

Appeal No: VA19/5/0972

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020**

Ryanair

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2201595, Office(s) at Floor(S) 4 0 (South Block) Airside Business Park,
Dublin, County Dublin.

B E F O R E

Hugh Markey – FSCSI, FRICS

Deputy Chairperson

Frank O’Grady – MA, FSCSI, FRICS, FIABCI

Member

Michael Brennan – BL, MSCSI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF FEBRUARY, 2022

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th day of October, 2019 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 €136,800

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: *“The valuation is excessive and inequitable by comparison to neighbouring comparable property - PN: 2195567. The category and use are incorrect. The property should be categorised as "Office - Office (Business Park).”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €106,700.

2. REVALUATION HISTORY

2.1 On the 7th day of July, 2019 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 €136,800.

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 10th day of September, 2019 stating a valuation of €136,800.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September, 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing remotely, on the 2nd day of December, 2021. At the hearing the Appellant was represented by Mr. Terry Devlin B.Sc., MRICS, MSCSI of CBRE and the Respondent was represented by Ms. Orla Lambe 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 characteristics of the Appeal property and its location within Airside Business Park; its location within the building and floor area had been agreed between the Parties.

The property the subject of this appeal comprises the 4th floor of a 5 storey modern office building, occupied by Ryanair DAC as its Head Office. There are 33 car spaces associated with these offices.

The valuers have agreed the floor area of the accommodation as follows:

Level 0 - 33 car spaces

Level 4 - Offices- 601.60 sq..

5. ISSUES

The sole issue to be determined by the Tribunal 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 The Appellant’s evidence:

Mr Devlin gave the following oral evidence.

The subject had been revalued as of 15th September 2017 with the valuation issued on 10 September 2019.

The NAV (Net Annual Value) arrived at by the Respondent valued the subject at €200 per sq. m. This level was appealed. By the Occupier.

There are two elements to the Appellant's appeal:

1/ The address of the subject is 'Airside Business Park, Swords, Co. Dublin and there are a number of other offices blocks, in single and multiple occupation and similar to the subject, in this Park. Mr Devlin maintained the subject should be valued in line with the other offices in the Park and not as 'Third Generation' offices. He noted there was a sign at the entrance with the title 'Airside Business Park'. He introduced 7 comparisons, all in the Park, to support his opinion of value. These are set out in Appendix 1 to this judgment.

2/ He noted some of the offices in Airside Business Park were valued as 'Office – Third Generation'. Mr Devlin posited that the subject offices should be valued in line with the above 7 comparisons as 'Office – Business Park'. The comparisons were all categorised by the Respondent as being 'Office – Business Park' at a level of €150 per sq. m.

He suggested there was no reason the subject should be valued at a higher level than these comparisons, it should be valued as 'Offices – Business Park' and not as 'Offices- Third Generation'.

Mr. Devlin said there were 354 properties in the Fingal Local Authority area valued as 'Offices – Business Park' at a level of €150 per sq. m. He questioned the rationale in the Respondent valuing some properties as third generation and other similar properties as business park. He suggested a rate of €150 per sq. m. as being the appropriate rate to meet the requirements of equity and uniformity

He outlined how the Respondent had applied a level of €200 per sq. m. to the office space and €500 to each of the 40 car spaces, giving a NAV of €188,000.

He evidenced the NAV should be €146,000. He arrived at this figure by applying a rate of €150 per sq. m. to the office space and €500 per car space.

In response to questions on cross examination, Mr. Devlin accepted there were 2 floors in the same building which were valued as 'Offices – 3rd Generation' which valuations had not been appealed. He noted that some properties in the business park were valued as 'Third Generation' and others as 'Offices – Business Park'.

He accepted this office building was owned by the Appellant.

He further accepted that, in accordance with s. 63, the unchallenged valuations in the same building were in the List and therefore deemed to be correct but equally, so were his comparisons (at the lower level).

He confirmed he did not introduce any rental evidence to support his opinion of the NAV,

He confirmed he was relying on the tone of €150 per sq. m. applied throughout Fingal and the Respondent's valuation of his Comparison No. 1.

He accepted there were 6 properties in the Park valued at €200 per sq. m. but posited this was an incorrect categorisation, they should have been valued at €150 per sq. m.

In response to a question as whether he accepted that only 4 of 22 properties were appealed to the Tribunal, while 13 third generation categorised properties were not appealed.

It was also put to him that 'Office – Business Park' is a mix of office and industrial but the subject is purely offices. In response he stated that 'Office – Business Park' can sometimes be office use only and that it was close to the retail park. It was then put to him that there was no industrial development within this business park to which he responded by saying that "Office / 3rd Generation in this locality is fine at €200 per sq. m. but that the subject offices were not 3rd Generation.

He asked the Tribunal to amend the NAV to €106,700, representing a rate of €150 per sq. m. on the 601.60 sq. m. office accommodation and €500 on each of the 33 per car spaces.

8. RESPONDENT'S CASE

8.1 Ms. Lambe gave the following oral evidence.

The location was agreed and she noted its proximity to the M1/M50 and Dublin Airport; it was within walking distance of the Pavilions Shopping Centre, also in Swords.

She noted there had not been any change to the NAV following the Occupier's representations and there were 2 other properties in the same building listed as 'Offices - Third Generation, and these had not been appealed.

She noted there are currently 22 relevant properties in accordance with Section 15 and Schedule 3 paragraph 1 (a) of the Valuation Acts, 2001-2020 situated in the Airside Business Park, where the subject property is located. 16 of these properties are categorized as Office – Third Generation. The remaining 6 are categorized as Office – Office Business Park.

She further noted there are currently 4 properties (including the subject) in the Airside Business Park under appeal to the Valuation Tribunal. 3 of these Appeals are by the appellant – Ryanair DAC.

She gave evidence that Property numbers 5004746 and 5004747 are both categorized as Office -Third Generation, are located in the same building as the subject under appeal. Neither was subject to representations or had been appealed.

She suggested the categorisation of as ‘Office – Business Park’ of the Appellant’s comparison was an incorrect categorisation by the Respondent’, this was a mistake, they should have been categorised as ‘Offices – Third Generation’ because they share the same characteristics and location as the subject.

She posited there was an ‘Emerging Tone’ in respect of ‘Office – Third Generation’ in Airside Business Park and this was a rate of €200 per sq. m..

Of the 22 properties in Airside Business Park, 16 have been categorised, correctly in her view, as ‘Office – Third Generation’, of which 3 have been appealed.

She drew the Division’s attention the Tribunal judgment in Marks & Spencer -v- The Commissioner of Valuation (VA08/5/219) as regards the ‘Emerging Tone’. And suggested this was appropriate in the instant case.

She relied on 6 Key Rental Transactions and 12 NAV comparisons, the latter all within Airside Business Park and valued at €200 per sq. m. These are included at Appendices 2.and 3. She suggested these supported her opinion of NAV.

She confirmed her opinion of NAV as being €188,000, based on a rate of €200per sq. m. on the office space with €500 applied to the car spaces. The rate per car space is not in dispute.

Under cross examination, Ms. Lambe confirmed her evidence that the Respondent had erred in the mis categorisation of a number of properties in Airside Business Park as ‘Office – Business Park’. The adoption of a rate of €200 per sq. m. as opposed to €150 per sq. m was in accordance with the Respondent’s scheme of valuation, which was based on an analysis of rental evidence. She was also asked to explain the difference between ‘Office – Business Park’ and ‘Office – Third Generation’. She stated that attributes of ‘Office – Third Generation’ were that it was constructed post 1990 with large open plan floor plates, pillars well spread out, air-conditioning, lift access, suspended ceilings and a ground floor atrium. She stated that ‘Office – Business Park’ was a mix of office and industrial that consists primarily of offices. She stated that the Airside Business Park was only a name but the use was entirely office. It was put to her if there was a categorisation of ‘Office – Office Park’ to which she confirmed that there possibly was and maybe that is where the crux of the issue lies.

In summing up, Mr. Devlin said that the subject should be valued at €150 per sq. m like the adjoining property which is occupied by a national financial institution. He stated that uniformity and equity cannot exist if next door is valued at €150 per sq. m. and maintained this was an issue of categorisation. He said all the properties should have been valued as ‘Office –

Business Park. He said the Respondent had created different levels and ‘these were not up for debate’.

He asked the Tribunal to adjust the NAV in accordance with his evidence.

In her summing up, Ms. Lambe noted the Appellant had not introduced any supporting evidence from other business parks or rental comparables. He had ignored two properties in the same building valued at €200 per sq. m and are both categorised as ‘Office – Third Generation’. She emphasised that these two properties were unchanged in terms of valuation and categorisation at representations stage and that they were not appealed. She also noted that the Applicant did not submit any supporting KRT’s in favour of €150 per sq. m. She said that the NAV’s relied upon by the Applicant should be categorised as ‘Office – Third Generation’ and this is a result of a categorisation error. She noted Airside Business Park had no industrial buildings whatsoever and that a “business park” has office and industrial use. She drew the Tribunal’s attention to the judgment of another Division in Marks & Spencer -v- The Commissioner of Valuation (VA08/5/219) in which the ‘Emerging Tone’ was discussed. She asked the Tribunal to confirm the level of €200 per sq. m. on the office space and €500 per car space and her opinion of NAV of €136,800..

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 Fingal County Council.

DETERMINATION:

In any appeal to the Tribunal, the onus is on the Appellant to give reason as to why the valuation should be disturbed. This can be achieved by the introduction of rental or other evidence to support the view that the valuation should be reduced.

In the instant case, the Respondent posited there had been a mischaracterisation of a number of properties in the Park. She introduced a number of supporting NAV and Key Rental Transactions to support her opinion of value. Two of the supporting NAV comparisons are within the same building and were not appealed. The Tribunal found this evidence, along with

that of rental transactions, to be compelling. The Tribunal accepts the Respondent's evidence there had been an error in categorising certain of the properties within the Park. The Tribunal sees no reason to alter the Respondent's NAV.

DETERMINATION:

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