

**Appeal No: VA19/5/1244**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Cosgrave Property Group**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 5014184, Miscellaneous at Meridian Point Shopping Centre Car Park,  
Greystones, County Wicklow.

**B E F O R E**

**Majella Twomey - BL**

**Deputy Chairperson**

**Annamaria Gallivan - FRICS, FSCSI, MPhil SEE**

**Member**

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

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 30<sup>TH</sup> DAY OF JANUARY, 2023**

**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 €51,300.

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 : *“Without prejudice to (d) below rates level is too high*

*when income is considered. Carpark is part of a shopping centre & is non-profit making, charges just cover admin.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0 or, alternatively a nominal sum of €10,000.

## **2. REVALUATION HISTORY**

2.1 On the 10<sup>th</sup> day of May, 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 €51,300.

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 not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 10<sup>th</sup> day of September, 2019 stating a valuation of €51,300.

2.4 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 November, 2022. At the hearing the Appellant was represented by Mr. Brian Bagnall SCSI, RICS of Bagnall, Doyle, MacMahon and the Respondent was represented by Mr. Liam Diskin B.Sc. (Property Management & Investment) of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

#### **4. FACTS**

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The subject property comprises a carpark attached to the Meridian Point Shopping centre in Greystones.

4.3 The premises is located in the centre of Greystones.

4.4 There are 168 spaces are contained underneath the carpark and there are 22 external spaces along the entrance way. There is a total of 190 car park spaces.

4.5 The Meridian Point was developed in the 2000s.

#### **5. ISSUES**

5.1 The issue in question here is quantum.

5.2 The Appellant contends that the rates level is too high when income is considered. He states that the Carpark is part of a shopping centre & is non-profit making as the charges just cover administration.

#### **6. RELEVANT STATUTORY PROVISIONS:**

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

## **7. APPELLANT’S CASE**

7.1 The Appellant was represented by Mr Brian Bagnall. Mr Bagnall was sworn in and adopted his precis as his evidence.

7.2 He stated that the car-park was being run on a break-even basis as it was servicing shops and offices.

7.3 Mr Bagnall said that there were 190 car parks. He said that the bulk of the car park was under the shopping centre. He said that, initially, there was no charge for the car park. However, due to its proximity to the train station, people started parking there. Consequently, parking charges were introduced for people who were parking there all day.

7.4 It was stated that the main reason for the introduction of the charges was to ensure that the car parking was kept for shoppers and not commuters.

7.5 Mr Bagnall said that the lack of commerciality of the car park should be taken into account. He said that the annual profit was only €11,000 and the only reason the charge was introduced was to prevent all day parking.

7.6 The Appellant did not put forward any comparators for the Tribunal, to support his claim for a lower or nil NAV.

7.7 On questioning, from the Tribunal, the Appellant said that shoppers do pay for parking and that everyone now pays for parking. However, prior to the paying system, the car park was not rated. Mr Bagnall did not know the date when the car park became a fee-paying car park.

7.8 On cross-examination from Mr Diskin, it was put to Mr Bagnall that following revision, the property remained on the valuation list. He accepted this, but he said that before that it was not valued.

7.9 It was put to Mr Bagnall, that the sum of €10,000 presented by him, equated to €52 per space and he was asked for comparator evidence to support this figure and he said that he was putting his case forward on the basis of profit.

7.10 It was put to Mr Bagnall, by Mr Diskin, that profit and turnover are not a character of rateability and he said that he did not agree. Mr Diskin asked him where, in the Valuation Act, it allowed for the NAV to be based on profits and Mr Bagnall said that pubs and restaurants are done in the R&E method.

7.11 Mr Diskin then put it to Mr Bagnall that Section 3 of the Act states that a relevant property is '*land used or developed for any purpose*'. Mr Bagnall said that he accepted that.

## **8. RESPONDENT'S CASE**

8.1 Mr Diskin, for the Valuation Office, said that it was agreed that there were 190 car spaces and he said that they were valued at €270 per car space.

8.2 He said that the subject property is 100 metres from the train station and there are external car spaces close to Costa Coffee and Sports Direct. Mr Diskin took the Tribunal through the block plan, access points and photographs of the subject property.

8.3 It was stated that the Meridian Shopping Centre is on a sloping site and is held freehold by the Appellant. It was stated that, at the representation stage, Mr Bagnall raised the same issues as he did at hearing.

8.4 Mr Diskin said that €270 is the rate which is established in urban Wicklow, and this has been accepted generally by the car park occupiers.

8.5 Mr Diskin was asked how the rate of €270 was arrived at, he stated that three car parks were analysed using all the information available to form a scheme and this was used to inform the €270.

8.6 Mr Diskin was asked about a Limerick car park, which the Appellant had referred to, which was rated differently, and he said that it was outside the rating authority and is no longer on the list.

8.7 Mr Diskin said that there are a number of towns in Wicklow where car parks are rated at €270, including Bray, Ashford, Greystones and Newtown Mount Kennedy. He said that there is no evidence to contradict that level.

8.8 A number of comparators were then introduced to the Tribunal.

8.9 The Respondent's first NAV was Frank Keating, which has 25 car parking spaces, all valued at €270 each. The evidence was that this is 250 metres from the subject and adjoins a mixed-use development. While it is smaller, it resembles the subject property.

8.10 NAV comparators 2 & 3 are surface properties, one is situated on Castle Street in Bray and valued at €270 per space for 100 spaces. The other is also valued at €270 for 42 spaces. NAV 4 is located in Bray and is also valued at €270 per car space.

8.11 The rest of the NAV comparators were in Bray and Wicklow town and were all valued at €270 per car space. It is noted that NAV 9 was Wicklow Town Council, which the Respondent stated offers public parking. The NAV for this was also €270 per space.

8.12 Mr Diskin summarised by stating that the onus of proof was on the Appellant. He said that no evidence had been produced to support the value of €10,000 and there were no comparators. He said that the subject property is relevant property within the legislation.

8.13 Mr Bagnall then took the opportunity to cross-examine Mr Diskin. He asked Mr Diskin if he considered the valuation to be high considering the low income of the car park. Mr Diskin replied that profit and turnover was not a characteristic of rateability. He said that he looks to

similar circumstanced properties. Mr Bagnall put it to Mr Diskin that the income figures were sent in at the representation stage and he agreed with this.

8.14 Mr Bagnall put it to Mr Diskin that the main reason for the charges was to deter all day parking in circumstances where, initially, there was no charge and he accepted this.

8.15 Mr Bagnall put it to Mr Diskin that he had used the same flat rate for five Wicklow towns and Mr Diskin accepted this. Mr Bagnall put it to Mr Diskin that Bray was a leading town in Wicklow. Mr Diskin said that it was the biggest town, then Greystones followed by Wicklow town. Mr Bagnall queried whether it was safe to use the same level used in Bray as was used in Newtown Mount Kennedy and Blessington. Mr Diskin replied that they are also large towns. He accepted that they were secondary towns, but it was not a perfect system.

8.16. Mr Diskin was then asked about his NAV 7 comparator and was asked if town councils paid rates. He acknowledged that it might be a case of robbing Peter to pay Paul. When it was put to him that they were hardly likely to appeal the NAV, he said '*no, but they do have a mechanism to appeal*'.

8.17 The Tribunal then clarified a number of matters with Mr Diskin. He stated that there was no distinction between paying and non-paying car parks in terms of rates. He said that he did not have any underground comparators as the Meridian is the only underground. The Tribunal asked him if the Respondents ignored the costs associated with an underground car park as opposed to a surface car park and he said '*we would need to see a pattern of evidence*'. Mr Diskin clarified that he ignored the actual income of the carpark totally, in this case. The Tribunal asked if the introduction of charges had any bearing on the subject property being put on the list and Mr Diskin said it did not. Mr Diskin also said that sometimes a supermarket with car spaces outside might be separately valued. However, the subject is not a standalone. He said that none of the retailers can lay claim to the car park.

## **9. SUBMISSIONS**

9.1 No legal submissions were made.

## 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.

10.2 The Appellant in this case put forward the claim that the subject property should either not be rated or should have a nominal NAV of €10,000 due to the low level of income which it makes.

10.3 The Respondent argued that the Act dictates that the Tribunal must look at similarly circumstances properties in order to arrive at a correct and equitable decision.

10.4 The onus is on the Appellant to prove his case.

10.5 Rule 36 of The Tribunal Rules states that ‘The appellant’s précis must include the following documents:

- (a) where appropriate, a copy of the relevant valuation certificate or notification of the valuation manager or revision manager;
- (b) a copy of any written record of the decision appealed;
- (c) a copy of the notice of appeal to the Tribunal;
- (d) ***maps and photographs of the property the subject of the appeal and of all comparator properties relied upon.*** [Emphasis added] Photographs must be dated and titled. Maps must be to scale, with north-point, road names, the property the subject of the appeal and the comparator properties clearly marked;
- (e) where appropriate, all relevant market evidence relating to the property the subject of the appeal and a copy of any lease affecting that property;
- (f) a copy of any other document verifying facts or particulars relied upon by the appellant.

10.6 Furthermore, Rule 38 States that ‘*The respondent, the occupier of the property the subject of the appeal (if not the appellant) and any interested party must include in a précis of evidence details of all comparator properties relied upon together with maps and photographs of the property the subject of the appeal and*



*all such comparators. Maps must be to scale, with north-point, road names, the property the matter of the appeal and the comparator properties clearly marked. Photographs must be dated and titled’.*

- 10.7 The Tribunal notes that the Appellant in this case did not comply with Rules 36(d) or 38. No comparator properties were produced to assist the Tribunal. While the Appellant referred to one property in Limerick, which he believed was useful to his case, the details relating to the said property were scant and there were no maps or photographs in relation to that property.
- 10.8 The Tribunal also notes that Rule 39 (f) states that *‘Any précis of evidence on behalf of any party as to the value of the property the subject of the appeal must include particulars of - the comparator properties that he or she considers to be similarly circumstanced to the property the subject of the appeal and relevant to the assessment of its net annual value and giving such details of the comparators as specified in subparagraphs (i) to (v) above’*. The Tribunal notes that the Appellant failed to produce any comparators which he considered to be similarly circumstanced. The Tribunal notes the use of the word ‘must’ in Rule 39 when it refers to the details which should be in a Précis of Evidence.
- 10.9 The Tribunal can only deal with the evidence before it. The Appellant failed to supply any clear or compelling evidence of comparator properties which are similarly circumstanced to the subject property. The Respondent, on the other hand, submitted 10 comparator car parks from all across Co. Wicklow. Each of the 10 car parks have a NAV per space of €270.
- 10.10 While the Appellant made the point that different rates should apply to different towns in Wicklow, it is significant that the Respondent was able to produce a comparator which is just 250 metres down the road, in Killinacarrig, Greystones (PN629671), with an NAV of €270 per car space. The Tribunal finds that this is similarly circumstanced in terms of location and use and also adjoins a mixed-use development. The Tribunal also finds that the uncontradicted evidence of the

Respondent was that it does not consider it relevant whether or not an occupier charges for car park spaces, when it makes a decision in relation to the NAV.

10.11 In circumstances where the Appellant has failed to put forward any comparators to bolster his claim that the subject property should not be rated or should pay a nominal sum, coupled with the fact that the Respondent has put forward 10 clear NAV comparators showing the tone as €270 per car space, the Tribunal finds that the Appellant has not proven his case.

**DETERMINATION:**

Accordingly, the Tribunal disallows the appeal and confirms the decision of the Respondent.