

**Appeal No: VA17/5/330**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**SIMON CROSS**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 5006738, Industrial Uses at Local No/Map Ref: 16B/1 Rathangan, Edenderry,  
County Kildare.

**B E F O R E**

**Majella Twomey BL**

**Deputy Chairperson**

**Frank Walsh - QFA, Valuer**

**Member**

**Eoin McDermott FSCSI, FRICS, ACI Arb**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 1<sup>ST</sup> DAY OF NOVEMBER, 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 €81,600.

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. The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

- Rathangan is a very small town in Kildare, but on the Offaly border. It has poor access to

the town with unsuitable roads and 8 bridges with height restrictions. This causes particular difficulty for large vehicles which are required for the Appellant's business.

- There is no public transport into the town in the morning or evenings so employees must have their own transport.
- The business is seasonal.
- The business is located behind a private house and therefore not rentable.
- The sheds are farm buildings, are not insulated with double skin.
- They have their own water and sewage system and do not rely on the Council for these services.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €28,090.15.

## **2. REVALUATION HISTORY**

2.1 On the 10th day of March, 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 €81,600.

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 the 7<sup>th</sup> day of September, 2017 stating a valuation of €81,600.

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 20th day of August, 2018. At the hearing the Appellant was represented by his son Mr Jason Cross and the Respondent was represented by Ms Ciara Marron, MSC, B.SC, MSCSI MRICS, District Valuer 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.

4.2 The subject property is located on the edge of Rathangan town and opposite the Rathangan GAA grounds.

4.3 The subject property is a purpose build factory located to the rear of a domestic house. The subject was developed in a piecemeal fashion and comprises a number of warehouse structures with two storey offices to the front.

4.4 The property has large yards to the rear and front of the factory.

4.5 The floor areas are agreed as follows: -

<b>Use</b>	<b>Area (sq. m.)</b>
Office	97.92
Store	276.49
Workshop	2,198.44
Yard	1,500

4.6 The subject property is held freehold.

## **5. ISSUES**

5.1 The Appellant claims that the NAV on the subject property is too high taking into account the bad access to Rathangan, with unsuitable roads and dangerous bridges, making it difficult for large vehicles to access.

5.2 The Appellant claims that the business is located behind a private house, therefore making it unsuitable for renting to a hypothetical tenant. Furthermore, the Appellant claims that it has its own sewage system.

5.3 The Valuation Office states that all of these factors had been considered and that such issues do not affect the current NAV.

## **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 The Appellant was represented by his son, who compiled a detailed report for the Tribunal, which he adopted to present his evidence.

7.2 Mr. Cross gave evidence that the subject property is not solely used for business purposes. He said that there is also a private dwelling which accesses the yard along with a farm yard.

7.3 It was stated that the land behind the warehouses were not connected to the company. He said that this land is owned by Simon Cross and is sometimes used to store machinery to make the area look more representable and tidy. However, when a customer comes in to view a machine, the machine is brought out to the forecourt and the customer views it there.

7.4 Mr. Cross said that in 2017, Cross Agricultural Engineering received a rates bill increase from €2,334.65 to €19,995.50. He said that this was an increase of 756.47%.

7.5 It was stated that the buildings are single skin farm buildings with no insulation or heating.

7.6 It was also states that there is only one driveway to the factory and that this is shared with a farm and a family home.

7.7 Mr. Jason Cross said that the area behind the subject property is a farm yard and had to be declared so, in order to gain a serial number.

7.8 Evidence was also give that the offices are now being used as the farm office and it was stated that all spray records, farm accounts and single farm payment applications are done from this office.

7.9 Mr. Jason Cross also made the point that the subject property is behind two family homes, family garden and shed space. Simon Cross's elderly aunt lives in from of the subject property and has a right of way and access directly into the yard of the subject property. Furthermore, the Cross factory have to pass through the subject property year in order to access the family farm.

7.10 In evidence, Jason Cross said that there was a lack of services in Rathangan, which would disincentive a hypothetical tenant, including a lack of a Garda station, bank, hotels, restaurants, parking, transport and gas mains, inter alia.

7.11 Evidence was also given as to a number of narrow and low bridges which lead to Rathangan, which most low loader trucks cannot fit through. Photographs of such bridges were provided. Jason Cross gave evidence that the Appellant has to transport machinery on the roads via tractor to local farm yards, where they have permission to load. The low loaders then meet in the farm yard and another vehicle has to travel to the Curragh and escort the vehicle to the subject property.

7.12 Jason Cross said that Rathangan was put in the same rates category as Naas but that Naas properties have footpaths and nice roads around their factories. Furthermore, there are no humpback bridges in Naas. There is also street lighting in Naas, to assist staff in wintertime. It was stated that Rathangan is 2KM from Offaly where similar properties have a rates bill of one quarter of the Appellant's rates bill, yet the Appellant's property is valued the same as Naas properties.

7.13 Further evidence was given that there is no road frontage with the subject property and it is situated up a laneway.

7.14 The subject property has its own well and the water on the site is fed from Simon Cross's house well. It was stated that another company renting the property would have to dig the whole site to the road to get water. Coupled with this, the site has no sewage or drainage.

7.15 The Appellant submitted a comparator, which is set out at page 19 of his precis. It is a Company which is situated in Rathangan, Co. Offaly. It was stated that the company has a yard space nearly as large as the Appellant and it is only 2.9 KM away. It was stated that it does not pay for its yard space and the company only has a rateable valuation of €1,080. It was submitted that the Appellant was being punished for being in a different county council, albeit the same village. It was submitted that yard space is not rated in Offaly.

7.16 It was argued that Kildare County Council are putting all companies in the same rating bracket irrespective of location

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

8.1 Ms. Marron appeared for The Valuation Office. She said that the subject property was valued at a rate of €30 per msq, which led to the NAV of €81,600. Ms. Marron produced 2 key rental transactions, which are set out in an appendix hereto. She said there was very little rental evidence in Rathangan.

8.2 The first is a property in Rahternan, Naas, Co. Kildare with a total floor area of 956.90 sq. m., with a 5 year lease which commenced on the 1<sup>st</sup> of January 2016. The NER at the 30<sup>th</sup> of October 2015 was €26.13 per msq. The NAV for the property was €35 per msq. It is situated 6.2 km from the subject, in a rural area and the buildings are steel frame. Ms Marron said that this was a standalone property and that there were no houses around it. She said that she had not actually seen it herself.

8.3 The second key rental transaction is situated in Newbridge with a floor area of 899 msq. It had a one-year lease, commenced on the 1<sup>st</sup> of January 2014 at an NER of €33.37 per msq. The NAV for that property is €45 per msq. This property is situated in an industrial estate in Newbridge town and has the benefit of commercial services. It is in an urban area, near the motorway.

8.4 Ms. Marron put forward five NAV comparisons. The first was a vacant property in Edenderry, which is 2.7 km from the subject and is an older type structure. The buildings were rated at €30 per msq.

8.5 The second NAV comparator is situate in Windmill Cross, Edenderry and is 18.7 km from the subject in a rural location. The total floor area is 1806.80 msq and the NAV is €40 per msq. It is finished to a high specification with refrigeration areas.

8.6 Comparator number 3 is situate in Rathangan, Co. Kildare. It is located 3.4 km from the subject and is in a rural location. It is a mixed development with an older type workshop. The workshop was valued at €25 per msq and the offices at €30 per msq.

8.7 Ms. Marron submitted a fourth comparator, in Rathangan industrial estate. This was valued at €35 per msq as it is in a modern industrial estate and 1.5 km from the subject. The yard was valued at €3.5 per msq.

8.8 The fifth comparator put forward by Ms. Marron is another engineering company, also situate in Rathangan. This is 600 metres from the subject and is a mixed development, comprising a converted convent and modern industrial units. The NAV is €35 per msq and €3.5 on the yard.

## **9. SUBMISSIONS**

9.1 No legal submissions were put forward.

## **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 Kildare.

10.2 Having weighed and evaluated all of the evidence before it, including the precis' of evidence, the oral testimony of the parties and the comparators put forward by each side, the Tribunal makes the findings set out below.

10.3 The Tribunal asked the representative from the Valuation Office if location was a factor in assessing rates and she agreed that it was. The Appellant made a strong case that the location of the subject property is inferior to the comparators put forward. The Tribunal has assessed the location of the property in the context of the comparators and the submissions put forward by Mr. Jason Cross and it finds that the location of the subject property puts it at a disadvantage to other key rental transaction comparators. For example, the NER comparable number 2 is set in a modern industrial estate, in an urban area, near a motorway. The evidence before the Tribunal was that the subject property is situated in a rural location. It is located behind family homes and is not a stand-alone property, like, for example, the first NER comparable put forward by Ms. Marron. In the circumstances, the Tribunal finds that the location of the subject property puts the subject at a disadvantage and it cannot be said to be in the bracket as the key transaction properties at Rathangan and Newbridge.

10.4 Further evidence was put forward to illustrate that the subject property does not benefit from any of the services such as those in key transaction number 2, which is in an industrial estate and which benefits from the services which are connected to such an estate. Ms. Marron said that she has not seen key transaction number 1 and, therefore, the Tribunal does not have any evidence as to the services attached thereto. The Tribunal accepts that the subject property does not have the benefit of public mains, sewage or lighting and that the Appellant provides all of these services itself, unlike the situation of the property referred to at key rental transaction number 2. The Tribunal finds that this is a pertinent fact and that it must be taken into account in terms of any reduction which should be applied.

10.5 The Tribunal notes that The Valuation Office was not in a position to put forward any information regarding the quality of the property submitted as key rental transaction number 1, apart from the fact that it is half the size of the subject property. The Tribunal does not have any information as to the specifications of this property as Ms. Marron has not inspected this property. In the circumstances and in the absence of such information, the Tribunal finds that key rental transaction number 1 is not an appropriate comparator in terms of assessing the quality and specification of the subject property.

10.6 The Tribunal finally finds that the access to the property puts the property at a serious disadvantage when compared to the property at key rental transaction number 2, which is situated near a motorway. The subject property is located in a village and the only access to it is by way of narrow roads and difficult, low and humpback bridge. Mr. Jason Cross gave direct evidence of this, coupled with a description and number of photographs of these bridges, as set out at pages 12, 13, 14 and 15 of his precis. The Tribunal accepts this objective evidence and finds that it must be taken into account in finding that the subject property is at a disadvantage in terms of access, when compared to key rental transaction number 2.

10.7 Taking all of the information provided, and for the reasons as set out above, the Tribunal finds that the NAV of the subject property should be reduced when one takes into account 1. Location, 2. Services, 3 Specifications and 4. Access.

**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 €55,900.

Unit			
Office	97.92	@€20	€1958.40
Store	276.49	@€20	€5529.80
Workshop	2,198.44	@€20	€43,968.80
Yard	1,500.00	@€3	€4,500.00
Total NAV			€55,957
Say			€55,900

And the Tribunal so determines.