

**Appeal No: VA19/5/0523**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Cocoon Childcare**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2196348, Miscellaneous at Drogheda Street (Ballbriggan), County Dublin.

**B E F O R E**

**Dolores Power - MSCSI, MRICS**

**Deputy Chairperson**

**Michael Brennan - BL, MSCSI**

**Member**

**Gerard O'Callaghan - MRICS, MSCSI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 13TH DAY OF DECEMBER, 2022**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 14<sup>th</sup> 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 €102,800.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because : *“1. The subject property is occupied at a rent of €36,000 per annum. The building is shortly to be put on the market for sale, at which point the appellants will be granted a new 25 year lease at €48,000 per annum. This conflicts substantially with the Commissioner’s estimate of €102,800.*

- 2. The subject property is not profitable and is only surviving due to ECCE programmes.*
- 3. The Commissioner appears to have adopted an almost uniform tone at €150/m<sup>2</sup> ground floor, with 70% on the 1st floor. Balbriggan is completely different in terms of relative value to Swords or Blanchardstown. Indeed, purpose built creches [sic] in Stamullen have been valued by the Commissioner at €80/m<sup>2</sup>.*
- 4. The extreme quantum of the subject property needs to be taken into account. The subject property is much larger than the average crèche [sic] and would be onerous for the hypothetical tenant to fill. The subject property would not exceed €70/m<sup>2</sup> ground floor as defined by the rent.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €48,010.

## **2. REVALUATION HISTORY**

2.1 On the 28<sup>th</sup> day of February, 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 €102,800.

2.2 A Final Valuation Certificate issued on the 10<sup>th</sup> day of September, 2019 stating a valuation of €102,800.

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

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 9<sup>th</sup> day of August, 2022. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. Ltd and the Respondent was represented by Ms. Rachael Ruane 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**

From the evidence adduced by the parties, the Tribunal finds the following facts pertaining to the property:

4.1 The subject property comprises a modern two storey, purpose built crèche that was constructed in 2007.

4.2 The property is located at Drogheda Street, Balbriggan, Co. Dublin.

4.3 The floor areas of the property were agreed between the parties as follows:

<b>Floor</b>	<b>Use</b>	<b>Size</b>
Ground	Crèche	460.49
First	Crèche	321.96
<b>Total</b>		<b>782.45</b>

4.4 The property is currently held subject to a 25 year lease from 19<sup>th</sup> December 2019 at a rent of €59,486 per annum. Prior to this lease, the property was held on a related parties lease at a rent of €36,000 per annum

#### **5. ISSUES**

5.1 The appeal raised the sole issue as to whether the NAV of the Property as determined by the Respondent is excessive.

#### **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, contended for a valuation of €54,800 as follows:

<b>Floor</b>	<b>Use</b>	<b>Size</b>	<b>NAV per sq m</b>	<b>NAV</b>
Ground	Crèche	460.49	€80.00	€36,839
First	Crèche	321.96	€56.00	€18,029
<b>Total</b>				<b>€54,868</b>
				<b>Say €54,800</b>

7.2 Mr Halpin opened his case by stating that the issue in dispute related to the uniform application of a rate per sq m to crèches in the Fingal rating area. He stated that the Respondent had neglected to consider that values are location driven. He stated that the NAV was assessed in uniformity with the standard crèche rate but in the absence of locational factors that should have been taken into account. In addition it was his view that the Respondent did not make any allowance for the quantum of the subject property.

7.3 He stated that the values in this part of north Dublin compares starkly to other areas within the Fingal Catchment. He relied on the Pobal Deprivation Index (2016) to demonstrate that Balbriggan has below average income in comparison to other coastal towns in Fingal such as Malahide, Howth, Sutton and Swords.

7.4 It was his evidence that lease from 19<sup>th</sup> December 2019 was an arm's length lease with a market rent of €59,486. He stated that this was a large crèche and the lease reflected a rate of €86 per sq m on the ground floor and €60 on the first floor.

7.5 In relation to the size of the subject property, he stated that it is 300 sq m larger than any other crèche building in Balbriggan and was the fourth largest in the Fingal rating area. He restated that the Respondent did not make any allowance for this fact.

7.6 He stated that the uniform rate of €150 per sq m for crèches in Fingal as a whole is not accurate when considering the dynamics of the Balbriggan location. Acknowledging that the following locations were in Co. Meath and not Fingal, he nonetheless stated that these neighbouring areas including Stamullen and Julianstown have equivalent crèche rates of €80 per sq m and €90 per sq m was the equivalent rate for Drogheda.

7.7 Mr Halpin relied on six NAV Comparisons which are set in Appendix 1 (n/a to public) hereto and can be briefly summarised as follows:

**NAV Comparison 1: Stamullen, Co. Meath – Located 6.5km from Subject**

Floor	Use	Size	NAV per sq m	NAV
Ground	Crèche	191.80	€80.00	€15,344
First	Crèche	120.25	€56.00	€6,734
<b>Total</b>				<b>€22,000</b>

**NAV Comparison 2: Stamullen, Co. Meath – Located 6.5km from Subject**

Floor	Use	Size	NAV per sq m	NAV
Ground	Crèche	283.14	€80.00	€22,651.20
<b>Total</b>				<b>€22,000</b>

**NAV Comparison 3: Bettystown, Co. Meath – Located 15km from Subject**

Floor	Use	Size	NAV per sq m	NAV
Ground	Crèche	523	€80.00	€41,840
First	Crèche	455	€56.00	€25,480
<b>Total</b>				<b>€67,300</b>

**NAV Comparison 4: Drogheda, Co. Meath – Located 13 km from Subject**

Floor	Use	Size	NAV per sq m	NAV
Ground	Crèche	553.14	€90.00	€49,782.60
<b>Total</b>				<b>€49,700</b>

**NAV Comparison 5: Julianstown, Co. Meath – Located 9km from Subject**

Floor	Use	Size	NAV per sq m	NAV
Ground	Crèche	177.47	€80.00	€14,197.60
First	Crèche	170.27	€56.00	€9,535.12
<b>Total</b>				<b>€23,700</b>

**NAV Comparison 6: Laytown, Co. Meath – Located 13km from Subject**

Floor	Use	Size	NAV per sq m	NAV
Ground	Crèche	241.73	€80.00	€19,338.40
<b>Total</b>				<b>€19,330</b>

7.8 Mr Halpin also included a previous Tribunal decision in VA17/5/278 in support of his contention that rental or NAV evidence from other rating areas is admissible evidence.

7.9 When questioned by the Tribunal whether the fact Balbriggan had a lower average income than other Fingal areas and if this impacted occupancy, he stated that the NAV assessed by the Respondent would be relevant to an area such as Balgriffin, but not Balbriggan.

7.10 Under cross-examination, Mr Halpin accepted that he did not rely on comparable evidence in the Fingal rating area because he didn't accept that the uniform valuation applied to crèches in Fingal, was applicable to Balbriggan.

7.11 In summarising his evidence, Mr Halpin stated Balgriffin is in the Fingal rating area but is within 100 metres of the environs of Dublin City Council. He stated that the application of a uniform rate from Balgriffin to Balbriggan was unfair. He stated that there was only one market rental comparison for Fingal but there was plenty of evidence for nearby areas in Co. Meath. He stated that it was unreliable to rely on the NAV comparisons on Fingal but they could have been assessed as a check and balance. He stated that the Respondent's NAV

Comparison 2 was the most relevant Respondent comparison but it was analysed having regard to its net internal area.

## 8. RESPONDENT’S CASE

8.1 Ms Ruane, for the Respondent, contended for a valuation of €102,800 as follows:

<b>Floor</b>	<b>Use</b>	<b>Size</b>	<b>NAV per sq m</b>	<b>NAV</b>
Ground	Crèche	460.49	€150.00	€69,073.50
First	Crèche	321.96	€105.00	€33,805.80
<b>Total</b>				<b>€102,879.30</b> <b>Say €102,800</b>

8.2 Ms Ruane outlined an error in her précis at page 45 where she had stated that the subject property was the only crèche appealed but at hearing, stated that there were in fact two subject to appeals.

8.3 She outlined that the subject property was in walking distance to the village and train station and that the specification of the subject property included a lift and outdoor play area.

8.4 She stated that there was one key rental transaction (“KRT”) relevant to the subject property which was agreed one month prior to the valuation date which has a net effective rent (“NER”) of €78,029 and a NAV of €80,700. This related the letting of a crèche property in Balgriffin and is detailed in Appendix 2 (n/a to public) hereto and can be briefly summarised as follows:

### **KRT 1: Balgriffin, Co. Dublin**

<b>Floor</b>	<b>Use</b>	<b>Size</b>	<b>Net Effective Rent per sq m</b>	<b>NAV</b>
Ground	Crèche	316.92	€145.00	€45,953.40
First	Crèche	316.96	€101.50	€32,171.44
<b>Total</b>				<b>€78,124.48</b>

8.5 In addition to this, Ms Ruane relied on four NAV Comparisons which are set out in Appendix 2 (n/a to public) hereto and can be briefly summarised as follows:

**NAV Comparison 1: Balbriggan, Co. Dublin**

Floor	Use	Size	NAV per sq m	NAV
Ground	Crèche	251.34	€150	€37,700

**NAV Comparison 2: Balbriggan, Co. Dublin**

Floor	Use	Size	NAV per sq m	NAV
Ground	Crèche	416.36	€150	€62,454
First	Crèche	73.60	€105	€7,728
<b>Total</b>				<b>€70,100</b>

**NAV Comparison 3: Lusk, Co. Dublin**

Floor	Use	Size	NAV per sq m	NAV
Ground	Crèche	183.2	€150	€27,480
First	Crèche	183.2	€105	€19,235
<b>Total</b>				<b>€46,700</b>

**NAV Comparison 4: Rush, Co. Dublin**

Floor	Use	Size	NAV per sq m	NAV
Ground	Crèche	195.94	€150	€29,391
First	Crèche	183.96	€105	€19,315
<b>Total</b>				<b>€48,700</b>

8.6 Under cross-examination, Mr Halpin put it to Ms Ruane that her NAV Comparison 2 was large and assessed on a net internal basis. He stated that it should be assessed as gross internal area which would reduce the NAV rate per sq m. Ms Ruane stated that measurement will be corrected. She stated that the rental evidence of the subject was excluded because it was not at arm's length when the question was put to her. He stated that the new lease was not relevant because it was post the valuation date. When it was put to her that Balbriggan was not a comparable area to Balgriffin, she stated that the NAV was based on the evidence. She stated that there was enough evidence in Fingal so there was no requirement to assess evidence from

the Meath rating area. It was put to her that evidence in nearby locations in the Meath rating area should have been assessed given that there was only one KRT for Fingal to which she stated that it was the only evidence available at the time.

8.7 In summarising her evidence, Ms Ruane stated that the NAV applied to the subject property was well established. She also stated that there were 21 comparisons in Fingal and two were under appeal.

## **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 Fingal County Council.

10.2 The issue in dispute centres primarily on whether the location of the subject property, Balbriggan (population 21,722), the most northerly town in the Fingal rating area should be valued in line with all of the other crèche locations in Fingal.

10.3 Mr Halpin for the Appellant, has argued that not all areas in Fingal are equal to each other. He argues that the blanket NAV rate applied to all Fingal crèches is based on a single market letting and that is not a balanced and fair reflection of individual location characteristics. He has provided NAV evidence within a 6.5 – 15km distance of the subject property which are in the Meath rating area.

10.4 The Tribunal accepts the Appellant argument that Balbriggan would be an inferior trading location for a crèche in comparison to Balgriffin and it further accepts that it is on the periphery of a much larger Dublin City catchment population. The subject property has inferior locational characteristics to the foregoing and a natural consequence of this is that its value should be discounted from the level applied to this KRT.

10.5 The Tribunal also accepts that the relevance of nearby NAV comparisons notwithstanding that they are from the Meath rating area. Unlike a revision, there is no legislative provision that would exclude the consideration of relevant evidence from a different rating area in the case of a revaluation. In locations such as the subject location, which lies near to a county border where the use of the property is as a crèche, the label of an address is unlikely to be a material factor in the setting of a rent. The setting of the rent will be a factor of supply and demand economics and the consideration of rents within a reasonable distance of the subject property, irrespective of address, are relevant considerations.

10.6 Having regard to the Appellant's NAV Comparisons, the range of rents within a similar catchment area and in relatively close proximity range from €80 - €90 per sq m for ground use crèche use and €56 per sq m for first floor crèche use. Having regard to the nature of the subject property, which has a good specification, is modern and well located, the Tribunal considers that it would be at the upper end of that range.

#### **DETERMINATION:**

Accordingly, for the above reasons, the Tribunal allows the appeal and the valuation of the Property as stated in the valuation certificate to €59,500, as follows:

<b>Floor</b>	<b>Use</b>	<b>Size</b>	<b>NAV per sq m</b>	<b>NAV</b>
Ground	Crèche	460.49	€90.00	€41,444
First	Crèche	321.96	€56.00	€18,029
<b>Total</b>				<b>€59,473</b>
				<b>Say €59,500</b>

**RIGHT OF APPEAL:**

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.