

Appeal No: VA17/5/111

**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. 451339, Industrial Uses at 23 (Unit 8.9) Hebron Industrial Estate, Kilkenny, County Kilkenny.

B E F O R E

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Michael Connellan Jr - Solicitor

Member

Barra McCabe – BL, MRICS, MSCSI

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF DECEMBER, 2018.**

1. THE APPEAL

1.1 By Notice of Appeal received on the 4th 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 €47,600.

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 as set out by the Commissioner is not in line with its potential rental value.*
- *The subject property consists of a modern workshop building (over 3 storeys), a long basic single skin workshop structure (constructed in 1999) and associated yard and concrete plant.*

- *The Commissioner has taken a uniform approach to the building which is not consistent with their construction. The long single skin shed is worth a maximum of 50% of the level applied to the newer workshop. It is purely a simple structure there to keep the weather off.*
- *The level applied to the plant is excessive in view of its low capital value and basic nature.*
- *There should be an allowance for circulation in the yard area.*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €23,300.

2. REVALUATION HISTORY

2.1 On the 11th 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 €100,000.

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 reduced to €47,600.

2.3 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €47,600.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th 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 27th day of August 2018. At the hearing the Appellant was represented by the Mr Eamonn Halpin BSc (Surveying), MRICS, MSCSI of Eamonn Halpin & Co Ltd 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.

4.2 The subject property is located in Hebron Industrial Estate Kilkenny and comprises a concrete works and batching plant with associated buildings.

4.3 The buildings have been agreed at 850.40m² and the valuation in relation to the buildings has also been agreed between the parties at €35.00/m².

5. ISSUES

5.1 The valuation of the Buildings was agreed prior to the hearing and nothing arises.

5.2 The appellants claim that the level applied to the plant is excessive in view of its low capital value, age and basic nature.

5.3 There should be an allowance for circulation in the yard area.

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 The appellant’s case was focussed on two main issues, firstly they claimed that the valuation applied to the batching plant was excessive and did not take account of its age c.1979 and had not allowed for any depreciation and no allowance had been made for the exclusion of moving parts. They referred to the recent John Spollen (Glasson)P Ltd t/a Spollen Concrete case VA17/5/041 and the Kilsaren Concrete case VA08/5/188 to support their contention that batching plants have a life span of 20 years whereas the Commissioner contends for a 40-year life span.

7.2 The appellants also argued that it was established practice that the moving parts of batching plants accounted for 37% as determined by the Kilsaren case having considered expert witness testimony from Mr. Nick Davis of the Institute of Concrete Technology; Mr. Gerard Fogarty of the Concrete & Quarry Engineering & Manufacturing Services Company CQEMS and Mr Tadgh Donnelly a valuer of Brian Bagnall & Associates on behalf of the appellant and Mr Christopher Field a Principal Valuer with the Valuation Office Agency in England and Mr Noel Rooney a valuer with the Valuation Office and a written report prepared by Mr. John J. Lauder MSc.

7.3 The appellants argued that the batching plant was old c.1979 and referred to previous evidence provided by Mr. Field on behalf of the Commissioner whereby he stated in his direct evidence in the Kilsaren case that a refurbished plant could have a working life of at least 20 years.

7.4 Mr Halpin also stated that he could not obtain a direct comparison price for the subject batching plant as it was too old however he provided a quotation prepared by Pat Fleming of Concrete & Quarry for the supply of a refurbished Teka 750 pan mixer and a 70-ton cement silo for a total price of €61,680 plus vat and dated 10th August 2018.

7.5 Mr Halpin stated that he could not understand the methodology adopted by the Commissioner in arriving at his valuation of €44,600 as it did not include any allowance for depreciation or moving parts. He accepted the building valuation but could not fathom the valuation based on a 70-tonne silo at €130/tonne, a 40-tonne bin at €10.00/tonne and plant and other supports at 12.50 @ €10.00.

7.6 He referred to the recent Spollen case where the Tribunal determined that the lifespan of a batching plant to be 20 years based on the evidence adduced.

7.7 Secondly, the appellants argued that the value of the site should be included in the value for the buildings at €35.00/m². In support of this contention they referred to three tone-of-the-list comparisons. The first referred to Leinster Stone Supplies PN 230429 located in Hebron Industrial Estate which comprised a similar premises and was located opposite and adjacent to the subject property. The accompanying aerial photographs they stated showed two very similar properties, however the Leinster Stone premises which comprised a similar enclosed yard did not have any value attaching to the yard and had been valued at €35.00/m² for the warehouse and €14.00/m² for a portacabin. Their second comparison referred to PN 106936 Cannon Hygiene in Hebron Business Park which also comprised a warehouse valued at €35.00/m² and an enclosed tarmac yard approx. 1,000m² did not have a separate valuation. The third comparison referred to Kilkenny Electrical Wholesale Ltd PN 209271 in Hebron Business Park an office and warehouse building was valued at €35.00/m² with a rate of €7.00/m² applied to the mezzanine store, but no value was attributable to the enclosed site.

7.8 The appellants argued that consequently there was a clear inequity whereby properties in the immediate vicinity which included similar enclosed yards had not been valued. They argued that the value of the yards was included in the value for the warehouses at €35.00/m².

7.9 In relation to the batching plant they sought an NAV of €478.13 for the batching plant calculated as follows: -

Replacement cost	€61,780 *
Less moving parts -37% (VA17/5/041) =	€38,921
Plus, fees 10% (VA17/05/041) =	€42,814

Less depreciation 80% (16 years elapsed out of 20-year lifespan) (VA17/5/041) =	€8,562.71
Plus, site nominal €1,000 =	€9,562.71
NAV 5% (per section 50 of Valuation Act	€478.13
Total including agreed €29,764 + €478.13 = €30,242 say	€30,200

* minor error of €10.00 noted.

7.10 During cross examination Mr Halpin agreed that the JR Perry unit -comparison 1 provided by the Commissioner included a yard in the valuation but argued that this property appeared to be used for the sale of Husqvarna equipment. He also agreed that yards were included in the Commissioners comparison 2 Sean Brett and in comparison, 3 All Tyres but argued that the yard was used for type fitting but noted that no yard was included in the Commissioner's comparison 4 and he agreed that the site was valued in comparison 5 but surmised that the site was used for selling equipment.

7.11 When queried as to whether yards were valuable Mr Halpin agreed but stated that this could only be determined on a case by case basis. He further argued that the site value was or should be included in the rate attributable to the warehouse.

7.12 In relation to the evidence as to the replacement cost of a batching plant he confirmed that there was no direct comparison price as the subject plant was too old, but he had provided an equivalent reconditioned cost. He agreed that the plant was operational but at the end of its economic useful life. He stated that a modern plant would be more efficient.

7.13 When queried in relation to the PN 210231-John Dalton he accepted that he had agreed the plant element of this case at €150/tonne for the silo. He argued however that he could not understand or accept the Commissioners approach to the valuation of a batching plant and maintained that a grain drying plant was not comparable to a batching plant. He claimed that the subject plant was commissioned c. 1979 and was old and inefficient. He referred to Mr Field, The Commissioner's expert witness in the Kilsaran case, and maintained that Mr Field had effectively confirmed that a batching plant, which had been refurbished in 2005 had an economic life of 20 years.

8. RESPONDENT'S CASE

8.1 Mr Devlin adopted his evidence in principal.

8.2 As the value of the buildings was agreed there was no requirement to address the key rental transactions. Mr Devlin confirmed that the yards should attract a separate value as evidenced by his comparisons: - PN 230443 where a concrete/tarmac yard of 1,260m² was valued at €3.50/m² based on 10% of the office/warehouse rate; comparisons 2, 3, 5 and 6 with similar valuations.

8.3 He stated that the batching plant had been correctly valued, based on €130/tonne for the 70-tonne silo and €10/tonne for the 40-tonne bin and €10 for the plant/other supports comprising 12.5.

8.4 During cross examination Mr Devlin agreed that there was no site value attaching to the Leinster Stone premises across the road from the subject property. He stated that it should have been valued and he stated that the same replies applied to Cannon Hygiene and Kilkenny Electrical.

8.5 When queried as to the Kilsaren case Mr Devlin agreed that it was a leading case. He agreed that Mr Field was a leading UK expert in the area and had been appointed by the Commissioner. He did not agree that the life of a batching plant was 20 years and insisted that it was 40 years but could not confirm where the figure had come from. He confirmed that he had no expert report in this case in relation to the life span of a batching plant.

8.6 When queried as to why there was a rate of €1.75/m² in the Kelly Machinery PN 209250 case Mr Devlin confirmed that the yard was made up of hardcore, but a concrete yard should be valued at €3.50/m².

8.6 When questioned about the silo and the bins Mr Devlin agreed that modern stainless-steel units were more expensive than the silo/bins on site. He did not agree that the 70/tonne silo was of similar quality to the 40-tonne bin and following additional questions he could not confirm the difference between a silo and a bin but suggested that the silo had additional equipment contained within the casing which would make it more valuable. Mr Devlin could not provide a rationale as to where the rate of €130/tonne for silos versus €10/tonne for bins had been derived.

8.7 When questioned as to where the life span of 40 years had come from Mr Devlin could not provide any confirmation. He acknowledged that the Tribunal had found in the Spollen case that the lifespan based on the evidence adduced in that case was 20 years for a batching plant. He did agree that the Commissioners calculations in relation to the subject batching plant had not allowed for depreciation.

8.8 The appellants summed up and concluded by restating that there was a lack of equity when a yard in the Leinster Stone premises which was very similar to the subject property and immediately adjacent to it did not include any value attaching to the yard and this approach was common in the Cannon Hygiene and Kilkenny Electrical premises. They also questioned the Commissioner's justification for applying €130/tonne for silos and €10/tonne for bins without being in a position to differentiate between the two types. They argued that the Commissioner's expert witness in the Kilsaran case had supported a 20-year life. They also argued that the level of discount of 37% for moving parts in batching plant was established and finally they confirmed that the Commissioner was not in a position to provide any market evidence to support its valuation. They requested that the Tribunal decrease the valuation to €30,200 and specifically attribute a value of €478.13 to the batching plant following agreement on the valuation of the buildings at €35.00/m² inclusive of the yard.

8.9 Mr Devlin on behalf of the respondents stated that yards had been valued and should be valued as indicted in the valuation based on 10% of the warehouse value. He argued that the plant had been valued on a similar basis to other such plants and requested the Tribunal confirm the valuation of €44,600.

9. SUBMISSIONS

9.1 No legal submission were made.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Kilkenny County Council.

10.2 No issue arises in relation to the value attributed to the building agreed at €29,764, however the appellants argument with strong supporting evidence from Leinster Stone PN 230429, Cannon Hygiene PN 106936 and Kilkenny Electrical Wholesale Limited PN 209271 convinced the Tribunal that it was correct and equitable to include the yard area in the overall value of €35.00/m².

10.3 The Tribunal accepts that the plant dated from c. 1979. It noted that Mr Field as an expert witness for the Commissioner had stated that a refurbished plant could have a working life of at least 20 years. However, no evidence was adduced to state that the plant had been refurbished. The Tribunal notes that it is not obliged to follow the reasoning in another Tribunal case, nonetheless in the absence of any evidence to show that a 38-year-old concrete batching plant was economically viable it has concluded that the plant while operational was well past its economic useful life and would have a relatively nominal residual value. The Tribunal noted the evidence from PN210231 John Dalton & Co., a grain drying plant and it agrees with the appellants that a grain drying plant was not comparable to a concrete batching plant. Furthermore, no evidence was provided as to the age of the Dalton plant however from the photographs provided it appeared to be of a more recent vintage.

10.4 As there was no agreement between the parties as to what constituted a silo and a bin the Tribunal arranged to visit the site. It noted that the plant was old and accepted that it was c. 38 years old and while continuing to operate was past its economic useful life. Consequently, the Tribunal finds that the approach to valuation adopted by the appellants more correctly reflected the actual condition and age of the plant.

10.5 The appellants provided a quotation from Concrete & Quarry, albeit very brief which provided a cost for a refurbished Teka 750 pan mixer and 70-ton cement silo at €61,680 plus vat for an equivalent plant comprising a 'mixer & silo'. As this was the only evidence adduced on this point it has been accepted by the Tribunal as the cost of a modern refurbished equivalent plant. Following on from this finding the Tribunal has accepted the approach to the valuation of the batching plant adopted by the appellants which is based on a similar determination in the John Spollen (Glasson) Ltd. t/a Spollen Case (VA17/5/04).

Concrete & Quarry replacement cost	€ 61,680
Less moving parts-37%	€38,858
Plus fees 10%	€42,744
Less depreciation 90% (the plant has a nominal residual value as it is 38 years old and well past its economic useful life of 20 years)	€4,274
Plus site -nominal value	€5,274
NAV @5%	€263.70

10.6 The value of the buildings including the yard has been determined at €29,764 plus €263.70 = €30,027 say €30,000.

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 €30,000.

And the Tribunal so determines.