

Appeal No. VA15/1/005

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

PAUL McLAUGHLIN

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the issue of Quantum of Valuation in respect of:

Property No. 2212555, Warehouse/Warerooms, Yard, at Lot No. 2C3/1, Umrycam, Mintiaghs, Inishowen, County Donegal.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11th DAY OF NOVEMBER, 2015**

Before:

Barry Smyth - FRICS, FSCSI, MCI Arb

Deputy Chairperson

Pat Riney - FSCSI, FRICS, ACI Arb

Member

Carol O'Farrell - BL

Member

By Notice of Appeal received on the 19th day of January, 2015, the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €115 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

“Comparisons used are not comparable. Valuation is excessive. Valuation does not reflect the tone of the list of comparable properties. Not valued in accordance with Valuation Acts.”

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, on the 3rd floor of Holbrook House, Holles Street, Dublin 2, on the 6th day of March 2015. The Appellant was represented by Mr Eamon Patrick McCarroll MSCSI MRICS and the Respondent was represented by Ms Fiona Quinn, BSc (Hons) (Surveying), ARICS, a valuer in 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 the 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.

The property is located in the townland of Umrycam, Mintiaghs, Inishowen County Donegal off the R238, the main road between Buncrana and Clonmany and is situate approximately 4 km north east of Buncrana, County Donegal. The property comprises two warehouse buildings and a concrete yard. One warehouse is of steel frame construction with block walls, a Kingspan metal roof and concrete floors and incorporates an office. The other warehouse is concrete construction with single skin galvanised cladding. The property is in owner occupation and used as a recycling plant.

The agreed floor area of the property measures 876.08 sq. metres as follows:

Warehouse	509.60 sq. metres
Warehouse	335.54 sq. metres
Office	30.94 sq. metres

The yard measures 2,142.00 sq. metres.

Valuation History

As the property did not appear on the valuation list and is a relevant property, on foot of a request Donegal County Council the Commissioner of Valuation appointed a Revision officer to carry out a valuation of the property in accordance with section 28(4) of the Valuation Act 2001. On the 21st May 2013 a Valuation Certificate was issued with a rateable valuation of €145.00. On First Appeal the valuation was reduced to €115.00. From that decision, the Appellant gave Notice of Appeal to the Valuation Tribunal. As the yard measurement was subsequently agreed at 2,142 sq. metres, the rateable valuation has been adjusted by the Commissioner of Valuation to €112.00. The Appellant is seeking a valuation of €86.00.

Basis of Valuation

There is no issue that the valuation of the property must be carried out in accordance with Section 49(1) of the Valuation Act 2001. Subsection (1) of section 49 provides:

“(1) If the value of a relevant property (in *subsection (2)* referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4) (or of an appeal from a decision 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.”

The Appellant raised an objection in the course of the appeal and it is convenient to deal with this point now before passing on to consider the issue of quantum. The Appellant objected to the Respondent relying on two comparable properties (No 4 and No 5) which had not been referred to, or relied upon, when the Respondent determined the rateable valuation of the property. Mr McCarroll on behalf of the Appellant contended that the inclusion of these two properties was prejudicial to the Appellant as he had not had sufficient opportunity to either advise his client in respect of the two comparison properties or to investigate the properties, though he later fairly acknowledged that he was familiar with one of those properties. This objection was not notified in advance of the date set for the hearing of the appeal to the Respondent or the Tribunal and nor was it raised as a preliminary matter at the start of the appeal hearing. Rather, it was made after the evidence had been heard and during the cross-examination of the Respondent’s witness. As a general rule, a party is not permitted to introduce new evidence or arguments for which the other party had not received reasonable notice. It would be unfair and contrary to natural justice for an appellant to be ambushed and required to deal with some point of which no notice has been given or which the appellant might not reasonably have anticipated. The Tribunal considered that while it was regrettable that the objection had not been made at the start of the appeal, the Tribunal decided in the exercise of its discretion having already heard the evidence that if during the Tribunal’s deliberations one or both of the comparison properties appeared to be of material assistance, as a matter of fairness and natural justice, the parties would be informed of the Tribunal’s view and the Appellant would be given an opportunity to make submissions or to provide further evidence in respect of those two comparison properties before the Tribunal made its final determination. The Tribunal does not consider either of these comparisons to be of assistance. The appeal property is significantly larger than comparable 4 and comparable 5 is in an isolated and relatively unattractive location less accessible than the appeal property. Accordingly, these properties have been disregarded.

Appellant's Case

For the Appellant, Mr McCarroll makes a number of points which include the following:

- (a) The property is situate in a rural area with no road frontage.
- (b) The property is accessed from the R238 by way of a narrow laneway which is a cul-de-sac.
- (c) The quality of the two warehouses is poor and the office accommodation is very basic.
- (d) The comparison properties relied upon by the Respondent are superior buildings in better locations and do not reflect the tone of the list.

Mr McCarroll provided details of five comparable properties as follows:

No.1 McMenamin Engineering - a modern purpose built industrial property used for the manufacture of cranes situate in a rural location in East Donegal. The property includes offices, stores, factory and yard. The factory area is valued at €18.50 per sq. metre and the yard at €1.00 per sq. metre. The valuation on this property was

determined by the Valuation Tribunal in 2006 under reference **VA06/1/015 - McMenam Engineering.**

No. 2 Inishowen Engineering – this property comprises a range of industrial type buildings and yard situate in a rural location with frontage to the R238 approximately 2 km from the appeal property. Reliance is placed only on the front building which is stated to be of better standard than the appeal property for comparison purposes. That building is valued at €18.50 per sq. metre and the yard at €1.00 per sq. metre.

No. 3 Haughey Joinery – this property comprises an office, workshop and store situate within 2 km of Letterkenny. The property is located up a cul-de-sac and access is poor. The store is similar in type to the appeal property and is valued at €19.50 per sq. metre. The valuation on this property was determined by the Valuation Tribunal in 2009 under reference **VA09/2/019 – Haughey Joinery Ltd.**

No. 4 GMG Mechanical Services – this property comprises a warehouse and offices and is in a superior location close to Donegal town off the Ballyshannon/Donegal town road. The warehouse area is valued at €20.50 per sq. metre.

No. 5 Inishowen Co-Op – this property includes a warehouse with frontage to New By pass and Merville Road which is in quasi-retail use. The warehouse area measuring 1593.90 sq. metres is valued at €20.50 per sq. metre.

Under cross-examination Mr McCarroll confirmed that the appeal property is situate on a concrete lane less than 200 metres from the main R238 and is visible from the R238. He did not accept that the appeal property is closer to the road than Comparable 1. He agreed that Comparable 2 is a much larger property than the appeal property. He agreed that the appeal property is just off the main road and more accessible than Comparable 3. He further agreed that Comparison 4 is not visible from the main road being located 300 metres off the Ballyshannon Road. He confirmed that he was only relying on the warehouse measuring 1595 sq. metres of Comparable 5 for comparison purposes.

Respondent's Case

Ms Quinn took the oath and adopted her précis as her evidence-in-chief. She stated that the subject property is situate on a concrete laneway off R238 approximately 4 km north east of Bunrana. She referred to the photographs showing the property, the laneway giving access to it and the proximity of the R238. She stated that the appeal property had been valued under section 49 of the 2001 Act by reference to the tone of the list. She clarified that the rateable valuation had been reduced from €145 to €115 due to the reduction in the yard measurement. She confirmed that the office within the warehouse is of poor quality and that this factor is adequately reflected in the assessment.

Ms Quinn referred to five comparable properties to argue that the appeal property had been valued in accordance with the tone of the list but as indicated above comparable 4 and comparable 5 have been disregarded. The details of the other three comparable properties are:

No. 1 ESB Aghilly & Lemynarnan, Buncrana – an industrial property of similar size to each of the warehouses situate in a rural location on a minor road approximately 8 km from the appeal property. The warehouse area measuring 488.13 sq. metres is valued at €22 per sq. metre. The yard is valued at €2.00 per sq. metre.

No. 2 McDaid at Meenagory, Buncrana - a workshop situate in a rural location on a minor road approximately 5 km north of Buncrana. The large yard area is stated as being included in the valuation but the area of the yard is not stated. The warehouse is valued at €30.00 per sq. metre.

No. 3 Don Redden Coach Hire Muff - a warehouse unit with yard located beside Kilderry Business Park in Muff with similar sized yard. The warehouse area measuring 338.00 sq. metres is valued at €27.33 per sq. metre. The yard is valued at €2.00 per sq. metre.

Ms Quinn under cross-examination agreed that the appeal property is off the R238 and accessed off a laneway that is a cul-de-sac. She further accepted that the warehouses of the appeal property are single skinned. She was reluctant to agree that the ESB Comparable is not situate in a rural location merely because it lies on the outskirts of Buncrana close to a housing development. Ms Quinn accepted that the appeal property is of poorer quality and situate in a poorer location in comparison to the McDaid No. 2 property. She also accepted that the Don Redden Coach Hire No. 3 property is in a better location on the outskirts of Muff close to Derry city and that it is also a superior property to the appeal property. Ms Quinn was unable to provide details of the eaves height of the No. 3 comparable property or confirm whether this property includes storage and office facilities. Ms Quinn was also unable to provide details of the size of the yard of the McDaid property.

Findings

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence adduced before us by the parties to the appeal makes the following findings;

1. The appeal property comprises two warehouses of poor construction and a yard.
2. The appeal property is not in a recognised industrial area. It is situate in a rural location off the R238. However, the fact that it is located on a narrow concrete road that is a cul-de-sac is of no relevance. The property is approximately 200 metres from the R238 and is clearly visible from the R238.
3. The adopted rate of €22 per sq. metre on the office within the appeal property is not in dispute.
4. The Respondent's comparable evidence was lacking in detail or analysis. Ms Quinn was only in a position to give the most basic of information about those comparable properties.

5. Having considered the comparative evidence of both parties, it does not appear that a consistent approach has been adopted towards the valuation of warehouse/industrial type buildings. The Tribunal finds that there is a band of values ranging from €18.00 per sq. metre at the lowest level to €27.00 per sq. metre at the higher level. It is, therefore clear that, by reference to the comparisons, the rate per sq. metre for the appeal property must be within this broad range.
6. On balance the Tribunal has reached the conclusion that the most relevant comparison is Inishowen Engineering which is only a short distance from the appeal property and that the warehouses should be assessed at €18 per sq. metre and the yard at €1.00 per sq. metre. The Tribunal decisions in **McMenamin Engineering** (a building of better quality and finish) and **Haughey Joinery Ltd** (a building in a better location) support this level of value.

Having regard to the foregoing, the Tribunal has reached the conclusion that the net annual value of the appeal property should be calculated as set out hereto:

ACCOMMODATION	AREA M²	€/ PER M²	€ NAV
Warehouse	509.60	18.00	9172.80
Office	30.94	22.00	680.68
Warehouse 2	335.54	18.00	6039.72
Yard	2,142	1.00	2,142
Total	3,018.08		18,034.20

Total NAV €18,035.20

NAV €18,035.20 @ 0.5% RV €90.18

Say €90

And the Tribunal so determines.