

Appeal No: VA21/1/0001

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Silverbow Ltd

APPELLANT

and

Commissioner Of Valuation

RESPONDENT

In relation to the valuation of
Property No. 654159, Industrial Uses at 17 Castle Street, Bray, County Wicklow.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF MAY, 2023**

BEFORE

John Stewart, FSCSI, FRICS, MCI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th day of January 2021, 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 €60,200.

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 28(4) of the Act because:

“the property is not fit for beneficial occupation. There are holes in the roof and the property has suffered significant water damage”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.

2. VALUATION HISTORY

2.1 On the 3rd day of November 2020 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 €60,200.

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 it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 09th day of December 2020 stating a valuation of €60,200.

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 Tribunal inspected the property on 27th April 2023 with both parties in attendance.

4. FACTS

1.1 The parties are agreed as to the following facts.

1.2 The subject property was located on the northern side of Castle Street Bray R761.

1.3 The parties agreed that the subject property comprised a number of buildings annotated A to J and a yard. The revised and undisputed floor areas are as follows:

Block /unit	Level	Use	Area M ₂
A	0	Showroom	189.90
B	0	Store	293.00
B	Mezzanine	Store	236.00
C/F	0	Store	407.00
E	0	Store	125.00
G	0	Store	85.00
I	0	Store	179.00
J	0	Store	149.00
H	0	Showroom	177.51
	0	Yard	2890.00

1.4 The areas of difference between the parties have been reduced with Blocks E and J and the yard in dispute. The calculations are as follows:

Block /Unit	Level	Use	Area M ₂	NAV €	Agreed NAV
A	0	Showroom	189.90	€9,570.96	€9,570.96
B	0	Store	293.00	€0	€0
B	Mezzanine	Store	236.00	€0	€0
C/F	0	Store	407.00	€17,094.00	€17,094.00
E	0	Store	125.00	€787.50	€0
G	0	Store	85.00	€3,570.00	€3,570.00
I	0	Store	179.00	€7,518.00	€7,518.00
J	0	Store	149.00	€938.70	€0
H	0	Showroom	177.51	€8,946.50	€8,946.50
	0	Yard	2890.00	€7,225.00	€0

5. ISSUES

1.1 The issue is one of quantum limited to three areas only as iterated above at E, J, and the yard.

6. RELEVANT STATUTORY PROVISIONS:

- 6.1 The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment) Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:
- “(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28 (4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property”*

7. APPELLANT’S CASE

- 7.1 The Appellants were lay appellants and stated that they had applied for an SDH planning permission to An Bord Pleanála on the 17th August 2022 and had not received a decision though the statutory time frame had expired. They argued that it was inappropriate for Wicklow County Council to seek rates from a site which was to provide social housing for the Council as well as to seek charges for Residential Zoned Land Taxation.
- 7.2 They added that they considered the site to be unfit for beneficial use, but they amended their claim and confirmed that they were willing to compromise to conclude the matter which had been close to agreement before the referral to the Tribunal. They provided a number of photographs which indicated disrepair to Block E and Blocks I and J and they confined their claim to Block E and Block J and the yard which they sought to have valued at nil. They stated that Block E had a corrugated roof over a corner of the site and had no sides or doors and was not secure. In relation to Block J they added that this unit had no doors and had holes throughout the roof and had vegetation growing within the confines. In relation to the yard area, they stated that the yard had been dug up in numerous locations for testing which had been required as part of the planning process and it was not fit for use.
- 7.3 No comparable evidence was adduced. This concluded the Appellants claim.

8. RESPONDENT’S CASE

- 8.1 The respondents represented by Mr John Shaughnessy provided a precis of evidence which confirmed the location was close to a large number of alternative industrial premises. He stated that the subject property comprised a series of industrial buildings with a mix of corrugated iron walls and roofs and included an industrial showroom facing Castle Street which was constructed of block walls and had a felt roof. He acknowledged that some of the units comprised open sided canopy style units. He added that the property included a substantial yard and the measurements taken from Google Earth comprised 4,110 m². He discounted 30% to allow for circulation which he claimed provided a nett usable area of circa 2,877 m².
- 8.2 He referred to the overall condition as poor quality due to neglect adding that a number of simple repairs would improve the useable accommodation. He noted missing locks, doors broken glass and missing corrugated roof sheets. He confirmed that the showroom referred to as Block A and H comprised good quality accommodation. He acknowledged that the yard was partially overgrown and included areas that had been dug up and replaced with hardcore gravel and noted that a number of the Blocks had areas foliage internally. He stated that Blocks C and F which were in use as stores had a solid concrete

flooring and were in a good condition. He stated that the overgrown building and yard areas could be remediated with a chemical agent and following certain remedial works could be capable of beneficial occupation.

8.3 The precis included a site plan and an annotated aerial photograph which identified the various Blocks/units.

8.4 Mr Shaughnessy provided a revised schedule of floor areas which was not disputed. He also provided detailed sketch plans of each block and a range of photographs of the various units which indicated the level of repair in the various units.

8.5 Addressing the Appellant's claims Mr Shaughnessy stated that having reviewed the condition of the various buildings that their poor condition was due to neglect and argued that only Block B and the mezzanine should be excluded from the valuation. He added that little work would be required to have them operational and once the roof panels had been replaced the units would again become usable. He accepted that Block E was an open shed and would be revalued accordingly.

8.6 He stated that with the exception of Block B (ground and mezzanine levels) the buildings fall into the category of a relevant property as per the Valuation Act 2001 to 2020. He added that the issue regarding Residential Site Taxation which the Appellant had raised with the Local Authority did not detract from wording or requirements of the Act and was a separate issue to this process.

8.7 He acknowledged that the subject property was valued as part of the 2019 Revaluation process and had been struck off in error at representation stage and had been reinstated following a request from the Local Authority as the property was advertised for rent on a number of online platforms and site posters. He confirmed that the Valuation Offices had revised and issued provisional and final valuation certificates though no inspection was carried out during this process due to Covid-19 restrictions. He confirmed that following an inspection in August 2022, only part of the buildings had been valued and others were in use as stores, and he claimed that only one block was in a damaged state.

8.8 Mr Shaughnessy stated that properties which are 'similarly circumstanced' are considered comparable where they share characteristics such as use, size, location and/or construction. In addition to the relevant market evidence which underpins the valuation scheme, he stated that his report sets out comparative evidence to demonstrate that both correctness, equity and uniformity of value had been achieved in this case. He referred to *Dalton vs Commissioner of Valuation VA 18/3/0042* wherein it was noted within the legal submissions under the *London County Council v Erith Churchwardens [1893] AC 562* where Hershel J stated, '*for a property to escape rating, it's occupation must have no value at all to anyone. This is a very high bar for an occupier to overcome*'. He added *that*, with little repair the storage sheds could be used and provide a hypothetical tenant value. He stated that Block A and H have a potential for beneficial occupation

8.9 He provided three comparisons detailed as follows.

Comparison No. 1. Property No. 654080 at 34 Ardee Street Bray comprised a ground floor and first floor GYM with a total floor area of 679.53m² and an NAV of €32,800 analysed as follows.

Floor	Description	Area m₂	NAV m₂
0	Gymnasium	661.50	€47.00
1	Gymnasium	18.06	€47.00
0	Yard concrete/tarmac	202.50	€4.70
		679.56	€32,891.07 Say €32,800

He stated that this comparison was an example of a large industrial unit with an attached yard and due to the lower overall area, it had a higher rate per square metre for the industrial stores. He added it was located 450 metres from the subject property and had not been subject to representations and was not appealed to the Valuation Tribunal. He included a site location map and an external photograph from Google Street View.

Comparison No. 2 Property No. 654555 at 14E/1 Fairgreen Road, Bray comprised a ground floor and first floor factory and office with a total floor area of 1,006.36m₂ and an NAV of €43,700 analysed as follows.

Floor	Description	Area m₂	NAV m₂
0	Factory	587.98	€42.00
0	Offices	88.40	€42.00
1	Factory	158.98	€42.00
1	Offices	170.00	€42.00
Mezz	Stores	179.02	€8.40
		1,006.36	€43,770.89 Say €43,700

He added it was located 250 metres from the subject property and had not been subject to representations and was not appealed to the Valuation Tribunal and was valued at the same rate as the subject property. He included a site location map and an external photograph from Google Street View.

Comparison No. 3. Property No. 654268 at 14B Dargle Road, Bray comprised a ground floor showroom and mezzanine stores with a total floor area of 929.76m₂ and an NAV of €53,300 analysed as follows.

Floor	Description	Area m₂	NAV m₂
0	Showroom	929.76	€56.40
Mezz	stores	82.62	€11.28
		929.76	€53,370.42
		679.56	€32,891.07 Say €53,300

He stated that this comparison was an example of an industrial showroom unit located 400 metres from the subject property and had not been subject to representations and was not appealed to the Valuation Tribunal. He included a site location map and an external photograph from Google Street View.

8.10 Mr Shaughnessy stated that having considered the particulars of the appeal and considered the grounds and evidence provided by the Appellant that in his opinion the NAV was €55,600 decreased from €60,200. His calculation are as follows.

Block	Level	Use	Area M ₂	NAV M ₂ / €	Total NAV
A	0	Showroom	189.90	€50.40	€9,570.96
B	0	Store	293.00	€0	€0
B	Mezzanine	Store	236.00	€0	€0
C/F	0	Store	407.00	€42.00	€17,094.00
E	0	Store open shed	125.00	€6.30	€787.50
G	0	Store	85.00	€42.00	€3,570.00
I	0	Store	179.00	€42.00	€7,518.00
J	0	Store open shed	149.00	€6.30	€938.70
H	0	Showroom	177.51	€50.40	€8,946.50
	0	Yard	2890.00	€2.50	€7,225.00
					€55,650.66 Say €55,600

He noted that Block I and J were not previously included, and he did not accept that the property was not rateable as it was in use as stores on the day of inspection. He argued that the neglect of a property should not be rewarded with an incapable of occupation/zero valuation status and requested a valuation of € 55,600.

8.11 Mr Shaughnessy stated that based on his assessment all of the blocks with the exception of block B were capable of rateable occupation by the owner of the property.

9. SUBMISSIONS

9.1 No additional submissions were provided.

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 Wicklow County Council.

10.2 The parties have accepted that the only outstanding areas of dispute refer to Blocks E and J described as Stores (open stores) and the yard. No claim was made by the Appellants challenging the rates per square metre as applied in the Valuation and the only supporting evidence was adduced by the Respondents, though no relevant market evidence was provided. Having undertaken a site inspection with the Appellants and the Respondents both of whom confirmed that the condition of the property was the same as the condition when the valuation was made the Tribunal finds that the valuation for Block E at €787.50 is correct however the condition of Block J is so poor as to render it unlettable/incapable of beneficial use without capital expenditure and consequently the Tribunal reduces the Valuation on this Block to nil.

10.3 The parties disagreed on whether the yard should be valued and having inspected the site it was clear to the Tribunal that due to the numerous ground works undertaken for trial pits and the overgrown nature of large parts of the open area that the yard should be valued at Nil.

10.4 The Tribunal does not intend to determine the issue as to whether the Local Authority is entitled to charge for rates and Residential Land Tax at the same time. This is a matter which the Tribunal finds is outside its jurisdiction.

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 €47,400.

Block	Level	Use	Area M₂	NAV M₂/ €	Total NAV
A	0	Showroom	189.90	€50.40	€9,570.96
B	0	Store	293.00	€0	€0
B	Mezzanine	Store	236.00	€0	€0
C/F	0	Store	407.00	€42.00	€17,094.00
E	0	Store open shed	125.00	€6.30	€787.50
G	0	Store	85.00	€42.00	€3,570.00
I	0	Store	179.00	€42.00	€7,518.00
J	0	Store open shed	149.00	€6.30	€0
H	0	Showroom	177.51	€50.40	€8,946.50
	0	Yard	2890.00	€2.50	€
					€47,486.96 Say €47,400

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.