

Appeal No: VA17/5/625

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

DSG PACKAGING LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2148150, Industrial Uses at Unit L2 Toughers Business Park, Ladytown,
County Kildare.

B E F O R E

Hugh Markey –FRICS FSCSI

Deputy Chairperson

Dairine Mac Fadden - Solicitor

Member

Donal Madigan – MRICS, MSCSI

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 29TH DAY OF JULY, 2020

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 ("the subject property") was fixed in the sum of €118,200.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the subject 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 is not in line with its actual and potential rental value.

2. PN2148150 is let on a 10 year FRI lease from 12th April 2015 at a rent of €132,000 no breaks and provides by far and away the best [sic] evidence for the subject in terms of relative value being next door to the subject.”

1.3 The Appellant considers that the valuation of the subject property ought to have been determined in the sum of €103,400.

2. REVALUATION HISTORY

2.1 On the 10th day of March 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 subject property was sent to the Appellant indicating a valuation of €118,200.

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 €118,200.

2.4 The date by reference to which the value of the subject 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 4th day of March 2020. At the hearing the Appellant was represented by the Mr Eamonn Halpin BSc (Surveying), MRICS, MCSI of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr John Doorly MSCSI, MRICS, MSc, 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 subject to Mr Halpin amending the paragraph headed "Tenure" on page 5 of his précis. The amended paragraph is set out in Appendix 1 hereto.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 The subject property is a purpose-built industrial unit, constructed ca. 1997.

4.2 The agreed floor areas are:

Warehouse (Ground floor) - 2,649.90 m²

Office (Ground floor) - 228.69m²

Mezzanine Store - 391 m².

Total floor area 3,269.59 m².

5. ISSUES

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

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the subject 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 The subject property is located in Tougher's Industrial Estate, off the R445, between Naas and Newbridge ("the Park"). This is the largest industrial estate in Kildare County, with 172 units, according to the Commissioner's list.

The tenure and rental particulars of the subject property are set out in Appendix 1 hereto. Mr Halpin submitted that the relevant date for the lease was 2013 and that it was not an open, market transaction in that the landlord reduced the rent in a Deed of Variation and the tenant agreed an additional three years being added to the term. Further, he said that the original lease was entered into in 2000 and had an upwards rent review clause only. Accordingly, he submitted that no weight should be attached to this rental evidence.

The bulk of the Park was sold in 2015, and there is a very substantial amount of rental information available as a result of the sale. Mr Halpin said that he had analysed all transactions within 3 years of the valuation date with lease periods longer than one year in duration – a total of 5 transactions. This when added to the subject property's rent and a rent known directly to the Appellant, makes a total of 7 rental transactions, all of which fall within the range of €22.87 – €37.08/ m². He suggested that not a single one of these transactions accords with the Commissioner's tone of the list at €40 to €45/ m² even in the case of units significantly smaller than the subject property and in the case of such smaller units, is 25% to 33.3% above the actual rental levels as shown.

He referred to an article in the Irish Times following the sale of the Park on the 2nd December 2015 and in which it was reported that many of the units were let at €32/ m² (€3/sq. ft). He said that his analysis accords with this general level.

He said that his Comparison 1 was also under appeal to the Tribunal and was the best evidence in terms of proximity to the valuation date. The tenure and rental particulars of that property are set out in Appendix 2 hereto. This lease was entered into just six months before the valuation date. His analysis of the rental at €34.59/ m² deeply conflicted with the Commissioner's valuation at €40/ m². Further, at the date of signing of that lease, the property had a significant area of mezzanine which had then been stripped out by the tenant and if that stripping out was factored into the analysis, the main industrial area would devalue at €30.20/ m² (with €6.04/ m² on the mezzanine).

Comparison 2 was roughly half the size of the subject but older and poorer in specification and he said that this explained the lower rental value. However, he said that notwithstanding that, the Commissioner had valued the property at the same figure per m² as the subject property. The Commissioner's valuation at €40/ m² deeply conflicted with his own analysis of the rental at €22.87/m².

Comparison 3 was located about 100 metres from the subject property, was smaller and yet there is very little difference in the rate/ m² applied by the Commissioner which he said showed how deeply conflicted the Commissioner's valuations were. His analysis of the rental at €31.55/ m² deeply conflicted with the Commissioner's valuation at €45/m².

Comparison 4 was located about 1,000 metres from the subject property, in the most modern section of the Park, was significantly smaller than the subject but again there was very little difference in the rate/ m² as the subject property. His analysis of the rental at €32.96/ m² (+ Mezz €6.59) deeply conflicted with the Commissioner's valuation at €45/ pm² (+ Mezz €9.00)

Comparison 5 was located about 1,000 metres from the subject property, in the most modern section of the Park and was significantly smaller than the subject. He said that his analysis of the rental at €29.07/ m² deeply conflicted with the Commissioner's valuation at €40/ m².

Comparison 6 was located about 1,500 metres from the subject property, in the most modern section of the Park. It was the only comparison which even approaches the Commissioner's level of €40/ m². The reason he said was that it is used as a distribution warehouse with associated loading facilities, has 7 metre eaves and also included a substantial yard which had not been rentalised by the Commissioner. He said that his analysis of the rental at €37.06/ m² deeply conflicted with the Commissioner's valuation at €40/ m².

Comparison 7 was located about 1,300 metres from the subject property, in the most modern section of the Park and was similar in size although the lease was the furthest in time from the date of the relevant comparisons. His analysis of the rental at €25.62/m² (+ Mezz €5.12, Yard €2.56) deeply conflicted with the Commissioner's valuation at €50/m² (+ Workshop and Warehouse €40.00, + yard €4.00, yard €5 and store €8.)

The Appellant was seeking a base value of €32/ m² in line with the rental evidence and proposed as follows:

Warehouse (Ground floor), 2,649.90m² @ €32/ m² = €84,797

Office (Ground floor), 228.69m² @ 32/ m²= €7,318

Mezzanine store, 391m² @ €6.40/ m²= €2, 502 which would give a total NAV of €94,617 say €94,600.

7.2 Under cross-examination by Mr Doorly for the Respondent, Mr Halpin said that he was not aware as regards Comparison 1 that the Appellant had incurred costs and expenditure (as set out in Appendix 3 hereto). He was however aware of expenditure incurred but could not say what the exact amount was.

Mr Doorly referred him to the Rental and Accommodation Schedule in the copy Sales Brochure for the Park included in the Appellant's précis. Mr Halpin said that he had not been able to verify the information given in respect of the various units on an individual basis but said that the information in the brochure corresponded with what was reported in the Irish Times.

He said that he did not analyse leases under a year as such a period seemed to him to be "too short". He felt that some of the units which had been valued by the Commissioner at €40/ m² had "slipped through" and he was of the view that the Commissioner's schematic was "faulty". It was put to him that he only had one rent from 2015.

7.3 In summary, Mr Halpin said that the Appellant had better information to inform the NAV of the subject property. The Respondent's KRT 2 was in a different park; KRT 4 and 5 were 1-year leases and of limited assistance; he had cast doubt over KRT 3 which he said had been sold as part of a larger deal. He submitted that in the overall scheme of valuation for the Park, the Respondent had relied on the rental evidence for the subject property, which was not open market evidence and should therefore be discounted. He suggested that the majority of the Respondent's evidence should be discounted; that while it had uniformity, he referred to the case of 'Commissioner of Valuation v Carlton Hotel Dublin Airport Limited' and in which the Judge found that the valuation must not be only uniform and equitable but also just. He posited that this present case was also the wider application of a mistake; the rates applied in the Park were inequitable, none were in the range of €40- €45 per m².

He asked the Tribunal to make its determination based on the wider evidence

8. RESPONDENT'S CASE

8.1 Mr Doorly said that the actual rent for any individual property may be material in deriving the estimate of rent payable by a hypothetical tenant but is not in itself conclusive of the net annual value in the context of section 48 in section 19(5) of the Act. Accordingly, the estimate of value is what the hypothetical tenant would pay by way of rent in accordance with section 48, not necessarily what any particular tenant was paying.

The subject property was classified as an industrial unit and is in close proximity to junction 10 on the M7 motorway and this makes it a most desirable location for an industrial property.

Regarding the tenure of the subject property, he referred to the section 45 form which had been submitted by the Appellant and which he had included in Appendix 3 of his précis. In this return, the Appellant had stated that the subject property was held on a lease with a commencement date in 2015 and at the rent specified in Appendix 4 hereto. He said that these details had been confirmed to him by the Financial Controller of the Appellant who had completed the s45 form, when he telephoned her on the 29th January 2020. He said that there had been subsequent emails sent from him to her; that these had not been responded to.

The subject property had been valued in line with comparable properties on the valuation list and with reference to section 19.5 of the Act, to arrive at a fair and equitable valuation. The Respondent relies upon five items of market information to inform the estimate of the net annual value of the subject property. In particular, he relies on five Key Rental Transactions (KRT's) and on seven properties as evidence of equity and uniformity.

KRT 1 relates to the subject property.

KRT2 related to a unit in a neighbouring estate which was of a similar construction type to the subject property and in a similar location. It was held on a lease for 4 years and 9 months from 1 October 2014 which was within one year of the valuation date, at a rent of €67,500 per annum.

KRT3 related to a unit located in close proximity to the subject property, which was of a similar construction type to the subject and in a similar location. This was held on a lease for 4 years and 9 months from 1st April 2015, which was with within six months of the valuation date, at a rent of €57,138 per annum.

KRT 4 related to a unit within the same Park as the subject property, which was of a similar construction type to the subject and in a similar location. This was held on a lease for 1 year from the 1st March 2015, which was with within six months of the valuation date, at a rent of €13,800 per annum.

KRT 5 related to a unit within the same Park as the subject property which was of a similar construction type to the subject and in a similar location. This was held on a lease for 1 year from the 1st May 2016 which was with within one year of the valuation date at a rent of €24,000 per annum.

NAV 1 (PN 2192306) relates to a unit in the Park, with an NER as of the 30th October 2015 of €86,300 and an NER/ m² of €40.

NAV 2 (PN 2163109) relates to a unit in the Park, with an NER as of the 30th October 2015 of €112,600 and an NER/ m² of €40.

NAV 3 (PN 2181616) relates to a larger unit in the Park, with an NER as of the 30th October 2015 of €153,900 and an NER/ m² of €40.

NAV 4 (PN 2198870) relates to a smaller unit in the Park, with an NER as of the 30th October 2015 of €84,600 and an NER/ m² of €40.

NAV 5 (PN 2168181) relates to a smaller unit in the Park, with an NER as of the 30th October 2015 of €77,300 and an NER/ m² of €40.

NAV 6 (PN 2198141) relates to a smaller unit in the Park, with an NER as of the 30th October 2015 of €90,300 and an NER/ m² of €40.

NAV 7 (PN 2200645) relates to a smaller unit in the Park, with an NER as of the 30th October 2015 of €111,400 and an NER/ m² of €40.

There are 31 similarly circumstanced properties in the Park and the valuation level of €40/ m² was applied to industrial units over 1001/ m² in size. Four properties were subject to representations to the Commissioner of Valuation. The subject property is one of three properties under appeal to the Valuation Tribunal.

The Respondent asked the Tribunal to affirm the valuation of the subject property as follows:

Warehouse, 2,649.90m² (Ground floor) @ €40.00/ m² = €105,996

Office, 228.69m² (Ground floor) @ 40.00/ m²= €9,147.60

Mezzanine store, 391m² @ €8.00/ m²= €3,128.00 which would give a total NAV of €118,271.60 say €118,200.00.

8.2 Under cross-examination by Mr Halpin, Mr Doorly was asked whether he had used the rental evidence from the subject as the KRT for the entire Park and he responded that he did not think that it was key but was of relevance to the subject property. He confirmed that KRT 2 also included offices and in response to the question of whether that would add value, he said that it was predominantly an industrial unit and he did not think that the office element increased its value. Regarding KRT 3, it was put to him that this property was for sale in conjunction with the adjoining unit and was a sub- letting of the "larger lease". However, Mr Doorly said that he could not agree with that as he had seen the brochure for the unit. He said that it was probably what he described as an "outlier" unit but that it did show a particular level. He did not have a copy of the lease. He accepted that KRT 4 and KRT 5 were leases for 1 year and was asked if there was not better rental evidence than that to which Mr Doorly replied that it was open market rent. It was also put to him that these units were smaller, and he responded that smaller units can be used to extrapolate higher rents. He was asked whether any changes had been made to the scheme after representations were made by agents and other rental evidence had been submitted and he said that no change had been made

He was referred to page 33 of his own précis (representations made by the Appellant) and he was asked whether any of these properties had been considered and he said that they had and commented as follows: PN2197588 – he was the valuer on this but considered that rental evidence from 2006 was too remote from the valuation date; PN 2163108- there were issues on that property regarding the removal of the mezzanine; PN 2187450- the rental evidence from 2013 was too remote from the valuation date; PN 1738085 - the rental evidence from 2013 was too remote from the valuation date.

8.3 Mr Doorly in his closing submissions said that there had been a correct approach to the valuation scheme for the Park which was reflected in the low appeals rate. It was an equitable and uniform scheme. All the KRT's which he had submitted in evidence were within a year of the valuation date. He asked the Tribunal to uphold the valuation.

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 subject property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the subject 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 Kildare County Council.

DETERMINATION:

The Tribunal disallows the appeal and confirms the decision of the Respondent.

REASONS:

The onus of proof lies on the Appellant in challenging the NAV of the subject property. The Tribunal finds that the Appellant failed to discharge this onus of proof.

Section 48 of the Valuation Act 2001 provides that the value of a relevant property must be determined by estimating the NAV. This is defined as the rent the property might reasonably expect to obtain from year to year. Thus, the focus of the Tribunal was on the rent for which the subject property might be reasonably expected to let from year to year.

The best evidence of the NAV is the rental evidence from the subject property itself. In respect of the subject property, the evidence of Mr Halpin was that the rent agreed was not an open market rent and that there were upwards only rent reviews. Mr Doorly in his evidence referred to the s45 form returned by the Appellant and stated also that the information contained therein had been confirmed to him by the Appellant's financial controller as recently as the 29th January 2020. Mr Halpin did not submit either a copy of the Lease or the Deed of Variation he had referred to. This is entirely unsatisfactory. Oral assertions made by the agent for the Appellant do not constitute evidence. However, as accepted also by the Respondent in valuing any property, while the actual rent payable may be material in deriving the NAV, it cannot be determinative of it. In the case before it, the Tribunal must look further than the rental evidence of the subject property, but it can have regard to it in its consideration of what the NAV of the subject property should be and having regard also to all the other evidence submitted by the parties.

Mr Halpin contended that the best evidence for the valuation of the subject property is the unit immediately across the road from the subject property (Comparison 1). That property is under appeal to the Tribunal. Further, there was a lack of evidence on the expenditure incurred in relation to the roof and the removal of part of the mezzanine area and the impact of same on the rent which the hypothetical tenant would have paid at the valuation date. Comparison 2 was not as submitted by Mr Halpin roughly half the size of the subject (2,231.69 m² compared to subject's 3,269.59 m²). Further, the lease was 15 months prior to the valuation date. Comparison 3 is a much smaller unit than the subject property and the lease was entered into over two and a half years prior to the valuation date. Comparison 4 is also a much smaller unit than the subject property and the lease was entered into 14 months prior to the valuation date. Comparison 5 is roughly half the size of the subject property and the lease was entered into 2 years prior to the valuation date. Comparison 6 is in the Tribunal's view not comparable as it is a distribution warehouse with associated loading facilities and 7 metre eaves. The lease for comparison 8 was entered into over three and a half from the valuation date.

The Tribunal can attach no evidential weight to the media report referred to by Mr Halpin in his evidence or to the sales brochure in his précis.

Turning now to the Respondent's rental evidence and comparisons, the Tribunal disregards KRT 2 as it is in a different park. The rental evidence for KRT 3, while a much smaller unit, is within 6 months of the valuation date. There was no actual evidence furnished to support Mr Halpin's position that this was part of a bigger property transaction at the time. Oral assertions made by the agent for the Appellant do not constitute evidence. The rental evidence for KRT

4 and 5 is within 6 months and 7 months respectively of the valuation date and while the terms of these leases are for one year, there is no reason, in the Tribunal's view, why these cannot be taken into account by the Tribunal in determining what a hypothetical tenant would pay, as required under s48 of the Act.

As regards the Respondent's NAV comparisons, NAV 1 is the subject property. In respect of the other comparisons, the Tribunal notes that these are all properties within the Park, in close proximity to the subject and that the NER's given are for the same date as the valuation date for the subject property.

Mr Halpin submitted that the Appellant had better information to inform the NAV of the subject property but having regard to the evidence, the Tribunal does not accept this. Further, it is a fact also that as submitted by the Respondent, out of 31 similarly circumstanced properties within the Park, four were subject to representations and only three, including the subject property, were appealed to the Tribunal. In the Tribunal's view this is indicative of a valuation approach to the Park which supports the position of the Respondent that the NAV of the subject property is fair and also respects the required principles of equity and uniformity. As noted by O' Malley J in the case of *Commissioner of Valuation v Carlton Hotel Dublin Airport Limited* "*the fact, if established, that other occupiers and their professional advisers have accepted or agreed a certain level of assessment is always going to carry weight in deciding whether assessments in that line of business are being done correctly*" [2013] IEHC 170.

Accordingly, the Tribunal is satisfied on the evidence before it that a hypothetical tenant would pay a rent of €170,000 per annum for the subject property. Further, the Tribunal is satisfied that the comparisons provided by the Respondent act as benchmarks showing that the NAV of the subject property is not incorrect or unfair.

And the Tribunal so determines.

APPENDIX 1

(amendment to Appellant's precis)

Paragraph 3.2 and 7.1

The property is held on a 20-year FRI lease from the 1st September 2000. The initial rent was €242,460 per annum and a Deed of Variation was executed in 2013 resulting in a reduced current rent of €170,000 per annum for the remainder of an amended 10 -year term expiring 21st of February 2023.

APPENDIX 2

PN 2163108 – paragraph 7.1

Leased at €132,000 per annum on a 10-year lease from the 12th April 2015.

APPENDIX 3

Paragraph 7.2

€150,000 on repairing the roof and €700,000 in removing the mezzanine.

APPENDIX 4

Paragraph 8.1 – s45 particulars

Commencement date of the 1st September 2015, at an agreed rent of €170,000