

**Appeal No: VA17/5/361**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**COCOON CHILDCARE**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2168739, Crèche (Purpose Built) at 1b Millennium Park, Sallins Road, Naas, County Kildare.

**B E F O R E**

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

**Deputy Chairperson**

**Barra McCabe – BL, MRICS, MSCSI**

**Member**

**Michael Connellan Jr - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 26<sup>TH</sup> DAY OF FEBRUARY, 2019**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 10<sup>th</sup> day of October 2018 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 €72,500.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

- The Valuation of the subject property is excessive and inequitable. It is not in line with its actual and potential rental value.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €46,100.

## **2. REVALUATION HISTORY**

2.1 On the 10<sup>th</sup> day of March 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 €72,500.

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 manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on 7<sup>th</sup> day of September 2017 stating a valuation of €72,500.

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 25<sup>th</sup> day of October 2018. At the hearing the Appellant was represented by the Mr Eamonn Halpin BSc (Surveying), MRICS, MSCSI and the Respondent was represented by Ms Louise Hogan 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.

4.1 The subject property comprises a modern purpose-built crèche constructed c. 2005 and located in Millennium Business Park Naas, Co. Kildare. The surrounding area comprises a mixture of commercial and residential developments. The floor area is agreed at 659.92 m<sup>2</sup> and the property is held on a 10-year lease from August 2015 subject to a base rent of €55,000 per annum or a maximum of 12.75% of turnover. The initial lease was for a term of 10 years from 1 August 2005 subject to a rent of €115,000 per annum.

4.2 The subject property is a modern single storey crèche with concrete floors, block walls and a rendered finish externally. It has double glazed windows and a tiled and slated roof. The property has a capacity for up to 100 children and is laid out with a central play area with designated rooms of all sides include kitchen baby rooms toddler rooms ECCE and after-school rooms as well as an outdoor play area which has a canopy and on-site car parking.

4.3 The S 45 form provided by the occupier stated that the rent for 2015 was €72,000pa.

## **5. ISSUES**

5.1 The appellants stated that the valuation of the subject property is excessive and inequitable and that the value as applied by the Commissioner is not in line with its actual and potential rental value. They state that the subject property is subject to a 10-year lease from 2015 and €55,000 per annum (€44,715net of vat) and subject to a top up of 12.75% of turnover. This arrangement, it is argued by the claimants was agreed to by the tenants at renewal in order to slowly reduce the rent from €115,000 per annum from the 2005 lease as the landlord did not wish to reduce the rent at renewal and the tenants did not wish to surrender the unit due to the high cost of the original fit out. They further claimed that the gross rent has fallen each year since the arrangement came into place and is currently at €70,000 per annum net and will continue to reduce until the minimum rent the €55,000 (€44,710 net) per annum applies.

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

6.1 The net annual value of the Property must 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 Eamonn Halpin on behalf of the appellants stated that in his opinion the valuation should be based on the base rent of €55,000 per annum as this is what he claimed the hypothetical tenant would have bid at the valuation date. He further claimed that the rent which is subject to a top up of 12.75% of turnover is specific to the actual occupier which resulted in rents for 2015 of €78,000, 2016 of €83,000 and 2017 of €88,000.

7.2 Mr Halpin also claimed that subject property had an occupancy of 70% versus 90% in Celbridge whereas Celbridge had a rent of €107.36/ m<sup>2</sup> versus the subject property is €83.34/ m<sup>2</sup>.

7.3 Mr Halpin also claimed that the net profit margin for the Cocoon group as a whole was 2% whereas an equivalent chain in the UK could hope to achieve a profit in the region of 20%.

7.4 In support of his claim that the property was overvalued Mr. Halpin relied on 3 comparisons.

7.5 The first, Giraffe Childcare in M4 Business Park Celbridge comprised a purpose-built crèche completed circa 2006 which had been extended c. 2011 and now comprised 646.36 m<sup>2</sup>. It was let on a 10-year full repairing and insuring lease from 18 September 2017 at €91,500 per annum and had been originally let for 9 years and 9 months from 17 December 2007 at €141,500 per annum. The NAV in this instance was €45,200 which he analysed at 646.36 m<sup>2</sup>@ €70.00/ m<sup>2</sup>. He contended that this was arguably the best crèche Kildare and maintained that it was significantly superior to the subject property yet had been assessed by the Commissioner €70.00. m<sup>2</sup>.

7.6 The 2<sup>nd</sup> comparison referred to The Good Shepard Crèche in The Curragh which had been let on a 2-year lease from 12 April 2017 at €8,700 per annum and it was analysed as follows 211.96 m<sup>2</sup>@ €41.25/ m<sup>2</sup>. The Commissioners assessment was 211.96 m<sup>2</sup> at €110/ m<sup>2</sup> = €23,300. The appellants accepted that this property was inferior to the subject property however they

claim that the analysis of the rent did not accord with the Commissioner's view that this property should be valued at €110/ m<sup>2</sup> and argued that there was a fundamental flaw in the Commissioners analysis.

7.7 The final comparison referred to Cocoon Childcare, Hazelhatch Park Celbridge which comprised a modern purpose-built crèche c.2007 and had been let from 1 December 2009 at €44,715 net of VAT. The appellant stated that the December 2015 rent review was passed over by both parties with an unchanged rent. The appellants analysis provided the following  
416.48 m<sup>2</sup> @ €107.36/ m<sup>2</sup> = €44,713.

The appellant's claimed that this rent conflicted with the Commissioners assessment of  
416.48 m<sup>2</sup> @ €110/ m<sup>2</sup> = €45,811 say €45,800.

This case is under appeal to the Valuation Tribunal.

7.9 The appellants argued that the estimated NAV as at 31 October 2015 should be as follows  
Crèche 659.92 m<sup>2</sup> @ €84.00/ m<sup>2</sup> = €55,433 say €55,400.

7.10 During cross-examination the appellants confirmed that the S46 form returned by the occupier confirmed that the rent for 2015 was €72,000. However, while he agreed that the crèche was performing well, he claimed that a hypothetical tenant could not and would not base a rental bid on turnover which would be unknown to him. He further stated that this position was agreed by the valuation office in relation to Dundrum town centre turnover rents. Mr Halpin stated that the base rent was a fair rent and it was based on a lease renewal. He further claimed that the rate of €70/ m<sup>2</sup> in Giraffe in the M4 business Park at Celbridge should be applied to the Millennium Park. He agreed that the rent in this instance at €91,500 per annum was approximately double the NAV.

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

8.1 Ms. Louise Hogan represented the Respondents and confirmed that the subject property was located near the front entrance of Millennium Business Park in Naas adjacent to commercial and residential developments. She also provided a block plan and an internal layout sketch which described the subject property as a modern purpose-built crèche with capacity for up to hundred children. She stated that the crèche is currently operating at full capacity and confirmed the floor area was not in dispute and are agreed at 659.92/ m<sup>2</sup>.

8.2 Ms. Hogan stated that the property was held under an FRI lease for 10 years from 1 August 2015 subject to a base rent of €55,000 (net) and a top up of 12.5% of turnover. She confirmed that the original lease had been for 10 years from 2005 at a rent of €115,000 per annum. She further stated that the appellant had confirmed that the rent paid for the last 3 years were as follows

Year	Rent Amount €
2015	€78,000
2016	€83,000
2017	€88,000

She further stated that the rent amount as at the valuation date of 30<sup>th</sup> October 2015 included in the S45 form provided by the occupier was €72,000 per annum. To support the Commissioners contention that the valuation of €72,500 is correct Ms Hogan relied on two items of market information and 6 comparisons.

8.3 The first Key Rental Transaction is the subject property and refers to a crèche occupied by Cocoon Childcare in Millennium Business Park Naas which was a purpose-built crèche originally let for 10 years from 2005 at €115,000 per annum (excl. VAT) with a lease renewal from 1 August 2015 subject to a base rent to €55,000pa (excl. VAT) The turnover rent was €72,000 as at the valuation date with an NER of €69,840. The NAV was calculated as follows  
 $659.92\text{m}^2 @ €110.00/ \text{m}^2 = €72,500.$

In relation to this property representations were submitted however no amendment was made to the valuation and it is subject to a Valuation Tribunal Appeal.

8.4 The 2<sup>nd</sup> key rental transaction referred to a purpose-built crèche at Hazelhatch Park, Celbridge which was let on a 20year lease from December 2009 at €55,000 per annum inclusive of VAT.

Representations had been submitted in this instance and the rate of €150 per square metre was reduced to €110 per square metre amending the draft NAV from €62,400 to €45,800. The NAV analysis as follows

$$416.48/ \text{m}^2 @ €110/ \text{m}^2 = €45,812.80$$

Say €45,800.

This NAV is subject to a Valuation Tribunal Appeal.

8.5 Ms Hogan provided 6 NAV comparisons 5 of which were subject to representations and four were under appeal to the Tribunal.

**Comparison 1**-refers to a modern purpose-built crèche at unit 10 Monread Leisure and Commercial Centre Naas.

Level	Use	Area M <sup>2</sup>	NAV (€/ m <sup>2</sup> )	NAV €
0	Crèche	405.46	110.00	€44,600.60
1	Crèche	94.15	77.00	€7,249.55
				€51,850.15
			Rateable Valuation	€51,800

This property is subject to a Valuation Tribunal Appeal.

**Comparison 2**-refers to Acorn Montessori and Crèche Oberstown, Sallins Co. Kildare it is a modern purpose-built facility approximate 2 miles from Sallins.

Level	Use	Area M <sup>2</sup>	NAV (€/ m <sup>2</sup> )	NAV €
0	Crèche	216.07	110.00	€23,767.70
1	Crèche	88.42	77.00	€6,808.34
				€30,576.04
			Rateable Valuation	€30,500

This property was subject representations, but the valuation was not reduced, and the property is not subject to a Valuation Tribunal Appeal.

**The 3<sup>rd</sup> comparison** refers to Inspire Child Development Centre 3 Devoy Quarter Limerick Road Naas and is referred to as a purpose-built two-storey crèche which is part of an apartment complex and the Osprey Business Park.

Level	Use	Area M <sup>2</sup>	NAV (€/ m <sup>2</sup> )	NAV €
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0	Crèche	150.00	110.00	€16,500.00
1	Crèche	90.00	77.00	€6,930.00
				€23,430
			Rateable Valuation	€23,400

This property was not subject to representations or a Valuation Tribunal Appeal.

**The 4<sup>th</sup> NAV comparison** refers to a crèche occupied by Cocoon Childcare Sallins County Kildare and comprises a modern purpose-built crèche.

Level	Use	Area M <sup>2</sup>	NAV (€/ m <sup>2</sup> )	NAV €
0	Crèche	390.00	110.00	€42,900.00
				€42,900.00

This property was subject to representations were of the valuation was not reduced. The property is subject to a Valuation Tribunal Appeal.

**The 5<sup>th</sup> NAV comparison** refers to Tots Crèche Unit B Roseberry Newbridge which is a modern two-storey purpose-built crèche and following representations the valuation was amended from €52,500-€48,200 as the first-floor rate was reduced from €110/ m<sup>2</sup> to €77/ m<sup>2</sup>.

Level	Use	Area M <sup>2</sup>	NAV (€/ m <sup>2</sup> )	NAV €
0	Crèche	346.53	110.00	€38,118.30
1	Crèche	131.46	77.00	€10,122.42
				€48,240.72
			Rateable Valuation	€48,200

This property is subject to a Valuation Tribunal Appeal.

**The 6<sup>th</sup> and final comparison** refers to Child's Play Childcare Centre Hazelwood, Newbridge, Co. Kildare which is a modern purpose-built single-storey crèche located on the ground floor of an apartment block.

Level	Use	Area M <sup>2</sup>	NAV (€/ m <sup>2</sup> )	NAV €
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0	Crèche	317.43	110.00	€34,917.30
				€34,900.00

This property was not subject to representations and is not subject to a Valuation Tribunal Appeal.

8.6 During cross-examination Ms Hogan confirmed that there were only 2 key rental transactions available and confirmed there was very limited rental evidence available overall as many of the crèche units were owner occupied. She acknowledged that 4 of her 6 NAV comparisons and all the key rental transactions were subject to appeal. She confirmed that the tone of the list was not established but the key rental transactions indicated the level of €110/m<sup>2</sup>. Ms Hogan stated that in her opinion the location was not as relevant to this type of use as to other more location driven outlets. She accepted that a hypothetical tenant would not have the benefit and knowledge of turnover when making a rental bid.

She did not accept that there was any evidence of a universal mistake and she referred to the NAV comparisons which supported a level of €110/ m<sup>2</sup>.

This concluded the respondent's cross-examination.

8.7 Both parties provided brief summaries requesting that the Tribunal find for the appellants at €55,400 and for the respondents at €72,500.

## **9. SUBMISSIONS**

9.1 No legal submissions were made.

## **10. FINDINGS AND CONCLUSIONS**

10.1 On this appeal the Tribunal must determine the value of the Property 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 Kildare County Council.

10.2 The Tribunal finds that the level of rental transaction evidence and supporting NAV comparisons is very limited based on the evidence provided to it.

10.3 According to the evidence provided by the respondent the Commissioner relied on two Key Rental Transactions as many units were owner occupied and limited contemporary rental evidence was available. In relation to Key Rental Transaction 1 the Tribunal notes the base rent of €55,000pa net of vat and the turnover rent of €72,000. The Tribunal finds that the hypothetical tenant could not and would not have been aware of the accounts and turnover information and accordingly it finds that the base rent should be regarded as the market rent in this instance. This is analysed at  
659.92 m<sup>2</sup> @ €83.42/ m<sup>2</sup>= €55,050.52 Say €55,000.

10.4 In relation to Key Rental Transaction 2 the Tribunal notes that the rent net of VAT is €44,715 which is 416.48 m<sup>2</sup> @ €107.36/ m<sup>2</sup>. Consequently, the Key Rental Transactions provide a very mixed picture varying from €82.42/ m<sup>2</sup> to €107.36/ m<sup>2</sup>.

10.5 The Tribunal has noted that rent from the Giraffe Childcare Unit in M4 Business Park should be regarded as an outlier and the rental analysis from the Good Shepherd Crèche at The Curragh was of limited assistance as it referred to a semi-rural location.

10.6 The Tribunal acknowledges the difficulty facing the Commissioner however it finds that the rate per square metre should lie between these two parameters €82.42/ m<sup>2</sup> to €107.36/ m<sup>2</sup>. and finds that an equitable rate in this instance taking account of the evidence provided should be based on €97.50/ m<sup>2</sup>.

**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 €63,300.

659.92m<sup>2</sup> @ €97.50/m<sup>2</sup>= €64,342.20  
Say €64,300.

And the Tribunal so determines.