

Appeal No: VA22/1/0008

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

CONNAUGHT ENVIRO CONTAINERS DAC

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5024064, Warehouse/Warerooms, Yard at Bunree Industrial Estate, Bunree,
Ballina, County Mayo

B E F O R E

Dairine Mac Fadden - Solicitor

Deputy Chairperson

Fergus Keogh - MSCSI, MRICS

Member

Annamaria Gallivan - FRICS, FSCSI, MPhil SEE

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF DECEMBER, 2023

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 11th day of January, 2022, the Appellant appealed against the determination of the Respondent pursuant to the fact that the net annual value ('the NAV') of the above relevant Property was fixed in the amount of €34,569.67 with a resultant rateable valuation on the List of RV €173.
- 1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:
 - (a) The Valuation is Incorrect
"TO EXPENSIVE FOR THIS PROPERTY AND ACTUAL USE OF SAME"
- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the yearly sum of €8,500.

2. VALUATION HISTORY

- 2.1 On the 19th day of November, 2021 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 €173.
- 2.2 A Final Valuation Certificate issued on the 5th day of January, 2022 stating a valuation of RV €173.
- 2.3 The date by reference to which the value of the property, the subject of this appeal, was determined is the 01st day of November 1988.

3. THE HEARING

- 3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2 on the 10th day of October, 2023. At the hearing the Appellant Mr Gary Loftus appeared in person and the Respondent was represented by Ms Fidelma Malone on behalf of the Commissioner of Valuation (Valuation Office/Tailte Eireann).

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 or her précis as their evidence-in-chief in addition to giving oral evidence.

4. FACTS

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

4.2 The subject property, comprises of a detached warehouse (double cladding walls and roof, 2m height block walls around offices only), with a concrete yard and weighbridge located outside the warehouse. The offices within the warehouse are two storey. The property is located within the Bunree Industrial Estate in the town of Ballina.

4.3 Floor areas are agreed to be;

	Floor	M²
Office	0	120.26
Office	1	120.26
Warehouse	0	780.71
Portacabin	0	6
Yard	0	2,150
Total (office & warehouse)		1,021.23

4.4 The property is held freehold.

5. ISSUES

5.1 The sole matter at issue is one of quantum.

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 Mr Loftus is a lay appellant. He commenced his evidence by explaining the reason for the appeal was that he considered that the rates were too expensive. He described the business as a small skip hire and recycling company that stores excess recycling materials in the shed. He further explained that the subject property and the concrete on the yard were constructed to clean up the yard, to keep the place tidy and for easy maintenance. He was unaware that the building would be rateable, and if he had known, he would not have constructed the shed. He acknowledged that the ground floor offices were in use but the offices on the first floor were not in use and were just empty rooms.

7.2 Mr Loftus said that the rating of the portacabin by the Respondent was an error as it is hired out in the same way as the skips and is not used for occupation purposes of his own business. It was Mr Loftus’s opinion that given the use of the portacabin element of the property, it had a zero value as it was not in use on the site, but rather stored on the site for hire in the same manner as the skips for hire which were not rated.

7.3 Cross examination of Mr Loftus

Under cross examination by Ms Malone for the Respondent, Mr Loftus confirmed that the subject property was located in the Bunree Industrial Estate, Ballina. He also confirmed that the property consisted of a warehouse, two storey offices, a portacabin, a weighbridge and a concrete yard. Mr. Loftus confirmed that the first-floor offices were capable of being used. He confirmed that he did not provide any tone of the list/ comparable evidence to support a lower valuation.

7.4 Under questioning from the Tribunal Mr Loftus confirmed that he did not use the portacabin for his own business, it was hired off site but stored on site.

8. RESPONDENT'S CASE

8.1 Ms Malone adopted her précis as her evidence in chief and gave the following oral evidence.

8.2 Ms Malone stated that the subject property is a Revision appeal, governed by s.49 of the Valuation Acts 2001-2020. This section provides that the valuation of the subject property is determined “by reference to the values, as appearing on the valuation list relating to the same rating authority area as the property is situate in, of other properties comparable to that property.” She further detailed that this is historically referred to as the ‘Tone of the List’ and aims to ensure that there is equity and uniformity between ratepayers.

Ms Malone explained that a revision of the valuation of a property may only be carried out if a “Material Change of Circumstances” has taken place since the property was last valued.

A Material Change of Circumstances is defined in the Valuation Act, 2001 as amended. However, the main criteria for satisfying a Material Change of Circumstances are as follows:

1. The property is an existing property whose value has changed by virtue of structural/physical alterations (including damage by fire or other physical cause).

2. The property is an existing property which has been divided into 2 or more separate properties.
3. Two or more existing properties have been amalgamated into a single property.
4. There has been a change in the rateable status of an existing property. This occurs when a property which was previously rateable becomes exempt or a property which was not previously rateable has now become rateable.
5. The property is a new property that has never been valued before.
6. The property is now located in a different jurisdiction by virtue of a rating authority boundary change.
7. The property begins or ceases to be licenced under the Licensing Acts 1833 to 2011.

Ms Malone explained that this revision request refers to the valuation of a large new-build commercial unit used for sorting recycling materials and was a new property that had never been valued before.

8.3 Ms Malone detailed that the subject property, comprises of a detached warehouse with eaves of 8.2 metres (double cladding walls and roof, 2m height block walls around offices only), with a concrete yard and weighbridge located outside the warehouse. The offices within the warehouse are two storey. The property is held freehold. The property is located within the Bunree Industrial Estate in the town of Ballina.

8.4 Ms Malone confirmed her agreement with the floor areas.

8.5 Ms Malone included in her précis (and made reference to) a location map, block plan, internal and external photographs (taken on 18th July 2023).

8.6 Ms Malone also included the Notice of Appeal which set out the grounds upon which the Appellant considers determination of the valuation of the property is not a determination of its value that accords with that required to be achieved by section 49. For the following reasons:

“Too expensive for this property and actual use”.

8.7 Ms Malone stated that Appellant has relied upon photographic evidence and a description of the use of the buildings valued (included in the Appellant’s Précis) to contend that “the rates are too expensive” for the following reasons.

1. Connaught Enviro Containers are a small skip hire company that supply skips to customers and when they are full, they are emptied into the storage / shed area until there is a full artic bulk trailer load which is sent to Covanta in Dublin. The only reason the shed was built is to keep the yard tidy. The property is used to store waste only. Plans for expansion and build more storage units are on hold due to the affordability of the rates.

2. Ground Floor office only in use. There are no offices upstairs just empty rooms.

3. Portacabin is a cabin / skip.

4. Concrete / tarmac was installed for easy maintaining and to store empty skips that are not out on hire, part not in use.

8.8 Ms Malone observed that the Appellant’s evidence did not provide any Tone of the List evidence to support a lower valuation and had not provided an opinion of value in his précis of evidence. The Appellant has not provided photographic evidence of the entire property including the yard to the rear and side of the building. It was her opinion that the Appellant’s précis of evidence does not comply with the Rules of the Valuation Tribunal.

8.9 Ms Malone explained that equity and uniformity were achieved by the consideration of ‘similarly circumstanced’ comparables. Ms Malone noted the location and condition of the property and stated that four NAV comparisons were relied upon in arriving at the valuation scheme from which the NAV of the property was derived. These were as follows:

NAV COMPARISON 1

Property Number	1441129
	Vacant
Address	Bunree Industrial Estate, Ballina

Total Floor Area	2280.47 sq.m
RV	€380.92

Level	Description	Size	NAV SQM	Total
0	Office	253	€44.42	€11,238.26
0	Factory	2018	30.75	€62,053.5
0	Yard	1364	€1.37	€1,868.68
0	Open Area	9.47	€68.34	€647.17
	Total	2,280.47		€75,807.61
	RV @ .005			€379
	RV say			€380.92

NAV COMPARISON 2

Property Number	2210639
Occupier	Occupied
Address	Bunree Industrial Estate, Ballina
Total Floor Area	388.14
RV	€67

Level	Description	Size	NAV SQM	Total
0	Office	64.93	€34.17	€2,218.66
0	Warehouse	323.21	€27.34	€8,836.56
Mezz	Office	64.93	€13.66	€8,86.94
0	Yard	1100	€1.37	€1,507
	Total	388.14		€13,449.16
	RV @ .005			€67.24
	RV say			€67

NAV COMPARISON 3

Property Number	2199267
Occupier	Vacant
Address	Bunree Industrial Estate
Total Floor Area	690.3 sq.m
RV	€101

Level	Description	Size	NAV SQM	Total
0	Warehouse	690.3	€29.40	€20,295
	Total	690.3		€20,294.99
	RV @ .005			€101.47
	RV say			€101

NAV COMPARISON 4

Property Number	5019662
Occupier	Occupied
Address	Bunree Industrial Estate
Total Floor Area	1584.17 sq.m
RV	€220

Level	Description	Size	NAV SQM	Total
0	Office	35.4	€34.17	€42,343.37
0	Factory	1,548.77	€27.34	€42,343.37
0	Yard	535.45	€1.36	€728.21
	Total	1,584.17		€44,281.20
	RV @ .005			€221.40
	RV say			€220

SUMMARY OF COMPARISONS

Property No.	Address	NAV SQM	RV
1441129	Bunree Industrial Estate, Ballina, Co. Mayo.	€44.42/€30.75	€380.92
2210639	Bunree Industrial Estate, Ballina, Co. Mayo.	€34.17/€27.34	€67
2199267	Bunree Industrial Estate, Ballina, Co. Mayo.	€29.40	€101
5019662	Bunree Industrial Estate, Ballina, Co. Mayo.	€34.17/€27.34	€220

8.10 Ms Malone stated that the NAV comparisons were strong, located within the same industrial estate and represented a clear ‘Tone of the List’. Ms Malone arrived at the valuation of the subject property on the following basis:

Use	Floor	M2	NAV €(m2)	Total €(m2)
Office	0	120.26	34.17	41,09.28
Office	1	120.26	34.17	4,109.28
Warehouse	0	780.71	27.34	21,344.61
Portacabin	0	6	13.75	82.50
Weighbridge	0			€2,000.00
Yard	0	2150	1.36	€2,924.00
Total NAV	-	-	-	€34,569.67
RV @ .005				€172.84
RV Say				€173.00

8.11 Cross Examination of Ms Malone

Under cross examination, in reply to a question by the Appellant, as to the inclusion of the portacabin, Ms Malone pointed to the fact that the Appellant had provided photographs which showed the portacabin on site, also the portacabin was there on the day of inspection and was therefore included in the valuation, 6 SQM assessed at €13.75 PSM. The Appellant followed up the questioning by asking if that means that skips should be rated. Ms Malone confirmed the skips are not in the valuation. When asked what the difference was between the skips and the portacabin, Ms Malone explained the skip were not continually on site

and they are therefore not rateable, however the portacabin was on site when the property was initially inspected, was on site at inspection in July 2023 and is included in the Appellants photographs, in his précis of evidence and is therefore rateable. Ms Malone also stated that it was not mentioned to her that the portacabin goes off site.

Under questioning from the Tribunal Ms Malone confirmed that she did not go into the portacabin, so had not seen it internally. It was pointed out to Ms Malone, that in her précis the valuation did not include the portacabin, which she confirmed as an error, although the end figure included the portacabin, the line showing the calculation was omitted. Ms Malone corrected the omission of the line showing the portacabin assessment in her valuation but confirmed that the overall valuation figure was correct. She confirmed that the portacabin was 6 SQM and the rate applied was €13.75 per SQM equating to €82.50.

When asked if the portacabin would be rateable if it was for hire and was not in use as part of the business other than for hire, Ms Malone stated that if it was on site on a constant basis, as it appeared to be to her, because it was there when the property had been inspected initially and thereafter for revision purposes and in the Appellants photographs in his summary of evidence - then it would be rateable. However, she said that if the portacabin was on site but also off site for long periods of time, then it would not have been included in the valuation. Ms Malone confirmed that if she was aware the portacabin was available for hire and not occupied by the Appellant, it would not have been included in the valuation, but she was not made aware of this at any stage. Ms Malone stated that the portacabin could be removed from the valuation if the Tribunal so decides.

Ms Malone confirmed the valuation date to be 01.11.1988. When asked why there were no comparisons included in her précis that had portacabins or weighbridges, Ms Malone stated that they were none nearby and the focus had been on the warehouse and office. When asked why there was no yard space included in her comparison 3, she replied that it was part of a larger building and likely did not have use of the yard.

9. SUBMISSIONS

9.1 There were no legal submissions.

10. CLOSING ARGUMENTS

10.1 In summing up, Mr Loftus said that the portacabin was for hire in the same way as the skips and just because it was stored on the same part of the site, did not mean that it was permanently there. He also confirmed that the portacabin was on a skip frame and should not be rated if the skips were not rated.

10.2 In summing up Ms Malone stated that the property is an industrial unit and has been valued in line with similar type industrial units in Bunree Industrial estate and in accordance with Section 19(5) and Section 49 of the Valuation Act 2001, as amended, to ensure that there is equity, uniformity, fairness, and transparency of value between properties on the Valuation List. The Appellant contends for a valuation of €8,500 (yearly value). Ms. Malone said that this is incorrect because it does not achieve equity and uniformity of value between similarly circumstanced properties on the valuation list. Ms Malone requested that the Tribunal affirms the valuation of the subject property

11. FINDINGS AND CONCLUSIONS

11.1 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 Mayo County Council.

11.2 This is a Revision type appeal where the Tribunal is directed to consider the relative Net Annual Value (“NAV”) of the Property by reference to comparable assessments of NAV from the tone of the Valuation List only by virtue of sec. 49 of The Valuation Act 2001.

11.3 The Tribunal is aware that lay appellants do not always have the technical training or resources of the Respondent, however they are bound by the rules of the Valuation Tribunal,

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.

- 11.4 It was the Appellant's opinion that the warehouse and concreted yard were only constructed to keep the yard tidy. He was not aware that the property would be rated. The Appellant highlighted the portacabin, stating that it was not permanently installed but rather was available for hire and was seeking the exclusion of the portacabin from the valuation. He also acknowledged that he had not produced any evidence in relation to a reduction in the NAV.
- 11.5 The Respondent contended that the characteristics of the subject property had been considered when arriving at the NAV, but also acknowledged that the portacabin would not be included in the valuation if it was not a permanent structure.
- 11.6 Subject to 11.7 below, the Tribunal finds that the property is rateable. During cross examination, the Respondent explained the Method of Valuation adopted by the Valuation Office in determining the rate to be applied. The Tribunal noted that the Appellant's précis and oral evidence was silent on this point and that no evidence was put forward to allow the Tribunal to examine same. The Tribunal accepts the evidence of the Respondent in relation to the NAV.
- 11.7 The Tribunal accepts the evidence of the Appellant that the portacabin is a non-permanent structure, stored on the site and available for hire in the same manner as the skips. The Tribunal further accepts the evidence of the Respondent that if the portacabin is non-permanent structure and available for hire then it should not have been included in the valuation.

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 RV€ 172 calculated as follows;

Use	Floor	M2	NAV €(m2)	Total €(m2)
Office	0	120.26	34.17	€4,109.28
Office	1	120.26	34.17	€4,109.28
Warehouse	0	780.71	27.34	€21,344.61
Portacabin	0	6	0.00	0.00
Weighbridge	0			€2,000.00
Yard	0	2,150	1.36	€2,924.00
Total NAV	-	-	-	€34,487.17
RV @ .005				€172.43
RV Say				€172.00

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.