

Appeal No: VA17/5/070

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

SPRING ELEGANCE LTD. T/A CERAMICA

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2187467, Industrial Uses at Floors; 0,1, 12 BC Hebron Industrial Estate, Hebron Business Park, Kilkenny, County Kilkenny.

B E F O R E

Barry Smyth – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Claire Hogan - BL

Member

Hugh Markey – FSCSI, FRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF JULY, 2018.**

1. THE APPEAL

1.1 By Notice of Appeal dated the 4th 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 €31,100.

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

“2. The subject property was agreed to lease in September 2015 at €20,000 per annum. The unit was subsequently bought by the occupiers instead. The Commissioner’s estimate is out of line with this evidence.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €19,740.

2. REVALUATION HISTORY

2.1 On the 11th day of May, 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 €31,100.

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 it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €31,100.

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 13th day of March, 2018. At the hearing the Appellant was represented by Mr Eamonn Halpin BSc (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. Ltd and the Respondent was represented by Mr Terry Devlin BSc, SCSi, RICS 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.

4.1.1 Location: The property under appeal is located in Hebron Business Park in Kilkenny City. It is described by the Appellant’s valuer as being ‘the most recognised industrial location in Kilkenny City’ and by the Respondent valuer as enjoying ‘a high profile location close to the entrance to the park’.

4.1.2 Description: The property comprises a modern industrial building with the front part in use as a showroom dedicated to the display and sale of bathrooms/tiles. There is a warehouse to the rear of the ground floor; storage on mezzanine level and offices at first floor. Externally, one of the two roller shutter doors has been replaced with glazing.

4.1.3 Areas: The following floor areas were agreed between the valuers, the Respondent having amended his areas at Tribunal stage:

Ground Floor:	Showroom	314.48 sq. m.
	Warehouse	149.00 sq. m.
Mezzanine:	Store	38.10
First Floor:	Office	112.00

5. ISSUES

5.1 The issue was purely one of quantum and the application of a loading for showroom use.

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 Mr Halpin, having adopted his Précis as his evidence in chief, opined that the best market rental evidence was an agreement for lease for the premises dating from 2015 which devalued the premises at €34 per sq. m. and the actual passing rent of the adjoining unit which devalued at €38 per sq. m.

He suggested the Commissioner had adopted rates in the range of €30 – 45 per sq. m. for ‘standard’ units in Hebron Business Park and he saw no reason to deviate from this range. He went on to state that the presence of limited glazing in the front elevation did not make part of the property into a showroom and he disagreed with the Commissioner’s approach in applying a loading of 20% to reflect this use.

Mr Halpin relied on one ‘market comparison’ and four ‘tone of the list’ comparisons, all located in Hebron Business Park. These are briefly:

- (i) PN 2131385 – let on a month to month basis and devaluing at a rent of €38 per sq. m. for the warehouse and offices and €7.60 for the mezzanine.
- (ii) PN2200131 – this is a purpose built car repair/sales unit with a glazed atrium and eaves height of 9m in the warehouse and two storey offices. The NAV analyses at rates of €45 per sq. m. applied to the warehouse offices (ground and first floor); stores on basement and first floor levels. Mr Halpin suggested this property was ‘more of a showroom than the subject’.
- (iii) PN 2169392 – a modern warehouse of similar size to the subject and in use for retail purposes. A rate of €45 was applied to all areas in arriving at the NAV. Mr Halpin suggested there was no allowance for the fact that a retail use was carried on.
- (iv) PN 1064936 – this is a warehouse unit in Hebron valued at €35 per sq. m. Mr Halpin suggested this rate sets a ceiling for the rate to be applied to the subject.

- (v) PN 209271 – A similarly sized warehouse valued at €35 per sq. m.; with the mezzanine valued at €7 per sq. m.

Mr Halpin put forward his opinion of the Net Annual value as being €20,400; having applied rates of €35 per sq. m. (Warehouse & Showroom and First Floor Offices) and €7 per sq. m. to the mezzanine area.

In cross examination, Mr Halpin accepted that the agreement for lease in respect of the premises was never converted into a letting, his clients having purchased the premises instead.

He accepted that other units in the Park were valued at €45 per sq. m but suggested that ‘size mattered’. He further contended that there was no planning permission for the showroom use. He refused to accept that there should be a loading for ‘showroom’ use and noted that other units were in such use but were not fixed with a surcharge.

He accepted the Respondent’s view that the mezzanine should be valued at the rate of 1/5th of that applying to the warehouse.

8. RESPONDENT’S CASE

8.1 Mr Devlin, having adopted his Précis as his evidence in chief, suggested that the rental evidence ranged from €20 per sq. m. to €60 per sq. m. and the Commissioner had adopted a rate of €45 per sq. m as being appropriate in this instance, subject to a loading of 20% to reflect the showroom use of part of the Property. He further suggested that the application of a loading of 20% applied to the ‘showroom’ area by the Respondent was not based on actual evidence but was ‘the approach adopted’.

Mr Devlin introduced six comparisons as key rental comparisons to support his view that the level of €45 per sq. m. was appropriate. These are included in Appendix 1.

He further introduced five NAV comparisons, all located in Hebron Business Park.

These are:

- (i) PN 2197468
- (ii) PN 2181376
- (iii) PN 2210114
- (iv) PN 2187469
- (v) PN 2210112

All of these had elements of, or were actually, showrooms, and were valued at €54 or €60 per sq. m.

Mr Devlin adjusted his opinion of value, to reflect the adjusted agreed floor areas, to a figure of €29,000.

9. SUBMISSIONS

9.1 There were no submissions of a legal nature.

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 practicable, 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 onus in this appeal is on the Appellant to provide the Tribunal with evidence as to why it should disturb the valuation placed on the subject property by the Respondent. The Appellant relied, to a large degree on an unfulfilled agreement for lease of the subject and a month to month letting of the adjoining unit. The former agreement was not consummated and the latter does not comply with the requirement of a letting ‘one year with another’ and as such is not a reliable comparator.

10.3 The Respondent confirmed that the ‘emerging tone’ being adopted derived from a wide range of evidence which ranged from €20 to €60 per sq. m. and while apparently arbitrary, provided the Tribunal with rental and NAV comparators to support the basic valuation placed on the subject by the Respondent.

10.4 The Tribunal was not satisfied that the Respondent provided sufficient justification for the loading of 20% for the purported showroom use. The inconsistent application of this loading, as suggested by the Appellant’s valuer, led the Tribunal to the conclusion that a loading was inappropriate in this instance.

10.5 The valuers were in agreement on the rate to be applied to the mezzanine is 1/5th of that applied to the warehouse space and the tribunal adopts this figure.

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 €26,240.

Level 0 Showroom	314.48 sq. m.	@ €45 per sq. m.	€14,151.16
Level 0 Warehouse	149.00 sq. m.	@ €45 per sq. m.	€ 6,705.00
Level 1 Office	112.00 sq. m.	@ €45 per sq. m.	€ 5,040.00
Mezzanine Store	38.10 sq. m.	@ €9 per sq. m.	€ 342.90
		Total	€26,239.06

Say €26,240