

Appeal No: VS21/6/0005

**VALUATION TRIBUNAL
AN BINSE LUACHÁLA**

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

BRUCE FENNELL & BARBARA FENNELL

APPELLANT

AND

LAOIS COUNTY COUNCIL

RESPONDENT

**In relation to the market valuation of site at
Crossneen, Springfield Road, Graiguecullen, Co. Laois.**

TRIBUNAL	Dairine Mac Fadden - Solicitor	Deputy Chairperson
	Gerard O' Callaghan - MRICS, MSCSI	Member
	Ken Enright - Solicitor	Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 2nd DAY OF DECEMBER, 2022**

Appearances

For the Appellant: Mr. James McDermott, Sherry Fitzgerald McDermott BEng, M.I.P.A.V, Rev

For the Respondent: Mr. Andrew Carberry MSCSI MRICS RV, Power Property

1. THE APPEAL

- 1.1 On the 5th day of August, 2021 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 €150,000 in respect of the vacant site situated at Crossneen, Springhill Road, Graiguecullen, Co. Laois (hereinafter referred to as 'the Vacant Site').
- 1.2 The date by reference to which the value of the Vacant Site was determined by the Respondent planning authority is the 10th September 2020.

1.3 By Notice of Appeal received on the 30th day of August 2021 the Appellant appealed against the Respondent's determination of value. The ground(s) of appeal as set out in the Notice of Appeal is that the determination of the valuation of the derelict site is incorrect because: Over valuation of site. On the given valuation date the market value determined by Laois Planning Authority is not in line with similar sites in the area.

1.4 The Appellant considers that the market value of the Vacant Site ought to have been determined in the sum of €75,000

2. THE HEARING

2.1 The appeal proceeded by way of a remote hearing held via Zoom platform, on the 16th September 2022.

2.2 In accordance with the Valuation Tribunal (Appeals) Rules 2019 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

3. RELEVANT STATUTORY PROVISIONS

3.1 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.

3.2 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"

3.3 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.

4. THE FACTS

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:

- 4.1 The Vacant Site is a small undeveloped greenfield site, comprising an area of 0.17 hectares located in the townland of Crossneen in a development known as Meadows Way, off Springfield Road, in Graiguecullen, Co Laois. The valuers for both parties assumed that all services were available for connection. There were no issues as regards contamination and no recorded flood events in relation to the Vacant Site
- 4.2 The Vacant Site forms part of a larger plot of land held under folio LS9684F of which the Appellants are the registered owners.
- 4.3 At the valuation date, the Vacant Site had the benefit of Planning Permission 04/890, which had been extended to an expiry date of 31st December 2021. The permission permitted development on the Vacant Site of a residential apartment block of 22 no. one and two bed apartments, laid out over three floors.

5. APPELLANTS' CASE

- 5.1 Mr. McDermott, on behalf of the Appellant first outlined his experience as a valuer in the area in which the Vacant Site is located and said that he was quite familiar with the location and the market, being continuously involved with valuations and sales of residential and non-residential property in that area.
- 5.2 He was requested by the Appellants in June 2022 to give an opinion on the open market value of the Vacant Site as of September 2020. He said that he inspected the Vacant Site which was located to the north of a residential development known as Meadow's Way. At the time of the giving of his opinion of value, he said that he understood that there was a lapsed planning permission for a small apartment development on it.
- 5.3 He was of the opinion that as of September 2020, property in the vicinity of the Vacant Site would command a value of €150,000 per acre and that as the Vacant Site had an area of 0.428 acres, he valued it at €75,000. He was of the view that this was a fair and reasonable value and reflective of where the market would have been at that point in time. In arriving at his opinion of value, he had regard to what he referred to as "case studies" of recent and less recent sales and which he said were supportive of his opinion of value.
- 5.4 Under cross-examination by Mr. Carberry, for the Respondent, he confirmed that the valuation date for the Vacant Site was the 10th of September 2020. He confirmed that in giving his opinion of value, he had valued on the basis of a lapsed planning permission as that was his understanding of the position from the information he had been given. He accepted now that there was in fact a "live" planning permission in existence at the valuation date and which had 15 months left to run on it at that time. He accepted that a site with planning permission should carry a higher value and that with 15 months left to run, there was a reasonable prospect of the development being substantially completed within that time. It was put to him that his opinion of value of €75,000 equated to €180,000 per acre rather than to €150,000 per acre which he had given as the value per acre, and he was asked to account for the difference. He responded that it had seemed petty to split it down and that he had taken the view that a general ballpark figure would be sufficient. He was asked to explain the basis of his valuation and he said that he used the comparable method; when asked to identify the name and source of the information he had relied on to arrive at his valuation, he said that he had done an analysis of existing sales transactions over the last number of years

in the area in which the Vacant Site was located. When asked why he had not included that in his précis, he said that he had not been asked to do so. He had been asked for an opinion of value not a blue book in-depth valuation. When asked whether he had made any assumptions in arriving at his opinion of value, he repeated that he had given a letter of opinion only. On the rationale of his opinion, he said that he had relied on 4/5 sales between the years 2014-2022.

- 5.5 Under questioning from the Tribunal, he said that while he was aware of market activity in sales at the valuation date, no new apartment developments were being constructed at that time. On the issue of services to the Vacant Site, he was not in a position to answer this conclusively but did accept that at worst services were available but not connected. He was not aware of any contamination.
- 5.6 In his summing up, he submitted that the existence of the planning for the Vacant Site was technically irrelevant as the construction costs would exceed the value of the end product. He disagreed that there was an appetite by Associated Housing Bodies (AHBs) for sites and referenced unsuccessful approaches made to AHBs. The Appellants disagreed with the relevance of the Respondent's comparators save one of them. Mr. McDermott stood over his valuation of €75,000 for the Vacant Site.

6 Respondent's evidence

- 6.1 Mr. Carberry said that the parties were in agreement that the Vacant Site was zoned "Residential 2". He said that the issue in dispute was quantum only. He accepted that the Appellant's valuer was correct when he stated that at the date of his instructions in June 2022, the planning permission had expired. However, the Appellant's valuer had now acknowledged that at the valuation date, the Vacant Site did have planning permission with a period of 15 months left to run on that. He referred the Tribunal to the details of that as set out in his précis, section 4.5. The fact was that at the valuation date there was an existing planning permission for the Vacant Site for what he described as a not insignificant number of units, 22 one and two bed apartments, laid out over three floors.
- 6.2 Regarding services he had made the same assumption as the Appellants' valuer, that same were available. The Vacant Site was part of the Meadows Way development and there were already services in situ there. He was not aware of any issues with contamination and that had also been confirmed by the Appellants' valuer. Having checked the OPW website, he was not aware of any historical issues with flooding.
- 6.3 He referred to his market commentary set out at section 6 of his précis regarding prevailing market conditions in Q3 2020 which corresponded with the valuation date. In brief he referred to the continuing difficulties caused by the COVID-19 pandemic and Brexit. However, he said that notwithstanding those difficulties, there were three factors he wished to highlight; firstly, due to the housing crisis, AHBs were very active in the market; secondly, in the broad general context, although not necessarily in Carlow, the stability in house prices and rents had assisted in providing developers with confidence to progress schemes; thirdly, the increase to a maximum of €30,000 in the Help to Buy scheme, which had been announced in the July stimulus package, just a few months before the valuation date, was a positive move for ready to go sites such as the Vacant Site. He concluded that overall, the development land market outlook was positive at the valuation date.

- 6.4 There was a dearth of comparable evidence available as at the valuation date, as the Covid-19 Pandemic was at its height. However, he gave evidence of five market transactions, ranging in date from 2017 - 2022, which he had relied upon to support his opinion of value, based on the comparable method of valuation. Mr Carberry's Table of Comparisons is set out in Appendix 1 (n/a to public). Adjustment was required to take account of the times of these transactions and the sizes of the respective sites.
- 6.5 He was of the view that his first comparison was a good comparison. He had assumed that there would be significant demolition/site clearance costs for this brownfield site. It was a dated comparable, in an improving market. He had adjusted the price per acre achieved in that sale by - 20% to allow for its better location and superior profile, which would have suggested an adjusted value of €250,320 for the Vacant Site.
- 6.6 His second comparison shared many of the characteristics of the Vacant Site. However, the location was remote, and the planning permission had expired. He had adjusted the price per acre achieved in that sale by +30% to allow for the planning status, timing of sale, location and size differential, to arrive at a suggested value of €141,960 for the Vacant Site.
- 6.7 His third comparable was of a site with no planning permission, in a superior location. He had adjusted the price per acre achieved in that sale by + 10% to allow for an improved market since the date of that sale, which would have suggested an adjusted value of €214,302 for the Vacant Site.
- 6.8 His fourth comparison was a larger site which was sold, by tender and had no planning permission. The zoning on that was split as between residential and open space/amenity land. He had assumed a value of €25,000 per acre for the lands zoned open/amenity and €171,500 for the remaining residential zoned area, to arrive at a suggested value for the Vacant Site, of €108,045 per acre after making a +50% adjustment to allow for the planning status of the subject site and the quantum.
- 6.9 His fifth comparison was a site in a superior location, which did not have the benefit of planning permission. Adjusting for the timing of the sale, superior location and the planning status, he adjusted the rate per acre by +15% and this suggested a value of €191,779 for the Vacant Site
- 6.10 On a stand back and look approach, he said that the total area of zoned lands in his table of comparables was 5.73 acres, giving a weighted average land value for the residential zoned lands of €466,143 per acre, which he said would suggest a value of €195,780 for the Vacant Site. In this analysis he had looked only at the residential zoned land and worked off his assumed value per acre for the residential lands in his fourth comparable. He also suggested an alternative approach of looking at the averages on both a straight line and adjusted basis. He said that when this was done, the average value on a straight-line basis for the Vacant Site was €141,865 and on the adjusted basis was €181,281. He submitted that if it was agreed that the Vacant Site has a superior value because it had planning permission then it would follow that it should have a higher value than the average of €141,865. His opinion of value at €150,000 was at the lower end of the straight-line analysis and the adjusted analysis and he was of the view that this was fair and reasonable.
- 6.11 Under cross-examination by Mr. Mc Dermott, Mr. Carberry agreed with Mr. Mc Dermott that it was not unreasonable for him to assert that a site with planning permission would have an added value. However, he was asked if there would be an added value where there was no market or in a very restricted market

and if so, how he would ascertain that value. Mr. Carberry responded that every planning permission adds value. At the valuation date, there was a housing crisis with very few apartments available to buy or rent anywhere in the country including in the location of the Vacant Site. It followed that there was demand for housing and the planning would have given the right to develop on the Vacant Site. He did not accept that there would be no demand for the end product. Mr. McDermott put it to him that it was generally agreed that outside of Dublin and outside other influential areas, the cost of construction of apartments would exceed the end value. He also put it to him that in September 2020 second hand apartments in the immediate environs of the Vacant Site were transacting at a value of €100,000 - €120,000 per unit; if they were transacting at that value, the suggestion that the Vacant Site with a value of about €200,000 equating to about €10,000 per unit, was at odds with the market evidence. Mr. Carberry said that this was new evidence but that he had given a market commentary in his evidence and there was demand. As regards comparator No. 2, Mr. McDermott put it to Mr. Carberry that this was not in a village and that the planning had been for detached house circa 2,000sq. ft. each. Mr. Carberry responded that in his valuation, he had already allowed for the location and that the planning had lapsed at the date of that sale.

6.12 Under questioning from the Tribunal, Mr. Carberry was asked if he was satisfied that his valuation would hold up for a reduced density scheme. He said that he had not done an appraisal on that basis but that hypothetically if there were only 7 units on the Vacant Site, you could expect a higher unit price. He also said that any issues in relation to viability which had been raised would also have extended to his comparables.

6.13 In summary Mr. Carberry said that as a matter of fact the Vacant Site did have planning permission at the valuation date, with 15 months to run. The opinion of value given by the valuer for the Appellants was completely unsupported. The Vacant Site had services and there was no contamination and the Appellants' valuer had offered no evidence of any other mitigating circumstances which would affect value. The said valuer had made an error in valuing it on the basis of a lapsed planning permission. A planning permission for a smaller development would be an inefficient use of zoned land. No market comparable evidence had been given. The valuer for the Appellants had given no appraisal to support his opinion of a negative value after construction. He asked the Tribunal to adopt his opinion of value of the Vacant Site at €150,000.

7 FINDINGS AND CONCLUSIONS

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 10th September 2020.

7.1 The Appellants' valuer's opinion of value falls considerably short of establishing that the Respondent's valuation of the Vacant Site is incorrect. Firstly, his opinion assumed that the planning permission for the Vacant Site had lapsed at the valuation date. It had expired at the date the valuer was instructed by the Appellants (June 2022) but was still in existence at the valuation date and had a period of 15 months to run. The valuer acted on the information which he was given but accepts now that at the valuation date the Vacant Site had the benefit of a planning permission. The Tribunal accepts the submission of the Respondent's valuer that planning permission for the Vacant Site at the valuation date added value to it. Secondly, the Appellants' valuer submitted no evidence of the case studies of recent and less recent sales he referred to in his oral evidence and which he said he had relied on to support his opinion of value. Consequently, neither the Respondent's valuer nor the Tribunal were given the opportunity to review these to determine what if any weight should be attached to them. Thirdly, he submitted no evidence to support

his opinion that the construction costs of an apartment development on the Vacant Site would exceed the value of the end product or that there was in fact no demand by AHBs at the valuation date for sites such as the Vacant Site. This again left the Tribunal and the Respondent's valuer with no documentation to assess or weigh up.

7.2 The Act provides in section 12(1) that a planning authority shall determine the market value of a vacant site by estimating the price which the unencumbered fee simple of the site would fetch if it was sold on the open market and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the site. The Respondent initially had the Vacant Site valued by another valuer who gave an opinion of value dated 12th October 2020, of €150,000, for the Vacant Site.

7.3 However, because that other valuer was not in a position to represent the Respondent at the hearing, Power Property were appointed. Mr. Carberry of Power Property subsequently inspected the Vacant Site and having considered the opinion of market value submitted by the Appellants, concluded that there was nothing contained in it that led him to change the original valuation of €150,000 as set out in the Notice of Valuation and which he considered to be fair and reasonable as of the Valuation Date. His evidence both as set out in his précis and at the hearing, is very comprehensive. He took into account that at the valuation date the Vacant Site had the benefit of planning permission, he gave an analysis of the market position at the valuation date, and he also gave details of comparable sales transactions. He did point out that in calculating the appropriate adjustments or allowances to be made to the data from those comparable sales to allow for timing, location, size and planning status, that there was a certain element of subjectivity in that aspect of his analysis. However, the Tribunal finds that no grounds have been advanced to challenge those calculations and has also noted Mr. Carberry's "stand back and look" approach and that he has adopted an opinion of value at the lower end of the scale.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the market value of one hundred and fifty thousand euro, [€150,000], as stated in the Notice of Valuation dated 5th of August 2021.

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.