contends for a valuation of € 40,700 which is a reduced figure from that specified in the Final Valuation Certificate, which was € 50,900.

## 6. RELEVANT STATUTORY PROVISIONS:

6.1 All references in this document 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 Acts.

6.2 In **Revaluation** type appeals, as in this appeal, sec. 37 of the Act provides that the Valuation Tribunal must reach a determination having regard to the provisions of sec. 19 (5) of the Valuation Act, 2001, which provides:

*that 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 (**NAV**) of the Property must 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.”*

6.4 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 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. David Molony of Hennigan & Company submitted a detailed précis of evidence to the Tribunal in which he outlined the location, description, accommodation and tenure of the Property, supplemented by photographs and maps in addition to his opinion of valuation and his supporting evidence. He also provided a copy of the Lease for the letting made in 2024 and set out the earlier determination of the Tribunal from August 2023 in the previous revision appeal V.A. 21.4.0098.

7.2 Mr Molony put forward the following valuations for consideration:

(a) As a Store

217.03m<sup>2</sup> @ € 92.00 per m<sup>2</sup>      € 19,966.76 say NAV € 20,000.

(b) As Retail, zoned

Retail	Zone A	76.60m <sup>2</sup> @ € 240.00 per m <sup>2</sup>	18,384.00
	Zone B	70.43m <sup>2</sup> @ € 120.00 per m <sup>2</sup>	8,451.60
	Zone C	55.27m <sup>2</sup> @ € 60.00 per m <sup>2</sup>	3,316.20
Remainder		<u>14.73m<sup>2</sup> @ € 30.00 per m<sup>2</sup></u>	<u>441.90</u>
		217.03m <sup>2</sup>	30,593.70 say, NAV € 30,500

(c) As Retail, overall

217.03m<sup>2</sup> @ € 140.00 per m<sup>2</sup>      € 30,384.20 say, NAV € 30,500.

7.3 In support of his valuations he submitted the following comparables:

As Stores

**1. PN 1153343**

6a Abbeygate Street Upper, Galway

This property is assessed at the NAV of € 1,540 which is calculated as follows:

Floor Level 0 Store 30.93m<sup>2</sup> @ € 50 = € 1,546.50 say, NAV € 1,540.

**2. PN 2164072**

1B Victoria Place, Galway

This property is assessed at the NAV of € 1,590 which is calculated as follows:

Floor Level 0 Store 17.50m<sup>2</sup> @ € 45.00 = € 787.50

Floor Level 1 Store 17.90m<sup>2</sup> @ € 45.00 = € 805.50

€ 1,593 say, NAV € 1,590.

**3. PN 1158956**

2A Victoria Place, Galway

This property is assessed at the NAV of € 23,100 which is calculated as follows:

Floor Level 0 Store 556.51m<sup>2</sup> @ € 40.00 = € 22,260.40

Floor Level 1 Store 21.66m<sup>2</sup> @ € 40.00 = € 866.40

€ 23,126.80 say, NAV € 23,100.

**4. PN 1142899**

38-41 William Street West, Galway

This property is assessed at the NAV of € 14,630 which is calculated as follows:

Floor Level 0 Store 375.50m<sup>2</sup> @ € 35.00 = € 13,142.50  
Mezzanine Store 213.20m<sup>2</sup> @ € 7.00 = € 1,492.40  
€ 14,634.90 say, NAV € 14,630.

### As Retail

#### 1. **PN1158700**

No longer on Valuation List but had been mentioned at previous revision appeal hearing.

#### 2. **PN 1158701**

Unit 2 Forster Court, Galway

This property is assessed at the NAV of € 17,180 which is calculated as follows:

Floor Level 0 Retail Zone A 28.00m<sup>2</sup> @ € 400.00 = € 11,200.00  
Zone B 27.79m<sup>2</sup> @ € 200.00 = € 5,558.00  
Zone C 4.29m<sup>2</sup> @ € 100.00 = € 429.00  
€ 17,187.00 say, NAV € 17,180.

#### 3. **PN 1158702**

Unit 3 Forster Court, Galway

This property is assessed at the NAV of € 15,950 which is calculated as follows:

Floor Level 0 Retail Zone A 25.54m<sup>2</sup> @ € 400.00 = € 10,216.00  
Zone B 28.67m<sup>2</sup> @ € 200.00 = € 5,734.00  
€ 15,950.00 NAV € 15,950.

#### 4. **PN 1158703**

Unit 4 Forster Court, Galway.

This property is assessed at the NAV of 17,320 which is calculated as follows:

Floor Level 0 Retail Zone A 27.37m<sup>2</sup> @ € 400.00 = € 10,948.00  
Zone B 29.53m<sup>2</sup> @ € 200.00 = € 5,906.00  
Zone C 4.69m<sup>2</sup> @ € 100.00 = € 469.00  
€ 17,323.00 say, NAV € 17,320.

#### 5. **PN 1158705**

Unit 8 Forster Court, Galway.

This property is assessed at the NAV of € 42,800 which is calculated as follows:

Floor Level 0 Retail 162.22m<sup>2</sup> @ € 240.00 = € 38,932.80  
Add 10% allowance € 3,893.28  
€ 42,826.08 say, NAV € 42,800.

7.4 In addition to his written evidence Mr. Molony made the following points, in oral testimony, in summary, omitting, where possible, a replication of what has already been stated above, as follows:

- (a) This Property was the subject of a previous revision appeal that was determined on 17th August 2023, reference VA.21.4.0098 wherein a 40% allowance was granted
- (b) The Property has no profile as it faces residential units in Forster Place and is not visible to passing traffic or pedestrians heading south on the adjacent roadway, which is a one way thoroughfare
- (c) The unit has been vacant since 2010 having previously been a supermarket and then a restaurant, both of which had failed.
- (d) The photographs he refers to indicate the poor condition of the interior and much needs to be spent to bring that up to an acceptable standard
- (e) The Property had been on the market to let for 8 years prior to finding a Tenant in 2024 ( see **Facts** in the section 4 above at 4.8)
- (f) He submits two bases of valuation, the first being storage use reflecting the use for which the property has been recently let, and the other for retail on a zoning basis, calculated at € 400 Zone A with a 40% allowance for lack of profile and condition, in the event that the Tribunal determine that method more appropriate.

7.5 In cross examination Mr. Molony confirmed, in summary, inter alia, that:

- (a) Forster Court is a residential street just off Bóthar Bhreandain Uí Eithir
- (b) That in a Revaluation all properties in the rating authority area are revalued simultaneously at a common valuation date, which in this case, is 1<sup>st</sup> February, 2022
- (c) That there is a Lease in place for the Property from May 2024
- (d) With regard to his Stores comparables he agreed that these are not directly comparable to the subject Property but were included to give guidance to the Tribunal on levels for Stores but he was not advocating that these levels (€ 35-50 per m<sup>2</sup>) be applied as he had suggested a higher value between these levels and retail levels
- (e) He agreed with Mr. O'Doherty that the statutory basis outlined in sec 19(5) and 48 of the Valuation Act applied and that the rent of a particular property, though material, may not, of itself be conclusive in determining net annual value as it is the rent a hypothetical Tenant would pay for the property as opposed to what the actual Tenant pays
- (f) He also agreed that the valuer in Tailte Éireann had valued this Property as retail notwithstanding that it was vacant at the valuation date.

7.6 In answer to questions from the Tribunal Mr. Molony confirmed:

- (a) The permitted use under the 2024 Lease is for light storage purposes
- (b) The premises set out in the Lease include parts of Units 7, 8 & 9 Forster Court
- (c) That the grounds of appeal did not make reference, in the original Notice of Appeal, to value for storage and he explained that is because, at the time the appeal was made, the letting for storage had not yet occurred
- (d) That the adjacent Unit 8 Forster Court is not leased but owner occupied
- (e) That the appeal on the adjacent unit 8 Forster Court (VA.21.4.0097) had been withdrawn by the owners themselves on 9<sup>th</sup> January, 2023 and that, accordingly, this unit, cited by both Valuers in their evidence, is a valid comparable (PN 1158705)

## 8. RESPONDENT'S CASE

8.1 Mr. Kevin O'Doherty of Tailte Éireann submitted a précis of evidence to the Tribunal in which he outlined the location, description, tenure, condition and other aspects of the Property in addition to a commentary on the grounds of appeal, his opinion and supporting comparables and rental evidence, which were supplemented by maps, photographs and a plan. He also attached relevant valuation certificates and the statutory basis for estimating net annual value.

8.2 Mr O'Doherty put forward the following valuation for consideration:

Retail	Zone A	76.60m <sup>2</sup> @ € 400.00 per m <sup>2</sup>	30,640.00
	Zone B	70.43m <sup>2</sup> @ € 200.00 per m <sup>2</sup>	14,086.00
	Zone C	55.27m <sup>2</sup> @ € 100.00 per m <sup>2</sup>	5,527.00
Remainder		<u>14.73m<sup>2</sup> @ € 50.00 per m<sup>2</sup></u>	<u>736.50</u>
	Total:	217.03m <sup>2</sup>	50,989.50
		Deduct 20%	<u>10,197.90</u>
			40,791.60 say, NAV € 40,700.

8.3 In support of his valuation, Mr. O'Doherty put forward the following comparables:

### Key Rental Transactions (KRT)

#### 1. PN redacted

Bóthar Bhreandain Uí Eithir

This property comprises a ground floor retail unit of 54.21m<sup>2</sup> which was let on a 4 year 9 months lease from 9<sup>th</sup> October 2022 at the rent of € 17,000 per annum which equates to a net effective rent, also, of € 17,000 that reflects a Zone A of € 426.00 per m<sup>2</sup>. It is assessed at the NAV of € 15,950 that reflects a Zone A of € 400.00 per m<sup>2</sup>.

Representations were received in respect of this property but no agent was involved and there was no appeal made.

#### 2. PN redacted

Eglinton Street, Galway

This property comprises a ground floor retail unit of 74.28m<sup>2</sup> plus first floor offices of 34.27m<sup>2</sup>, a total of 108.55m<sup>2</sup> which was let on a 20 year lease from 1<sup>st</sup> October 2019 at the rent of € 28,000 per annum which equates to a net effective rent of € 26,888.40 that reflects a Zone A of € 475.00 per m<sup>2</sup> and a unit value rate of € 60.00 per m<sup>2</sup> on the offices. It is assessed at the NAV of € 24,100 that reflects a Zone A rate of € 400.00 per m<sup>2</sup> and a unit value rate of € 100.00 per m<sup>2</sup> on the offices.

No representations were received in respect of this property, there was no agent involved and no appeal was made.



### 3. PN redacted

Abbeygate Street Lower, Galway.

This property comprises a ground floor retail unit of 44.16m<sup>2</sup> which was let on a 5 year lease from 10<sup>th</sup> September 2018 at the rent of € 24,000 per annum that equates to a net effective rent of € 23,156.36 that reflects a Zone A rate of € 620.30 per m<sup>2</sup>. It is assessed at the NAV of € 20,900 that reflects a Zone A rate of € 560.00 per m<sup>2</sup>.

No representations were received in respect of this property, there was no agent involved and no appeal was made

### 4. PN redacted

Abbeygate Street Upper, Galway.

This property comprises a retail unit plus basement store and ground floor store with a total of 46.69m<sup>2</sup> which was let on a 4 year 9 months' lease from 9<sup>th</sup> August 2018 at the rent of € 18,000 per annum that equates to a net effective rent of € 15,641.11 that reflects a Zone A rate of € 640.00 per m<sup>2</sup>, € 64.00 on the ground floor store and € 60.00 on the basement store. It is assessed at the NAV of € 14,630 that reflects a Zone A rate of € 560.00 per m<sup>2</sup> with unit value rates of € 56.00 on the ground floor store and € 100.00 per m<sup>2</sup> on the basement store.

No representations were received in respect of this property, there was no agent involved and no appeal was made

### 5. PN redacted

Mainguard Street, Galway.

This property comprises a building of 64.18m<sup>2</sup> comprising retail of 18.66m<sup>2</sup> at ground floor level; retail of 16.62m<sup>2</sup> at first floor; store at second floor of 15.22m<sup>2</sup> and a store at basement level of 13.68m<sup>2</sup>. The entire was let on a 20 year lease from 9<sup>th</sup> January 2017 at the rent of €24,000 per annum which equates to a net effective rent of € 22,920.54 that reflects a Zone A of € 1,078 per m<sup>2</sup>, with ancillary unit value rates of € 80.00 per m<sup>2</sup> (First Floor retail); € 42.00 per m<sup>2</sup> on second floor and € 60.00 per m<sup>2</sup> on the basement store. It is assessed at the NAV of € 21,000 that reflects a zone A rate of € 900.00; € 110 per m<sup>2</sup> on the first floor retail; € 70 per m<sup>2</sup> on the second floor store and € 100 per m<sup>2</sup> on the basement store.

No representations were received in respect of this property, there was no agent involved and no appeal was made.

## NAV Comparables

### 1. PN 1158701

Unit 2 Bóthar Bhreandain Uí Eithir

This property comprises a ground floor retail unit of 60.08m<sup>2</sup> which is assessed at the NAV of € 17,180 that is calculated as follows:

Floor Level 0 Retail Zone A	28.00m <sup>2</sup>	@ € 400.00	= € 11,200.00
Zone B	27.79m <sup>2</sup>	@ € 200.00	= € 5,558.00
Zone C	4.29m <sup>2</sup>	@ € 100.00	= € <u>429.00</u>
			€ 17,187.00 say, NAV € 17,180

Representations were received in respect of this property but no agent was involved and there was no appeal made.

## 2. PN 1158703

Unit 4 Bóthar Bhreandain Uí Eithir

This property comprises a ground floor unit of 61.59m<sup>2</sup> which is assessed at the NAV of € 17,320 that is calculated as follows:

Floor Level 0 Retail Zone A	27.37m <sup>2</sup>	@ € 400.00	= € 10,948.00
Zone B	29.53m <sup>2</sup>	@ € 200.00	= € 5,906.00
Zone C	4.69m <sup>2</sup>	@ € 100.00	= € <u>469.00</u>
			€ 17,323.00 say, NAV € 17,320

No representations were received in respect of this property; no agent was involved and no appeal was made.

## 3. PN 1158704

Unit 5/6, Bóthar Bhreandain Uí Eithir

This property comprises a ground floor unit of 101.64m<sup>2</sup> which is assessed at the NAV of € 32,800 that is calculated as follows:

Floor Level 0 Retail Zone A	62.38m <sup>2</sup>	@ € 400.00	= € 24,952.00
Zone B	39.26m <sup>2</sup>	@ € 200.00	= € <u>7,852.00</u>
			€ 32,804.00 say, NAV € 32,800.

No representations were received in respect of this property; no agent was involved and no appeal was made.

## 4. PN 2169498

Unit 7, Bóthar Bhreandain Uí Eithir

This property comprises a ground floor retail unit of 84.89m<sup>2</sup> which is assessed at the NAV of € 21,000 that is calculated as follows:

Floor Level 0 Retail Zone A	28.73m <sup>2</sup>	@ € 400.00	= € 11,492.00
Zone B	39.65m <sup>2</sup>	@ € 200.00	= € 7,930.00
Zone C	16.51m <sup>2</sup>	@ € 100.00	= € <u>1,651.00</u>
			€ 21,073.00 say, NAV € 21,000.

Representations were made in respect of this property but no agent was involved and no appeal was made.

## 5. PN 1158705

Unit 8, Bóthar Bhreandain Uí Eithir

This property comprises a ground floor retail unit of 162.22m<sup>2</sup> which is assessed at the NAV of € 42,800 that is calculated as follows:

Floor Level 0 Retail	162.22m <sup>2</sup>	@ € 240.00	= € 38,932.80
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Add 10% allowance                    € 3,893.28  
    € 42,826.08    say, NAV € 42,800.

Representations were received in respect of this property, an agent was involved and an appeal was made to the Valuation Tribunal. [That appeal, **VA. 21.4.0097** was subsequently withdrawn on 9<sup>th</sup> January, 2023 as announced to the parties for clarification at the hearing.]

8.4 In addition to his written evidence, omitting, where possible, a replication of what has already been stated above, he made the following points, in oral testimony, in summary, as follows:

- (a) The case is one of quantum only with floor areas agreed at a total of 217.03m<sup>2</sup>
- (b) By reference to pages in his written evidence he confirmed that the property is a unit in shell and core condition with all mains services connected and that there are two floors of residential over head
- (c) He referred to the photos taken by him on 5<sup>th</sup> June 2024 and to those of the interior taken by a colleague on 28<sup>th</sup> July 2023 to indicate the character of the property etc
- (d) The Lease that is in place was dated 7<sup>th</sup> May 2024, being entered into some 2.25 years after the statutory valuation date and outlined the main terms
- (e) That the process of revaluation updates all values in the rating authority area at a common valuation date which results in a more equitable distribution of the rates burden on ratepayers
- (f) That whilst the rent of a particular property may be material it is not conclusive in determining net annual value as the basis considers, instead, what a hypothetical Tenant will pay
- (g) This part of Galway had been revisited on valuation levels following representations and the basis resulted in a reduction of the valuation of the subject Property from € 63,700 (based on a Zone A rate of € 500) to € 50,900 (based on a Zone A rate of € 500) to reflect similarly circumstanced properties
- (h) That the Stores properties referred to by the Appellant are not comparable with the subject Property as they are mainly rear stores, not retail
- (i) That he had allowed for lack of profile and location disadvantage by making an end allowance of 20%
- (j) That the lease subsequently entered into was not relevant in determining the NAV being made well after the valuation date
- (k) That the previous revision decision of the Valuation Tribunal is not of assistance in determining this revaluation appeal.

8.5 In cross examination, Mr. O'Doherty confirmed, in summary, inter alia, that:

- (a) When asked about rental growth between the valuation date in 2022 and the date the Lease was entered into, (2024) he said that this was not a relevant consideration as anything after the date could not be relied upon, as it was vacant at the valuation date
- (b) He was asked was it not incumbent on the Chief Operations Officer in Tailte Éireann to keep the Valuation List up to date by reference to new rental information and he replied that although it is, the property had not changed between the valuation date and the date the lease was made, that it was still a retail property as it had always been, since being developed in the early 1990s
- (c) He said it had previously been a supermarket and a restaurant and that the nature of the unit had not changed as it is still a retail unit and the rent payable by an occupier was not conclusive in determining NAV, as it is what a hypothetical Tenant would pay, that is more important

- (d) You cannot compare revision cases with revaluation case appeals
- (e) With regard to the relevance of the actual letting in 2024 he did not agree that the existence of an actual Tenant in 2024 did away with the requirement to have regard to a hypothetical Tenant because this letting was not in place at the valuation date; that Tenant did not exist and cannot be taken into account
- (f) He said whether an owner chooses to let a Tenant use the unit for storing cigarette boxes is irrelevant and gave the example of a brand store in Grafton Street, if the brand is no longer in occupation, that does not change the nature of the property; it is still retail and valued on a zoning basis; whether the owner chooses to let an occupier store boxes in the property is irrelevant as it remains a retail unit
- (g) He had used key rental transactions in as close proximity as possible to the subject property to show relativity between properties in the same valuation scheme and conceded that some are in better locations but are all valued uniformly; it is policy in Tailte Éireann to include rental transactions in an appeal submission but said it is very difficult to secure rental evidence and that these KRTs are these are not the same as the net annual value comparables close to the Property backing up the valuation
- (h) That the indicator arrow on page 28 of his precis for KRT No. 1 was in the wrong block on that location plan
- (i) That his KRT No. 2 is on Eglinton Street which is close to Brown Thomas (100 yards)
- (j) That all his KRTs are located to the west of Eyre Square, enjoying the highest footfall in the city, and that he is attempting to show how net effective rents on KRTs compare with NAVs and demonstrating how these NERs per square metre rise as one moves into a better location but that nothing is perfect and one is unlikely to encounter KRTs that match up precisely with NAVs
- (k) That the subject property is about 300 metres from Eyre Square
- (l) That, with regard to KRT No. 5, he had not sought further information from the letting agents for this unit because the lease details adopted in this appeal related to the letting in 2017 and nothing further is required and that the rent review details for the 2022 review are not relevant as in his view the lease rent takes precedence over a reviewed rent as the latter may not be at arm's length
- (m) That the Tribunal revision Determination is not relevant as the basis is different to that adopted for revaluation
- (n) That taking account that Unit 8, it was put to him that this has been valued at an overall unit value rate as opposed to zoning, (like the rest facing Bóthar Bhreandain Uí Eithir ) this indicates the valuation process is already reflecting a change to accommodate individual characteristics of a property, and that this approach should be applied to the subject Property, to which he responded by stating that the Chief Operations Officer of Tailte Éireann has already done this by the application of a 20% end allowance
- (o) That there has been no change to the Property since the revision appeal Determination as borne out by the photographs provided in evidence
- (p) That when he inspected the Property in June 2024 it was in shell and core condition and that in a revaluation Tailte Éireann cannot seek to value each property on the basis of what one occupier might spend on it contrasted with another, and that, as it is capable of beneficial occupation, that it can be valued in line with other properties in the scheme
- (q) That, notwithstanding the visual aspect of the interior, that all services are available to the Property (as confirmed in the earlier revision appeal in 2023)

8.6 In answer to questions from the Tribunal, Mr. O'Doherty confirmed, in summary:

(a) That having regard to his analogy with a branded shop in Grafton Street, it was put to him that there is a subtle difference between being located on Grafton Street as opposed to a street at the back, such as South Great Georges Street, yet he was adopting the same Zone A rental in his valuation (as those on Bóthar Bhreandain Uí Eithir) even though this Property is located to the rear of the comparables he relied upon, which are all shops on a main road, and that, consequently, he had not made an allowance for the actual location of the Property, and he responded by stating that the subject is part of a lease comprising parts of Units 7,8 & 9 that have an address on Bóthar Bhreandain Uí Eithir and that is why it has been valued on the same basis as the other units on that road and that a further allowance had been made to reflect the particular circumstances of this unit.

(b) That he did not ignore the earlier revision appeal Determination, was aware of the facts therein but considered that it was not relevant as it was conducted on a different process

(c) That, with regard to Unit 8, which adjoins the subject Property, sharing some similar characteristic with it, is valued at an overall unit value rate of € 240.00 per m<sup>2</sup> compared to his revised valuation of the subject Property (€ 40,700) which equates to an overall unit value rate of € 187.53 as it is not zoned, and it was put to him how does this relate to a zoned basis ? He responded by stating it is valued as a shop on an overall basis and said the Chief Operations Officer would be happy if a unit value rate of € 240.00 per m<sup>2</sup> was adopted to the overall area which would produce a value of just over € 52,000 but that he had been more than fair in using a zoned approach and applying an end allowance of 20% to reflect all the disadvantages it has

## **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 Galway City Council.

10.2 The Tribunal notes that the Appellant raised other grounds of appeal in his submission which encompassed issues not raised in the Notice of Appeal relating to user (the adoption of a lower value reflective of storage ) and the poor condition of the appeal property. The Valuation Act provides at sec. 35. that any appeal must specify the grounds of appeal as this is the necessary framework for the consideration of appeals because it depends on one party (the Appellant) stating their case and outlining the supporting grounds of appeal, in order for the other party (the Respondent) to consider same and compile an appropriate response. Accordingly, the Tribunal can only consider the grounds advanced in the Notice of Appeal, no

application having been received from the Appellant to vary those grounds in advance of the hearing.

10.3 Whilst the Tribunal notes the very challenging letting history of the Property, the long vacancy period, and the eventual letting for a lower value user, it is not persuaded that the character (or mode or category of occupation) of the Property has changed in that it still corresponds more closely to a retail unit, than any other type of property. The letting in 2024 did not encompass the unit 9 in isolation and was made conditional on certain works being undertaken by the Tenant. Although it may influence a certain view on the ability to let the unit, it is not conclusive and was made after the issue of the Final Valuation Certificate on 15<sup>th</sup> September, 2023. For this revaluation, the valuation date is fixed at 1<sup>st</sup> February, 2002 and does not move in time. If one was to try and encapsulate changes in values subsequent to the issue of the valuation certificates, that implies that one would be embarking on a new revaluation (at, by inference, a new valuation date) which would be contrary to the direction in sec. 19(5) of the Act and it is worth recalling the introductory part of that subsection again for the sake of clarity on this issue as follows:

*(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,.....*

The remainder of that subsection is set out at length in Section 6 above of this Determination.

10.4 There were several exchanges at the hearing between the Valuers on the relevance of the previous Determination for the subject property in the revision appeal **VA. 21.4.0098** issued on 17<sup>th</sup> August, 2023. The Appellant Valuer contended that this is relevant, in determining the current appeal, whereas the Respondent Valuer contended that it is not. Whilst the earlier decision might contain aspects that could be pertinent, it must be stated that, as a general principle, it is considered that revision appeals for a rating authority area, especially one which was not previously revalued, will be of little assistance in determining a Revaluation type appeal, as the former refers to a base net annual value valuation date of 1<sup>st</sup> November 1988 (and then adjusted by a reducing factor to produce a Rateable Value). It is also consequential on the occurrence of a material change of circumstances, with the methodology to measure that rateable value confined to comparison with the values illustrated by comparable net annual values on the Valuation List of that rating authority. A Revaluation embraces a complete review of all aspects of rental value changes, as opposed to revisions, which only seek to place the valuation of a property within the existing pattern or tone of values, irrespective of changes in the underlying rental values that occur since the base date. Whilst the end allowance granted in the earlier revision appeal might point to relativities as between the subject property and comparable properties, the statutory mandate postulated by sec, 19(5) requires a much broader spectrum of factors as the valuation is being considered, in effect, *de novo*. New evidence can be introduced in this revaluation exercise to provide the foundation of the new tone of net annual values being brought forward. The mere inclination to transcribe what was determined previously in a revision appeal has to be avoided, as otherwise, no account is taken of the change in the factors affecting

rental valuation which may have occurred since the base date for the old Valuation List of 1<sup>st</sup> November, 1988.

10.5 Turning to the evidence submitted the Tribunal makes the following findings:

(a) The reference to Stores is not considered appropriate because this was not a ground of appeal in the original Notice of Appeal and it was acknowledged by the Appellant Valuer that these were not being used to provide a unit value basis as he himself had valued the unit (as Stores) substantially higher than these levels indicated by these, at € 92.00 per m<sup>2</sup> as against € 35.00-50 per m<sup>2</sup>;

(b) Following from that in (a), reference to the condition of the Property is not relevant as that was not raised as a ground of appeal either, and in the exchanges at the hearing it was common ground between the parties that the unit had all services connected at the relevant date and was capable of beneficial occupation and that an argument was not being further advanced on that issue;

(c) The Appellant Valuer did not submit any rental comparables (although he did submit NAV comparables as mentioned further below) to refute the five key rental transactions provided by the Respondent Valuer;

(d) Whilst the five key rental transactions provided by the Respondent Valuer gave an overall view of the retail valuation scheme adopted for Galway, four of these-KRT no's 2 to 5- are in better locations, in the view of the Tribunal, when contrasted with the location of the subject, but it is acknowledged that the Respondent Valuer's first KRT (PN 1158702 Unit 3 Bóthar Bhreandain Uí Eithir) is of definite relevance in verifying the rental basis for the ultimate adoption of a Zone A rate of € 400.00 per m<sup>2</sup> for the small units facing onto Bóthar Bhreandain Uí Eithir/ Forster Court. This comparable was also referenced by the Appellant Valuer as one of his NAV comparables (his Number 3 in Retail comparables).

(e) Three further NAV comparables are common to both Valuers, being PN 1158701 & PN 1158703 which refer to small units of 60.08m<sup>2</sup> and 61.59m<sup>2</sup> both valued on a Zone A rate of € 400.00 per m<sup>2</sup> whilst the third is PN 1158705 that is Unit 8 Forster Court being adjacent to the subject, comprising an area of 162.22m<sup>2</sup> and valued at an overall unit value rate (i.e. not zoned) of € 240.00 per m<sup>2</sup> with an addition for return/corner frontage of 10% to result in an NAV of € 42,800.

(f) That leaves two further comparables referred to by the Respondent Valuer being PN 1158704 which is another unit of 101.64m<sup>2</sup> valued off a zone A rate of € 400.00 per m<sup>2</sup> but also fronting the Bóthar Bhreandain Uí Eithir and PN 2169498 which is Unit 7 Forster Court that also adjoins the subject and comprises a unit of 84.89m<sup>2</sup> that is valued on a Zone A rate of € 400 to produce an NAV of € 21,000.

(g) The Tribunal is satisfied that the Zone A rate adopted of € 400 per m<sup>2</sup> for small units fronting Bóthar Bhreandain Uí Eithir is appropriate but it is clear that the subject Property does not enjoy that main retail road frontage (despite the assertions by the Respondent Valuer that the address on the Lease is to this road which is irrelevant as the appeal property does not correspond with the demised premises in the Lease, which includes parts of other units). The valuation levels for smaller units may provide a context for the valuation of the subject in this secondary retail part of Galway. The subject Property is a much larger unit, with no profile and

what might be termed tertiary retail frontage. The terrible undisputed letting and vacancy history, as outlined by the Appellant Valuer, reinforces this view.

(h) The leading comparable evidence therefore comes down to two, having taken account of the other rental and NAV comparables to set the background context. These are Unts 7 and 8 Forster Court. Unit 7 is 84.89m<sup>2</sup> (some 39.11% of the subject in size) that has main road frontage with an NAV of € 21,000 on a zoning basis but also reflecting an overall unit value rate of € 247.38

per m<sup>2</sup>. Unit 8 is 162.22m<sup>2</sup> (some 74.75% of the subject in size) that is valued at a unit value rate overall of € 240.00 before the addition of an allowance for return frontage.

(i) Questions arose at the hearing about why this Unit 8 was valued on an overall basis as opposed to a zoning approach, and having regard to the fact that the unit faces both Forster Place and Bóthar Bhreandain Uí Eithir this remains unanswered. However, by revisiting the block plan provided in the precis of the Respondent Valuer on page 10. It will be observed that this unit has a unique shape with a part hexagonal section facing Forster Place and the main road but it will be noted that it has a disproportionate large Zone A area because it is configured “sideways on” to Bóthar Bhreandain Uí Eithir with an unusual frontage to depth ratio and the actual zones are stated on that plan to be Zone A 98.55m<sup>2</sup> and Zone B 63.67m<sup>2</sup> which go to make up the total size of 162.22m<sup>2</sup>.

(j) Further analysis of Unit 8, by the Tribunal, provides a possible insight into why this was valued on an overall rate, rather than zoned, as revealed as follows, by dividing the NAV of the property before the allowance for return frontage is added, namely, € 38,932.80 (being 162.22m<sup>2</sup> X € 240.00) by the ITZA (Zone A of 98.55m<sup>2</sup> plus half Zone B 63.67m<sup>2</sup> X 0.5= 31.835, making a total of 130.385 units) to derive an implied Zone A rate of € 298.60. This implies a discount from the Zone A for smaller units of € 400 to € 298.60 of just over 25%. That might well account for the size differential but that proposes that, to value the subject unit, Unit 9, the appeal Property, some further adjustment should be made for the inferior location to Unit 8.

(k) The Tribunal considers that the subject Property, being larger than Unit 8 and any other comparable, and lacking in profile and not having main road frontage, falls to be valued at an overall unit value (as that reflects, more properly the approach to its previous retail use as either supermarket/mini market/restaurant than what might be classified as a typical small retail unit to be zoned) and, accordingly, if both Experts’ valuations are analysed on that basis, the Appellant is at € 140.53 per m<sup>2</sup> overall to yield a valuation of € 30,500 whilst the Respondent Valuer is at € 187.53 per m<sup>2</sup> overall to yield a valuation of € 40,700.

(l) Reflecting on the valuation of Unit 7 Forster Court, comprising 84.89m<sup>2</sup>; it is valued at an overall rate equivalent of € 247.38 per m<sup>2</sup> and yet the much larger Unit 8, at 162.22m<sup>2</sup> with an unfavourable frontage to depth ratio, is valued at an overall rate of € 240.00 per m<sup>2</sup> representing a reduction of only € 7.38 (€ 247.38/€ 240.00), some 2.98%, seems extraordinary.

(m) Weighing up this evidence carefully, the Tribunal considers that the disproportionate amount of Zone A in the valuation of Unit 8 obscures the adoption of a standard zoning approach but by reference to the overall level pertaining to Unit 7, (€ 247.38) a level of € 240,00 per m<sup>2</sup> overall for Unit 8, before allowance for return frontage, seems higher than is reasonably warranted. Both these unit valuations appear out of sync with one another when considered objectively.

(n) The Tribunal considers that, to reflect all relevant factors but especially the location, size, hidden profile and likely Tenant category for this Property, that the adoption of an overall unit value rate of € 150.00 per square metre is appropriate, based on the information provided to it; the limited pertinent comparables with similar circumstances and given the actual letting history of the **actual** Property as well as its propensity for prolonged vacancy.



**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 **€ 32,540**.

This is calculated as follow:

Retail 217.03m<sup>2</sup> @ € 150.00 pe m<sup>2</sup> = € 32,544.50

Say, NAV **€ 32,540**

**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.