

Appeal No: VA19/5/0717

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Irish Popcorn & Snackfood Company Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2195869, Category; Industrial Uses, Use: Warehouse/Warerooms
at Local No/Map ref: 1A/1B Milltown North Glenealy, Rathdrum, County Wicklow.

B E F O R E

Dolores Power - MSCSI, MRICS

Eamonn Maguire - FRICS, FSCSI, VRS, ARB

Mema Byrne - BL

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18th DAY OF NOVEMBER, 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 **€94,000**.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: "1. *The subject property is an early 1980s warehouse and as such is over 35 years old at the valuation date. The property is not directly comparable with modern industrial units in the vicinity. The property has a flat metal deck roof and eaves of 5.7m.*

2. *Base levels for similar type industrial property in Rathnew are €20-€25/m² per PN 21948974 & PN 639789*".

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €52,200.

2. REVALUATION HISTORY

2.1 On the 15th day of 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 €94,000.

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 it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 17th day of September 2019 stating a valuation of €94,000.

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 held remotely on the 17th day of August 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. and the Respondent was represented by Mr Peter Gilsenan of the Valuation Office and Mr. David Dodd, BL instructed by the Chief State Solicitor’s 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 situated in the N11 South Point Business Park, off Charvey Lane in Rathnew, County Wicklow.

4.2 The business park is situated 2 km north of Wicklow town and circa 1 km from the M11, which connects Dublin to the north with Wexford in the southeast. Dublin’s M50 orbital route is located circa 29 km to the north.

4.3 Off Charvey Lane there are a number of industrial estates, the subject being one of 58 unit in this location off Charvey Lane, currently on the Wicklow valuation list.

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

Floor Level	Description	Sq. m.
0	Offices	145.08
1	Offices	145.08
0	Warehouse	1,799.52
Total:		2,089.68

5. ISSUES

The sole issue raised in the appeal was whether the NAV of the Property, as determined by the Respondent, is appropriate in the circumstances.

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, for the Appellant, having made his affirmation, adopted his précis as his evidence-in-chief before giving oral evidence.

7.2 Mr. Halpin stated that question was about the type and nature of the Property being an older dated premises from the 1980s and whether the Commissioner has been fair to the Property given the values that he has placed on compatible properties in around the same parts of Wicklow.

7.3 Mr. Halpin stated that this was a case concerning a warehouse which is of older specification including an eaves height of 5.7 metres, and has dated office accommodation, compared to that of modern warehouses in the vicinity. The property has a flat metal deck roof.

7.4 Mr. Halpin stated that at €45 psm. assessed on the Property, he believed that the level was excessive when compared to his NAV comparables, 1 to 3 inclusive and those closer to the Property.

7.5 Mr Halpin provided details of five properties by way of tone of the list comparables, and submitted evidence of market lettings concerning three properties, all within the area of Wicklow County Council.

NAV COMPARISONS:

- 1) PN 639789 – Rathnew, County Wicklow – comprising a modern warehouse of 816 sq.m, first floor offices of 146.32 sq.m, and canopy of 101.20 sq. m. The Commissioner has valued that property as: warehouse at €20 psm, the offices valued at €20 psm and the canopy at €3 per psm. Mr. Halpin stated that he found it hard to believe that a hypothetical tenant would lease the Property at €45 psm when the comparable was assessed at a value of €20 per psm.
- 2) PN 2189751 – Rathnew, County Wicklow – comprising a modern warehouse of offices of 70.18 sq. m., canopy and yard measuring 1,012.50 sq. m. The Commissioner has valued that property as; offices at €20 psm, the canopy at €1,000 and the yard at €2 per sqm. Mr. Halpin stated that the building in this case was negligible, the rate on the offices adopted was €20 psm.
- 3) PN 2194894 – Rathnew, County Wicklow – comprising a retail warehouse of 1,074.44 sq. m., warehouse of 49.22 sq. m., warehouse of 1,650.47 sq.m., yard of 3,500 sq. m. and offices of 207.69 sq. m. The Commissioner has valued that property as; retail warehouse valued at €40 psm, the first warehouse at €12.50 psm, the second at €25 psm, the yard at €4 psm and the first-floor offices at €25 psm. Mr. Halpin stated that the comparable building in this case was superior and that given its size, the Property could not be valued greater than this comparable.
- 4) PN 2195911 – Rathdrum, County Wicklow – comprising an office of 93.50 sq. m., a steel container of 518.40 sq. m., a warehouse of 1,150.49 sq. m., and mezzanine offices of 150 sq. m. The Commissioner has valued that property as; office at €25 psm, steel container at €5 psm, warehouse at €25 psm and mezzanine offices at €10 psm. Mr. Halpin stated that the comparable building in this case was in a superior location, yet the Property was valued at 80% more than this comparable per square metre.

- 5) PN 634593 – Kilcoole, County Wicklow – comprising a factory of 2,029.12 sq. m., offices of 60.95 sq. m., store of 31.50 sq. m., first floor factory of 15.91 sq. m., first floor offices of 34.02 sq. m., a canopy and additional factory area of 1,480 sq. m. The Commissioner has valued the property as follows; the canopy at €6 psm and the balance of the premises at €40 psm. Mr. Halpin stated that the comparable building was of similar age to the Property but in a far superior location and a hypothetical tenant would pay €5 psm less for the Property, to reflect this difference.

KEY RENTAL TRANSACTIONS:

All three of the following properties are in the same scheme and the key transaction details are as follows;

- 6) In the case of PN 2195852 and PN 2195853, they were let on a 5-year lease from 3rd May 2017 at €100,000 per annum.

PN 2195852 – Rathnew, Co. Wicklow – comprising warehouse of 768.58 sq. m. and first floor office of 221.40 sq. m. The Commissioner has valued the property as follows; warehouse at €45 psm and offices at €45 psm.

PN 2195853 – Rathnew, Co. Wicklow – comprising warehouse of 765.12 sq. m. and first floor office of 221.40 sq. m. The Commissioner has valued the property as follows; warehouse at €45 psm and offices at €45 psm.

- 7) In the case of PN 2195854, it was let on a 5-year lease from 27th July 2017 at €50,000 per annum.

PN 2195854 – Rathnew, Co. Wicklow – comprising office of 148.53 sq. m., warehouse of 765.12 sq. m. and first floor office of 217.36 sq. m. The Commissioner has valued the property as follows; office at €50 psm, warehouse at €50 psm and offices at €50 psm.

Mr. Halpin stated in his oral evidence that whilst more modern and superior comparable properties in the vicinity let at €55 psm, the Commissioner had valued two of those comparable properties at an NAV of €45 psm.

REPRESENTATIONS TO THE COMMISSIONER:

Mr. Halpin in his Precis gave details of the following evidence that was conveyed in representations to the Commissioner. However, at the oral hearing Mr. Halpin did not make any oral representations in respect of these properties or how they might have served as appropriate comparators for the Property.

- 1) Unit at Croghan Industrial Estate, Arklow - let on a 5 Year lease from 17th July 2017 (commencement) at €30,400 for 677 m² i. e. €45/m². Modern industrial unit in Arklow, with 7 metre eaves. Subject would require significant quantum and adjustment for age and location.
- 2) Unit at Croghan Industrial Estate, Arklow - let on a 1 Year lease from 23rd August 2017 at €22,000 for 585m² i.e., €37.50/m². Industrial unit in Arklow, 5.5m eaves – similar to the Property in terms of eaves. Subject would still require quantum.
- 3) Unit 6 Renmore Business Complex, Kilcoole. Let on a 10 Year lease from 1st February 2018 at €11,704/annum for 397m² i.e., €29.50/m². 8 Metre eaves, superior.
- 4) Unit in Carnew – let on a 5-year lease from 1st February 2016 at €26,000/annum for 3,000 m², i.e. €8.66/m². Only 4m eaves and poorer location that the Property.

7.6 In contending for a reduced NAV, Mr. Halpin set out his opinion of the NAV on 15th September 2017, as follows:

Use	Area – Sq. m.	NAV €/Sq. m.	Total NAV/Sq.m.
Warehouse	1,799.52	€35	€62,983
Ground Floor Offices	145.08	€35	€5,078
First Floor Offices	145.08	€35	€5,078
Total NAV			€73,139
Rounded down to:			€73,100

7.7 It was put to Mr. Halpin by the Tribunal that it was unusual that Mr. Halpin did not have any internal photographs of the property, to which Mr. Halpin replied that he normally did not take them.

7.8 It was put to Mr. Halpin by Mr. Dodd, that KRT 1 to 3 inclusive, all on the same site were an anomaly according to Mr. Gilsean. Mr. Halpin replied that it cannot be an anomaly if there is more than one item.

Mr. Dodd asked Mr. Halpin given that these comparators carried a valuation of €20 psm, he put a value of €35 psm on the Property, Mr. Halpin stated that he used his skills as a valuer having considered the evidence, including the presence of a single skin roof and that the properties were attached to a retail warehouse, to derive the higher valuation figure per square metre for the Property.

7.9 Mr. Dodd asked Mr. Halpin whether beside the three KRT's 1 to 3 inclusive, had he any other market evidence. Mr. Halpin replied he had submitted that market evidence as they were the best units in Rathnew, the location of the Property.

Mr. Dodd asked Mr. Halpin whether the evidence valued those units at €55 psm, and Mr. Halpin replied that it depended on whether you were assessing a single or double unit, the double unit would be valued at €50.20 or €50.30 psm.

7.10 Mr. Dodd referencing the schedule of 58 properties off Charvey Lane in Mr. Gilsean's evidence, asked Mr. Halpin whilst excluding the Property, why he submitted in evidence only three of those properties, and not the balance. Mr. Halpin replied that they were there to test the schematic and validity of the Commissioners approach which he did not agree with and also that many of those other properties were not comparable with the Property.

7.11 Mr. Dodd asked Mr. Halpin whether NAV comparator PN 2195911 was a rural property, to which Mr. Halpin said that it was a bit of a stretch, as the property was adjacent to the N11 and 11 km closer to Dublin than the Property.

7.12 Mr. Dodd asked Mr. Halpin to confirm if NAV comparator PN 634593 had an asbestos roof and Mr. Halpin replied that he could not say, but that he did not believe that Mr. Gilsean took that into account in arriving at his valuation assessment.

7.13 In commencing his cross examination by the Tribunal, Mr. Halpin was asked why some of his photographs of the NAV comparator properties comprised only aerial photographs. Mr. Halpin replied that in the case of NAV comparator PN 2189751, that was true.

7.14 Mr. Halpin was asked about the schedule of 57 other industrial units valued in the vicinity of the Property, some with levels of €45, €50 and €55 psm, to which Mr. Halpin replied they were not comparable in terms of size. When asked his opinion of property reference number PN 2195869 contained on Mr. Gilsean's list, valued also at €45 psm, and which had the same eaves height as the Property, Mr. Halpin replied that that the same criteria had been applied by the Commissioner to value that property.

7.15 Mr. Halpin was asked whether he perceived that a premises with an internal eaves height greater than the Property was more valuable, Mr. Halpin stated that he believed that it was. Mr. Halpin also stated that in the case of the Property compared to his comparators, the offices were of a lower specification, but he conceded that he had not submitted any evidence to support his contention.

7.16 Mr. Halpin was asked whether he could confirm the history of the complex, whether given the amount of car parking and generous site, it had been constructed as a manufacturing premises, he replied that he did not, but that his client used the property for warehousing.

7.17 Mr. Halpin was asked by the Tribunal whether he could confirm the number of loading doors into the property, he confirmed that he could not. He acknowledged that in a photograph in Mr. Gilson's Précis, there was evidence of a loading door on the side elevation which was accessed through a gated yard.

7.18 In summing up, Mr. Halpin for the Appellant stated that the Property should be valued on its merits, it is of a 1980's construction which as Mr Gilson had said is of the standards of that time. The property is now 40 years old, whereas modern properties have a greater eaves height, and would command higher rents for obvious reasons, including lower operating costs.

Mr. Halpin submitted that the Commissioner cannot selectively support part of the Valuation List and yet query other valuations on the List. He submitted that the List was the List and should be fair. It was submitted that it was the Schematic that was causing the problem, as it does not reflect the rents and it was somewhat similar to the Carlton Case, where the Court observed that the application of a universal mistake does not make the subject's value correct. Mr Halpin contended that the evidence put forward to support the Schematic does not support it.

7.19 Mr Halpin drawing on his NAV comparisons (1) and (2), valued at €20 psm and NAV comparison (4) valued at €25 psm, and whilst allowing for the fact that the Property is located in an industrial estate, though a dubious advantage in the case of Charvey Lane, he asked the Tribunal to confirm a valuation of €35 psm.

8. RESPONDENT'S CASE

8.1 Mr Gilsenan, for the Respondent, having made his affirmation, adopted his précis as his evidence-in-chief before giving oral evidence.

8.2 Mr. Gilsenan stated that the property is located in a compound accessed via large electronically controlled entrance gates, off Charvey Lane. There are two storey offices to the front constructed with part block walls and metal cladding, metal deck roof, with a concrete floor in the warehouse and roller shutter access door to the warehouse, located on the gable wall.

8.3 Mr. Gilsenan stated that the condition of the warehouse was reasonable and fair. The offices were carpeted and have suspended ceilings with fluorescent lighting. There was ample car parking to the front and there was plenty of circulation including at the back of the premises.

8.4 Mr. Gilsenan clarified that in terms of the compound, there was planning permission in place to further develop the site.

8.5 In terms of eaves height, Mr. Gilsenan measured the eaves height at 5.746 metres rounded up to 7.75 metres. Mr. Gilsenan stated that the general rule was that warehouses constructed in the 1970's had a 4.8 – 5.5 metre internal eaves height, in the 1980's it was 5.5 to 6 metres eaves height, in the 1990's it was typically 7 metres eaves height, in the 2000's it was an 8 metre eaves height and from 2010, a 10 metre eaves height.

8.6 Mr. Gilsenan stated that in his opinion the Property was of 1980's construction, typical of its vintage but is a good property, in very good condition throughout.

8.7 Mr. Gilsenan stated that Mr. Halpins NAV comparator PN 639789 is located 2.2 km from the Property of 1980's construction with single skin cladding and 5.6 metre eaves and in his opinion the level of €20 psm was anomalous and cannot be relied upon for comparison purposes.

8.8 Mr. Gilsenan stated that Mr. Halpins NAV comparison PN 2189751 was predominantly made-up of tanks, yard and gantries and that the office content was negligible, making up no more than 7% of the overall accommodation. Given these facts, Mr. Gilsenan stated that the property could not be relied upon for comparison purposes.

8.9 Mr. Halpins NAV comparison property number 2194894, was attached to a retail warehouse valued correctly at €40 psm, but that the warehouse valued at €25 psm, he believed was too low.

8.10 Mr. Gilsenan stated that Mr. Halpins NAV comparison PN 2195911, valued at €25 psm on the warehouse and office accommodation was also too low.

8.11 With regards to Mr. Halpins comparison PN 634593, Mr. Gilsenan confirmed that in answer to Mr. Dodd's earlier question of Mr. Halpin of the roof material used, that it was an asbestos roof, inferior to the Property and was built in the 1970's. Mr. Gilsenan stated that the value applied to that property at €40 psm was consistent with the values applied to old industrial buildings in that estate and that modern buildings were valued at €45 psm.

8.12 Mr. Gilsenan stated that in his opinion the Commissioner had fulfilled the requirements of Section 48 (1) of the Valuation Act 2001, as amended, in that he has estimated the net annual value of the property by reference to suitable market evidence, that is also supported by the NAV comparisons cited, properties that share similar characteristics to the Property.

Mr. Gilsenan stated that all the industrial property off Charvey Lane in Rathnew were valued in line with Commissioners industrial schematic, which uses three criteria to group industrial property, namely;

- (1) Age, specifically old or modern (based on roof construction)
- (2) Location within or outside an industrial state.
- (3) Size – 0 - 200 sq. m.
201- 1,000 sq. m.
1,001 – 3,000 sq. m.
Greater than 3,000 sq.m.

Of the 58 records on the list, there is one property valued €40 psm, four at €45 psm, including the Property and forty-five at €50 psm and eight at €55 psm and critically, the Property is the only property appealed to the Valuation Tribunal.

8.13 Mr. Gilsenan submitted in his Precis five Key Rental Transactions (KRT), the first three of which are the same KRT's submitted by Mr. Halpin and he submitted five NAV comparisons.

KEY RENTAL TRANSACTIONS

- 1) PN 2195852 - Mr. Gilsenan stated that the letting commenced 4 months prior to the valuation date and was an FRI letting.
- 2) PN 2195853 - Mr. Gilsenan stated that the letting commenced 4 months prior to the valuation date, was an FRI letting and that floor areas were amended on foot of representations from the occupier's agent.
- 3) PN 2195854 - Mr. Gilsenan stated that the letting commenced 1 month prior to the valuation date and that the tenant is liable for internal repairs only.

- 4) PN 2176223– this comparison comprises a mid-terraced unit, with a steel structure frame and double skin cladding and 6 metre eaves. The property was let on a one year rolling lease, for €14,400 per annum. The accommodation measured as follows; ground floor office; 113.12 sq. m., first floor offices; 13.12 sq. m., warehouse; 217.54 sq. m., ground floor offices, -13.12. The Commissioner has valued the property as follows; ground floor office at €45.06 psm, first floor offices at €45.06 psm, warehouse at €45.06 psm, ground floor offices at €45.06 psm.
- 5) PN 2196616 – this comparison comprises a mid-terraced unit, with double skin cladding and 6.8 metre eaves. The property was let on a 3-year lease, for €10,420 per annum. The stated accommodation was measuring as follows; ground floor office at 39.99 sq. m., first floor offices at 39.99 sq. m., and warehouse at 102.10 sq. m. The Commissioner has valued the property as follows; ground floor office at €48.96 psm, first floor offices at €48.96 psm, warehouse at €48.96 psm.

NAV COMPARISONS:

- 1) PN 2196007- Rathnew, Co. Wicklow – comprising warehouse of 726.88 sq. m. and office of 149.31 sq. m. The Commissioner has valued the property as follows; warehouse at €50 psm and offices at €50 psm. Mr. Gilsenan stated that the property is of similar construction to that of the Property, but valued at €50 psm as the unit falls within the Commissioners smaller group size category of 201 sq. m. to 1,100 sq. m.
- 2) PN 5010574 - Rathnew, Co. Wicklow – comprising warehouse of 736.78 sq. m. and ground floor office of 131.60 sq. m., first floor office of 78.56 sq. m. and mezzanine store at 561.38 sq. m. The Commissioner has valued the property as follows; warehouse at €50 psm and offices at €50 psm and the store at €10 psm. Mr. Gilsenan stated that the property has 6.8 metre eaves is of similar construction to that of the Property, but valued at €50 psm as the unit falls within the Commissioners smaller group size category of 201 sq. m. to 1,100 sq. m.
- 3) PN 2170389 - Rathnew, Co. Wicklow – comprising workshop of 2,060.84 sq. m. and ground floor office of 133.90 sq. m., first floor office of 133.90 sq. m. and store at 914.60 sq. m. The Commissioner has valued the property as follows; workshop at €40 psm and offices at €40 psm and the store at €40 psm. Mr. Gilsenan stated that the property has 6.5 metre eaves and is valued as per the Commissioners schematic, at €40 psm as the unit size is greater than 3,000 sq. m.
- 4) PN 639749 - Rathnew, Co. Wicklow – comprising factory of 935.30 sq. m. and 759.92 sq. m., first floor office of 119.40 sq. m. and store at 78.40 sq. m. The Commissioner has valued the property as follows; factory at €45 psm and offices at €45 psm and the store at €45 psm. Mr. Gilsenan stated that the property has 6 and 6.5 metre eaves, is of part modern and part older construction and valued at €40/45 psm to reflect the difference in age.

5) PN 2187326 - Rathnew, Co. Wicklow – comprising warehouse of 660 sq. m., mezzanine store of 551.20 sq. m. and office of 206.92 sq. m. The Commissioner has valued the property as follows; warehouse at €50 psm, store at €10 psm and offices at €50 psm. Mr. Gilsonan stated that the property is a terraced unit of steel portal frame construction, with double skin cladding and 7 metre eaves height. This property was valued at €50 psm as the unit is of modern construction and falls within the Commissioners smaller group size category of 201 sq. m. to 1,100 sq. m.

8.14 Mr. Gilsonan stated that in his opinion the correct NAV for the Property was €94,000, arrived at as follows:

Use	Area – Sq. m.	NAV €/Sq. m.	Total NAV/Sq.m.
Warehouse	1,799.52	€45	€80,978.40
Ground Floor Offices	145.08	€45	€6,528.60
First Floor Offices	145.08	€45	€6,528.60
Total NAV			€94,036.60
Rounded down to:			€94,000.00

8.15 In cross examination, Mr. Halpin asked Mr. Gilsonan whether he would consider the Property as of dated construction given that it is forty years old. Mr. Gilsonan stated that it was of 1980's construction.

8.16 Mr. Halpin asked whether it could compare with modern buildings, to which Mr. Gilsonan replied that it was still very functional and maintained in very good condition and would not deter a hypothetical tenant.

8.17 Mr. Halpin asked whether he accepted that eaves height is an issue with tenants, to which he replied that it was a consideration rather than an issue with tenants. Mr. Halpin asked doesn't the Commissioner load for eaves height to which Mr. Gilsonan replied that he loads only for buildings in excess of 10 metres.

8.18 Mr. Halpin asked whether a hypothetical tenant would pay a lesser rent for the Property compared to more modern properties which had double skin insulated cladding and more efficient lighting in the warehouse and offices, to which Mr. Gilsonan replied it would depend on the occupier, but he did concede that the Property would be more expensive to run, compared to properties of more modern specification.

8.19 Mr. Halpin asked whether the Commissioner in allowing in his schematic for value differentiation to reflect quantum, and taking into account Mr. Gilsenan's KRT comparison PN 2176223, where that unit only commanded a rent of €45 psm, at one eighth the size of the Property, did it not suggest that the Property should be lower and how could the Commissioner value that comparison at €50 psm when it only commanded a rent of €40 psm, to which Mr. Gilsenan replied that the schematic is based on a basket of comparable evidence, not just one property.

8.20 Mr. Halpin asked whether their shared KRT comparisons were the best units in Rathnew, to which Mr. Gilsenan replied that from external inspection they did appear to be the most modern units in Rathnew.

8.21 Mr. Halpin asked looking at KRT1, did he accept that they were achieving a premium at €50 psm to his other KRT'S, and yet the Commissioner had valued them at €45 psm. Mr. Gilsenan replied that the valuation assessment was a mistake, that the original cert had an incorrect floor area of over 1,000 sq.m. which pushed it into a higher size category and consequently a lower valuation assessment of €45 psm according to the Commissioners schematic. When the adjustment in size was made following representation, the value should have been adjusted up to €50 psm, but it was not.

8.22 The Tribunal asked Mr. Gilsenan is describing the Property as being in reasonable condition at one point of his verbal evidence and in very good condition later on in his verbal evidence, which was it. Mr. Gilsenan replied that it was in very good condition on the date of inspection.

8.23 The Tribunal asked Mr. Gilsenan whether his KRT 1 and KRT 2 were not the subject of a single letting, to which he replied that they were two separate lettings. Mr. Halpin was asked to clarify his evidence that stated that the two units were leased together, to which he replied that was indeed the case as evidenced by his PSRA Commercial Lease Register extract contained in his appendix (N/A to public)

8.24 In summing up, Mr. Dodd for the Respondent and in response to Mr. Halpin's closing remarks concerning anomalies in the List, he stated that as the basis of valuation was being determined not under Section 49, but rather under Section 48 (1) of the Act, that it was on Mr. Halpin acting for the Appellant to show that the rate of €45 psm is incorrect as an estimate, and that it should in fact be €35 psm. Mr. Dodd stated that this exercise all turns on market evidence and that there was a second aspect and that was to achieve equity and uniformity of values on that List.

8.25 Mr. Dodd stated that Mr. Halpin had introduced KRT's which from his own analysis had derived a value of €55 psm, yet he is seeking a reduction on the Property of €10 psm from the List value of €44 psm, and what was stark about that, is that he produced no evidence at all from Wicklow, other than two KRT's in the vicinity of the Property, so the case isn't a rental evidence case.

In contract Mr. Gilsonan has produced five KRT's, four of which are in the same vicinity as the Property, which demonstrates the reasonableness of €45 psm on the Property, where the average in Charvey Lane runs in fact from €48 psm to €50 psm.

8.26 Mr. Dodd referenced the second part of Section 19 (5) and how Mr. Halpin had approached this appeal in selecting just a couple of properties out of a Valuation List of 4,000 properties. He has 58 properties to choose to analyse in the vicinity of Charvey Lane, which he doesn't do, bar two, and one must scrutinise that approach, as it is always easier for the valuer to go through the 3,750 properties on the List and pick out the lowest ones, but one should not be concerned with relativity to one or two properties on the List but to the List as a whole.

8.27 Mr. Dodd stated that if you were to lower the valuation to €35 psm for the Property, you would have to be saying that it was the worst property in Charvey Lane, which no one is saying it is, and as we know there is a property in Charvey Lane on the List at €40 psm but that is a larger property, and a quantum valuation element applies. The Property is valued at the lower end of the scale for properties in Charvey Lane, so, when it comes to equity and uniformity, Mr. Halpin has not produced the evidence to support his case.

8.28 Mr. Dodd submitted that the List is the List, it is not full of anomalies, and it should be relied upon, however he expanded this point in his legal submission below.

In summary, Mr. Dodd states that one wants to avoid a repeat of anomalies here because that's not the objective of the Act.

8.29 Mr. Dodd stated that whilst Mr. Halpin relied on NAV comparisons located beyond Charvey Lane, NAV comparisons 1 to 3 inclusive, he had not argued the case that the Property was any less valuable than those properties valued at €20 -€25 psm, but rather opted for €35 psm, and one must reflect on that. Mr. Halpin did not put much weight on that evidence whereas Mr. Gilsonan in his evidence said that he simply could not stand over those valuations.

8.30 The Tribunal invited Mr. Halpin to ask any further questions on Mr. Dodd's submissions, to which he replied that he did not, but wanted to state that he was not confused, the Commissioner was carrying out a Revaluation exercise not a Revision, and in that exercise the purpose of a Revaluation in the first place was to remove anomalies, but that what he did not say was that the Commissioner was selectively applying the List, although that is undoubtedly what he is doing.

What he had said was that the Commissioner cannot selectively defend part of the List while not defending other parts, the List is the List. The Commissioner is charged with creating equity and uniformity, and he has definitely created uniformity, but it is certainly not equitable. The property must be valued on its own merits, not just by way of uniformity. The uniform mistake is still a mistake, and the value of the property must rest on its own attributes and on the evidence.

9. SUBMISSIONS

9.1 Mr Dodd identified some of the provisions of the Act which are engaged by the appeal, specifically those governing the nature of the appeal and the nature of the revaluation exercise and those governing the jurisdiction of the Tribunal and its function. He indicated to the Tribunal that he was going to open three decisions which deal with the issue of anomalies. Mr Dodd set out s. 48 of the Valuation Act, 2001 (“the 2001 Act”) which governs the “Method of determining property” value generally. Section 48(1) provides:

“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.

He noted that the instant appeal was a s.48 appeal and emphasised the inclusion of the word “estimating” and “estimated” in s.48 of the 2001 Act.

Mr Dodd noted that the Oireachtas charged the Commissioner (and now the Tribunal) with the task of determining a reasonable estimate of the Net Annual Value. He noted that it’s not a precise science. It was submitted that should the Tribunal find that the reasonable estimate is not correct, that it’s “not a reasonable estimate”, then the Appellant succeeds in its appeal. He noted that just because two valuers disagree doesn’t mean that the first valuer’s viewpoint is “unreasonable”. Mr Dodd noted that the onus was on the Appellant to present evidence to the Tribunal to show that the rate of €45 per square metre is incorrect as an estimate, that it should in fact be €35 per square metre.

Mr Dodd then set out Section 49 of the 2001 Act, which deals with Revisions (which this case is not). Mr Dodd suggested that the Appellant was confusing valuation for the purposes of a “revaluation” and a “revision”. Section 49 provides “If the value of a relevant property ... falls to be determined for the purpose of section 28 (4) ...that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”

Mr Dodd submitted that there are no “list values” when a re-evaluation is carried out, and suggested that the Appellant was inviting the Tribunal to determine the appeal as if it is a revision engaging section 49 of the 2001 Act, which is where the list is examined and a decision is made as to whether a property valuation is too high or too low or correct or not based on the Valuations List.

Mr Dodd noted that section 35 of the 2001 Act provides: “An appeal made under section 34 shall, as appropriate specify the grounds on which the appellant considers that the value of the property, the subject of the appeal, being the value as determined by the valuation manager or provision manager is not a determination of its value that accords with that required to be achieved by section 19(5)”. Mr Dodd explained that this requires an Appellant to state on what grounds the valuation is not in accordance with a valuation achieved under section. Addressing the Tribunal’s jurisdiction Mr Dodd noted s. 37(1) of the 2001 Act provides:

“The Tribunal shall consider an appeal made to it under section 34; in considering the appeal, unless the issues of the appeal do not relate to the value of the property, the Tribunal shall achieve a determination of the value of the property concerned that accords (a) with that required to be achieved by section 19(5)”.

The Respondent submitted that for the Appellant to succeed, the Tribunal must be satisfied that the valuation is not a reasonable estimate, and if it isn't a reasonable estimate, to make that finding. Thereafter, it must make a determination in accordance with 19(5) of the 2001 Act.

Section 19(5) of the 2001 Act provides:

(5) 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.

Firstly, Mr Dodd noted that the Valuation List is not published until after the valuation certificates issue, therefore the list is not available when a re-evaluation is carried out. It was submitted that “Correctness of Value” equates effectively to market rents. He noted there is a second obligation which is to try and achieve “equity and uniformity of value between properties on that valuations list” so that 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.

Mr Dodd noted there were two requirements: one is correctness of value. To show this an Appellant must show rental evidence which shows what a property could rent at, in and around the valuation date, and therefore demonstrating the Commissioner's valuation is too high. Mr Dodd said this had not been done in this case, as the Appellant had produced little or no rental evidence other than the property at Riverside (Comparator no. 6). Mr Dodd submitted that the Riverside property is valued at €55 per square metre and that the Appellant is seeking a €10 reduction from the list value at €45 per square metre. The Respondent submitted that the Appellant did not produce any rental comparators in Wicklow [I assume this is a mistake and he meant to say in Charvey Lane as the other comparators are in Wicklow] other than the Riverside property. In contrast, the Respondent produced five comparators, four of which are situate in Charvey Lane, and the rental values of the comparators demonstrate the reasonableness of €45 per square meter (running from €43 to €50).

Turning to the second requirement under s.19(5) of the 2001 Act, which requires equity and uniformity of value between properties on that valuation list, so that the value of the subject property is relative to the value of other properties comparable to that property. Mr Dodd submitted that there was a contrasting approach between the Appellant and the Respondent in analysing this requirement. The Appellant analysed properties in Wicklow in areas outside of Charvey Lane. The first three of the Appellant's comparisons are in effect in one area; they are not in Charvey Lane, although there are 58 properties to analyse and consider in Charvey Lane.

Mr Dodd submitted that that should be scrutinised, as it is always easy for a valuer to go through properties (in the whole of Co. Wicklow) and pick out the lowest ones and present them. However, Mr Dodd submitted that the task the Oireachtas assigned to the Tribunal, is not to analyse the relative value between to one or two properties but with the relative value of the list as a whole. Mr Dodd submitted that to lower the valuation to €35 per square metre the Tribunal would have to be satisfied that it was the worst property in Charvey Lane. Mr Dodd submitted that the Appellant had not submitted that it was the worst property in Charvey Lane and had no evidence before the Tribunal to support this contention. Mr Dodd noted there was one property at Charvey Lane valued at €40 per square metre and most of the properties in Charvey Lane are valued at €50 per square or higher. Mr Dodd submitted that valued at €45 per sqm this property was at the lower end of the scale. If you lower it again, you're effectively saying that this is the worst property here, which it isn't. Therefore, Mr Dodd surmised that in relation to equity and uniformity the Appellant had not produced the evidence that the designated value does not achieve equity and uniformity.

The Respondent the referred to the case law furnished to the Tribunal.

Mr Dodd referred to page 15 of *Orange Tree Ltd. v Commissioner of Valuation*, a Judgement of the Valuations Tribunal issued on the 4th day of October 2006 ("Orange Tree"). He noted it was a revision case and not a revaluation case. He noted the Tribunal stated:

" 39. In the Tribunal's view the nature of the exercise carried out by the Revision Officer and maintained by the Appeal Officer is flawed:

- i. Section 49 (1) requires the value of the property concerned to be determined by reference to the values appearing in the Valuation List, not by reference to rents at 2004, which is effectively what the Revision Officer and the Appeal Officer did.
- ii. If the Revision Officer and the Appeal Officer decided that the 2004 Zone A rent of €2700 per sq. metre was the starting point surely it would have been more logical to adjust this figure by reference to the Jones Lang LaSalle retail index or any other appropriate index in order to establish the rental value/net annual value as at November, 1988. After all, if the Jones Lang LaSalle retail index was considered appropriate to adjust 1997 rents and others in the analysis carried out on the rents of retail units in the other shopping centres, it is equally appropriate to use it in order to arrive at an estimate of the 1988 rent/net annual value levels of the property concerned. No evidence as to what result this exercise might have produced is available to the Tribunal and we are therefore unable to postulate what it might be. Nonetheless, it would certainly be our opinion that it would not show that rental levels in November 1988 were equivalent to 41.5% of rental levels in 2004.

iii. The exercise carried out by the Revision Officer and the Appeal Officer in our opinion is a re-run of the 1986 exercise which led to the establishment of the rates reduction factor of 0.63% now used in valuing properties in all the main urban areas. This exercise would in our opinion introduce a new level of values above and beyond the settled tone of the list that currently prevails in the Dun Laoghaire/Rathdown Rating Authority area. As stated elsewhere in this judgment the tone of the list is the standard by which the values of properties must be determined at revision in order to ensure fairness and equality. This is not to say that anomalies may not from time to time emerge within the valuation list over a period of time and it is for this very reason that revaluation of all properties in a Rating Authority area should be carried out on a regular basis as envisaged in Section 25 of the Valuation Act, 2001”.

The Respondent accepted that there are anomalies in the valuation list and noted that it is open to the appellant to rely on them and pursuant to Section 63 of the 2001 Act they have to be deemed to be correct. However, the Respondent submitted that weight should not be put on anomalies as it is easy to pick out 6 anomalies from 4,000 properties. The Respondent emphasised that it was for the Tribunal was charged with achieving equity and uniformity between all of the comparable properties on the list, not just selected properties.

The Respondent opened *Mia Taverns v Commissioner of Valuation*, a decision of the Valuations Tribunal issued on the 20th day of April, 2011 (“*Mia Taverns*”) to the Tribunal, specifically the second last page. He quoted from the decision “In the circumstances the Tribunal feels that the current practice of valuing licensed premises which have been subject to material changes of circumstances by reference to their adjusted turnover merely give rise to even more anomalies than currently exist on the valuation list”. He noted that the case was a revision case, not a revaluation case. Mr Dodd submitted that this underpins the logic that a valuation should not be based on anomalies in the list because that produces more anomalies when the whole point of revaluation and the whole point of section 19(5) is to reduce the amount of anomalies in the list to reduce any lack of equity and fairness. He submitted that the Applicant had not produced a basket of comparable properties to show that the valuation is too high. Mr Dodd submitted that the Applicant should have assessed comparable properties in Charvey Lane and identify why the valuation of the property at issue should be lower.

The Respondent opened the case of *Commissioner of Valuation v Seven Wonders Limited*, Judgment of Meenan J. delivered on the 18th day of September 2020 (“*Seven Wonders*”). Mr Dodd noted that *Seven Wonders* was an unopposed case. That case was about whether street furniture should be included in the valuation. In that case it was argued that as street furniture had not been valued in other premises it should not be valued in the *Seven Wonders* case. The Appellant succeeded before the Tribunal, however at issue was whether the premises, where the street furniture had not been valued, were anomalies.

The High Court noted at paragraph 12:

“In its decision, the Valuation Tribunal found as a fact that there were a number of inconsistencies in the way that the “right to street furniture” was treated for rating purposes by the Valuation Office and found as a fact that the appellant (the respondent) had offered a number of comparisons in close proximity to the subject property that had been valued with no addition for street furniture. It was acknowledged by Mr. Dodd that “anomalies” can arise in the valuation list but, if found, should be corrected. In my view, even if anomalies exist, the Valuation Tribunal is bound to apply the provision of the Act of 2001”.

In that case the High Court found that the Valuation Tribunal was erroneous in point of law in finding that the right to street furniture should not be included in the valuation. Mr Dodd submitted that any anomalies found should not be repeated and that this is supported by the cases presented. Referring to the Milltown premises Mr Dodd submitted that the Appellant produced them as the first three comparators, but did not use the values in the list, and did not contend that the properties were far less valuable property. He himself valued it at €35 per square metre. It was submitted that the Respondent’s position is that it is an anomaly and therefore it should not be used to judge equity and uniformity, and that much more comparable properties in Charvey Lane should be used. The Respondent concluded by submitting that the onus is on the Appellant to show the valuation is too high, and to provide market evidence that this is too high, and it hasn’t done that.

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 Wicklow County Council.

10.2 The Tribunal has examined the details of the Property and considered both the Precis of Evidence and the oral evidence submitted by both Mr Halpin who contended for a revised NAV of €73,100 and by Mr Gilsean who was defending the NAV of €94,000, as being both fair and equitable in the circumstances.

10.3 In the case of the comparators submitted in representation to the Commissioner, and included in Mr. Halpin’s Precis, as neither the corresponding property numbers from the Valuation List were included nor was the source validated with the inclusion of extracts from the PSRA Commercial Lease Register, the Tribunal found that evidence of less assistance.

10.4 The Tribunal finds that in the case for the Appellant, the rental evidence rests on what are Key Rental Transactions located in the vicinity of the Property, transacted one and four months respectively, before the valuation date. The Tribunal finds this evidence of great assistance.

In the case of the first transaction, which from the evidence the Tribunal finds involved a single five-year lease, entered into on the two adjoining properties, PN 2195852 and PN 2195853, the total size being 1,976.50 sq. m. The rent contracted was €100,000 per annum equating to an overall rent of €50.59 psm.

In cross examination Mr. Gilsean confirmed that the assessment of each of these properties were originally included in the schematic size category 1,000 sq. m. to 3,000 sq. m., which is the same size category as the Property and had accordingly been valued at the level of €45 psm. Following Representation, the areas for the individual units were agreed below 1,000 sq. m. and each were then placed in a lower size category, but the valuation which should have been then altered to €50 psm, was not.

The Tribunal finds that these KRT comparators constructed in 2008, circa 30 years after the Property have a greater eaves height than the Property, and superior specification, yet if those comparators were assessed as originally intended in the same size category as the Property on the Valuation List, between 1,001 – 3,000 sq.m., the Tribunal was informed by Mr. Gilsean that the NAV assessment would have been correct at €45 psm.

10.5 The Tribunal finds that of the NAV comparable evidence submitted by Mr. Halpin, comparators 1 to 4 inclusive, are of less assistance, with NAV's of between €20 to €25 psm, yet as Mr. Dodd has pointed out, Mr. Halpin had not used those levels set on more modern buildings, to argue for a similar or lessor rate on the Property.

In the case of comparator 5, PN 634593, the Tribunal finds that the property concerned though located closer to Dublin, is similar in size to the Property, classified as a dated industrial property with a corrugated asbestos roof.

10.6 In reviewing the separate Key Rental Evidence submitted by Mr. Gilsean, the Tribunal finds that in the case of KRT (4), PN 2176233, a modern unit with a 6 metre eaves height let on a one year rolling lease term, it is a very small unit size, compared to both the Property and the KRT's submitted in common with Mr. Halpin. Although the latter are contained in the Commissioners same schematic size category, they are at opposite ends of the threshold, consequently, that evidence is of less assistance to the Tribunal.

In the case of KRT (5), PN 2196616, the Tribunal finds that the evidence concerns a much smaller size unit, let two years prior to the valuation date and bearing in mind the KRT's introduced by both parties of similar size and location as the Property, the Tribunal finds that this evidence is of less assistance.

10.7 The Tribunal finds that of the NAV comparable evidence submitted by Mr. Gilsean, all are within the vicinity of the Property. From the evidence the Tribunal finds that;

PN 2196007, concerns a property valued at €50 psm which is of similar in age and specification, but is less than half the size at 876.19 sq. m of the Property.

Similarly, PN 5010574 and PN 2187326 concern properties which are half the size, but of modern construction, and valued at the same level of the previous comparable at €50 psm.

PN 2170389, concerns a larger property, valued at €40 psm and from the photographic evidence submitted, part of the structure is 'lean-to', and of lesser height to the main structure which has a confirmed height of 6.5 metres.

PN 639749, concerns a similar sized property, constructed in phases, some dated, with eaves height varying between 6 and 6.5 metres, and is valued at €40 to €45 psm. The photographic evidence submitted does not demonstrate that the original phase of construction was inferior to the Property and the eaves height is marginally higher.

PN 2187326, concerns a property which is half the size of the Property, but of modern construction, and valued at €50 psm.

10.8 The Tribunal finds that the market transactional evidence submitted concerning comparators in the vicinity of the Property, warrant a reduction in value of the Property, to account for its dated building specification, lower eaves height, reflective of its age of construction.

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 €83,500, and the Tribunal so determines.

Use	Area – Sq. m.	NAV €/Sq. m.	Total NAV/Sq.m.
Warehouse	1,799.52	€40	€71,980.00
Ground Floor Offices	145.08	€40	€5,803.20
First Floor Offices	145.08	€40	€5,803.20
Total NAV			€83,586.4
Rounded down to:			€83,500.00