

Appeal No: VA19/5/1332

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Doran Concrete Products Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2133687, Industrial Uses at Commons, Newtown, New Ross Rural, New Ross,
County Wexford.

B E F O R E

Dolores Power - MSCSI, MRICS

Deputy Chairperson

Liam Daly - MSCSI, MRICS

Member

Michael Brennan - BL, MSCSI

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 17th DAY OF NOVEMBER, 2022

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th 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 €77,600.

1.2 The grounds 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 entire complex is located at the rear of the family’s domestic premises. This would be unattractive to a hypothetical tenant.*

2. *The site has no 3 phase power and relies entirely on generators.*

3. *The subject's buildings are very basic and were constructed at a cost of €20,000 + VAT (705m²) in 2004 and €26,500 + VAT (541m²) in 2007. The buildings are open fronted with no doors, and are all single skin corrugated iron construction. They are simply structures to keep the weather off. Such structures have discussed at length by the Tribunal in VA 15/5/050 and VA17/5/245 and the detailed findings of the Tribunal in such similar type structures need to be considered if the subject is to be fairly valued. Even if €18/m² is appropriate for standard workshops (many of which would be of a superior standard, i.e. double skin panelling and double skin roof), the maximum rate per m² for the subject would be €9/m².*
4. *The oldest building on the site (ca. 40 years old), again with open fronted (no doors, no front wall) has just 3.7m eaves is an extremely basic corrugated iron structure could not exceed 50% of this level, i.e. €4.50/m².*
5. *The third class of structure on site comprises of the most basic low eaved (2.5m) open side canopies. These would not exceed 25% of the base level i.e. €2.25/m². Part is in use domestically for firewood etc. and should be excluded (see plan and pic below).*
6. *The value of the yard is completely disproportionate. The yard has been concreted in a piecemeal fashion with surplus concrete from the facility. There are 2 sections of yard used for storage – a) a stretch of 60m x 15m adjacent to the 2 large sheds and b) a further section of 60m x 25m on the other side of an internal road (see plan). The balance of the “yard” comprises circulation and access to the buildings, batching plant etc. There is also a small area of site which is completely undeveloped.*
7. *The value as applied to the plant remains out of line with it is depreciated replacement cost.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €40,600.

2. REVALUATION HISTORY

2.1 On the 29th 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 €128,700.

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 €77,600.

2.3 A Final Valuation Certificate issued on the 17th day of September, 2019 stating a valuation of €77,600.

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 11th day of August, 2022. At the hearing the Appellant was represented by the Mr Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Ms Susan Dunlea B.Sc. (Hons) Estate Management Surveying 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. Both parties requested small changes to their précis at the beginning of the hearing. Mr Halpin for the Appellant requested a change to his NAV from €32,800 to €32,600 representing a reduction of €0.50 on the canopy. Ms Dunlea for the Commissioner requested that the Tribunal insert the Canopies to her valuation as they had been incorrectly omitted from her précis. Mr Halpin had no objection. The oral hearing then proceeded with each witness, having taken the oath, and 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 subject property is located in the Townland of New Ross Commons, a rural location approximately 3kms east of New Ross town and approximately 2kms north of the N25, the main highway from Cork to Rosslare. It is situated along a rural road which is mainly residential and agricultural in nature.

4.3 The floor areas are agreed as follows:

Workshop (new):	719.55 sq m
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Workshop (new):	110 sq m
Workshop (New)	549.90 sq m
Office (Portocabin):	13.48 sq m
Store (Canopy):	123.69 sq m
Store (Canopy):	15.60 sq m
Store (Canopy):	90.95 sq m
Workshop (Old)	225.33 sq m
Workshop (Old):	150.95 sq m
Yard (concrete):	4,830 sq m
Plant: 1.	
Total measurement:	1,778.22 sq m

The methodology was also agreed in relation to the Yard and Canopies assessment:

Yard: 10% of Workshop (new).

Canopy : 20% of Workshop (new).

4.4 The property is held Freehold

5. ISSUES

The only issue is quantum in respect of the assessment of the workshops, both old and new. Assessment of Plant was agreed prior to the Hearing as well as the methodology for valuation of the yard and canopies.

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 said that, fundamentally, the subject’s case revolves around the level applied to the buildings by the Commissioner, and contended that the Commissioner has failed to adequately recognise the nature of the structures on site. He stated that even the most modern structures are single skin and very cheaply constructed and almost all structures are open sided in one respect or another. He said that such structures have been at the centre of Tribunal cases on concrete works before, such as VA17/5/2245, VA15/5/050 and VA17/5/081. He said the structures on site are, in the main, simply to keep the weather off and hence are easily differentiated from purpose build industrial properties.

7.2 He confirmed that the subject property is a concrete works at Newtown Commons, New Ross, County Wexford which is a rural agricultural location, 3kms from the centre of New Ross. He stated that there are no other commercial properties in the immediate vicinity of the subject.

7.3 He confirmed to the Tribunal that the subject property is located to the rear of the occupiers’ domestic accommodation and is unlike the majority of both concrete and industrial concerns in that it does not have three phase power.

7.4 Following agreement of the areas, the Appellant’s case is straightforward in that it concerns

- (A) The value applied to the buildings;
- (B) The value applied to the yard.

7.5 In terms of the buildings, he said the best and most modern were constructed in 2004 (705sq.m) and 2007 (541 sq.m). He said that these single skin corrugated iron structures with no doors and completely open fronted. It was his evidence that total cost of these structures was €20,000 plus VAT and €26,500 plus VAT respectively. He stated that in

terms of NAV the Commissioner is suggesting that these structures would be capable of a rent of over €20,000 per annum. He stated that he was not aware of any structure which would command an annual rent of over 40% of its ex. VAT built cost.

7.6 He stated that the remaining buildings on site are poorer and older and that the oldest building on site is c. 40 years old and has no front wall or doors and an eaves height of just 3.7 metres. He also said that there are a number of further canopy structures on the site with two or more walls missing and that the very basic level can be seen best through the photographs.

7.7 He said that the Commissioner misunderstands the nature of the structures and wishes to compare them with modern double skinned warehousing or equivalent in the environs of New Ross.

7.8 Mr Halpin gave the following NAV Comparisons to support his case, six within the Co. Wexford Rating Authority area and two prior Tribunal decisions:

(See APPENDIX I – N/A to public)

Comparison 1:	Ardinagh Taghmon, Co. Wexford.	
	NAV: €17,760.	
Comparison 2:	New Ross, Co. Wexford.	NAV: €11,710.
Comparison 3:	Ballyrue Upper, New Ross, Co. Wexford.	NAV: €16,640.
Comparison 4:	New Ross, Co. Wexford.	
	NAV: €10,810.	
Comparison 5:	Stokestown, New Ross, Co. Wexford.	NAV: €26,300
Comparison 6:	Stokestown, New Ross, Co. Wexford.	
	NAV €72,500	

Mr Halpin further also relied on two prior Tribunal decisions for context as follows:

VA15/5/050:	Shanagolden, Co. Limerick.
VA17/5/245:	Cloonagh, Co. Longford.

CROSS EXAMINATION

7.9 Under cross-examination, Ms Dunlea asked Mr Halpin if the Commissioner had valued the yard in NAV Comparison 1 at 10% of the buildings. Mr Halpin agreed that he had.

7.10 In respect of NAV Comparison 3, Ms Dunlea asked had Mr Halpin inspected this property. He replied that he inspected it from the road.

7.11 Ms Dunlea also queried Mr Halpin's use of properties outside the Wexford Rating Authority Area, and Mr Halpin said that he used these 2 NAV comparisons as 'context' only in that they were concrete plants.

7.12 Ms Dunlea asked Mr Halpin did he take into consideration the fact that the Commissioner has made a distinction between old and new buildings in assessing NAV's. Mr Halpin agreed that he had, but he contended that the Commissioner had not reduced the old buildings on the subject site by enough.

7.13 Mr Halpin, in his summing up, asked that the Tribunal consider the property in its 'actual state' in line with Section 48 of the Act. He maintained that the hypothetical Tenant would not pay the same rate per sq m for the old industrial units as he would pay for the newer units, and quoted Section 48 of the Act referring to the 'actual state' of the property. He requested affirmation of €32,600 NAV from the Tribunal taking all the facts into account.

8. RESPONDENTS CASE:

8.1 Ms Dunlea confirmed the location of the property in the Townland of New Ross Commons, Co. Wexford, c. 3kms from New Ross Town, a rural location which is mainly residential and agricultural in nature. She stated that New Ross acts as a transport hub to connect four main centres of population – Wexford, Kilkenny, Enniscorthy and Waterford City, and is the gateway to the Counties Carlow, Kilkenny and Waterford.

8.2 She said that the subject property has been categorised as Industrial and it is in use as a concrete works. She stated that the business was established in the 1970's and manufacture concrete products such as kerbs, patio slabs, wall caps, pier caps, chimney caps, fire products, lintels and cills, treatment systems, septic tanks, road gullies and water troughs.

8.3 Ms Dunlea said that the property varies in condition throughout and the new Workshops were constructed in c. 2004 and are single skin cladding with 6m eaves. She confirmed

that the old workshop/stores are in the region of 40 years old and have low eaves and are very basic in nature and in adequate condition. She said that the yard has a concrete surface and in reasonable repair.

8.4 Ms Dunlea stated that the Appellant relies on six ‘Tone of the List’ Comparisons and two ‘Context Comparisons’ within his précis. She said that there are no open market comparisons and the two ‘Context’ comparisons are outside the Rating Authority of Wexford County Council. Therefore, in the context of Section 19(5) of the Valuation Acts, Ms Dunlea has disregarded these two context comparisons and said that there are ample comparable properties within Wexford Council Rating Authority area, and therefore there is no need to be at variance with the Act. Ms Dunlea said that even if there were no directly comparable properties, the value of the subject property must be ‘relative to the value of other properties’ in Wexford.

8.5 Ms Dunlea provided the Tribunal with three key rental transactions (“KRT”) and four NAV Comparisons (See APPENDIX II – N/A to public)

KRT 1:	Enniscorthy, Co. Wexford NAV: €4,160
KRT 2:	Enniscorthy, Co. Wexford NAV €10,790
KRT 3:	Enniscorthy, Co. Wexford NAV €11,530
NAV 1:	EnniscorthyCo. Wexford NAV €93,300
NAV 2:	Enniscorthy, Co. Wexford NAV €127,400
NAV 3:	Enniscorthy, Co. Wexford NAV €9,470
NAV 4:	New Ross, Co. Wexford NAV €7,750

8.6 Ms Dunlea said that of the Appellant’s seven comparisons, none had supporting rental evidence. She stated that five of the comparisons are in the Wexford Rating Authority Area, but the final two comparisons are outside the Wexford Rating Authority area. There are

seven comparisons categorised as industrial concrete works located throughout County Wexford for comparison purposes.

8.7 Ms Dunlea stated that the subject property is behind the occupier's domestic dwelling and there is no phase 3 power to the industrial buildings. She said that the lack of 3-Phase electricity to the subject property would not, she contended, be uncommon when dealing with Concrete Works and Quarries.

8.8 Regarding the value of the levels applied to the buildings, Ms Dunlea said that she had taken into account the fact that there are old and new buildings on site and has adjusted the valuation accordingly. She said that an allowance has been made for the canopies that are on site and an adjustment has been made accordingly and that they are valued at 20% of the prevailing industrial rate.

8.9 She said that the valuation level applied to the yard has now been amended to 10% of the prevailing industrial in line with yards of this type within Wexford County Council Rating Authority area. She confirmed that the size of the yard has been reduced by agreement to take into account circulation areas that would be required in this type of operation. She also confirmed that the Plant element has also been agreed with the Appellant.

8.10 Ms Dunlea stated that the property has been valued in accordance with Section 48(3) and Section 19(5) of the Valuation Act 2001. The Plant element has been valued in accordance with Section 50 of the Act.

8.11 She stated that the property is currently on the Valuation List at €77,600, but is now contending for a valuation or NAV of €52,600.

8.12 Ms Dunlea said that the Appellant is now contending for a valuation or NAV of €32,600 as set out in his amended precis before the Tribunal. Ms Dunlea outlined her valuation approach as follows:

- I. €18 per sq m applied to the new workshop element;
- II. €17 per sq m applied to the old store/industrial element;

- III. €3.40 per sq m is applied to the Canopies, which is 20% of the prevailing industrial level;
- IV. €1.80 per sq m was applied to the yard which equates to 10% of the prevailing industrial valuation level; and
- V. €8 per sq m was applied to the office element as this is a portacabin. The valuation level applied per sq m equates to 40% of the prevailing industrial rate.

8.13 Ms Dunlea stated that properties which are ‘similarly circumstanced’ are considered to be comparable – i.e they share characteristics such as use, size, location and/or construction.

CROSS EXAMINATION

8.14 Under cross-examination, Ms Dunlea confirmed to Mr Halpin that all concrete works are classified as industrial. He asked Ms Dunlea did she accept that the buildings were constructed cheaply, and that the lean-to building is short of a door and she accepted this.

8.15 Having regard to this factual aspect, Mr Halpin questioned Ms Dunlea as to whether they were comparable to her KRT comparisons and Ms Dunlea stated that they were modern units and only partially open sided.

8.16 Mr Halpin asked her why his comparisons located at New Ross Port are valued at a lower rate than the subject and Ms Dunlea confirmed that this was due to the large quantum. Mr Halpin put it to her that the subject buildings would not be suitable for a tyre retailer for example and she accepted this. She was asked if an allowance was made to reflect this and she confirmed that no allowance was made as the buildings are suitable for a concrete user.

8.17 Mr Halpin put it to Ms Dunlea as to why she did not reflect the discounts as per prior Tribunal decisions relied upon by him and she stated that it was her view that the properties pertaining to those decisions appeared to be in worse condition than the subject property and that particular methodology was no appropriate in the subject case.

8.18 Mr Halpin put it to Ms Dunlea that the combined size of the various buildings within the subject property should provide for a quantum discount but she did not accept this as the

various parts of the property were valued at different rates to account for the nature of the subject property

8.19 Ms Dunlea asked the Tribunal to agree her NAV at €52,600 and stated that she had provided both Key Rental Transactions and Comparable Properties on the Valuation List to support her evidence. She said the evidence she has put forward is both in line with the Tone of the List and Rental evidence in the Local Authority area of Co. Wexford.

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 As regards the level at which the subject property has been rated, the onus of proof is on the Appellant to challenge the correctness of the valuation.

10.3 The parties are agreed on sizes, and the only difference between the two parties is the valuation of the older industrial buildings on site.

10.4 The Tribunal has carefully examined all of the evidence, and in particular the photographic evidenced produced by both parties of the subject property. The Tribunal considers that the KRT's supplied by the Respondent had significant difference in sizes to the subject, and therefore the Tribunal found them to be of limited assistance.

10.5 Of the Comparable properties submitted by both the Appellant and the Respondent, the Tribunal finds the Respondent's NAV Comparisons 1 to be the most compelling of all the properties. The buildings here have been valued as 'industrial' for a concrete user. This property also contains a plant element. As per the Respondent's evidence, the overall is

very similar in both location and construction of the modern buildings on the subject property.

10.6 The Tribunal notes the agreement regarding the canopies (20% per cent of the level applied to the Industrial Buildings) and also the Yard (10%). It is also noted that the Yard area and level of price per sq.m has also been agreed.

10.7 The Tribunal accepts that older buildings are of a more limited specification and use and deems it appropriate in this instance to adjust the rate per sq m to reflect the poorer nature of these older industrial buildings on site as illustrated to the Tribunal with the photographic evidence.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the overall valuation of the Property as stated in the valuation certificate to:-

	Area Sq.M	Rate	
Workshop:	1379.46	€18.00	€24,830.28
Old Workshops/Store	385.28	€10.80	€4,161.02
Canopies:	230.24	€3.60	€828.86
Offices (Portacabin)	13.48	€8.00	€107.84
Yard:	4830	€1.80	€8,694.00
Plant:			€11,620.00
Total:			€50,242.00

SAY NAV: €50,200

And the Tribunal so determines.