

Appeal No: VA17/5/545

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

KAY INGHAM AND SYLVIA KELLY

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 391309, Miscellaneous at 11 Lugnaquilla Avenue, Greenpark, Walkinstown,
County Borough of Dublin.

B E F O R E

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Barra McCabe - BL

Member

Raymond J. Finlay – FIPAV, MMII, ACI Arb, TRV, PC

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF NOVEMBER, 2019

1. THE APPEAL

1.1 By Notice of Appeal received on the 12th 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 €41,000.

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 Crèches in South Dublin generally. The appellants have evidence from 7 Crèche premises across the county, all of which devalue between €50-111/m². The subject property would sit in the middle of this range given its actual location, type and nature.*
3. *Part of the attic is valued as 1st floor, which is incorrect. The attic is between 1.4m and 2.4m in height. Refer to agreed measurements VA08/5/081. The ground floor is made up of several out buildings of poor quality which have been incorporated into the back of the residence. Property should not exceed €75/m² on the ground floor, 1st floor at €50/m² and attic at €25/m².*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €15,830.

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 €41,000.

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 €41,000.

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 18th day of November 2019. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS,

MSCSI of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Ms. Ciara Marron M.Sc., 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 his/her 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 property is situated at Lugnaquilla Avenue, Walkinstown, Dublin 12 in an established residential location close to local schools. The subject property comprises a detached former two storey residential property which has been converted to use as a crèche. It has been extended to provide additional facilities and it has a front paved car park and an enclosed rear garden.

4.3 The property comprises a ground floor area and includes a first floor which was part of the original two storey house and full height first floor/attic space as well as restricted first floor/attic space. The floor areas as measured on a net internal basis 'NIA' are agreed as follows:

Use	Level	'NIA' Floor area M²
CRÉCHE	Ground floor	164.04
CRÉCHE	1 st floor	43.82
CRÉCHE	1 st floor/attic-full height	11.32
CRÉCHE	1 st floor/attic-restricted height	31.15

4.4 The walls are of brick and rendered concrete block construction and the roofs are finished with concrete tiles. The property is located on a corner site with frontages to Lugnaquilla Avenue and Glendoo Close. Internally the walls and ceilings are plastered and painted.

4.5 The Property has the benefit of planning permission for a crèche under S00A /0551 from South Dublin County Council.

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 Referring to his précis of evidence Mr. Halpin described the location, size, description, and nature of the subject property and submitted general commentary in relation to the prevailing property market conditions and specifically the crèche market in 2015. He argued that the crèche market had collapsed in 2007 and that the profit margins for crèche’s in Ireland was very poor with a 2% profit margin as distinct to the UK where it was 20%. He claimed that the ECCE grants had diluted size of the market for the 0 to 3-year age bracket. He further argued that the high level of statutory regulation in relation to staffing as set out by the HSE further limited crèche profitability. He also argued that only 1/3rd of the childcare sector paid commercial rates as many were community childcare facilities and others operated from residential premises.

7.2 Mr. Halpin included a schedule of agreed floor areas based on the Code of Measuring Practice Guidance Note provided by the SCSi 'NIA' and he also provided a schedule of floor areas based on Gross Internal Areas 'GIA' and he claimed the rents for many crèche's were calculated using this methodology and consequently he needed to compare like with like.

Use	Level	'GIA' Floor area M ²
CRÉCHE	Ground floor	207.37
CRÉCHE	1 st floor	52.35
CRÉCHE	1 st floor/attic-full height	13.72
CRÉCHE	1 st floor/attic-restricted height	39.20

He also indicated that the ratio was approx. 4:5 or 80% for NIA to GIA.

7.3 Mr. Halpin argued that most lettings or rent reviews for purpose-built crèche's in the greater Dublin area converged in the range €90/ M² to €110/M². He referred to four related party rents in various areas of suburban Dublin where the range was from €100/M² to €135/M² and three in Co. Kildare where the range was from €95/M² to €107/M². He claimed that the actual location and construction of a crèche would be of particular concern to a hypothetical tenant.

7.4 Mr Halpin argued that the subject crèche which comprised a converted domestic/residential property in a non-commercial location was inferior to a purpose built equivalent which were generally located in a residential/commercial environment. In support of this claim he relied on three rental comparisons, five Valuation Tribunal decisions in Dublin and three in Kildare and four tone of the list comparisons which were not in the 'crèche house' category. He also claimed that the 20% GIA versus NIA floor area differential should translate to a similar recalculation in the rate per square metre. He also claimed that the original first floor should be valued at €84.00/M² - 70% of the ground floor and the full height/attic area should be values at €42.00/M² - 35% and the restricted height attic/first floor should be valued at €21.00/M² - 17.5%.

7.5 Mr. Halpin submitted three rental comparisons which are summarised below and detailed in the attached Appendix 1.

Comparison A – Located in Tallaght and let for 25 years from 16th July 2015 at €50,000pa for a purpose-built crèche which devalues to a headline rent of €113/M². The letting included a 9-month rent-free concession which provided a net rent of €95/M² for 447.9 M² measured on a GIA basis without allowing any value to the external play area. This is described as a purpose-built crèche over two floors in a retail and apartment complex.

Comparison B- Located in Citywest and let for 25 years from 1st September 2012 the rent was reviewed in September 2017 to €69,105pa down from the initial rent of €85,000pa. This rent can be analysed at €111.71/M² for 618.60 M². This is described as a purpose built creche built to a high specification and it has the benefit of a large outdoor area. The NAV was assessed at €92,700 calculated at €150/M².

Comparison C – Was located in Celbridge Co. Kildare and was let on a 20-year lease from 1st December 2009 for €44,715pa and the 2015 (rent review after 6 years) was passed over by both parties. The crèche of 416.49 M² was analysed at €107.36/M² and the NAV was €44,500 following a Valuation Tribunal decision in line with the passing rent.

7.6 Mr Halpin provided a number of tone of the list comparisons which had been determined by the Valuation Tribunal. They all related to purpose built creches and were located in Kimmage, Tallaght, Lucan, Rathcoole, and Newcastle Co. Dublin.

Floor	Use	Area M ² GIA	NAV/ M ²	NAV €
0 (Kimmage)	Creche	354.19	€135.00	€47,815.65 Say €48,000
0 (Tallaght)	Creche	330.40	€100.00	€33,040 Say €33,000
0 (Lucan)	Creche	471.00	€125.00	€58,875 Say €59,000
0	Creche	367.07	€110.00	€40,377.70

(Rathcoole)				Say €40,300
0	Creche	95.79	€120.00	€11,494.80
1	Creche	95.79	€120	€11,494.80
(Newcastle)				Say €23,000

7.7 Mr Halpin also provided four tone of the list comparisons for crèches determined by the Commissioner at Ballycullen, Rathfarnham Tallaght and Clondalkin. All were part of retail or office/commercial developments. Mr Halpin stated they were valued on an NIA basis.

Floor	Use	Area M ² NIA	NAV/ M ²	NAV €
0 (Ballycullen)	Creche	226.05	€130.00	€29,386.50 Say €29,300
0	Creche	106.60	€130.00	€13,858.00
0 (Rathfarnham)	Creche	101.99	€130.00	€13,258.70 Say €27,100
0 (Tallaght)	Creche	244.19	€130.00	€31,744.70 Say €31,700
0 (Clondalkin)	Creche	213.61	€130.00	€27,769.30 Say €27,700

Mr Halpin concluded his direct evidence and argued for an NAV of €24,500 as at 31st October 2015 which was calculated on an NIA basis as follows:

Floor	Use	Area M ² NIA	NAV/ M ²	NAV €
0	Creche	164.04	€120.00	€19,685
1	Creche	43.82	€84.00	€3,681
1 Attic/1 st floor -full height	Creche	11.32	€42.00	€475
1 Attic/1 st floor -restricted	Creche	31.15	€21.00	€654
				€24,495 Say €24,500

- 7.8 Under cross examination by Ms. Marron, Mr. Halpin confirmed that there was a difference in gross internal area and net internal areas of approx. 20% based on the analysis of the subject property. He stated that he had included the two methods so as to be in a position to analyse the rental transactions which had been calculated on a GIA basis. He argued that the ECCE had put a ceiling on costs, but he agreed with Ms. Maron that additional fees could be charged for after school hours. He disagreed with the contention put to him by Ms. Marron that the creche market was categorised into a number of different categories as referenced by Mr Lavelle in a previous Valuation Tribunal case VA08/5/801 for the subject property. These were (1) a retail crèche. - high street; (2) a purpose-built crèche. -state of the art; (3) an office crèche - offices used as a crèche and (4) domestic house property converted to or extended into a crèche.
- 7.9 He could not confirm if his first rental comparison was calculated on GIA or NIA but stated that as far as he knew the floor area was GIA and, in this instance, there was very little difference as the unit was not fitted out. The JLL letting details included with his submission referred to GIA. He claimed that all his comparisons except for 6-9 were GIA. He also stated that planning permission would be required to convert any creche into offices and in his opinion the rental value of offices accordingly was not relevant.

8. RESPONDENT'S CASE

- 8.1 Referencing her précis of evidence Ms. Marron outlined the background and context of the Appeal and how it has arisen as a result of the recent revaluation of South County Dublin rating authority area along with the valuation principles as contained in the Valuation Act 2001.
- 8.2 Ms. Marron described the location, description, size, and nature of the subject property as a former domestic house that had been adapted and extended to provide a crèche over a number of years. She referred to planning permission no. S00A/ 0551 and a previous Valuation Tribunal case VA08/5/0551 for the subject property. She supported her comments with photographs of the property. Ms. Marron advised of the appeal history of the property and the outcome at Representation stage when the valuation was confirmed at €41,000.

Level	Use	Area M ²	€/M ²	NAV
0	Crèche	181.34	180	32,641.20
1	Crèche	66.66	126	8,399.16
				€41,040.36 Say €41,000

Following a review of the floor areas she amended her opinion of value to €39,200.

Level	Use	Area M ²	€/M ²	NAV
0	Crèche	164.54	180	29,617.20*
1	Crèche	43.82	126	5,521.32
1	Crèche	11.32	126	1,426.32
1	Crèche	32.15	88	2,741.20
				39,306.04 Say €39,200*

* this calculation read €29,527.20 in the precis.

8.3 Ms. Marron submitted three Key Rental Transactions 'KRT's' which are summarised below and detailed in the attached Appendix.

8.4 **KRT Comparison A:** Located in Tallaght and let for 2 years and 9 months from 1st May 2016 at €17,592.76pa for 53.01M² (NIA) which is €331.86/M². The NAV was €8,180 based on €180/M² and €126/ M² for the first floor.

KRT Comparison B: Located in Rathfarnham Village and let for 5 years from 21st December 2015 at €25,800pa. The premises comprised 106.01M² (NIA) which is analysed at €243.37/M². It had an NAV of €16,150 based on €180/ M² for the ground floor and €126/ M² for the first floor.

KRT Comparison C: Located in Tallaght and let for 3 years from 1st Sept. 2014 at €11,503.42pa for 54.63M² (NIA) which is €210.57/ M². The NAV was €9,830 based on €180/ M² for a house/office.

8.5 There were no representations or Valuation Tribunal appeals for these three KRT's. Ms Marron referred to 39 properties valued in the vicinity of the subject property based on €180/ M², 9 of which were subject to representations and 3 are under appeal to the Tribunal.

8.6 Ms Marron provided four NAV for Walkinstown, Walkinstown, Terenure and Knocklyon comparisons as follows:

Floor	Use	Area M² NIA	NAV/ M²	NAV €
0	Creche	71.08	€180.00	€12,794.40
1	Creche	28.92	€126.00	€3,643.92
(Walkinstown)				€16,438.32 Say €16,430
0	Creche	233.01	€180.00	€41,941.80
1	Creche	78.25	€126.00	€9,859.50
2	Creche	17.50	€88.00	€1,540.00
(Walkinstown)				€53,341.30 Say €51,500
0	Creche	30.60	€180.00	€5,410.80
(Terenure)				Say €5,410
0	Creche	45.66	€180.00	€8,218.80
(Knocklyon)				Say €8,210

8.7 Ms Marron referred to the importance of location and proximity to local schools as very significant benefits for the subject property and while she agreed the attic was limited, she stated it had very good natural light. She stated that the business had not been valued only the building and that the categories referred to by Declan Lavelle in the previous case relating to the subject property were correct. She also stated that in her opinion the house/creche category was more valuable than the purpose-built category due to its community base.

8.8 She concluded her direct evidence and sought confirmation of the amended witness value of €39,200

Level	Use	Area M ²	€/M ²	NAV
0	Creche	164.54	180	29,617.20*
1	Creche	43.82	126	5,521.32
1	Creche	11.32	126	1,426.32
1	Creche	32.15	88	2,741.20
				39,306.04
				Say €39,200*

* should read €39,300 to allow for minor misprint

8.9 Under cross examination by Mr. Halpin, Ms. Marron acknowledged that the accepted ratios for determining upper floor rentals was 70% of ground floor rate for the first floor and 49% for the attic accommodation. She did not accept that her KRT 1 was an outlier when the NER was €331.88/ M² and the NAV was €180/ M². She supported her position by stating that the Valuation Office has reviewed all the information available to it in arriving at its NAV values. She confirmed that the Commissioner did not look at purpose-built crèches when reviewing the house/crèche properties. She restated her opinion that the house/crèche model provided higher rental values than purpose-built crèches. She did not accept the proposition that crèches such as the subject one could not be compared to offices in similar positions and that the issue of a requirement for a change of planning was not material.

8.10 Both parties summarised their respective positions. Mr Halpin maintained that the Commissioner had adopted an incorrect approach to valuing ‘house/crèches’ as it was not based on rental values extracted from the KRT’s supplied in evidence as they did not show a consistent approach or a level of values to support the Commissioner’s NAV values. He stated that the position whereby the Commissioner claimed that house/crèches were more valuable than purpose built creches was untenable. He referred to the NAV comparisons for purpose-built crèches in Rathfarnham and Tallaght at €130/ M² and argued that it was not possible to value the subject property which was a converted house at €180/M² when purpose built creches in similar locations, valued on NIA bases were valued at substantially lower rates. He claimed that the basis adopted by the Commissioner was not correct. He argued that the Respondents KRT’s did not

support the levels adopted and specifically stated that KRT A was an outlier, KRT B was a prime high street property in an established village and the third KRT was not a crèche but a doctor's surgery. He concluded by stating that the subject property could not be regarded as offices as planning permission would be required for any such change of use. He asked the Tribunal to find for an NAV of €24,500.

8.11 Ms Marron summarised her position and stated that she had valued like with like as there were a large number of similar properties valued on the basis of a ground floor of €180/M² with €126/M² on the first floor. She argued that the rental evidence supported her position and that rents in purpose-built crèches were not comparable as they were larger, and many were not market transactions. Furthermore, she argued that they were valued on a GIA basis and not NIA which applied to house/crèches. She did not agree that the Commissioner had adopted an incorrect approach to valuing creches such as the subject one which were previously domestic houses. She argued that properties such as the subject one could get planning permission for office use. She claimed the tone of the list supported her opinion of value and stated that it would therefore be unfair to reduce the value and she asked the Tribunal to confirm the value at €39,200.

9. SUBMISSIONS

9.1 There were no legal submissions made by either of the Parties.

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 basis for establishing the NAV relies on the analysis of market information and applied to the subject property as at the valuation date. The Tribunal was informed that the Commissioner took account of and 'analysed all information' and in this case referred to three Key Rental Transactions KRT's. The Tribunal has reviewed the evidence contained in these KRT's and finds that the first one must be disregarded as an outlier as the NER of €331.88/ M²

is materially in excess of the NAV rate of €180/M² applied by the Commissioner to ground floors of house/crèches. No first-floor area was included in the submission. The second KRT refers to a high street location and here the analysis shows a rate of €243.37/M² versus €180/M² a variation of 35% above the rate applied. In itself this range could be considered as part of an overall analysis however the only other KRT provided refers to a doctor's surgery and consequently the Tribunal cannot accept that these KRT's provided a basis for establishing the rate of €180/M². The Tribunal must accept that the Respondent has provided the best evidence available to it to support €180/M² however, it is not convinced and does not see a link between the KRT's which is the primary evidence and the outcome namely €180/M².

10.4 The Respondent argued that house/crèches were superior to purpose-built crèches. She also argued that there are four distinct types of crèches. The Tribunal cannot accept that house/crèches are superior to purpose-built ones and no evidence was adduced to support the argument made. In relation to the use of four types it can be argued that such definitions exist for ease of categorisation however a hypothetical tenant in the market seeking to acquire a crèche would not seek one particular type of crèche over any other. Such a tenant would seek the best crèche at the best price taking account of the opportunities and disadvantages of each possibility subject to the test of a willing landlord and a willing tenant. The issue of how to evaluate a market rent for a crèche is complicated by the use of two different measuring codes- Gross Internal Area GIA and Net Internal Area NIA. Such a difference could be regarded as differentiating purpose-built crèches from house crèches however the Tribunal noted that the suggested 20% ratio as provided by Mr Halpin. This ratio was not disputed, and it may be that the application of such a ratio is correct though it may be too high or too low, but it is the only one before us.

10.5 The appellants first rental comparison in Tallaght as let by JLL refers to a GIA area in the letting brochure provided and also refers to the unit as being in shell and core which is effectively equating GIA and NIA in this instance as the same. However, allowing a ratio of 20% this would provide a rate of €114/M² in this case. Adopting a similar approach in the second comparison at Citywest the adjusted rate would be to €134.05/M². The Appellant's third rental comparison is in Kildare and is of limited use to the Tribunal. If a similar ratio adjustment is applied to the crèches determined by the Valuation Tribunal the NAV in the crèche in Kimmage would be increased to €162/M²; Tallaght increased to €120/M²; Lucan increased to €150/M²; Rathcoole to €132/M² and Newcastle increased to €144/M². The analysis of these

rental transaction and the Tribunal determinations provides a range from €114/M² to €162/M² for purpose-built crèches.

10.6 The crèches in Ballycullen, Rathfarnham, Tallaght and Clondalkin were all determined by the Commissioner on an NIA basis at €130/M² in each case. The Tribunal finds that these crèches are generally comparable to the subject property as they are similar in size, are in the same catchment area and could be considered by the hypothetical tenant. Each one is located on the ground floor in residential/commercial locations and the Tribunal finds having considered all of the evidence before it that the rate of €130/M² is the correct rate for ground floor creche accommodation.

10.7 The two parties agreed that the ground floor rate should be discounted for the first floor to 70% and the reduced ceiling height area to 49%.

10.8 The Tribunal finds that the NAV should be determined as follows:

Level		Use	Area M²	€/ M²	NAV
0		Creche	164.04	130	21,325.20
1		Creche	43.82	91	3,987.62
1		Creche	11.32	91	1,030.12
1/restricted		Creche	31.15	63.70	1,984.26
					28,327.20
					Say €28,300

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 €28,300.

And the Tribunal so determines.