

Appeal No: VA19/5/1625

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Pump Gen Engineering Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2131651, Industrial Uses at Local No/Map Ref: 12B Gorteen or Gorteenaterriff, Brucehall, County Cavan.

B E F O R E

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

Caroline Murphy - BL

Member

Fergus Keogh - MSCSI, MRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 23RD DAY OF JUNE, 2023

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th 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 €17,130.

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: *“Section of the property is for agriculture use not occupied by Pump Gen and not for commercial use.” “Floor area 222 square metres”*.

1.3 The Appellant considered that the valuation of the Property ought to have been determined in the sum of €3,552 on the Notice of Appeal

2. REVALUATION HISTORY

2.1 On the 15th day of 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 €17,130.

2.2 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €17,130.

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

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 23rd day of January, 2023. At the hearing the Appellant was represented by Mr. Patrick O'Reilly of Pump Gen Engineering Limited, and the Respondent was represented by Mr. Terry Devlin B.Sc., MRICS, MSCSI, Dip Rating of the Valuation Office.

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

4. FACTS

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

4.1 The Property is situated in a rural location approx. 5km East of Arvagh, Co. Cavan and approx. 17.5km South/West of Cavan town centre;

4.2 The Property comprises of an office building to the front of the site (being an older type building, a byre, having been adapted and renovated over many years) with two adjoining workshops / industrial units to the rear, Block 2 built around 1997 (approx.) and Block 3 built in 2005/2006. The industrial units are constructed of portal steel framework with concrete block walls to one third height with single skin Kingspan cladding on the side walls and roof. There is a concrete yard to the side of the buildings. The front building

includes a first-floor store with reduced height at the sides to accommodate the steep roof pitch and this area has an unrailed stair access. The occupier uses some toilet/kitchen facilities in his residence.

4.3 The floor area of the buildings (but not their rateability use) is agreed at 993.90m²;

4.4 The accommodation is as follows:

Front Building

Ground floor	Office	75.00m ²
First Floor	Store	37.50m ²

Building No. 2

Workshop	237.90m ²
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Building No.3

Workshop	<u>643.50m²</u>
	993.90m ²

4.5 The main use of the Property is as a workshop/stores in connection with the Appellant's business of providing pumps/engineering services for a variety of purposes and associated products but see below under Issues in Section 5(A) hereunder.

4.6 The Property is owner occupied.

5. ISSUES

At the time of the hearing, discrepancies in the floor areas of the buildings had been agreed between the Appellant and the Respondent and thus there were two issues outstanding to be determined, namely:

(A) the rateability of part, in that the Appellant contended that part of the front building and all of Block 3 were not rateable, being either domestic or vacant/agricultural, respectively and

(B) the valuation.

6. RELEVANT STATUTORY PROVISIONS:

(A) Rateability

6.1 All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.

6.2 The relevant sections of the Valuation Act dealing with rateability in the context of the present appeal are, firstly, in sec.3 dealing with definitions which defines the following:

“domestic premises” means any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel;

“apart-hotel” means one or more apartments, including any ancillary facilities associated with such apartments, which are used for the purposes of the trade of hotel-keeping;

“mixed premises” means a property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent;

“farm buildings” means—

- (a) buildings, parts of buildings, or other structures, occupied together with agricultural land and used solely in connection with the carrying on of agricultural activities on that land,*
- (b) buildings, parts of buildings, or other structures, used solely for the production of livestock, poultry or eggs or for the breeding of bloodstock or other animals,*
- (c) buildings, parts of buildings, or other structures, occupied together with land developed for horticulture or forestry and used solely in connection with the carrying on of horticultural or forestry activities, as the case may be, on that land,*
- (d) buildings, parts of buildings, other structures or cages or tanks, used for the production or rearing of fish,*

other than—

- (i) buildings, parts of buildings, or other structures, used for the production of furs or used for the training of bloodstock or other animals, or*
- (ii) buildings, parts of buildings, or other structures, used for the storage of agricultural, horticultural or forestry goods not produced on the land attached to such buildings or structures, or*
- (iii) buildings, parts of buildings, or other structures, used for the processing or sale of agricultural, horticultural or forestry goods (whether produced on the land attached to such buildings or structures or not) or used for sawmills or the carrying on of activities necessarily related to the activities of sawmills, or*
- (iv) buildings, parts of buildings, or other structures, used for the storage, processing or sale of fish, or*
- (v) buildings, parts of buildings, or other structures, used for the production of tropical fish or exotic birds or butterflies or other similar species;*

Secondly, the general power to value relevant property as set out in sec.15:

15.—(1) Subject to the following subsections and sections 16 and 59, relevant property shall be rateable.

(2) Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable.

Schedule 3 of the Valuation Act provides for property that is rateable and relevant extracts (in the present appeal) from that are:

1.—Property (of whatever estate or tenure) which falls within any of the following categories and complies with the condition referred to in paragraph 2 of this Schedule shall be relevant property for the purposes of this Act:

- (a) buildings,*
- (b) lands used or developed for any purpose (irrespective of whether such lands are surfaced) and any constructions affixed thereto which pertain to that use or development,*
- (c) railways and tramways, including running line property and non-running line property,*
- (d) harbours, piers, docks and fixed moorings,*
- (e) mines, quarries, pits and wells,*
- (f) rights of fishery.....etc*

2.—The condition mentioned in paragraph 1 of this Schedule is that the property concerned—

- (a) is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property, or*
- (b) is unoccupied but capable of being the subject of rateable occupation by the owner of the property.*

For property not to be rateable, it must come within the ambit of Schedule 4 of the Valuation Act 2001 as amended which specifies classes of property exempt (only relevant extracts set out here) as follows:

- 1.—Agricultural land.*
- 2.—Land developed for horticulture.*
- 3.—Land developed for forestry. etc*

And further:

5.—Farm buildings.

6.—Any domestic premises (but subject to section 59(4) (which provides that apartments are rateable in certain limited circumstances)).

Other classes etc.....

(B) Quantum (Valuation)

6.3 In Revaluation type appeals, as in this appeal, sec. 37 provides that the Valuation Tribunal must reach a determination having regard to the provisions of Section 19(5) inserted by section 7 of the of the Valuation (Amendment) Act 2015 as follows:

“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.”*

6.4 The Net Annual Value of the Property must be determined in accordance with the provisions of section 48 (1) of the Act as amended 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.”

6.5 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the basis 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 expected to let from year to year, on the assumption that the probable average 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 (a) Mr. Patrick O'Reilly, on behalf of the Appellant, having made his affirmation to give evidence, adopted his letter to the Tribunal of 3rd November, 2022 as his précis and outlined for the Tribunal that he operates a small pump engineering business and said that the Property comprises three buildings (Block 1,2,3) and one shared yard.

Block 2 is used for repairs of power washers and water pumps and that this building has one full time employee working in it. He also has a couple of vans on the road to service that business, fitting water pumps on farms, as well as domestic water pumps and some industrial pumps too including sewerage treatment systems, fitting, servicing and repairs.

Mr. O'Reilly states that Block 3, although adjoining Block 2, is separate from it and there is no access to it from Block 2 and it is not currently in any use by Pump Gen Engineering but is used as a farm building, in connection with his own 55 acres farm, for holding farm machinery and for repairing their own farm machinery.

(b) Mr. O'Reilly said that there is also the front building (Block 1) which he contends is used partly for Pump Gen as an office but that it is not fully reconstructed yet; it was an old cow shed which had the roof blown off some years ago. They have been adapting this over the past 20 years and this building has a hay loft but is not fully finished, with no hand rail on the stairs up to it and it is not insulated. This area is only used for rough storage containing some old fittings from when he built his own house. He submits that approximately one third of the ground floor of this building has been used as an office, the residue has items dumped there due to go for shredding.

(c) Block 3, the third building, is in use, he contends, as a farm building and his intention is to apply for planning permission for agricultural use. He confirmed that it was erected as an industrial building based, at that time, on the recommendation of his Architect and in order to allow for use inside it for a dump trailer he put in extra height in the specification and a gantry at the time it was built.

(d) His précis confirms that he pays around € 1,600.00 in rates on these buildings and that, other than himself, he has one full time employee, plus his son on apprenticeship with him and that his wife works part time in the office. He also referred to the fact that the business had been experiencing difficulty, financially.

(e) He queries what the difference is between a farm building and an industrial building as he does a lot of work on farms and is therefore around farm workshops on a daily basis and sees well-constructed industrial buildings used for working on farm machinery, and so he is not clear on why he cannot use this building (Block 3) as an agricultural store and for repair of his own farm machinery. He says that there are three tractors, a baler, hay racks, a dump trailer and hedge cutter currently stored in it.

(f) He outlined that this is a rural location between Ballinagh and Arvagh and that most of the road does not even have a white line down the centre, being really only a single carriageway and that, if you are travelling on it and happen to meet a truck, you have to pull in for safety.

He clarified that as it is not on the outskirts of a town and so to try and suggest there might be a rent for the property is to him an impossible proposition.

(g) In regard to Block 3, he stated that he was advised not to downgrade his use of this because it is a better standard than one might normally erect as a farm building in that it has good structure, double doors, fire certs and fire escapes, high internal height, insulation and a gantry and thus, if he downgrades it, he would be losing out on the benefits of these health and safety provisions.

(h) In answer to questions from Mr. Devlin for the Respondent he confirmed that the planning permission for Block 3 is for “Stores/Workshop” and shares the use of the yard which is about 50 feet wide. He confirmed that he had read Mr. Devlin’s précis of evidence and did not agree with the valuations of the three buildings as he could not understand the basis to arrive at a figure of € 17,130

(i) In answer to questions from the Tribunal he confirmed that:

- there is planning permission for the three buildings
- the planning application contemplated in his précis of 3rd November 2022 (being to change Block 3 from industrial to agricultural) has not been made
- that Patrick and Maureen O'Reilly are the registered owners of the entire property
- the dates of construction of the buildings

7.2 He had also made reference to the brief Report from Mark Cunningham, Chartered Engineer of Cunningham Design & Planning, Longford, dated 21st October, 2022 which he confirmed to the Tribunal that he wished to be included in his evidence. This report, which included an annotated photograph/streetview, stated that Mr. Cunningham is a Chartered Engineer and is familiar with the Property and was therefore able to certify that:

(a) One third of the ground floor of the front building (denoted as building "A" on his plan) was used in connection with Mr. Pat O'Reilly's business. The remainder is used for storage in connection with Mr. O'Reilly's house and that the attic floor is in an unfinished state;

(b) Block 2 (denoted as "B" on his plan) is where the main business is carried on;

(c) Block 3 (denoted as "C" on his plan) is vacant and has been so for a long period and that Mr. O'Reilly has employed his firm to apply for planning permission to allow this building to be used for agricultural storage.

8. RESPONDENT'S CASE

8.1 (a) Mr. Terry Devlin, Valuer for the Respondent, having made his affirmation, adopted his précis as his evidence in chief but clarified that the previous reference to this being a Revision type appeal required to be corrected, following on from a pre-hearing Direction of the Tribunal to clarify that this is, in fact, a Revaluation type appeal. Accordingly, references to that effect in his written submitted précis (notably Section 2. in particular) required to be altered to reflect the true position.

(b) Mr. Devlin outlined that as part of the Revaluation exercise that every property in County Cavan in 2019 was valued at that time. He outlined the rural location of the Property and referenced maps and photographs to describe the three buildings. He clarified that the photos on pages 16 & 17 of his précis are of Block 3 and not Block 2 as labelled.

8.2 This appeal falls to be dealt with by Mr. Devlin under the headings of (A) Rateability and (B) Quantum (Valuation), because the floor areas of the property (as opposed to their asserted use) were agreed as set out under Facts (Section 4. of this Determination) above so these are no longer in dispute.

(A) Rateability

8.3 (a) Mr. Devlin said, in relation to rateability, that his evidence is that based on his inspection and with reference to the photographs provided in his précis that the front building (Block 1 & 1A) is used for commercial purposes and despite what the Appellant contends in this regard, he considers that the entire must be valued for rating purposes, as it is available for letting as such but acknowledged that the first floor, though floored, has no railing on the stairs to this area but he is of the opinion that this area is used for storage purposes. The other two industrial buildings are in good condition and form part of the site with a large concrete yard to the side and front.

(b) Block 2 is an industrial building and this has a small mezzanine area but he confirmed that due to reduced head height, this mezzanine has not been valued.

(c) The larger of the two industrial units (Block 3) is a fine, relatively new unit which has double doors, a 5-tonne gantry and with access to the yard in a fenced off site. This has a concrete floor, good eaves height and though there may be some items of an agricultural nature stored there, he is of the opinion that it is not solely used for agricultural purposes and references photographs in his précis in support of his view. Accordingly, it does not comply with the statutory definition of a farm building in the Valuation Act in that it is not being used solely and exclusively for agricultural activities. He refers to the Appellant's intention to seek planning permission for a change to agricultural use and suggests that if that is obtained it is then open to the Appellant to arrange to have the property listed for a Revision valuation to reflect those changed circumstances but that, as things stand, both at the time of revaluation and currently, he considers this property comprises three buildings

in commercial/industrial type use. He asserts that the fact that a property may be claimed not to be in use is not sufficient to have it struck off the Valuation List and he does not feel evidence has been provided to show that this cannot be valued as industrial.

(d) The three properties are in his opinion all Relevant Properties as defined by the Act that fall to be valued and must be treated as such until clear evidence is provided to show otherwise.

(e) In answer to questions from the Tribunal he confirmed:

-the valuation date

-the previous valuation (supplied subsequent to the hearing)

-definition of “farm Building” (see section 6 above)

-when he inspected, Block 3 was part in use for agricultural use in that there were some agricultural items but that it was predominantly for industrial use

(B) Quantum (Valuation)

8.4 Mr. Devlin submitted the following comparable properties from the Valuation List in support of his contention on the valuation of the Property.

NAV Comparable No.1 PN 2159625

Kiduff, Redhill, Co. Cavan.

This property, which comprises 672.54m², is assessed at an NAV of € 10,760 that is calculated as follows:

Factory	548.66m ² @ € 16.00	8,778.56
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Office	123.88m ² @ € 16.00	<u>1,982.08</u>
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10,760.64 rounded to € 10,760.

No representations made against this and no appeal either.

NAV Comparable No.2 **PN 1990471**

Killyrue, Corraneary, Co, Cavan.

This property comprises 1,147.92m² and is assessed at the NAV of € 12,360 that is calculated as follows:

Store	679.30m ² @ € 16.00	10,868.80
Mezz Store	468.62m ² @ € 3.20	<u>1,499.58</u>
		12,368.38 rounded to € 12,360.

No representations made against this and no appeal either.

NAV Comparable No. 3 **PN 1989368**

Cloghballybeg, Mullagh, Co. Cavan.

This property comprises a unit of 680.74m² plus two portacabins that is assessed at the NAV of € 11,230 which is calculated as follows:

Workshop	680.74m ² @ € 16.00	10,891.84
Portacabins	54.00m ² @ € 6.40	<u>345.60</u>
		11,237.44 rounded to € 11,230.

No representations made against this and no appeal either.

NAV Comparable No.4 **PN 2168374**

Ardkill More, Denn, Co. Cavan.

This property comprises an office, workshop and yard with a total of 1,012.43m² plus yard which is assessed at the NAV of € 19,640 that is calculated as follows:

Office	123.50m ² @ € 40.00	4,940.00
Store	217.69m ² @ € 16.00	3,483.04
Workshop	451.36m ² @ € 16.00	7,221.76
Office	120.20m ² @ € 28.00	3,365.60
Mezz Store	99.68m ² @ € 3.20	318.98
Yard	200.00m ² @ € 1.60	<u>320.00</u>
		19,649.38 rounded to € 19,640.

No representations made against this and no appeal either.

NAV Comparable No.5 **PN 2212947**

Lattoo, Lurgan, Castlerahan, Co. Cavan

This property comprises of a warehouse of 844.11m² which is assessed at the NAV of € 13,500 that is calculated as follows:

Warehouse	844.11m ² @ € 16.00	13,505.76 rounded to € 13,500.
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No representations made against this and no appeal either.

NAV Comparable No.6 **PN 1990044**

Cloverhill, Belturbet, Co. Cavan.

This property comprises a warehouse and store of 840.60m² plus a yard that is assessed at the NAV of € 13,600 that is calculated as follows:

Store	456.60m ² @ € 16.00	7,305.60
Warehouse	384.00m ² @ € 16.00	6,144.00
Yard	100.00m ² @ € 1.60	<u>160.00</u>
		13,609.60 rounded to € 13,600.

No representations made against this and no appeal either.

He confirmed that all of the above comparables reflect a unit value rate per square metre of €16 which is applied to these rural industrial type properties across Co. Cavan.

8.5 In conclusion, on the quantum aspect of this appeal, Mr. Devlin set out his valuation as € 15,600 (reduced from the figure in the Valuation List of €17,130 because of a change in floor areas by his remeasurement, following his inspection, and also he reduced the level of value on the first floor of the front building) as the Net Annual Value of the Property, which he calculated as follows:

		<u>Floor Area m²</u>	<u>NAV per m²</u>	<u>€</u>
<u>Front Building</u>				
Ground floor	Office	75.00m ²	@ € 16.00 per m ²	1,200.00
First Floor	Store	37.50m ²	@ € 8.00 per m ²	300.00
<u>Building No. 2</u>				
	Workshop	237.90m ²	@ € 16.00 per m ²	3,806.40
<u>Building No.3</u>				
	Workshop	<u>643.50m²</u>	@ € 16.00 per m ²	<u>10,296.00</u>
		993.90m ²		15,602.40
	Rounded to		Say, NAV	€ 15,600.

8.6 In answer to questions from the Tribunal (on matters of valuation) he confirmed that the yard has not been separately valued as he regarded this as being already included in the value of the buildings. In regard to the attic in the front building he acknowledged that this area could be valued at € 3.20 per square metre in line with two of his comparables instead of the € 8.00 per square metre he had adopted.

9. SUBMISSIONS

There were no legal submissions in this case.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine:

- (A) whether the Property (PN 2131651) is rateable in its entirety, and
- (B) if that be the case, i.e. that it is rateable, then to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is both correct and equitable and uniform, 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 Cavan County Council.

(A) Rateability

10.2 The first issue requiring to be addressed is the rateability of the parts of the Property which the Appellant contends should not be rated. The Respondent contends that the entire Property is Relevant Property-Rateable. What is not disputed is that a

commercial/industrial business is conducted from the buildings but the extent of that is in question. The Tribunal can only decide such issues based on the evidence placed before it and it is a well-established principle in these appeals that the onus rests with the Appellant to prove his case in this regard.

10.3 It is thus necessary to consider the status of each building comprised in this relevant property, in turn.

(a) The Front Building

This was described by Mr. O'Reilly as being a very old building, in the nature of a byre, that had been renovated and adapted over many years and not fully completed, as apparent from the condition of the first floor. He asserted that only one third of the ground floor was in use by Pump Gen, as an office, the residue has items dumped there due to go for shredding and that the first floor is only used for rough storage containing some old fittings from when he built his own house. In order to qualify as domestic premises it would have to accord with the definition in the Act. This is:

“domestic premises” means any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel;

From a review of the definitions set out in Section 6 above the Tribunal can see quite easily that this is not an apart hotel and thus the next question that arises is whether it is a mixed premises. A mixed premises is:

“mixed premises” means a property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent;

From an examination of the evidence provided it appears to the Tribunal that this is neither a mixed premises nor domestic because the component attributable to domestic use is missing in that the concept of “domestic” refers to that which might indicate the function of residing and no evidence is forthcoming from the Appellant to demonstrate the normal activities associated with residing such as eating, cooking, washing, sleeping etc that might be associated with a house or dwelling.

(b) Block 2

There is no dispute that this property is occupied by the Appellant and is rateable

(c) Block 3

Mr. O'Reilly made assertions on the use of the front building and Block 3 and submitted a brief report from Mr. Mark Cunningham, Chartered Engineer, dated 21st October, 2022, certifying the usage of the buildings in support of those assertions. Mr. Cunningham was not before the Tribunal to be examined on that evidence by the Respondent or to take questions from the Tribunal. It is unclear from that Report if the author was familiar with the Valuation Act or the rules of the Tribunal. The certification, as such, is deficient as it does not reference the statutory requirements that divide Relevant Property from Relevant Property not rateable. Mr. Devlin set out in his précis and his sworn testimony the use of the buildings as he found them to be on inspection which was supplemented by photographs of the buildings both internal and external and it was clear to the Tribunal from these (and, indeed, also from the photographs supplied by the Appellant) that the buildings portrayed all the appearances of being predominantly in use for commercial and industrial purposes and of a nature that, if assumed vacant and to let, as the rating hypothesis dictates, would be in the mode or category of occupation of commercial/industrial as opposed to either domestic or agricultural use. The Tribunal finds that the specification of Block 3 is superior to farm buildings and incorporates a gantry. The balance of evidence provided favours the Respondent in that the buildings are found to be a part of an overall enterprise. This is further amplified by the fact that the Appellant contemplated making an application for planning permission for Block 3 to put it in agricultural use. It was established at the hearing that this application, though intended some years ago, has not yet been made. The assertion that part of a property is vacant does not relieve it from being assessed as Relevant Property Rateable. Whilst the Tribunal accepts that the Appellant made his contentions on rateability in good faith he did not persuade the Tribunal, within the framework of the legislation applicable to these appeals, that a case could be made to exempt parts of the Property from being valued for rating purposes

10.4 Accordingly, the Tribunal finds that the entire property is rateable, because:

- (a) the Appellant confirmed in cross examination that the three buildings have planning permission for commercial use;

(b) Vacancy of Block 3 as cited by the Appellant's Engineer in his report is not a ground for exemption from rating though the Tribunal notes that later in the hearing Mr. O'Reilly disputed this and submitted that this building is, in fact, in use for agricultural purposes and thus the evidence emanating from the Appellant's side on this is conflicted;

(c) Mr. Devlin's oral evidence and his photographic evidence persuades the Tribunal that all three buildings are in use for a commercial/industrial enterprise;

(d) The Tribunal considers that the necessary ingredients for rateable occupation are all present in this case being actual occupation; beneficial occupation; exclusive possession and possession not being too transient in nature in accordance with paragraph 2 of Schedule 3 of the Valuation Act 2001 as amended;

(e) The Appellant, by Mr. O'Reilly's own admission, confirmed a prior intention to seek planning permission to change Block 3 from commercial to agricultural use and so, if it was agricultural at present, there would be no need to change this, and, further, as established at the hearing no such application has been made;

(f) Within the statutory framework the buildings are not used solely for agricultural purposes

(g) Taking the normal rating hypothesis principles, the buildings, assumed vacant and to let, would be considered as falling in the mode or category of occupation of commercial/industrial rather than either agricultural or domestic.

(B) Quantum (Valuation)

10.5 The value contended for by the Appellant, in the absence of a valuation in his précis, is taken as the figure of € 3,552, as per the Notice of Appeal, no other figure being advanced since then, but its manner of calculation has not been shown nor have any comparable properties or rental information being submitted to show how this alternative valuation figure might be proved or supported.

10.6 In cases of this nature where a lay Appellant (i.e. those ratepayers who are not professionally represented by either a Valuer, Surveyor, or Solicitor) is acting on his/her own account confusion can arise as between the valuation (Net Annual Value) and the amount of rates actually payable and so it is not unusual to see a figure in a Notice of Appeal that is more in line with being a response to the rates invoice figure rather than a valuation assessment/estimate per se.

10.7 As is the case in many rating appeals before the Valuation Tribunal mounted by lay Appellants confusion can arise in the understanding of the role of the Tribunal and its scope of power. A rates bill is comprised of two parts. The first is the **valuation (Net Annual Value)** and the second is the **ARV, the annual rate on valuation**. The total rates payable is a factor of one component multiplied by the other. The jurisdiction of the Tribunal is solely concerned with the correct and equitable determination of the first of these, the **valuation**. The second of these, the **ARV** is fixed annually by the local rating authority and the Tribunal has no function on the determination of this figure. The **ARV** will vary from local authority to local authority and the amount of this will also vary greatly depending on whether the local authority area has been revalued or not. As stated in Sections 6.3 to 6.5 of this Determination above, the basis of the **valuation** is the notional rental value of the property assuming it to be vacant and to let at the valuation date identified in the Valuation Order, as at 15th September, 2017.

10.8 Notwithstanding what has been said in the preceding paragraph, the Tribunal is well aware that what will ultimately concern any Ratepayer after a Revaluation is the change in his monetary liability from the previous position. In this case the Tribunal made the enquiry of the Respondent as to what was the amount of the previous Rateable Value that had been applicable for the Property prior to the Revaluation. The Respondent has, since the hearing, provided that in the following extract of an email received on 23rd January (i.e. the same day as the hearing):

“As per a query raised by a member in this morning's hearing please see below the valuation of the subject property pre revaluation: Workshop RV €25.39 This valuation related to Block 2 only and did not include the office building or the large new building to the rear of the site. The property was last revised in 1999.”

This old valuation would have given rise to a liability of € 1,545.49 (R.V. € 25.39 X Cavan rate € 60.87 prior to Revaluation) which accords approximately with what the Appellant had quoted in his precis (€ 1,600) but, as a result of the revaluation exercise the liability, based on the figure in the Valuation List of € 17,130 would give rise to a rates liability of € 3,443.13 (valuation NAV € 17,130 X ARV Cavan in first year of Revaluation in 2020 of € 0.2010).

This is a significant increase in rates payable but it can be seen that the previous valuation, upon which the liability was based, did not include two buildings. This explanation, it is hoped, will go some way towards explaining the change in the ultimate rates bill. It is worth reiterating that the power of this Tribunal is limited to a consideration of the new valuation arising from the Revaluation and trust that this fundamental point will be accepted by the Appellant.

10.9 Similarly, the Tribunal, though sympathetic to any business occupier facing financial difficulty, cannot look into issues of affordability but only the basis, method and comparables cited, which are used to calculate the new valuation. Every Ratepayer faces the issue of affordability. The statutory basis outlined in Section 6 above does not permit this to be taken into account.

10.10 In the absence of a case being made regarding the valuation from the Appellant, all the Tribunal has before it are the calculations of the Respondent of his valuation and the comparable properties upon which that value is supported. The Tribunal has carefully examined these comparables and considers that, with some minor differences, the broad thrust of these properties are reasonably similar circumstanced properties to the subject Property. Closer examination reveals that the main unit value rate per square metre adopted by Mr. Devlin in his valuation of € 16.00 per square metre for the subject property is directly in line with these comparables. The Tribunal accepts this opinion as being accurate.

10.11 However, with regard to the area described as a first floor store in the front building, the Tribunal considers that the physical characteristics of this area make it more akin to the mezzanine areas which are referenced in two of the comparable properties, (NAV No. 2 and NAV No. 4 in section 8.4 above) and this observation was accepted by Mr. Devlin

in answer to a query to that effect from the Tribunal. Accordingly, the Tribunal considers that this area of 37.50m² should be valued at a unit rate of € 3.20 per square metre (instead of € 8.00 per m²) for consistency, as agreed by Mr. Devlin. The Tribunal notes that no part of the yard has been separately valued on the footing that it is shared and that the mezzanine in Block 2 is not valued either, on account of reduced height for practical use to be made of this area.

The Tribunal further considers that the amendment to the floor areas made by the Respondent since the original valuation was compiled is now accurate and presents a fair treatment in so far as only the useable area of the first floor in the front building is taken into account.

DETERMINATION:

(A) Accordingly, for the above reasons, the Tribunal determines that the entire property forming Property Number **2131651** is Relevant Property Rateable.

(B) Notwithstanding the determination that the entire Property is rateable, on the issue of quantum, for the above reasons, the Tribunal allows the appeal in part and decreases the valuation of the Property as stated in the valuation certificate to **€ 15,400.**

This is calculated as follows:

		<u>Floor Area m²</u>	<u>NAV per m²</u>	<u>€</u>
<u>Front Building</u>				
Ground floor	Office	75.00m ²	@ € 16.00 per m ²	1,200.00
First Floor	Store	37.50m ²	@ € 3.20 per m ²	120.00
<u>Building No. 2</u>				
	Workshop	237.90m ²	@ € 16.00 per m ²	3,806.40
<u>Building No.3</u>				
	Workshop	<u>643.50m²</u>	@ € 16.00 per m ²	<u>10,296.00</u>
		993.90m ²		15,422.40
	Rounded to		Say, NAV	€ 15,400.

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.