

Appeal No: VA17/5/060

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

ANTHONY DOYLE & VALERIE DOYLE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2210694, Industrial Uses at 23B Hebron Industrial Estate, Hebron Business Park, Kilkenny, Co Kilkenny.

B E F O R E

Rory Lavelle – MA, FRICS, FSCSI, ACI Arb

Deputy Chairperson

Hugh Markey –FRICS FSCSI,

Member

Caroline Murphy - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF JANUARY, 2019**

1. THE APPEAL

1.1 By Notice of Appeal received on the 3rd 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 €49,400.

1.2 The grounds 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:

“1. We feel the current valuation of €49,400 per annum is too high. We are currently in a 10-year lease and our current rent is €28,000 per annum.”

“Our competitors (PN 1034159) located at Loughboy Industrial Estate, Kilkenny are being valued at a much lesser rate than us. They are being charged at 35 NAV € per metre squared. We are being charged at 54 NAV € per metre squared.”

2. The second ground of appeal was that *“the usage on the valuation certificate states us as being Showroom (Industrial). Please find attached a copy of a change of usage from Kilkenny County Council changing our usage from Warehouse Showroom to children’s soft play centre.*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €32,053.52

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 €31,900.

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 and an inspection of the property the valuation of the Property was increased to €49,400, reflecting the corrected floor area.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €49,400.

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 2nd day of November, 2018. At the hearing the Appellant was represented by Mr John Algar BSc. (Surveying) AssocSCSI AssocRICS of GVA Donal O Buachalla 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 comprises an industrial unit, in use as a children's indoor play centre, located in Hebron Industrial Estate, Kilkenny.

The areas were agreed:

Ground Floor 864.23 sq. m.

Mezzanine 103.17 sq. m.

The premises are held on a sub- lease for a term of 10 years from 01 November 2012 at a current passing rent of €35,000pa from the rent review in 2017. The initial rent was €28,000pa excl.

5. ISSUES

The sole issue in this appeal is one of quantum.

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 Algar, in his direct evidence, described the subject as an industrial building at the rear of a furniture/lighting showroom. He confirmed that the premises were held on a lease from 2012 at a rent of €28,000pa ex. vat. And this had been reviewed, in 2017, to €35,000pa. He suggested that the rental of the premises was the most relevant. He noted how the warehouse element of the front part of the building was valued by the Respondent at a rate of €40 per sq. m. Furthermore, the mezzanine element of this comparable was valued at €8 per sq. m. and was similar in nature to the subject's mezzanine.

7.2 He introduced three comparisons, all premises adjacent to the subject. He said that a rate of €8 should be applied to the mezzanine, in line with that applied to the storage mezzanine of the front building.

7.3 In cross examination, he confirmed that there was adequate car parking attaching to the premises and for the use thereof.

7.4 In response to a question regarding the relative qualities of the subject and his first comparison, Mr Algar suggested that the subject, which shared some of the characteristics of the front building insofar as display windows was concerned, was inferior because it was located in a cul de sac and lacked the prominence of the front building.

7.5 He confirmed that, apart from the subject, he did not put forward any other rental evidence. He accepted that there was not a single tone in the valuations but accepted there were showrooms valued at €54 per sq. m.

7.6 In response to a query as to whether the rate of €40 per sq. m. was used in respect of warehouses, Mr Algar responded by stating that each property should be assessed individually.

8. RESPONDENT'S CASE

8.1 Mr Devlin gave evidence that the subject was in a good location in the park; had good car parking to the front and side.

8.2 He introduced six Key Rental Transactions located in Hebron, Loughboy and Purcellsinch Industrial Estates in Kilkenny which analysed at adjusted rents in the range €20.16 - €60.79 per sq. m. He suggested that the letting at €20.59 per sq. m. was an 'anomaly'.

8.3 He noted that there were 41 industrial properties valued at €45 per sq. m. in the Kilkenny City area.

8.4 He introduced seven comparisons of Equity and Uniformity. These were all adjacent to the subject premises in Hebron Industrial Estate. Five were showrooms; one was a showroom and warehouse; while one was purely a warehouse. He said that rates of €54 & €60 per sq. m. were applied to showrooms depending on their size and warehouses were valued at €45 per sq. m.

8.5 In cross examination, Mr Devlin outlined how the band of values ranging between €35 and €50 per sq. m. had been arrived at after a consideration of the rental evidence and this had fed into a decision to apply a rate of €54 per sq. m. to those industrial properties in use as showrooms.

8.6 When asked about the rate applied to the mezzanine area (€27 per sq. m.), he responded that a rate of 50% of that applied to the ground floor and this was similar space to the 'front' building; if it had been a full floor showroom, the full 100% rate would have been applied.

9. FINDINGS AND CONCLUSIONS

9.1 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. CONSIDERATION OF THE EVIDENCE

10.1 In an appeal, the onus is on the Appellant to put forward a basis as to why the valuation should be altered. In this instance, the Appellant has relied heavily on the letting evidence of the subject but written confirmation had not been provided. His other evidence was the rate applied to the showroom element of the front building (€48 per sq. m.), something the Respondent suggested was a mistake. His second comparison was a much larger, two level showroom premises extending to more than 3,000 sq. m., approximately three times the size of the subject and therefore not immediately comparable. It was valued at a rate of €36 per sq. m. for the showroom element on ground and first floors. The Appellant's third comparison had been valued as 'offices and warehouse' and in the view of the Tribunal was not comparable.

10.2 The Respondent, on the other hand, had submitted evidence supporting the rental tone adopted both in terms of rental and tone of the list comparisons.

10.3 The Tribunal did find, however, that the rate adopted by the Respondent for the mezzanine was not supported by the evidence of what was described as an equivalent to that in the front building. The mezzanine offices to the front had been assessed at a rate of €16 per sq. m., while the stores at this level were valued at a rate of €8 per sq. m. The Tribunal determined that the mid-point between these figures (€12 per sq. m.) was an appropriate level to apply to the mezzanine of the subject.

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 €47,900

Level 0 864.23sq. m. @ €54 per sq. m. €46,668.42

Mezzanine 103.17 sq. m. @ €12per sq. m. € 1,238.04

Total €47,906.46 say. €47,900

And the Tribunal so determines