

Appeal No. VA15/5/045

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

Mandore Ltd

APPELLANT

And

Commissioner of Valuation

RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 2202060, Crèche (Purpose Built), Floors 0,1, 5B/1 Park, Limerick City, County Limerick.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6th DAY OF JULY, 2016

BEFORE:

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Grainne Duggan - BL

Member

Claire Hogan - BL

Member

By Notice of Appeal received on the 10th day of September, 2015 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €59,900 on the above described relevant property on the grounds as set out in the Notice of Appeal at **Appendix 1**.

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 on the 23rd of June, 2016 adduced before us by Mr Eamonn Halpin on behalf of the Appellant, who contended for a net annual value of €37,300, and Mr Ian Power on behalf of the Respondent to the appeal,

DETERMINES

That the net annual value of the subject property be as set out below:

€59,900: Unchanged

The reasoning being

The onus of proof lies on the Appellant in challenging the Net Annual Value of the subject property. The Tribunal finds that the Appellant failed to discharge this onus of proof.

Section 48 of the Valuation Act 2001 provides as follows:

48.—(1) 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.

(2) Subsection (1) is without prejudice to section 49 .

(3) 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 expected to let from year to year, on the assumption that the probable average 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 and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant.

Thus, the focus of the Tribunal was on the rent for which the subject property might be reasonably expected to let from year to year.

The rent which is currently paid in respect of the subject property is in the amount of €40,650 Net (€50,000 Gross).

However, when this reduction was agreed (in Year 5 of the lease which commenced in August 2006 for 9 years and 10 months), the tenant paid a penalty of €100,000.

The Appellant’s agent acknowledged this penalty payment at hearing, however there was no prior indication of same in his Summary of Evidence, and only an unsubstantiated assertion that this payment may have been to clear arrears.

The payment was made by the tenant in order to stay in the subject property, and if averaged out over the remainder of the lease from the year in which it was paid, augments the net rent

payment upwards from the amount of €40,650 Net in the order of approximately €10,000 per annum.

The Appellant argued that the Grove Island development has been a commercial failure, that the demand for creche facilities is not present, and that the Early Childhood Care and Education (ECCE) Scheme has had no impact on the subject property.

Again, no evidence of this was adduced for the Tribunal in the Appellant's Summary or at hearing. Oral assertions made by agent for the Appellant do not constitute evidence.

The Tribunal is satisfied that the Comparisons provided by the Valuation Office act as benchmarks showing that the NAV of the subject property is not incorrect or unfair.

The Tribunal notes that some inappropriate valuations were included by the Valuation Office in these Comparisons; namely office units, and that this practice should be avoided.

However, all relevant considerations having been taken into account, the estimate of NAV is fair and equitable and should remain unchanged.