

Appeal No: VA20/1/0016

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020**

Maguire Dental Care

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5019423, Retail (Shops) at Unit 2 Green Road, Mullingar, County Westmeath

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF NOVEMBER 2022**

BEFORE

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 3rd day of January 2020 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 €30,200.

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: “*As per planning register number from Westmeath County Council: 19/6142 Permission granted namely; “change of use from Retail use (159sqm) and Office (159sqm) use to Dental surgery use (318sqm)”.* May I also add that all other dental practices in town have not been named a retail; rather office and medical.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €18,836.10

2. RE-VALUATION HISTORY

2.1 On the 12th day of September 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 €30,200.

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 not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 12th day of December 2019 stating a valuation of €30,200.

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

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined based on 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.

4.2 The parties agreed that the subject property comprised a two-storey premises.

4.3 The parties agreed that the use is a dental practice.

4.4 The parties agreed that the occupier had obtained planning permission in 2019 to convert the premises into a dental practice.

5. ISSUES

The sole issue is one of quantum

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value 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.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be considered 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 The Appellants stated that the subject property Eircode no. N91 XK40 should be rated as a dental surgery. The building was acquired in 2019 and a subsequent planning application Reg no. 19/6142 sought a ‘change of use from Retail (159sqm) and Office (159sqm) to Dental Surgery use (318sqm).’

7.2 The premises was converted from a shell condition to provide a six-surgery dental practice which included fire-doors, lead lined walls, x-ray machines on the walls and plumbing for dental chairs.

7.3 The Appellants claimed that all dental practices in Mullingar had been classified as medical and office and not retail use.

7.4 The Appellants claimed that the NAV should be €18,836.10.

7.5 The Respondents in considering representations stated firstly that the property had been valued as retail as it has a retail front along with other units in the parade of shops. Secondly, the property was valued on the potential use of the property, so the planning permission was not considered. Thirdly that other dental practises must be operating from office premises with no retail frontage if they had been valued as offices.

7.6 The respondents stated that the subject property was valued in accordance with S.49 (1) of the Valuation Act 2001 to 2020 which states:

49.- (1) If the value of a relevant property (in subsection (2) refer to as the "first mentioned property) falls to be determined for the purpose of Section 28 (4) , (are of an appeal from a decision made 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.

7.7 The Respondents stated that the subject property, not the business and occupation was valued by the Commissioner. He further stated that the subject property must be valued by reference to the tone of the list and that all the other ground floor relevant properties situated in this parade of units were also entered on the valuation list as Retail (shop) and included in his submission

7.8 The Respondents further stated that the Appellant had not provided any evidence to support his claim that all other dental practises had been categorised as medical and offices. He further stated that the Appellant had not provided an opinion of value within their precis of evidence and no calculation of the claimed amount was provided.

8. RESPONDENT'S CASE

8.1 The Respondents, represented by Oliver Parkinson stated that the subject property was a revision appeal on the draft certificate NAV of €30,200 was issued on the 12th of September 2019, representations were received on the 18th of October 2019 and a final

certificate with the NAV of €30,200 was issued on the 12th December 2019. They noted that an appeal was lodged with the Valuation Tribunal on the 13th of July 2020 and that the Appellants precis was received on the 4th of May 2022.

8.2 He stated that the subject property was in the ALDI Shopping Centre in a parade of ground floor retail units with first floor offices on Green Road, Mullingar, Co. Westmeath. He described the subject property as comprising a mid-terraced double retail unit, with stairs at either end which can be accessed internally and externally and lead to the first floor. He noted that the subject property was an amalgamation of two units with internal access between the units and a mix of stud partitions and concrete walls. He added that the subject property had double frontage onto Green Road and could avail of free car parking on either side of the subject property and to the rear. He described the property as presented in excellent condition.

8.3 He referred to the subject property as number 5019423 and provides a schedule of the valuation and floor areas as follows:

Floor	Use	Area/M₂	NAV €/ M₂	NAV €
0	Retail Zone A	61.61	€225.00	€13,862.25
0	Retail Zone B	57.57	€112.50	€6,476.63
0	Store	28.16	€22.50	€633.60
1	Office(s)	123.52	€75.00	€9,264.00
			Total	€30,236.48
			Say	€30,200

He noted that the floor areas had not been challenged. He provided a ground floor and 1st floor block plan and various photographs externally and internally relating to the subject property. He noted that the subject property was freehold.

8.4 He stated that having fully considered the representations made by the Appellant the valuation manager had decided not to amend valuation on the subject property as the property had been valued as retail similar to other units in the parade; the property had been valued on the potential use of the property so the planning permission was not taken into account and that other dental practises must be operating from office premises with no retail

frontage if they had been valued as offices. He added that the Appellant had not provided any evidence to support his claim that all the dental practises were regarded as medical, and officers and the Appellant had not provided an opinion of value in its precis day of evidence.

8.5 He stated that properties which are '*similarly circumstanced*' are considered comparable where they share characteristics such as use, size, location and/or construction. He added that relevant market evidence underpinned the valuation scheme and his report set out to demonstrate that the correctness and equity and uniformity of value had been achieved in this case.

8.6 He provided four tone of the list comparisons which he stated were in the same parade as the subject property and that they had been revised in 2019 at the same time as the subject property. He provided the following analysis of comparison 1.

Property number	2210666
Occupier	Market Point Pharmacy limited
Address	Unit 5 ALDI Shopping Centre, Green Road, Mullingar Westmeath
Total Floor Area	127.62sqm
NAV	€15,210

Description	Size M₂	NAV/M₂
Retail Zone A	29.89	€225.00
Retail Zone B	31.04	€112.50
Offices (1st floor)	66.69	€75.00
Total	127.62	€15,210

He stated that this property was identical in façade, location, and construction to the subject property, and he included a location map and external photographs showing the respective locations. He noted that there were no representations received, no agent represented the occupier and there was no appeal to the Valuation Tribunal.

8.7 He provided the following analysis of comparison 2.

Property number	5007949
Occupier	JDDDB Butchers
Address	Unit 1 ALDI Shopping Centre, Green Road, Mullingar Westmeath
Total Floor Area	68.92sqm
NAV	€11,450

Description	Size M₂	NAV/M₂
Retail Zone A	32.94	€225.00
Retail Zone B	35.98	€112.50
Total	68.92	€11,450

He stated that this property was also identical in façade, location, and construction to the subject property, and he included a location map and external photograph showing the respective locations. He noted that there were no representations received, no agent represented the occupier and there was no appeal to the Valuation Tribunal.

8.8 He provided the following analysis of Comparison 3

Property number	2208119
Occupier	Art Hair Design
Address	Unit 1 ALDI Shopping Centre, Green Road, Mullingar Westmeath
Total Floor Area	62.39sqm
NAV	€4,670

Description	Size M₂	NAV/M₂
1 st Floor office	59.67	€75.00
1 st Floor Store (kitchen)	2.72	€75.00

Total	62.39	€4,670
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He stated that this property which referred to the first floor only was also identical in location, and construction to the subject property, and he included a location map and external photograph showing the respective locations. He noted that there were no representations received, no agent represented the occupier and there was no appeal to the Valuation Tribunal.

8.9 He provided the following analysis of comparison 4.

Property number	2173238
Occupier	Dental Excellence
Address	Payne's Lane Belhavel, Irishtown, Athlone, Westmeath
Total Floor Area	275.5sqm
NAV	€50,500

Description	Size M₂	NAV/M₂
Retail Zone A	164.27	€230.00
Retail Zone B	111.23	€115.00
Total	275.50	€50,500

He stated that this property was located at the junction of Payne's Lane with T. P O' Connor Street in Athlone and comprised a ground floor retail unit which was in use as a dental surgery in a terraced commercial development. He noted that planning permission (ref. no. 157102) refers to "*Permission for change of use from existing retail to medical and dental services; The development will consist of combining two adjacent units into one single unit, closing off three front existing pedestrian doors and replacing three rear pedestrian doors with opaque windows, a ground floor internal fitout, external signage and all associated site works*". He stated this property was in the same category as a subject property and in the same rating authority thus satisfying S.49 (1) of the Valuation Act 2001 to 2020. He noted that there were no representations received, no agent represented the occupier and there was no appeal to the Valuation Tribunal.

8.10 He referred to Tribunal hearing VA 14.5. 453 ZZSEL Limited Vs Commissioner of Valuation wherein the Commissioner's valuation of €13,960 was upheld and noting *"Evidence from the emerging tone of the list was also included, including the adjoining unit where €200/sqm was applied and €60/sqm for the store. The Respondent particularly referred to the valuation being assessed not on the business that is run out of the property but on the actual property itself and based on equity and uniformity that this is the correct application."*

8.11 He concluded by stating that he had investigated all the particulars of the appeal, considered both the grounds and the evidence of the Appellant, and agreed matters of fact where they were in dispute. He stated that in his opinion that the correct NAV for this property was € 30,200. He stated that the subject property must be valued by reference to the tone of the list according to the Acts and that the subject property comprised a mid-terrace double ground retail unit and first floor office accommodation. He stated that he relied on comparisons from within the same parade and added that in relation to his fourth comparison which referred to a change from retail to medical and dental services that did not affect the valuation which was based on a retail ground floor. He stated that no comparable evidence was put forward by the Appellant and that no evidence of a method of valuation was adduced. He further stated that the Appellant did not provide any evidence that *"all dental practises in the surrounding area of Mullingar have been classed as medical and office (not retail)."* He requested that the valuation of €30,200 should be affirmed in accordance with the Valuation Act 2001.

9. SUBMISSIONS

9.1 The Respondents provided a legal submission with its precis. The outline legal submission on behalf of the Commissioner of Valuation was submitted by Brian Murray BL was filed on 22nd September 2022. The index of authorities provided by the Respondent was:

1. Lawlor v Flood (1999) 3 IR 107
2. Nangles Nurseries v Commissioner of Valuation (2008) IEHC 73
3. Revenue Commissioners v Associated Properties (1951) IR 140
4. Proudlane Ltd t/a Plaza Hotel VA 00/2/032
5. William Savage Construction VA 07/2/054
6. O'Sullivan's Marine Ltd VA 09 /1/018
7. ZZSEL Ltd v Commissioner of Valuation VA 14/5/453

8. Stanberry Investments Ltd v Commissioner of Valuation (2020) IECA 33.

9.2 This submission stated inter alia that the ordinary and plain meaning rules are to be applied to the interpretation of enactment generally and the 2001 act. The ordinary meaning or literal rule has always been most strictly adhered to in the interpretation of taxation statutes and this is evident in the Court, and Tribunal approach to the interpretation of the Valuation Act 2001. Referring to *Lawlor V Flood* (1999) 3 IR 107 Denham J stated that “*In applying the ordinary meaning of the words the Court is enforcing the clear intention of the legislature. This aspect of statutory construction is an essential part of the separation of powers. Further, it is an illustration of the appropriate respect by water organ of government to another.*”

9.3 He also referred to McMenamin J in *Nangles Nurseries -v- Commissioner of Valuation* (2008) IEHC 73 which set out seven interpretive principles to be applied by the Tribunal to the interpretation of the 2001

“*I would therefore summarise the principles which are applicable in an interpretation of the statute in the light of these authorities as follows:*

- (1) while the Act of 2001 is not to be seen in precisely the same light as a penal or taxation should statute, the same principles are applicable;*
- (2) the Act is to be strictly interpreted;*
- (3) impositions are to be construed strictly in favour of the rate payer;*
- (4) exemptions or relieving provisions are to be interpreted strictly against the rate payer;*
- (5) ambiguities, if they are found in an exemption are to be interpreted against the rate payer;*
- (6) If, however there is a new imposition of liability looseness or ambiguity it is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language;*
- (7) In the case of ambiguity, the court must have resort to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statues or other statutes expressed to be considered with it.”*

9.4 He stated that the Appellant is bound to specify the grounds of its appeal as to why the value is determined by the revision manager does not accord with valuation “*required to be achieved by section 49*”. He also stated that the Appellant is bound to specify what the

Appellant considers ought to have been determined as the property's value in accordance with the matters set out in section 49". He states therefore that the subject property must be valued by reference to the tone of the list and the Appellant has wholly failed to present what it considers ought to have been determined at the property's value by reference to any other values stated in the valuations list in which the subject property appears or indeed by reference to any other property value at all. He said that no comparable evidence whatsoever had been put forward by the Appellant and no method of valuation to support the Appellants opinion of value was presented.

9.5 He stated that it is well settled that the onus of proof in appeals before the Tribunal rests with the Appellant and that the property has been valued on the potential use of the property, so the planning permission was not considered. He noted that no evidence of other dental practises was provided.

9.6 In conclusion he requested that the Tribunal dismissed the appeal and affirmed the valuation of the subject property appearing on the relevant valuation list as representing its Net Annual Value in accordance with section 49 of the Valuation Act 2001 as amended.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine the value of the Property 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 Westmeath County Council.

10.2 The floor areas have not been agreed between the parties however the Tribunal notes that the Appellant did not dispute floor areas relied upon by the Commissioner which are lower than those contended for by the Appellants and accordingly the Tribunal finds the correct floor areas have been provided by the Respondent.

10.3 The onus of proof in appeals before the Tribunal rests with the Appellant following VA00/2/032 Proudlane Ltd t/a Plaza Hotel; VA07/3/054 William Savage Construction and VA 09/01/018 O'Sullivan's Marine Ltd.

10.4 While the Tribunal is cognizant of the fact that lay Appellants do not always have the technical insights or on occasions the resources of the Respondent, they are nonetheless bound by the rules of the Valuation Tribunal. In this case the Appellants did not provide any comparable evidence, nor did they provide any valuation methodology to support their claim. They did not provide any supporting evidence to show that dental practices were valued as offices whereas the Respondent provided evidence to show the opposite was the case.

10.5 The Respondents relied upon several strong tone of the list comparables from within the same parade as the subject property and accordingly the Tribunal affirms the Valuation of €30,200.

DETERMINATION:

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