

Appeal No: VA19/5/1478

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**P.J. Callan LTD**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 1278998, Industrial Uses at 130B Townparks, Ardee, County Louth.

**B E F O R E**

**Donal Madigan - MRICS, MSCSI**

**Deputy Chairperson**

**Claire Hogan - BL**

**Member**

**Martin Connolly - MAgrSC, M.Sc., MSCSI, FCInstArb**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 28<sup>th</sup> DAY OF FEBRUARY 2013**

**1. THE APPEAL**

1.1 By Notice of Appeal dated 11th 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 ("**the Property**") was fixed in the sum of €91,900.

1.2 In the Notice of Appeal, the Appellant argues :

*“Entrance Porch – Your measurements 209 sq mt, Actual size 6.54 sq mt*

*Shop – Your measurements 702 sq mtr , Actual size 682.59 sq mt*

*Value of porch should be €650 and the shop should be €26,211.*

*Nos. 8 & 9 Store independent valuation 14,900.*

*No. 2 Store. This is an attic not a store and should have zero rating”*

1.3 In the Notice of Appeal, the Appellant argued that the valuation of the Property ought to have been determined in the sum of €52,919.88.f

## 2. REVALUATION HISTORY

2.1 On 15 March 2019 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 €91,900.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on 10 September 2019 stating a valuation of €91,900.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is 15 September 2017

## 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 24 January 2023.

3.2 The Appellant did not attend the hearing. The Respondent was represented by Mr. Vasile Goian of the Valuation Office.

3.3 The chronology in relation to the Appellant’s non-appearance is as follows:

**02/03/2022:** The Appellant was notified by the Tribunal that his appeal had been placed on the Advance warning list.

**24/08/2022:** The Appellant was notified by the Tribunal that it proposed to list his appeal for hearing, and he was directed to submit his précis of evidence within 15 working days.

**06/09/2022:** The Appellant submitted a two- page PDF letter, dated 17/04/2019, as his précis. [This was his original representations’ letter, no other précis being submitted]

**06/09/2022:** The Tribunal sent an e-mail to the Appellant with the guidelines for précis requirements. It was highlighted that he would need to submit further documentation, including *inter alia*, maps and photographs of the property the subject of the appeal and of all comparator properties relied upon.

**15/09/2022:** The Tribunal sent an email to the Appellant asking him to confirm whether the single document he provided constituted his full précis.

**7/10/2022:** A Notice of hearing was sent to the Appellant by the Tribunal. The appeal was scheduled for 11/11/2022.

**12/10/2022:** The Tribunal contacted the Appellant by phone and e-mail, and informed him that the précis he submitted had been sent to the Respondent.

**04/11/2022:** The Appellant requested an adjournment, on grounds of ill-health.

**07/11/2022:** The Appellant was granted the requested adjournment.

**14/11/2022:** A new hearing date was assigned; 24/01/23, and details of same were sent by the Tribunal to the Appellant.

**18/01/2023:** The Appellant emailed the Tribunal to request that the second hearing date be adjourned. The email provided as follows:

*“We refer to our phone call of 17<sup>th</sup> January, we spoke to a colleague of yours regarding above appeal. We advised that our consultant was not available for the Appeal which is listed for 24<sup>th</sup> January due to shortage of staff in his office. We are very annoyed and very much regret that this Appeal cannot be heard on this date as we had given our consultant plenty of notice of the date but unfortunately now he will not be available. He has asked for a further extension of at least 3-4 weeks.*

*This postponement is obviously inconvenient for you and your office staff, and we are disappointed that this Appeal is not taking place on 17<sup>th</sup> January.*

*It would be very much appreciated if you can facilitate us with a new hearing date.*

*Yours sincerely*

*For P.J. CALLAN LTD”*

**20/01/2023:** The Tribunal refused the adjournment request. The text of the email explained as the reason for the denial as follows:

*“1. This appeal was listed before and could not proceed on that occasion and this is therefore the second attempt to have it heard.*

*2. The request was made only 4 working days before the date of hearing which is very little notice, in time, for both the Respondent and the Division of the Tribunal assigned to determine the appeal.*

*3. The ground for an adjournment cited by the Appellant is not considered to be "exceptional" under Rule 87 of the Valuation Tribunal (Appeals) Rules 2019 as the non-availability of a Consultant who has not been previously identified as a representative for the Appellant cannot be accepted as being an exceptional reason, and further as no precis has been filed for this Consultant in advance and no request for an extension of time to file a precis has hitherto been received, this is unacceptable too.*

*4. The Appellant has been given adequate notice of the appeal and what is required to be submitted for the hearing of the appeal in advance by him over several weeks."*

**23/01/2023:** The Appellant replied to the email denying the adjournment, expressed disappointment, and stated, *"As we don't have anyone available to attend this tribunal tomorrow, 24th January, is it possible to give us an alternate date in a couple of months?"*

**23/01/2023:** The Tribunal replied, notifying the Appellant that the appeal would proceed the following day, and that if he did not attend, it could be struck out for want of prosecution.

3.4 At the oral hearing, Mr Goian for the Respondent indicated that rather than acquiescing to the Tribunal striking out the Appellant's appeal, he wished to give evidence to contend for a higher NAV than that appearing on the Final Valuation Certificate. The Respondent contended that instead of the sum of €91,900, €98,800 was the correct figure for the Property.

3.5 This argument had been made in the Respondent's précis of evidence. It was based on a re-appraisal of the Property following an inspection by Mr Goian on 6 December 2022.

3.6 Mr Goian took the oath, and adopted his précis as his evidence-in-chief in addition to giving oral evidence.

#### **4. FACTS**

4.1 From the evidence adduced by the Respondent, and in the absence of any appearance by the Appellant, the Tribunal finds the following facts about the Property.

4.2 The Property is an industrial unit with showroom/retail area, offices, stores, and canteen. There is a workshop attached adjacent to the showroom area and another 3 warehouses at the rear of the site. The property is situated outside an industrial estate, with gated yard. Part of the front yard has been used as a display area.

4.3 The Property is located on the Kells Road (N52), opposite the St Brigids Hospital. It is approx. 1 km west of Ardee town centre and 8.1 km west from M1 motorway. Ardee town is on N2 Dublin to Derry Road located approx. 67 km north from Dublin City and approx. 19.5 km south west from Dundalk town.

#### **5. ISSUES**

5.1 The primary issue to be determined is whether the Respondent's figure of €98,800 is the correct NAV for the Property. The Appellant had contested the floor areas in his Notice of Appeal but had not replied to the Valuation Office in their attempts to agree these

#### **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 As set out above, the Appellant's précis was extremely brief and lacking key details. He argued that the Property should not be classified as industrial but as a retail business. He also argued that there is no showroom, and that the sheds have no potential for renting whatsoever. He also argued that many businesses in Ardee had closed.

7.2 The Appellant did not appear for the hearing. Therefore, he did not give any oral evidence.

## 8. RESPONDENT'S CASE

8.1 The Respondent highlighted that the Property was valued; not the business. He stated that the Property is considered as an industrial unit due to its specifications. He stated that the front building is in use as retail area and is classified as showroom. He maintained that the Property was valued as Industrial showroom and not as retail shop, and observed that the retail shops in Ardee town have been zoned and valued at a rate per m<sup>2</sup> for Zone A in the range of €120 to €200. He also pointed out that the warehouses at rear of the property are in very good condition and that they were capable of beneficial occupation.

8.2 The Respondent drew attention to the evidence in this case which supported an elevated NAV.

8.3 Originally, the following valuation levels were applied:

- workshops/warehouses, offices, and stores: €32 per m<sup>2</sup>
- mezzanine stores: €32 per m<sup>2</sup>
- showroom/retail area: €38.40 per m<sup>2</sup>
- display yard: €3.20 per m<sup>2</sup>

**NAV of €91 900.**

8.4 However, Mr Goian for the Respondent indicated that he inspected the Property on 6 December 2022, and that he proposed the following changes:

(i) The office's areas should increase from 51.84 m<sup>2</sup> to 61.02 m<sup>2</sup>, to be valued at €29 per m<sup>2</sup>;

(ii) The shop/retail areas should be considered as a showroom and its floor area reduced from 911 m<sup>2</sup> to 802.59 m<sup>2</sup> and valued at €34.80 per m<sup>2</sup> (20% addition on workshop level);

(iii) The workshop's area of 239.12 m<sup>2</sup> should be added to the valuation and valued at €29 per m<sup>2</sup>;

(iv) The stores attached at the rear of the workshop with floor areas of 23.76 m<sup>2</sup> should be valued at €29 per m<sup>2</sup>;

(v) 3 buildings at the rear of the main retail building, previously considered as stores, should now be categorised as warehouses with total floor areas of 2028.60 m<sup>2</sup> and valued at €29 per m<sup>2</sup>;

(vi) The front display yard's area should remain at the same size of 600 m<sup>2</sup> and the level applied should be reduced from €3.20 per m<sup>2</sup> to €2.90 per m<sup>2</sup> (10% of workshop/warehouse level);

(vii) The mezzanine stores should be valued at €5.80 per m<sup>2</sup> now (previous level - €32 per m<sup>2</sup>)

8.5 Mr Goian explained that according to his calculation on inspection, the total floor areas of the subject property increased from 2630.68 m<sup>2</sup> to 3322.55 m<sup>2</sup>, and therefore the applied level per m<sup>2</sup> was reduced to €29 per m<sup>2</sup> to reflect the larger size of the property. **In conclusion, the proposed NAV was €98 800.** (rounded from a total of € 98,863.90m<sup>2</sup>), from the figure on the Valuation List of € 91,900.

8.6 The following table from the Respondent's précis sets out these figures clearly:

The valuation arrived at on the following basis:

Floor	Use	Area (m <sup>2</sup> )	NAV € (m <sup>2</sup> )	Total NAV € (m <sup>2</sup> )
0	OFFICE(S)	61.02	€29	€1 769.58
0	SHOWROOM	802.59	€34.80	€27 930.13
0	STORE	23.76	€29	€689.04
0	WAREHOUSE	2028.60	€29	€58 829.40
0	WORKSHOP	239.12	€29	€6934.48
0	YARD	600	€2.9	€1740
MEZZ	STORE	167.46	€5.8	€971.27
	Total NAV Rounded			€98 800

8.7 Mr Goian discussed Key Rental Transactions (KRTs) near the Property to support the NAV; KRT 1 in Drogheda (PN1278009), KRT 2 in Dunleer (PN2210057), and KRT 3 in Dundalk (PN 1282329). These appear in an appendix to this decision (N/A to public).

8.8 The Respondent also introduced evidence of four NAV Comparisons, three of which were situated in Ardee (PN1279074, PN1279168, and PN1279168) and one in Dunleer (PN 2164528). The full details of these properties are as follows:

1. PN 1279074 Jervis Street, Ardee, Co. Louth

This is an industrial unit located approx. 500 metres east of the subject property comprising, in total, 2628.95m<sup>2</sup> which is assessed at the NAV of € 91,100, which is calculated at the unit value rates per square metre as follows:

Office	88.79m <sup>2</sup> @ € 32.00 per m <sup>2</sup>
Showroom	1,091.52m <sup>2</sup> @ € 38.40 per m <sup>2</sup>
Store	1,389.84m <sup>2</sup> @ € 32.00 per m <sup>2</sup>
Store (first floor)	58.80m <sup>2</sup> @ € 32.00 per m <sup>2</sup>
Yard	25.00m <sup>2</sup> @ € 3.20 per m <sup>2</sup>

There were no representations made in this case and no appeal made to the Tribunal

2. PN 1279168 Irish Street, Ardee, Co. Louth

This is a modern industrial unit located approx. 1.4 kilometres northeast of the subject property comprising, in total, 1,781.80m<sup>2</sup> which is assessed at the NAV of € 61,700 that is calculated at the unit value rates per square metre as follows:

Showroom	390.32m <sup>2</sup> @ € 38.40 per m <sup>2</sup>
Store	1,288.20m <sup>2</sup> @ € 32.00 per m <sup>2</sup>
Offices (first floor)	103.28m <sup>2</sup> @ € 32.00 per m <sup>2</sup>
Yard	700.00m <sup>2</sup> @ € 3.20 per m <sup>2</sup>

There were no representations made in this case and no appeal made to the Tribunal



3. PN 1278938 John Street, Ardee, Co. Louth

This is a factory industrial unit located approx. 1.4 kilometres south of the subject property comprising, in total, 4,948.77m<sup>2</sup> assessed at the NAV of € 145,000, which is calculated at the unit value rates per square metre as follows:

Factory	4,492.80m <sup>2</sup> @ € 29.00 per m <sup>2</sup>
Offices	251.69m <sup>2</sup> @ € 29.00 per m <sup>2</sup>
Store	54.23m <sup>2</sup> @ € 29.00 per m <sup>2</sup>
Office (first floor)	150.05m <sup>2</sup> @ € 29.00 per m <sup>2</sup>

Horse Power & Tanks additional values

There were no representations made in this case and no appeal made to the Tribunal

4. PN 21645288 Shamrock Hill, Dunleer, Co. Louth

This is a modern industrial unit located approx. 14.2 kilometres east of the subject property comprising, in total, 3,018.68m<sup>2</sup> which is assessed at the NAV of € 98,900, calculated at the unit value rates per square metre as follows:

Factory	2,866.85m <sup>2</sup> @ € 29.00 per m <sup>2</sup>
Offices	151.83m <sup>2</sup> @ € 29.00 per m <sup>2</sup>
Yard	3,924.00m <sup>2</sup> @ € 2.90 per m <sup>2</sup>

There were no representations made in this case and no appeal made to the Tribunal

8.9 The Respondent submitted email evidence to the Tribunal after the hearing. The evidence demonstrated his attempts to agree the floor areas with the Appellant. Following his inspection on 6 December 2022, Mr Goian sent an email on 9 December 2022 to the Appellant, with an updated floor area and plan of the buildings. The email stated:

*"I would appreciate if you could back to me and confirm the fact that the floor area is correct as per my inspection. The proposed valuation at the hearing will be €99 200 (based on floor area increase)."*

8.10 The Respondent explained that that figure of €99,200 quoted to the Appellant in his email of 9 December was actually inaccurate (due to the wrong level applied to offices). He maintained that the correct figure was the slightly lower figure of €98,800, as stated in the précis of evidence.

8.11 The Valuation Office did not receive any reply to the email about floor areas.

8.12 Mr Goian also included emails from a previous valuer, Ms Tanya Vasileva, who inspected the Property in September 2022. She also put the Appellant on notice that the floor areas were larger than the Valuation Office had originally measured them to be. She attempted to agree the areas with the Appellant, however no agreement was forthcoming.

## **9. SUBMISSIONS**

9.1 There were no legal submissions made in this case.

## **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 Louth County Council.

10.2 It is very regrettable that the Appellant did not attend the Tribunal hearing. His request for an adjournment was refused on 20 January 2023. It was a very late request, in circumstances where the Appellant already benefitted from an adjournment in respect of the first hearing date allocated to this appeal. The Appellant's reason for requesting an adjournment was that an unnamed "*consultant*" was unavailable. The Appellant failed to previously identify any consultant or agent in his Notice of Appeal or précis.

10.3 Rule 92 of the Valuation Tribunal (Appeals) Rules 2019 provides as follows:

*92. If a party does not appear at a hearing having been informed in writing of the date, time and place of hearing in accordance with Rule 83, a Tribunal may dismiss the appeal. Before doing so, a Tribunal shall consider any information available to it following such enquiries as may be practicable about the reasons for the party's absence.*

10.4 The Tribunal cannot facilitate a succession of adjournments without good reason, and the integrity of the system of rates depends on challenges to valuations being prosecuted to conclusion, or else dismissed.

10.5 It was open to the Tribunal to dismiss the appeal when the Appellant failed to appear. However, the Respondent contended that evidence should be given in support of a changed and increased NAV; the sum of €98,800.

10.6 The Tribunal was satisfied that the Respondent was entitled to make this argument. It is appropriate that the Property has a valuation which reflects its true size and characteristics. Furthermore, the Appellant was on notice about the Respondent's calculation of the areas, but failed to engage with the Valuation Office's valuers who carried out inspections on his Property. He then forfeited the opportunity to dispute the evidence due to his non-attendance at the hearing.

10.7 As there was no *legitimus contradictor*, there was no evidence put forward to contradict the oral evidence of the Respondent, which reflected his very detailed and well-reasoned précis of evidence.

10.8 Accordingly, the Tribunal accepts the Respondent's evidence.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal allows the appeal, and confirms the view of the Respondent that the valuation should increase to €98,800.

**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.