

Appeal No: VA17/5/278

**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. 2186558, Crèche (Purpose Built) at Marlfield Hall, Kiltipper Road, Tallaght, County Dublin.

B E F O R E

Hugh Markey – FSCSI, FRICS

Deputy Chairperson

Dairine Mac Fadden - Solicitor

Member

Caroline Murphy - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 13TH DAY OF MAY, 2019

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th 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 €49,500.

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

- The Valuation is excessive and inequitable. The property’s value as applied by the Commissioner is not in line with its potential rental value.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €28,000.

2. REVALUATION HISTORY

2.1 On the 13th day of April, 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 €49,500.

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 the 7th day of September stating a valuation of €49,500.

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 5th day of March, 2019. At the hearing the Appellant was represented by Mr Eamonn Halpin BSc (Surveying), MRICS, MSCSI of Eamonn Halpin & Co Ltd and the Respondent was represented by Ms Ciara Marron MSc, BSc, MSCSI, MRICS, District Valuer 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 at Marlfield Mall, Kiltipper, Co. Dublin.

4.3 It is a purpose built, ground floor crèche, constructed in 2004.

4.4 The floor area of the subject property has been measured on a Gross Internal Area (GIA) basis, as follows;

Crèche (ground floor) 330.40 sq. m

The valuers have agreed the floor area.

5. ISSUES

5.1 The issue that arises in this appeal is the matter 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. Halpin said the subject property is located in a residential location with a small commercial development.

7.2 Mr. Halpin said the property is currently held on a related parties leasehold basis from 2005 at a rent of €42,000 per annum at commencement. This was commuted to €28,000 per annum in phases up to 2015. The Landlord and the Tenant have common directors, and the rent reflects finance agreements.

7.3 Mr. Halpin argued that the providing of private childcare facilities in Ireland is not a profitable enterprise, following the economic collapse in 2007. He further said that crèches face the challenge of HSE mandatory minimums in terms of staff numbers and space requirements per child, together with high operating costs.

7.4 Mr. Halpin said all evidence points towards a range of €75 per sq. m for the subject property. Mr. Halpin argued that Co. Kildare was valued at the same valuation date as South Dublin and that the Tribunal has determined Cocoon (Sallins) at €95 per sq. m and Cocoon (Celbridge) at €107 per sq. m. He said the occupancy rates and monthly charges of occupiers in both counties are very similar however the subject's location is significantly more disadvantaged. Mr. Halpin argued that while the Appellant accepts the Commissioner has valued all properties in the "purpose built" category at €150 per sq. m, this is not the only category of crèche to be found in South Dublin. The Respondent has valued the "crèche: office" category at €130 per sq. m and that these properties were valued on a Net Internal Area (NIA) basis and that "purpose built" crèches are valued on a GIA basis. Mr. Halpin further argued that in order to establish the equivalent GIA level based on the "office: crèche" category, one would have to "gross up the measurement", resulting in a lower rate per square metre by in the region of 15-25%, namely €97.50-€110.50 per sq. m.

7.5 Mr. Halpin relied on 4 rental comparisons which are set out at **Appendix 1**. Mr. Halpin said that Comparison No.1 and Comparison No. 2 were superior locations with the rent in the latter, a quality business park in a very accessible location, reviewed downwards in 2017. He added that while most sectors were recovering the rent here reflects the market clearly and that the actual rent conflicts with the Respondent's assessment. Mr. Halpin said Comparison No. 3 was also purpose built and had suffered slow commercial activity with a myriad of tenants coming and going.

7.6. Mr. Halpin said his Comparison No. 4 was located on the outskirts of Celbridge in County Kildare. He said there was a 20 year lease on the property with the rent devaluing to €107.36 per sq. m which was reduced by the Tribunal. He noted that this crèche was achieving occupancy of 90% and the €150 per sq. m rate had been applied here also.

7.7 Mr. Halpin relied on tone of the list comparisons which are set out at **Appendix 1**. He said Comparison No.5 was located in a commercial development including a supermarket, betting

shop, pub, medical centre and offices. All these comparisons were valued on a Net Internal Area (NIA) basis. Mr. Halpin also included a local comparison valued at €140 per sq. m which he said was the lowest zone A level applied by the Respondent to anywhere in South Dublin.

7.8 Mr. Halpin said the subject property required security in order to maintain the safety of infants and staff. He said he witnessed the security on one of his inspections.

7.9 During the course of cross examination Ms. Marron asked Mr. Halpin if his comparisons had been valued in compliance with section 49 of the Valuation Act 2001. Mr. Halpin said section 48 states that rent should be value; he accepted they were not on the valuation list. Mr. Halpin referred to the Valuers response in the Revaluation Reps Report which states at Paragraph 2 that, *“The Property Services Regulatory Authority is charged with maintaining a public register of leases and this is an invaluable source of rental information to a Valuation Manager, and his/her team of valuers when conducting the revaluation of a rating authority area. Ratepayers and the public have access to this register.”* The Tribunal put it to Ms. Marron that section 49 relates to section 28(4) revisions which was not relevant in the present case. Ms. Marron said the Respondent is charged with valuing every property. In reply, Mr. Halpin said rental evidence stands on its own.

7.10 Ms. Marron asked Mr. Halpin how he knew the information in relation to his Rental Comparison No.1 was accurate if he had not been in the property. Mr. Halpin said the information had been corroborated by the Agent and Ms. Marron asked whether the agent was in attendance to corroborate it. Mr. Halpin said she had the précis prior to the hearing on this issue and it had not been raised.

7.11 Ms. Marron put it to Mr. Halpin that his comparison No. 4 was located in a different rating authority. In reply, Mr. Halpin said the hypothetical tenant, in considering his rental bid, would not have regard to local authority boundaries.

7.12 Ms. Marron asked Mr. Halpin if he was aware that there were 21 purpose built crèches on the Valuation List in South Dublin County Council including 4 that were being appealed by this Appellant. The Tribunal asked Miss Marron to define purpose built crèches. She answered, that in her opinion, purpose built meant a property that has been given planning permission to be specifically built by a developer and designed as a crèche. In answer to her question Mr.

Halpin said Ms. Marron had given a different definition in answering and that he was not sure how many there were or how rigid the definition of purpose built was and that he could not answer.

7.13 Ms. Marron put it to Mr. Halpin that he had not provided any rental evidence for purpose built crèches to which he said he had and pointed to his comparisons. Ms. Marron questioned Mr. Halpin in relation to Comparison No.2 and Mr. Halpin said he did not know if the property had been appealed but he said the rental information was correct as he had phoned the agent to confirm there was not a conflict in the rent and that it was the case that the rent had reduced in a rent review in September 2017.

7.14 In his submission Mr. Halpin suggested that the Tribunal must examine the level of €150 per sq. applied by the Respondent to properties falling within the definition of purpose built crèches and in so doing must look at the scope of the rental evidence. He said boom time rents which have been commuted have been relied upon by the Respondent in determining the level of valuation to be applied when there was actual fresh rental evidence available for purpose built crèches. He said the valuation had no sound basis for the level of €150 per sq. m applied and asked the Tribunal to rectify this.

8. RESPONDENT'S CASE

8.1 Ms. Marron said in her direct evidence that the subject property was situated in a mixed commercial/residential area in Marlfield Mall and housing estate, just off the Kiltipper Way. She said the property was divided into a number of childcare rooms, office and kitchens. She said there are number of parking spaces to the front of the property and a large car park in the adjacent area. She said she was not aware of any additional security at the property and that it would be the norm for crèches to have security.

8.2 Ms. Marron relied on 6 rental comparisons and 3 Tone of the List comparisons which are set out at **Appendix 2**. In respect of rental comparison No. 3 Ms. Marron accepted that the lease was between related parties but suggested that it might be of some benefit as she understood the occupier had filled out the current market value in the S.45 Report. Ms. Marron said all the Respondents Rental Comparisons were unrelated leases with the exception of this property.

8.3 Ms. Marron sought to clarify the position in respect of properties relied upon not appearing in the Valuation List. She gave evidence that the Respondent was asked to value a property when a request was sent in from the local authority usually through revision. She said often such properties under the ECCE scheme do not pay rates and they do not get sent in.

8.4 The Tribunal referred Ms. Marron to “relevant market data” as set out at Section 19(5) of the Act and asked her to address or comment on this section of the Act. Ms. Marron said if a property wasn’t on the list they would gather as much information as they can and go out and look at their property. Ms. Marron repeated that the Respondent did their best and in keeping with the principle of fairness and that not many S45 Reports were sent in, which she said, were only one tool for the Respondent to look at when valuing a property.

8.5 In cross examination, Ms. Marron accepted that the 25 year lease in respect of Rental Comparison No. 2 was a rent from the boom times in that it was an upwards only lease. Mr. Halpin put it to Ms. Marron that it is a historic lease not a market comparison and doesn't satisfy the Act. Ms. Marron accepted that it wasn’t an open market lease at the valuation date.

8.6 Ms. Marron said the lease for her Rental Comparison No.3 was on a par with market comparisons. Mr. Halpin put it to Ms. Marron that it was the Respondent’s standard practice that little or no weight should be attributed to a related parties lease which she agreed with.

8.7 Ms. Marron said she was unsure of the term of the lease in her Rental Comparison No.4 but that the original lease was at a rent of €79,500. Mr. Halpin put it to her that it was an upwards only lease from 2008 reviewed in 2012 and not an open market lease which Ms. Marron accepted.

8.8 In answer to a question from Mr. Halpin Ms. Marron confirmed that she had not inspected her Rental Comparison No.5 but that someone from the Respondent would have been in it. Mr. Halpin put it to her that it was not a suitable comparison and Ms. Marron clarified that it was an informer to the list as was the Respondent’s Rental comparison No.6.

8.9 Mr. Halpin put it to Ms. Marron that only one of her rental comparisons was a fresh letting and Ms. Marron agreed that the comparisons all had some history with them. In response to a further question from Mr. Halpin in respect of the Respondent’s Rental Comparison No.1 being

an open market level Ms. Marron agreed that €63,000 was not an open market level having been reduced from €104,800.

8.10 In her submission Ms. Marron said as much rental evidence had been gathered and analysed noting that there was a lack of fresh rental evidence. She argued that four of the Appellants rental comparisons do not appear on the list for the Rating Authority in question and to rely on them is unfair. She concluded that the property should be looked at on its individual merits and asked the Tribunal to affirm the valuation.

9. SUBMISSIONS

9.1 There are no legal submissions.

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 relative to the value of other comparable properties on the valuation list in the rating authority area of South Dublin County Council.

10.2 The Appellant put forward several arguments that required the Tribunal to answer two questions, namely:

a) The first question concerned Market Evidence. In her evidence Ms. Marron said that the Respondent did not consider two comparisons relied upon for market evidence by the Appellant, as the Respondent does not rely on properties that do not appear on the Valuation List. The Appellant provided rental evidence in the form of an investment sales brochure from reputable estate agents in respect of two of these properties and a listing from the Property Services Regulatory Authority's Commercial Leases Register, in respect of a third. The Tribunal also notes that the Respondent Valuer's Response at No. 3, paragraph 2 of the Representations Report:- *"Firstly, Section 25 of the Valuation Act 2001 (as amended) allows the ratepayer to make representations to the Valuation Manager who then must consider those representations and following such consideration may amend the valuation of the property which has been the subject of the representation and the valuation of any other similarly circumstanced property."*

The Tribunal also notes the Valuers response at No. 2, paragraph 3 of the Revaluation Reps Report that *"The Property Services Regulatory Authority is charged with maintaining a public*

register of leases and this is an invaluable source of rental information to a Valuation Manager, and his/her team of valuers when conducting the revaluation of a rating authority area. Rate-payers and the public have access to this register.” The Tribunal considers it appropriate to allow the evidence put forward by the Appellant to be considered under Section 48 of the Act.

b) The second question concerned evidence from another rating authority, Co. Kildare. The Tribunal must achieve 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 South Dublin County Council. The Tribunal recognises that Section 19(5) allows the Tribunal to consider other rental evidence from other rating areas but in the present case it is not necessary to consider same as there is sufficient evidence in the rating authority of the subject property, put forward by both parties.

10.3 The Tribunal found the Appellant’s Rental Comparisons No.1 and No. 2 helpful as they included leases dated close to the valuation date and where the rents devalued at rates of €95 per sq. m and €112 per sq. m. The Tribunal considered both comparisons to be located in superior locations to that of the subject property.

10.4 The Tribunal notes that the Appellant’s Rental Comparison No.3 is an open market lease dated 1st January 2016, close to the valuation date of the 30th October 2015. The level of €43.18 per sq. m placed it very much as an ‘outlier’ due to the circumstances of the immediate area and as such the Tribunal placed little value on this comparison.

10.5 The Tribunal has attached little weight to the Key Rental Transaction comparisons relied upon by the Respondent as the rental evidence is historic. Furthermore, the Respondent accepted in evidence that it was historic and not open market. The Tribunal noted the Respondent’s Rental Comparison No.3 was between related parties and consequently has been disregarded by the Tribunal.

10.6. The Tribunal is persuaded by the evidence put forward by the Appellant, in particular his rental comparisons No. 1 and 2, as they are open market rental comparisons of purpose built crèches, located in close proximity to the subject property.

10.7 The Tribunal finds that there is sufficient market rental evidence before it and it does not have to consider the evidence of the ‘emerging tone of the list’.

10.8 In the circumstances, the Tribunal having regard to the isolated location of the subject property, deem it appropriate to reduce the valuation to €33,000.

330.40 sq. m x €100 per sq. m = €33,040

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 €33,000.

And the Tribunal so determines.