

Appeal No. VA13/2/002

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**Ace Autobody**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2210948, Showroom, Workshop, Yard at Lot No. 4B (pt.of) 4D,  
Newhall, Ladystown, Naas 1, County Kildare.

**B E F O R E**

**John F Kerr - BBS, FSCSI, FRICS, ACI Arb**

**Deputy Chairperson**

**Patricia O'Connor - Solicitor**

**Member**

**Thomas Collins - PC, FIPAV, NAEA, MCEI, CFO**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 11TH DAY OF NOVEMBER, 2013**

By Notice of Appeal received the on 13th day of June, 2013, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €140 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are as follows:

*"On the basis that the RV as assessed is excessive and inequitable given nature [sic] of the premises & its location."*

*"The level of value suggested by the Commissioner fails to reflect the type & nature of the property & its relative value when valued against the established tone for comparable property in County Kildare."*

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal on the third floor of Holbrook House, Holles Street, Dublin 2, on the 29<sup>th</sup> day of August, 2013. Mr Eamonn S. Halpin B.Sc. (Surveying), M.R.I.C.S., M.S.C.S.I., represented the appellant, and the respondent was represented by Mr Paul Ogbebor B.Eng. (Hons) Civil Engineering, a valuer at the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

#### **At Issue**

Quantum.

#### **The Property**

The subject property is a motor showroom building with adjoining workshop, offices and display tarmac. Construction is of structural steel and glass with roof cladding.

#### **Location**

The subject property is situated on a slip/access road onto the M7 just off the Newhall interchange and the Naas – Newbridge road, approximately 3.2km south of Naas and within close proximity to the M7 Business Park and Newhall Retail Park.

#### **Services**

It is assumed that the subject property has the benefit of all the usual services.

#### **Floor Areas**

The floor areas were agreed as follows:

Showroom	– 44.10 sq. metres, Gross Internal Area (GIA)
Office	– 30.58 sq. metres GIA
Workshop	– 579.77 sq. metres, Gross External Area (GEA)
Canteen	– 26.22 sq. metres GIA
Yard	– 1,947 sq. metres GIA

### Valuation History

The complex of buildings in which the subject property is situate (property no. 1738666) was valued for the first time in its entirety in 1974 at a Rateable Valuation (RV) of €46.98. This valuation was revised in 2005 and increased to €985. The entire property was subsequently subdivided and separately occupied by various occupiers. The appellant's agent, Eamonn Halpin & Co. Ltd., made a request on the 30<sup>th</sup> June, 2011 to the Commissioner of Valuation to revise the subject property as a result of the subdivision. Mr Paul Ogbebor was appointed on the 2<sup>nd</sup> August 2011 on foot of this request. On 18<sup>th</sup> October 2011, a certificate in draft form was issued for the divided lot in five parts, including the subject property at a proposed Rateable Valuation of €140. Representations were made by the appellant's agent against this proposal under Section 29(2) of the Valuation Act, 2001, and a certificate in final form was issued on the 25<sup>th</sup> January 2012 confirming the valuation of €140. No change was made on foot of an appeal to the Commissioner and, in due course, an appeal against this decision was made to this Tribunal under Section 34 of the Act.

### Appellant's Case

Mr Eamonn Halpin gave evidence on behalf of the appellant and adopted his précis with two amendments at page 11. Mr Halpin stated that this was originally a car dealership which stopped selling cars and simply divided the dealership into units in order to utilise the building. He said that some of the property was vacant at present but that the majority of it was occupied by different individuals. On query from the Tribunal, the respondent confirmed that the show rooms were measured on a gross internal area basis and the workshop was measured on a gross external area basis.

### Valuation by the Appellant

The appellant contended for a rateable valuation, calculated as follows:

Reception	– 44.10 sq. metres @ €41 per sq. metre	=	€ 1,808
Offices	– 30.58 sq. metres @ €34.17 per sq. metre	=	€ 1,045
Workshops	– 579.77 sq. metres @ €23.92 per sq. metre	=	€13,868
Canteen (1 <sup>st</sup> floor)	– 26.22 sq. metres @ €13.67 per sq. metre	=	€ 358
Yard	- 1,947 sq. metres @ €1.27 per sq. metre	=	<u>€ 2,473</u>
Total			€19,552

@ 0.5% = RV of €97.76

Say RV €98

### **Appellant's Comparison Properties**

In support of his opinion of rateable valuation, Mr Halpin put forward eight comparison properties, as follows:

1. Monasterevin Motors Ltd., Kildare Road, Monasterevin, Co. Kildare.

RV €107.93 (2000/4 first appeal)

Mr Halpin made the point that this comparison property is similar in age and construction to the subject property but added that there was less circulation in the yard of this property.

2. Everest Motors, Baltracey, Naas, Co. Kildare.

RV €34.28 (including domestic €15.24) (1999)

Mr Halpin pointed out that this was an older type car repair garage but that there was also a sales yard located at this property.

3. Joe Miley & Partners, Unit L1, Toughers Industrial Estate, Newhall, Co. Kildare.

RV €137.13 (2000/4 first appeal)

4. Domino's Pizza Group, Unit 1B, Toughers Industrial Estate, Newhall, Co. Kildare.

RV €171.41 (2000/4 first appeal)

Mr Halpin commented that this was a very good quality modern warehouse.

5. Kube Solutions, Unit 1A, Toughers Industrial Estate, Newhall, Co. Kildare.

RV €109.20 (2000/4 first appeal)

6. Irish Insulation Limited, Unit W10D Toughers Industrial Estate, Newhall, Co. Kildare.

RV €102 (2009)

Mr Halpin was of the view that this property comprised the best modern quality industrial construction.

7. Unit A3 M7 Business Park, Newhall, Co. Kildare.

RV €93.96 (2000/4 first appeal)

Mr Halpin made the point that this property is visible from the motorway unlike the subject property.

8. Southern Link Business Park, Naas, Co. Kildare.

RV €40 (2010)

Mr Halpin commented that this was a modern complex with a smaller warehouse of good quality.

With regard to all of these comparisons, Mr Halpin stated his opinion that these buildings were vastly superior to the subject property.

Upon questioning from the Tribunal, Mr Halpin stated that he believed that the entire building did not date back to 1974. He commented that the subject property comprised two types of construction but was of the view that both types were old. Mr Halpin estimated the front eaves height of the subject property at approximately 4.5 metres and the back eaves height at approximately 5.5 metres. Mr Halpin confirmed that the front of the building is tarmacked. Mr Halpin alluded to the principle of *Rebus Sic Stantibus* which he stated as meaning that one values the property as one finds it on the day in respect of type, nature, construction and age of the property. Mr Halpin also commented that the Valuation Act does not point to prior valuations as comparisons but instead points to other properties and directs one to value the subject property against others as per the 'tone of the list'.

Mr Halpin contended that it was no longer appropriate to value the subject property as shown. He accepted that there was a reception desk at the back of the showroom which was utilized by the subject property but pointed out that the appellant only has one access through the showroom. Mr Halpin stated that as this situation did not pertain when the premises was occupied only by one party, then in his opinion, this constituted a major change. Mr Halpin confirmed that there was no access to the service and parts desk from the front office space. At this point Mr Halpin and Mr Ogbebor approached the Tribunal and took the members through the floor plan which had been agreed by them. Mr Halpin confirmed that the remainder of the front showroom had been let to a bicycle sales business only in the last few months. Mr Halpin stated that a colleague of his had originally viewed the property and that when he himself visited it and viewed all of the comparisons recently, he came to have the opinion that the value placed on the reception area was too high given that it was adjacent to a workshop and had nothing to do with the showroom.

### **Cross-examination of the Appellant**

In response to Mr Ogbebor's query as to what physical change, if any, had occurred, Mr Halpin replied that a permanent demarcation had taken place in that the occupier of the front portion of the property now has to keep an access route open to the appellant's reception area which did not arise in 2005. Mr Halpin stated that the appellant had a 50% interest in the use of the car park marked A on the map as previously agreed. He also pointed out an old house marked B on the map and stated that this had a right of access and parking which was not therefore available to the appellant. Mr Halpin stated that the appellant used only a portion of block C located behind the workshop while other users of the building have the right to drive through the appellant's yards, thus taking up room which could otherwise be utilised for more storage by the appellant.

Mr Halpin gave it as his opinion that the 'tone of the list' is the sum of the other valuations on the list and that it was not a static figure. Mr Halpin stated that the appellant was seeking to sub-divide and reduce the valuations based on the 'tone of the list'. He further stated that when he had looked at the 2005 valuation of the subject property, he was of the view that it did not correspond to the 'tone of the list' in Kildare as he knew it to be and therefore the issue of the revision was to address that question. With regard again to the front show room, Mr Halpin was of the view that its value was altered radically as the appellant only has a right of access through the showroom to its reception but has no right to use the showroom. Mr Halpin stated that he considered that this would be provided for in the lease and that the hypothetical tenant would have taken that on board from "day one" in making a decision in respect to the property.

### **Respondent's Case**

Mr Paul Ogbebor gave evidence on behalf of the respondent and adopted his précis. He stated that he was unable to provide photographs for the respondent's comparison property no. 3.

### **Valuation by the Respondent**

The respondent contended for a rateable valuation of €140 for the subject property, calculated as follows:

Showroom	44.10 sq. metres @ €52.50 per sq. metre	= € 2,315.25
Office	30.58 sq. metres @ €41 per sq. metre	= € 1,253.78
Workshop	579.77 sq. metres @ €34 per sq. metre	= €19,712.18
Canteen	26.22 sq. metres @ €34 per sq. metre	= € 891.48

Yard	1947 sq. metres @ €2 per sq. metre	= € 3,894.00
	Total NAV	= €28,066.69

RV = Total NAV x 0.5% = €140.33

RV Say €140

### **Respondent's Comparison Properties**

In support of the respondent's opinion of ratable valuation, Mr Ogbebor put forward five comparison properties, as follows:

1. Newhall, Naas, Co. Kildare (same as subject property).  
RV €515
2. Ray O'Brien Group Ltd, Newhall, Naas, Co. Kildare (same as subject property).  
RV €295
3. Paddy Connolly (t/a Naas Kia), Block O, M7 Business Park, Newhall, Naas, Co. Kildare.  
RV €190
4. Kildare Car Outlet, Unit C, Toughers Business Park, Naas, Co. Kildare.  
RV €350
5. M.A. Finlay & Sons (Newbridge) Ltd, Edward Street, Newbridge, Co. Kildare.  
RV €545

Mr Ogbebor confirmed that comparison 5 had been tested in the Valuation Tribunal. He stated that he had selected comparisons which had the same description and which he considered were similarly circumstanced to the subject property.

Mr Ogbebor stated that the original building in respect of the subject property has always been a car showroom and that the extension had been added recently and pointed out the photographs showing this at pages 3 and 20 of his précis. He was of the view that the new extension had increased the value of the subject property rather than diminished it.

Mr Ogbebor did not agree with Mr Halpin that the average rate per square metre in respect of the subject property had changed from the previous revision. Upon further questioning, Mr Ogbebor stated that he considered that sub-division did not result in a change of rate and pointed out that he had valued the property based on the 'tone of the list'. He stated also that there had not been any physical change to the building in respect of the perimeter walls or the exterior of the building and was of the opinion that an internal sub-division is not a change. In this regard, Mr Ogbebor stated that the sum of the rate on sub-division should equate back to the original pre sub-division figure. Mr Ogbebor stated that sub-division would automatically lead to a reduction in each occupier's rates in any event depending on the floor area etc. which they had taken. Mr Ogbebor opined that the occupiers would be paying less but that the total figure following sub-division should equate to the original NAV.

Upon questioning from the Tribunal, Mr Ogbebor confirmed that he had driven past comparisons 3, 4 and 5 and had used Google maps but had not physically inspected any of those buildings. He stated that they were comparable as they comprised modern car show rooms built more recently although he believed that comparison 3 was built at the same time as the extension to the subject property. Taking into account the 'tone of the list', Mr Ogbebor was of the opinion that those three comparisons appeared to be top of the range.

### **Cross-examination of the Respondent**

Mr Ogbebor was asked by Mr Halpin why, with possibly 50 to 100 old structures in Kildare, had the respondent not put forward even one comparable to the subject property. Mr Ogbebor replied that every car show room has a workshop to the back of it and again pointed out that he was of the view that the respondent's comparisons 3, 4 and 5 were comparable to the subject property.

### **Summaries**

The representatives of both the appellant and the respondent made brief closing submissions.

### **Findings**

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at hearing, and finds as follows:



1. This was a revision on foot of a Material Change of Circumstances accommodated by the Commissioner of Valuation. The request for revision is both an apportionment and a reduction of the rateable valuation of each of the occupancies but this case is specific to this “relevant property” only.

The parties did not agree as to the definition of the subject with the appellant citing it as primarily a warehouse with ancillary reception and canteen and office facilities. The respondent considered and approached the task as the valuation of a showroom with ancillary warehouse facilities.

2. The respondent stated that his primary source of evidence was the ‘tone of the list’ of the complex in which the subject relevant property is situate and confirmed that the position of the Commissioner of Valuation is that the sum of the individual valuations for the subdivided units should equal the total valuation of the property prior to revision, excluding any changes.
3. The appellant’s comparison properties were more helpful than those proffered by the respondent to guide the Tribunal on the values of comparable properties based on criteria of age, purpose, specification, design, access, profile and location.

The Tribunal is satisfied that the subject relevant property should be described as a warehouse with ancillary building services including reception desk, offices and first floor canteen.

The Tribunal holds a view that the value per square metre attributable to the pertinent surface yard should reflect the agreed fact by the parties that same offers circulation and ingress and egress for vehicles driven by clients other than those attending at the subject premises.

Based on the evidence adduced, the Tribunal is satisfied that the rates per square metre applied to the various elements of the premises by the Commissioner are representative of the ‘tone of the list’ in all regards except for the warehouse.

Germaine to the above, the Tribunal is satisfied that when the comparative elements are considered for the warehouse portion of the premises, the value should be adjusted and reduced to €27.34 per square metre.

### **Determination**

Mindful of the foregoing, the NAV is calculated as follows:

Reception:	44.1 sq. metres @ €52.50	= € 2,315.25
Offices:	30.58 sq. metres @ €41.00	= € 1,253.78
Workshops:	579.77 sq. metres @ €27.34	= €15,850.91
Canteen (First Floor):	26.22 sq. metres @ €34.00	= € 891.48
Yard:	1947 sq. metres @ €1.80	= <u>€ 3,504.60</u>
Total		€23,816.02

€23,816.02 @ 0.5% = RV €119.08

Say €119

And the Tribunal so determines.