

**Appeal No: VA17/5/280**

**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. 394891, Creche (Purpose Built) at 28A Shelton Park, Kimmage, County  
Borough of 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 13<sup>TH</sup> DAY OF MAY, 2019**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 9<sup>th</sup> 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 €53,100.

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 €35,400.

## **2. REVALUATION HISTORY**

2.1 On the 13<sup>th</sup> 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 €53,100.

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 7<sup>th</sup> day of September stating a valuation of €53,100.

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 11<sup>th</sup> day of January, 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, 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 Shelton Park, Kimmage, Dublin 12.

4.3 It is a purpose built creche, of single storey construction, with approximately four car spaces to the front.

The floor area of the subject property has been measured on a Gross Internal basis (GIA) as follows: 54.19 sq. m The valuers have agreed the floor area.

## **5. ISSUES**

5.1 The issue that arises in this appeal is the quantum of value.

## **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 in his direct evidence that the subject property is a ground floor crèche, constructed in 2002 and located in a predominately residential location, with commercial property limited to a small number of local shops. He described the subject property as being “hemmed in” and in a built-up area of Kimmage.

7.2 Mr. Halpin said the property is currently held on a related parties leasehold basis from 2003 at a rent of €107,500 per annum at commencement. This was commuted to €95,000 per annum in 2013. He said this was not an open market rent. 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 €107-€120 per sq. m for the subject property.

7.5 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 were very similar. He said the subject property has a slightly higher occupancy and rate and, in his opinion, would be likely to exceed the €107 per sq. m achieved in Celbridge by the order of 10%. In those circumstances, he said the Appellant believes the hypothetical tenant would pay similar rents for crèche properties in Co. Kildare as in South Dublin.

7.6 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 per sq. m.

7.7 Mr. Halpin introduced 4 rental comparisons with three of these crèches devaluing at between €95 - €112 per sq.m. These are set out at **Appendix 1** to this judgment. The Appellant provided brochures from Agents and an extract from the Property Services Regulatory Authority Commercial Leases Register in respect of these properties.

7.8 In his opinion, Mr. Halpin said that the rental evidence relied upon by the Respondent did not come from the market as they were not fresh rents but rather historic rents. He said it was odd that the Respondent won’t recognise information if it arises from a property that has not been valued by it.

7.9 In respect of Comparison No.1, he clarified that the lease register was different and that he received the information he relied upon through an agent. He said the lease in Comparison No.2, a quality business park in a very accessible location, was reviewed downwards in September 2017 which highlighted the difficulties in the sector. He said he accepted that not every crèche would achieve the valuation of €43 per sq. m in South Dublin as Comparison No.3 had.

7.10 Mr. Halpin relied upon four Tone of the List comparisons as set out in **Appendix 1** to this judgment.

7.11 During the course of cross examination, Mr. Halpin accepted the subject property is purpose built. Ms. Marron put it to Mr. Halpin that a purpose built crèche was superior to a house converted into a crèche. Mr. Halpin did not agree with this assertion and said it depends on where and what the demand is and that crèches are “locationally sensitive”. He agreed that the layout of the subject property was good and had some large spaces. Ms. Marron put it to Mr. Halpin that it was the Respondent’s policy that if it had not valued a property they would not use this information and accordingly the Appellant’s Comparison No. 1 and No. 3 could not be considered. Mr. Halpin contended that a property which wasn’t on the valuation list could be used as rental evidence noting that the Respondent would eventually value such a property. Mr. Halpin said that the floor area in these properties had been corroborated by agents and same had been attached to his précis. In respect of Comparison No.2, Ms. Marron put it to Mr. Halpin that the Agent’s information he relied upon was hearsay evidence. In reply Mr. Halpin said that he had confirmed the figure of €69,105 as opposed to €85,000 which had been the rent previously.

7.12 Mr. Halpin concluded that the Appellant believes that the NAV of the subject property cannot exceed €115 per sq. m, resulting in a valuation of €40,700.

## **8. RESPONDENT’S CASE**

8.1 Ms. Marron said in her direct evidence that the subject property is a purpose built crèche which has approximately four car spaces to the front of the property, which she described as limited. The subject property is a single storey property of block construction, with plastered exterior. Ms. Marron said that internally the property is divided into several childcare rooms, office and kitchens and is finished to a high standard throughout with large spacious rooms and

a large enclosed garden to the rear of the property. Ms. Marron said the property has full planning for a crèche under planning permission reference SD02A/0326. She further said that the subject property used space to the maximum and that it catered for the catchment area where there was huge demand for childcare.

8.2 Ms. Marron said that lease and rent information provided by the occupier in the S45 was relied upon and informed the valuation. She suggested there was a ‘conflict of evidence on the rent’.

8.3 Ms. Marron relied on six Key Rental Transactions which are attached to **Appendix 2** of this judgment. She said Key Rental Transaction No.1 was close to the valuation date and approximately 7 km from the subject property. Ms. Marron said Key Rental Transaction No.2 was on a five year review and approximately 17 km from the subject property. Ms. Marron said Key Rental Transaction No.4 was further away from the valuation date but located close to the subject property.

8.4 Ms. Marron said she included Key Rental Transaction No.5 and 6 to illustrate the typical crèche house which were not purpose built but a standard house with adapted rooms.

8.5 Ms. Marron outlined her opinion that a crèche office was an office development which was a crèche not an office, that a crèche house was very different to a purpose built crèche with smaller rooms, no children’s toilet and not much space. She said for those reasons the valuation for purpose built crèches is higher per square metre than that of crèche houses.

8.6 Ms. Marron said the leasehold information provided in relation to three Cocoon properties in South Dublin dated from 2007-2008 and a 2015 rent. She said it appeared that the leases are between related parties and not open market transactions. Mr. Halpin said that the Appellant couldn’t locate the lease for this property although he had it for the other similarly owned properties. There was some dispute about the rent paid differing from the lease and the Form S45 as submitted by the occupier.

8.7 Ms. Marron said leasehold information had been supplied regarding two properties not on the valuation list. She said the Respondent could not confirm if such information was correct or inspect a property if it was not on the list.

8.8 Ms. Marron relied upon three NAV comparisons as set out in **Appendix 2** to this judgment.

8.9 During the course of cross examination, Mr. Halpin questioned Ms. Marron on NIA and GIA and she said the Respondent must be as fair as they can. Mr. Halpin asked Ms. Marron if she had better evidence such as fresh lettings closer to the valuation date, would she have used such evidence and she replied that she would have looked at them. Ms. Marron accepted that the Respondent's Key Rental Transaction No. 2 was not a new lease and the occupier was not in a position to negotiate. Mr. Halpin asked her if her evidence was tainted in this regard and in reply Ms. Marron said it was not an open market lease but it should still be given weight.

8.10 In respect of Key Rental Transaction No.4, Mr. Halpin put it to Ms. Marron that looking at renewals and historic rents was a dangerous thing to do which she did not accept. Ms. Marron said the valuation of €150 per sq. m was the tone adopted and €131 per sq. m was a discounted level for the boom rents and Mr. Halpin contended that there were historic rents on most of them.

8.11 Ms. Marron said a valuation level of €150 per sq. m was applied to arrive at a NAV of €53,100 for the subject property.

## **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 Valuer's 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. Ratepayers 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 1<sup>st</sup> January 2016, close to the valuation date of the 30<sup>th</sup> 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. 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 inferior location of the subject property to the comparisons put forward by the parties and the limited car parking, deem it appropriate to reduce the valuation to €48,000.

$354.19 \text{ sq. m} \times \text{€}135 \text{ per sq. m} = 47,815.65$ , say, €48,000.

**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 €48,000.

And the Tribunal so determines.