

Appeal No: VA19/5/1235

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

ZINC PROPERTIES LTD

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. PN 5019213 Industrial Uses at Unit 12C Antigen Business Park, Lourdes Road,
Roscrea, County Tipperary

B E F O R E

Hugh Markey - FRICS FSCSI

Sarah Reid - BL

Eamonn Maguire - FRICS FSCSI VRS ARB

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF FEBRUARY, 2024**

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th 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 €3,930.

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:

1. *"The subject property forms part of the former Antigen/Taro factory complex in Roscrea.*
2. *The subject property is occupied at €369/month gross.*

3. *There are buildings on this site from as far back as the 1940s and many piecemeal additions over the years. Many of the individual buildings have been vacant for over a decade, with nothing spent on their upkeep.*
4. *The complex was bought in its entirety by Zinc Properties Ltd. in October 2017 for €825,000. This gives a very clear indication of the rental value of the complex. Indeed, the purchase price cannot remotely justify a total rental value of €435,000 as assessed by the Commissioner – which would be a yield of over 50%. The fact of the matter is that whilst a number of small parts have been let on a month to month basis, this is a long term project to recondition the buildings and make them again suitable for letting. The current rent roll for the let sections is not even €60,000 per annum, with the landlord responsible for all outgoings – including electricity as the individual units cannot be metered separately due to the cost.*
5. *Given that the entire site (25 units) is under appeal, we recommend that the Tribunal inspects the entire site so that each unit can be accurately appraised, with regards to both value and capability of occupation.”*

1.3 The Appellant, in the Notice of Appeal, considered that the valuation should be €1,970 and in submission to the Tribunal considered that the valuation of the Property ought to have been determined in the sum of €2,690.00

2. REVALUATION HISTORY

- 2.1 The present Appeal is one of 25 Appeals taken in respect of Antigen Business park in Roscrea. On the 15th day of March 2019, the Respondent issued proposed valuation certificates under section 24(1) of the Valuation Act 2001 (“the Act”) for Antigen Business Park and did this in three sections by issuing three valuation certificates in respect of PN1773627, PN 1773854 and PN 1773909. These were sent to the Appellant indicating valuations of €188,800, €60,100 and €82,800 respectively.
- 2.2 Following representations, the parties agreed to deal with the proposed assessments by way of 25 individual Certificates and the subject property was so assessed and assigned PN 5019213
- 2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation for the Property of €3,930.
- 2.4 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 in person, on 21st July 2022. The Appellant was represented by Mr. Eamon Halpin of Eamonn Halpin & Co. Ltd. and the Respondent by Mr. Paul Ogbebor of the Valuation Office, counsel for the Respondent. Ms. Rosemary Healy-Rae BL, instructed by the Chief State Solicitors Office
- 3.2 In accordance with the Rules of the Tribunal, the parties filed and exchanged their respective reports and précis of evidence prior to the commencement of the hearing. At the oral hearing, each witness, having taken the oath, adopted their précis as his evidence-in-chief in addition to giving oral evidence.
- 3.3 This hearing dealt with the valuation evidence pertaining to the Property and at the conclusion of same, it was determined that the Tribunal would conduct a site inspection of the unit, and the business park with Mr. Halpin and Mr. Ogbebor both in attendance, details of which are set out below.
- 3.4 On 10th November 2022, a resumed hearing was held, in person and legal arguments were made regarding four units and whether same were capable of beneficial occupation. Submissions were made by Mr. Halpin for the Appellant and Ms. Rosemary Healy-Rae BL.
- 3.5 At the conclusion of this hearing, and in light of the overlapping evidence and duplicated photographs in respect of the units, the Tribunal directed the parties to agree and compile a single document for each unit under Appeal and submit same to the Tribunal. A copy of the said directions is attached as Appendix 1 to this determination (N/A to public).
- 3.6 Subsequent to the submission of these documents, the Tribunal sat a final time on 7th December 2022 for closing submissions from the parties.

4. SITE VISIT

- 4.1 The members of the Tribunal visited the premises with the parties' representatives on the 14th day of September 2022. Property No. 5019213/Unit 12C was entered and inspected as part of this visit.

5. FACTS

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

- 5.1 The Property is located in an industrial park close to the town centre, on Lourdes Road in Roscrea, Tipperary.
- 5.2 The Property under Appeal is part of Antigen Business Park which was created by the subdivision of the former Antigen/Taro pharmaceutical factory into 27 units. The

original plant was constructed in the 1940s and expanded and improved thereafter up until the 1980s with additional units being added on the site.

5.3 The property has changed ownership over the years being occupied by Antigen, Miza and Taro industries before being purchased by the present owners who embarked on a process of letting the units individually and rebranding the property as ‘Antigen Business Park’.

5.4 In line with its former use as a pharmaceutical plant, some of the units in the development were constructed as, and used for, distinct processing functions. Certain units have been excluded from the List, other units have been repurposed and are occupied by commercial tenants. The majority of the complex is vacant, while a number of units are let on a short-term basis.

5.5 The subject property under Appeal (PN 5019213) comprises a single storey modern warehouse building located towards the rear of the business park. It is clear from the photographs introduced by the valuers to assist the Tribunal and the Members on-site inspection that the building is in reasonable condition. The Respondent has classified the building as Industrial – Warehouse. It was occupied at the time of the Member’s inspection.

It has been valued by the Respondent as being ‘Type: 25 - Tier 3 Town Modern units located within Industrial Estate. 0 -200sqm’, at a rate of €35psm

5.6 The property is freehold.

5.7 The agreed floor area of the unit is:

| Description | Floor Level | Sq. M. |
|------------------------|-------------|--------|
| Industrial - Warehouse | 0 | 112.41 |

6. ISSUES

6.1 The sole issue is one of quantum. The Appellant claims that the Valuation, as assessed, is excessive and inequitable and should be reduced to reflect the condition of the premises, the historic and defunct use of the premises, its location and the fact that the business park is a poorly performing commercial entity with high levels of vacancy.

7. RELEVANT STATUTORY PROVISIONS:

7.1 The NAV of the Property must be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“(1) 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.

(2) Subsection (1) is without prejudice to section 49.

(3) 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.”

7.2 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.”

7.3 Section 19(5) of the 2001 Act provides as follows:

“(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.”

8. APPELLANT'S EVIDENCE

- 8.1 In opening the case on behalf of the Appellant, Mr. Halpin said that many of the individual buildings in the complex had been vacant for over a decade with nothing spent on their upkeep.
- 8.2 Mr. Halpin suggested that the purchase price in October 2017 of €825,000 gave a very clear indication of the rental value of the complex. He said were one to adopt the total rental value (for the entire complex) of €435,000 as assessed by the Respondent, this would suggest a yield of over 50%. He noted that while a number of smaller units have been let on a month-to-month basis, the purchase by the Appellant was a long-term project involving reconditioning of the buildings to make them suitable for letting. He evidenced that the current rent roll for tenanted units was less than €60,000 per annum with the landlord responsible for all outgoings, including electricity. He said there was a single electricity meter serving the entire complex and to have the units have separately metered would cost a six-figure sum.
- 8.3 Mr. Halpin further noted that of the twenty vacant units which he accepted were capable of beneficial occupation, only eight had been let during that 22-month period between November 2017 and September 2019. He said this represented 14.44% of the entire lettable floor space and noted that the largest of the let units was 427.34 psm. Mr. Halpin suggested that the market for this type of unit is limited and when there are requirements, the amount of space required is small.
- 8.4 Mr. Halpin posited that the easiest way to value the subject, by reference to the tone of the list, is by way of an end allowance. He noted how the Respondent had shown a reluctance to vary the absolute rate psm adopted and suggested that, by contrast, end allowances have been applied elsewhere. He said the best example of this was factories located in Wicklow Port where the Respondent adopted the same base level as modern warehousing but allowed a 50% end allowance (where the buildings were basic and pre 1960s) and a 20% allowance (where the buildings were basic and constructed between 1970 and 1999). Based on this, Mr. Halpin contended for a 50% devaluation allowance on structures which were developed pre 1950 in the subject property and a 20% allowance on those constructed between 1960 and 1980. Mr. Halpin sought to have the NAV adjusted in line with the comparables in the list in terms of the subject's actual rental potential.
- 8.5 Mr. Halpin relied on seven 'Tone of the List' NAV comparisons, all of which are located in Roscrea and its environs. The brief details are set out below and full details are included at Appendix 2 to this judgment (N/A to public).

8.5.1 Comparison 1. PN's 1773632 (1A) /1773628 (1B) /1773629 (1C)

He noted this industrial facility is located in Roscrea and extends to 14,750 sq. m. It is an industrial facility used as a meat processing plant, constructed in a piecemeal fashion between the 1960s and the 2000s. Mr. Halpin suggested this illustrated the appropriate levels for fully functioning factory buildings which had been constructed over time. He

evidenced that the level applied to the factory element was €17 psm, with the same level applied to the stores with the warehouse and office element valued at €22 psm.

1A) PN: 1773632 - Roscrea, Co. Tipperary

NAV €203,000

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|------------------|---------------|-----------|-----------|
| 0 | Factory | 5,229.62 | 17.00 | 88,903.54 |
| 0 | Office (S) | 556.00 | 17.00 | 9,452.00 |
| 0 | Store | 1,979.51 | 17.00 | 33,651.67 |
| 1 | Factory | 3,624.03 | 17.00 | 61,608.51 |
| | Additional Items | | | 9,806.51 |

1B) PN1773628

NAV €34,400

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|-----------|
| 0 | Canopy | 45.99 | 22.00 | 117.27 |
| 0 | Factory | 1,247.91 | 17.00 | 21,214.47 |
| 0 | Store | 772.75 | 17.00 | 13,136.75 |

1C) PN 1773629

NAV €42,900

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|------------------------|---------------|-----------|-----------|
| 0 | Office(s) | 2.34 | 22.00 | 51.48 |
| 0 | Store | 15.30 | 22.00 | 336.00 |
| 0 | Warehouse | 1,363.50 | 22.00 | 29,997.00 |
| 0 | Yard (Concrete/Tarmac) | 5,700.00 | 2.20 | 12,540.00 |

8.5.2 Comparison 2. PN 1773813.

NAV €4,950

This comprises a small workshop situated between the western boundary of Antigen Business Park and Grove Street; the workshop is valued at a level of €20 psm.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|------------------------|---------------|-----------|----------|
| 0 | Office(s) | 18.90 | 20.00 | 378.00 |
| 0 | Store | 16.20 | 10.00 | 162.00 |
| 0 | Store | 33.75 | 20.00 | 675.00 |
| 0 | Workshop | 134.30 | 20.00 | 2,686.00 |
| 0 | Yard (Concrete/Tarmac) | 526.00 | 2.00 | 1,052.00 |

8.5.3 Comparison 3. PN 1773633.

NAV €71,300

This comprises a warehouse, workshop and yard located immediately to the northwest of the subject business park and adjacent to Comparison No. 1. Mr. Halpin noted it

dates from the 1960s/1970s. He said the warehouse is valued at €20 psm., for what he described as a ‘large purpose built industrial property’.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|---------|
| 0 | Warehouse | 3,234.00 | 20.00 | 64,680 |
| 0 | Workshop | 182.00 | 20.00 | 3,640 |
| 0 | Yard | 1,500.00 | 2.00 | 3,000 |

8.5.4 Comparison 4. PN 1773691

NAV 44,400

Mr. Halpin noted that this is a fully functioning mill, built piecemeal primarily in the 1980s to 2000s but with some buildings dating to the 1920s. He suggested the complex of which the subject property forms part cannot be said to be significantly better or worse than this. The store area of 2,732.4 sq. m is valued by the Respondent at €15 psm.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|------------------|---------------|-----------|-----------|
| 0 | Store | 2,732.40 | 15.00 | 40,986.00 |
| 0 | Yard | 1000.00 | 1.50 | 1,500.00 |
| | Additional Items | | | 2,000 |

8.5.5 Comparison 5. PN 1773651

NAV €11,200

Mr. Halpin noted that this is a fully functioning commercial garage located 500 metres from the subject property. While noting that the Respondent has valued this property of 509.20 sq. m as ‘warehouse’ at a level of €22 psm., he suggested this is substantially better than the subject, with a full yard for associated sales as well as retail frontage on the garage itself.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|-----------|
| 0 | Warehouse | 509.20 | 22.00 | 11,202.00 |

8.5.6 Comparison 6. PN 1773662

NAV €27,400

Mr. Halpin said this is a retail showroom which has been valued by the Respondent as a ‘warehouse’. He took issue with the view adopted by the Respondent which suggested that the subject development is similar in value, when, he suggested, in reality this is a retail property and one which is substantially more valuable than any of the individual units in the development. The rate adopted for the warehouse was €22 psm.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|-----------|
| -1 | Store | 188.70 | 22.00 | 4,151.40 |
| 0 | Office(s) | 27.50 | 22.00 | 605.00 |
| 0 | Warehouse | 843.80 | 22.00 | 18,563.60 |
| 1 | Store | 188.70 | 22.00 | 4,151.40 |

8.5.7 Comparison 7. PN. 2166285**NAV €97,400**

Mr. Halpin noted that this is a fully functioning bakery built circa 2002. He suggested that if this fully functioning, modern, factory is valued at €22 psm., it is impossible that an old factory, subdivided as its original function is defunct, could have a value in excess of this rate.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|------------------|---------------|-----------|-----------|
| 0 | Factory | 1657.91 | 22.00 | 36,474.02 |
| 0 | Loading Bay | 564.86 | 22.00 | 12,426.92 |
| 0 | Office(s) | 347.76 | 22.00 | 7,650.72 |
| 1 | Factory | 333.61 | 22.00 | 7,339.42 |
| 1 | Office(s) | 347.76 | | 7,650.72 |
| | Additional Items | | | 25,868.13 |

8.6. Mr. Halpin also introduced what he described as ‘Context Comparisons’. The brief details are set out below and full details are included at Appendix 2 to this judgment (N/A to public).

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8.6.1 Context Comparison A:

PN 662504/ 5019297/ 5019298/ 5019299/ 5019300/ 5019301/ 5019302/ 501-9303/ 5019304

Mr. Halpin outlined how this former factory in the Murrough, Wicklow, constructed in the mid-1960s which has been vacated following cessation of the factory use in 2014. He noted that the total NAV for this development is €325,660 following the application of a 50% end allowance and this reflected a yield of approximately 15-17.5%. He contrasted this with the effective yield of 35.16% of the entire of the Antigen Business Park and noted how an end allowance of 50% had been applied to all of these valuations.

A1) Unit 1&2 PN 662504**NAV €60,000**

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|------------|
| 0 | Warehouse | 3,639.85 | 33.00 | 120,115.05 |
| 0 | Warehouse | -1.00 | 60.050.00 | -60,500 |

A2) Unit 3A PN 501297**NAV €12,600**

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|---------|
| 0 | Warehouse | 600.00 | 42.00 | 25,200 |
| 0 | Warehouse | -1.00 | 12.600.00 | -12,600 |

A3) Unit 3B PN 501298**NAV €23,800**

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|------------|------------|
| 0 | Warehouse | 1,286.55 | 37.00 | 47,602.35 |
| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
| 0 | Warehouse | 1,588.90 | 37.00 | 58,789.30 |
| 0 | Warehouse | -1.00 | -29,394.65 | -29,394.65 |

A4) Unit 4 PN 5019299**NAV €29,300****A5) Unit 5 PN 5019300****NAV €42,400**

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|------------|------------|
| 0 | Warehouse | 2,292.00 | 37.00 | 84,804.00 |
| 0 | Warehouse | -1.00 | -29,394.65 | -42,402.00 |

A6) Unit 6A PN 50199301**NAV €9,160**

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|-----------|
| 0 | Warehouse | 436.65 | 42.00 | 18,339.30 |
| 0 | Warehouse | -1.00 | -9,169.65 | -9,169.65 |

A7) Unit 6B PN 501302**NAV €13,600**

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|------------|------------|
| 0 | Warehouse | 647.85 | 42.00 | 27,209.70 |
| 0 | Warehouse | -1.00 | -13,604.85 | -13,604.85 |

A8) Unit 7&8 PN 5019303**NAV €111,900**

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-------------|-------------|
| 0 | Warehouse | 6,787.00 | 33.00 | 223,971.00 |
| 0 | Warehouse | -1.00 | -111,985.50 | -111,985.50 |

8.6.2 Context Comparison B:**PN 662998/ 640390/ 640393/ 2170974**

Mr. Halpin noted that the first of these (PN 662998) had a 20% end allowance agreed prior to a Tribunal appeal. He said the property is a basic transit shed constructed in 1997 and with concrete walls to a height of 2.5 metres and a single skin side and roof. He further noted that the same 20% end allowance had been applied to the other comparables listed above.

B1) Conway Port PN 662998**NAV €32,560**

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|-----------|
| 0 | Warehouse | 868.00 | 47.00 | 40,700.00 |
| 0 | Allowance | -1.00 | -8,140.00 | -8,140.00 |

B2) Waterbrand Holdings PN 640390**NAV €35,400**

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|-----------|
| 0 | Allowance | -1.00 | -8,865.61 | -8,865.61 |
| 0 | Store | 198.80 | 47.00 | 9,343.60 |
| 0 | Warehouse | 744.35 | 47.00 | 34,984.45 |

B3) Waterbrand Holdings PN 640393**NAV €21,900**

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|-----------|
| 0 | Allowance | -1.00 | -5,480.20 | -5,480 |
| 0 | Warehouse | 583.00 | 47.00 | 27,401.00 |

B4) Waterbrand Holdings PN 2170974**NAV €11,930**

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|-----------|
| 0 | Allowance | -1.00 | -2,983.74 | -2,983.74 |
| 0 | Warehouse | 317.42 | 47.00 | 14,918.74 |

8.7 Appellant's Valuation

Mr. Halpin contended for a NAV of €2,690.00. This represents a 20% discount to the level adopted by him. His calculation is as follows:

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|------------------------|---------------|-----------|----------|
| 0 | Industrial - Warehouse | 112.41 | 30.00 | 3,372.30 |
| 0 | Allowance (20%) | -1.00 | | 674.46 |

NAV €2,690.00**Cross Examination of Mr. Halpin**

- 8.8 Mr. Halpin was cross-examined by Ms. Healy Rae BL. When asked if some of the units within the business park were occupied, Mr. Halpin confirmed that to be the case and accepted that all the units were available to let. He suggested that in order for the owners to avail of a vacancy relief, the units must be available to let.
- 8.9 Mr. Halpin was asked for a breakdown of the gross figures provided in relation to the units which had been let but was unable to clarify this as he had been provided with the gross figures which had not been broken down and he was not in a position to provide further details in that regard. He accepted that the yield derived from the purchase price

was of limited relevance, but argued valuers would be conscious of how the capital value related to the net annual value.

- 8.10 Mr. Halpin maintained that the legislative basis for assessing the NAV was the rent achievable on an assumed 'one year with another' basis and suggested that the owners would struggle to let the various units in the complex on any longer term.
- 8.11 In respect of the end allowance which he proposed, Mr. Halpin said this was something which had been adopted by the Respondent elsewhere thus avoiding the need to use a lower rental rate.
- 8.12 In so far as Mr. Halpin adduced evidence in relation to properties in Wicklow, it was put to him that evidence from another rating authority was not relevant in the context of the property in County Tipperary. He felt it was relevant insofar as the Wicklow comparisons showed the Respondent had taken the age of the buildings into account in that exercise and could or should adopt a similar approach here.
- 8.13 When questioned about his comparison No. 7 (PN. 2166285), which the Respondent had categorized as 'Town - Old' in the schematic below, Mr. Halpin commented that it was a fully functioning factory, and it was irrelevant how it was categorized by the Respondent.
- 8.14 With regards to his context comparisons from Co. Wicklow, Mr. Halpin confirmed that he had inspected these properties and was putting them forward, not on their NAV values, but on the basis that they demonstrated an appropriate end allowance had been applied by the Respondent and he argued there must be equity and uniformity in the approach taken to valuation of all properties the Commissioner values.
- 8.15 When it was put to him that the application of a 50% discount was not equitable or uniform, he replied that 'uniformity was simple' but 'equity meant dealing with the property as it exists'. He suggested the Valuation Act starts with the individual property not the schematic 'blanket' which was the Respondents preferred approach.
- 8.16 Summarising his case, Mr. Halpin suggested that the subject property should be considered in the context of other industrial properties in Roscrea and in order to do this properly, adjustments needed to be made. He suggested a valuation range of €17 to €30 per sq.m for ground floor properties which he suggested was in line with comparisons in the town but an end allowance of 20% or 50% in line with the Respondent's approach to such structures in Wicklow town, was appropriate. He confirmed that there had been no investment of any consequence in the buildings in the previous 20 years and despite being fully available and to let since the date of purchase, only 15% of the floor space had actually been let and that and no section larger than 500 sq.m had been leased.
- 8.17 Mr. Halpin suggested that there was a need to bring everything back to basics. He noted that the Respondent had suggested that properties should 'fit into the schematic'; however, he said, there was a vast range of properties in the business park as was evidenced from the on-site inspection. Some of the properties in the business park were very old, while some were more modern, dating from the 1980s.

He cited the example of his comparisons in Wicklow Town where the Respondent had adopted an end allowance for older buildings, all of which were capable of occupation.

He said the Respondent had a 'vast amount' of comparisons which led to the formulation of the scheme. He said these were mostly modern buildings and cited by way of example Comparison No. 18, a high bay warehouse in Cahir which had been valued by the Respondent at a rate of €25psm and comparison No.9 which was a state-of-the-art meat plant valued at €18psm, with the cold store element valued at €27 psm. He further alluded to the Respondents comparisons No's 25 and 26 which are located in Carrick on Shannon and which he described as having been repurposed and reclad. He suggested these were significantly improved buildings and were valued at €20 psm.

Mr. Halpin went on to posit that there were 'infirmities' in the manner in which the business park had been dealt with by the Respondent and noted that he was contending for figures as most recently submitted to the Tribunal.

9. RESPONDENT'S EVIDENCE

- 9.1 Mr. Ogbebor on behalf of the Respondent, outlined the background to the revaluation in Tipperary County Council. He described, in detail, the complex of which the subject property forms part. He outlined the revaluation milestones and then went on to consider the representations put forward by Mr. Halpin on behalf of the Appellant.
- 9.2 Mr. Ogbebor indicated that all properties within Antigen Business Park (25 in total) had been appealed to the Valuation Tribunal. He explained the schematic which had been arrived at by the Respondent in valuing industrial properties in the County Tipperary revaluation and provided the categorization of properties, as set out below.
- 9.3 It was the Respondent's evidence that a Valuation scheme is applied for Industrial Properties located across County Tipperary however, the Industrial Estates and Business parks are mainly located in Clonmel, Cahir, Carrick On Suir, Nenagh, Thurles, Roscrea, Cashel and Tipperary Town. The adopted scheme divides properties into the following categories:

1. Old units (200 - 1000sqm) located within industrial estates in towns (Carrick On Suir, Roscrea, Tipp Town, Cahir, Templemore) valued at €30/sqm (Showroom)

2. Old units (200 - 1000sqm) located within industrial estates in towns (Carrick On Suir, Roscrea, Tipperary Town, Cahir, Templemore) valued at €25/sqm (Warehouse)

3. Old units (> 3000sqm) located within industrial estates in towns (Carrick On Suir, Roscrea, Tipperary Town, Cahir, Templemore) valued at €18/sqm

(Office) – Reduced at representation stage.

4. Old units (0 -200sqm) located within industrial estates in towns (Carrick On Suir, Roscrea, Tipperary Town, Cahir, Templemore) valued at €30/sqm (Warehouse)

5. Modern units (1001 - 3000sqm) located inside industrial estates in towns (Carrick On Suir, Roscrea, Tipperary Town, Cahir, Templemore) valued at €25/sqm (Warehouse)

6. Modern units (201-1000sqm) located inside industrial estates in towns (Carrick On Suir, Roscrea, Tipperary Town, Cahir, Templemore) valued at €30/sqm (Warehouse)

7. Modern units (201-1000sqm) located inside industrial estates in towns (Carrick On Suir, Roscrea, Tipperary Town, Cahir, Templemore) valued at €36/sqm (Gym)

8. Old units (1001 - 3000sqm) located within industrial estates in towns (Carrick On Suir, Roscrea, Tipperary Town, Cahir, Templemore) valued at €24/sqm (Office)

9. Old units (1001 - 3000sqm) located within industrial estates in towns (Carrick On Suir, Roscrea, Tipperary Town, Cahir, Templemore) valued at €20/sqm (Warehouse)

10. Modern units (1001 - 3000sqm) located inside industrial estates in towns (Carrick On Suir, Roscrea, Tipperary Town, Cahir, Templemore) valued at €25/sqm (Warehouse)

11. Modern units (0 -200sqm) located within industrial estates in towns (Carrick On Suir, Roscrea, Tipperary Town, Cahir, Templemore) valued at €35/sqm (Warehouse)

12. Old units (0 -200sqm) located within industrial estates in towns (Carrick On Suir, Roscrea, Tipperary Town, Cahir, Templemore) valued at €30/sqm (Warehouse)

- 9.4 Mr. Ogbebor outlined that properties were categorised according to the town in which they were located and were subdivided by age, location and use (e.g. showroom, warehouse, office, gym). The rental level applied depended on the category into which the individual properties fell. The subject property falls into Category 12. This category includes old units in an industrial setting in certain towns, including Roscrea and having an area less than 200 sq. m.

Key Rental Transactions:

9.5 Mr. Ogbebor confirmed that the above schematic had been arrived at following the collation and analysis of available market evidence in County Tipperary. The Respondent had identified six items of market information which informed the valuation scheme and these were used to estimate the net annual value (NAV) of the subject property. These transactions were described as Key Rental Transactions (KRTs) and are included in Appendix 3 to this judgment (N/A to public). Arising from this exercise, the rate derived and applied to the subject property was €35 per square metre giving an NAV of €3,930.

NAV Comparisons:

9.6 Mr. Ogbebor introduced 33 NAV comparisons as evidence of equity and uniformity. A schedule of these NAV comparisons is included in Appendix 4 to this judgment (N/A to public). Of the 33 NAV Comparables adduced by the Respondent, 7 fell into the <200 sq. m category viz – No's 10, 11, 12, 28, 29, 30, and 31.

9.7 The outline details are set out below:

1. NAV Comparison 10 (N10) PN 5016292 NAV €2,350
Carrigeen Industrial Estate, Cahir, Co. Tipperary.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|---------|
| 0 | Store | 78.57 | 30.00 | 2,350 |

2. NAV Comparison 11 (N11) PN 1345652 NAV €5,790
Mill River Industrial Estate, Carrick on Suir, Co. Tipperary.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|----------|
| 0 | Warehouse | 193.20 | 30.00 | 5,790.00 |

3. NAV Comparison 12 (N12) PN 1345662 NAV €3,100
Mill River Industrial Estate, Carrick on Suir, Co. Tipperary.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|----------|
| 0 | Warehouse | 103.66 | 30.00 | 3,100.00 |

4. NAV Comparison 28 (N28) PN 1773600 NAV €1,200
Ashbury, Roscrea, Co. Tipperary.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|------------------------------|---------------|-----------|----------|
| 0 | Warehouse | 25.66 | 35.00 | 8,981.00 |
| 0 | add-on for minimum valuation | | | €310.00 |
| | Total | | | 1,208.10 |

5. NAV Comparison 29 (N29) PN 1773604 NAV €4,440.00
Ashbury, Roscrea, Co. Tipperary.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|----------|
| 0 | Warehouse | 127.02 | 35.00 | 4,440.00 |

6. NAV Comparison 30 (N30) PN 2204800 NAV €3,880.00
Carrigeen, Kilcommon, Clogheen, Co. Tipperary.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|----------|
| 0 | Warehouse | 110.96 | 35.00 | 3,880.00 |

7. NAV Comparison 31 (N31) PN 2185252 NAV €4,830.00
Cahir Business Park, Cahir, Co. Tipperary.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-------------|---------------|-----------|----------|
| 0 | Workshop | 138.00 | 35.00 | 4,830.00 |

9.8 Respondent's Valuation

Mr. Ogbebor contended for a valuation as follows.

| Level | Description | Size – Sq. m. | NAV €/psm | NAV (€) |
|-------|-----------------------|---------------|-----------|----------|
| 0 | Industrial -Warehouse | 112.41 | 35.00 | 3,934.00 |

NAV **€3,930.00**

9.9 In cross examination, Mr. Ogbebor was asked why he had excluded Mr. Halpin's comparators in Wicklow. It was put to him that that the Commissioner must adopt a similar approach across the rating authorities, that is fair and balanced. Noting that the Revaluation of Tipperary was undertaken at the same time as the Wicklow Revaluation

Mr. Halpin questioned why the same allowances were not applied in Tipperary as had been in Wicklow. Mr. Halpin further enquired who decided the categories in the Respondent's scheme and questioned whether there was equity in the application of the scheme. He also sought details as to the allowances that were given having regard to the attributes of the particular properties, as opposed to the categories devised. Mr. Ogbebor replied that Wicklow was a different rating authority and therefore considerations in that valuation exercise were not relevant in the present Appeal.

- 9.10 Mr Halpin asked Mr. Ogbebor why there were no KRTs in Roscrea and what criteria had been adopted in establishing the relevant Tiers in the scheme he had outlined. Mr. Ogbebor replied that there were KRTs from other towns which had been grouped into tiers and that Roscrea was grouped under Tier 3. He was asked what criteria was adopted to include the town in Tier 3 and Mr Ogbebor replied that the Respondent took into account local population, size of the town, the number of commercial properties in those towns, access to public transport, and which were the main towns in the local authority.
- 9.11 Insofar as the age of a property was an important factor to be considered, Mr. Ogbebor was re-examined to clarify how the age of the property was determined and he confirmed that the Respondent looked to the roof construction and specification in that regard.
- 9.12 In summing up the Respondent's case, Ms. Healy Rae said that the application, by Mr. Halpin, of a 20% or 50% end allowance was arbitrary and a very large discount being sought. She noted that these adjustments were not included or referenced in the Notices of Appeal and there was no basis for them. She suggested the Appellants use of the purchase price and yield to establish a rental value was irrelevant and maintained that the property was valued by the Respondent in accordance with s19 and s 48 of the Act.
- 9.13 Relying on his adduced comparisons, she said Mr. Ogbebor evidence was that the tone of the list is well established. All the properties in this business park were valued at these levels and suggested that in his opinion the NAV level applied by the Respondent of €3,930.00 for the subject property was fair and reasonable. In the circumstances, she requested that the Tribunal affirm the valuation as representing its Net Annual Value in accordance with Section 48 of the Valuation Act 2001 and the requirements of Section 19(5).

10. SUBMISSIONS

10.1 No submissions were made of a legal nature in respect of this Property.

10.2 As regards costs, the Respondent submitted that in the event that the Tribunal determines that the present Appeal is not well founded, the Respondent would seek its costs on the basis that they follow the event with Killarney Country Lodge Limited VA98/2/006 relied on in that regard.

11. FINDINGS

- 11.1 In 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.
- 11.2 The burden of proof in all appeals before the Tribunal lies with the Appellant. (VA00/2/032 *Prounlane Ltd. t/a Plaza Hotel*, VA07/3/054 *William Savage Construction* and VA09/1/018 *O'Sullivan's Marine Ltd.*)

Unusual nature of the present Appeal

- 11.3 In coming to its determination, the Tribunal inspected the Property, examined the Respondent's scheme and considered the written and oral evidence, including submissions, adduced by Mr Halpin who contended for a revised NAV of €2,690.00 and that of Mr. Ogbebor who contended for an NAV of €3,930.00.
- 11.4 The unusual circumstances of this Appeal are that, while the Subject Property falls to be determined before the Tribunal under Appeal VA19/5/1235, a total of 25 appeals were lodged in respect of the Antigen Business Park. A hearing was undertaken in respect of all 25 appeals and the evidence adduced encompassed the entirety of the properties under appeal. The Tribunal takes no issue with this approach, however the range of accommodation under appeal varied significantly between the properties in terms of size, construction and condition, and the Tribunal was tasked with separately applying the Appellant and Respondent's comparison properties to each individual property under appeal. In that regard, the Tribunal has identified, for the purposes of the present appeal, the relevant evidence as it applied to the Subject Property.

Respondent's scheme

- 11.5 The evidence before the Tribunal was that the Respondent adopted a scheme in the context of industrial units in the rating authority of Tipperary County Council whereby the following towns were categorised as 'Tipperary Tier 3 Towns': Carrick On Suir, Roscrea, Tipp Town, Cahir, Templemore. The Respondent's evidence was that the said scheme divided relevant buildings into the following categories:

| | | | |
|--------------|--------------|-----------------------------------|----------------|
| Tier 3: Town | Old units | located within Industrial Estate. | 0 -200sqm |
| Tier 3: Town | Old units | located within Industrial Estate. | 200 - 1000sqm |
| Tier 3: Town | Old units | located within Industrial Estate. | > 3000sqm |
| Tier 3: Town | Modern units | located Inside Industrial Estate. | 0 -200sqm |
| Tier 3: Town | Modern units | located Inside Industrial Estate. | 201-1000sqm |
| Tier 3: Town | Modern units | located Inside Industrial Estate | 1001 - 3000sqm |

11.6 In the context of the present Appeal, the Subject Property fell to be considered as Type: 25 - Tier 3 Town Modern units located within Industrial Estate. 0 - and the valuation applied by the Respondent to the subject being similarly circumstanced properties within that grouping, was €35 psm.

Extent of evidence before the Tribunal

11.7 The Tribunal notes that the Valuation Act 2001, as amended, requires that there be equity and uniformity in the approach to valuation. While the application of a single rate gives rise to uniformity, it can lead to inequity as between valuations. In that regard, the Tribunal notes that a scheme for a set of Tipperary towns was relied on but the Respondent failed to introduce comparable evidence before the Tribunal from the town of Roscrea, this evidence being available (and so advanced by the Appellant) but the Respondent chose not to introduce or rely on it. The evidence adduced by the Respondent before the Tribunal consisted of a broad range of comparables from elsewhere in the Tipperary rating authority, whereas the evidence from the Appellant was better focused on town of Roscrea.

11.8 The Tribunal acknowledges that for various reasons it can be challenging to collate information in respect of a rating area or similarly circumstanced relevant properties, but the Tribunal relies on both parties before it, to provide relevant evidence as will enable it adjudicate the valuation under dispute and weigh it against similar and/or comparable market values in order to establish equity and uniformity in the List.

11.9 In contending for a lower valuation, the Appellant did not introduce any KRT'S, other than referencing a single casual tenancy in the subject estate. Had such evidence of market rentals been available to the Tribunal, it would have greatly assisted the Tribunal in its task. Mr. Halpin submitted 7 'tone of the list' NAV comparators, all of which are located in the town of Roscrea and evidenced a range of €15-22psm.

11.10 There was disagreement between the valuers as to the rental rate to be applied to the subject; the Appellant applied a rate of €30psm as opposed to the Respondent's €35psm. Mr. Halpin also applied an 'end discount' of 20%, resulting in an actual rate applied of €24psm.

11.11 Mr. Halpin confirmed in evidence that the Subject Property was let on a month to month licence at an inclusive fee equating to an annual fee of 4,428. This fee was to include all outgoings, including utilities.

11.12 Insofar as the Respondent's scheme (outlined in paragraph 11.5 above) was adopted having regard to market information from the county, Mr. Ogbebor stated that three of the Five 'Key Rental Transactions' (KRTs) submitted in this Appeal informed that valuation scheme and are relied on as being relevant but are of limited assistance, given that there appears to be little correlation between the net effective rents (NER) achieved in these lettings and the net annual value (NAV) attributed to them by the Respondent. In some of the KRTs, the disparity between the NER achieved and the NAV applied was as much as 70%. This suggests that little reliance can be placed on these KRTs.

11.13 The Respondent submitted thirty-one NAV comparators in support of his valuation.

Valuation applied and the need for allowances.

11.14 The Tribunal notes that the valuers applied slightly different rental rates to the subject property with the significant difference in valuation reflecting an end allowance sought by the Appellant.

11.15 The Tribunal notes that the Subject Property was constructed in the 1980s and is modern in appearance and in reasonable condition. The Tribunal finds that an end allowance is not required and the rate applied by the Respondent accords with the Tone.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the Respondent's valuation of the Property as stated in the Valuation Certificate as €3,930.00

And the Tribunal so Determines

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.