

**Appeal No: VA17/5/110**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015  
VALUATION ACTS, 2001 - 2015**

**KILKENNY PRECAST CONCRETE LTD**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2181381, Industrial Uses at Unit 39 A Hebron Industrial Estate, Hebron Business Park, Kilkenny, County Kilkenny.

**B E F O R E**

**John Stewart – FSCCSI, FRICS, MCI Arb**

**Deputy Chairperson**

**Orla Coyne - Solicitor**

**Member**

**Frank O’Grady – MA, FSCSI, FRICS, FIABCI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 22<sup>ND</sup> DAY OF NOVEMBER, 2018**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 4<sup>th</sup> day of October 2017 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 €24,100.

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:

*“The valuation of the subject property is excessive and inequitable. The property’s value is not in line with its potential rental value.”*

*“The subject property is the warehouse section of a standard industrial type building. The offices have been let separately and are separately assessed. An industrial building with no office content is of lesser value than the combined value of offices and warehousing.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €16,110.

## **2. REVALUATION HISTORY**

2.1 On the 11<sup>th</sup> day of May 2017 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 €1,820.

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 of the Property was increased to €24,100 following an amalgamation with property number 2187476.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September 2017 stating a valuation of €24,100.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> day of October 2015.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 15<sup>th</sup> day of August 2018. At the hearing the Appellant was represented by the Mr David ES Halpin MSc (Real Estate), BA (Mod) and the Respondent was represented by Mr Terry Devlin BSc, MSCSI, MRICS of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

## **4. FACTS**

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

The subject property of this appeal comprises a warehouse and yard located at Hebron Industrial Estate Kilkenny. The floor and site areas have been agreed and the industrial unit extends to an area of 399m<sup>2</sup> and the yard to an area of 1,381m<sup>2</sup>. The parties have confirmed that the office section to the front of the building and the entire first floor office have been separately let and valued and do not form part of the subject of this determination.

4.2 The property is freehold.

## **5. ISSUES**

5.1 The Appellants have contended for an NAV of €16,380 whereas the Respondents on behalf of the Commissioner has requested that the Commissioner's valuation of €24,100 be confirmed.

## **6. RELEVANT STATUTORY PROVISIONS:**

6.1 The net annual value of the Property has to 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 taken into account 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 Mr Halpin on behalf of the appellant confirmed that subject property was constructed in 2004 and was of standard construction with double skin roof and side panels. He stated that the

building had been divided into three separate rateable properties namely a part ground floor office PN 2187474, a part ground floor and entire first floor office PN 2187475 neither of which was part of this appeal.

7.2 Both parties agreed on the location of the subject premises and confirmed the details of the description.

7.3 Mr Halpin's case was mainly based on two main points firstly, that the subject property without the benefit of office accommodation should not attract a rate of €45.00/m<sup>2</sup> as in effect it comprised a poorer quality property than one that included office/warehouse accommodation. He took issue with the Commissioners approach which assumed that a warehouse without the benefit of office accommodation should still be valued at €45.00/m<sup>2</sup>. Mr Halpin provided a table showing the calculations that would have been adopted had the subject property been in single occupation.

<b>Description</b>	<b>M<sup>2</sup></b>		<b>€/M<sup>2</sup></b>	<b>€</b>
Warehouse	399	@	€45.00	€17,955
Yard	1,381	@	€4.50	€6,214.50
				€24,214.50
Total			Say	€24,100

He claimed that the Commissioner following the subdivision of the property was contending that the property was now worth €53,540 NAV i.e. 50% more than as a single unit. He further claimed that this approach does not bear scrutiny as otherwise any prudent landlord would seek several tenants to provide a substantially higher rent whereas most landlords sought single tenancies where possible.

7.4 He stated that the subject property had been vacant for several years and the reason the landlord had sublet the offices was because he could not let the property to a single tenant in its entirety. He also stated that in his opinion there was an inconsistency in the treatment of yard space by the Commissioner which would be evidenced by his comparisons.

7.5 The appellant stated while the offices formed part of the overall building they were not part of the subject property but were subject to 2 tenancies at €5,000 and €15,000 per annum on an IRI (internal repairing and insuring) basis. He further argued that this equated to a rent of €19,000 per annum having discounted IRI to an FRI (full repairing and insuring) basis. He further argued that taking account of the established rate of €45.00/M<sup>2</sup> as the accepted basis for office/warehouse buildings and deducting €19,000 (the passing rent adjusted for an FRI lease) from €34,200 that this would leave a residual amount of €15,200 which would equate to a rate of €32.50/M<sup>2</sup> for the warehouse and a rate of €1.62/M<sup>2</sup> for the yard.

7.6 The appellant stated that there were two tones for standard industrial units in Hebron €35.00/M<sup>2</sup> and €45.00/M<sup>2</sup> and he referred to Tribunal judgements VA17/5/070 and VA117/5/072 in support of these rates as both contained industrial accommodation and offices and one showroom accommodation all of which had been valued at €45.00/M<sup>2</sup>. The appellant consequently contended that the NAV should be established taking account of the fact that the subject property did not have offices.

7.7 The Appellants referred to five market comparisons. The first PN 2214926 referred to a unit in Hebron Industrial Estate which had been let according to the Valuation Office for a term of 25 years from 24 May 2014 at €7,000/pa. This unit had a NAV of €12,970 based on a warehouse of 262.4M<sup>2</sup> at €45.00/M<sup>2</sup> and a mezzanine of 129.15 m<sup>2</sup> at €9.00/M<sup>2</sup>. He stated that this property comprised a modern unit with no office content and that the market rent which he stated was €24.50/M<sup>2</sup> was at complete variance to the NAV of €45.00/M<sup>2</sup>.

7.8 The appellant's second comparison PN 209449 comprised an older style unit with offices at ground and first floor levels and warehouse accommodation also referred to Hebron Industrial Estate where the Valuation Office also provided letting details - a five-year lease from 1 April 2014 at €13,650/pa. This unit had a NAV of €11,630 based on €35.00/M<sup>2</sup> for the offices and warehouse and the appellant argued that the subject property should not be able to achieve a higher rate than this Commissioners assessment.

7.9 The Appellants third comparison PN 2200131 -tone of the list-referred to Hebron Business Park which comprised a motor repair garage and included stores, offices and warehouse accommodation all valued at €45.00/M<sup>2</sup> as well as a concrete/tarmac yard valued at €4.50/m<sup>2</sup>. The appellant stated that this property which was completed in 2008 was purpose-built and

comprised a 9m high warehouse with two-storey offices and a full height atrium. He also stated that only part of the yard had been valued.

7.10. The Appellants fourth comparison PN 1064936 also referred to Hebron Business Park and the property comprised good quality warehouse accommodation with offices to the front but had been valued at €35.00/M<sup>2</sup> and no valuation for the yard or office content. The appellant's claimed that the subject property should not be valued at a rate higher than this level of €35.00/M<sup>2</sup>.

7.11 The appellant's final comparison PN 209271 also referred to Hebron Business Park and comprised ground floor offices warehouse accommodation valued at €35.00/M<sup>2</sup> and a mezzanine store valued at €7.00/M<sup>2</sup>. He described this property as comprising good quality warehouse accommodation with offices to the front and included a yard with parking to the front and a side yard however the yard accommodation had not been valued.

7.12 Mr Halpin in relation to his second main contention referred to his comparisons and stated that in his opinion there was a clear and inequitable inconsistency in the treatment of yards attached to industrial properties. Four of the yards in his five comparisons were not valued and only partly in the fifth.

7.13 In conclusion the appellant stated that the NAV as at 31 October 2015 should be €16,380.

<b>Description</b>	<b>M<sup>2</sup></b>		<b>€/M<sup>2</sup></b>	<b>€</b>
Warehouse	399	@	€35.00	€13,965
Yard	1,381	@	€1.75	€2,417
				€16,382
<b>Total</b>			<b>Say</b>	<b>€16,380</b>

7.13 During cross-examination Mr Halpin confirmed that the subject property was occupied by the landlord as he had failed to secure a letting of the warehouse. He referred to the historical position whereby offices and industrial accommodation had been valued at different levels however he accepted the current position whereby both offices and warehouse accommodation were valued at the same rate as evidenced by market transactions. Following questions in

relation to the value of the yard Mr Halpin agreed that it was traditionally set at a rate of 10% of the buildings but he argued that in this case only part of the yard should be subject to valuation approximate 400 m<sup>2</sup>.

## **8. RESPONDENT'S CASE**

8.1 Mr Terry Devlin for the Respondents agreed the location and description details and included several photographs of the subject property with his submission. The photograph showed that the warehouse was been used by Kilkenny Precast Concrete and the yard was being used for the storage of concrete products.

8.2 Mr Devlin provided five Key Rental Transactions the first PN2193501 referred to Hebron Business Park and a one-year lease from June 2016 which provided an overall NER of €10,179.75 which equated to an NER of €60.79/M<sup>2</sup>. The subject property comprised a workshop, showroom and offices with the offices and workshop valued at €50.00/M<sup>2</sup> and the showroom at €60.00/M<sup>2</sup>.

8.3 The second Key Rental Transaction PN209449 referred to Hebron Industrial Estate and was common to the appellant's and comprised their second comparison. This property was let from April 2014 for 5 years and the NER in this instance was €13,650 which provided a rate of €41.08 NER/M<sup>2</sup> for the warehouse and offices at ground and first floor levels. The valuation for this property was €35.00/M<sup>2</sup> for offices at ground and first floors and the warehouse. Mr. Devlin referred to this property as an older type industrial building.

8.4 The third key rental transaction PN 2148445 referred an industrial building in Hebron Business Park subject to a four-year nine-month lease from 1 January 2016 and had an NER of €6,306.21 which equated to an NER/M<sup>2</sup> €40.68. This property comprised a warehouse and was valued at €40.00.M<sup>2</sup>.

8.5 The fourth key rental transaction PN2214926 referred Hebron industrial estate and had been let on a 25-year lease from May 2014 and had an NER of €7,000 which equated to €20.59/M<sup>2</sup>. The warehouse was valued at €45.00/M<sup>2</sup> and the mezzanine at €9.00/M<sup>2</sup>.

8.6 The fifth Key rental transaction PN210050 comprised a modern industrial building in Purcellsinch Industrial Estate and had been let for a term of three years from June 2014 and the NER was calculated at €17,249.13 which equated to an NER of €20.16/M<sup>2</sup>.

8.7 Mr Devlin provided five NAV comparisons. The first referred to PN5009106 S & E Kennedy in Hebron Industrial Estate

Level	Use	Area M <sup>2</sup>	€/M <sup>2</sup>	NAV
0	Warehouse/office	534.49	€45.00	€24,051.60
			Say	€24,000

8.8 The second referred to PN2181379 Kilkenny Print & Graphics in Hebron Industrial Estate.

Level	Use	Area M <sup>2</sup>	€/M <sup>2</sup>	NAV
0	Offices	86.75	€45	€3,903.75
0	Warehouse	203.11	€45	€9,139.95
1	Store	83.72	€45	€3,767.4
				€16,811.10
			Say	€16,810

8.9 Mr Devlin's third NAV comparison PN209263 Peter Insulation referred to Hebron Industrial Estate.

Level	Use	Area M <sup>2</sup>	€/M <sup>2</sup>	NAV
0	Office	79.98	€45.00	€3,599.1
0	Warehouse	317.34	€45.00	€14,280.3
				€17,879.4
			Say	€17,870.

8.10 The fourth PN2196380 Murphy Engineers Ltd comprised an industrial unit in Hebron Industrial Estate.



Level	Use	Area M <sup>2</sup>	€/M <sup>2</sup>	NAV
0	Workshop	232.00	€45	€10,440
1	Offices	125.14	€45	€5,631.3
Mezz	Store	36.00	€9	€324.00
				€16,395.3
			Say	€16,390

8.11 The 5<sup>th</sup> NAV comparison PN2163769 referred to Kellehers Electrical Limited Hebron Industrial Estate.

Level	Use	Area M <sup>2</sup>	€/M <sup>2</sup>	NAV
0	Warehouse/office	394.70	€45.00	€17,761.50
Mezzanine	Warehouse/office	315.00	€9.00	€2,835.00
				€20,596.50
			Say	€20,500

8.12 The 6<sup>th</sup> NAV comparison referred to PN2107921 Fastmac Express Delivery Services Ltd. Purcellsinch.

Level	Use	Area M <sup>2</sup>	€/M <sup>2</sup>	NAV
0	Canopy	70.46	€6.75	€475.61
0	Offices	111.60	€45	€5,022.00
0	Warehouse	624.00	€45.00	€28,080.00
0	Yard	720.00	€4.50	€3,240.00
1	Offices	111.60	€45.00	€5,022.00
	Tank	1.00	526	€526.00
				€42,365.61
			Say	€42,300.

8.13 Based on the rental transactions and NAV comparisons the Commissioner determined that the NAV for the subject property should be based on the following calculations:

Description	M <sup>2</sup>		€/M <sup>2</sup>	€
Warehouse	399	@	€45.00	€17,955
Yard	1,381	@	€4.50	€6,214.50
				€24,214.50
Total			Say	€24,100

Mr Devlin requested that the Tribunal affirm the value at €24,100.

8.14 During cross-examination Mr Devlin confirmed that he did not accept that a portion only of the yard should be valued. He did not agree that there was a difference between an industrial property with or without offices and did not agree that a warehouse unit without offices should be valued at a lower rate than the prevailing one of €45.00/m<sup>2</sup>. He accepted that most of the key rental transactions included offices and all the NAV ones included offices. Following questions as to the proportions of offices in the NAV comparisons Mr Devlin agreed that generally they varied from 20% to 35%. In relation to Key Rental Transaction No.4 Mr Devlin acknowledged that the rent was €7,000/pa and the NAV was €12,970 but claimed that a single comparison could show anomalies. In relation to Key Rental Transaction No.3 Mr. Devlin confirmed that he had no confirmation on what office, if any, was included and he confirmed that the NAV and rent were almost ad idem at €40.00/m<sup>2</sup>. He also accepted that the rent in Key Rental Transaction No.5 at €20.16/m<sup>2</sup> was approx. half of the NAV at €45.00/m<sup>2</sup>. Mr Devlin when queried as to why certain yards were not valued stated that their inclusion was dependant on whether they had been previously included and inspected by the Valuation Office.

8.15 Following a question from the Tribunal Mr. Devlin confirmed that the operators of the warehouse had a right to use the toilet accommodation in the offices. He also confirmed that he was not aware of the required turning circle for 40ft vehicles.

This concluded the cross examination of Mr Devlin.

8.16 Both parties provided brief summaries of Mr Halpin restated his contention that a warehouse without offices was less marketable to one with offices. He also contended in his oral evidence that the yard area should be reduced to 400m<sup>2</sup>. He concluded by stating that in his opinion the rate should be reduced to €35.00/m<sup>2</sup> for the warehouse to reflect the fact that

the subject property did not have any office complement and sought a consequential reduction to €3.50/m<sup>2</sup> for the yard.

8.17 Mr Devlin in his summary maintained that the subject property was not disadvantaged by the lack of offices and the NAV had been determined and was in line with the Key Rental Transactions and NAV comparisons and he requested the Tribunal affirm the NAV at €24,100.

## **9. SUBMISSIONS**

9.1 No legal submissions were made.

## **10. FINDINGS AND CONCLUSIONS**

10.1 The appellant's case was principally based on two main arguments firstly, that the subject property which comprised a warehouse and yard and no office accommodation should be valued at a lesser rate to that applied to warehouse/office properties to reflect its more limited appeal to the market. The Tribunal accepts that this contention has merit. Secondly, the appellant also argued that the yard space should be reduced to 400 m<sup>2</sup> but did not provide any evidence to support this figure. The appellant also contended that the Commissioner's approach to the valuation of yards was inconsistent as it claimed many yards had not been valued. The Tribunal has noted the inconsistency and provides its findings in relation to this point below.

10.2 The rental comparisons adduced varied from €20.00/m<sup>2</sup> to €60.00/m<sup>2</sup> and the Tribunal did not note any clear correlation between the rents and the NAV's of €45.00/m<sup>2</sup>. The rent for comparison no. 1 provided by the appellant and sourced from the Valuation office refers to a 2014 rent of €7,000/pa and a NAV of €12,970 based on €45.00/m<sup>2</sup> for the warehouse and €9.00/m<sup>2</sup> for the mezzanine in a premises without any office accommodation. The appellant's second comparison referred to an older building which was not comparable, however his third comparison which was tone of the list referred to a motor repair garage which included offices, stores and warehouse accommodation all at €45.00/m<sup>2</sup> and a concrete/tarmac yard at €4.50/m<sup>2</sup> or 10%. The Tribunal notes that only part of this site had been valued but no information on the overall was provided and it noted the high specification and two storey offices included in this property. The appellant's 4<sup>th</sup> tone of the list comparison referred to a warehouse without offices on a large surfaced yard at €35.00/ m<sup>2</sup> without any rate applied to the yard. The 5<sup>th</sup> and

final comparison referred to an office/warehouse valued at €35.00/ m<sup>2</sup> and a mezzanine store at €7.00/ m<sup>2</sup> but did not include any value on the enclosed yard.

10.3 The Tribunal has noted that the respondents provided five Key Rental Transactions with NER's that varied from €60.70/m<sup>2</sup> to €20.16/m<sup>2</sup> and that all but one which was the disregarded one as it comprised an older property referred to above, had NAV's of €45.00/m<sup>2</sup> and one had a showroom with a NAV of €50.00/m<sup>2</sup>. The respondents provided six NAV comparisons and only one included a yard that had been valued, even though the other five appeared to include enclosed yard accommodation. The first referred to a warehouse/office at €45.00/m<sup>2</sup>; the second referred to a warehouse/store/office at €45.00/m<sup>2</sup>; the third comprised a warehouse/offices at €45.00/m<sup>2</sup>; the fourth a warehouse/office at €45.00/ m<sup>2</sup> and a store at €9.00/ m<sup>2</sup> and the fifth had similar rates and finally the sixth had offices/warehouse at €45.00/ m<sup>2</sup>, a canopy at €6.75/ m<sup>2</sup>, a tank at €526 and a yard at €4.50/ m<sup>2</sup>.

10.4 The Tribunal does not accept the appellant's contention that the yard should be reduced to 400 m<sup>2</sup>, but it has accepted that there is an inconsistency in the valuation of the yards in Co. Kilkenny. It is not aware how many yards have been valued and how many have not been valued, however it has determined that an equitable approach to all yards should be applied. The Tribunal acknowledges that yard accommodation can enhance a property's value, however standard access and turning circles for commercial vehicles should be calculated and excluded from any calculation of the yard size. The appellant did not provide these calculations in this case.

10.5 The Tribunal has accepted that an industrial building without any office accommodation does not compare and cannot be valued equally to an industrial/office building. Consequently, it has determined that the NAV should be reduced to €35.00/ m<sup>2</sup>. The appellant did not prove to the Tribunal what deduction, if any, should apply to the calculation of the size of the yard, and while The Tribunal is not satisfied that an equitable approach has been adopted across the county it has nonetheless adopted the accepted procedure in this case, whereby yards are valued at a rate of 10% of the warehouse rate.

#### **DETERMINATION:**

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €18,700.

<b>Description</b>	<b>M<sup>2</sup></b>		<b>€/M<sup>2</sup></b>	<b>€</b>
Warehouse	399	@	€35.00	€13,965.00
Yard	1,381	@	€3.50	€4,833.50
				€18,798.50
Total			Say	€18,800

And the tribunal so determines.