

Appeal No: VA17/5/358

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

COCOON CHILDCARE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2204336, Miscellaneous at 26/1 Sallins, Sallins, County Kildare.

B E F O R E

John Stewart – FRICS, FSCSI, MCI Arb

Deputy Chairperson

Dairine Mac Fadden - Solicitor

Member

Hugh Markey – FRICS, FSCSI

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF DECEMBER, 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 €42,900.

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

1. The Valuation of the subject property is excessive and inequitable. The property’s value as applied by the Commissioner is not in line with its actual and potential rental value.
2. 10-year FRI lease from 2016, following renewal after 10-year lease from 2006. Rent €36,000 per annum. This devalues as follows: Creche floor 390m² @ €92.30/ m².
3. This creche performs relatively poorly as there is not the same level of Childcare spending in Sallins as in the major centres in Kildare.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €27,300.

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 €42,900

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 €42,900.

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 4th day of October 2018. At the hearing the Appellant was represented by Mr Eamonn Halpin BSc (Surveying), MSCSI, MRICS of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr Ian Power 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 comprises a purpose-built crèche facility located at Millbank, Sallins Co. Kildare. The property is close to the train station and the town had a population of 5,849 in the 2016 Census.

4.3 The floor area is agreed at 390m²

4.4 Appellant

5. ISSUES

5.1 That the subject property is competing with three other crèches in Sallins that are not assessed for rates and the position for the operator is inequitable.

5.2 That the rent for the property is €36,000pa which is below the valuation of €42,900 assessed by the Commissioner.

5.3 That there is not a universal rate applied to all purpose built crèches in Co. Kildare.

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 adopted his précis of evidence. Mr. Halpin for the Appellant stated that the valuation on the subject property was excessive and inequitable based on the actual and potential rental value which he stated was €36,000pa as the tenants were holding over. The rent of €36,000pa he stated was arrived at following a lease renewal on completion of a 10-year lease from 2006. He affirmed that the analysis of this rent showed a rate per square metre of €92.30. He also claimed that the crèche was performing poorly and that Sallins had a lower level of spending on crèches than other towns in Co. Kildare.

7.2 Mr. Halpin sought to have the rate adjusted to reflect the potential rental value and the emerging tone of the list.

7.3 Mr. Halpin stated that the crèche market following the 2007 crash was a low profit business, due to the imposition of mandatory staffing requirements. He claimed that the HSE requirements were for a minimum of 1 staff member for 8 children aged 3-6; 1 staff member for 6 children aged 1-3; and 1 staff member for 3 children aged under 1 year of age. He further claimed that it was universally acknowledged that any services provided for children under 1 year were loss making and were provided solely as a 'lost leader' in the hope of subsequent business when the children were older. He referred to mandatory space requirements whereby 2-6-year olds must have 2.3m² and under 2-year olds must have 3.5 m². This, he claimed, resulted in significantly reduced places being available in relatively large buildings.

7.4 Mr. Halpin argued that the government sponsored ECCE year benefit had led to even fewer parents opting for crèche places and the government benefit had allowed for greater competition from Montessori schools. He also argued that overall only 33% of the childcare market pay commercial rates.

7.5 He stated that the profitability in childcare was very low and that the Cocoon group profitability was 2% as evidenced by the ECI report which indicated a profit rate of 2-3% as compared to the UK with 20%. He stated that the 'Children's House', 'Magic Years' and 'Busy Bees' were crèches operating in Sallins where there was no rates liability and claimed that this inequity disadvantaged a crèche where rates were applied.

7.6 Mr. Halpin claimed that crèche rents were linked to occupancy and stated that the subject property had an occupancy rate of 58% with a rent of €36,000 (€92.30/m²); Naas had an occupancy of 70% and a rent of €55,000 (€83.34/m²) and Celbridge had a 90% occupancy and a rent of €44,715 (€107.36/).

7.7 Mr. Halpin provided three rental comparisons from Millennium Park, Naas; Brownstown Manor, The Curragh and Hazelhatch Park, Celbridge, all in Co Kildare.

7.7.1 Millennium Park crèche Naas was let on a 10-year lease from December 2015 subject to a base rent of €55,000/pa or 12.5% of turnover. This crèche was completed in 2005. The rent was analysed at 659.92 m² @ €83.34/ m².

Mr. Halpin claimed that the rent conflicted with the Commissioner's valuation of €72,000 which shows a rate of €110/ m².

This valuation is under appeal to the Tribunal.

7.7.2 Brownstown Manor crèche at The Curragh is held on a 2-year lease from 12th April 2017 at €8,700/pa which devalues at €211.96 m² @ €41.25 /m².

Mr. Halpin claimed that the rent conflicted with the Commissioner's valuation of €23,300 which showed a rate of €110/ m².

7.7.3 Hazelhatch Park Celbridge crèche is subject to a lease for 20 years from 1st December 2009 at €44,715/pa which devalues at 416.48 m² @ €107.36/ m².

Mr. Halpin claimed that this rent also conflicted with the Commissioner's valuation of €45,800 which shows a rate of €110/ m².

This valuation is also under appeal to the Tribunal.

7.8 Mr. Halpin also provided four of the list comparisons:

7.8.1 M4 Business Park, Celbridge crèche which was completed c. 2005 was assessed at €70.00/ m² for 646.36 m², whereas the adjoining offices were assessed at €100/ m².

7.8.2 Crèche at Kill was assessed at €90.00/ m² for 126.50 m², and 52.87 m², following a redesign and extension in 2006, whereby the unit was converted from a domestic house to a crèche.

7.8.2 Chambers Park, Kilcock, comprises a purpose built crèche in a similar residential setting with a similar population and had been assessed at €100/ m² for the ground floor of 171.50 m² and €70.00/ m² for the first floor providing an average rate of €85.00/ m².

7.8.3 Ryebriidge Way, Kilcock, also comprised a purpose built crèche, completed in 2008 in a similar residential setting with a similar population and had been assessed at €100/ m² for the ground floor of 317.38 m² and €70.00/ m² for 274.39 m² on the first floor providing an average rate of €86.00/ m².

7.9 Mr Halpin also included details of the three Sallins crèches which had not been assessed for rates.

7.10 In conclusion, Mr. Halpin stated that in his opinion the correct valuation for the subject property should be **€27,300** based on 390 m² @ €70.00/ m².

7.11 During cross examination Mr Halpin was queried as to whether the lease for the subject property was at arm's length. Mr Halpin replied that it was, however when Mr Power showed him the signature page of the lease provided with the Appellant's submission, he agreed that the landlord and tenant were the same parties. Mr Halpin also accepted that the rent as provided by the occupier in the S46/7 return in Millennium Business Park had exceeded the base rent of €55,000/pa. In relation to The Crèche, Brownstown, Co Kildare Mr Halpin could not provide additional information regarding the turnover. While he had provided occupancy levels for Sallins, Naas and Celbridge he did not have this information for the M4 Business Park. Mr Halpin agreed that the crèche in Kill village was not purpose-built but stated that it had been redesigned and extended c.2006 and as it was much smaller it would have a higher rate per square metre. Mr. Halpin did not accept that the crèches in Sallins were effectively domestic houses converted and stated that they provided competition to the subject property which remained the only one subject to rates.

8. RESPONDENT'S CASE

8.1 Mr. Power adopted his precis of evidence. He confirmed the information in relation to the location and description and added that the crèche had a maximum capacity of 119 children. He provided various photographs and referred to the lease of 9 years and 11 months from 13th

July 2006 at a rent of the bank charges plus €4,392.30. He stated that the lease was between connected parties and consequently of no evidential value.

8.2 He stated that all-purpose built crèches in Kildare had been universally valued at a rate of €110/ m² and in support he relied on two key rental transactions at Millennium Business Park and Hazelhatch Park Celbridge.

8.3 In Millennium Business Park, he stated that the premises had been let for 10 years from 2015 at a base rent of €55,000/pa or a percentage of turnover if higher. He stated that the S45/46 form supplied by the occupier stated that the current rent was €72,500/pa and the NER for 2015 was €69,840. He analysed this rent as follows: 659.92 m² @ €110.00 = Total NAV 72,500.

8.4 The second key rental transaction referred to Hazelhatch Park which was held on a 20-year lease from 2009 at a rent of €55,000/pa which provided an NER of €44,715 (416.48 @ €107.36/ m²) and the crèche valuation was as follows:

$$416.48 \text{ m}^2 @ €110.00 = \text{Total NAV } €45,800.$$

He stated that it was close to Hazelhatch station and was also purpose-built.

8.5 Mr. Power stated that there were 12 properties in the vicinity of the subject property valued at €110/m²; seven were subject to representations and six are under appeal to the Tribunal. He provided details of 6 properties in the vicinity which were based on €110/m².

1A Acorn Crèche & Montessori at Oberstown, Sallins.

Floor level	Floor use	Area m ²	NAV (€/m ²)	NAV €
0	Crèche	216.07	110.00	23,767.70
1	Crèche	88.42	77.00	6,808.34
				30,576.04
			Say	30,500.00

Comments: Modern purpose built crèche in a rural setting with an outdoor play area, closest to the subject property. It was subject to representations; the valuation was not reduced, and no appeal was made to the Tribunal.

2A Bright Sparks Childcare, Centre Station Road, Allenwood

Floor level	Floor use	Area m ²	NAV (€/m ²)	NAV €
0	Crèche	742.22	110.00	81,644.20
			Say €81,600	€81,600

Comments: Modern purpose built crèche in excellent condition and the largest considered. It was not subject to representations and there was no appeal to the Tribunal.

3A Enquiring Minds Childcare, Prosperous Road, Clane

Floor level	Floor use	Area m ²	NAV (€/m ²)	NAV €
0	Crèche	410.40	110.00	45,144
			Say	€45,100

Comments: Modern purpose built crèche in excellent condition. It was not subject to representations and no appeal was made to the Tribunal.

4A Gilttown, Kilcullen

Floor level	Floor use	Area m ²	NAV (€/m ²)	NAV €
0	Crèche	335.66	110.00	36,922
			Say	€36,900

Comments: Mr. Power stated that this unit was in a rural location and was not as good as the subject property. It was not subject to representations and no appeal was made to the Tribunal.

5A Millfield Manor, Newbridge

Floor level	Floor use	Area m ²	NAV (€/m ²)	NAV €
0	Crèche	335.66	110.00	36,922
			Say	€36,900

Comments: This was also a purpose built crèche in good condition and in a rural location. It was not subject to representations and no appeal was made to the Tribunal.

6A Easton Road, Leixlip

Floor level	Floor use	Area m ²	NAV (€/m ²)	NAV €
0	Crèche	394.47	110.00	43,391.70
1	Crèche	92.53	77.00	7,124.81
				50,516.51

			Say	50,500.00
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Comments: Modern purpose built crèche in excellent condition, on the outskirts of Leixlip close to M4. It was not subject to representations and no appeal was made to the Tribunal.

8.6 In concluding his direct evidence Mr. Power stated that the subject property had been valued on a basis that had been adopted for purpose-built crèches in Co. Kildare. No location or population issues had been considered and he requested the Tribunal confirm the valuation of €42,900.

During cross examination, when queried how if all purpose-built crèches were valued at €110/ m² why was the M4 premises valued at €70/ m², Mr Power replied that it must have been an error as it was within a business park and may have been influenced by the level adopted for the offices at €100/ m². He agreed that Celbridge was an excellent location, with a population of more than 20,000 and the operator was experienced. He confirmed that he was not aware if representations had been made. He also stated that he was not valuing the crèche business but the building. Mr. Power stated that there was very limited rental evidence available and many operators were owner occupiers. When queried as to why €100/ m² was applied to the two comparisons from Kilcock, Mr. Power indicated that there may have been a mistake but did not accept that there was a universal mistake as most of the crèches had accepted the valuation based on €110/ m². Mr Power stated that it was not the responsibility of the Commissioner to list properties such as the three in Sallins that had not been rated. He did not accept that there was a very low level of inspections undertaken by the Commissioner; he further stated that all would have been inspected at some point, possibly at the original listing.

8.7 Both parties provided brief summations with Mr. Halpin claiming that Sallins was a low-income town and with its population, the values could not be compared to Naas and Newbridge and he was relying on the rate of €70.00 in the M4 Business Park. He called for the Tribunal to amend the rate of €110/ m² to €70.00/ m². Mr. Power asked the Tribunal to affirm the valuation of €42,900 as the onus of proof fell on the Appellant and he had not proven his case. He claimed that the Appellant had relied on a related party lease which must be disregarded, and the evidence showed the correct valuation was €42,900.

9. SUBMISSIONS

9.1 There were no legal submissions.

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 County Council.

10.2 The subject property comprises a modern purpose-built crèche in Sallins. The Tribunal has noted that three other crèches, albeit not purpose built, in Sallins have not been rated.

10.3 The Tribunal noted that the lease for the subject property was between connected parties and consequently it has been disregarded by the Tribunal.

10.4 The Respondent stated that all purpose built crèches in Co. Kildare had been valued on a uniform basis of €110.00/ m², however the Appellant referred to three which had not been valued on this basis; namely M4 Business Park, Naas at €70.00/ m²; Chambers Park, Kilcock and Ryebidge Way, Kilcock at €100/ m² and €70.00/ m² for ground floors and first floors respectively. The analysis of these figures provided averages of €85.00/€86.00/ m²; however as the subject property comprises a ground floor only the tribunal is concerned solely with the ground floor valuation. From the evidence provided, all three comprise modern purpose-built crèches. Consequently, the Tribunal finds that not all purpose-built crèches in Kildare had been valued at €110/ m².

10.5 While arguments were made regarding the poor profitability of the business of crèches no evidence was adduced in support of this claim and as crèches are not valued as businesses, the Tribunal finds no merit in this argument.

10.6 The Tribunal noted that the comparisons referred to as 5A Millfield Manor, Newbridge had a floor area of 317.43 m² and not 335.46 m², but nothing turns on this.

10.7 In the Millennium Business Park, Naas comparison put forward by the Respondent they stated that the premises were leased for 10 years from 1st November 2015 at a base rent of €55,000/pa or a percentage of turnover if higher. They stated that the S45/46 form supplied by the occupier stated that the current rent was €72,000/pa and the NER for 2015 was €69,840. They analysed this rent as follows: 659.92 m² @ €110.00 = Total NAV €72,500. The Tribunal

finds that the approach adopted in this instance was flawed as the lease dated from 1st November 2015 - almost exactly the statutory valuation date of 30th October 2015 and consequently no turnover figures could have been available at the required date, as the lease had only commenced. Further, following questions in relation to a Celbridge crèche, the Respondent stated that he had not valued any of the crèche businesses and had confined his valuation solely to the buildings. Therefore, the Tribunal finds that the rent should have been referred to as €55,000/pa and not €72,000/pa giving a rental rate per square metre of €83.34/m².

10.8 The Tribunal noted that the value sought by the Appellant was €27,300 whereas the Notice of Appeal referred to €31,200. These valuations should be consistent.

10.9 Having carefully considered the evidence adduced, the Tribunal finds that there is not a universal rate for crèches in Co. Kildare. Proximity to transport modes including train services-particularly in provincial towns is an important factor in determining rents for crèches and additional criteria would relate to the immediate population and the economic well-being of the area.

10.10 The Tribunal finds that the valuation is €31,255 based on €95/ m² x 329 m²
Say €31,250

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 €€31,250

And the Tribunal so determines.