

**Appeal No: VA19/5/1795**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**FILBECK LTD**

**APPELLANT**

**and**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2179225, Retail (Shops) at 5.6.6A/Unit 16 Abbey Quay, Enniscorthy, County Wexford.

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 23<sup>RD</sup> DAY OF AUGUST, 2024**

**BEFORE**

**Fergus Keogh – MSCSI, MRICS**

**Tribunal Member**

**1. THE APPEAL**

- 1.1 By Notice of Appeal received on the 14<sup>th</sup> 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 €11,820.
- 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 and the Appellant stated:

*“Rental income for this property is €7,500. We have tried the principle auctioneers of the town and it is considered to be in a corner and the majority of the unit should be classed as a store. We could value this premises at €8,000 maximum. Virtually no footfall here because it is hidden in the corner of Abbey Car Park.”*

- 1.3 The Appellant stated in the Notice of Appeal that the valuation of the Property ought to have been determined in the sum of €6,156.

## **2. BACKGROUND AND RE-VALUATION HISTORY**

- 2.1 The Tribunal considers it beneficial to set out some background information in relation to this this appeal and to a previous appeal made in respect of the Property. Two appeals were lodged with the Valuation Tribunal in relation to the Property. The first appeal was lodged by the occupier of the Property on the 11<sup>th</sup> October 2019 and was assigned reference number VA19/5/1057. A second appeal, this appeal, was lodged by the owner of the Property on the 14<sup>th</sup> October 2019 and assigned reference number VA19/5/1795.
- 2.2 On the 15<sup>th</sup> 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 issued indicating a valuation of €16,340.
- 2.3 Being dissatisfied with the valuation proposed, representations were made to the valuation manager on behalf of the occupier in relation to the valuation. In these representations the occupier had professional representation. Following consideration of those representations, the valuation manager considered it appropriate to provide for a lower valuation.
- 2.4 A Final Valuation Certificate issued on the 10<sup>th</sup> day of September 2019 stating a valuation of €11,820.
- 2.5 Being dissatisfied with the valuation manager’s decision an appeal was made to the Valuation Tribunal (VA19/5/1057) on the 11<sup>th</sup> October 2019. Prior to this appeal being heard

the parties agreed to compromise the appeal. The rating authority was notified as required and there being no objection by the rating authority, the revised valuation assessment of €9,580 agreed by the parties and confirmed by the Tribunal on the 1<sup>st</sup> April 2021.

- 2.6 In relation to this subject appeal (VA19/5/1795), no representations were made to the valuation manager by the owner appellant in response to the valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ('the Act') in relation to the Property that indicated a valuation of €16,340 and which issued on the 15<sup>th</sup> day of March, 2019.
- 2.7 Being dissatisfied with the valuation manager's decision made under the occupier's appeal (VA19/5/1057), an appeal was made by the owner of the Property on the 14<sup>th</sup> October 2019 in response to the Final Valuation Certificate issued in the amount of €11,820. This appeal was assigned reference number VA19/5/1795.
- 2.8 The date by reference to which the value of the Property, the subject of this appeal, was determined is 15<sup>th</sup> 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 submissions and submitted them to the Tribunal.
- 3.3 In this appeal the Appellant was represented by Mr. Eamonn Buttle. The Respondent was represented by Mr. Liam Hendricken of Tailte Eireann ('the Parties').

#### **4. FACTS**

- 4.1 The Property comprises a ground floor lock-up shop extending to 123.13 m<sup>2</sup> which forms part of a development known as The Abbey Square Shopping Centre. The development is located between Mill Park Road and The Promenade, a short distance from Seamus Rafter Bridge, Enniscorthy, Co. Wexford.
- 4.2 The Property is rectangular in shape and occupies a corner location at the intersection of two terraces and overlooks a car parking area. It is of block wall construction with a timber shop front.
- 4.3 Photographs and a block plan provided by the Respondent and dated 31<sup>st</sup> January 2024 indicate a unit occupied by a print-shop trader. The Property has a large frontage relative to a narrow depth and has been divided into a public shop area with a partitioned workshop / printing area.

#### **5. ISSUES**

- 5.1 The issue in the Appeal is one of the quantum of the valuation. The Appellant contended for a valuation of €6,156 and the Respondent for a valuation of €9,580.

#### **6. RELEVANT STATUTORY PROVISIONS**

- 6.1 All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015 and other Acts.
- 6.2 In Revaluation type appeals, as in this appeal, sec. 37 provides that the Valuation Tribunal must reach a determination having regard to the provisions of sec. 19 (5) of the Valuation Act, 2001, 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. Buttle’s précis of evidence on behalf of the Appellant comprised a cover letter attached to a schedule of what he described as being rental payments received for the Property in

2023. The schedule contained a list of thirty amounts which totalled €3,630 and were referenced with calendar dates.

7.2 Mr. Buttle did not submit any other information as required under the Valuation Tribunal (Appeal) Rules 2019.

7.3 Mr. Buttle's submission did not state a valuation amount. The Notice of Appeal submitted by Mr. Buttle stated a valuation an amount of €6,156.

## **8 RESPONDENT'S CASE**

8.1 In his précis, Mr. Hendricken outlined the location, description, size and characteristics of the subject Property. He confirmed the date of valuation and provided a history of the valuation of the Property. He supplemented his text with maps, photographs, title and tenancy details.

8.2 Mr. Hendricken contended for a valuation of €9,580 which is less than the amount of the valuation appealed by the Appellant and is the same valuation amount agreed by compromise by the parties in appeal VA19/5/1057. Mr Hendricken said that this valuation was arrived at by applying a rate of €96 per m<sup>2</sup> to the agreed floor area and applying an allowance of €2,240 to take account of the impeded layout and ramped floor of the Property.

8.3 Mr. Hendricken said that in valuing the Property he had collated and analysed market evidence and information obtained from comparative transactions of properties that he identified as being aligned with the requirements of the hypothetical tenant as described in section 48 of the Valuation Act. He provided details of five comparative transactions termed Key Rental Transactions (KRT's) from which he estimated the net Effective Rent of each comparison. Details of these transactions are set out in Appendix 1 (N/A to public) and summarised below;

<b>KRT Comparison No.</b>	<b>Lease Date</b>	<b>NER @ Oct 2015</b>	<b>NER per m<sup>2</sup> @ Oct 2015</b>	<b>NAV</b>	<b>Comments</b>
1.	1 <sup>st</sup> Sept. 2017	€18,396.84	€178.70 Zone A €167.14 overall	€16,860	<ul style="list-style-type: none"> <li>• Located on Rafter Street &amp; in a superior location</li> <li>• Ground floor retail &amp; 1<sup>st</sup> Floor stores</li> </ul>
2.	3 <sup>rd</sup> Feb. 2016	€10,128.25	€193.81 Zone A €143.71 overall	€9,520	<ul style="list-style-type: none"> <li>• Located on Weafer Street &amp; in a superior location</li> <li>• Ground floor retail &amp; stores</li> </ul>
3.	3 <sup>rd</sup> August 2016	€6,851.80	€173.76 Zone A €136.24 overall	€7,090	<ul style="list-style-type: none"> <li>• Located on Rafter Street &amp; in a superior location</li> <li>• Ground floor retail &amp; stores</li> </ul>
4.	1 <sup>st</sup> June 2017	€8,771.85	€276.51 Zone A €170.14 overall	€5,190	<ul style="list-style-type: none"> <li>• Located on Duffry Street &amp; in a similar location</li> <li>• Ground floor retail</li> </ul>
5.	1 <sup>st</sup> April 2018	€4,039.18	€210.81 Zone A €210.81 overall	€3,370	<ul style="list-style-type: none"> <li>• Located on Slaney Street &amp; in a similar secondary location</li> <li>• Ground floor retail</li> </ul>

8.4 Mr. Hendricken also provided details of three Net Annual Value (NAV) Comparisons as set out below;

#### **NAV Comparison No. 1.**

<b>Property Number</b>	<b>2161410</b>
Occupier	Mary Cummins, T/A The Abbey Café
Address	Unit 6 Abbey Square Shopping Centre
Total Floor Area	90.62 m <sup>2</sup>
NAV	€8,690

<b>Level</b>	<b>Description</b>	<b>Size m<sup>2</sup></b>	<b>NAV per m<sup>2</sup>.</b>
0	Shop	90.62 m <sup>2</sup> .	€96.00

	Total	90.62 m <sup>2</sup> .	€8,690
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Mr. Hendricken commented that in relation to this comparison that it was;

1. Located in the same Shopping Centre as the subject and approximately 50 metres from the Property.
2. It trades a café over split levels and valued on an overall basis due to its configuration.
3. Representations were submitted and no appeal was made to the Valuation Tribunal.

### NAV Comparison 2

<b>Property Number</b>	<b>2097403</b>
Occupier	Coppens Pharmacy
Address	Unit 4 Abbey Square Shopping Centre
Total Floor Area	30.80 mms.
<b>NAV</b>	€4,920

<b>Level</b>	<b>Description</b>	<b>Size m<sup>2</sup></b>	<b>NAV per m<sup>2</sup></b>
0	Retail Zone A	30.80 m <sup>2</sup>	€160
	<b>Total</b>	30.80 m <sup>2</sup>	€4,920

Mr. Hendricken commented that in relation to this comparison that it was;

1. Located in the same Shopping Centre as the subject property.
2. It is a retail shop which is zoned as per the Guidance Notes on Retail Valuation.
3. It equates to €160 per m<sup>2</sup> on an overall basis whereas the subject Property is valued at €96 per m<sup>2</sup>.
4. There were no Representations or an Appeal made on this property.



### NAV Comparison 3

<b>Property No.</b>	<b>2097405</b>
Occupier	Magic Prices
Address	Unit 12, Abbey Square Shopping Centre
Total Floor Area	77.76 m <sup>2</sup>
<b>NAV</b>	<b>€11,140</b>

<b>Level</b>	<b>Description</b>	<b>Size m<sup>2</sup></b>	<b>NAV Per m<sup>2</sup></b>
0	Retail Zone A	61.61 m <sup>2</sup>	€160
0	Retail Zone B	16.15 m <sup>2</sup>	€80
	<b>Total</b>	<b>77.76 m<sup>2</sup></b>	<b>€11,140</b>

Mr. Hendricken commented that in relation to this comparison that it was;

1. Located in the same shopping centre as the subject property.
2. It is retail shop which is zoned as per Guidance Notes on Retail Valuation.
3. Equates to €143.38 m<sup>2</sup> on an overall basis. Subject is valued at €96 per m<sup>2</sup>.
4. There were no Representations or an Appeal made on this Valuation.

8.5 Subject to the foregoing comparisons Mr. Hendricken applied a valuation of €9,850 analysed as follows;

<b>Use</b>	<b>Floor</b>	<b>M<sup>2</sup></b>	<b>€ NAV PM<sup>2</sup></b>	<b>€ NAV</b>
<b>Shop</b>	0	123.13	€96.00	€11,820.48
Less configuration allowance				€2,240.00

			<b>Total, Say</b>	<b>€9,580.00</b>
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## **9. SUBMISSIONS**

9.1 The Parties did not make any legal submissions.

## **10. FINDINGS AND CONCLUSIONS**

10.1 In 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 County Council.

10.2 The Tribunal relies upon and decides on Appeals based on the evidence placed before it. It is a well-established principle that the onus rests with the Appellant to prove his / her case and provide evidence to the Tribunal that the Respondent's valuation of the property in question is incorrect and that the valuation should be amended. This valuation evidence is to be submitted by way of a précis of evidence, the required content and format of which is set out in the Valuation Tribunal (Appeals) Rules 2019.

In this appeal the Respondent contended for a valuation that was less than that of the subject Property as it appeared on the Valuation List at the date of the commencement of the appeal process. The decision to contend for a different valuation was not due to a numerical error in calculation or building measurement but rather the Respondent's witness offered a lower opinion of value than that on the then Valuation List. Under such circumstances the Tribunal considers that the onus of proof now rests with the Respondent.

10.3 The subject Property is required to be valued in accordance with sections 48 and 19 (5) of the Act by reference to the values of other comparable properties on the Valuation List. It follows that the Tribunal must consider the nature of the comparative evidence submitted to determine whether it supports the arguments advanced on behalf of the Parties. The

submissions and précis submitted by the Parties have been considered by the Tribunal in arriving at this decision.

10.4 The Appellant's submission did not contain any comparative valuation evidence related to the values of other comparable properties on the Valuation List and no valuation evidence was submitted by the Appellant for the Tribunal's consideration. The Appellant did not submit any information other than the schedule of rent paid and the dates of payment.

10.5 The Appellant's submission did not state an opinion of value or a valuation amount being sought. The Appellant's Notice of Appeal stated a valuation amount of €6,156 and the Tribunal has acted on the basis that this is the Appellant's opinion of value of the Property.

10.6 The Respondent contended for a valuation of €9,580 being a reduction from the List Valuation of €11,820 when this appeal was first lodged.

Mr Hendricken's valuation is based on applying an overall rate of €96 per m<sup>2</sup> to the agreed area of the Property which results in a rounded figure of €11,820 from which he deducted an allowance of €2,240 to take account of the impeded layout and ramped floor of the Property to arrive at his valuation of €9,580.

10.7 In support of his valuation Mr. Hendricken submitted details of five Key Rental Transactions, summarised in paragraph 8.3 above and details of which are set out in Appendix 1 attached (N/A to public). The five KRT comparisons are analysed at overall rates per m<sup>2</sup> which range from €136.24 to €210.81.

The Tribunal considers that the higher valuation rates per m<sup>2</sup> of the Respondent's five KRT comparisons to be reflective of their superior locations when compared to the subject Property which Mr. Hendricken valued at €96 per m<sup>2</sup> prior to the application of the impeded layout and ramped floor allowance which results in a rate €77.80 per m<sup>2</sup> net of the allowance.

10.8 Mr. Hendricken also submitted three Net Annual Value (NAV) Comparisons as set out in paragraph 8.4 above. Each of these comparisons are located within the Abbey Centre. Comparison number 1 extends to 90.62 m<sup>2</sup> is valued at €96 per m<sup>2</sup> overall. Comparison number 2 is a substantially smaller unit of 30.80 m<sup>2</sup> and is valued at a Zone A rate of €160 per m<sup>2</sup> equivalent to €159.74 per m<sup>2</sup> overall. Comparison number 3 extends to 77.76 m<sup>2</sup> and is valued at a Zone A rate of €160 per m<sup>2</sup> equivalent to an overall rate of €143 per m<sup>2</sup>. Each comparison is in close proximity to the subject Property with the applied valuation rates reflecting unit size and location within the development.

10.9 The Tribunal is satisfied that Mr. Hendricken has demonstrated that the weight of comparable evidence supports the Respondent's opinion of value of €9,580 and the Tribunal considers that the Appellant has not submitted any evidence that supports a valuation of €6,156 as stated by the Appellant in the Notice of Appeal.

**DETERMINATION:**

Having regard to the foregoing, to the timing and background of this appeal, details of which are set out in section 2 above, the Tribunal allows the appeal and in doing so confirms the Respondent's valuation of €9,580 being a reduction from the valuation of €11,820 as set out in the Final Valuation Certificate issued on the 10<sup>th</sup> day of September 2019 and the valuation which pertained to the subject Property when the Notice of Appeal was lodged on the 14<sup>th</sup> October 2019, as follows;

<b>Use</b>	<b>Floor</b>	<b>M<sup>2</sup></b>	<b>€ NAV PM<sup>2</sup></b>	<b>€ NAV</b>
<b>Shop</b>	0	123.13	€96.00	€11,820.48
Less configuration allowance				€2,240.00
			<b>Total, Say</b>	<b>€9,580.00</b>

And the Tribunal so determines.

**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.