

Appeal No: VA17/5/084

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

UNUM IRELAND LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2203844, Office(s) at Floors: 0, 2, 3, Floor 2 Offices 11 & 12 & Floor 3 Tullow Street, Carlow, County Carlow.

B E F O R E

Rory Lavelle - MA, FRICS, FSCSI, ACI Arb

Deputy Chairperson

Liam Daly - MSCSI, MRICS

Member

Claire Hogan - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF JULY, 2019**

1. THE APPEAL

1.1 By Notice of Appeal received on the 4th 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 €271,000.

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 :

- “1. *The Valuation of the subject property is excessive and inequitable. The Property’s value as applied by the Commissioner is not in line with its actual rental value.*
2. *The areas as recorded by the Commissioner are incorrect. The subject’s 3rd floor was agreed as part of VA14/3/002 at 706.63m² whilst ½ of the 2nd floor was agreed at 367.50m² in VA14/3/001. The other ½ of the second floor does not exceed 342.02m²*

NIA. Moreover it is claimed in the consideration of the representations that the areas have been amended and they have not been changed. The gross areas are noted in the relevant leases, but the subject may be assessed NIA per the relevant guidelines.

3. *The subject property would not exceed €85/m² overall based on the most recent letting to the appellants close to the valuation date.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €155,300.

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 €251,000.

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 increased to €271,000.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €271,000.

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 26 day of July, 2017 and the 10th January 2019. At the hearing the Appellant was represented by Mr Eamonn S. Halpin BSc (Surveying) MRICS MSCSI 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.

4.2 The subject property is an office building located at Shamrock Plaza at the junction of Tullow Street and the Dublin Road, Carlow Town, Co. Carlow.

4.3 The subject property is a third generation office in a mixed used development. The building is a high quality office with lift, air conditioning and raised floors.

4.4 The accommodation has been agreed between the parties;

Second Floor: 709.52 sq. m.

Third Floor: 706.63

Car Space: 70

4.5 We are advised that the subject property is held freehold by the Appellant.

5. ISSUES

5.1 The matter at issue is Quantum

5.2 The Appellant claims that the valuation is excessive and inequitable and should be set at €151,800 to reflect the type, nature and quantum of the property. The subject property is subject to 3 leases, two dated in May 2011 but relating to a 2008 agreement, and one dated in May 2016, relating to a term commencing 1st December 2015. The Appellant believes that the December 2015 lease rent, which devalues at €96 per. sq. m should be the starting point for the subject property's valuation, with a discount for quantum.

5.3 The Respondent is contending for a valuation of €219,000.00. The Respondent had been seeking €271,000.00 however this figure was reduced to reflect agreed floor areas between the parties.

5.4 The Respondent has relied on three key transactions in arriving at a valuation level of €130 per sq. m. to be utilised in determining the NAV. Of the 3 key transactions, only the subject property was submitted for further consideration at Representative Stage. Similarly, only the subject property is subject to a Valuation Tribunal Appeal.

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 on behalf of the Appellant adopted his precis as his evidence-in-chief. Mr. Halpin explained that the subject property is a 3rd generation office space over 2 floors (2nd & 3rd) at Shamrock Plaza, Carlow Town. The total take is €1,415.95, which the appellants believe is the largest single private office holding in Carlow Town. It is the Appellant’s understanding that only Carlow County Council occupy more purpose built modern office space in Carlow Town than the Appellant.

7.2 Mr. Halpin explained how the subject property is held under 3 separate leases, two of which commenced in May 2011 and one which commenced in December 2015. Mr. Halpin outlined how the May 2011 leases do not represent open market as at the date, as the Appellant had

occupied that space since 2008. The rent therefore significantly predated this written agreement, having been formed at a time when the property market was at a peak. It was Mr. Halpin's opinion that that the December 2015 rent? is closer to an open market transaction and devalues at rental level of €96 per sq. m, for a net area of 342.02 sq. m. Mr. Halpin believed that in assessing the subject property, one needs to start with this letting and work backwards. This would establish the appropriate quantum for the entire centre (1,415.95 sq. m. + 70 car spaces).

7.3 Mr. Halpin stated there were a total of 30 office lettings on the Commercial Lease Register in the period 2012 to the time of writing his precis. None of them relates to space of similar quantum or standard as the subject property. The vast majority are spaces under 150 sq. m above shops and leased at under €15,000 per annum.

7.4 Mr Halpin explained how there was little to no demand for 3rd generation office space in Carlow. He referred to the following spaces being available:

- Shamrock Plaza – 568 sq. m.
- 38-42 Tullow Street – 1,087.61 sq. m.
- The Waterfront – 4,400 sq. m.

Mr Halpin described how these were all modern purpose built 3rd generation spaces, completed in 2007/2008 and all remain shell and core, having never been let in 10 years since their completion. None of these units has been valued by the Commissioner. It was Mr. Halpin's opinion that there is more vacant 3rd generation office space in Carlow than occupied.

7.5 It was Mr. Halpin's view that in such circumstances, the hypothetical tenant seeking over 1,400 sq. m as the Appellant did, would be have been in a position to drive a very hard bargain at the valuation date. The quantum discount would have been very significant.

7.6 With regard to the parking, Mr. Halpin explained how the Appellant occupies 70 marked car spaces in the development's shared car park on a license of €500/space. It was Mr. Halpin's opinion that this must be treated as a gross figure and not as the rent which a hypothetical landlord would receive. The only liability the occupiers bear with regard to spaces is rates. The insurance, repairs, maintenance, security etc. are all borne by the landlord.

7.7 Mr. Halpin introduced four comparisons (See Appendix 1) to contextualise what the variations between what was been achieved in rents compared with the NAV assessments of the Commissioner of Valuations.

8. RESPONDENT'S CASE

8.1 Mr. Devlin for the Respondent adopted his precis as his evidence-in-chief.

8.2 Mr. Devlin commenced his evidence by explaining that a valuation level of €130 sq. m was applied to the subject property which arrived at a NAV of €219,000.00

8.3 Mr Devlin stated that 3 key rental transactions were relied upon in arriving at the NAV for this valuation level of €130. Of the 3 key transactions, only the subject property was subject to further consideration at representative stage. Similarly, only the subject property is subject to a Valuation Tribunal Appeal (See Appendix 2)

8.4 Mr. Devlin explained that equity and uniformity was utilised in compiling the NAV comparisons on the list (See Appendix 3). Mr. Devlin explained there are 9 properties valued at €130 sq. m in the Carlow area. Two of these properties are within the same building as the subject. The other 6 properties are located within the vicinity of the subject property. A total of 2 of these properties valued made Representations at the proposed Valuation Certificate stage and the subject property is one of two which is under appeal to the Valuation Tribunal

8.5 Taking all of this into consideration, Mr. Devlin requested the Tribunal affirm the valuation of the subject property appearing on the relevant valuation list as representing its Net Annual Value in accordance with Section 48 of the Valuation Act 2001 and the requirements of section 19(5).

8.6 Under cross examination the Appellant questioned the suitability of the comparables (See Appendix 2) utilised by the Commissioner in arriving at €130. Mr Halpin put forward the limited number of comparables used and the significant difference in the size (smaller) of these properties.

Mr Devlin acknowledged these points, however contended that the Commissioner has to work with what is available. Mr. Devlin stated that the Appellant would have faced similar

challenges in compiling suitable comparisons. Mr. Devlin concluded that the onus was on the Appellant to prove there were alternatives comparables available.

8.7 Mr. Halpin had also questioned comparable 4 (See Appendix 3) and as to how the car parking spaces were accounted for. This was clarified by the Respondent on the 10th January 2019 hearing.

9. SUBMISSIONS

9.1 There were 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 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 Carlow County Council.

10.2 The Tribunal has examined the particulars of the property and considered the written and oral evidence adduced by Mr. Halpin on behalf of the Appellant, who contended for a revised NAV of €151,856 and Mr. Devlin on behalf of the Respondent, who sought confirmation of the Valuations Office's determination of NAV €219,000.

10.3 Mr Halpin presented evidence highlighting the significance of the leases' dates and the implications on what he argued was overstatement of the rental values being achieved. There was a notable time lapse between the tenants taking original possession of the property in 2008 and the first lease being signed in 2011. The Tribunal acknowledges the property market in Carlow has changed considerably during that period.

10.4 Mr Halpin also contended that the number of comparables being used the Commissioner was small and that they were not of similar characteristics to the subject property. They were therefore producing an inflated value for the subject property.

10.5 The Tribunal acknowledges the point made by the Respondents with regard to the difficulties associated with trying to get suitable comparables and having to utilise what is available. However in this circumstance, the Tribunal is of the opinion that there are large

discrepancies. The units were of lesser size and dissimilar car parking arrangements (Appendix 3 - Comparison 4). They assisted the Tribunal in arriving at their decision but they were not considered direct comparisons.

10.6. The Tribunal is persuaded by the evidence put forward by the Appellant, in particular the uniqueness of the subject property in the context of the Carlow office market. The Tribunal finds that the lack of suitable comparisons is been utilised to the Appellants disadvantage. The Tribunal accepts that this has been further compounded by the time lapse between the tenant taking possession of the property and the actual signing of a lease agreement. The Tribunal therefore accepts that the significance December 2015 lease in determining an appropriate rate per sq. m. Tribunal therefore deem it appropriate to reduce the valuation

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 €190,754.50 say €190,755.00

Use	Area /	€/per sq. m.	NAV
Offices	1,415.95	€110	€155,754.50
70 Car Spaces		€500	€35,000.00
		Total NAV	€190,754.50

Say **190,755.00**