

Appeal No. VA04/2/016

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**Fitzgerald Vehicle Body Builders Cork Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Lot 1D Knockane, ED Derragh, RD: Millstreet, Co. Cork, Factory and Yard.

**B E F O R E**

**John F. Kerr, BBS.,ASCS.,MRICS.,FIAVI.**

**Deputy Chairperson**

**Patrick Riney, FSCS.,MIAVI.**

**Member**

**Joseph Murray, Barrister**

**Member**

**JUDGEMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 6th DAY OF October, 2004**

By Notice of Appeal dated the 7<sup>th</sup> April, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €197 on the above described property.

The Grounds of Appeal as set out in the said Notice of Appeal are that:

- (1) “The valuation is excessive and inequitable having regard, inter alia, to the valuation of comparable properties and the tone of the list”.
- (2) “The Commissioner’s decision in determining this appeal is invalid and bad in law”.

**At issue**

Quantum

This appeal proceeded by way of an oral hearing in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on Tuesday the 6<sup>th</sup> of July, 2004. The appellant was represented by Mr. Alan McMillan, ASCS, MRICS, MIAVI, a director of GVA Donal O Buachalla. The respondent was represented by Mr. Brian O’Flynn, a Valuer in the Valuation Office. Mr. John Fitzgerald, owner of the subject property, gave evidence at the hearing. In accordance with the Rules of the Tribunal, the parties had, prior to the commencement of the hearing, exchanged their précis of evidence and submitted same to this Tribunal. At the oral hearing, both valuers having taken the oath, adopted their précis as being their evidence-in-chief.

### **The Property**

The property is located close to the village of Cullen on a narrow country lane, off a county road, a short distance off the Killarney to Mallow road (N72), approximately ten kilometres east of Rathmore and 30 kilometres west of Mallow.

The property comprises a newly built free standing factory premises (built circa 2002/2003) of mainly portal steel framed construction with pitched double skin insulated metal decked roof and walls clad in similar material and with a concrete floor, together with a lean-to section to the rear and a section of integral offices to the front.

The main factory area has an eaves height of circa 7 metres reducing to circa 5 metres in the lean-to (a separate area used as a paint shop). Access to the factory is via a series of roller shutter doors. There is a substantial hardcore yard to the front along with a narrow concrete apron to the front of the main factory.

### **Floor Areas (Agreed)**

Offices	142.6 sq.m
Factory	1,311.0 sq.m (including lean-to paint shop)
Yards (4 & 5)	5,183.0 sq.m

**Services**

It is understood that there are no mains water or drainage services connected to the building and that there is no central heating to the factory areas.

**Tenure**

The property is held in fee simple.

**Valuation History**

The subject is a new premises which was first valued in October 2003 at RV €197.

The Valuation Certificate (Proposed) issued on 1<sup>st</sup> October, 2003.

Representations were furnished but no reduction made and the Valuation Certificate issued on 5<sup>th</sup> December, 2003.

An Appeal Application was submitted to the Commissioner on 14<sup>th</sup> January 2004. Negotiations were unsuccessful and an Appeal was filed to the Valuation Tribunal, seeking an RV of €120 according to the Notice of Appeal. An R.V. of €152 was contended for in the Appellant's précis of evidence and at the oral hearing.

The property is included in the Valuation List as follows:

Occupier:	Fitzgerald Vehicle Body Builders Cork Limited
Townland:	Knockane
ED:	Derragh
Lot No.:	1D
Description:	Factory and yard
RV:	€197

The VO property number is 2160249.

### **Appellant's Evidence**

Mr. Alan McMillan referred in some detail to his précis of evidence. He stated that his client Mr. Fitzgerald had tried unsuccessfully for some time to get a tenant for the older section of the premises. He also stated that his client had not received correct Notification from the Valuation Office and also pointed out that the area over the office section was only recently used as stores.

Mr. McMillan emphasised the remote nature of this location and argued that his client had tried to relocate his business previously, but unsuccessfully. He introduced some additional photographs with the consent of the Respondent. He pointed out the subject premises had been available for letting for a few years and that the lane had been widened recently.

Mr. McMillan summarised his Valuation Considerations and reviewed each of the three Comparison Properties contained in his précis of evidence, details of which are contained in Appendix 1 to this judgment.

He also raised the issue that under section 30 of the Valuation Act, 2001, an appeal was made by his client, a fee of €250 was paid to the Valuation Office, a further fee of €300 was subsequently paid to the Valuation Tribunal and that the Valuation Office was apparently represented by the same Officer each time.

The owner of the subject property, Mr. John Fitzgerald, gave evidence under oath on behalf of Fitzgerald Vehicle Body Builders Cork Limited and was questioned by Mr. McMillan. Mr. Fitzgerald stated that he had moved to Carrigtohill in 1988 and had been away for about 11 years and was unable to let the older adjoining premises, which they had vacated. He had instructed Mr. Pomeroy, a former Estate Agent from Millstreet, to seek a tenant for that older building. He then moved back to Cullen approximately two and half years ago and bought the property adjoining for about €8000, i.e. farmland as it

was then, which comprised circa two and a half acres. When he was asked to compare the new and the old premises he pointed out that it made no real difference to the operation of his business. He also stated that the loft area which he had mentioned was not easily accessible and of no great use, except for very limited storage. He confirmed that, on average, approximately three truck bodies per week were supplied and installed by his firm at the relevant property. The old buildings were still being used and there were two cranes and 8 No. overhead roller shutter doors in the new building. He noted that Limerick was circa 65 miles away, Tralee circa 40 miles, Mallow and Killarney about 20 miles each, demonstrating how remote the subject area is from major population centres.

Mr. Fitzgerald was cross-examined by Mr. Brian O’Flynn who asked him if the property was about half a mile off the main road and somewhat visible. He accepted both points but emphasised that, whilst the property was only a short distance from the main road, poor access to the property was proving very difficult in terms of deliveries.

Mr. O’Flynn asked how many loading bays and shutters there were and Mr. Fitzgerald stated there were six loading bays with roller shutters to the main building and two doors to the paint shop. He was also asked if this was a typical warehouse with doors that were more expensive and he acknowledged and answered in the affirmative.

Mr. O’Flynn asked if the loft had been used for storage and Mr. Fitzgerald said this had just recently been the case.

### **Respondent’s Evidence**

Mr. O’Flynn gave evidence on behalf of the respondent and referred to his précis of evidence in some detail and specifically pointed out that the agent did not claim that the “Commissioner’s decision in determining this appeal was invalid and bad in law” at first appeal stage. He accepted that the walls surrounding the main structure were mainly metal cladded and not of masonry construction. He considered it inappropriate to attempt

to extract a comparison from part of an overall rateable valuation and stated that there was an old valuation in 2001/2 for the hardcore yard.

Mr. O’Flynn had looked at a basket of comparisons, details of which are attached in Appendix 2 to this judgment, and stated that Munster Joinery was one of his more “minor” comparisons.

During cross-examination, Mr. McMillan enquired again if Mr. O’Flynn accepted that the factory was partially walled, and did not have masonry walls around all of the building structure, and the latter agreed.

Mr. McMillan asked when specifically had Mr. O’Flynn been nominated as the Revising Officer. Mr. O’Flynn accepted he was the Revising Valuer and had also been designated to assist with the Appeal process. Mr. O’Flynn said it was the practice in the Valuation Office for a Revising Officer to follow through to the Appeal and deal with it until a decision was finally made, at a higher level.

Mr. O’Flynn stated that he had valued the yard at €28.40 and did not accept this was extraordinary. He stated that he did not have regard to the Munster Joinery comparison on this point. When asked if he had accessed the loft area of the subject property by ladder, Mr. O’Flynn could not recall.

Mr. McMillan also asked if Mr. O’Flynn accepted the old premises in Cullen were vacant for years and still available to let. Mr. O’Flynn only knew that the business was still there and had expanded over the years.

Some discussion ensued with Mr. O’Flynn explaining to the Tribunal his interpretation of remote locational criteria, referring to a peninsula situation to illustrate his views.

Mr. McMillan then summed up his client’s case and made the following points:

1. He stated that Mr. O'Flynn now acknowledged that he was not apparently the Appeal Officer.
2. The subject property is in a rural location.
3. The comparisons submitted show areas that were broken down by Mr. O'Flynn's Valuation Office colleagues, as distinct from the single unit nature of the relevant property.
4. It was accepted by Mr. O'Flynn that some walls of the building were metal clad.
5. There is a difference of opinion in regard to how the loft area should be considered.
6. Some of the yard area has been deducted but the level applied to the remaining area was increased which, in his opinion, was entirely unjustified, particularly when referring to the Munster Joinery comparison figures.
7. He remained concerned about the initial procedures adopted by the Valuation Office with regard to the Appellant's name and Notification which, in his opinion, had not been properly attended to.

Mr. Brian O'Flynn summed up his case on behalf of the Respondent and made the following points:

1. He would not comment on the issue of the appointment of the Revising Officer and the Appeal Officer.
2. The entire area of yards of circa 9599 sq.metres works out at about €0.60 per sq.metre.
3. The subject relevant property includes a high quality building.
4. Some side walls are not of masonry construction.
5. He had offered a basket of comparisons in the same Rating Authority Area and referred to Carrigtohill, which he noted, was closer to Midleton, than to Cork City, but acknowledged that he had not visited that complex.
6. He was applying a nominal rental rate of €13.66 / m<sup>2</sup> to the loft area.

### Findings & Determination

The Tribunal has considered all the evidence and arguments presented by both valuers in this appeal and makes the following findings:

1. It is accepted that the subject premises is in a remote location.
2. It is accepted that the loft area is not really accessible and should not be rated.
3. The Tribunal has considered all comparisons and considers the Munster Joinery property to be of most assistance in this case.

Accordingly, the Tribunal determines the rateable valuation as follows:

1. Offices 142.60 m <sup>2</sup> @ €34.17 per sq. metre	= € 4,872.64
2. Factory 1311 m <sup>2</sup> @ €20.51 per sq. metre	= €6,888.61
3. Yards (Nos. 4 &5) 5183.40 m <sup>2</sup> @ €0.70	= € 3,628.38
4. Allow 20% reduction	= { <u>€ 725.68</u> }
Estimated NAV	= €34,663.95
@ 0.5%,	= €173.32
<b>Say RV</b>	<b>€173</b>

And the Tribunal so determines.