

Appeal No: VA17/5/603

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

TARGET FERTILIZERS LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2164093, Industrial Uses at Local No/Map Ref: 19U, Gorteens, Rathpatrick, Waterford, County Kilkenny.

B E F O R E

Hugh Markey –FRICS FSCSI

Deputy Chairperson

Patricia O'Connor - Solicitor

Member

Sarah Reid - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF OCTOBER, 2020.**

1. THE APPEAL

1.1 By Notice of Appeal received on the 12th day of October, 2017 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 €375,000.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

- The Valuation of the subject property is excessive and inequitable. The property’s value as set by the Commissioner is not in line with its potential rental value.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €215,600.

2. REVALUATION HISTORY

2.1 On the 22nd day of June, 2017 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 €409,000.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €375,000.

2.3 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €375,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th day of October 2015.

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 6th day of March 2020. At the hearing the Appellant was represented by the Mr Eamonn Halpin BSc (Surveying), MRICS, MSCSI of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr Terry Devlin BSc, MSCSI MRICS of the Valuation Office.

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 précis as his 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 Property is situated in Belview Port, Co. Kilkenny, approximately 10km east of Waterford City and is accessed from the N29. The port specialises in the import of bulk cargo.

4.3 The Property comprises a series of 7 industrial type buildings used for the bulk storage of grain/fertilisers. The eaves height in the buildings is 9m and all except one of the buildings has double skin side panels with double skin roofs and mass concrete walls to a height of 6-8m. The exception, Block 5, has double skin walls to its entire elevation. There is no office accommodation within the warehouses.

4.4 Externally, there is a large concreted yard, a portacabin and a weighbridge; the entire contained in a self-contained complex.

4.5 The property is freehold.

4.6 **Accommodation**

The valuers have agreed the following areas:

Warehouse (Ground Floor) 10,662 sq. m.

Portacabin 63 sq. m.

1 no. Weighbridge

5. ISSUES

5.1 This appeal raised the sole issue as to whether the net annual value of the Property under appeal, as determined by the Respondent, is correct.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual

cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

7. APPELLANT’S CASE

7.1 In opening the Appellant’s case, Mr Halpin referred to the fact that there were Valuation Tribunal decisions in cases of properties comparable to the subject, indeed located in the same port viz: VA17/5/465; VA17/5/599 and VA17/5/53. In all 3 cases, the Division of the Tribunal adopted a rate of €30 per sq. m. for the warehouse space and Mr. Halpin was suggesting that this level be adopted in the instant case. He outlined the hierarchy of evidence insofar as it applied to rating appeals: untested revision valuations; agreed valuations following representations and judgments of the Tribunal and noted that the latter was historically regarded as being the best quality evidence. He suggested the Respondent had adopted an approach that there was to be uniformity, even if it were incorrect.

7.2 Mr. Halpin placed much reliance on the previous Tribunals’ judgments in similarly circumstanced properties where it had been determined that €30 per sq. m. was the appropriate rate to apply; indeed these were on ‘all fours’ with it being located in the same Port and equally lacked office accommodation. He posited that the level of €30 per sq. m was the ‘upper limit’ of where the value should lie

7.3 In support of his contended valuation and apart from the level determined by another Division of the Tribunal in the cases cited above, Mr. Halpin further relied on the following:

1/ PN 746975 which is located in Belview Port, is of similar and in parts superior, construction. Despite enjoying direct access to the river, it was valued by the Respondent at €20 per sq. m. for the warehouse space of 3,312 sq. m.

He introduced the following further comparisons from outside the port area:

2/ PN2107652 & PN218379. These are warehouses with 9m and 12 m eaves respectively and are located approximately 3.5km from the subject on the N25/N29. The latter has an element of office content. The warehouses are valued by the Respondent at €20 and €25 per sq. m respectively.

3/ PN 229312. This is a self-contained property with a warehouse element of approximately 3,277.06 sq. m., situated approx. 3km from the port. The warehouse element of the property is valued at €20 per sq. m.

4/ PN 226666. This is a purpose built storage facility approx. 6 km distant from the subject. The cold room element of 11,454.99 sq. m. is valued at €35.25, while the stores of 4,717.15 are valued at €25 per sq. m. Mr Halpin contended that this property was vastly superior to the subject and the purpose built cold storage area was valued at the same rate as the subject.

5/ PN203515 This property is located in New Ross, Co Kilkenny and was, Mr. Halpin suggested, of similar standard to the subject. He noted that significant sections had eaves heights of over 15m. The warehouse element of 9,933 sq. m. was valued at €20 per sq. m.

6/ PN210231 (VA17/5/081). Mr Halpin introduced this Tribunal judgment of what he described as 'piecemeal' type development in a similar fashion to the subject property. It is located on the outskirts of Kilkenny City. A warehouse element of 2,052 sq. m., which Mr. Halpin suggested was of better quality, had been determined by the Tribunal at a rate of €17.50 per sq. m.

7/ PN 2166232. This property is located in Gowran and comprises a series of modern industrial units with eaves height of up to 18m in part. The warehouse element of 8,632.59 is valued at €14 per sq. m.

7.4. Mr Halpin introduced 4 rental comparisons to support his opinion of value:

1/ This is a property in a port setting, with its own jetty on the River Suir, in New Ross, Co. Wexford. It was let on a 5 year lease from December 2017 and he analysed the rent as devaluing at a rate of €13 per sq. m. for the storage element of 3,544.13sq. m. This property's valuation is currently under appeal and as it is in different local authority area, the Respondent's valuation was not relevant.

2/ The Appellant's second rental comparison is in Waterford City and comprises a modern, purpose-built warehouse/office building in a dedicated estate. It was let in January 2014 at a rent which he analysed at €17.64 per sq. m. for what he described as being 'in a similar value range to the subject'.

3/ This rural property was available for letting at a quoting rent of €25,000pa as at May 2017. He analysed the asking rent as reflecting a rate of €16.50 per sq. m. for the warehouse element of 1,302.90 sq. m. He suggested this contrasted 'starkly' with the rate of €20 per sq. m. applied to this element by the Respondent

4/ Mr Halpin introduced this May 2012 letting of 2 units in Purcellsinch Business Park, Kilkenny. He suggested the letting analyses at a rate of €13.45 for the warehouse of 4,145 sq. m. and contrasted this with what he believed to be the Respondent's valuation level of €35 per sq. m.

7.5 Relying on the above, he opined that the valuation should be as follows:

Warehouse (Ground Floor) 10,662 sq. m.	@ €30 per sq. m.	€318,660
Portacabin 63 sq. m.	@ €4 per sq. m.	€252.00
I no. Weighbridge	@	<u>€1,800</u>
	<u>Total NAV</u>	<u>€320,712 say, €320,000</u>

Cross examination of Mr. Halpin.

7.6 When asked by Mr. Devlin, Mr Halpin accepted that the buildings were non-standard and were built for the purpose of bulk storage. He suggested they were not dissimilar to the better buildings in the case of PN 210231(VA17/5/081), which had been determined by the Tribunal at €17.50 per sq. m.

7.7 Mr. Halpin further accepted that two buildings in the Port had been the subject of appeals and had been agreed with the occupier's agents at a rate of €40 per sq. m.; there were 4 properties immediately adjacent that were valued at a rate of €35 per sq. m. but suggested that at that time, the valuers may not have had access to all the information; there was no support for this level and it was open to the occupiers to seek a review under s. 29 of the Valuation Act 2001/ Valuation (Amendment Act) Act 2015. He further suggested the application of this rate

per sq. m. was the application of a wider mistake. He accepted there were other properties valued at this level in the list and others at €40 per sq. m. but maintained that they were not correct and referred to the Tribunal's decisions in previous appeals.

7.8 In response to a query regarding his Comparison No. 2 – PN 746975, Mr. Halpin accepted that it was undervalued and that even if one were to apply an upward adjustment of 50%, it would result in the level he was suggesting for the subject.

7.9 Mr Halpin also accepted that his comparisons 3/4/5/6 were industrial units of more standard construction but the warehouse element (part of the cold storage facility) of Comparison No. 5 was valued at €25 per sq. m.

7.10 In response to questions regarding his rental comparisons; he confirmed that his first rental comparison was located in Wexford and while not immediately comparable, because it was located in a different local authority area, suggested it was a poorer building and there was no evidence of a 'port premium'.

7.11 As regards his second rental comparison, he accepted it was located in a different local authority area but was informative as to rental levels.

7.12 Mr. Halpin confirmed that his third rental comparison was situated a distance away from the city of Kilkenny and was a quoting rent but as such was informative.

7.13 He confirmed that while he accepted the adjoining properties as comparables, he preferred the decisions of the Tribunal.

8. RESPONDENT'S CASE

8.1 Mr Devlin outlined the nature of Belview Port and its primary function being for the import of bulk cargo. He said the property under appeal were bulk storage units in a self-contained complex of modern construction with a large yard and weighbridge and was secured by a gate. He noted the eaves height as being 9m.

8.2 He outlined how other adjoining buildings, which were of similar construction with mass concrete walls to a height of 8m, are all valued at €35 per sq. m. and are similarly in use for bulk storage. He noted this property had the benefit of a large yard.

8.3 Mr Devlin suggested that it would not be possible to use standard warehouse buildings for bulk storage use.

8.4 The witness noted the paucity of rental evidence in this sector; that the (rental) comparisons were ‘*not perfect*’ but within Belview Port the following per square metre rents were in the list:

6 no. @ €40

3 no. @ €35

3 no. @ €30

1 no. @ €27

1 no. @ €20

8.5 In opening his comparisons, Mr Devlin outlined how the Respondent had relied on 3 rental transactions as informing the appropriate rate per square metre to apply to ‘*the group of properties sharing similar characteristics, including the subject property. Following that, if there are any relevant individual considerations in relation to the subject property, relative to that group, further adjustments may be made to the subject property’s NAV.*’ He noted that none of the 3 Key Rental Transactions relied upon had been the subject of representations or appeal.

8.6 In support of his contended valuation Mr. Devlin relied on the following Key Rental Transactions:

1/ The first rental transaction was a letting of an industrial unit of 155.02 sq. m, located in an industrial estate in Kilkenny City. It was let on a lease for 4years and 9 months, from January 2016, at a net effective rent (NER) of €40.68 per sq. m. It had been valued by the Respondent at €40per sq. m. NAV

2/ This is also an industrial unit in an industrial estate in Kilkenny City and extends to 334.28 sq. m. It was let on a 4years and 11 month lease from November 2012 at a net effective rent of €43.53 per sq. m. and was valued by the Respondent at €42 per sq. m.

3/ KRT 3 is an industrial unit in an industrial estate in Kilkenny City. It comprises 323.31 sq. m. and was let on a 5 year lease, from April 2104, at a net effective rent of €41.08 per sq. m. It was valued at NAV €35 per sq. m.

Evidence of Equity and Uniformity-NAV Comparisons.

8.7. Mr Devlin outlined there were 14 industrial properties in the Port valued as follows:

6 no. @ €40

3 no. @ €35

3 no. @ €30

1 no. @ €27

1 no. @ €20

8.8 He outlined how the subject is one of 6 properties appealed to the Tribunal.

1/ NAV Comparison 1 PN2163306/ VA17/5/530. He noted this property is adjacent, modern and of similar construction to the subject. He noted that this property had 10m eaves but lacked the yard space of the subject. He said this had been the subject of an appeal but had been agreed with the appellant's valuer at a rate of €35 per sq. m for the warehouse space of 16,863.90 sq. m.

2/ NAV Comparison 2 PN2166275/VA17/5/524. This is a similar adjacent property which appeal was withdrawn and the valuation agreed with a valuer for the appellant. The warehouse of 10,121.50 sq. m. is valued at €35 per sq. m.

3/ NAV Comparison 3 PN 2163303 is a modern warehouse building of 9,646.80 sq. m. in the Port area. It has 10m eaves. The valuation of €40 per sq. m. was not appealed.

4/ NAV Comparison 4. PN1136393. This is also located in the Port area and comprises a modern warehouse of 6,410 sq. m. with 8 m. eaves. This element is valued at €40 per sq. m.

8.9 Mr Devlin outlined his opinion of the NAV as being €375,000. He arrived at this figure by applying a rate of €35 per sq. m. to the warehouse with €10 applied to the Portacabin and a further €1,800 attributed to the weighbridge.

Cross Examination of Mr Devlin

8.10 Mr Halpin asked whether Mr. Devlin accepted the decisions of the Tribunal in earlier cases. Mr Devlin responded by saying '*they were there*'. He accepted there are three Valuation Tribunal judgments at a rate of €30 per sq. m for similar bulk storage units but that he was relying on his four comparisons of which two were valued at €35 per sq. m and two at €40 per sq. m.

8.11 In response to a question from Mr Halpin as to whether the evidence at a rate of €35 per sq. m. had been placed before the previous hearings, confirmed that it had and while he had not introduced to the current hearing, he had referenced it at P. 19 of his précis.

8.12 He noted that the KRT's were the same as used previously; there was limited evidence available. Mr Halpin referred the witness to his statement at P. 12 of his précis where he stated inter alia, '*...the group of properties sharing similar characteristics, including the subject property. Following that, if there are any relevant individual considerations in relation to the subject property, relative to that group, further adjustments may be made to the subject property's NAV..*' and responded that he accepted they were located approximately 60km distant; one was 1/24th of the subject's size and they were all much smaller.

8.13 Mr Devlin robustly defended his position and suggested that Mr. Halpin's comparisons were poor; the application of a rate of €20 per sq. m. to PN746975 (a property in the Port about 200m from the subject) was 'incorrect' and the level should have been higher.

8.14 Mr Devlin accepted that the three properties that were the subject of appeals to the Tribunal all had water frontage.

Summing Up

8.15 Mr Halpin noted the subject property was of poor quality in a location removed from the quayside and therefore disadvantaged. He suggested the Respondent's rental comparisons (KRT's) were not comparable. He suggested the best evidence is the decisions of the Tribunal and the 'Tone of the List'. He suggested those occupiers who had settled or otherwise agreed a valuation with the Respondent in other cases might not have done so, had they been aware of

the Tribunal's judgments. He asked that the Tribunal affirm his opinion of NAV as being €320,000.

8.16 Mr Devlin, in his summing up reiterated that other properties in the vicinity were in the list at €35 per sq. m.; that they had 'been through the process' and the Tribunal should adopt his opinion of value as being €35 per sq. m.

8.17 In his summing up Mr. Devlin maintained his position and suggested that Mr. Halpin's comparisons were poor and that the valuation applied was appropriate in the circumstances.

9. SUBMISSIONS

9.1 There were no legal submissions.

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 Kilkenny County Council.

10.2 The Tribunal was presented with evidence from the Appellant of similarly, if not better circumstanced properties in the immediate area, either determined by other Divisions of the Tribunal or on the Valuation List at €30 per sqm and even €20 per sqm, the latter being on the Valuation list. It is generally accepted that a NAV determined by a Division of the Tribunal would rank highest in the hierarchy of comparisons as they have been fully ventilated, tested and been subject to representations from both sides.

10.3 In setting out its case, the Respondent relied on the fact there are a number of properties in the immediate vicinity of the subject which are in the List and valued at a rate of €35 per sqm. The Tribunal regards this approach as being tendentious and not soundly based, notwithstanding the provisions of Section 63 of the Valuation Act 2001, because this figure does not accord with three recent and proximate determinations of the Tribunal. Mr. Devlin, in his evidence, did not satisfy the Tribunal that the properties on the List could be reconciled with the three Tribunals decisions for the port. Furthermore, the Respondent's rental evidence relied upon to set a tone is narrowly based and as such should be treated with caution.

10.4 For these reasons and in the interest of comity, the Tribunal finds that appropriate rate to apply to the warehouse element of the property, the subject of this appeal is €30 per sqm.

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 €321,000.

Warehouse	10,622 sqm	@ €30 per sqm	€318,660
Portacabin	63 sqm	@ €4 per sqm	€ 252
Weighbridge	1	@ €1,800	€ <u>1,800</u>
			<hr/>
			€320,712 say €321,000 NAV

And the Tribunal so Determines.