

Appeal No: VS 19/6/0011

**VALUATION TRIBUNAL
AN BINSE LUACHÁLA**

**URBAN REGENERATION AND HOUSING ACT, 2015
AN tACHT UM ATHBHEOCHAN UIRBEACH AGUS TITHE 2015**

Davy Target Investments ICAV

APPELLANT

AND

Meath County Council

RESPONDENT

In relation to the market valuation of a site at the former Beechmount House Hotel, Dan Shaw Road, Navan, Co. Meath

TRIBUNAL	Dairine Mac Fadden, Solicitor	Deputy Chairperson
	Liam Daly FRICS, FSCSI	Member
	Eamonn Maguire FRICS, FSCSI, Arb. Member	

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF DECEMBER 2022**

THE APPEAL

1. On the 30th July 2019 a copy of Notice of Valuation issued in accordance with section 12 of the Urban Regeneration and Housing Act, 2015 Act ('the Act') was sent to the Appellant indicating a market value of €1,000,000.00 (One Million Euro) in respect of the vacant site situated at former Beechmount House Hotel, Dan Shaw Road, Navan, Co. Meath (hereinafter referred to as 'the Vacant Site').
2. The date by reference to which the value of the Vacant Site was determined by the Respondent planning authority is the 30th July 2019.
3. By Notice of Appeal received on the 27th August 2019 the Appellant appealed against the Respondent's determination of value.
The grounds of appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *"The valuation is considered excessive and inequitable please see attached-Appendix 1" (n/a to public)*

4. The Appellant considers that the market value of the Vacant Site ought to have been determined in the sum of €425,000.

THE HEARING

5. The appeal proceeded by way of a remote hearing held via Zoom platform, on the 9th of September and 14th October 2022. At the hearing the Appellant was represented by Mr. Nicholas Corson, FSCSI, FRICS, Finnegan Menton Property Consultants and the Tribunal heard evidence on behalf of the Appellant from Ms Tracy Armstrong, BA, MRUP, MIPI, MRTPI and from Mr. Graham Kavanagh of Modia Quantity Surveyors. The Respondent was represented by Mr. Ed Reilly of Sherry Fitzgerald Reilly and the Tribunal heard evidence on behalf of the Respondent from Mr. Simon Bradshaw, Executive Planner, Meath County Council.
6. The Appellant had sought to call Mr. John Harrington, Smith Harrington, valuer as a witness but the Tribunal, in accordance rule 151 of the Valuation Tribunal (Appeals) Rules 2019, ("the Rules"), had not permitted this on the grounds that Mr. Corson was the expert on valuation.
7. In accordance with the Rules the parties' valuers exchanged their respective valuation reports prior to the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted their valuation report as their evidence-in-chief in addition to giving oral evidence.

RELEVANT STATUTORY PROVISIONS

8. A planning authority is required by s.12 of the Act to determine as soon as may be, after a vacant site has been entered on the register of vacant sites maintained under s.6 of the Act, and at least once every 3 years thereafter, the market value of the unencumbered fee simple of a vacant site if it was sold on the open market on the date of the determination. In that regard, a planning authority must authorise a person it considers suitably qualified for that purpose to inspect the site and report to it on the site's value.
9. Under s.3 of the Act the 'market value' of a vacant site is to be construed in accordance with s.12 which requires the market value to be determined

"by estimating or causing to be estimated the price which the unencumbered fee simple of such site would fetch if it was sold on the open market on the date of the determination in such manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the site."
10. Under s. 14 of the Act the Tribunal may, where it considers it appropriate in all the circumstances, deem that a vacant site has a zero-market value, in particular where

- (a) no market exists for the site, or
- (b) the site is situated on contaminated lands and the estimated costs of remedial works necessary in order to use or develop the site exceed the market value of the site itself.

THE FACTS

11. On the basis of the evidence adduced by the parties, the following facts in respect of the physical condition of the Vacant Site were agreed or proved to the satisfaction of the Tribunal:

- (i) The Vacant Site is located on the Dan Shaw Road c.100m from the junction with the R161 Navan to Trim Road and about 1.5km south of the Navan Town Centre. It is the site of the former Beechmount Hotel which has been demolished many years ago, with only the foundations remaining. It is bounded by the Beechmount Shopping Centre car park to the south-east and to the housing estate “Beechmount Vale” to the front and west. As agreed by the parties, it comprises an area of c.1.32 ha (3.26 acres). It is held under Folios MH26888F and MH27097F.
- (ii) The Vacant Site is completely fenced off and there is a mobile mast in the corner. The Vacant Site is generally level. The valuers for both parties valued the Vacant Site on the assumption that services were available. There were no issues as regards contamination or flooding
- (iii) There had been previous permissions for residential development on the Vacant Site, which had not been implemented. The Navan Development Plan 2009-2015 Variation 2, (“the Navan Development Plan”) was the relevant Plan at the valuation date and the site was zoned C1 – “mixed use” in that plan. The Vacant Site has been identified in that plan, in Chapter 2, Table 2A2 as “Site N”. In Chapter 3 of the Navan Development Plan, it is stated that “*C1 zones have been identified to encourage mixed use development and for this reason it will be a requirement to include at least 30% of a given site area for commercial (non retail) development*” (Chapter 3).
- (iv) The Meath County Development Plan 2013-2019 (“the County Development Plan”) was the relevant plan at the valuation date.

APPELLANT'S CASE

12. Mr. Corson

12.1 Mr. Corson stated that the Vacant Site was zoned for C1 "Mixed Use" in the Navan Development Plan. There was a specific requirement in that plan that at least 30% of a mixed-use site had to be designated for commercial (non-retail) development. He had requested Armstrong Fenton Ltd, Town Planners & Development Consultants, to provide a proposed development scheme for the Vacant Site and Ms. Tracy Armstrong would be called by him to give evidence in relation to that.

12.2 He said that the zoning allows for a wide variety of permitted uses and while "Residential/Sheltered Housing" is permitted in principle," he submitted that residential on C1 zoned lands, is to be a subsidiary use. Ms. Armstrong had advised him that potentially up to 60% of the Vacant Site could be used for residential development, with c. 10% reserved for open space, and a minimum of 30% for non-retail commercial uses.

12.3 Mr. Corson said that the Vacant Site had been registered as "residential" under the Act. The definition of "residential" under the Act was lands "solely or primarily for residential purposes" and having regard to the requirement that at least 30% of the site would have to be designated for commercial use, he submitted that of the entire 1.32 ha, 70% or 0.924 ha could potentially be used for residential purposes. In light of this, he asked that the Tribunal consider whether it would be appropriate to apportion the Vacant Site, so that the vacant site registration should only apply to 70% of the overall site. He accepted however, that there was a separate appeal process when properties were proposed for inclusion on the register and that the time to appeal on the basis of his submission that not all of the site was residential, had passed.

12.4 He said that the Navan Development Plan had identified the Vacant Site as site "N" and had specified a density of 20 units per ha, yielding 32 units. However, he said that this yield had been calculated on the basis of a site area of 1.6 ha, rather than the agreed area of 1.32 ha, which would suggest a yield of 18/19 units on the Vacant Site.

12.5 In arriving at his valuation, Mr. Corson said that he had looked for comparables sales, but he said that there was little in the way of sales of properties with a comparable C1 zoning. He included at Appendix 6 of his précis, (Appendix 1 hereto – n/a to public) evidence of three sales in the Meath area:

12.5.1 The first comparable which he submitted, while not directly comparable, was the most recent after the valuation date and he noted that the market had improved since then. However, it would give an indication of what a higher value site with planning permission and higher density could achieve. It was zoned C2 which permitted a higher density. It was sold in Q1 2022 and particulars of the site area, the number of units permitted by the planning permission and the sale price are included in Appendix 1 (n/a to public) hereto. He said that the sale price equated to €10,500 per apartment. He contrasted this with the Vacant Site and was relying on the report of his planning consultant, who advised that approximately 24 houses only would be permitted on the Vacant Site.

12.5.2 The second comparable, was sold in Q4, 2019, somewhat after the valuation date, for the sum specified in Appendix 1. The area of this site (Appendix 1 n/a to public) was almost double

the size of the Vacant Site, zoned completely residential and in a better location from a sales and rental point of view.

12.5.3 The third comparable, located in what he also described as a better location, had a lapsed planning permission. It was sold in Q2 2018 and particulars of the site area, number of units permitted by the lapsed planning permission and the sale price are included in Appendix 1 hereto (n/a to public). He said that the sale price would be the equivalent of about €21,000 per house site. It was zoned residential and was double the size of the Vacant Site.

12.5.4 He submitted that all of these sites had a higher value than the Vacant Site. They equated to a value of approximately €260,000 -€380,000 per ha or €100,000 to €150,000 per acre.

12.6 Given what he described as the limitations of the comparisons, Mr. Corson said that he had arranged for a development appraisal study to be conducted by Armstrong Fenton Ltd. The consultants had come forward with a proposed development scheme of 24, 3-4 bed houses and they also considered other options of duplexes and apartments to increase the density. However, over a certain density, basement/underground parking would be required and having costed that, it was leading to a negative land value.

12.7 Modia Quantity Surveyors were then engaged to cost the development proposed and he said that Mr. Kavanagh of that firm, would be giving evidence in that regard. Mr. Corson said that he had also considered the value of the end product, being the value of the individual units built on the Vacant Site and in that regard had commissioned Mr. John Harrington valuer to give an opinion on that.

12.8 Mr. Harrington's opinion was that in 2019, a 3-bed house would sell for €260,000 and a 4-bed house would sell for €300,000. However, Mr. Corson said that in arriving at his own valuation, he had taken a more optimistic view and had allowed a value of €300,000 per 3- bed house and €335,000 for a 4-bed house. Mr. Harrington had also given a view of €8 -€10 per square foot for the rental value in 2019, but Mr. Corson said that he had taken the view that a developer would be seeking €15 per square foot, to give a yield of 8% on that, to arrive at a breakeven point.

12.9 Mr. Corson said that he had also looked at it from a developers profit perspective which would normally be expected to be between 10 and 20% of development costs; however, he had applied a rate of 5% given the balance between site value and developers profit and this was all referenced in the Residual Appraisal (Appendix 5 of his précis - n/a to public). This was conducted by him having regard to the study conducted by Fenton Armstrong Ltd and applying the costs estimated by Modia Quantity Surveyors. In his appraisal, he also had regard to Mr. Harrington's opinion of the end unit sale prices, and he made provision for the various items listed under "Additional Costs" in his appraisal, to arrive at a value of €425,000 for the Vacant Site, with a net site value of €130,000 approximately per acre/€17,708 per unit and having allowed for the cost of purchasing the site.

12.10 He stated that with any development there are risks associated and that Mr. Kavanagh would deal with some of the risks which had been excluded. Mr. Corson said that there could be delays in securing planning and in progressing the development, and while he had made an allowance for social and affordable housing, there was no agreement with the Local Authority on the number of units. He referenced ground conditions, insufficient services, all of which he said, would be taken into account by a developer looking at the Vacant Site.

12.11 He also referenced that at the valuation date finance lending from Banks and other lenders was difficult to secure for development sites without planning permission and that this would further impact the value of the Vacant Site.

12.12 His valuation of €425,000 would only generate a developer's profit of 5% and made no provision for inflation, which he said was now running rampant or site holding costs or the levy which would negatively impact on the Vacant Site, once applied. If the Tribunal was to consider that the levy should only be applied to the residential portion of the site, this would reduce the value of the Vacant Site to €300,000 for a site area of 0.94 ha.

12.13 He had looked at the Respondent's initial "drive by" valuation report and submitted that it had not been fully considered at the time. Reference had been made to one site with an industrial use and there had been no indication as to what adjustment had been made to arrive at the proposed value of €1 million. He suggested that the Respondent's valuation had been arrived at in error, with an attempt to justify it since.

12.14 Under cross-examination by Mr. Reilly for the Respondent:

12.14.1 Mr. Reilly put it to Mr Corson that in adjacent developments, mid terraced 3- bed units comprising 109 sq. m were selling for €355,000 and 2- bed terraced houses, were selling for €305,000. Mr Corson responded that they were current prices and that what had to be looked at was the situation at the valuation date and that the Respondent had ample opportunity to put evidence forward of other house sales.

12.14.2 Mr. Reilly said that his planning witness would be giving evidence that a greater density than that relied on by the Appellant would be permitted. Mr Corson responded that his planning witness would give evidence on that also but that the Respondent' evidence on higher density did not indicate how that could be achieved.

12.14.3 Under questioning from the Tribunal, it was noted that Mr. Corson had relied on an opinion of Mr. Harrington, but that said opinion had not been underpinned by any transactional evidence. Mr. Corson confirmed that but stated that there was no counter evidence to prove that the opinion was wrong, and he was taking it as undisputed. He had looked recently to see what local prices for 3-bed houses in the Beechmount Vale estate were fetching, and he said that they were selling for in or around the €300,000 mark. They were detached with larger gardens.

13. Ms. Tracy Armstrong

13.1 Ms. Armstrong confirmed that in the Navan Development Plan, the Vacant Site was zoned C1 Mixed Use: *"To provide for and facilitate mixed residential and business uses"* and also the requirement that 30% would have to be developed for commercial use. There was also the County Plan, and it was quite common for there to be overlap of plans within the one administrative area. The County Plan included a core strategy setting out population growth figures and corresponding growth figures for housing. The Navan Development Plan would then have been varied to correspond with the core strategy in the County plan, which she described as the top tier plan. She said that in the preparation of the Navan Development Plan, the Vacant Site was examined and identified in the Plan (Table 2A2) as site N.

13.2 On the issue of density, she confirmed the density requirements for the Vacant Site as given by Mr. Corson in his evidence. As the area of the Vacant Site, was 1.32 ha, she took that as the starting point and discounted the 30% parts of the site which had to be used for commercial

development, which she said left a residual area of 0.92 ha which could in principle be used for residential development. However, she stated that generally to apply for residential development, such a development would require circa 10-15% of the site area to be reserved for use as public open space, which would leave an area less than 1ha, circa 0.8 ha, equating to circa 60% of the overall site.

13.3 She referred to the sketch which had been prepared by Armstrong Fenton on behalf of the Appellant and said that a view had been taken that the part of the Vacant Site which was appropriate for the commercial development was on the southern boundary. A standard office development of about 15 units of 200m² each, in 2 story buildings, was proposed, which they were of the opinion were appropriate in that location. A number of other uses were permitted. As regards the residential portion of the site, being the remaining 70%, regard was had to the character of the environs and it was noted that the Vacant Site was backing on to the existing Beechmount Vale development. This would have required a minimum 22 metre separation at first floor window level and private open spaces which would generally be rear gardens. She said that for a 3-bed house, this would generally be a garden area of 60m² and for a 4- bed house circa 75m². All of these issues, and also car parking and public open space requirements, dictated the actual part of the Vacant Site that could be used for residential purposes. In view of these considerations and so as to maximise the density of the Vacant Site, Armstrong Fenton, devised a scheme of 24, 3-4 bed terraced houses which she said equated to 30 units per ha.

13.4 Under cross-examination by Mr. Reilly for the Respondent:

13.4.1 It was put to her that under the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, published by the Dept. of Environment, Heritage and Local Government, 2009 ("the Guidelines") open spaces should be included in density calculations, and she was asked why she had deviated from those Guidelines. She responded that development plans varied and that as a traditional rule of thumb, in doing a feasibility study, open spaces had to be catered for and as regards the Vacant Site, there was a requirement that a minimum 10% be allocated to open space.

13.4.2 It was put to her that a potential developer would see the benefit and potential of the Vacant Site given its proximity to the town centre of Navan and to maximise that potential would allow for 40 units per ha. She responded that the Navan Development Plan stated that the appropriate density for the Vacant Site was 20 units per ha and that this had been specifically stated in Table 2A2 of the Plan; to allow for a density of 40-45 units per ha would require a scheme of duplexes or apartment which may necessitate underground car parking, resulting in added associated costs. In her opinion developers preferred a traditional house type which was simpler and more cost effective and bearing in mind also that the adjacent development was also of 2-storey type houses. Further, she said that a higher density development was more suited to a location with high frequency public transport and the Vacant Site was not in such a location.

13.4.3 In further reference to the Guidelines, Mr. Reilly put to her that it was stated in these, that developments at a net density of less than 30 dwellings per ha should generally be discouraged in the interests of land efficiency, particularly on sites of greater than 0.5 ha. She was asked whether she was suggesting that it was likely that any Planning Authority would grant permission for a scheme with a low density of 20 dwellings in a location such as Navan. She responded that the Navan Development Plan had been prepared and adopted by the elected

members; that it was legally required to have a core strategy which it did and that the core strategy specified a density of a maximum of 20 units per ha for the Vacant Site. Her understanding was that the Navan Development Plan should comply with the s.28 Guidelines such as the ones Mr. Reilly had referred to; that the Navan Development Plan was a statutory adopted development plan and that its core strategy stated that the Vacant Site could be developed at a maximum density of 20 units per ha.

13.4.4 She was asked how as asserted by the Appellant, the residential development on the Vacant Site could be said to be a subsidiary development and she responded that as the zoning was mixed, the 70% parts of the site could be developed for a plethora of uses. She confirmed that she was not aware of any pre-planning enquiries, or applications made by the current owners or whether they had made any observations on any statutory development plans applicable to the Vacant Site

14. Mr. Graham Kavanagh

14.1 Mr. Kavanagh said that he had been asked by the Appellant to consider the sketch development plan for the Vacant Site prepared by Armstrong Fenton and to prepare an order of magnitude costs. He said that this would be typically high-level costs based on similar developments in the vicinity of the Vacant Site. He calculated the floor areas which then allowed him to benchmark the proposed scheme against other schemes in the locality they were working on at the time. The size and scale of the proposed development was considered and specification of a typical developer standard house in other schemes in the area was also looked at. The assumptions and exclusions were as set out in his précis, 3/4 bed-roomed houses and some commercial units were proposed. There would also be typical site works including drainage, access roads, paving, footpaths and entrance gates. In summary he said that the construction costs would amount to roughly €8.4 million and to that you would have to add a contingency for a bond and excluding VAT, he said that the total construction costs would amount to roughly €8.86 million. This included a contingency of 5% which would be a minimum requirement as opposed to a generous allowance and he said that additional costs could be expected given that the scheme was at an early stage of design and development. The commercial unit specification was for units of basic construction of approximately 1,000 square metres each, storage units, basically shell and core with no finishes internally on the ground floor and open plan offices on first floor. This was purely constructions costs and allowance would also have to be made for all non-construction costs such as legal fees, development charges and marketing.

14.2 There was no cross-examination

RESPONDENT'S CASE

15. Mr. Ed Reilly

15.1. The Vacant Site had been placed on the register as there was unprecedented demand for housing in Navan and the Appellant had not engaged with the Planning Authority. A planning application had been submitted in 2015 for a mast but no other applications had been made since 2005 and until the Appellant sat down with the Local Authority and put in a planning

application, nobody would know where it would land. He was valuing the Vacant Site on the basis of it being 70% residential and 30% commercial. He was of the view that the value was somewhere in the region of €1.5 to €1.8 million but he had valued it at €1 million which he thought was fair. He said that the Appellant's view of the Vacant Site was very negative, but he could not accept that this was the only site in Navan which was not commercially viable. There were other developers including PLC's and smaller developers, developing in the area. The Vacant Site was an excellent site.

15.2 Under cross-examination by Mr. Corson:

15.2.1 Regarding his statement in his précis that prices were at a premium in the location of the Vacant Site, he accepted that the prices for 4-bed semi-detached houses in Beechmount Vale, in 2019 would have been in the region of €210,000 to €230,000 but said that they were not comparable as that was a development build in the 70's. He suggested that the Limekiln development might be a more appropriate comparison.

15.2.2 He was asked had the Respondent looked at how 40 units could be accommodated on the Vacant Site as his opinion of value was based on that number of units; was it apartments or houses or duplexes? He said that there had been no engagement with the planning authority on that but that his planning witness would give evidence on that aspect of the matter. He accepted that the County Development Plan 2021-2027 was of no relevance to the valuation of the Vacant Site, as it had not been published at the date of valuation.

15.2.3 As regards his comparables:

Site A, (Appendix 2 - n/a to public) sold late 2019. Mr. Reilly said that this site now had no relevance. Mr. Corson said that it had been put into evidence and that this was for a site zoned residential and had been sold subject to planning permission for a school and that the Tribunal should not ignore it.

Site B, (Appendix 2 - n/a to public) sold late 2018/early 2021. Mr. Reilly accepted that there were some buildings on it but did not accept that because of that the site was not comparable to the Vacant Site, as his view was that the buildings were irrelevant to the parties interested. He could not say whether the purchaser was a special interest purchaser. It was put to him that the Vacant Site was mixed zoning and had to have both residential and commercial whereas site B could be used for either residential or commercial. He did not accept that but said that his planning witness would address that.

Site C, (Appendix 2 - n/a to public), sold August 2021. Mr. Reilly confirmed that this was zoned C1, like the Vacant Site. He could not say whether the purchaser was a special interest purchaser. He said that there appeared to have been active bidding on it. It was definitely not as good as the Vacant Site and was off Commons Road which had the highest density of social housing. He confirmed that it was bought for warehousing use but did not accept that it was therefore not comparable to the Vacant Site, which was in an excellent location. It was put to him that this sale was substantially after the valuation date; he said that it would have had a way higher value in 2019.

Site D: (Appendix 2 - n/a to public), sold in March 2019. When asked about the density on this site, it was put to him that the number of units permitted by the planning permission equated to about 31 houses per hectare, €17,000 per site or €214,000 per acre. He was asked if he would

expect a site with planning permission to have a higher value than a site without planning permission. He said that in normal situations to have a site with planning permission would give it more value but that in this instance the planning permission was specifically for social housing and there was a difference in that. When it was put to him that in the normal way you would expect to pay about at least 20% more for a site with planning permission, he said that he did know what percentage would apply. This particular site was an exception to the normal rule as the planning was for social houses. The value per site is low compared to the value of the Vacant Site.

15.2.4 He accepted that the Glenveagh and Cairn Homes sales referred to in his précis were subsequent to the valuation date. His point was that there were both plcs and small private developers building in Navan.

15.2.5 He accepted however that apartment developments, multi-story development, with underground parking would make absolutely no sense on the Vacant Site. He had accepted in his précis that the construction of high-rise apartment and office buildings with underground parking was commercially unviable.

15.2.6 He was asked about his opinion set out in his précis that the Vacant Site would be suitable as a retirement village and had he any evidence of that. He responded that they had sold a site in Johnstown village and were actively trying to get planning for single story semi-detached units, but he accepted that he had not included that in his evidence. He could not remember the price achieved for that.

15.2.7 He accepted that the price of second-hand houses in or around the valuation date was in or around €260,000 for a 3-bed house but said that would have been for second hand houses which were not comparable. He was asked if there was anything in Mr. Corson's appraisal that he had issue with, (such as costs and inputs) other than the number of units, the core of the issue being the number of units, as opposed to any other calculations. He said that was at the core, engagement, lack of engagement. He said until there was engagement no one would know the number of units that would be allowed. Mr. Corson made the point that valuers often had to value without the benefit of such engagement. He did not agree that the subject site would not take 40 units.

15.3 Mr. Simon Bradshaw

15.3.1 Mr. Bradshaw confirmed that the Vacant Site had been zoned C1 Mixed Use under the Navan Development Plan. He had reviewed the planning history of the file and there had been no engagement by the current owners with the planning authority as regards developing the Vacant Site; the only application had been in respect of a mast, made in 2015. 70% of the Vacant Site could be developed for residential purposes and residential did not have to be subsidiary as submitted by the Appellant.

15.3.2 As regards the density, he said that the preparation for the core strategy involved assigning a notional density, to undertake a mathematical exercise to provide an approximate capacity for all available development lands across Navan. As part of this exercise the Vacant Site was assigned a density of 20 units per ha for the purpose of this high-level exercise as were all C1 zoned lands. No part of the plan included an objective or policy that the Vacant Site must be developed at a maximum density of 20 units per hectare. The Appellant's interpretation on this was entirely incorrect.

15.3.3 He referred to the Guidelines which he said state that a minimum density of 30 units per ha should be provided for developments in urban areas. An example of the potential to provide higher density housing has been highlighted by the Office of the Planning Regulator. The example of St. George's Place in Dún Laoghaire, Co. Dublin was provided where a development with a density of 67 units per ha was developed on a relatively small site. He noted that the Appellant had reduced the area available for residential development by removing the public open space areas and he said that this was contrary to Appendix A (n/a to public) of the Guidelines. In the view of the Respondent, a density of 37-41 residential units was appropriate, assuming a density of 40-45 units per ha in line with the Guidelines. The Vacant Site has been vacant for a number of years.

15.4 Under cross-examination by Mr. Corson:

15.4.1 He confirmed that the Vacant Site was identified in the Navan Development Plan as Site N Beechmount and was zoned C1. Mr Corson noted that the land area was given as 1.6 hectares but was actually 1.32 hectares, which Mr. Bradshaw accepted. Mr. Corson put it to him that under the Navan Development Plan a maximum density yield of 32 units for a site of 1.6 ha was suggested. Mr. Bradshaw disagreed and said that that was a misinterpretation of the Development Plan as outlined by him in his evidence. Mr. Corson referred him to the core strategy in the County Plan which he said had assumed a net density of 45 units per ha across all zonings but a density of 20 units per ha had been considered reasonable for commercial and mixed zoning lands, as residential would not be the predominant use. Mr. Bradshaw agreed but said that in working out the core strategy, this was done across the entire County to work out what lands in different zonings could theoretically accommodate in the sense of units. The County Plan was not just for Navan but across the County. Some of the lands zoned C1 would be developed mainly for commercial and some mainly for residential. The purpose of applying the 20 units per ha was just to get an idea across the County. It was purely a mathematical exercise. He did not accept that the number of 20 units was to apply at planning stage. He did not accept that a buyer or a valuer would form the view that 20 was the maximum permitted number of units and said that if such a view was taken that it would be a misinterpretation. The Appellant had an opportunity to engage as did their expert planning consultant, but they had not done so. He confirmed that speaking on behalf of the Planning Authority, a density of 20 units was never intended to apply to a mixed development site.

15.4.2 He was asked how 40-45 units per ha could be fitted into the Vacant Site unless they were to be apartments. He disagreed and he referred again to the Dun Laoghaire Development noted by the Office of the Planning Regulator where 67 units per ha had been accommodated and while he did not expect that number of units on the Vacant Site, a higher density level of residential housing units could be provided. He had not said it had to be apartments. He confirmed that the requirement of 10% for public open spaces had been included in the net density calculations and on-site parking was also included in the net density calculations. It was put to him that in the Dun Laoghaire example there was no public open space and no off street car parking, it being an infill development. He said that the net density took account of all of this and that it was possible to have communal car parking. He accepted that the Dun Laoghaire example did not have public open space but that would not reduce the density to below 40 units, even if you did have public open space in that development.

15.4.3 He was of the view that the development on the Vacant Site would be relatively a high-density townhouse development. He was of the view that the sketch provided by the

Appellant's planner was not the optimal layout possible and considered it a poor layout and which would require to be redesigned. He believed that if there was an improved layout it could accommodate 40 units per ha. As the Local Authority, and because of what he referred to as the complication of having to defend this appeal and in the future having to adjudicate on any planning application in relation to the Vacant Site, it was not open to the Respondent to provide a sketch plan. He did not accept that at that density underground or basement car parking would be required; communal car parking may have to be provided. It was put to him that no examples had been provided but he said that he had put forward an example and that as the Local Authority, they could not outline other examples that would provide an appropriate example for the Vacant Site. It was a core planning principle that all sites had to be considered on their own merits. The residential density design guidelines were there, and it was the responsibility of the Appellant to come forward with a design in compliance with those Guidelines. It was his view that the density proposed by the Appellant was not in compliance with those Guidelines and an incorrect interpretation of the Navan Development Plan. He did not accept that his view on the matters was coloured by the provisions in the new development plan.

15.5 Under questioning from the Tribunal, he was asked whether the maximum densities set out in the Table which had been shared in evidence had been replicated in the new development plan. He said that there never was a maximum density specified in either development plan. He said that the Table had not been replicated as a new approach had been taken. He was asked whether a party seeking to bid on the Vacant Site and having regard to the Table could have arrived at any conclusion on the maximum density other than as set out in the Table. He referred to the County Plan in which it was stated that *"The appropriate density will be determined on a site by site basis having regard to the DoECLG Guidelines on Sustainable Residential Development in Urban areas, the Core Strategy of this Development Plan and the role of Navan as a Large Growth Town"*. The purpose of the core strategy in a development plan is to consider a figure for the entire town to ensure that the cap was not exceeded and to ensure that the appropriate transport infrastructure was in place. The core strategy is a cap for the entire town rather than a cap for an individual site. Navan as a large growth town was also relevant.

16.0 Closing Statements

16.1 Mr. Corson said that there were a number of key points to consider. He asked the Tribunal to look in particular at Chapter 2 of the Navan Development Plan which he said identified the Vacant Site and specified a maximum density of 20 units per ha. Both parties had acknowledged that residential was the highest value use for 70% of the Vacant Site and both had acknowledged that high density apartments and commercial uses were not viable. There had been other uses suggested, such as a creche, retirement homes and a nursing home but no evidence had been furnished to put a value on those uses. He had put forward comparative evidence of a site with similar zoning, sold with the benefit of planning permission, for apartments worth €10,000 per unit. He took it that apartments would be worth less per unit than houses. The better comparisons were probably the residentially zoned lands (his second comparison and third comparisons). Tracy Armstrong had prepared an appraisal of the Vacant Site and had given her view that having considered the Navan Development Plan, and other

matters, 24 units on the Vacant Site was appropriate. Alternatives had been considered but the proposed scheme was considered the most appropriate and viable, to allow for open spaces and carparking and to avoid overlooking adjoining developments.

He said that he thought that the QS's costings had been accepted by the Respondent as that evidence was not challenged. His own appraisal was not in any way questioned other than as to the number of units that could be put on the Vacant Site.

He had utilised end values for houses above that being achieved at the valuation date and probably higher for the offices. He had only taken a 5% developer's profit which on a site without planning was not probably at a level a developer in 2019 would have considered. He had not allowed for inflation and even on that basis, the highest price he considered a developer would pay for the Vacant Site was €425,000. That was in line with the comparable evidence.

Mr. Reilly had erred in his initial valuation of €1million, which Mr. Corson described as a desk top valuation. He said that Mr. Reilly had admitted in evidence that he had no comparable evidence first time around. In the latest précis he had suggested a rule of thumb valuation which is not how prudent parties in the market would value a site. At the end of the day the value of a site is a factor of what you can build on the site, how much is the end product worth, what does it cost you to get there, what are you left with to pay for the site and to get a developer's profit. There is a limit to what a developer will pay. Clearly the developer of the Vacant Site will pay less as planning permission would have to be obtained, and with the associated costs, risks and delays.

The Respondent had failed to show how 40 units could be accommodated without going in a high-density style of development, going up, which he said had been demonstrated was not viable. This was to be contrasted with the Appellant's proposed development of tightly packed, terraced houses, which would be suitable for first time buyers.

16.2 Mr. Reilly said that he did not question Mr. Kavanagh, the Appellant's QS witness, as he felt that it was irrelevant. It comes back to the same thing. It was not up to the Local Authority to demonstrate the viability of the Vacant Site. It is up to the Appellant through engagement with the Local Authority to discuss. On the point of having no comparable evidence in his initial valuation, he had used an industrial site just to show that the Vacant Site was worth a lot more. The value of the €17,000 per acre site for social housing was to show that was a low value in comparison to the Vacant Site. He would always do a look back in any valuation. In conclusion, the Respondent had proven that the Vacant Site was viable for development; there was a lack of engagement; every site was looked at on its merits and if the Appellant engaged with the Local Authority at some time in the future as regards planning, they might be pleasantly surprised to see the commercial viability of the Vacant Site, which he said was an excellent site.

FINDINGS AND CONCLUSIONS

17. On this appeal the Tribunal is required to determine the market value of the Vacant Site in accordance with s.3 of the Act which is to be construed in accordance with s.12 of the Act as of the 30th of July 2019.

18. The parties were in agreement that 30% of the Vacant Site was required to be allocated for commercial (non-retail) development. In light of this, the Appellant's valuer asked that the Tribunal consider whether it would be appropriate to apportion the Vacant Site, so that the vacant site registration should only apply to 70% of the overall Vacant Site. However, the Tribunal would have no remit to do so. The Act clearly set out the process regarding entry on the register and specifically provides in section 9, that an appeal against entry on the register is to be made to the Board, which is An Bord Pleanála and not to the Tribunal, whose remit arises under section 13 in respect of an appeal against the market value determination of a local authority.

19. The issue of whether the valuation should be of the entire area of the Vacant Site as appearing on the register or of the Vacant Site less the 30% designated for commercial development is a separate issue. Mr. O'Reilly for the Respondent is clear on page 1 of his précis that he is valuing the residential portion of the site and in his appraisal in adopting a density of 40 units at a value of €28,000 per unit, has valued 70% of the overall site area i.e., 0.924 ha. The Tribunal follows this approach of valuing only the residential portion of the site as adopted by the Respondent.

20. At the valuation date, the Vacant Site did not have the benefit of any planning permission. The parties were in agreement that apartment/ multi-story development/ underground parking, were not appropriate for the Vacant Site. However, because of differing interpretations of the Development Plan and the County Development Plan, the parties did not agree on the number of residential units which could be accommodated on the Vacant Site. The planning witness for the Appellant contended that the Vacant Site was specifically identified in the Development Plan with a stipulated maximum density of 20 units per ha, and in light of this, she considered that 24 residential units could be accommodated on the Vacant Site which would equate to 30 units per ha, in line with national guidance. The planning witness for the Respondent contended that there was no cap on the maximum density and that the actual number of residential units which could be accommodated on the Vacant Site could not be determined until there was engagement by the Appellant with the Planning Authority and an application lodged. The Respondent's valuer accepted that the price of second-hand houses in or around the valuation date was approximately €260,000 for a 3-bed house but made the point that was for second hand houses.

21. In the Tribunal view in the absence of a planning permission for the Vacant Site which would give certainty as regards the number and type of residential units, the percentage of the site to be allocated for open space and the percentage of the site to be designated for social housing, to value the Vacant Site on the basis of an estimated number of residential units and on the assumption of such units being of a typical developer type specification, would be purely speculative and is not the correct valuation approach to take in the circumstances. The Tribunal has noted also that the Appellant in the proposed scheme of development for the Vacant Site, has deviated from what they contend is a maximum permitted density for the site. The Tribunal

is further mindful of the fact and as pointed out by the Respondent's witness, Mr. Simon Bradshaw that the Respondent, as the planning authority, is responsible under the Act for making the determination of market value and also of deciding on any planning application lodged in respect of a vacant site. In all of these circumstances, the Tribunal's view is that the valuation to be arrived at under the Act is best found by reference to the sales of comparable sites in or around the Valuation Date rather than by conjecture about the number or type of units that could be accommodated on the Vacant Site.

22. Turning then to the market evidence presented by the Appellant's valuer, his opening position on this was that there were a number of sites on the open market in 2019 for long periods of time, which he contended indicated that there was little demand. He also said that he had consulted with a local valuer, Mr. Harrington who had advised him that there was a lack of demand for mixed-use sites in Navan in 2019.

23. Mr. Corson's first comparison, which he accepted was not directly comparable as it had the benefit of planning permission, was put forward to show what a site with planning and a higher density could achieve in an improving market. However, the Tribunal attaches no weight to that sale as it significantly post-dated the Valuation Date, being a sale in quarter 1 of 2022.

24. Mr. Corson's second comparison comprised a site which was almost double the size of the Vacant Site, zoned completely residential and had no planning permission. It sold in quarter 4, 2019 (further details in Appendix 1 - n/a to public). In the Tribunal's view this site is very comparable being close to the Valuation Date and also not having the benefit of any planning permission at the date of the sale.

25. Mr. Corson's third comparison, which was sold in quarter 2 of 2018, was also in the Tribunal's view not comparable as it was a partly built site with a lapsed planning permission and with a sale date approximately a year prior to the Valuation Date.

26. Turning now to the market evidence presented by the Respondent's valuer, in his "Drive-By Valuation" dated 12th June 2019, the Respondent's valuer had stated that comparable evidence was scarce and had given as a comparable an industrial site in a nearby industrial estate which had been sold in April 2019 for €208,000 per acre. The Tribunal considers that this is not comparable to the Vacant Site and attaches no weight to it.

27. Mr. Reilly's first comparison in his précis for the hearing (site "A"), was considered of assistance to the Tribunal. This had been sold on a subject to planning permission basis for a school. This was considered of assistance to the Tribunal as it shows the value of a site on a subject to planning permission basis. However, as accepted by both valuers, the Tribunal finds from the evidence that a site with the benefit of current planning permission or sold subject to first securing planning permission, would command a higher value than a site put on the market without such a permission.

28. Mr. Reilly's second and third comparables (sites "B" and "C"), being much smaller than the Vacant Site are not considered by the Tribunal to be good comparables.

29. As regards his final comparison (site “D”), this was a much larger site sold, with planning permission for units for social housing. Mr. Reilly stated that this sale which equated to a value of €17,117 per site (1/111), supported his valuation on the grounds that the Vacant Site would be able to accommodate 40 units, and that individual site value (1/40) would be of higher value as they would not be for social housing. However, the Tribunal’s finds that there was no evidence put forward to the Tribunal to support the Respondent valuer’s view that a social housing site would be of less value than a site not so designated.

30. In reviewing the transactional evidence submitted both in terms of lot size and the timelines relative to the ‘Valuation Date’, the Tribunal finds that Mr. Corson’s second comparison and Mr. O’Reilly’s comparisons, identified as sites A and D, to be the most relevant to the ‘Vacant Site’.

Similar to the ‘Vacant Site’, the Appellant’s second comparison did not have planning permission at the time of sale.

In the case of sites, A and D, whilst similar in both size and disposal timeline to the ‘Valuation Date’, both sites were sold either subject to the securing of planning permission or with planning permission. The Tribunal finds that on the oral evidence submitted, a discount of 20% is appropriate to apply to the value per hectare to these comparable sales, relative to the value of the Vacant Site.

After applying the relevant adjustments, the Tribunal determines the market value of the Vacant Site, per hectare, to be an average of the three sales on a price per hectare basis. The Tribunal’s analysis is set out in Appendix 3 (n/a to public)

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and determines that the market value of the Vacant Site falls to be amended to three hundred and eighty seven thousand euro, (€387,000), as of the valuation date.

RIGHT OF APPEAL

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.