Appeal No: VA17/5/606

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

COLAS TEORANTA LIMITED **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of

Property No. 2167586, Office at Floor 0,1, 1A/A2A/ (Unit G1) Maynooth Business Campus, Maynooth, County Kildare.

B E F O R E

Carol O'Farrell – BL	**Chairperson**
Donal Madigan – MRICS, MSCSI	**Member**
Sarah Reid – BL	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF SEPTEMBER, 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 was fixed in the sum of €54,300.

1.2 The grounds of appeal set out in the Notice of Appeal for contending that the Respondent's determination is not a determination that accords with that required to be achieved by section 19 (5) of the Act are as follows:

1. *"The Valuation of the subject property is excessive and inequitable. The property's value is not in line with its potential rental value.*

2. *The subject property is valued at €100/m^2. The property immediately next door which is for all intents and purposes identical is valued at €70/m^2 (PN 2167591). The subject property should also be valued at €70/m^2.*
3. *The subject is not a purpose-built office but was converted from an industrial unit. It is thus different from the other office blocks in the park."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €38,000.

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 Property was sent to the Appellant indicating a valuation of €54,300.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager. 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 €54,300.

2.4 The date by reference to which the value of the Property 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 11th day of March 2020. The Appellant was represented by Mr. David Halpin M.Sc. (Real Estate), B.A. (Mod) of Eamonn Halpin & Co. Ltd and the Respondent was represented by Mr. John Doorly MSCSI, MRICS, M.Sc., B.Sc. 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

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

4.1 The Property is located on Maynooth Business Campus (hereinafter 'the Campus') just off Junction 7 of the M4 motorway approximately 20 kilometres west from Dublin city centre.

4.2 The Campus provides a variety of units ranging from sole office blocks in Units A-E to a mixture of light industrial, warehouse and offices in the remaining blocks F-K.

4.3 The Property comprises a two-storey unit being part of a larger building which was built as an industrial unit in around 2005 and converted to offices in about 2006.

4.4 The floor areas of the Property are agreed as follows:

Ground Floor:	Offices	288.54m^2
First Floor:	Offices	254.54m^2
		543.08m^2

4.5 The Property is held freehold.

5. DISPUTED ISSUE

5.1 The sole issue on this appeal concerns the appropriate rate to apply to the office space. The Appellant sought a reduction of the Respondent's applied rate of €100m² to €70/m².

6. RELEVANT STATUTORY PROVISIONS:

6.1 The NAV of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act as amended 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 considered 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 expected to let from year to year, on the assumption that the probable average 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."*

6.3 Section 19(5) (inserted by section 7 of the of the Valuation (Amendment) Act 2015 provides:

> *"The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable) —*
>
> *(a) correctness of value, and*

(b) equity and uniformity of value between properties on that valuation
list,

and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area."

7. APPELLANT'S CASE

7.1 Mr. David Halpin contended for a valuation of €38,000 which he calculated as follows:

Ground Floor:	Offices	288.54m²	@ €70.00 per m²	€20,198
First Floor:	Offices	254.54m²	@ €70.00 per m²	€17,800
		543.08m²		€37,998

Say, €38,000

7.2 In support of his valuation he relied on seven comparable properties, being four rental type and three tone of the list type. These are summarised in Section A of the Appendix to this Determination. All the comparables submitted by both Appellant and Respondent relate only to properties situated on the Campus.

7.3 In summary, with appropriate redaction, the comparables submitted by Mr. Halpin are:

(1) A two-storey office unit of 329.37m² which was let on a 4 year 9 months' lease from March 2016 at the rent of €25,000 p.a. reflecting a rate of €76.00 per m² overall and which, in turn, is assessed at an NAV calculated at € 100.00 per m² overall.

(2) A former warehouse (as offices) and office of 597.57m² which was let on a 20 year lease from February 2017 at the rent of €45,000 p.a. which reflects a rate of €75.00 per m² overall (ground and first) for the office portion (317.92m²). This is assessed at an NAV reflecting €70.00 per m² for both warehouse and office portions overall.

(3) A former warehouse (as offices) and first floor office unit of 1,033.00m² which was let on a ten-year lease from March 2016 at the rent of €47,000 p.a. which reflects a rate of €45.50 per m² overall for warehouse and offices. This comparable comprises four separate assessments at an NAV rate of €70.00 per m² (mainly) and €100.00 per m² (one first floor office in Unit 16).

(4) A warehouse and office unit of 1,338.66m² which was let on a ten-year lease

from October 2016 at the rent of €69,000 p.a. reflecting a rate of €51.60 per m^2 overall and which is assessed at an NAV analysing at €60.00 per m^2 overall.

(5) A ground floor office unit of $156.72m^2$ assessed at the NAV of €10,970 reflecting a rate of €70.00 per m^2.

(6) A ground and first floor office unit of $253.83m^2$ assessed at the NAV of €17,760 reflecting a rate of €70.00 per m^2 overall.

(7) A unit comprising offices and a store with a total of $577.08m^2$ which is assessed at the NAV of €40,300 reflecting a rate of €70.00 per m^2 overall.

7.4 In addition to his comparable evidence, Mr. Halpin also asserted that

(a) the Property was built originally as an industrial unit in about 2005 and the Appellant company, the first and only occupant, converted the unit to offices around 2006. It is thus not a purpose-built office.

(b) although the Property enjoys relatively easy access to the M4 there is only one entrance to the Campus.

(c) the Property has a large amount of glazing which enabled relatively easy conversion to offices.

(d) the Property is assessed at a unit rate per m^2 of €100 whereas the NAV of the property next door to it (Property Number 2167591- corrected number ascertained at the hearing) is assessed at a rate of €70 per m^2 and accordingly, this should be the basis of the level adopted for the valuation.

(e) the accuracy of the rental evidence he submitted has been checked with the details from the Commercial Lease Register, operated by the Property Services Regulatory Authority, which is information accessible to all, being in the public domain.

(f) the Campus is amongst the best industrial developments in Kildare as evidenced by rental evidence in the park which devalues at €45 to € 76 per m^2 and to put this in context he quoted rental levels at Toughers Industrial Estate, near Naas (the largest in the county) where units are let at rents of €32 per m^2.

(g) in general, the larger the proportion of office content space in the industrial type property, the higher it sits in the rental range of €45 to €76 per m^2, the best configuration (highest value) being all purpose-built offices, followed by all offices part converted from industrial, and finally, warehouse offices.

(h) a distinction must be drawn between units which were constructed solely for office use and those which were converted to office from warehouse/office units, as they will generally command a lower rent than stand-alone purpose-built offices.

(i) the rental evidence upon which he relied (being not more than €76 per m^2 conflicts with the tone of values adopted by the Respondent for units in the Campus at €100 per m^2 and, as there are a number of stand-alone offices assessed at €70 per m^2, the Appellant not only contended for a valuation that follows the rental evidence, but one which is in line with the unit value rate of €70 per m^2 applied by the Respondent in other assessments.

8. RESPONDENT'S CASE

8.1 Mr. John Doorly contended for a valuation of €54,300 which he calculated as follows:

Ground Floor:	Offices	288.54m^2	@ €100.00 per m^2	€28,854
First Floor:	Offices	254.54m^2	@ €100.00 per m^2	€25,454
		543.08m^2		€54,308

Say, €54,300.

8.2 In support of his valuation he relied on six comparable properties, being three rental type and three tone of the list type. These are summarised in Section B of the Appendix to this Determination. All the comparables submitted by both the Respondent and the Appellant relate only to properties situated in the Campus.

8.3 In summary, with appropriate redaction, the key rental transactions submitted by Mr. Doorly are:

(1) A ground floor office of 225.00m^2 which was let on a one-year lease from January 2015 at the rent of €44,800 p.a. reflecting a rate (on a net equivalent basis) of €191.20 per m^2 and which in turn, is assessed at an NAV calculated at €100.00 per m^2.

(2) A first-floor office unit of 52.27m^2 which was let on a 4-year 9 months' lease from September 2014 at the rent of €7,800 p.a. reflecting a rate (on a net equivalent basis) of €141.85 per m^2 and which, in turn, is assessed at an NAV calculated at €100.00 per m^2.

(3) A first-floor office unit of 139.36m which was let on a five-year lease from March 2015 at the rent of €16,000 p.a. reflecting a rate (on a net equivalent basis) of € 111.36 per m^2 and which, in turn, is assessed at an NAV calculated at €100.00 per m^2.

The three comparison properties submitted by Mr. Doorly are:

(4) An office unit on ground and first floors comprising 331.20m^2 which is assessed at the NAV of €33,100 calculated at €100.00 per m^2.

(5) An office unit on ground and first floors comprising 255.68m^2 which is assessed

at the NAV of €25,500 calculated at €100.00 per m^2.

(6) A ground floor office unit of 225.00m^2 assessed at the NAV of € 22,500 calculated at €100.00 per m^2.

8.4 In addition to his comparable evidence, Mr. Doorly asserted that:

(a) there are 25 similarly circumstanced properties in the Campus valued as offices at a unit value rate of €100 per m^2.

(b) six properties were subject to representations (none of which were altered) and out of a total of 94 properties; the Property is the only unit in the Campus to have had its valuation appealed to the Valuation Tribunal.

(c) the schematic used for the valuation of properties in the Campus adopted unit value rates of €60 to €80 per m^2 for industrial/warehouse units, €100 per m^2 for offices and €130 per m^2 for third generation offices (to reflect higher specification and passenger lifts).

(d) whilst both valuers referred to comparables in the Campus, Mr. Doorly made brief reference, at the request of the Tribunal, to the levels adopted on the M7 Business Park (€100 per m^2) and the Millennium Business Park (€120 per m^2) and, on one of the maps he provided in his precis of evidence, he also referred to the level of €100 per m^2 applied to 9 properties in the neighbouring M4 Business Park.

(e) Arising from the revaluation of the rating authority area of Kildare County Council out of 5,014 proposed valuation certificates issued, 20% were subject to representation, and 22% (some 1,122 properties) of these were altered, and as a result 5,056 valuation certificates subsequently issued. 225 appeals were made to the Valuation Tribunal reflecting an appeal rate of 4.45%.

(f) of the requests issued pursuant to section. 45 Valuation Act 2001 as amended for rental information, 2,601 rental returns were received from ratepayers in respect of the final number of valuation certificates issued of 5,056, representing a response rate of 52%.

9. FINDINGS AND CONCLUSIONS

9.1 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 Kildare County Council.

9.2 Both valuers in this case are agreed on the inputs to the valuation exercise in terms of location and size (floor area is agreed) but differences emerge regarding the comparable evidence, the quality of the subject unit and, consequently, the unit value rate per m^2 to be adopted to value the property. The Property size is agreed at $543.08m^2$ for both floors in total and each valuer has applied an overall rate (i.e. not separate rates for each floor level) of €70.00 per m^2 in the case of Mr. Halpin, and €100.00 per m^2 in the case of Mr. Doorly. This provides final valuations of € 38,000 for the Appellant and € 54,300 for the Respondent.

9.3 At the hearing there was much debate between the valuers in their respective cross examinations on the veracity of the details of comparable properties. Mr. Halpin used the Commercial Lease Register to source his rental comparisons whereas Mr. Doorly preferred to rely on the statutory returns of rental information from ratepayers. Whilst the Commercial Lease Register is in the public domain, the Appellant has no access to rental information received by the Respondent following the exercise of section 45 powers which puts him at a disadvantage. Mr. Doorly explained that he preferred to place reliance on rental returns made by ratepayers as opposed to entries on the Commercial Lease Register, as he felt the latter can have gaps in information He cited the example of a renewal lease which may not be identified as such on the Register and would not therefore be indicative of a true open market letting to a hypothetical tenant, taking the property "fresh on the scene".

9.4 The Tribunal is of the view that following the exchange of their respective précis of evidence, the valuers should have engaged with each other to discuss and, if necessary, clarify details in respect of the rental evidence that had been collated. This would have focused the issues considerably at the hearing of the matter. If the Respondent intends to rely on rental returns as evidence at an appeal hearing, the Respondent should provide to the Appellant or his agent the details of those rental returns at least two weeks before an Appellant is due to file a precis of evidence. It is a well-established principle of natural justice that an appellant should not be placed at a procedural disadvantage by reason of an opposing parties conduct and, in this instance, by virtue of the fact that he or she cannot obtain rental information other than by recourse to the Commercial Lease Register. In the present appeal Mr. Doorly claimed that the rental returns were considered confidential information. However, they were nonetheless relied upon by the Respondent at the appeal and disclosed to the Appellant on the exchange of the respective précis of evidence. The Tribunal does not therefore accept that it can be considered confidential. Accordingly, there is no reason why such evidence cannot be exchanged in advance to ensure fair procedures so that appellants may effectively prepare their case.

9.5 From a review of the comparable properties relied upon by both valuers, the Tribunal takes the following observations, taking those of the Appellant and Respondent in turn, using the numbering in sections 7.(3) and 8.(3) above respectively, as follows:

Mr. Halpin

7.(3) (1). This property was let some 4 months after the statutory valuation date of 30th October 2015 at the rent of €25,000 p.a. reflecting an overall rate of €76 per m^2. It is 39% less than the appeal Property in size. There was some discussion over the precise identity of this unit as it appeared to feature as an investment included with another unit to form a large industrial and office property of 2,032m^2 which was let from 1st September 2015 at a rent of €90,000 p.a. according to an extract of the sales details produced by Mr,. Doorly for the Respondent. The floor area mentioned on the Commercial Lease Register extract corresponds closely with that appearing in the Valuation List, along with the other details cited by Mr. Halpin and thus it is capable of being accurately identified and ranks for serious consideration.

7.(3) (2). This property, categorised by the VO as a warehouse and office, was let on a lease from February 2017 at the rent of €45,000 p.a. reflecting an overall rate of €75 per m^2 and is assessed at a rate of €70 per m^2. Whilst the area set out in the extract from the Commercial Lease Register resembles that on the Valuation List (588m^2 contrasted with 597.57m^2) this has to be discounted for the fact that it was a letting well after the valuation date and also because the unit could have been in use as a mixed use type property at that time as was submitted by Mr. Doorly.

7.(3) (3). This property at 1,033.30m^2 is 90% larger than the appeal Property. It is identified in the extract from the Commercial Lease Register as being an office and converted office of a total of 1,102m^2 which was let on a ten year lease from March 2016 (not long after the valuation date) at the rent of €47,000 per annum with breaks at the 2nd, 5th and 7th years. Mr. Halpin devalues this rent at € 45.50 per m^2 overall. This property has four separate assessments (at unit value rates between €14.00 per m^2 for stores to €70.00 per m^2 for warehouse/offices and a small part, office, at €100.00 per m^2) which might be explained by the records of the Valuation Office not being up to date, in this case, given that not all properties are inspected during the revaluation of a rating authority area.

7.(3) (4). This property measuring 1,338.66m^2 is 146% larger than the appeal property. It is let on a ten-year lease from 1st October 2016 (almost a year after the valuation date) at the rent of €69,000 p.a. which Mr. Halpin devalues at a rate of €51.60 per m^2 overall. The extract from the Commercial Lease Register specifies the floor area at the higher figure of 1,580m^2 but clearly indicates this as being office, rather than any other use such as warehouse. It is categorised by the Valuation Office as offices and warehouse and valued at the NAV of €80,300 representing a unit value rate of €60.00 per m^2 overall.

7.(3) (5). This property is assessed at the NAV of €10,970 reflecting a rate of €70.00 per m^2. It is more than 70% smaller than the appeal Property.

7.(3) (6). This property is assessed at the NAV of €17,760 reflecting a rate of €70.00 per m^2. It is just over 50% smaller than the appeal Property

7.(3) (7). This property is a two-storey unit which comprises ~~of~~ offices and store of 577.08m^2 (the store being 27.29% of the total floor area) which is assessed at the NAV of €40,300 reflecting an overall rate of €70 per m^2.

Mr. Doorly:
8.(3) (2). This property is under a tenth the size of the appeal Property falls out of further consideration in the Tribunal's opinion.

9.6 The first question for the Tribunal is to determine whether the adopted rate of assessment applied of €100 per m^2 adopted by the Respondent is soundly based on rental evidence or can be rebutted by the evidence submitted by Mr. Halpin. Mr. Halpin makes a strong case to question the level of rents that should apply in determining the NAV of the Property and his main comparables 1-4 (see section 7.(3) above) are all of note in this regard, but these lettings were all agreed after the valuation date, albeit two were agreed only 4 months after the valuation date in March 2016 within 4 months, but two of these properties are also substantially larger properties, compared to the subject. Evidence of rents agreed after the valuation date are generally held to carry only limited weight and indeed only really assist in established a rental trend. This makes sense in that such rental information could not have been in the minds of the hypothetical landlord and tenant to an agreement reached at the valuation date which is what is being determined for the purposes of estimating the NAV of a property. By contrast, the rental evidence advanced by Mr. Doorly for the Respondent, excluding his key rental transaction property number 2 (see section 8.(3) above) by reason of it being too small) indicated a pattern (based on rents prior to the valuation date) of unit value rents ranging from €111.36 to €191.20 per m^2. It is of note that the rental rate per m^2 in respect of these two key rental transaction properties is in excess of the rate adopted for the valuation, being €100 per m^2 and thus leads the Tribunal to address the second question, which is, whether the adopted rate is equitable and uniform according to the level of other assessments of similar properties in the same mode of occupation and use in this location.

9.7 Mr. Doorly has submitted evidence of comparable assessments based on the applied rate of €100 per m^2 but we must acknowledge that Mr. Halpin has drawn attention to the anomaly of the comparables cited by him which are assessed at €70 per m^2 one of which is even assessed at €60 per m^2 overall, albeit for a unit of 1,338.66m^2 being significantly larger than the Property which is 543.08m^2.

9.8 The Tribunal considers that Mr. Halpin has made an arguable case for a reduced assessment and has produced rental evidence and tone of the list comparators to challenge the level of value adopted by the Respondent. Specifically, he identified seven offices ranging in size from 131.04m² to 28854m² where the NAV rate applied is €70 per m². This was clearly relevant evidence which the Tribunal carefully considered. Nonetheless the Tribunal finds, on weighing up that evidence, five of the office properties are considerably smaller than the appeal Property and are therefore not truly comparable and, while regard must be had to this evidence, the Tribunal considers that it was not in itself conclusive of the argument that the basis being applied in the assessments of the appeal properties was excessive.

9.9 The rents relied upon by Mr. Doorly are few in number in this appeal but the Tribunal is persuaded, notwithstanding this, that the unit value rate per m^2 is not excessive in relation to these rents, as they are fixed below their mean level. The equity and uniformity of the assessment of the Property fits the pattern of values ascribed to similar units in the Campus in tandem with the fact that this is the only appeal arising out of 94 rating assessments within the Campus. It is unfortunate that the assessment basis for PN 5007114 and PN 2167591 appear to be so far out of line with the actual rental information obtained by the Respondent but that is not a matter for the Tribunal, which had to give most weight to the rental evidence when it is available. The Tribunal does not consider there was sufficient strength in the rental evidence adduced by Mr. Halpin to overturn the established tone of the list.

9.10 The Tribunal does not endorse the concept that acquiescence in the rating valuation of a property following revaluation is conclusive of full acceptance by a ratepayer of the level of the valuation applied. The ratepayer is concerned, primarily, on the amount of the total rates bill, and so the mere fact that more ratepayers do not challenge assessments, for which there may be many reasons, is not decisive but, as in this appeal, can be persuasive.

DETERMINATION:

The Tribunal has concluded that Mr. Halpin did not, in the evidence he presented, show that the rate of €100 per m² applied in estimating the NAV of the appeal Property was excessive. The Tribunal, therefore, disallows the appeal and confirms the decision of the Respondent.

And the Tribunal so determines.