

**Appeal No: VA17/5/344**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**MARY WHITE**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 5005453, Office(s) at 18Aa/1 Knockquire, Killedmond, Carlow, County Carlow.

**B E F O R E**

**Carol O'Farrell BL**

**Chairperson**

**Orla Coyne Solicitor**

**Member**

**Frank O'Grady MA, FSCSI, FRICS, FIABCI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 10<sup>TH</sup> DAY OF JULY, 2018**

**1. THE APPEAL**

- 1.1 By Notice of Appeal received on the 10th 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 €7,890.
- 1.2 The grounds of appeal upon which the Appellant contends that the determination of value does not accord with that required to be achieved by section 19 (5) of the Valuation Act, 2001 are appended to the Notice of Appeal and may be briefly, they may be summarised as follows:
- the Property is situated in a rural area where no local authority services are provided;
  - the Property is a protected structure and as such carries an extra burden in terms of maintenance, repair, and insurance;

- the Property is in use as an Eco tourism business, which is largely conducted outdoors; there is no retail or office use; the Property is used as a meeting place for introductory talks, the provision of light refreshments, shelter and changing facilities; the Appellant offers outdoor activities such as Eco trails, mountain hikes, school tours, foraging events and teacher courses;
- the use of the Property is seasonal from April to October;
- there has been a 300% increase in the valuation of the Property;
- the Property cannot be let for rent;
- the Property is incorrectly described on the Valuation Certificate as an office; it ought to be described as an Eco Centre and Walking Centre;
- the valuation is arbitrary, lacks fairness and transparency and is unjust.

1.3 The Appellant considers that the NAV of the Property ought to have been determined in the sum of €1.00.

## **2. VALUATION HISTORY**

2.1 The valuation of the Property was revised in 2015 following a material change of circumstances which had occurred since a valuation was last carried out in the rating area authority area of the county of Carlow. On the 13<sup>th</sup> January 2017, following an appeal to the Valuation Tribunal, the net annual valuation of the Property was determined in the sum of €2,400. The valuation of the Property at that time fell to be determined in accordance with section 49 of the Valuation Act 2001 as the appeal had been taken from a decision of a revision manager made under section 28 (4) of the 2001 Act. This meant that the valuation had to be made by reference to the values of other properties as appearing on the existing valuation list that was in force for County Carlow (i.e. the tone of the list).

2.2 On the 23<sup>rd</sup> September 2016 a Valuation Order for Carlow County Council Rating Authority Area was signed authorising the revaluation of all commercial and industrial properties in the rating authority areas of Carlow. On the 11<sup>th</sup> day of May 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the 2001 Act”) in relation to the Property was sent to the Appellant indicating a valuation of €7,890.

2.3 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 and a Final Valuation Certificate issued on the 7<sup>th</sup> day of September 2017 stating a valuation of €7,890.

- 2.4 The Respondent reduced the valuation of €7,890 to €5,500 at the hearing by making an end allowance of 30% to reflect the Property's remote location and status as a protected structure.
- 2.5 The date by reference to which the value of all commercial and industrial properties in that Rating Authority Area, including the appeal Property, was determined was 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 3rd day of April 2018. At the hearing the Appellant appeared in person 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 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 Killedmond, in a remote rural location near the Blackstairs Mountains approximately 7 km from Borris, and 15 kilometres from Bagenalstown in County Carlow. It is set back some distance and is not visible from the nearest minor road.
- 4.3 The Property is a converted barn adjoining a house. It forms part of a protected structure and the conversion works to the barn were largely funded by a grant from the Carlow County Development Board as part of the rural economic development strategy underpinned by the LEADER Programme. The agreed floor area of the Property is 112.83 sq. m. The Property is fitted out to a high standard and comprises a room for seminars, a kitchen, changing facilities and bathroom and a sitting area on the mezzanine floor.
- 4.4 The Property is owner occupied and is used as an Eco Centre/Walking Centre. The Appellant trades under the name Blackstairs Ecotrails and promotes, implements and participates in Eco-activities and experiences such as foraging workshops, Eco-trails, mountain hikes, and Celtic Tree events. The Appellant's business has achieved a gold standard certification from Eco Tourism International.

- 4.5 The Property is advertised as being available for events such as mindfulness courses, Think Ins, Workshops, Seminars, Meetings, Family Events, Civil Marriages, Yoga, Painting Courses and Team Building Activities.

## **5. ISSUES**

- 5.1 The appeal concerns the application of established principles of valuation. The fundamental disagreement between the parties relates to what the Property is, and therefore, how it should be valued. The Appellant submitted that the Property is in use as a small Eco tourism business and that it should be valued such as it is used and occupied and not by reference to office rents. The Property was valued by the Respondent in accordance with section 48 of the 2001 Act as amended having regard to office rental evidence and the assessment of rural offices (house) on the basis that the Property could command the same rent as an office.

## **6. RELEVANT STATUTORY PROVISIONS:**

- 6.1 The NAV of the Property must be determined in accordance with section 48 (1) of the 2001 Act which provides;

“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 2001 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.”

- 6.3 Section 37 (1) obliges the Tribunal when considering an appeal made to it under section 34 of the 2001 Act to achieve a determination of the value of the property concerned that accords with that required to be achieved by section 19(5).

Section 19(5) provides:

(5) The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable)—

- (a) correctness of value, and
- (b) equity and uniformity of value between properties on that valuation list,

and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

## **7. APPELLANT'S CASE**

- 7.1 The Appellant gave evidence that the Old Rectory and its curtilage (which includes the Property) are listed as a Protected Structure by Carlow County Council and that such designation brings with it additional responsibility which in turn has financial implications for the occupier. In her view, businesses operating from protected structures should be exempt from the payment of commercial rates.
- 7.2 The Appellant outlined some of the constraints imposed by the planning authority in the context of the conversion and refurbishment works carried out to the Property. Solar panels were not permitted to be placed on the south facing roof of the Property to protect the integrity of the courtyard which dates back to 1831 and nor was the installation of two windows in the blanked-out spaces on the west elevation of the Property permitted. As a result, the Property has higher heating costs and the inadequate interior light gives rise to greater energy costs for daytime lighting.
- 7.3 The Appellant also explained that the costs of maintenance and repair are generally much higher in respect of a protected structures than in other types of building. As neither aerials nor satellite dishes could be installed on the roof of the Property expensive ducting had to be laid underground from the road boundary to the Property and broadband antennae had to be affixed to a tree where it is exposed to storm damage. The roof requires costly Blue Bangor slates which must be regularly replaced due to wear and tear and adverse weather events. The cost of a new Blue Bangor slate is 9

times that of a modern composite slate. The barn doors were originally made of native Irish oak and any replacement door would have to be of similarly seasoned oak.

- 7.4 The Appellant said that the Property has no office or retail element and that the Eco tourism business is essentially an outdoor and seasonally based business that operates from April to October. She rejected any analogy with office building and contended that the Property ought to be considered individually and objected that that had not happened. The Appellant stated that the Property is used as a meeting place for introductory talks, the provision of light refreshments, shelter and changing facilities. The Appellant offers outdoor activities such as Eco trails, guided walks, mountain hikes, school tours, foraging events, workshops and teacher courses. The Property is fitted out as an Eco and Walking Centre with demonstration units, kitchen, wet room and changing facilities. It has no local authority services due to its remote location. The Appellant asserted that her Eco tourism business is unique in County Carlow.
- 7.5 The Appellant doubted that any tenant could be found for the Property given its protected structure status and the disadvantages of its location including the lack of any local authority services. The Appellant also pointed out that there are at least 7 vacant business premises in Borris and 16 vacant business premises in Bagenalstown.
- 7.6 The Appellant expressed the view that the Respondent appeared to have adopted the valuation of €7,890 on an entirely arbitrary basis which had no regard to:
- (i) the maintenance and insurance costs associated with a protected structure;
  - (ii) the special ethos of the Eco-tourism business;
  - (iii) the seasonality of the use of the Property;
  - (iv) the actual user of the Property;
  - (v) the rural location;
  - (vi) the fact that no tenant would take a letting of the Property.
- 7.7 The Appellant considered that the Nav determined by the Respondent was unfair and excessive in all the circumstances.

## **8. RESPONDENT'S CASE**

- 8.1 Mr. Devlin stated in his précis that the Respondent relied on two items of market information to inform the estimate of net annual value ("the NAV") of the Property, the details of which are attached at Appendix 1 to this judgment. He explained in his précis that the Key Rental Transactions ("the KRTs") were investigated and analysed regarding the date of transaction relative to the valuation date, any inducements or other individual feature of the transaction to arrive at the net effective rents (the 'NERs'). These NERs equate to the basis of valuation as set out in section 48 of the 2001 Act as amended on the statutory valuation date.

- 8.2 Mr Devlin also stated that the NERS provided the basis for deciding the appropriate Nav per square metre or Zone A to be applied to the group of properties sharing similar characteristics, and that if there are any relevant individual considerations in relation to the Property, relative to that group of properties, a further adjustment is made to the NAV. A valuation level of €80 per sq. m. was applied to the Property.
- 8.3 Though accepting that the Property is in rural area Mr. Devlin did not consider it in any way unique. He explained that there was limited rental evidence available in respect of rural properties and that 32 similar rural type offices situated either to the side or, at the rear, of domestic dwellings were valued at the level of €80 per sq. m. and that only 3 of those properties had been appealed to the Tribunal. Mr Devlin relied on 10 comparable properties all of which, with the exception of Comparison no. 2, were valued at €80 per sq. m.
- 8.4 Mr. Devlin considered that the Property, which had been refurbished to a high standard, could be used for another purpose such as an office and his comparable properties indicated the level of rent that could be achieved for the Property. He did not regard the seasonality issued raised by the Appellant to be of relevance as it related to the business carried out and not the Property itself. Under cross-examination he accepted that the Property is in a more remote location than all of his comparable properties. Whilst accepting that the Property had no services he did not consider this factor to be unique to the appeal Property. He also explained why the rates had increased since the Valuation Tribunal's decision of the 13<sup>th</sup> January 2017 by pointing to the different methods of valuation required to be applied by the 2001 Act when the valuation of a property is revised due to a material change in circumstances and when a property is revalued pursuant to a valuation order.

## **9. FINDINGS AND CONCLUSIONS**

- 9.1 On this appeal the Tribunal has to determine the value of the Property to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation as determined by the Tribunal is relative to the value of other properties on the valuation list in the rating authority area of County Carlow there being, in the Tribunal's view, no properties comparable to the appeal Property in existence on that valuation list.
- 9.2 The underlying principles of rating which arise out of, or have relevance, to this appeal are equity and uniformity. It is an underlying principle of rating that "fairness generally requires comparable properties to be valued by the same yardstick". The requirements of uniformity and equality are achieved by the individual valuation of each property and the application to all properties in the same rating authority area of the same measure of value (i.e. in accordance with section 48 of the 2001 Act) by reference to a statutory valuation date (the 30<sup>th</sup> October 2015 for the rating authority area of Carlow

County Council). As pointed out by Ms. Justice O'Malley in *Commissioner of Valuation v Carlton Hotel Dublin Airport Ltd & Ors* [2013] IEHC 170

*“Like must be treated alike. However, there is a logically prior issue and that is whether liability to the tax in question has been properly assessed in the first place. There is no merit in the uniform application of a mistake.”*

- 9.3 The relevant question on this appeal concerns the amount a hypothetical tenant would pay in rent for a tenancy of the Property on the terms set out in section 48 of the 2001 Act as amended. Except for a few exceptional cases where there is restricted demand and a single hypothetical tenant, the hypothetical tenant's ability to pay rent is irrelevant to the assessment of the NAV. The ability to pay of each occupier of relevant rateable property is measured by the rental value on a hypothetical tenancy of the property on a year on year basis and not by the actual occupier's financial means. But that is not to say that the Tribunal must exclude all consideration of the occupier's accounts, though rents are usually the most reliable evidence of net annual value.
- 9.4 It is also important to point out that to achieve uniformity, all relevant properties are assumed to be vacant and available let on the terms set out in section 48(3) of the 2001 Act as amended. The Appellant asserted that there would no tenant willing to take a letting of the Property. Section 48 of the 2001 Act requires the assumption that the property to be valued is to be let and, therefore, the fact that a property is occupied by an owner is immaterial. All possible occupiers, including the actual occupier, must be taken into account as possible tenants. Whether there are many possible tenants or only one depends on the type of property and its location. It is doubtful whether a tenant could be found for the Property. It is difficult to conceive market demand for the Property given its remote rural location. But for the purposes of the rating hypothesis, the Tribunal must treat the owner and occupier of the Property as a hypothetical tenant. Whilst the Tribunal is not convinced by Mr Devlin's argument that the Property would attract hypothetical tenants for office use, it is possible that a community group or an organisation such as the scouts could bid for the Property as base for practical outdoor or adventure activities.
- 9.5 There are a number of methods of rating valuation in general use. Where there is no rental evidence, an alternative approach to valuation is the Receipts & Expenditure (“the R & E”) method. The R & E method is for the most part used in the valuation of properties such as hotels, public houses, service stations, restaurants but that methodology may also be used as a check on other methods of valuation to ensure that a correct NAV is determined. The R & E method is not used, however, if the Property is loss making as that would inevitably lead to a nil valuation. The evidence of Mr. Devlin confirms that the valuation of the Property was determined by the rental method and comparison with assessments of other rural properties on the valuation list. Ms. White contended for a NAV of €1.00 on the basis that no hypothetical tenant would take a letting of the property. The Tribunal is not required to determine the NAV of a

property by reference to any particular method of valuation and can apply whatever method of valuation or combination of methods as the Tribunal, in its discretion, deem appropriate.

- 9.6 Since its conversion and refurbishment in 2013 the Property has been used as a meeting place for introductory talks and the provision of light refreshments for those who participate in the eco-outdoor events and activities provided by the Appellant. It has planning permission for Eco-tourism use. The Appellant takes exception to the description of the Property as an office. It does not have planning permission for office use. It is an established rating principle that a relevant property has to be valued as it is in fact exists on the valuation date, save for the possibility of minor alterations. Accordingly, the Tribunal finds that the Property must be valued in its existing state as used and occupied and not for some other potential form of occupation such as office use which would according to the evidence of the Appellant, and which was not contested, require a grant of planning permission.
- 9.7 However, this does not mean that the rents of office buildings cannot be used as a guide to value the Property. The difficulty here is that there are no open market rents for properties comparable to the appeal Property. When, for want of anything better, local office values have to be considered, they are just the starting point. In the Tribunal's view office rental levels can be a useful guide as the hypothetical tenant could look to rent a small rural office building from which to provide an eco-tourism business and pay a rent commensurate with the use of the building for such purposes. Even though the Property is not exceptional or in any way unique, no evidence was adduced of any directly comparable properties and so the task of comparing valuations applied to other rural commercial properties and making appropriate adjustments is not a straightforward exercise.
- 9.8 The evidence indicates that the Respondent did not receive any open market rental information concerning rural properties in the Office: House category. The two key rental transactions (the details of which as set out Appendix 1 to this judgment) investigated and analysed by the Respondent concern an office in Market Square in Tullow and an office located in a business park in Bagenalstown. No doubt this lack of information is explained by the fact that most properties falling within the Office: House category are owner occupied so the Tribunal appreciates the difficulty faced by the Respondent if rental returns are low or non-existent for certain categories of property. Nonetheless, care must be exercised in categorising properties for valuation purposes to ensure the result achieves the statutory objective set out in section 19(5) of the 2001 Act as amended.
- 9.9 The property identified as the KRTs are located in populated area approximately 15 kilometres (in the case of the KRT 1 in Bagenalstown) and 31 kilometres (in the case of KRT 2 in Tullow) from the appeal Property. There is no rental evidence available in respect of properties comparable to the appeal Property. The ten comparable properties relied upon by the Respondent though not physically better than the appeal Property,

are all located in more prominent or superior locations closer to population centres which for the most part have the benefit of local authority services. None are protected structures. The accuracy of a valuation is likely to be greatest if it is based on evidence derived from properties with similar characteristics to the property to be valued. The greater the differences between the property to be valued and the comparables, the less helpful will be the evidence of the comparable rents.

- 9.10 The net effective rent for the ground floor of KRT 1 in Tullow is €84.57 and for KRT 2 in Bagenalstown is €72.95 per m<sup>2</sup>. KRT 2 is the closer of the two properties to the appeal Property. In the Tribunal's view the appeal Property would achieve a much lower rent in the open market and the appropriate ground floor rate for the appeal property must be lower than the evidence provided by these lettings. KRT 2 is a two-storey office building in a business park in an edge of town location that has good access to the road network and was assessed at ground floor level at €70 per m<sup>2</sup>. The Tribunal finds that the actual rental evidence in respect of this property is a strong indication that the assessment of the appeal Property at €80 per m<sup>2</sup> is excessive. Accordingly, the appropriate ground floor rate for the appeal Property should therefore lie below €70 per m<sup>2</sup> given its significantly inferior location. In the Tribunal's judgment, Mr Devitt made an end allowance of 30% to the valuation to reflect the Property's remote location and the fact that it is a protected structure. The Tribunal considers that an end allowance of 30% is justified to reflect the disadvantage for the appeal Property in the market due to its significantly inferior location and, the additional cost of maintaining and insuring the Property due to its protected status designation.
- 9.11 For the foregoing reasons, in the Tribunal's judgment the appropriate rate for the ground floor of the Property is €50 per m<sup>2</sup>, and the appropriate rate for the mezzanine is €15 per m<sup>2</sup> as the accommodation at this level is ancillary to the ground floor.
- 9.12 The Tribunal's valuation of the appeal Property is given in Appendix 2 and is in the sum of €3,255.70 which we round down to of €3,250.
- 9.13 Accordingly, the Tribunal allows the appeal and
- (i) Decreases the value of the appeal property as stated in the valuation certificate to €3,250.
  - (ii) Amends the description of the appeal property as stated in the valuation certificate to Eco and Walking Centre.