

Appeal No: VA17/5/026

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

FRANK KANE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1590213, Retail (Warehouse) at 5 Old Connaught Road, Longford, County Longford.

B E F O R E

Dearbhla M. Cunningham - BL

Deputy Chairperson

Liam Daly – MSCSI, MRICS

Member

Eoin McDermott – FSCSI, FRICS, ACI Arb

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF FEBRUARY, 2019**

1. THE APPEAL

1.1 By Notice of Appeal received on the 27th day of September 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 €65,300.

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: *“It is not subdivided”*.

1.3 It is common case that the property should be sub-divided for rating purposes into two units, namely Blocks 1-8 occupied by the freehold owner Frank Kane (“Blocks 1-8”) and

Blocks 9-12 (“Blocks 9-12) occupied by a tenant JD Lawnmowers. The Appellant also seeks a reduced assessment to a value of €13,000 for Blocks 1-8 and €10,000 for Blocks 9-12.

2. REVALUATION HISTORY

2.1 On the 12th day of January 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 €73,600.

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 €65,300.

2.3 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €65,300.

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 7th day of December 2017. At the hearing the Appellant was represented by the Mr David Halpin MSc (Real Estate), BA (Mod) of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr Karl Gibbons, BSc Property Valuation and Management, Higher Diploma in Business Studies (Information Technology) 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 It is common case that the property should be sub-divided for rating purposes into two units, namely Blocks 1-8 occupied by the freehold owner Frank Kane (“Blocks 1-8”) and Blocks 9-12 (“Blocks 9-12) occupied by a tenant JD Lawnmowers. The accommodation was agreed. The only issue for the Tribunal was the quantum for the sub-divided properties.

4.3 The Property is located on Connaught Road in Longford town. It is approximately 600 meters from the commercial centre of the town on a road that was the main Mayo/Dublin Road (N5) but is bypassed since 2012.

Blocks 1-8

This comprises a motor factors, workshop and stores. It was constructed in the 1960s/1970s and consists primarily of single skin industrial structures with an average of 4m eaves. It is occupied by Frank Kane, a motor factors, who holds the freehold.

Blocks 9-12

This is occupied by JD Lawnmowers under a lease from Frank Kane. This comprises a showroom and is a newer and better building. It was constructed in two parts, in 2000 and 2007, at a cost of approximately €125,000. There was some dispute around whether the walls were of single or double skin construction. The Tribunal accepted that it was of basic construction with a metal portal and double skin roof and a glass front showroom.

4.4 It was vacant for a number of years before being let to the current occupier on a four-year, nine-month lease from 28th April 2017 at a rent of €9,900 per annum (the ground floor rent devalues at €13 per sm). The occupier had installed shutters at a cost of €8,500 plus VAT on taking up occupation and those shutters would be left in the premises at the end of the lease. The Tribunal took this into account in considering the lease terms and the rent payable thereunder.

5. ISSUES

5.1 It is common case that the property should be sub-divided for rating purposes into two units, namely Blocks 1-8 occupied by the freehold owner Frank Kane (“Blocks 1-8”) and Blocks 9-12 (“Blocks 9-12) occupied by a tenant JD Lawnmowers. Therefore, the only issue on appeal was 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 The Appellant contended for a valuation of €13,000 on Blocks 1-8 and €10,000 on Blocks 9-12 contending for a rate of €13 psm.

7.2 The Appellant described the location of the property and submitted it was poor as it was bypassed. The property is located on the Connaught Road in Longford town which is located 600 metres from the centre of the town. That road is bypassed since 2012 having been part of the main Dublin-Westport road.

7.3 The Appellant detailed the nature of the property and submitted that the standard of the buildings was poor. Blocks 1-8 are occupied by Frank Kane in use as a motor factors, workshop and stores. They were constructed in the 1960s-1970s and consist primarily of single skin industrial structures with an average of 4m eaves. Frank Kane has freehold title to this property.

7.4 Blocks 9-12 are occupied by JD Lawnmowers and are in use as for the purposes of lawnmower sales and service. It was formerly in use as the Longford Motors Showroom operated by its landlord, Frank Kane until the end of 2011. It was vacant from then until it was let to JD lawnmowers. It was submitted that it was available to let for 5 years and drew no interest as a car showroom. Now, JD Lawnmowers occupy the showroom under a four-year, nine-month lease from 28th April 2017 at a rent of €9,900 from Frank Kane who has the freehold interest. The Appellant submitted this devalues at €13 per m. The JD premises is of basic construction being a glass fronted warehouse constructed in two parts between 2002 and 2007 at a cost of €125,000. The Appellant was requested by the Tribunal to confirm the nature of the construction following which it was confirmed that Blocks 9-12 comprise a double skin roof and single skin side panels (above concrete or glazed sections). Blocks 9-12 were constructed in two parts, the first in 2000 and the second in 2007 of simple metal portal frame with part concrete block walls. There is no wall insulation.

7.5 The lease agreement refers to an obligation on the tenant to supply and fit security shutters on the premises on signing the lease at this own expense and shall leave same in place at the end of the tenancy. The Appellant was requested by the Tribunal to provide further information regarding the shutters installed on the property and to clarify whether they had been there originally. It was confirmed by the Appellant that the shutters were installed by the tenant, JD Lawnmowers, at a cost of €8,500 plus VAT and they will be left when the tenant vacates the property at the end of the lease. There is another occupier, Stewart Oil, who occupy the filling station, and which is not under appeal. All the yards are shared between the three occupiers.

7.6 The Appellant submitted that the low rent reflected the low quality of the accommodation, the large choice of properties on the market and the poor location of the property. The Appellant submitted this while basic is the best building on the site. On that basis, the Appellant submitted it followed that Blocks 1-9 would have a lower rental value than Blocks 9-12 as they are of poor quality. It was submitted that the property was not attractive to car dealers.

7.7 The Appellant submitted that Longford town has the third highest vacancy rate in Leinster averaging 21% commercial vacancy. It also relied on rental evidence in particular the rate at which Blocks 9-12 had been let in 2017 and also submitted that this rating area has one of the lowest occupancy rates in the country.

7.8 The Appellant relied on a number of rental comparisons and submitted that the lease of Blocks 1-9 was fully in line with the comparisons taking into account its construction type, size and actual location referring to showroom/fitted industrial of similar size which is leased on the Athlone Road at €10-20 psm. The Appellant sought to have the valuation in line with the comparables in the list in terms of its actual rent potential. The Appellant submitted that the JD tenant could equally occupy any of the comparisons without necessitating a change in use on the its investigations on the zoning and planning profile of the area.

7.9 The Appellant submitted that the tone of the list for industrial properties in Longford is still emerging in circumstances where there are several extant appeals. The Appellant submitted that JD Lawnmowers would not require a change in use to occupy any of its comparisons. The Tribunal queried the basis on which the Appellant arrived at this conclusion and allowed the Appellant an opportunity to respond to that query in writing following the oral hearing. Similarly, the Respondent was given an opportunity to respond to this in writing. In response, the Appellant submitted in writing that it had investigated the zoning objectives in the Local Area Plan and the County Development plan and in its view, there was no reason a change of use would be required. It noted that Blocks 9-12, Comparisons 1 and 3 were zoned commercial industrial. Comparison 2 is zoned industrial commercial. The Appellant relied on a discussion with a planner in Longford County Council to assert that: (1) both uses are permitted with the emphasis on the first use over the second use, (2) in terms of existing premises, users are free to move within these categories.

7.10 In summary, the Appellant sought the reduction in circumstances where it submitted the current NAV does not tally with the rental evidence on site nor the rental evidence of superior comparisons on the Athlone Road. It submitted that the rental evidence on site of €13 psm is justified in view of the property type, location and level of vacancy in the town which supplies the hypothetical tenant with a multitude of showroom type properties to choose from in the open market.

8. RESPONDENT'S CASE

8.1 The Respondent contended for a valuation of €20,720 in respect of the Blocks 1-8 and €21,630 for Blocks 9-12.

8.2 The location of the property is close to the centre of Longford town being 500 metres from the main street.

8.3 The Respondent submitted that the walls and roof are of double skin cladding in JD Lawnmowers. The Respondent relied on a physical inspection of the property noting that the roof and walls to the rear of the property are corrugated externally while internally the surface was smooth which would indicate that there was an inner and an outer skin classifying it as a double skin construction.

8.4 The Respondent relied on four comparisons to inform its estimate of NAV of the property. These key rental transactions are set out at **Appendix II**. Those transactions were investigated and analysed to arrive at a net effective rent which was submitted to the Tribunal in support of its position for the purposes of s.48 of the Act. The Respondent explained its approach to Blocks 1-8 whereby the valuation level devolves at €17 psm with a 20% premium to the showroom element of the property. In terms of Blocks 9-12, a valuation level of €25 was applied with a 20% premium for the showroom element of the property. The Respondent rejected the Appellant's submission that the rental level of the subject property was appropriate as it submitted that the rent was out of line with other rents in the area submitting that it was significantly under-rented. The Respondent countered that the current rent payable by the current occupier is out of line with rents in the area. The Respondent relied on 4 key rental transactions set out at **Appendix II**. The Respondent submitted that the property was consistent with the NAV comparisons.

8.5 The Respondent was afforded an opportunity to respond in writing to the Appellants' written submission on the change of use issue. The Respondent submitted an email from an executive architect and planner in Longford County Council attaching relevant planning documents. That email confirmed that JD Lawnmowers would require a change in use to occupy any of the three comparisons relied on by the Appellant noting that comparison 1 changed its use to Leisure Centre on the 23rd September 2001. Comparison 2 has a mixed use of industrial, warehousing and commercial. Comparison 3 has planning for warehousing/storage repository and the limitation on the use that it may not be used for the purpose of retail without permission. The Respondent disputed the assertion that JD

Lawnmowers would not require a change of use to use any of the Appellant comparisons on the basis of planning documentation from the local authority.

8.6 The Respondent pointed out that at Representations stage the valuation was reduced from €73,500 to €65,300 to take into account its size and location in terms of its valuation as a car showroom. The Respondent pointed to a low appeal rate in Longford County Council area indicating that appeals to the Tribunal were at a rate of 3.36% of total proposed valuation certificates issued.

8.7 In summary, the Respondent submitted the property was valued in line with industrial warehouses with a premium for the showroom element of the property. In this case, there was an adjustment to reflect the poorer building so that Blocks 1-8 were based on a lower rate than Blocks 9-12.

9. SUBMISSIONS

9.1 There were no legal submissions made in the case.

10. FINDINGS AND CONCLUSIONS

10.1 The Tribunal found that the Appellant's tone of the list comparison was not comparable on the basis of the location of that comparison (see **Appendix I**). In terms of NAV Comparisons, the Tribunal accepted the Respondent's Comparison 1 as comparable in size and location (see **Appendix II**). This comparison is located directly across the road from the subject. It is an old industrial building with a showroom element. It is similar in particular to Blocks 1-8 in terms of size and type of building. An addition of 20% for the shop/showroom over the warehouse had been applied.

10.2 The Appellants rental comparisons on which the Tribunal relied are set out in **Appendix I** to this determination. The Tribunal found that the Appellant's rental comparisons were comparable in terms of size of the properties. However, Comparison 1 was not comparable as it was in use as a leisure use in a superior location. There was some dispute about whether JD Lawnmowers would require a change of use to occupy any of the Appellant's comparisons. On balance, the Tribunal found that the Appellant had not established on the balance of probabilities that there would be no requirement for a change of use on the basis of the more persuasive evidence put forward by the Respondent.

10.3 The Tribunal preferred the Respondent's rental evidence which are set out in **Appendix II** to this determination. Its rental comparisons were considerably more proximate to the subject property than those of the Appellant. The Appellant relying on both the subject property and rental comparisons from the Athlone Road side of the town. The Tribunal found rental Comparison 3 to be the most comparable of the Respondent's comparisons in terms of size. The was leased under a three-year lease at a rent of €29,496 and a NER of €28,611 as at 30th October 2015 which devalues at €33.50 psm for the warehouse

10.4 The Tribunal found that the Appellant had not established based on the evidence before it that Blocks 1-9 to be inconsistent with what is the emerging tone of the list. The Tribunal determined that Blocks 9-12 should be reduced on the basis that the uplift from Blocks 1-9 is not justified by reference to the building quality. The Tribunal accepted the 20% premium for showroom in circumstances where no case was made by the Appellant against this approach in principle.

10.5 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 Longford County Council. The Appellant sought an assessment on the basis of a rate of €13 psm. The Respondent submitted that the current rent on Blocks 9-12 is not reflective of the NAV of the subject property at the valuation date. The Respondent submitted that a rate of €17 psm be applied to Blocks 1-8 with a 20% premium for the shop/sales counter part of the property with a rate of €25 to be applied to the warehouse to be applied to Blocks 9-12, a 20% premium for the showroom giving a rate of €30 and a lower rate of €5 in respect of the stores. The Respondent submitted that a value of €20,720 in respect of Blocks 1-8 and €21,630 in respect of Blocks 9-12.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal determines that the property be sub-divided into two units for rating purposes: namely, Blocks 1-8 occupied by Frank Kane and Blocks 9-12 occupied by JD Lawnmowers.

The Tribunal confirms the Commissioner's value of €20,720 for Blocks 1-8 occupied by Frank Kane.

The Tribunal further determines that the quantum of Blocks 9-12 occupied by JD Lawnmowers be reduced to a total NAV of €18,000 which is broken down as follows:

Level	Use	Area (sq. m)	€/per sq. m	NAV
0	Showroom	196.88	€24	€4,725.11
0	Showroom	272.17	€24	€6,932.08
0	Warehouse	283.86	€20	€5,877.20
Mezz	Store	93.32	€5	€466.60
			Total NAV	€18,000.99

Say €18,000.00

And the Tribunal so determines.