

**Appeal No: VA19/5/1335**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Timac Agro Ireland Ltd**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2100994, Industrial Uses at 25BEF Waterford Road, New Ross, County Wexford.

**B E F O R E**

**Eoin McDermott - FSCSI, FRICS, ACI Arb**

**Brian Meldon - FSCSI, FRICS, Reg Val, Arb**

**Mema Byrne - BL**

**Deputy Chairperson**

**Member**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 30<sup>th</sup> DAY OF AUGUST, 2022**

**1. THE APPEAL**

1.1 By Notice of Appeal received on 9<sup>th</sup> 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 **€78,300**.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *"The subject property is let on a 5-year lease from 1st December 2017 at a gross rent of €60000 per annum. Devalues at €13.05m<sup>2</sup> on the buildings with 15% on the canopy, 10% on the yard and €2000 annum on the weighbridge."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €59,000.

**2. REVALUATION HISTORY**

2.1 On 15<sup>th</sup> March 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 €99,200.

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 of the Property was reduced to €78,300.

2.3 A Final Valuation Certificate issued on 10<sup>th</sup> September 2019 stating a valuation of €78,300.

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

### **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely, on 5<sup>th</sup> July 2022. At the hearing the Appellant was represented by Mr. Eamonn S. Halpin B.Sc. (Surveying) M.R.I.C.S. M.S.C.S.I. of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Mr Ian Power 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.

4.2 The property, which forms part of New Ross Port, is located on the Waterford Road in New Ross and lies on the western side of the River Barrow, south of O' Hanrahan Bridge.

4.3 The property was constructed approximately 50 years ago and has been extended since. It comprises a storage facility of steel/concrete frame construction, with single skin corrugated asbestos roof and cladding.

4.4 The floor areas of the property are agreed as follows: -

Floor	Use	Area (M2)
0	Warehouse	3,559.63
0	Offices	45.19
0	Open Store	111.15
0	Yard	1,550.00
0	Plant/other - weighpit	1.00

4.5 The property was let on a 5-year short term business letting agreement from 1<sup>st</sup> December 2017. The lease is on full repairing and insuring terms, although the tenant is under no obligation to keep the premises in a better state or condition that it was at commencement. The lease contains a provision that the letting is made for the temporary convenience of the landlord. The annual rent under the lease is €60,000.

## **5. ISSUES**

The issue 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 Mr. Halpin, on behalf of the Appellant, described the property and its location using photographs contained in his submission. He said that the buildings were effectively transit sheds and that they were close to the end of their natural life.

7.2 Mr. Halpin drew attention to the letting on the property, which he said was on internal repairing and insuring terms (“IRI”). He said that, given the nature and age of the buildings, a hypothetical tenant would require a reduction of at least 10% in the rent to take a lease on the property on a full repairing and insuring basis. He described this letting as the best evidence of the subject’s value, having been let within three months of the valuation date.

7.3 Mr. Halpin developed his case by noting that a hypothetical tenant would obviously require access to the River Barrow and that the most relevant NAV comparisons would therefore be found at the Port of New Ross in Strokestown, some 5km south of the subject and which has a jetty and access to the same shipping channel. He noted that NAVs for properties the size of the subject in Strokestown were in the range of €13/M2 - €15/M2. These were his comparisons 1 -4.

7.4 Mr. Halpin drew attention to precedents agreed in the port of Wicklow, where older port buildings received a 50% end allowance versus modern equivalents and said that the

application of this precedent in the subject case would also support his opinion of value. These were his comparisons 5 and 6, as well as his context valuation.

7.5 Mr. Halpin put forward six NAV comparisons as follows: -

Property No.	Address	NAV per Sq. M	NAV
2008932	Boortmalt, Strokestown	€15.00	€137,900
2008945	Strokestown Port Services	€13.00	€72,400
2008934	Strokestown	€15.00	€26,300
2008930	Strokestown	€15.00	€85,300
2008891	Butlerstown IE, New Ross	€27.00	€304,000
2172629	IDA Industrial Estate, New Ross	€25.00	€59,000

Mr. Halpin also put forward for context details of the former Veba factory in Wicklow, where settlements had been agreed with a 50% end allowance due to the age and condition of the units.

7.6 Mr. Halpin contended for a valuation of €53,500 as the Net Annual Value of the subject property, which he calculated as follows: -

Floor	Use	Area (M2)	NAV (M2)	Total NAV
0	Warehouse	3,559.63	€13.50	€48,055.01
0	Offices	45.19	€13.50	€610.07
0	Open Store	111.15	€6.75	€750.26
0	Yard	1,550.00	€1.35	€2,092.50
0	Plant/other - weighpit	1.00	€2,000.00	€2,000.00
				€53,507.83

7.7 Responding to cross examination from Mr. Power, on behalf of the Respondent, Mr. Halpin accepted that he had originally valued the property at €59,000 but noted that he had based this valuation using a different area from that subsequently agreed. He also noted that he had maintained the same NAV/M2 rates. He argued that Wicklow was relevant in terms of precedent. He said that he did not consider Mr. Powers comparisons to be comparable to the subject property and that he did not consider Strokestown to be a rural location, although he did concede that it was on the periphery of New Ross. He accepted that the jetty in Strokestown was a shared one, but said that Strokestown was a bigger port

7.8 Responding to queries from the Tribunal Mr. Halpin conceded that the lease on the subject property was on full repairing and insuring ("FRI") terms, rather than IRI terms as he had claimed. He did not consider that would change his valuation, despite have previously indicated that a reduction of at least 10% would be required to move from an IRI lease to an FRI one. He indicated that he was happy that the strength of his comparisons justified his valuation.

## 8. RESPONDENT'S CASE

8.1 Mr. Power, on behalf of the Respondent, described the property and its location using photographs contained in his submission. He noted that the property had direct access to the River Barrow and that the property had access to crane facilities.

8.2 Mr. Power said that the lease on the property was on FRI terms and noted that the commencement date of the lease was close to the valuation date but drew attention to Clause 2 of the special conditions of the lease, which states that the letting was for the temporary convenience of the landlord, and said that this was not a normal lease clause. He said that his interpretation of this clause was that the Landlord could take possession of the subject property at any time. He stated that the rent had been taken into consideration but was just one piece of information used in assessing the NAV, and that equity and uniformity required that the Commissioner take a wider view than a single piece of information.

8.3 Mr. Power stated that he considered Strokestown to be a rural location and not comparable to the subject property. He said that the properties there were valued in line with other rural properties while the subject property was valued in line with other urban properties, as he would demonstrate with his comparisons. He noted that Mr. Halpin had not included any properties of a similar age to the subject property in New Ross within his comparisons and had only used modern properties. He did not consider that the precedent cited in Wicklow town was relevant in this case as there a number of buildings of a similar vintage in the Local Authority area.

8.4 Mr. Power put forward two Key Rental Transactions ("KRTs") which had influenced the valuation scheme. Details of these can be found in Appendix A. He also put forward 7 NAV comparisons as follows: -

Property No.	Address	NAV per Sq. M	NAV
2100833	Thomastown Rd, New Ross	€20.00	€51,900
2008913	Oaklands New Ross	€22.00	€51,800
2008889	Butlersland, New Ross	€30.00	€76,580
2148925	Marshmeadows, New Ross	€27.00	€110,300
2100229	Priory Lane, New Ross	€22.00	€31,600
5005067	Arnestown, New Ross	€18.00	€47,100
2100641	Wexford Street, New Ross	€22.00	€31,300

8.5 Mr. Power contended for a valuation of €78,300 as the Net Annual Value of the subject property, which he calculated as follows: -

Floor	Use	Area (M2)	NAV (M2)	Total NAV
0	Warehouse	3,559.63	€20.00	€71,192.60
0	Offices	45.19	€20.00	€903.80
0	Open Store	111.15	€10.00	€1,111.50

0	Yard	1,550.00	€2.00	€3,100.00
0	Plant/other - weighpit	1.00	€2,000.00	<u>€2,000.00</u>
				€78,307.90

8.6 Responding to cross examination from Mr. Halpin, Mr. Power said that he had no specific knowledge of the Port of New Ross but accepted that Strokestown could form part of it. He reiterated that the Respondent had valued the property as an urban industrial unit and the Strokestown units as rural industrial units, adding that neither party had made any allowances for the subject property being in a port location with access to cranes and jetties. He did not accept that no allowances had been made for age, pointing to the different NAV/M2 rates applied to modern buildings and the subject unit. He said that the KRTs were the best available to him and did not accept that they were not particularly comparable to the subject property. Nor did he accept Mr. Halpin's assertion that the NAV comparisons were not comparable to the subject, saying that this was merely Mr. Halpin's opinion.

8.7 Responding to queries from the Tribunal, Mr. Power confirmed that the end allowance given to older buildings in Wicklow Port had not been replicated anywhere in County Wexford. Mr. Power did not accept the Tribunal's stated view that the purpose of Clause 2 of the special conditions of the lease was to defeat the tenants right to a new tenancy and maintained his opinion that the clause allowed the landlord to regain possession at a time of its choosing. He accepted that KRT 1 was substantially smaller than the subject property but said that the NAV comparisons showed how properties of different sizes were treated. When questioned why he was disregarding the negotiated market rent of €60,000 and was instead seeking an NAV of €78,300 he said that he had to have regard to the other comparisons within the area and the subject property should not be treated any differently to these comparisons.

## **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 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 Wexford County Council.

10.2 The Tribunal notes the different approaches taken to the valuation by the parties. Mr. Halpin argued that as the property was part of the Port of New Ross it should be valued in line with other properties within the Port of New Ross, namely those properties located in Strokestown. He backed this point up by referencing the similarities between the subject property and properties in Wicklow Port, where a 50% end-allowance against the value of modern industrial units was given to reflect the age and condition of the property. Mr Power's position was that the subject property had been valued in line with similar properties in New

Ross and that no account had been taken of the property being located within the Port or the direct access to the waterfront enjoyed by the property. The Tribunal finds that, on the evidence before it, Mr. Halpin's argument that the subject property should be valued in line with those properties in Strokestown, a rural location some 5Km south of the subject property, to be unsustainable. Nor is it persuaded by the argument relating to the Wicklow Port end allowance. There was sufficient evidence, including that from the subject property, to value the property on its own merits. The Tribunal prefers Mr. Power's approach to the valuation, although it disagrees with his suggested figures.

10.3 In determining the rent at which it is estimated a relevant property might reasonably be expected to let, the best evidence is lettings of comparable premises in the open market. Use of the rental method of valuation depends, however, on sufficient, appropriate, and reliable comparable evidence being available from the marketplace; if it is available then it is top of the evidential hierarchy.

10.4 The Respondent put forward two KRTs which he said had informed the scheme for industrial units in the local authority area. The first KRT was of a body repair shop attached to a filling station on the eastern side of the county. The lease dates from a year prior to the valuation date and the comparison is some 10% the size of the subject property. The Tribunal does not consider this KRT to be relevant to the subject property, although it notes that the NAV as published by the Respondent equated to some 85% of the agreed rent. The second KRT was of a modern industrial unit in a business park, located close to M11 to the east of the county. The lease dates from a year prior to the valuation date and the comparison is some 50% the size of the subject property. The Tribunal does not consider this KRT to be relevant to the subject property, although it notes that the NAV as published by the Respondent was in line with the agreed rent.

10.5 The subject property was let on a 5-year lease on an annual rent of €60,000 from 1<sup>st</sup> December 2017, less than 3 months after the valuation date. The lease is on FRI terms, although the tenant is under no obligation to put the property into any better condition than that existing at the lease commencement. The Tribunal does not consider this clause to be unusual, given the age and condition of the property. The lease is also described as being a temporary convenience letting. This does not mean that the Landlord can take back possession as and when it chooses, as suggested by Mr. Power. There is no suggestion by either party that the lease was not agreed on an arm's length basis. The Tribunal finds that this is the best evidence available and sees no reason to depart from the agreed rent of €60,000 in assessing the NAV.

10.6 The Tribunal is under a duty to ensure that its valuations are correct and ensure equity and uniformity between properties on the valuation list. It appears to the Tribunal that in this case the correct figure can only be the one that has been negotiated freely and fairly on the open market close to the valuation date. The Respondent has argued that it is not correct to value a property based on one piece of evidence and the Tribunal accepts the point but notes that the Respondent has failed to put forward detailed evidence of the lettings underlying the scheme

by which it has valued the property. Nor has it put forward evidence to persuade the Tribunal that it should discard the open market rent.

**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 €60,000, calculated as follows: -

Floor	Use	Area (M2)	NAV (M2)	Total NAV
0	Warehouse	3,559.63	€15.21	€54,141.97
0	Offices	45.19	€15.21	€687.34
0	Open Store	111.15	€7.61	€845.30
0	Yard	1,550.00	€1.52	€2,357.55
0	Plant/other - weighpit	1.00	€2,000.00	<u>€2,000.00</u>
				€60,032.16