

Appeal No: VA19/5/1871

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

**ABP Ltd.
and**

APPELLANT

Commissioner of Valuation

RESPONDENT

**In relation to the valuation of
Property No. 1802710, Factory at Kilcommon More, North Kilcommon, Clogheen, County
Tipperary.**

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF APRIL, 2023**

BEFORE

Eoin Mc Dermott - 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 €1,145,000.

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: “*The valuation is excessive. Incorrect rental levels applied*”.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €510,240.

2. RE-VALUATION HISTORY

2.1 On 29th 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 €1,145,000.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on 10th September 2019 stating a valuation of €1,145,000.

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

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. Viroel Gogu. As Mr. Gogu had the opportunity to consider the Appellants summary before preparing his own, Mr. Donnelly was offered the opportunity to respond to Mr. Gogu'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 added extensively to the property since its original construction.

4.4 The area of the property has been agreed by the parties as follows: -

Location	Use	Area (m ²)
External areas	Office	1,203.04
	Warehouse/workshop	562.80
	Portacabin	24.75
	Total	1,790.59
Block A	Office	1,859.90
	Factory	3,610.72
	Tripe room	634.00
	Hide store	1,273.50
	Lairage	2,170.88
	Total	9,549.00
Block B	Factory	16,763.70
	Total	16,763.70
	Total buildings	28,103.29
Yard	Concrete/helipad	7,647.00
Plant	Tanks, boilers, motive power, weight pit, dock levellers	

5. ISSUES

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 from 1970 to the present day. He outlined the portions of the property that had been constructed in 1980 (abattoir, chillers, boning and hide store) although he did not specify when other parts of the property were built.

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 in a piecemeal fashion over the years and that if the occupier had to rebuild the property, it would result in a more efficient use of space. He drew attention to the large amount of storage required for a beef supplier as opposed to a lamb supplier. He said that much of the factory would be considered as very basic in terms of design and specification and that the holding pen for the abattoir should be assessed at a low level to reflect its use.

7.4 Mr. Donnelly seeks a valuation of €510,230, calculated as follows: -

Use	Area	NAV €/ m ²	NAV €
Factory	17,229.97	€17.00	€292,909.49
Office	2,294.69	€17.00	€39,009.73
Store	3,707.25	€17.00	€63,023.25

Workshop	4,076.13	€17.00	€69,294.21
Yard	7,425.00	€2.20	€16,335.00
Yard	222.00	€6.00	€1,332.00
Plant -Boilers	10,000.00	€1.00	€10,000.00
Plant -Motive Power	933.00	€3.04	€2,826.32
Plant -Tanks	6,500	€1.00	€6,500.00
Plant -Weight Pit	1.00	€2,000	€2,000.00
Plant -Dock Levellers	14	€500	€7,000.00
Total			€510,230.00

8. RESPONDENT'S CASE

8.1 Mr. Gogu, 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 purpose built fully integrated meat processing site and notes that it is an EU approved modern factory (EU No. 300). He adds that it has changed substantially in recent years with major investment from the occupier. The condition of the property is described as being very good.

8.2 In response to the Appellants submission, Mr. Gogu outlines the planning history of the property since 1980 to refute the suggestion that it was developed on a piecemeal basis. He notes that no rental evidence has been submitted by the Appellant and that none of the NAV comparisons put forward by the Appellant are located in the same Rating Area as the subject property. He also notes that the NAV comparisons in Kilkenny, Limerick and Roscommon were valued at different valuation dates to the subject and 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.

8.3 Mr. Gogu 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 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
1773346	Grange, Nenagh	€40 (main level)	€506,000	Yes
1802714	Kilcommon, Clogheen	€40 (main level)	€400,000	Yes
2213152	Castleholding, Roscrea	€40.63/€27	€27,400	No

8.4 Mr. Gogu seeks a valuation of €1,129,000 calculated as follows: -

Location	Use	Area (m ²)	NAV (m ²)	NAV
External areas	Office	1,203.04	€40.00	€48,121.60
	Warehouse/workshop	562.80	€27.00	€15,195.60
	Portacabin	24.75	€16.00	€396.00
	Total	1,790.59		€63,713.20
Block A	Office	1,859.90	€40.00	€74,396.00
	Factory	3,610.72	€40.00	€144,428.80
	Tripe room	634.00	€40.00	€25,360.00
	Hide store	1,273.50	€27.00	€34,384.50
	Lairage	2,170.88	€22.00	€47,759.36
	Total	9,549.00		€326,328.66
Block B	Factory	16,763.70	€40.00	€670,548.00
	Total	16,763.70		€670,548.00
	Total buildings	28,103.29		€1,060,589.86
Yard	Concrete/helipad	7,647.00		€17,667.00
Plant	Tanks, boilers, motive power, weight pit, dock levellers			€51,004.10
		Total		€1,129,260.96
		Say		€1,129,000.00

He gives details of the make-up of his valuation and in particular the extra rental value attributable to temperature-controlled areas, which he says comprise 77% of Block A and 100% of Block B, as opposed to the level applying to more basic factory space.

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 and, finally, that quantum is an issue that should be taken into account.

9. SUBMISSIONS

9.1 There were no legal submissions. However, the Respondent did note the Tribunals decisions in VA00/2/032 Proundlane 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.

10.3 The Respondents case is that the property is a purpose built fully integrated meat processing site in very good condition and with EU compliance. It believes that the valuation is in line with the tone of the list for the local authority area. It values the main factory areas at €40 per m² and reduces this level in respect of areas with a more basic specification. The Respondent proposes to reduce the value appearing in the list to take account of the different

types of space in the property and also make additions in respect of new space and plant not included in the original valuation.

10.5 The Appellant has relied upon 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, two of which have not been appealed to the Valuation Tribunal. Accordingly, the Tribunal cannot attach any weight to the Appellants arguments in this regard.

10.4 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.

10.4 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.

10.5 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.

10.6 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 2015, 2016 and 2017.

None of the three are in any way comparable to the subject property and no weight can be attached to them.

10.7 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. A third property is significantly smaller than the subject, although in use as a warehouse with blast freezers inside. The fourth (NAV comparison 1) is less than a third the size of the subject property. It is valued on the same basis as that proposed for the subject property and represents the best evidence available to the Tribunal.

10.8 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.

10.9 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 allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €1,129,000, calculated as follows: -

Location	Use	Area (m ²)	NAV (m ²)	NAV
External areas	Office	1,203.04	€40.00	€48,121.60
	Warehouse/workshop	562.80	€27.00	€15,195.60
	Portacabin	24.75	€16.00	€396.00
	Total	1,790.59		€63,713.20
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