

Appeal No. DS10/0/003

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHT UM LAITHREAIN TREIGHTE, 1990
DERELICT SITES ACT, 1990**

Mr. Anthony Walsh & Ms. Mairéad Divilly

APPELLANTS

and

Ballinasloe Town Council

RESPONDENT

RE: Derelict Site at 8 Duggan Avenue, Townparks (Clonmacnowen By), Ballinasloe, Ballinasloe Urban, County Galway.

B E F O R E

Fred Devlin - FRICS.FSCS.

Deputy Chairperson

Frank Walsh - Valuer

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 6TH DAY OF JUNE, 2012

By Notice of Appeal dated the 21st day of January, 2010 the appellant appealed against the determination of Ballinasloe Town Council in fixing a market value of €110,000 on the above described subject property.

The grounds of Appeal as set out in the Notice of Appeal are: *The market value is too high.*

This is an appeal under Section 22 (4) of the Derelict Sites Act, 1990 against the decision of Ballinasloe Town Council to enter the market value of urban land known as 8 Duggan Avenue, Ballinasloe on the Derelict Sites Register in the sum of €110,000 on the 21st April, 2009.

The appeal proceeded by way of oral hearings held at the office of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 1st day of July, 9th day of August and the 31st day of August, 2010. At the oral hearing the owners of the property concerned, Mr. Anthony Walsh and Ms. Mairead Divilly were represented by Ms. Divilly. Mr. Ed Walsh, B Arch, MRIAI, gave evidence in relation to the likely costs necessary to restore the property to habitable use. Mr. Michael Staunton, Auctioneer and Valuer of Cogavin & Staunton, Ballinasloe gave evidence on behalf of Ballinasloe Town Council, in relation to the market value of the property at the relevant date in accordance with the Act. Mr. Shane Hanniffy of S. Hanniffy & Associates, Consulting Engineers, on behalf of the Town Council, gave evidence in relation to the estimated cost of refurbishing the existing structure in order to provide a two-storey residence with an area of approximately 1,500 sq. feet. Mr. Brian Murphy, an official of Ballinasloe Town Council was in attendance at the hearing held on the 31st day of August but did not give evidence.

In addition to the oral evidence given by Ms. Divilly, Mr. Walsh, Mr. Staunton and Mr. Hanniffy, additional written reports and documents were received by the Tribunal on behalf of the appellants and respondents as listed below.

- a) Building Conservation Assessment Report – dated 11th November, 2009 prepared at the request of the appellants by Architectural Conservation Professionals, Abbington Enterprise Centre, Monroe, Co. Limerick.
- b) Report prepared at the request of the appellants by Mr. R. Campbell, Consulting Engineer, Ballinasloe, dated 2nd October, 2009.
- c) Architectural Impact Assessment prepared at the request of the appellants by The Archaeology Company, Hamilton House, Emmet Street, Birr, Co. Offaly, dated September, 2009.

d) A letter from Sherry Fitzgerald O'Meara dated 28th April, 2010 addressed to Ms. Divilly estimating the value of the subject property to be "€25,000 or thereabouts".

e) A letter from Mr. Ed Walsh to Ms. Divilly dated 23rd July, 2010 estimating the cost of refurbishing the dwelling on the site "*to modern standards, but without any extension or remodelling any of the interior to suit modern requirements*". The estimated cost of the works to include connection fees, utility fees, professional design and supervision inclusive of VAT was stated to be €315,200 itemised as set out below:

Demolition of roof covering and structure, wall finishes internally and externally, all floors	€20,000
Reconstruction to minimum engineering standards and minimum insulation to comply with building regulations – 1,505 sq. metres @ €1,300 per square metre	€195,000
Additional cost of minimum kitchen and wardrobe units	€20,000
Provision for external works, service connections	€20,000
L.A. connection fees, utility fees	€5,000
Professional design and supervision	<u>€35,000</u>
Total Estimated:	€275,000
VAT on works @ 13.5%	€32,800
VAT on fees at 21%	€7,350
Total Cost	Say €315,200

f) A letter from Mr. Ed Walsh to Ms. Divilly dated 17th August, 2010 setting out a revised estimate of reconstruction costs. The contents of this letter and its conclusions contained therein were received into evidence at the hearing on the 31st August, 2010.

g) Quotation obtained by Mr. Staunton from Hubert Hardiman, Building Contractor, Ballinasloe for the reconstruction of the property and submitted as part of Mr. Staunton's evidence on 9th August wherein the costs of reconstruction was estimated to be €142,329 inclusive of VAT.

h) Guide to house rebuilding costs published by The Society of Chartered Surveyors dated February, 2010.

i) Valuation report prepared by Mr. Michael Staunton and submitted to the Tribunal and received into evidence at the oral hearing on 1st July, 2010.

j) Valuation report prepared by Mr. Staunton and submitted to the Tribunal as part of his evidence given at the oral hearing on 9th August, 2010.

k) Written submissions prepared by Ms. Divilly and received by the Tribunal on 23rd August, 2010 and received into evidence at the oral hearing on 31st August, 2010.

l) Letter from Mr. Ed Walsh dated 17th August, 2010 addressed to Ms. Divilly and attached to the submission referred to at (k) alone wherein Mr. Walsh expressed to her that the value of the derelict site was €55,275.

Appellant's Evidence

Ms. Mairead Divilly gave evidence under oath at the oral hearing on the 1st July, 2010. In her evidence Ms. Divilly said that she and her husband had purchased the property in 2005 for €375,000. The property, she said, was located close to her former family home now occupied by her sister. In the circumstances she had a special interest in purchasing the property at that time.

The property, Ms. Divilly said, has a site area of approximately 0.02 hectares (i.e. 205 sq. metres). On the site there is a two-storey part derelict and fire damaged house dating back to before 1840. The property occupies a corner location at the junction of Duggan Avenue and Church Hill directly opposite to St. John's Church. The property, Ms. Divilly said, is located in an area designated as being "an architectural conservation area" and within the radius of some 200 metres from the property there are a number of buildings designated as being of local, regional or national interest – St. John's Church being in the last mentioned category.

Since purchasing the property, Ms. Divilly said she and her husband had sought planning permission for the demolition of the existing structure and replacement with a two-storey building containing 2 apartments at ground and first floor levels. Permission for this development was refused and in December 2009 an application was submitted for the part demolition, renovation and extension of the existing structure. This application, Ms. Divilly said, had not yet been formally processed by either the planning officer or the conservation

officer for the council due to the location of the property in an architectural conservation area. In her opinion, the restrictions imposed by being within a conservation area militated against the economic and viable development of the property and this was a fact that should be reflected in the underlying value of the site.

Ms. Divilly said that on the basis of the information contained in the “Guide to House Rebuilding Costs” published by the Society of Chartered Surveyors in February 2010, it would cost approximately €370,000 to reconstruct the property and in current market conditions such a project would not be a viable proposition. In support of her contention in this regard, Ms. Divilly listed the asking prices for a number of houses of a similar size and type in the Ballinasloe area ranging from €215,000 to €80,000.

Ms. Divilly in concluding her evidence said that having regard to market conditions, refurbishing costs and the restrictions imposed by the property being located in an architectural conservation area, it was her opinion that the market value of the property was €15,000. She acknowledged that this figure was €10,000 less than the valuation prepared by Sherry Fitzgerald O’Meara. When asked by the Tribunal if she would sell the property at the sum of €15,000 Ms. Divilly answered in the negative.

Extension to Ms. Divilly’s Evidence

Prior to the hearing held on 31st August, 2010, Ms. Divilly submitted a revised statement (document reference k) wherein she estimated the value of the site to be €47,900 calculated as set out below:

(i) Value of reconstructed property as per Mr. Staunton		€323,500
(ii) Less		
Auctioneer fees not including costs	say	€4,000
Interest	say	€5,000
Legal & Conveyance costs	say	€2,500
Profit on development @ 10% of market price	say	€32,500
Architect/Design fees	say	€20,000
Engineer Fees	say	€7,000
Building Surveyor	say	€3,000
Archaeological impact assessment report	say	€1,750

External works as advised by Mr. Walsh	say	€20,000	
Building test as per Mr. Walsh			
1,505 sq. metres @ €1,200 per sq. metre		<u>€180,000</u>	
Total costs	=	€275,600	- <u>€275,600</u>
Estimated value of the site			€47,900

Mr. Ed Walsh

Mr. Ed Walsh, an Architect, gave evidence on 31st August in relation to the likely costs of refurbishing the subject property in order to provide some 1,600 sq. feet (150 sq. metres) of residential accommodation to a standard consistent with current building regulations. In his evidence, Mr. Walsh said he was familiar with the problems associated with the reconstruction/refurbishment of old buildings and it was his experience that the costs of such works on a sq. metre basis exceeded that of providing a new building of a similar size. Mr. Walsh said he had been advising Ms. Divilly and Mr. Anthony Walsh in relation to the subject property for some time and more particularly had written the letter to Ms. Divilly dated 23rd July and 17th August (i.e. documents a and b). Mr. Walsh said that in his opinion the cost of restoring the property to habitable standards in compliance with current building regulations would be in the region of €1,300 per sq. metre exclusive of site clearance works, connection fees, professional fees and VAT. In all, the total cost would be in excess of €300,000.

Under cross-examination by Mr. Hanniffy, Mr. Walsh said his estimate of costs reflected the fact that refurbishment/reconstruction cost was much higher than new build cost which in his opinion was in the order of €1,100 per sq. metre. Mr. Walsh said that the works necessary to ensure that a building, such as the subject property, met current building regulations and requirements were quite onerous and expensive and added to the overall cost of reconstruction. In his opinion the estimate of costs put forward by him were in line with other similar type projects with which he had been involved and were in his opinion reasonable. When it was put to him that new build costs were currently in the order of €700 to €800 per sq. metre, Mr. Walsh expressed surprise and said that his experience would indicate that the these levels were much too low. Mr. Hanniffy suggested to Mr. Walsh that the €35,000 allocated to professional fees was grossly excessive in prevailing market conditions when all professionals in the construction business were engaged in serious fee cutting exercises in order to continue in business. Mr. Walsh responded that the reconstruction of the subject

property was not a straightforward exercise having regard to the location of the property, the planning situation and other factors which would give rise to the requirement to retain various experts in the environmental and archaeological fields in order to obtain the necessary planning permission and other statutory requirements. In the circumstances he considered his estimate for professional fees of 12% of the reconstruction costs to be fair and reasonable.

The Respondent's Evidence

Mr. Michael Staunton

At the first day of the oral hearing on 1st of July, Mr. Staunton, having taken the oath, said he had prepared the "Market Value Report" (document i) dated April 2010 on the instructions of Ballinasloe Town Council. In this report he had estimated the value of the subject property to be €110,000 in accordance with Section 22(1) of the Derelict Sites Act, 1990. In arriving at his opinion of value, Mr. Staunton said he had regard to the sale of two residential properties in Ballinasloe as referred to in his report. In addition he also had regard to the asking price of houses in the town and the sale of three "one off" residential sites in the vicinity of Ballinasloe.

Under cross-examination Mr. Staunton said that in arriving at his valuation he had taken into account the fact that the property was located within an architectural conservation area and that planning permission had been refused for the refurbishment of the property to provide four apartments in a new two-storey building. In his opinion, it could be reasonably assumed that planning permission would be obtained for the refurbishment of the building on the site to provide two apartments, one at each level and each having an area of circa 800 sq. feet and a market value of €175,000 per unit.

When asked by the Tribunal if he could substantiate his valuation of €110,000 on the assumption that the subject property could be refurbished to provide two apartments, Mr. Staunton said he could do so if granted a short adjournment in order to enable him to carry out a residual valuation exercise. Following the adjournment, he put forward, in writing, the following calculations and assumptions:

Site cost per unit	€55,000
Building cost 800 sq. feet @ €70 per sq. foot	€56,000
Planning charges	€5,000

External works incorporating garden to each unit	€10,000
Architect's fees per unit	€5,000
Allow €10,000/€15,000 per unit for ancillary costs and materials	
Total costs per unit	€141,000 / €146,000
Sale price per unit in the order of	€150,000 to €175,000

Mr. Staunton said that in carrying out the above exercise he did not take into account any added costs that might arise from the fact that the existing building may be subject to some sort of a preservation order. Furthermore, Mr. Staunton said he had not inspected the property internally and hence could not make any comments regarding the internal state of repair and condition other than that which could be seen from an external examination. In the circumstances the parties agreed that the hearing be adjourned in order to afford Mr. Staunton an opportunity to carry out an internal inspection of the property and take such further advices as he considered necessary in relation to rebuilding and refurbishment costs.

At the resumed hearing on 9th August, Mr. Staunton submitted a revised valuation and asked that his original valuation be withdrawn. In his amended valuation, Mr. Staunton once again stated that the market value of the property as at April, 2009 was €110,000. On this occasion, Mr. Staunton's opinion of value was based on the refurbishment of the existing building as a single dwelling which, when completed, would have a sale value of €323,500.

Mr. Staunton said that in arriving at his valuation of the site he had regard to a quotation for the refurbishment of the property prepared by Mr. Hubert Hardiman, a Building Director based in Ballinasloe. The quotation obtained from Mr. Hardiman estimated the costs of refurbishment to be €143,379 inclusive of VAT at 13.5%. On the basis of this quotation, Mr. Staunton put forward the following valuation:

Refurbishment/Reconstruction

Value of completed property	€323,500
Refurbishment/Reconstruction costs	€142,329
Generous contingency allowance @ 40%	€56,932
Engineer/Professional fees @ 10%	€14,233
Value of property in its present condition (Residual Value)	€110,000

Under cross-examination by Mr. Walsh, Mr. Staunton confirmed that the Council had not obtained the service of a Quantity Surveyor before seeking the quotation from Mr. Hardiman. When asked if he considered that all the floors and all the interior partitions required replacement, Mr. Staunton replied that he thought not and that the schedule of works set down in Mr. Hardiman's quotation was sufficient to reinstate the property to habitable use in compliance with current building regulations. When it was put to him that it could cost as much as €315,000 to restore the property, Mr. Staunton said that he thought such a figure was grossly excessive.

At the end of Mr. Staunton's cross-examination, Ms. Divilly asked if Mr. Walsh could give evidence in relation to relevant building costs. The Tribunal advised Ms. Divilly that it had no difficulty with this request but in fairness to the Council the acceptance of this evidence would have to be postponed to another day to enable the Council to have sight of the evidence Mr. Walsh proposed to adduce so as to enable the Council an opportunity of rebutting the evidence by calling whatever other expert they considered to be appropriate. In the event it was agreed that the hearing would resume on 31st August, 2008 and that Mr. Walsh would submit to the Tribunal a précis of evidence would be forwarded to the Council. The Tribunal also requested that the parties, in the meantime, would engage in meaningful negotiations and discussions with a view to arriving at an agreement. In the event no such agreement was reached and Mr. Walsh gave the evidence previously referred to in this judgment.

Mr. Shane Hanniffy

At the resumed hearing on 31st August, Mr. Shane Hanniffy, a Consultant Engineer, gave evidence in relation to the estimated cost of rebuilding and refurbishment of the subject property. In his evidence, Mr. Hanniffy said that the structural walls of the building on the site were in good condition and repair with the exception of some cracking above the windows at first floor level. As a consequence it would be necessary to lower the existing walls to the top of the first floor window level and install a concrete band beam up to parapet level. The internal walls would have to be dry-lined and insulated to meet current building regulation standards.

The existing roof, he said, was in very poor condition and as a consequence therefore, would have to be replaced in its entirety. Similarly, the external doors and all windows would have to be replaced and fitted with new double-glazed units.

Internally, Mr. Hanniffy said the existing timber floors at ground to first floor level appeared to be in reasonably good condition as did the staircase although some renovation works would be needed. All internal doors, doorframes, ironmongery, architrave, skirting and window boards, etc. would have to be replaced. At the rear of the main structure the existing extension would require to be knocked down and replaced with a new structure of cavity wall construction using the same materials and roof structure as the main building.

In preparing for his appearance at the Tribunal, Mr. Hanniffy said he had prepared a schedule of the cost of works necessary on a reinstatement refurbishment basis and a copy of this schedule is attached and forms part of the judgment. (Appendix 1 attached hereto) However, in summary, the figures contained in Mr. Hanniffy's schedule are as follows:

Cost of works	€125,000
Scaffolding and site insurance	€8,000
Add VAT on the above of 13.5%	€17,955
Professional team fees	€3,000
VAT on fees @ 21%	<u>€630</u>
Total costs =	€154,585

Mr. Hanniffy in his evidence said that he was well experienced in the type of work necessary to restore a building such as the subject property to habitable use and had a good working knowledge and experience of the costs involved for this type of work as well as new building works. In his experience, Mr. Hanniffy said the current cost of new "one off" modern houses was in the order of €700 to €800 per sq. metre. In regard to the professional fees he considered €3,000 to be a fair estimate having regard to the highly competitive conditions which now existed in all areas of the building/contracting business. Under cross-examination by Mr. Walsh, Mr. Hanniffy accepted that the estimated costs of reconstruction put forward by him were substantially different from those put forward by Mr. Walsh. Whilst he was unable to say why there should be such a difference, Mr. Hanniffy said his figures in relation to rebuilding costs and professional fees represented the current market conditions where

builders and construction professionals were prepared to quote figures which represented a low profit margin, if indeed any.

When asked by the Tribunal to provide the estimated costs as per the schedule prepared by Mr. Hanniffy, Mr. Walsh was good enough to do so. Under this exercise the main differences in the estimates were shown to be concentrated in a number of specific items as clearly set out below:

	Mr. Hanniffy	Mr. Walsh
Construction of roof	€22,000 + VAT	€35,000 + VAT
Carpentry, Plumbing, Electrical	€18,000 + VAT	€33,000 + VAT
Dry Lining, Plumbing	€8,000 + VAT	€19,000 + VAT
Kitchen, Wardrobes	€10,000 + VAT	€25,000 + VAT
	TOTAL €58,000 + VAT	TOTAL €112,000 + VAT
Professional Fees	€3,000 + VAT	€35,000 + VAT

Findings

The Tribunal has carefully considered all the evidence and arguments put forward by both parties and finds as follows:

1. Under Section 22(1) of the Derelict Sites Act, 1990 the market value of the site to be included in the Derelict Sites Register is to be estimated as *“the price which the unencumbered fee simple of such land would fetch if it was sold on the open market on the valuation date in such manner and in such conditions that might reasonably be calculated to obtain for the vendor the best market price for the land.”* The relevant valuation date in relation to this appeal is April 2009.
2. It is common case that the building currently on the site is in a highly dilapidated condition and is partly fire damaged. It is also common case that it will require substantial work of reinstatement and refurbishment in order to return the building to normal habitable conditions in compliance with current building regulations. Whilst the experts retained by the parties agreed that it would be necessary to replace the roof there was little

agreement on the extent and estimated cost of the remaining works and other associated costs and fees related thereto.

3. Both parties adopted a common valuation approach in order to arrive at the market value of the property at the relevant date. Firstly, both parties accepted Mr. Staunton's opinion that if the property was refurbished to modern expected standards in compliance with building regulations that it would be possible to sell the property for an estimated price of €323,500. From this figure was deducted all estimated costs and expenses required to achieve this end and the resulting figure being the market value of the site. The type of valuation exercise put forward can be best described as being a shortened version of the standard residual method of valuation.
4. Notwithstanding the fact that both parties had the same starting point, i.e. the market value of the building when completed would be in the order of €323,500, and a similar valuation approach, the parties arrived at manifestly different levels of value for the property concerned in its current state. This is of course, due to the substantial differences of opinion as to the likely rebuilding costs put forward by Mr. Walsh and Mr. Hanniffy respectively. An analysis of the figures put forward by both these gentlemen indicated a substantial difference in a number of items including the level of professional fees.
5. Whilst the residual method of valuation is an accepted method of valuation when assessing the value of a redevelopment site it is to some degree the method of last resort in that the final figure is highly sensitive to the various input costs. Indeed, this is borne out by the evidence adduced by Mr. Walsh and Mr. Hanniffy, both of which said they were experienced in estimating the likely costs of refurbishment and rebuilding.
6. In the context of this appeal the Tribunal attaches little weight to the information contained in the 'Guide to House Building' costs published by the Society of Chartered Surveyors in February 2010. As the Guide notes says "*the quotation of costs are calculated on a total loss situation, i.e. the house has been totally destroyed and has to be demolished and totally rebuilt. In relation to demolition and reconstruction, the costs also allowed for Building Surveyors, Architects, Quantity Surveyors fees and for value added tax at the correct rate at the time of printing the guide*". The above hypothesis does not accurately reflect that facts which exist in this situation.

7. The substantial differences in the evidence in relation to refurbishment costs and professional fees put forward by Mr. Walsh and Mr. Hanniffy makes the Tribunal's task far from easy but making the best judgment it can and using the same valuation method as that put forward by the parties and also having regard to Mr. Staunton's evidence that the value of the building when completed would be in the order of €323,500, the Tribunal determines the value of the subject property in accordance with Section 21 of the Act at the relevant valuation date 21st April, 2009 to be €70,000. In arriving at this figure the Tribunal has carried out the following exercise:

a)	Estimated value of property when completed	€323,000
b)	Input costs:	
	Demolition of extension at rear & removal of any associated works (as agreed)	€20,000
	Construction of band beam over first floor window	€8,000
	Reconstruction of roof and associated works	€28,000
	New extension at rear (as agreed)	€16,000
	New external door and double glazed window units	€17,000
	New kitchen units and wardrobes	€15,000
	Renovating staircase	€2,000
	Plumbing/Electrical works	€15,000
	Dry lining/Plastering	€10,000
	Miscellaneous works to include plumbing, carpentry, insulation, tiling, floor coverings etc.	€35,000
	Scaffolding and site insurance	<u>€8,000</u>
	Total Building Costs	€174,000
	VAT @ 13.5%	€23,490
	Professional fees @ say 8%	say €14,000
	Plus VAT @ 21%	<u>€2,940</u>
	Total redevelopment costs	€214,430
	Interest costs	say €5,000
	Sales and Marketing	<u>€5,000</u>
	Total costs	€224,430
		say €224,500

Allow for profit and risk		€30,000	
All in total	Total	€254,500	<u>€254,500</u>
		Site Value	€69,000
		say	€70,000

And the Tribunal so determines.