

Appeal No: VA19/5/1884

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Munster Proteins

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of
Property No. 1802714, Factory at Kilcommon More North, Kilcommon, Clogheen, County
Tipperary

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF MAY, 2023**

BEFORE

Eoin McDermott FSCSI, FRICS, ACI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on 14th 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 €400,000

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *“Excessive valuation”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €183,429.85.

2. RE-VALUATION HISTORY

2.1 On 15th March 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €400,000.

2.2 A Final Valuation Certificate issued on 10th September 2019 stating a valuation of €400,000.

2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is 15th September 2019.

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal. The Appellant's summary was prepared by Mr. Tadhg Donnelly of Donnelly & Associates and the Respondents summary was prepared by Mr. Andrew Cremin. As Mr. Cremin had the opportunity to consider the Appellants summary before preparing his own, Mr. Donnelly was offered the opportunity to respond to Mr. Cremin's summary and did so.

3.3 Both summaries contained the Declaration and Statement of Truth required under Tribunal Rules.

4. FACTS

4.1 The parties are agreed as to the following facts.

4.2 The property is located on the outskirts of Cahir, opposite Cahir Park Golf Club.

4.3 The property comprises a meat processing plant with abattoir, deboning, packaging, processing and cold storage facilities. The original facilities are approximately 40 years old, but the occupier has upgraded the premises extensively since construction.

4.4 The area of the property is as follows: -

Level	Use	Area (m ²)
0	Factory	5,839.11

0	Offices	470.92
0	Store	283.25
0	Warehouse	2,823.73
	Total	9,417.01
Plant	Tanks, boilers, motive power, weight pit.	

4.5 The plant has an NAV of €23,340.88, made up as follows: -

Use	Area	NAV €/ m ²	NAV €
Plant -Boilers	10,000.00	€1.00	€10,000.00
Plant -Motive Power	622.00	€3.04	€1,890.88
Plant -Tanks	9,450	€1.00	€9,450.00
Plant -Weight Pit	1.00	€2,000	€2,000.00
Total			€23,340.88

5. ISSUES

5.1 The issue is one of quantum.

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.”

6.3 Section 19(5) (inserted by section 7(b) of the 2015 Act) of the 2001 Act provides:

(5) The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable)

—

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list,

and so that (as regards the matters referred to in paragraph (b) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

7. APPELLANT’S CASE

7.1 Mr. Donnelly, on behalf of the Appellant, described the property as being constructed in piecemeal fashion in the 1980s. He advised that the property consisted of a factory, store, cold room and warehouse and the property was used to process offal for later production into meal.

7.2 Mr. Donnelly stated that there were 68 industrial buildings described as factory on the valuation list and said that only 2 properties had higher NAVs than the subject property. He put forward the following six NAV comparisons.

Property No	Use	Address	Valuation	Factory Level
226660	Factory	ABP, Kilculliheen, Waterford, Co Kilkenny	€404,000	€30
226674	Workshop	Munster Proteins, Kilculliheen, Wateford, Co Kilkenny	€42,800.00	€20
1299508	Factory	ABP, 21 Kyletaun, Rathkeale, Co Limerick	€170,500	€15
116970	Factory	Kepak, Cloonkelly, Athleague West, Roscommon, Co Roscommon	€235,500	€30

1446568	Abattoir	Kepak, Ardnaglew, Mullingar, Co Westmeath	€63,800	€17
2008270	Factory	Slaney Foods International, Ryland, Bunclody, Co Wexford	€565,700	€27

7.3 Mr. Donnelly gave his opinion that the plant had grown significantly since its establishment and that if the occupier had to rebuild the property, it would result in a more efficient use of space. He said that much of the factory would be considered as very basic in terms of design and specification

7.4 Mr. Donnelly seeks a valuation of €183,430, calculated as follows: -

Use	Area	NAV €/ m ²	NAV €
Factory	5,839.11	€17.00	€99,264.87
Office	470.92	€17.00	€8,005.64
Store	283.25	€17.00	€4,815.25
Warehouse	2,823.73	€17.00	€48,003.41
Plant			€23,340.88
Total (rounded)			€183,430.00

8. RESPONDENT'S CASE

8.1 Mr. Cremin, on behalf of the Respondent, described the property and its location using photographs and plans contained in his submission. He described the property as a meat rendering production plant. He adds that it represents a major infrastructural investment of “millions of euros” by the owner o in or around 2015. The condition of the property is described as good, and it is noted that the property complies with the relevant national standards.

8.2 In response to the Appellants submission, Mr. Cremin notes that none of the NAV comparisons put forward by Mr. Donnelly are located in the same Rating Area as the subject property. He states that the NAV comparisons put forward do not comply with the requirements of section 19 (5) of the Valuation Act 2001 – 2020 and are not valid comparisons for the subject of this appeal. He also queries why the Appellant has not put forward any evidence from meat plants in the rating authority area.

8.3 Mr. Cremin notes that there are no direct Key Rental Transactions available for the property in this Local Authority Area as all the specialist meat processing factories are owner

occupied. He also argues that food production plants are specialist properties and accordingly a premium must be allowed for in assessing the rental value when comparing them with standard industrial units, pointing out that many areas are built to be sterile with higher than standard grade walls, ceilings and flooring. He puts forward three Key Rental Transactions (“KRT”) which informed the valuation scheme the Respondent relied on in arriving at the valuation of the subject property. These are set out in Appendix A (n/a to public) . He also puts forward 4 NAV comparisons as follows: -

Property	Address	NAV/m2	NAV	Appealed to V.T.
1773684	Parkmore, Roscrea	€40 (main level)	€458,000	No
1802710	Kilcommon North, Cahir	€40 (main level)	€506,000	Yes
1773346	Grange, Nenagh	€40 (main level)	€506,000	Yes
880504	Clonmel	€29/€39	€307,000	No

8.4 Mr. Cremin seeks a valuation of €400,000 calculated as follows: -

Use	Area	NAV €/ m ²	NAV €
Factory	5,839.11	€40.00	€233,564.40
Office	470.92	€40.00	€18,836.80
Store	283.25	€40.00	€11,330.00
Warehouse	2,823.73	€40.00	€112,949.20
Plant			€23,340.88
Total			€400,021.28
Say			€400,000.00

Mr. Cremin sets out the reasons for applying a higher value per m² to plants such as the subject as opposed to standard industrial units. He notes that the occupiers marketing material makes reference to the significant investment in the plant in 2015. He also queries why the Appellant has not put forward any evidence from meat plants in the rating authority area.

8.5 Replying to the Respondents submission, Mr. Donnelly stated that levels had been established that were applicable to specialist meat plants, that the subject property was an old meat plant, that as a specialist property comparisons should not be restricted to the same rating area as the subject, that there is no emerging tone of the list on which the Respondent can rely and that the valuation as proposed would be in defiance of the established levels

that have been adopted country wide. Mr. Donnelly also notes that he represents the majority of meat plants in the country and would be well aware of the values applying in those cases. He gives his opinion that quantum is an issue that should be taken into account. Finally, he makes reference to another appeal in respect of Property No. 2266074, where he states that the overriding principle is that plant used for the production of offal which is unfit for human consumption does not require the same standards of hygiene that is necessary for meat plants for products entering the food chain. The Tribunal can find no record of a property with that number and believe it refers to Property No. 22660, the Appellants NAV comparison 1.

9. SUBMISSIONS

9.1 There were no legal submissions. However, the Respondent did note the Tribunals decisions in VA00/2/032 Proudlane Ltd. t/a Plaza Hotel, VA07/3/054 William Savage Construction and VA09/1/018 O'Sullivan's Marine Ltd. to support its contention that the onus of proof lies on the Appellant.

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 Tipperary County Council.

10.2 The Appellants case is that the valuation as proposed is not in accord with values of similar properties in the State, that the basic NAV level of the factory space should be set at €17 per m², that the property was originally constructed approximately 40 years ago and has been updated in a piecemeal basis subsequently. It is also suggested that quantum should be considered. It is further suggested that a precedent was set in an appeal in respect of a meat plant in Kilkenny.

10.3 The Respondents case is that the property is a meat rendering production plant in good condition and compliant with national standards. It believes that the valuation is in line with the tone of the list for the local authority area. It values all areas of the property at €40 per m².

10.4 The Appellant has relied upon historic valuations from meat plants located in Limerick (valuation date March 2012), Kilkenny (valuation date October 2015), Roscommon (valuation date October 2015), Westmeath (valuation date September 2015) and Wexford (valuation date September 2017). It is argued that as a specialist facility, comparisons should not be restricted to the same rating area as the subject. For such an argument to succeed the Appellant should be able to show that there are no similar properties within the same rating area or, if there are, include them in evidence and set out the differences. The Respondent has demonstrated that there are other similar properties in the area, one of which is a specialist meat plant which has not been appealed to the Valuation Tribunal. Accordingly, the Tribunal cannot attach any weight to the Appellants arguments in this regard.

10.5 The Appellant has made a general argument that there is an established level of valuation for meat plants across the country and that the valuation of the subject property does not comply with this general level. The Tribunal notes that the evidence put forward by the Appellant shows factory space in the Kilkenny comparison is valued at €30 per m² while cold rooms are valued at €38.55 per m², factory space in the Limerick comparison is valued at €15 per m² while cold rooms are valued at €23.50 per m² and in the Roscommon comparison factory space is valued at €30 per m² while cold rooms are valued at €39.40 per m². In contrast, the Wexford comparison has factory and cold rooms valued at €27 per m². These figures suggest that there is no overall national level of valuation for meat plants across the country and the Tribunal does not accept the Appellants arguments in this regard.

10.6 The Appellant has also argued that the property is dated and has been upgraded on a somewhat haphazard basis since then. Both parties have submitted photographic evidence and having studied the photographs the Tribunal can find no evidence to support the Appellants claim.

10.7 The Appellant has also suggested, in its reply to the Respondents submission, that quantum is a major issue. No evidence has been put forward to substantiate this claim or quantify what level of allowance may be made in respect of quantum. Accordingly, the Tribunal cannot attach any weight to the Appellants argument in this regard.

10.8 Also contained within the Appellants response to the Respondents submission is the claim that an appeal of a meat plant in Ferrybank in Kilkenny set a precedent that plant used for the production of offal which is unfit for human consumption does not require the same standards of hygiene that is necessary for meat plants for products entering the food chain. There is no further explanation or evidence to support the claim that this was the reason for the different valuation levels in that property and the Tribunal cannot attach any weight to the Appellants argument in this regard.

10.9 It is common cause that there is no rental evidence for similar properties within the rating area. Nor was any rental evidence put forward by either side in respect of any similar property located outside the rating area. The Respondent has put forward three Key Rental Transactions which informed the valuation scheme used to value the subject property. The three rental comparisons are located in a town some 17km away from the subject property. The three are significantly smaller than the subject property. They date from 2016 and 2017. None of the three are in any way comparable to the subject property and no weight can be attached to them.

10.10 The Respondent has put forward four NAV comparisons from the rating area. Two of the properties are currently under appeal to the Tribunal and must therefore be treated with caution. NAV comparison 1 is a similar size to the subject property and is described as being similar in specification and fit out. It is valued on the same basis as that proposed for the subject property and represents the best evidence available to the Tribunal. NAV comparison 4 is again a similar size to the subject but is described as an older building and not as modernised or requiring the same specification as the subject property. This is predominantly valued at €29 per m².

10.11 The Tribunal finds that in this appeal, and in all appeals before the Tribunal, the onus of proof rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal's determination.

10.12 The Tribunal finds that the Appellant has not been able to demonstrate that the valuation levels proposed by the Respondent are incorrect.

DETERMINATION:

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

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.