

**Appeal No: VA17/5/671**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**WILLIAM CONNOLLY & SONS**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 210049, Industrial Uses at Local No/Map Ref: 1ABF (otherwise Unit 9) IDA Industrial Park, Purcellsinch, Kilkenny, County Kilkenny.

**B E F O R E**

**Hugh Markey – FSCSI, FRICS**

**Deputy Chairperson**

**Orla Coyne - Solicitor**

**Member**

**Allen Morgan – FSCSI, FRICS**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 14<sup>TH</sup> DAY OF NOVEMBER, 2019**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 12<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 €311,000.

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 set by the Commissioner is not in line with its potential rental value.*

2. *The subject property is a late 1st generation industrial building constructed ca. 1973. The building is coming to the end of its natural lifespan and several sections are now incapable of beneficial occupation.*
3. *The age, type and nature of the building deeply suppress the market value of the property. However, the biggest difficulty to achieve an open market letting would be the sheer quantum space involved, at over 7,500m<sup>2</sup> of buildings. Owing to the size, condition, age and type of the building, it is only really suitable for rough storage or a waste processing facility, or other similar type operation which greatly limits its value.*
4. *The prevailing rental values for these types of buildings is exceptionally low at between €10-15/m<sup>2</sup> if in fact a tenant can be found at all. This is due primarily to the low capital values prevailing. For example, PN 1139246 Former Braun (now Carlow Business Park), sold June 2015 at €1,300,000. It is significantly larger than the subject property at 18,370m<sup>2</sup> of buildings.*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €116,600.

## **2. REVALUATION HISTORY**

2.1 On the 11<sup>th</sup> 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 €323,000.

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 reduced to €311,000.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €311,000.

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 14<sup>th</sup> day of August, 2019. At the hearing the Appellant was represented by Mr. Eamonn S. Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. Ltd 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.

The property under appeal comprises an industrial warehouse unit, located in a business park on the outskirts of Kilkenny City. The estate was formed out of the subdivision of a larger factory premises (Fieldcrest), constructed in the late 1970's. The eaves height in the warehouse is 8.5m and there is a 2 storey office building linked to the warehouse.

The floor areas have been agreed;

Level 0 Warehouse 6,173.74 sq. m.

Mezzanine Warehouse 464.58 sq. m.

Level 0 Offices 401.45 sq. m.

Level 1 Offices 401.45 sq. m.

### **5. ISSUES**

The sole issue in this case is one 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 On behalf of the Appellant, Mr Halpin outlined his case. He outlined his view that the Respondent had ‘imposed a valuation regime based on evidence which differs from the subject’. He applied the rate derived from his second rental comparison (€20 per sq. m.) in arriving at his opinion of value. He suggested the Respondent’s ‘scheme’ for the city had been compromised in the Valuation Tribunal’s decision in PN 210231 where the Tribunal applied a rate of €17.50 to buildings which he described as ‘equivalent to the modern double skin sections of this property’.

He introduced two rental and five ‘tone of the list’ comparisons in support of his view:

The first is a unit in the estate extending to 4,145 sq. m. which he said appears on the Commercial Leases Register at a net effective rent, as of May 2012, of €55,750pa. He suggested this reflected an overall rate of €13.45 per sq. m.

The second rental comparison is also part of the estate and comprises warehouse and offices of approximately 855.78 sq. m. He said the letting was at a net effective rent of €17,249.13pa from June 2014 for a 3-year term. He analysed this as a rate of €20.16 per sq. m.

Mr Halpin’s first ‘tone’ comparison – PN 210231 is located on the edge of Kilkenny City and comprises what he described as ‘a piecemeal development with a variety of types and sizes’. He suggested the equivalent buildings had a valuation of €17.50 per sq. m. applied to them by the Tribunal.

His Comparison No. 2 (PN 2166 232) is located in Gowran, Co. Kilkenny. He said parts of this modern industrial production unit had ‘exceptional’ height of 18m. The warehouse has been valued by the Respondent at €14 per sq. m. He suggested a hypothetical tenant would not pay a higher rate per sq. m. than this for the subject.

The third tone comparison relied upon by Mr Halpin is PN 226666, which, while adjacent to Waterford City, is in the administrative district of Co. Kilkenny. It comprises an extensive cold storage facility of 11,454 sq. m and is valued at €35.25 per sq. m. for the cold room and €25 for the 4,717 sq. m. stores. His view is that the purpose-built cold storage was valued at less than the rate applied to the subject and that valued at €25 was superior to the subject.

Comparison No. 4 (PN 203515) is located in New Ross, Co. Kilkenny. It is a large industrial complex with the warehouse element (9,933 sq. m.) valued at a rate of €20 per sq. m. by the Respondent.

Mr Halpin's final tone comparison is located in Castlecomer, Co. Kilkenny (PN199334). This is, he suggested, a purpose-built IDA factory built in the 1980's and extended in the 1990's. It extends to approximately 10,672 sq. m. and is valued at €20 per sq. m. He believed it to have been vacant for about 15 years.

As a 'context comparison', Mr Halpin introduced the former Lapple factory in Carlow town (PN 1139247).

He suggested that the rate applied to the subject should not be 2.5 times that (€14 per sq. m.) applied to this extensive (12,592 sq. m.) and in many ways similar building on the same effective date.

His opinion of Net Annual Value as of 31 October 2105 is:

Level 0	Warehouse	6,173.74 sq. m.	@ €20 per sq. m.	€123,475
Level 1	Warehouse	464.58 sq. m.	@ €10 per sq. m.	€ 4,646
	Mezzanine Warehouse	336.00 sq. m.	@ €4 per sq. m.	€ 1,344
	Link Corridor	9.66 sq. m.	@ nil	
Level 0	Offices	401.45 sq. m.	@ €20 per sq. m.	€8,029
Level 1	Offices	401.45 sq. m.	@ €20 per sq. m.	€8,029
Total		€145523	NAV say	€145,000.

## 7.2 Cross Examination of Mr Halpin

Under cross examination, Mr Halpin confirmed that the property was fit for occupation; that the occupier was using part for laboratory/testing but not at the valuation date and he was uncertain as to whether the office block was linked to the warehouse by a fully glazed 'corridor'.

He accepted that his first rental comparison dated from 2012 and was on the list at a rate of €35per sq. m.

In response to a query that none of his NAV comparisons were from within the estate, he responded by stating that he presumed the same information had been used by the Commissioner of Valuation to establish these levels.

He said he was aware of the three comparisons in Mr. Devlin's precis which were at a level of €30 per sq. m and located in the same block/estate but suggested these had only been arrived at subsequently, also based on the same evidence and in effect he was 'testing the level set'.

He accepted that his comparison in Gowran was more rural but said it was a better building. Equally, he suggested those in Castlecomer, and New Ross were more rural locations but said that New Ross was an 'exceptional' building.

He responded to a query as to whether he was aware the offices had been let at €33,000pa while he had valued them at €8,000pa by saying the valuation was as a single entity and such a hypothetical tenant would require this quantum of offices with such a large facility. He added that these offices, while linked to the warehouse, are assumed to be occupied by the hypothetical tenant.

In relation to his comparison adduced of the Lapple plant in Carlow, he accepted that it was based on Carlow values; it had been valued by the Respondent at €26 per sq. m. and then reduced to €14 per sq. m. on appeal to the Tribunal. He accepted this was based on evidence placed before the Tribunal and suggested this Division be cognisant of his first 'tone' comparison PN 210231 where the equivalent buildings (to the subject) had been assessed by the Tribunal at €17.50 per sq. m.

In further response, Mr Halpin conceded that he was unaware of the date of construction of the office building nor had he any evidence of the cost of maintaining the flat roof.

He said the roof had an amalgam and torch- on felt covering and he would have added €5 per sq. m. had it had a 'proper' roof covering. He said the range of €30 – 45 per sq. m. adopted by the Commissioner of Valuation was 'under challenge'.

## **8. RESPONDENT'S CASE**

8.1 Mr Devlin suggested the Net Annual Value placed on the property under appeal was arrived at after a consideration of rental information. He had introduced 3 rental transaction in Loughboy and Hebron Industrial Estates, Kilkenny at rents of €42/40/30 per sq. m. for units of 334/155/332 sq. m. He suggested there was no rental evidence in Kilkenny (at the subject location) for units of this size.

He drew the Tribunal's attention to the adjoining property (PN 2167703) which had been reduced at Representations stage by 25% to a level of €30 per sq. m. for a warehouse of 2,821.89 sq. m. The occupier in that instance was professionally represented.

His second and third NAV comparisons are of units of 4,855.78 sq. m (PN 2148440) and 3,061 sq. m. (PN 230266) in the same estate and both valued at €30 per sq. m.

His comparisons No's 4-7 are, he suggested, more modern and are valued at €40 per sq. m. These are PN 2167704 – 2,796.60 sq. m; PN 2175503 – 1,484,67 sq. m.; PN 209272 – 7,475 sq. m. and PN 2107824 – 2,151.80 sq. m.

His final NAV comparison (PN 209262) is valued at €40 per sq. m for 966 sq. m.

Mr Devlin introduced 3 NAV comparisons to support his opinion on the rate applied to the offices element of the property under appeal. These are:

PN 2187492.- First floor offices of 193.68 sq. m. valued at €85 per sq. m.

PN 2184153 Offices at ground (136 sq. m.) and first (156 sq. m.) floors valued at €120 and €85 per sq. m. respectively

PN 2169397 Offices on ground (842.79 sq. m. and first (800.71 sq. m.) floors, valued at €120 and €85 per sq. m. respectively.

Mr Devlin's approach, at Tribunal stage, was to consider that the first floor offices should perhaps have a new PN number as they were leased separately. On this basis, he valued the offices at rates of €120 per sq. m. (ground floor) and €85 per sq. M. (first floor) A uniform rate of €40 per sq. m. had been applied to the offices, following representations.

The Respondent's Opinion of Value following receipt of Representations was €311,000; however, Mr Devlin advanced the following Opinion of Value at Tribunal Stage:

Level 0 Office	401.45 sq. m. @ €120 per sq. m.	€48,173.76
Level 1 Office	401.45 sq. m. @ € 85 per sq. m.	€34,123.08
Level 0 Warehouse	6,173.74 sq. m. @ €30 per sq. m.	€185,212.20
Level 1 Warehouse	464.58 sq. m. @ €30 per sq. m.	€ 13,937.40
Mezzanine Store	336.00 sq. m. @ €6 per sq. m.	€ 2,016.00
		€283,462.44

NAV say, €283,000.

## 8.2 Cross Examination of Mr Devlin.

In response to a query as to whether he had valued the office element of the property as being part of the entire or 'stand-alone', Mr Devlin responded that he had considered it on a stand-alone basis. He suggested that where the offices were an integral part of an industrial building it may be appropriate to apply a different rate but in the instant case, there was letting evidence of the actual offices.

He did not accept that the rate applied to this estate was incorrect and pointed to the fact that the instant case was the only one at this location under appeal. He accepted the original rate of €40 per sq. m. was too high, thus his view, at Tribunal Stage that a level of €30 per sq. m. was appropriate.

He accepted that the three key rental transactions were of much smaller units but 'that was the only evidence available.

Mr Devlin accepted, when it was put to him by Mr. Halpin, that he had previously introduced a comparison in the matter of an appeal on PN 210231. This comparison is of a letting of a unit of 855.78 sq. m in Purcellsinch. at a net effective rent of €20.16 per sq. m. The NAV was, however, set at a level of €45 per sq. m. This was contained in Mr Halpin's evidence as part of the Tribunal's judgment (Respondent's Comparison No. 3).

In relation to the relativity as between this property and Mr Halpin's comparisons and the latter's assertion that there was a 'magic line' along the city boundary, Mr Devlin suggested that the onus lay with the Appellant in proving the Respondent's valuation was incorrect.; he asserted that locational aspects were reflected in the valuations.

## **9. SUMMING UP**

### 9.1 Appellant Summing Up

In his summation Mr. Halpin reiterated that this was a 1970's terraced industrial unit and it was "scandalous that it should be valued at a rate of €30 per sq. m."

He drew the Tribunal's attention to the fact that the Respondent was aware of and had used in a different appeal, evidence within Purcellsinch at a level of €20 per sq. m. but had not introduced it on this occasion.

He posited that based on the comparables, a maximum level of €20 per sq. m. should be applied.

### 9.2 Respondent Summing Up

Mr. Devlin, in his summing up suggested the building was capable of use; the office building was detached and had a value as such. He said the level of €20 per sq. m. was more appropriate



for buildings of this type in rural Kilkenny; this was a city location. He contended for a valuation as recited above.

## **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 Kilkenny County Council.

10.2 The Tribunal finds the Respondent has not taken sufficient cognisance of the scale of the property under appeal and finds that an appropriate rate to be applied to the warehouse is €28 per sq. m. This represents a discount on the level agreed on the smaller adjoining unit..

10.3 The Tribunal finds that the office element should properly be considered as an integral part of the entire and does not fall to be valued separately.. It deems €40 per sq. m to be an appropriate level to apply to both levels of the office building. This view is reinforced by the Respondent's application of this level to the space, following representations.. Furthermore, the Tribunal finds that levels of €14 (50%) and €6 per sq. m. should be applied to the first floor warehouse and mezzanine store, respectively.

### **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 €211500

Level 0 Office	401.45 sq. m. @ €40 per sq. m.	€16,058.00
Level 1 Office	401.45 sq. m. @ € 40 per sq. m.	€16,058.00
Level 0 Warehouse	6,173.74 sq. m. @ €28 per sq. m.	€172,864.72
Level 1 Warehouse	464.58 sq. m. @ €14 per sq. m.	€6,504.12
Mezzanine Store	336.00 sq. m. @ €6 per sq. m.	<u>€2,016.00</u>
Total		€211,484.84
SAY NAV	€211,500.	

And so the Tribunal determines.