

Appeal No: VA17/5/345

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

GRIAN NA NOG CRECHE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2166549, Miscellaneous, Creche (Purpose Built) at Tay Lane, Rathcoole,
County Dublin.

B E F O R E

Eoin McDermott – FSCI, FRICS, ACI Arb

Deputy Chairperson

Annamaria Gallivan – MRICS, MSCSI, BSc Hons, TRC

Member

Patricia O'Connor - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 26TH DAY OF AUGUST, 2019

1. THE APPEAL

1.1 By Notice of Appeal received on the 10th 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 €55,000.

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 potential rental value.*
2. *The Commissioner has over-assessed Creches[sic] in South Dublin generally. The appellants have evidence from 7 Creche[sic] premises across the county, all of which*

devalue between €50-113/m². The subject property would sit in the middle of this range given its actual location, type and nature.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €27,500.

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 €55,000.

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 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, 2017 stating a valuation of €55,000.

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 23rd day of July, 2019. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying) MRICS, MSCSI and the Respondent was represented by Ms. Ciara Marron MSc, B.Sc., 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 their précis as their evidence-in-chief in addition to giving oral evidence.

4. ISSUES

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

5. RELEVANT STATUTORY PROVISIONS:

5.1 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.”

5.2 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.”

6. APPELLANT’S CASE

6.1 Mr. Halpin, on behalf of the Appellant, started by expressing surprise that this matter was before the Tribunal, given that the Tribunal had already ruled on four similar cases in South Dublin. He noted that the Respondent was maintaining its position that all purpose built creches in South Dublin should be valued at €150/M2 and gave his view that this was incorrect.

6.2 Mr. Halpin opened his case by describing the location and layout of the property, using photographs contained in his précis. He described the property as being located on a short residential laneway, lying beyond the southern fringe of Greenogue Business Park. He categorised the location as being below average.

The property consists of a single storey creche, which was constructed in 1999. The construction was referred to as basic, with a metal deck roof and timber underlay internally. He said that the floor area had been agreed at 367.07 Sq. M.

6.3 Mr. Halpin made some general remarks about the property market at the valuation date, the operation of the creche market in Ireland and what he considers as the lack of profitability therein.

6.4 Mr. Halpin put forward four rental comparisons (see Appendix 1), three of which he said showed that rental values of similar properties lay between €95/M2 and €111/M2. He accepted that the fourth comparison was something of an outlier and said that little weight could be attached to it. The Respondent objected to the introduction of the second comparison on the basis that it lay outside the rating area. Mr. Halpin argued that it was a relevant rental comparison and that a hypothetical tenant, in considering a rental bid, would not have regard to Local Authority boundaries. The Tribunal agreed to accept the evidence, while reserving the right to decide how much weight should be placed on it.

6.5 Mr. Halpin put forward eight NAV comparisons, all creches, as follows: -

Location	Area (Sq. M.)	NAV €/M2	NAV	Appellants Comments
Newcastle	191.58	€120	€23,000	Over 2 floors. Tribunal decision to reduce NAV from €150/M2.
Kiltipper	330.40	€100	€33,000	Tribunal decision to reduce NAV from €150/M2.
Balgaddy	471.00	€125	€59,000	Tribunal decision to reduce NAV from €150/M2
Kimmage	354.19	€135	€48,000	Tribunal decision to reduce NAV from €150/M2
Ballycullen	226.05	€130	€29,300	Area measured on NIA basis, therefore effective NAV/M2 is between €95 and €110.

Rathfarnham	208.59	€130	€27,100	Two separate units. Area measured on NIA basis, therefore effective NAV/M2 is between €95 and €110.
Tallaght	244.19	€130	€31,700	Area measured on NIA basis, therefore effective NAV/M2 is between €95 and €110
Clondalkin	213.61	€130	€27,700	Area measured on NIA basis, therefore effective NAV/M2 is between €95 and €110

Mr. Halpin noted that purpose built creches were being valued by the Respondent at €150/M2 based on the Gross Internal Area of the property, while offices in premises that were considered to be “creche offices” were valued at €130/M2 based on the Net Internal Area. He pointed out that the difference between gross and net areas ranged between 15%-25%, reducing the effective rate per M2 for properties in the creche office category to between €95 and €110.

6.6 The Appellant sought an NAV of €38,600 based on a rate of €105/M2.

6.7 In response to cross examination by the Respondent, Mr. Halpin stated that creche operators would look to locate in areas of new housing or large commercial developments. He agreed that there was a strong demand for creches in the area. When asked why his view of the rental value of the property had changed three times he explained that his view had evolved as more information, including Tribunal decisions, became available and was surprised that the Respondent hadn’t adopted the same approach. He agreed that the proximity to Greenogue Business Park was a benefit but noted that the property did not have high profile.

In relation to Rental Comparison 1, he confirmed that he had not inspected the property but that he had confirmed the details of the lease and rent review with the agent. He did not know what incentives were given at the start of the lease. He was unaware that representations had been made but that the occupier had accepted the NAV of €150/M2 put forward by the Respondent.

When asked what weight he gave to Rental Comparison 2, he took the view that it was good evidence but noted that there was other evidence in South Dublin.

In relation to Rental Comparison 3 he confirmed that, as far as he was aware, this was a purpose built creche and that it was a clean transaction. He had not inspected the property. He disagreed that it was a converted retail unit.

7. RESPONDENT’S CASE

7.1 Ms. Marron, on behalf of the Respondent, gave evidence of the location and layout of the property. She described it as a purpose built creche, sitting on a site of 0.2 Ha, with parking for approximately 25 cars at the front of the site and a large enclosed garden to the rear and side. She noted that the property was finished to a high standard throughout.

7.2 Ms. Marron put forward three rental comparisons (see Appendix 2), which she said justified the respondents view that the property should be valued at €150/M2.

7.3 Ms. Marron put forward two NAV comparisons, both creches, as follows: -

Location	Area (Sq. M.)	NAV €/M2	NAV	Respondents Comments
Hillcrest Grove	163.23	€150	€24,400	Measured on GIA basis. Not appealed.
Palmerstown	474.86	€150	€71,200	Measured on GIA basis. Not appealed.

She noted that there were 19 purpose built creches valued at €150/M2 in the rating area, of which 11 had been subject to representations and 9 appealed to the Tribunal.

7.4 In response to cross examination by the Appellant, Ms. Marron accepted that there was a mathematical advantage in being valued on a Net Internal Area basis as opposed to a Gross Internal Area basis but argued that parents would prefer to send their children to a purpose built creche rather than one in a converted office building. When asked why the Respondent continued to argue that the value of €150/M2 was correct following four Tribunal decisions

which suggested otherwise, she replied that the Respondent accepted the Tribunals decision but noted there were individual property reasons for each of the Tribunal decisions.

In relation to Rental Comparison 1, Ms. Marron advised that she believed that this was a new letting and tendered in evidence the S. 45 report submitted by the occupier. When queried as to whether this was in fact a renegotiation of an existing lease between the same parties, dating from January 2010 with an annual rent of €104,000, she said she was relying on the information provided by the occupier. The Tribunal queried whether there was any additional information to suggest that this might be a new open market letting, such as advertising from the time or an entry on the Commercial Lease Register but no further information was available.

In relation to Rental Comparison 2, Ms. Marron advised that this was effectively a new lease. It was put to her that it was a renegotiation of an existing lease from 2009 and Mr. Halpin showed Ms. Marron an estate agents brochure confirming same. Ms. Marron accepted the point but argued that in her opinion that it was effectively a new lease.

In relation to Rental Comparison 3, Ms. Marron accepted that both the lease term and review pattern were unusual and that the lease may have been a continuation of an older lease. She disagreed that they had applied little weight to the comparisons, despite the difference between the actual rent and the NAV.

7.5 In response to queries from the Tribunal, Ms. Marron expressed the view that all purpose built creches in the rating area should be valued at the same level, irrespective of location. She also confirmed that the Respondent accepted the Tribunals decisions in the cases already decided but that it would be unfair to those occupiers who had accepted the Respondents valuation to agree to a lower valuation on the subject property.

8. SUBMISSIONS

There were no legal submissions.

9. FACTS

9.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

9.2 The property is located on a short residential laneway approximately 2Km north of Rathcoole. It is bounded to the north by the R120 and Greenogue Business Park is directly north of that. The majority of the land between the property and Rathcoole is in agricultural use, with a number of one-off houses also.

9.3 The property comprises a purpose built creche, constructed in or around 1999. It sits on a site of 0.2 Ha, with parking for approximately 25 cars at the front of the site and a large enclosed garden to the side and rear. The agreed floor area of the property is 367.07 Sq. M.

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 South Dublin County Council.

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

10.3 The Tribunal found the Appellant's Rental Comparisons No.1 and No. 3 helpful as they included leases dated close to the valuation date. The Tribunal notes that the analysis of Rental Comparison 1 shows a decline in the rental value of the property from €137.40/M2 in September 2012 to €111.71/M2 in September 2017. Apportioning the reduction on a straight-line basis indicates a rental value of €121.99/M2 as at the valuation date.

10.4 With regard to the Appellants Rental Comparison No.2, 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.

10.5 The Tribunal notes that the Appellant's Rental Comparison No.4 is an open market lease dated 1st January 2016, close to the valuation date of the 30th October 2015. The level of

€43.18/M2 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.

10.6 The Tribunal has attached little weight to the Key Rental Transaction comparisons relied upon by the Respondent as they do not appear to be open market transactions. The Tribunal accepts the Appellants contention that these were renegotiations of existing leases which were previously held on terms that were accepted as being unsustainable by the parties to the renegotiation.

10.7 The Tribunal does not accept the Respondents view that all-purpose built creches in the rating area should be valued at the same level, irrespective of location. The Tribunal believes that this would amount to an effective subsidy of better located creches by those creches situated in less economically attractive locations.

10.8 The Tribunal attaches the greatest weight to the Appellant’s Rental Comparisons No.1 (€121.99/M2) and NAV Comparison 1 (€120/M2). It considers both properties to have a superior location to the subject premises, given that they are located within a large business park and a residential area close to Newcastle village respectively.

10.9 Having considered the evidence adduced, the Tribunal consider that the property should be valued at €110/M2.

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 €40,300.

Description	Area (Sq. M.)	NAV €/M2	NAV
Creche	367.07	€110	€40,377.70

Say €40,300