

Appeal No: VA22/4/0011

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

WALSH SAWMILL

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5024901, Property Type: Workshop/Yard, Address of Property: Ballyshonack, Kildorrery, County Cork. (“The Property”)

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF APRIL 2026**

BEFORE

Killian O'Higgins - FSCSI, FRICS

Member

1. THE APPEAL

1.1 By Notice of Appeal received on the 22nd day of November 2022 Appellant appealed against the determination of the Respondent pursuant to which the rateable value of the Property was fixed in the sum of €18.

1.2 The valuation of the Property falls to be determined from a decision made by the revision manager under section 28(4) of the Valuation Act 2001 as amended (‘the Act’) that a material change of circumstance had occurred since a valuation under section 19 of the Act was last carried out in relation to the rating authority area in which the Property is situate. Accordingly, the value of the Property must be ascertained by reference to values of other properties comparable to the Property as appearing on the valuation list for the rating authority area of County Cork. The method of determining the value of the Property is provided for at section 49(1) of the Act.

1.3 The sole ground of appeal as set out in the Notice of Appeal is that the valuation of the Property is incorrect as it does not accord with that required to be achieved by section 49 of the Act because: “*a) The Valuation is incorrect. The sole ground advanced was “The Valuation is too high, with the cost of and not being able to source raw materials I haven't worked there for a few months the shed is only used as storage.”*”

1.4 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5.00 RV.

2. VALUATION HISTORY

2.1 No evidence was offered of an application to the Respondent for the appointment of a revision manager to exercise powers under section 28(4) of the Act. No evidence was offered by the Respondent as to what material change of circumstances had occurred since a valuation under section 19 was last carried out in relation to the rating authority area of County Cork

2.2 On the 8th day of September, 2022 a copy of a proposed valuation certificate was issued under section 28(6) of the Act was sent to the Appellant indicating a valuation of €18.

2.3 A final valuation certificate issued on the 26th day of October, 2022 stating a valuation of €18.

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. FACTS

4.1 Ms. Tanya Vasileva (“the Respondent’s Representative”) provided the following information which the Tribunal is treating as fact, the Appellant not having objected to the characterisation of the Property as outlined in the précis of the Respondent’s Representative.

4.2 The subject property is located in the Ballyshonock area, on a rural road and just off the Mallow-Dublin Road. It is approximately 3.4km north/west from Kildorrery village, 25km north/east of Mallow and 16km west of Mitchelstown.

4.3 The Property is a basic workshop with single cladding walls and roof, open sides, in use for sawmill business at the date of inspection, the 15th day of August 2022 and the date of issue of the Final Certificate on the 26th day of October 2022. The Property is situated beside domestic properties and a farm workshop.

4.4 The measured areas are:

Description	Sq. M
Workshop	200.83
Yard	136.00

4.5 No evidence was offered as to the material change of circumstance that had taken place.

5. ISSUE

Although the Appellant attempted to introduce other issues subsequently, no application was made to the Tribunal to amend the appeal to the Tribunal dated the 22nd day of November 2022 which dealt with quantum only. The Appellant stated that the value he considered ought to have been determined as €5.00 RV.

6. RELEVANT STATUTORY PROVISIONS:

6.1 All references to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.

6.2 In relation to Section 3(1) of the Act, so far as material to this appeal, no evidence was provided as to what "material change of circumstances" had occurred.

6.3 No evidence was provided on the circumstances of the appointment of a revision manager or on what basis the revision manager was satisfied that a material change of circumstances as

defined by section 3 of the Act had occurred, since a valuation under section 19 of the Act was last carried out in the rating authority area in which the Property is situated.

6.4 A revision manager has power under section 28(4)(b) of the Act to:

*“(i) carry out a valuation of that property, and
(ii) include that property on the list together with its value as determined on foot of that valuation.”*

6.5 It appears to the Tribunal that the appointed revision manager acted on that basis but has no evidence other than the issue of the proposed valuation certificate and final valuation certificate.

6.6 Where a property falls to be valued for the purpose of section 28(4) of the Act that value is ascertained 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 On the 15th day of July 2024 via email from Mr. John Gallagher to the Tribunal, Mr. Walsh, the Appellant, stated that the unit on his property, which was previously a sawmill, was no longer a manufacturing unit. He stated that he had turned the sawmill into additional storage areas for his working farm.

7.2 Mr. Walsh provided photographs in a separate email to support this point. One photo indicated fertiliser being stored in the old sawmill plant, another indicated that some farm machinery was being stored; there was a photo of bales of hay in the Property together with pallets ready to take more bales of hay. Also, there was one single photo of the redundant saw.

7.3 Mr. Walsh stated that he could not be any clearer in making his point - the areas that were previously used as a sawmill no longer functioned as a sawmill - they were now supporting the wider working of the general farm areas, and he now considered those areas as part of his working farm.

7.4 On the 17th day of July 2024 via email from Mr. John Gallagher to the Respondent's Representative, Mr. Walsh confirmed that he converted the property back to domestic/farm use in February 2023.

7.5 Mr. Walsh offered no comparative evidence in support of the Rateable Valuation of €5 advanced in the Appellant's appeal.

7.6 In response to the receipt of a copy of the Respondent's Representative's précis, Mr. Walsh simply reiterated his previous point stating: *“the sawmill is no longer in operation, and has been incorporated as part of the working farm for the last 18 months.”*

8. RESPONDENT'S CASE

8.1 In the précis provided to the Appellant and to the Tribunal, the Respondent's Representative provided no evidence of qualification, experience, or training in relation to the matter in contention – the Rateable Valuation of the property.

8.2 As with any other appellate body, the Tribunal expects 'expert evidence' to be supplied by 'experts'. An expert is:

“a person who, through specialist training, study, or experience, is able to provide a court, tribunal, or hearing with relevant scientific, technical, or professional information or opinion, based on skills, expertise, or knowledge, that is likely to be beyond the experience and knowledge of the representing lawyers, judge, jury or panel” (Jackson and Powell on Professional Liability, 9th Edition December 2021).

8.3 A judgement delivered by Mr. Justice Barr on the 6th day of December 2019 - Havbell DAC and Hilliards [2019] IEHC 841 in relation to the admissibility of evidence stated:

“In that report, there is no indication whatsoever that Mr. Fitzpatrick holds any qualification at all in relation to banking or financial matters. Nor is there any

statement that he has any experience in relation to banking or financial matters. Broadly speaking, there are essentially two types of witnesses whose evidence can be tendered to the Court. The first are witnesses as to fact, who can give evidence as to what they saw and heard and did at a particular time. The second category is expert evidence, where the expert due to his or her knowledge, qualifications and experience in the relevant area, is permitted to give opinion evidence on the issue before the Court. Experts are the only people permitted to give opinion evidence before a Court. While it is certainly true that there is no specific threshold which has to be met before a person can be classed as being an expert, there must be some evidence before the Court that the person proffered as an expert, does in fact have some expertise and experience in the relevant area upon which he or she proposes to give an opinion. In this case such evidence is totally lacking. I simply do not know who Mr. Fitzpatrick is; what qualifications, if any, he may hold and what experience, if any, he may have in banking and financial matters. In the absence of any such evidence, I decline to admit Mr. Fitzpatrick's report in evidence."

8.4 The main difference between an expert witness and a witness of fact (i.e. an ordinary witness) is that the expert can provide an opinion, whereas the witness of fact may only give factual evidence.

8.5 In the circumstances the opinion of Rateable Valuation as provided by the Respondent's Representative, together with contentions cannot be admitted as evidence. However, given that the Appellant has not challenged the Respondent's Representative's details in relation to 2.1 "Location", 2.2 "Subject Property", Floor area in 4.1, and the "RV Comparisons" at 4.2, the Tribunal accepts those specified paragraphs as evidence of fact and together with factual Appendices 1 to 3, is the only evidence provided on behalf of the Respondent which is admitted by the Tribunal.

9. LEGAL SUBMISSION

9.1 Martin Scanlon BL provided a legal submission on behalf of the Respondent.

9.2 Mr Scanlon said that the property was "*a basic workshop – single cladding walls and roof with open sides – and a surrounding yard which is in use for a sawmill business.*"

9.3 A history of the appeal was provided stating that it was a quantum appeal and no effort was made seek the permission of the Tribunal to change the terms of the appeal lodged by the Appellant who valued the Property at €5.00 RV.

9.4 Mr. Scanlon quoted Tribunal Rules (2019) 55 to 59 inclusive which deals with requests to amend appeals lodged. He also quoted sections 28(4) and 49(1) of the Act.

9.5 Mr. Scanlon quoted Nangles Nurseries v Commissioner of Valuation [2008] IEHC 73 and Mac Menamin J's principles of interpretation of the Act and emphasising that the onus of proof rests with the Appellant. He also quoted examples *Proudlane Ltd. t/a Plaza Hotel* (VA00/2/032) and *AIB Group PLC v Commissioner for Valuation* (VA20/4/0053). In *Dave Doherty (Insurance Brokers) Ltd v Commissioner for Valuation* (VA19/5/1635), Mr Scanlon quoted the judgement in a documents-based appeal:

“The Tribunal finds that the onus rests with an Appellant in all appeals before the Tribunal. Further the comments of the Tribunal in FGM Properties v Commissioner for Valuation (VA19/5/1091) refer wherein it was confirmed that in order to succeed in their appeal, an Appellant must demonstrate, through cogent evidence, that the Respondent has erred. In advancing their case in this appeal, the Appellant was obliged to substantiate their grounds of appeal that the Respondent’s valuation was incorrect and the Commissioner’s approach to valuation resulted in an incorrect valuation of the Property.”

Later he further quoted from that appeal at paragraph 10.5 in relation to evidence or lack of same proffered by an Appellant:

“The Tribunal, while an expert body knowledgeable in matters of rating, is not at large to blindly approve NAV figures presented to it. The Tribunal relies on the parties and looks to the evidence put before it to instruct what is a fair and accurate valuation for a property given its circumstances and the valuation of similarly circumstanced properties in the rating area. No evidence was proffered by the Appellant in this appeal as would explain or otherwise justify the NAV levels sought, and accordingly the Tribunal did not have before it, evidence that was reliable or capable of being tested.”

9.6 Mr Scanlon stated that no cogent evidence, had been put forward by the Appellant to demonstrate any error by the Respondent in respect to the valuation applied and for that reason alone, the appeal should be dismissed. He also referenced and quoted from emails sent for and on behalf of Mr. Walsh dated the 15th and 17th days of July 2024.

9.7 In similar vein, Mr. Scanlon quoted the Tribunal Rules (2019), particularly 36(d) dealing with the obligation on the Appellant to provide comparator properties together with detailed information.

9.8 Mr. Scanlon submitted that there was no basis for departing from the valuation set out in the Final Certificate. The Respondent had provided evidence of three local properties similarly circumstanced.

9.9 In relation to the use which the property was put, Mr Scanlon denied that this was within the scope of the appeal but pointed out that the Appellant accepted that his change of use was after the issue of the Final Certificate. Mr. Scanlon referenced *Zrko v Commissioner of Valuation* (VA12/1/015).

9.10 Mr. Scanlon requested that the Tribunal dismiss the appeal on the ground that the Appellant has failed to adduce any evidence to demonstrate any error on the part of the Respondent in respect of the sole ground of appeal, namely the value given to the Property. He contended that, as a result, the valuation of the Property appearing on the relevant valuation list should be affirmed.

9.11 No legal submission was provided by the Appellant.

Application for Costs

9.12 In the event that the Tribunal determined that the appeal was not well founded, the Respondent sought its costs on the basis that they follow the event offering the Tribunal's judgement *Killarney Country Lodge Limited* (VA98/2/006) as an example.

FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine whether the value of the Property accords with that which is required to be achieved by section 49 of the Act, namely a value that is relative to the value of other properties on the valuation list of the County Cork rating authority area.

10.2 In relation to Mr Martin Scanlon BL's submission, the Tribunal accepts that the Appellant did not substantiate their claim to a €5.00 RV or to provide details of inaccuracies in the Respondent's approach or provide evidence from the Co. Cork list. However, for reasons outlined earlier, the Tribunal had no admissible evidence, or proof, related to RV calculation from the Respondent. The Appellant accepted that the change of use occurred after the date of issue of the Final Certificate.

10.3 Neither party advanced evidence on which the Tribunal could rely in adjudicating matters. Accordingly, in proceeding to make a judgement on the matter the Tribunal relied on Rule 89 of the Valuation Tribunal (Appeals) Rules 2019 (partially quoted):

“Subject to the Second Schedule of the Act, a Tribunal may regulate its own procedure and conduct the appeal in the manner it considers fair and proportionate to the importance of the appeal, the anticipated costs and the resources of the parties.”

10.4 The Appellant has stated that a change of use occurred in February 2023 after the date of issue of the Final Certificate on 22nd day of October 2022. Accordingly at the date of issue of the Final Certificate the Property was a relevant property under Schedule 3 of the Act and validly entered on the list.

10.5 Accordingly it falls to the Tribunal to consider the Rateable Valuation of the property in circumstances where only three comparable properties are available from the Co. Cork list.

10.6 Having checked data on the list, and replicated the data below, the Tribunal notes that there is no evidence on the list to support the floor areas offered by the Respondent's

Representative. However, in the absence of a challenge by the Appellant, the Tribunal accepts the floor areas of comparable properties offered by the Respondent's Representative as fact. Photographs were provided for PN 5014007 and PN 2197056 but not PN 2175451. In the absence of a photograph, the Tribunal omits PN 2175451 from consideration.

PN 5014007

Valuation Report - Property Number: 5014007				
Level	Use	Area (m2)	NAV (€ per m2)	NAV (€)
Additional Items (€):				€0.00
Total (€):				€0.00
Rateable Valuation (€):				€4.00
NAV = Net Annual Value (Section 48 of the Valuation Act 2001)				
Date Published : 20/03/2018				
Valuation Date : None				

RV €4.00 for 48.68 Sq. M = €1.00 RV per 12.17 Sq. M
 Similarly circumstanced, adjacent to a residence. No yard valued

PN 2197056

Valuation Report - Property Number: 2197056				
Level	Use	Area (m2)	NAV (€ per m2)	NAV (€)
Additional Items (€):				€0.00
Total (€):				€0.00
Rateable Valuation (€):				€25.00
NAV = Net Annual Value (Section 48 of the Valuation Act 2001)				
Date Published : 05/11/2008				
Valuation Date : None				

RV €25.00 for 292.75 Sq. M - €1.00 RV per 11.71 Sq. M
 Far superior property with concrete yard which is not valued.

PN 2175451 – excluded in the absence of photographic evidence.

Level	Use	Area (m2)	NAV (€ per m2)	NAV (€)
Additional Items (€):				€0.00
Total (€):				€0.00
Rateable Valuation (€):				€4.00

NAV = Net Annual Value (Section 48 of the Valuation Act 2001)

Date Published : 06/12/2004

Valuation Date : None

10.7 The RV of €18.00 on the list for the Property includes the yard. Neither of the comparable properties considered have yards valued - only the buildings are valued on the list. Accordingly, the Tribunal does not propose to value the yard. Using the information supplied by the Respondent’s Representative, the Tribunal assesses the €18.00 RV apportioned as €16.66 for the building and €1.34 for the yard – total €18 RV. ($€18.00 \text{ RV} / 18.44 \text{ RV before rounding} = 97.61\%$. $€17.07 \text{ RV} \times 97.61\% = €16.66 \text{ RV}$).

€16.66 RV for 200.83 Sq. M represents €1.00 RV per 12.05 Sq. M.

10.8 The summary analysis is:

Property	Sq. M per €1 RV
5014007	12.17
2197056	11.71
The Property	12.05

10.9 The Tribunal’s approach is to value the Property based on properties on the list as required under section 49(1) of the Act.

10.10 The property is demonstrably and significantly inferior to PN 2197056. The Property was described in the legal submission as “*a basic workshop – single cladding walls and roof with open sides – and a surrounding yard which is in use for a sawmill business.*” It is also

inferior, although less so, to PN 5104007, a solid structure. Using an average of 12.17 and 11.71 Sq. Ms per €1.00 RV = 11.94 Sq. M per €1.00 RV (average of the two comparisons).

10.11 This formula produces a result for the Property of 200.83 Sq. M/11.94 Sq. M = €16.82 RV. However, this figure needs to be deflated to allow for a significantly inferior construction of the Property and the Tribunal considers an average 25% discount factor as appropriate - a €4.20 RV reduction providing an RV of €16.82 RV – €4.20 RV = €12.62 RV, say €12.50 RV.

10.12 The Tribunal is of the opinion that it serves justice not to have excluded the Respondent's précis in full. Whilst the Appellant did not meet the burden of proof it is equally true that, for reasons outlined earlier, the RV evidence offered by the Respondent's Representative could not be admitted. In the circumstances relying on Section 49(1) of the Act the Tribunal assessed the RV of two comparable properties adjusting for inferior construction.

10.13 The Tribunal notes that while the Appellant may disagree with the Tribunal's decision to admit any information from the précis of the Respondent's Representative, there is a remedy available to the Appellant to address that matter via the Right of Appeal details below. Equally, the Respondent has an option to appeal this judgement.

10.14 In addition, the Tribunal notes that it is open to the Appellant to apply to have the Property removed from the list under section 27 and Schedule 4 of the Act if the Appellant can prove a material change of circumstances from sawmill to farm use. It is a matter to the Appellant to initiate and prove his case.

11. DETERMINATION

11.1 Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €12.50 RV.

And the Tribunal so determines.

12. DECISION ON THE APPLICATION FOR COSTS

12.1 Rule 164 of the Valuation Tribunal (Appeals) Rules, 2019 states:

A Tribunal shall only allow costs which are proportionate to the matters in issue on an appeal and which were reasonably and proportionately incurred. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably incurred. A Tribunal shall also have regard to:

- (a) the importance of the appeal to all the parties;*
- (b) the complexity of the appeal or the difficulty or novelty of any questions raised;*
- (c) the skill and specialised knowledge involved; and*
- (d) the time in preparing and presenting the appeal.*

12.2 The Tribunal considers that the Mr Scanlon's application for costs, of itself, is not proportionate to the matters in issue. The Appellant truthfully provided evidence of the date of change of use post the issuing of the Final Certificate. The Appellant made no legal submissions.

12.3 The Tribunal recognises that while uncomplicated legal issues did arise, the Appellant's evidence was truthful and helpful to the Respondent, and that the costs of the Respondent were reasonably incurred.

12.4 The Tribunal disallows the application for costs.

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.