

Appeal No: VA17/5/632

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Rosbowl Ltd.

APPELLANT

and

Commissioner Of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2167630, Industrial Uses at Floors 0,1 4D Athlone Road, Longford, Co Longford.

B E F O R E

Rory Hanniffy - BL

Deputy Chairperson

Fergus Keogh – MSCSI, MRICS

Member

Allen Morgan – FSCSI, FRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 26TH DAY OF APRIL, 2022

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 €53,900.

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 based on its actual rent.*
2. *The subject property is let on a 4 year 9 month lease from 14th October 2014 at €30,000 per annum fully fitted and **inclusive of rates**. The rates at the date of the signing of the lease were €15,000/annum. Even adjusting to the new rates liability, the value would not exceed €24,000 FRI NER. This is backed up by the open market lettings of other similar properties including PN 5010176.*
3. *The most serious issue is the fact that the 1st floor has been valued at the same level as the ground floor. It is very unlikely that the 1st floor would exceed 33.3% of the ground floor level.*
4. *The areas of the subject property are incorrect.*
5. *The market for commercial property is very weak and greatly oversupplied in Longford. This appears to have been ignored by the Valuation Office.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €24,000.

2. REVALUATION HISTORY

2.1 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €53,900.

2.2 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 12th day of March, 2020. 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. James Costello B.Sc., SCSi, RICS 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:

Location

The property is located on the outskirts of Longford town, adjacent to the N63 Longford-Athlone Road, approx. 2kms south of the town centre within a mixed industrial/retail warehouse development. The property is not directly adjacent to the main road but is easily accessible with a good profile.

Description

The subject property, originally an industrial unit constructed in 1998, was converted into a bowling alley in 2001. This conversion involved the insertion of a concrete mezzanine floor at first floor level for which planning permission was granted under PL01/281.

Planning Permission.

The property has planning permission to operate as a bowling alley.

Accommodation (As agreed by the Parties)

The subject property comprises as follows:

Ground Floor: Bowling Alley 950.53 sqm.

First Floor: Bowling Alley 950.53 sqm.

First Floor: Store 35.88 sqm.

Tenure

As at the Statutory Effective valuation date, 30th October 2015, the subject property was held under a leasehold tenure, a 4-year 9 month lease at €30,000 p.a. from 1st October 2014 (inclusive of rates).

5. ISSUES

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 The Appellant's witness, Mr. Eamonn S Halpin, valuer, affirmed the content of his written evidence, subject to directing the Tribunal note corrections under the section "Valuation History and Relevant dates" which Mr Halpin advised that the correct NAV as stated on the final certificate should be changed to €53,900 and that the Statutory Effective date for the subject property's valuation should be changed to 30th October 2015. The changes were noted by the Tribunal.
- 7.2 The witness set out the history of the subject property, stating that it had been built in 1998 as an industrial unit, and that in 2001 it had been altered for use as a Leisure facility, by the changing the original use of the first floor offices at the front of the building and adding a concrete first floor running the entire of the property, front to back. He stated it was the only such facility in Longford county. Visually he said that it had the physical appearance of an industrial property, in reality that its physical changes and repurposing as a bowling alley with a customised fitout made it a very different building. He noted that adjoining occupiers in the immediate vicinity of this estate were car showrooms and the like.
- 7.3 Mr Halpin drew attention to the elevated vacancy rate in Longford town. He also asserted that in his opinion, in the absence of evidence of properties in the locality in similar use, the terms of the lease of the subject represented the best available rental evidence.
- 7.4 Referring to his first rental comparison, PN 5018849 (VA 17/05/020) being a former car showroom in Longford, Mr. Halpin stated that it was a similar retail-type industrial building, located on the old N5 national road. He noted that it was partially fitted out as a retail showroom. Mr. Halpin stated that this property had been appealed to the Valuation Tribunal. He said that most notable in that case was that the showroom area was determined by the Valuation Tribunal at NAV of €24 per sqm, the point he said being that the subject property's NAV should not exceed this level.

7.5 Mr. Halpin's second rental comparison, PN 5009838, was a superior purpose retail warehouse, located directly across from the subject property on the opposite side of the main N63 Athlone Road. He pointed in particular to the first floor area which he said was of solid concrete construction (like the subject building) albeit that the first floor display area was set back from the front wall (i.e. it did not cover the entire internal floor area of the ground floor), but was also classed by the Commissioner of Valuation as mezzanine space. In that case the mezzanine space was assessed by the Commissioner at an NAV of €6 per sqm, in contrast to the ground floor retail area which was assessed at €40 per sqm. (i.e. the first floor was assessed at a greatly reduced rate - 15% of the ground floor rate.)

7.6 Mr Halpin stated that due to a paucity of evidence of this specialised use in Longford, he had found it necessary to extend the search for context comparisons to adjacent counties. Four properties were identified, the first in Mullingar, Co. Westmeath, (PN 2194783) a bowling alley of reportedly superior location, with ground floor of 1,459.26 sqm. and first floor mezzanine of 583.64 sqm and where he noted that the first floor had been agreed between the parties at an NAV €11.20 per sqm or 37% of the ground floor NAV.

The second property, a bowling alley located in Athlone, Westmeath (PN 1335806) was, Mr. Halpin said, an example where the NAV, despite the location being superior, was still at an NAV level of €18 per sqm. for both ground and first floor levels of 2,090.30 sqm and 238.451 sqm respectively.

The third context comparison located in Roscommon town, (PN 2189932), was also occupied by the Appellant, at an advised greater rental, yet the subject property is being valued at almost twice the rental value of their Roscommon property at €24 per sqm for 1,192.50 sqm.

Lastly Mr Halpin cited an industrial unit in Tullow, Carlow PN 2178914 (VA 17/05/239), now in use as a retail warehouse, the primary reason for its inclusion in evidence being the fact that the NAV of the mezzanine (1,004.08 sqm), is valued at

€12 per sqm, and is 50% lower than the NAV of the ground floor area of 1,121.51 sqm and valued at €24 per sqm.

- 7.7 Mr Halpin concluded his evidence by stating that on the basis of the evidence adduced, in his opinion, the NAV for the subject property was:

| | | |
|---------------------|--|---------------|
| Ground Floor: | Bowling Alley 950.53 sqm @ €20 per sqm | = €19,011 |
| First Floor: | Bowling Alley 950.53 sqm @ €4 per sqm | = €3,802 |
| <u>First Floor:</u> | <u>Store 35.88 sqm @ €20 per sqm</u> | <u>= €718</u> |

Total NAV **€23,531,**
say, €23,500

- 7.8 Mr. Halpin advised the Tribunal that the freehold interest in the property had been purchased by the lessee in 2018 for a figure stated to be €150,000, following a protracted but unsuccessful sales campaign by the vendor at an asking price of €200,000.00.

- 7.9 Mr Halpin referred in particular to a copy of the decision of the Valuation Tribunal (VA 17/5/026) in relation to a retail warehouse at Old Connaught Road Longford, which was included in the Appendices to his evidence. As already noted, this property was the first of Mr. Halpin's rental comparisons. He directed the panel's attention to the NAV levels, as determined by the VT in that case, which were:

Showroom (ground floor) €24 per sqm
Warehouse (ground floor) €20 per sqm
Mezzanine store (first floor) €5 per sqm

Mr. Halpin said that this Decision buttressed his argument that the Tribunal in that case determined that there was a quantum difference in NAV between the ground floor space and the first floor mezzanine space.

- 7.10 The Tribunal asked Mr. Halpin whether in analysing the 4 year 9 month lease of the

subject property, he had factored in the impact of the existence of two tenant break options in that lease, one after year 1 and the second after year 3, subject to 3 months written notice to the landlord. Mr Halpin affirmed that he had but he felt that their impact on value was of little or no significance in the particular circumstances of the case.

- 7.11 Mr. Costello, cross examined Mr. Halpin on his evidence. He asked the appellant's witness to confirm that the subject property was in a good location. The response was yes. He then sought confirmation that the appellant's first rental comparison was located within the same estate as the subject property – again the answer was yes. Mr Costello then posed the question – was the subject property the only bowling alley in Longford? Again, the answer was yes.
- 7.12 Mr. Costello then asked the witness to agree with him that the 4-year 9 month lease was fragmented by the existence of tenant break options. Mr Halpin did not agree and said that such break options were the result of an astute approach taken by the Appellant in negotiating the lease. He said that if the landlord had had a better option at the time of the letting he would have taken it.
- 7.13 Mr. Costello drew Mr Halpin's attention to the fact that the 4-year 9 month lease had not been stamped and entered in the Commercial Lease Register which has been a legal requirement since 2012. Mr. Halpin acknowledged this fact and said frankly that the tenant "did not take too much heed" to this requirement.
- 7.14 When questioned on the matter of planning permission, Mr Halpin stated that as the property has the appropriate planning permission it can legally operate as a bowling alley.
- 7.15 Mr Costello asked Mr Halpin to acknowledge that in terms of the general market, 80% of retail space in Longford is occupied and that an NAV range of €24 - €26 per sqm is a normal industrial range. Mr. Halpin's response was that this range is far removed from the actual rent being paid by the tenant (until the purchase of the subject in 2018). If such a range were accepted, he stated that the resulting rates bill would be in the order of €50,000 p.a., which he stated would not make sense in rental terms, given that the

property was purchased for €150,000 which would mean that the annual rates bill would equate to 33% of its capital value (as established by the recent purchase of the property.)

7.16 Mr. Costello asked Mr Halpin to comment on the fact that the NAV in his second rental comparison, PN 50099838, an industrial-style retail unit, had a ground floor space NAV of €40 per sqm. Whilst the Respondent's witness accepted that the NAV of the first floor mezzanine was much less than that of the ground floor, he queried Mr Halpin as to whether this might be because of the configuration of the mezzanine and its particular use. He asked Mr. Halpin to accept that in the case of the subject property, whilst it was described as a mezzanine, it was a substantial structure of concrete construction and was of identical size to the ground floor area. Both floors were stated to be used for the same leisure purpose to which end he stated that the premises benefitted from purpose-built leisure equipment on the two floors. He also asked Mr Halpin to accept that when the premises was first rented, the current occupier had the benefit of all of this equipment, given that it had already been in that leisure use since 2001. Mr Halpin responded stated that whilst this was the case, it was his opinion that the equipment would have only a marginal impact on the rental value of the property.

7.17 Mr. Costello then asked Mr Halpin to acknowledge that of his comparisons, Nos. 3 to 6 were out of the rating area of the subject. Mr Halpin's response was that the reasons for their inclusion were as follows:

Comparison No. 6 (PN 2178914 VA 17/05/239) at Tullow, Co. Carlow, was included to highlight the differential in NAV between ground floor and first floor mezzanines, which showed a reduction of 50% for the first floor mezzanine, the case reportedly being settled between the parties prior to an appeal.

Comparison No. 4 (PN 1335855), whilst the NAV of the ground and first floors were identical, the size of the first floor at 238.40 sqm was so small that it was practically irrelevant to the overall rates assessment.

Comparisons 3 - 5 (PN 2194783, PN 1335806, PN 2189932) were considered relevant by Mr Halpin as those properties were assessed in the same revaluation as the subject property; in addition, there was a consistent relative NAV correlation between ground

and first floors. In summary Mr Halpin said he had found from the evidence he was presenting that there was a consistent relationship in most cases between the NAV's of ground and first floors.

- 7.18 Responding to a question from the Tribunal in respect of his comparison No 4 (PN 1335806), Mr. Halpin stated that his reason for relying upon this comparison was not as regards values, rather the relationship between ground and first floor NAVs.

Mr Costello asked Mr Halpin, to agree that the Commissioner normally distributes values fairly. Mr. Halpin responded, saying that in this case he believed that the Commissioner had "misunderstood" the market.

Mr. Costello then asked Mr Halpin to acknowledge that his first comparison, formerly a car dealership, was his best comparison for the subject property. Mr. Halpin replied that it was not suited for major car marques, having been previously occupied by an Opel dealership. He also denied that the first floor of that premises could be ascribed the same rental value as the ground floor.

8. RESPONDENT'S CASE

- 8.1 Mr Costello affirmed his precis of evidence and then addressed the points he wished to highlight. He referred to the location of the subject property as being on the outskirts of Longford town on the main Longford-Athlone Road, and that as such it was very accessible. He also noted that it was the only such specialised property in the locality. He also asked the Tribunal to note the low rate of appeals in Longford which he stated amounted to only 2.7%. He stated that the Commissioner had valued the NAV of the property at €53,900, and that it was valued as a warehouse but with an added value premium as a bowling alley. On this basis he said that the property had been assessed at €28 per sqm and €20 per sqm respectively between ground and first floors.

- 8.2 The Respondent put forward his supporting comparative evidence as follows:

KRT 1. 2190492 - A warehouse unit of 374.42 sqms in Royal Canal Business Park, on the western outskirts of Longford town, in an industrial park adjacent to the main road

- the N63 Longford/Roscommon Road. Canal Business Park is located opposite Catronageeragh Industrial Park, the estate in which the subject unit is located which is also served by the N63. Ground floor 253.76sqms, First floor 125.66 sqm and mezzanine office 90.1 sqm, all valued at €25 per sqm. NAV €9,930

KRT 1 was rented for a 5-year term commencing 12 May 2015 for €10,500 p.a. This rent was analysed in terms of its NER (to the valuation date of 30 October 2015) as equating to €10,185 and equating to an NER of €26 per sqm – Valued at €26 per sqm.

KRT 2. 2190496 - A warehouse unit of 778.36 sqms, with a yard measuring 1,200 sqms, located in Catronageeragh Industrial Park. The property had no first floor.

KRT 2 was rented for a 3-year term commencing 1 January 2015 for €29,496 p.a. This rent was analysed in terms of its NER (to the valuation date of 30 October 2015) as equating to €28,611, and equating to an NER of €33p.s.m (warehouse) – Valued at €25 per sqm. NAV €22,700

KRT 3. 5007960 - A warehouse unit of 287.40sqms, Templemichael Business Park. Ballinalee Road, Longford. This industrial estate is located on the eastern side of Longford town. Ground floor 119.04 sqms, First floor 117.76 sqms and small mezzanine office 50.6 sqms all valued at €25 per sqm.

KRT 3 was rented for a 10-year term from 6 April 2015. The rent of €8,000 p.a. was analysed in terms of its NER (to the valuation date of 30 October 2015) as equating to €7,070 (warehouse), and equating to an NER of €25 per sqm – Valued at €25 per sqm. NAV €7,180

NAV Comparison No 1. PN 2183994 - Retail/showroom warehouse of 841.59 sqms, located beside the subject unit in Catronageeragh Industrial Park. This estate, as previously stated, is served by the N63 main Longford to Roscommon Road. Ground floor showroom 62 sqms, NAV- €31.25 per sqm, Ground floor warehouse 389.79 sqms NAV - €25.00 per sqm, and mezzanine store 389.80 sqms. NAV - €5.00 per sqm.

NAV Comparison No 2. PN 5010174 - Warehouse of 596.00 sqms, located in same area as the subject unit in Westlink Business Park, an estate almost directly facing the subject property on the opposite side of the N63, the main Longford to Roscommon Road. Ground floor warehouse. NAV- €25.00 per sqm

NAV Comparison No 3. PN 5008014 - Warehouse of 1788.68 sqms, located in an industrial Park on the inner western outskirts of Longford town, again adjacent to the main road - the N63 Longford/Roscommon Road. Ground floor warehouse. NAV- €20.00 per sqm

NAV Comparison No 4. PN 5010176 - A warehouse unit of 374.42 sqms in Westlink Business Park, an estate almost directly facing the subject property on the opposite side of the N63, the main Longford to Roscommon Road. NAV €40.00 per sqm

- 8.3 In cross-examination, Mr. Halpin invited Mr. Costello to agree that he had not adduced any evidence to substantiate an NAV of €28 per sqm, and that a premium above normal industrial user should apply for this specialised use as a bowling alley. In reply Mr Costello did not accept Mr. Halpin's contention that the NAV figure of €28 per sqm was unreasonable.
- 8.4 Mr. Halpin questioned Mr Costello as to whether he was aware that the normal eaves height in a warehouse would be in the order of 6-8 metres floor to ceiling height, which was not the case with the subject property as a result of the insertion of the first floor mezzanine. Mr Halpin put it to Mr Costello that such works had reduced the potential of the building for alternative industrial purposes. Mr Costello stated that in his opinion the mezzanine did not significantly impact on the potential of the property for alternative industrial uses.
- 8.5 Both parties to this appeal when asked by the Tribunal to assist it by providing a clear definition of a 'mezzanine' level, both agreed that this term can vary widely, both in terms of construction and use. Mezzanine areas are often recessed, leaving a full floor to ceiling clear height area, usually at the front.
- 8.6 Mr Halpin queried Mr Costello as to what justification he had in judging the subject property to be more valuable as a leisure use. He followed this up with an observation that despite the particular alterations made to the building for leisure purposes, it had failed to find a purchaser when the investment was put on the market for sale in 2017 for €200,000. He said that despite this, it failed to attract a purchaser other than an offer

in 2018 by the current occupier to purchase it for €150,000, which offer was accepted by the vendor. Mr Costello noted Mr Halpin's statement but contended that he had taken all relevant factors into account in arriving at his opinion of NAV of the subject property.

8.7 Turning to the provisions of the Valuation (Amendment) Act 2015, Mr. Halpin asked Mr Costello to confirm that he had taken account of s19 (5) in arriving at his determination of NAV, and also that he had taken account of relevant rental evidence, close to the Valuation Date. He queried whether Mr Costello had taken into account that industrial units in the vicinity, including a street facing unit, was assessed by the VO at €24-€26 per sqm. He asked Mr Costello to consider whether it was reasonable for the Commissioner to ascribe an NAV figure of €53,000 to the property, in the face of a sale price in 2018 of €150,000. He again asked Mr Costello if it was not more relevant to seek to compare actual rental values. Mr Costello stated that he had taken all relevant factors into account in arriving at his opinion of NAV of the subject property.

8.8 Turning to the Respondents comparisons, in particular his first comparison (PN 2183994), Mr. Halpin pointed out to Mr Costello that an NAV of only €5 per sqm applied to the first floor mezzanine.

8.9 Finally, Mr Halpin asked whether the existence of the planning permission for change of use to a bowling alley was a justifiable reason to add an additional value to the property, and if so why. Mr. Costello said that in his view the permission did add a value to the property.

8.10 The Tribunal invited both parties to sum up.

For the appellant, Mr Halpin reiterated that there were no comparable properties in the locality, and that in those circumstances s.19 (5) allows for a widening of the search for comparable properties. If as in the subject case the property is the only such property in Longford then, ergo he said it is the only direct evidence in Longford. As such, he said, it reflects both the pros and cons of such a property. Mr. Halpin also stated that

rates in the locality had gone down after the lease of the subject property was put in place.

Mr. Halpin further confirmed his opinion that the NAV figure of €53,000 placed on the property by the Respondents was totally unsupported and that it does not correlate with the sale price of the property for €150,000 achieved in 2018. In answer to a query from the Tribunal Mr Halpin agreed that whilst it may be in order to refer to rental evidence in adjacent counties, this would not apply to comparing NAVs.

8.11 Mr. Costello then summed up his approach to the case, stating that in his opinion he had taken into account all relevant factors in arriving at the NAV of €53,000, that the specific use of a bowling alley merits a premium, and that the other properties referred to in his evidence had been considered.

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 Longford County Council.

9.2 In arriving at its determination as set out below, the Tribunal has deliberated carefully on all issues adduced in evidence and finds that:

9.2.1 The rent in the lease is of limited assistance by reason of break clauses contained therein, the short-term notice period and the fact that same is unstamped.

9.2.2 The rental value of space under a mezzanine with restricted height, is worth less than a full height area.

9.2.3 The Respondent has referred to the planning permission as conferring a 'premium' on the NAV. The Tribunal considers that the existence of a planning permission is a legal

requirement and furthermore the Tribunal is satisfied the Respondent's contention that same confers a premium on rent was not supported by evidence.

9.2.4 It is rare in an industrial building, that the first floor area, whether described as 'mezzanine' or not, would attract the same rent per sqm as the ground floor space.

9.2.5 The ground floor NAV is worth less than €28 per sqm and that the first floor NAV is commensurately less.

9.2.6 Of the comparator evidence provided by the parties, the Tribunal finds the Appellant's first two comparison properties to be of most assistance.

9.2.7 The specialised fit-out created a unique value in the subject property without which it would have been considerably less attractive to this or any other tenant in the same business.

9.2.8 There is a substantial degree of equivalence in many of the KRTs presented in evidence and thus they are relevant to the subject case.

The Tribunal concludes that:

Having regard in particular to the Key Rental Transaction properties adduced by the Respondent in evidence, the Tribunal are satisfied that an appropriate ground floor NAV is €25 per sqm.

With regard to the first floor / mezzanine area, the Tribunal are satisfied same should be valued at a lower level relative to the Ground floor. The Tribunal have had regard to the relativity applied in the Appellant's first two Comparison properties and the Valuation Tribunal decision in VA17/5/026 and have determined an NAV of €10 per sqm.

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 €33,975.00, derived as follows:

| | | |
|--|---|----------------------------------|
| Bowling Alley 950.53 sqms @ €25 per sqm | = | €23,763.25 |
| Bowling Alley (first floor) 950.53 @ €10 per sqm | = | €9,505.30 |
| Store 35.88 sqms @ €20 per sqm | = | €717.60 |
| Total NAV | | €33,986.15 say €33,985.00 |

And the Tribunal so determines.