

Appeal No: DS22/0/0005

**VALUATION TRIBUNAL
AN BINSE LUACHÁLA**

**DERELICT SITES ACT, 1990
AN tACHT UM LÁITHREÁIN THRÉIGTHE, 1990**

Peter & Catherine Moloney

APPELLANT

and

Limerick City and County Council

RESPONDENT

**In relation to the market valuation of:
Former Woodworker's Store, Sexton Street North, Thomondgate, Limerick.**

B E F O R E

Donal Madigan MRICS, MSCSI

Deputy Chairperson

Orla Coyne Solicitor

Member

Gerard O'Callaghan MRICS, MSCSI

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF SEPTEMBER, 2023**

Appearances:

For the Appellants: Mr. Joseph Wheeler, Auctioneer MIPAV TRV

For the Respondent: Bruce Dodd MSCSI MRICS, RICS Registered Valuer, Chartered Surveyor of Avison Young

THE APPEAL

1. On the 20th day of January, 2022 a copy of Notice of Determination of Market Value issued in accordance with s. 22 of the Derelict Sites Act, 1990 Act ('the Act') was sent to the Appellants indicating a market value of €450,000 in respect of urban land situated at Sexton Street North, Thomondgate, Limerick (hereinafter referred to as 'the Derelict Site').
2. The date by reference to which the value of the Derelict Site was determined is the 20th day of December, 2021.

3. By Notice of Appeal received on the 18th day of February, 2022 the Appellants 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:

(i) *The Market Value is too High, and*

(ii) *Other Grounds of Appeal are as follows: Large burnt out building needs to be demolished*

4. The Appellants consider that the market value of the Derelict Site ought to have been determined in the sum of €250,000.

THE HEARING

5. The appeal proceeded by way of a remote hearing held via Zoom platform, on the 4th day of October, 2022.
6. In accordance with the Valuation Tribunal (Appeals) Rules 2019 the parties' Valuers, Mr. Wheeler for the Appellants and Mr. Dodd for the Respondent, 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.

RELEVANT STATUTORY PROVISIONS

7. A local authority is required by s. 22 of the Act to determine, after a derelict site has been entered on the derelict sites register maintained under s. 8 of the Act, the market value of that site in such manner and by such means as they think fit. In that regard, a local authority may authorise a person suitably qualified to inspect the site and report to them on the site's market value.
8. Under s. 2 of the Act 'market value' means the value of the relevant urban land assessed in accordance with s. 22. That assessment is undertaken by:

“ estimating or causing to be estimated the price which the unencumbered fee simple of such land would fetch if it was sold on the open market on the valuation date in such manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the land.”

THE FACTS

9. On the basis of the evidence adduced by the parties, the following facts in respect of the physical condition, location and other aspects of the Derelict Site were agreed or proved to the satisfaction of the Tribunal:
10. The date of Valuation for the subject property is December 20th, 2021.

11. The site area has been agreed at 0.512 Hectares (1.265 acres) and is irregular in shape with frontage on to Sexton Street North. The site widens to the rear. The site bounds Gaelscoil Sáirséal to the west, Shelbourne Park to the south and Farran Villa residential estate to the east.
12. There is a large former commercial building on the site which has suffered significant fire damage.
13. Both parties gave evidence of a significant drop in ground levels within the site from the front of the site to the rear and that the site is overgrown with vegetation.
14. The site is situated approx. 1.6 km north west of Limerick city centre.
15. The area is an inner suburb of Limerick which is predominantly residential in nature with retail, educational and sporting uses also prevalent in the area.
16. The property is held in Folio No. LK8572L
17. The site is zoned “Existing Residential “in the Limerick County Development Plan 2022 to 2028.

APPELLANT’S CASE

18. Mr. Peter Moloney sent a submission to the Tribunal on 30th June, 2022 in which he stated, in summary, that (a) there is a drop of between 20 & 30 feet across the centre of the site; (b) the Healy family next door are claiming ownership of part of the site as they have been using it for many years and also as a right of way; (c) there is a large burned out building on the site and the present day cost of demolishing this would be approximately € 200,000; (d) Limerick City Council have turned down planning permission to date on four occasions even though there were three commercial buildings on the site before the fire, and (e) that he has tried to sell the property over the past ten years but has been told it is worthless without planning permission and has only been offered € 156,000. He referred to the report by Jospeh Wheeler, Auctioneer in his submission but he did not appear himself at the hearing of this appeal.
19. Mr. Joseph Wheeler, Auctioneer, set out the case for the Appellants and submitted a letter of valuation dated June 22nd, 2022 with a proposed valuation of €250,000 which he adopted as his evidence-in-chief. Mr. Wheeler began by stating that the site was very challenging from a valuation perspective due to its location and topography. He described the location in Thomondgate as being very much a secondary area and referenced significant social problems in the locality. It was stated by him that the site is only suitable for Social Housing and that the site’s location would not appeal to private housing developers.
20. Mr. Wheeler stated that the site would be challenging to develop due to the significant drop in levels in the site and the demolition costs in removing the existing buildings.

21. Mr. Wheeler stated that the Appellants acquired the site in 1989 with a view to selling it on. The Appellants were unable to sell the site during the “boom years” of 2004 to 2006 and had engaged the services of 3 different Auctioneering businesses over the years in endeavouring to sell the site.

Cross-examination

22. Mr. Bruce Dodd, acting for the Respondent, questioned to what extent Mr. Wheeler had inspected the site. Mr. Wheeler responded that the site was very difficult to inspect due to it being very overgrown with mature vegetation. However, he confirmed he inspected the derelict building and also noticed the significant fall in level half way into the site.
23. Mr. Dodd questioned whether Mr. Wheeler would adjust his valuation of the site given that Mr. Wheeler’s valuation stated that the site was 1 acre, whereas the true size of the site was 1.265 acres. Mr. Wheeler responded that he would not adjust the valuation due to it’s location and the challenging nature of the site and re-iterated the valuation of €250,000 was at the “top end” of his estimate.
24. Mr. Dodd questioned whether Mr. Wheeler was aware that the site was advertised for sale with a guide price of €700,000 in early 2022. Mr. Wheeler stated that he was unaware of the fact and that his first involvement with the site was only 6 months’ previously.

RESPONDENT’S CASE

25. Mr. Bruce Dodd of Avison Young set out the case for the Respondent and began by adopting the Precis submitted to the Tribunal as his evidence in chief.
26. Mr. Dodd inspected the site on August 25th, 2022.
27. Mr. Dodd described the site as a compact, irregular shaped, brown field site with various buildings thereon comprising a detached former commercial unit, adjoining outbuildings and partially demolished former residence situated to the rear of the commercial building. He described the buildings as being in very poor condition having previously suffered fire damage. He stated that neighbouring properties had doorways leading directly onto the subject property and it was clear that neighbours were accessing the site.
28. Mr. Dodd outlined that the site is zoned “Existing Residential” in the Limerick Development Plan where the stated objective is; *“This zone is intended primarily for established housing areas. Existing residential amenity will be protected while allowing appropriate infill development. The quality of the zone will be enhanced with associated open space, community uses and where an acceptable standard of amenity can be maintained, a limited range of other uses that support the overall residential function of the area, such as schools, crèches, doctor’s surgeries, playing fields etc.”*

29. Mr. Dodd stated that there is no Planning Permission currently pertaining to the site and he outlined details of 3 Planning Applications made on the site between the years 2007 and 2020. The two most recent applications in 2014 and 2020 were withdrawn by the Applicants. In 2007, Planning Permission was refused for a housing development of 21 residential units. Mr. Dodd expressed his view that, after reviewing the Planning file, it was his view that the requests for further information by Limerick County Council Planners related to the lack or quality of information provided in the Planning Application as opposed to concerns regarding the proposed development on the site. He could not find anything material to substantiate the adjoining occupier's claim to a right of way over the site other than a claim in a planning objection.

30. Mr Dodd outlined various considerations in determining the value of the subject property as at 20th December, 2021, namely;

- The property itself its location and the land use of the locality.
- The development potential of the site taking into account its zoning and site characteristics.
- Title. The respondent assumed that the Title is held on a Freehold or a good and marketable Title.
- The Economy. He considered macroeconomic factors such as Covid-19 and potential disruption from Brexit.
- The Development Land market. Mr. Dodd emphasised the presence of Approved Housing Bodies in the market place and stated that they have witnessed developers paying c. €10,000 to €30,000 for residential unit stands or sites with FPP.

31. Mr. Dodd employed the comparison method of valuation for the subject site. He analysed other development land sales in the Limerick market and considered their location and planning status.

32. Mr. Dodd outlined 4 comparisons, the details of which are outlined in the **Appendix (n/a to public)**. The 4 sites included the subject property with the others in Dooradoyle, New Street in Thomond Gate and the Condell Road. In analysing the subject property, Mr. Dodd stated that the site was advertised for sale with an AMV of €700,000 before being withdrawn from the market in early 2022. This guide price equates to c.€555,000 per acre or €25,000 per site, based on an assumption of 28 residential units. Mr. Dodd stated that in his opinion the site was not worth €700,000.

33. For the purposes of valuing the site Mr. Dodd assumed that a development of 28 residential units could be achieved in a potential application for planning permission and that local developers would consider bids in the region of €20,000 per unit for a development opportunity in this part of Limerick. However, based on the constraints highlighted by both parties, such as the requirement for demolition and site clearance, issues pertaining to neighbours potential rights of way and the variation of levels within the site, he felt it was appropriate to discount the value by 20% to reflect these additional burdens.

34. Therefore, based on an assumption that Planning Permission could be achieved for a residential scheme of 28 units with each unit having a discounted site value of €16,000 per unit, Mr. Dodd believed a reasonable market value of €450,000 (Four Hundred and Fifty Thousand Euro) was attainable on the valuation date of 20th December, 2021.

Cross- Examination

35. Mr. Wheeler questioned whether Mr. Dodd had valued the site under the assumption that Full Planning Permission was in place and that he had failed to make sufficient regard to the poor location of the site. In response Mr. Dodd stated that he had not assumed that planning permission was in place and instead based his valuation on the valuation date of 20th December, 2021 without the benefit of planning permission. Mr. Wheeler contended that the comparables cited were not in comparable localities and put it to Mr. Dodd that his valuation was predicated on planning permission being forthcoming. Mr. Dodd explained that this was not the case and clarified that he had started from the viewpoint of adopting a unit value per site of € 25,000 assuming planning would be forthcoming but had discounted this back to € 20,000 per unit and then made a further discount of € 4,000 from that to derive his figure of € 16,000 per unit to reflect the physical constraints of the site being the demolition of the building, variation in site levels (and consequent costs of those) and possible rights of way issues. Mr. Wheeler questioned Mr. Dodd on the adequacy of the €4,000 allowance to cater for all the challenges of this site but Mr. Dodd responded by stating that all inner city brownfield sites have challenges, citing as an example the New Street, Thomondgate comparable from his precis in this regard which he said would have different but equally challenging issues to contend with.
36. In answer to questions from the Tribunal, Mr. Dodd clarified that with regard to there being no buyers for the property at the asking level of € 650/700,000 he submitted that this level was far too high and acted to dissuade potential purchasers. He confirmed with regard to his Comparison number 3, he had adjusted the rate downwards to reflect the time and cost of obtaining planning for the subject site.
37. He further clarified that he did not consider that the claim by the neighbours amounted to a claim of adverse possession but was more in the nature of a claim for a right of way which he in turn submitted could be catered for in any new development by siting the access road along this part of the site. He agreed with the Tribunal that the drop in level of the site is significant but can be catered for in any development and that the proposed development as far as he envisaged it could be developed on two distinct planes, higher and lower. He agreed with the tribunal that his best comparison was no. 3 New Street, Thomondgate but with adjustment for being a year prior to the valuation date; in the midst of covid-19, a fifth the size and other issues. He acknowledged that the comparison in Dooradoyle was in a more superior location to the subject but had been included for context to indicate value level achievable for small sites in Limerick generally. He also confirmed that with regard to Comparison Number 4 in Condell Road that this was also a better location than Thomondgate and that his analysis to derive a value of € 30,000 per acre had been calculated after discussion with the selling agents who maintained that the additional lands zoned for open space did not add anything further to that site.

FINDINGS AND CONCLUSIONS

38. On this appeal the Tribunal is required to determine the market value of the Derelict Site as defined in s. 2 of the Derelict Sites Act 1990 assessed in accordance with s. 22 of that Act.
39. In considering this Appeal, the Tribunal believed that the Appellants' Valuer had failed to offer compelling evidence to support his opinion of value for the subject site. No comparisons were cited and the opinion of value was limited to a single page report. No basis of calculation was offered to indicate how the valuation submitted had been computed.
40. The Tribunal also noted that the Appellants' Valuer did not deny that the site was advertised for sale on the open market with a guide price of €700,000 in early 2022. No reason was advanced to reconcile this with the present stance being adopted of a valuation of € 250,000, by contrast.
41. The Tribunal believed that the methodology and assumptions employed by the Respondent's Surveyor in arriving at his valuation were logical and sound. The adjustments to the site value undertaken by him due to the constraints which were identified by both experts, are considered to be reasonable. The Tribunal concurred with the Respondent's Surveyor in identifying Comparison No.3 located in New Street, Thomondgate as the best comparison (notwithstanding the relative size, planning permission and date of transaction) to the subject property and in the opinion of the Tribunal this comparable transaction, after suitable adjustment, was supportive of the opinion of value advanced by him. The marketing history of the subject site plus the two other comparables submitted by the Respondent's Surveyor assisted to give an overall context to the range of values for sites in the Limerick area.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the market value of **€450,000** (Four Hundred and Fifty Thousand Euro), as stated in the Notice of Determination of Market Value dated January 20th, 2022