

**Appeal No. VA16/2/021**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**CAT LEISURE LTD**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In Relation to the Issue of Quantum of Valuation in Respect of:**

Property No. 2190868, Retail (Warehouse), Toughers Business Park, Ladytown, Ladytown,  
Naas 1, County Kildare.

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 18<sup>TH</sup> DAY OF OCTOBER, 2018.**

BEFORE:

**Dearbhla Cunningham – BL**

**Deputy Chairperson**

**Mairead Hughes - Hotelier**

**Member**

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

**Member**

**1. THE APPEAL**

1.1 By Notice of Appeal dated the 16<sup>th</sup> day of June 2016 the Appellant appealed against the determination of the Respondent fixing the Rateable Valuation of the above relevant property at €390.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated the Appellant contends that the Rateable Valuation ('RV') as assessed is excessive and inequitable and not in line with comparable properties in the list.

1.3 The Appellant considers that the RV ought to be €279.

## **2. VALUATION HISTORY**

- 2.1 On the 7<sup>th</sup> day of November, 2014 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) was sent to the Appellant following a revision application indicating a valuation of €390 for the Property.
- 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 but did amalgamate as requested by the Appellant the three properties in one valuation as it is now occupied as a single unit. This was appealed to the Commissioner of Valuation who disallowed the appeal and confirmed the amalgamated valuation.
- 2.3 A Final Valuation Certificate issued on the 23<sup>rd</sup> day of May, 2016 stating a valuation of €390 and issued as a single valuation certification on Property No. 2190868.

## **3. THE HEARING**

- 3.1 The appeal was part-heard by a different division of the Tribunal on the 20<sup>th</sup> day of December, 2016. The sitting was then adjourned following which additional submissions were made by both sides on the direction of that division of the Tribunal. The matter was re-listed for hearing at which time it was no longer possible to have it listed before the same division owing to retirements from the Tribunal. The parties agreed to a full *de novo* hearing by a newly constituted division of the Tribunal. In consequence, this appeal and the hearing proceeded as a full *de novo* hearing.
- 3.2 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 8<sup>th</sup> day of February, 2018. At the hearing the Appellant was represented by the Mr Eamonn Halpin of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Mr Dean Robinson of the Valuation Office.

3.3 In accordance with the Rules of the Tribunal, the parties had exchanged their précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, both witnesses, having taken the oath, adopted their précis as their evidence-in-chief in addition to giving oral evidence.

#### **4. FACTS**

4.1 From the evidence adduced at the hearing, the Tribunal finds the following facts.

4.2 The properties are located at Units W8A/W8B/W8C Toughers Business Park, Newhall, Naas, Co. Kildare. This is one of the best-established locations in County Kildare. The property is an amusement centre featuring a bowling alley and a large indoor play area with ancillary diner and video gaming area. The property is of a standard industrial type with a glass front and is similar to many other units constructed in the development at the time.

4.3 It originally comprised three units which were amalgamated by removing internal walls and associated works at a cost of approximately €50,000. The accommodation is agreed and comprises of the following: ground floor amusement centre measuring 1,322.72m<sup>2</sup> and mezzanine level amusement centre measuring 4.8m<sup>2</sup> giving a total agreed floor area of 1,743.52m<sup>2</sup>.

4.4 The property is held on a 20 year lease from the 1<sup>st</sup> January 2013 at a rent of €72,000.

4.5 It is one of two amusement centres in the industrial estate.

#### **5. ISSUES**

5.1 This is a quantum appeal. This was an appeal on quantum only on a revision application so that the Tribunal was asked to adjudicate on the valuation of the property in line with the tone of the list.

## 6. RELEVANT STATUTORY PROVISIONS

6.1 This is a revision appeal and as such the net annual value of the Property is to be determined in accordance with the provisions section 49 of the Valuation Act 2001 which provides as follows *inter alia*:

*“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property”.*

## 7. APPELLANT’S CASE

7.1 The Appellant submitted that the property is a basic warehouse fitted and used as an amusement centre. It originally comprised three units which were amalgamated by removing internal walls and associated works at a cost of approximately €50,000.

7.2 The Appellant submitted that the subject property should be valued at an overall rate of €32 per sqm in line with the only other amusement centre in the Industrial Estate (**Appellant’s Comparison 1**) which is consistent with the tone of the list.

## 8. COMPARISONS

8.1 The Appellant relied on three comparisons all located in the same industrial estate as the subject property as follows:

### **8.1.1 Comparison 1 - Tricky Tricksters Magic Castle, Unit W11, Toughers Business Park.**

It was submitted by the Appellant that this is the most comparable property in that it is the only other amusement centre in the park and was also the most comparable in size. It also noted that it has limited profile to the link road. The ground floor (floor area 711.98 m<sup>2</sup>) and the mezzanine floor (floor area 366.68 m<sup>2</sup>) of the amusement centre were both valued at the same rate of €32 per sqm. The Appellant was unable to provide a description of the internal fit out of the

comparison as no inspection had been carried out. No reason was advanced by the Appellant as to why an inspection was not carried out. It is regrettable that this was not done with view to putting full evidence in relation to the key comparator before the Tribunal. It should also be observed that the Respondent was also unable to assist the Tribunal in this regard.

### **8.1.2 Comparison 2 - Elaine Byrne, Unit W7C/1, Toughers Business Park.**

The Appellant relied on this property which is in the block immediately adjacent to the subject property and has similar profile. It was noted to be a very small unit (total 456.32m<sup>2</sup>) and the Appellant submitted that a significant quantum discount would be appropriate to make it comparable to the subject property. The ground floor was valued at two different rates with €41 per sqm applied to the front section which had profile and natural light and €34.17 per sqm was applied to the rear section which did not. Similarly, the first floor (noted to be a full floor not a mezzanine) was rated in the same manner with €41 per sqm applied to the front section and €34.17 per sqm applied to the rear section. It was common case that this valuation was arrived at by agreement between the ratepayer and the Valuation Office. This was the only comparison adduced in evidence where this approach whereby the property was split into a front and rear sections for valuation purposes was taken.

### **8.1.3 Comparison 3 - Insultation Limited, Unit W10D, Toughers Business Park**

This was the third comparison relied on by the Appellant and is a property located in the block behind the subject property and was constructed at the same time. It was relied upon by the Appellant as an example of the rate for standard industrial warehousing of €27.34 per sqm.

8.2 The Appellant submitted that the tone of the business park is well settled over the years and submitted that having amalgamated the three properties the Respondent failed to “stand back and look” in order to assess whether or not the valuation fits

within the tone of the list and in particular, failed to value it in the same way as the other amusement centre in the industrial estate.

8.3 The Appellant submitted that the subject property should be valued at a rate of €32 per sqm in line with the only other amusement centre in the Industrial Estate (see **Appellant's Comparison 1**). The Appellant submitted this approach is consistent with the tone of the list as evidenced by the rates in Elaine Byrne (**Appellant's Comparison 2**) and that for standard retail warehousing (**Appellant's Comparison 3**) when a quantum discount is applied to those rates. The Appellant submitted that a quantum discount would be appropriate in this case where three individual units are now occupied as a single unit.

8.4 On the basis of the foregoing the Appellant submits the correct rate of evaluation to be €279.

## **9. RESPONDENT'S CASE**

9.1 The Respondent gave additional evidence in relation to the property. It comprises three retail warehouse units with good internal access throughout. The property is fitted out to a good standard with air conditioning, suspended ceilings and an elevator from the ground floor to the mezzanine level. It has good profile and there is a large free carpark to the front of the unit.

## **10. COMPARISONS**

10.1 In arriving at its valuation the Respondent relies on five properties which it submits share similar characteristics and are all located in the same industrial estate as follows:

### **10.1.1 Comparisons 1 – 3 CAT Leisure comprising Units 8A, 8B and 8C (which were amalgamated as part of the revision application the subjproperty)**

The subject property is valued at the same rate as each of the three individual units which were amalgamated to form the subject property. This is a rate of

€54.67 per sqm for ground floor and a rate of €13.67 per sqm for mezzanine level.

#### **10.1.2 Comparison 4 – Unit 8D – Kitchen World**

This Unit on the same parade is valued in a similar manner with the ground floor retail warehouse and the mezzanine value valued at the same rates as the subject property. In addition, Unit 8E and Unit 8F comprising a warehouse at ground floor and office at mezzanine are value at the same rates as the subject property.

#### **10.1.3 Comparison 5 - Mandika's Icon**

This property is located in the adjoining parade. It is similar in construction to the subject property. The ground floor is valued at the same rate as the subject property. The Respondent relies on it as demonstrating that the application of the same rate for a substantially smaller area (228.16 m<sup>2</sup>) than the subject property and also to the units comprised in Comparisons 1 to 4.

10.2 The Respondent also gave evidence of the other units in that block. A similar rate is applied to ground floor and mezzanine as the subject property in Units 7A – 7F (inclusive, save for Unit 7C Elaine Byrne (**Appellant's Comparison 2**)) whereby the ground floor retail warehouse is valued at €54.67 per sqm and the mezzanine office at €13.67 per sqm.

10.3 In response to the Appellant's reliance on Unit 7C Elaine Byrne (**Appellant's Comparison 2**), the Respondent referred to other units in the same block valued at the same rate as the subject property. The Respondent also pointed out that Unit 7C is in fact split into two units with Elaine Byrne occupying Unit 7C/1 and Sasta Health and Fitness occupying Unit 7C/2 and the latter was at the same rate as the subject property.

10.4 The Tribunal noted that included in the Respondant's comparisons was Unit 7F which used a rate of €34.38 in respect of an office which accounted for the majority of the floor area and the rest of the property was valued at the ground floor and

mezzanine levels at the same rate as the subject property. The Respondent was unable to assist the Tribunal further when questioned about this property which was inconsistent with what the Respondent submitted to be the established tone of the list.

10.5 The Respondent submitted that there is no basis for a quantum allowance in the retail park relying on the fact that a substantially smaller unit was valued on the same basis as larger units (**Respondent Comparison 4**). The Respondent also relied on the Tribunal Determination in **Argos Ltd v Commissioner of Valuation** (VA06/3/012) which it submitted was authority for the proposition that there is no basis for a quantum allowance. In that case, a submission by the Appellant to apply a quantum in a retail park was disputed by the Respondent and on the facts a determination was made without allowing a quantum discount.

10.6 In conclusion, the Respondent submitted that the rates applied were fair and reasonable having regard to location, access and quality of the property. It also submitted that the rates were well established having regard to the parade of retail warehouse units the subject property is situated in and the adjoining parade.

## **11. FINDINGS AND CONCLUSIONS**

11.1 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.

11.2 The Tribunal notes that the Respondent has used two different approaches to valuing properties in the industrial estate within which the subject property is located. In short, the Appellant's case is that the subject property should be valued at the same rate as the only other amusement centre in the park. This valuation applies a rate of €32 per sqm to both the ground floor and the mezzanine level. The Respondent's case is that the subject property is valued in line with the established tone of the list and without adjustment for quantum.

- 11.3 The Tribunal noted that the Respondent's comparisons were, in general, a third of the size of the subject and expressed a degree of concern by reference to valuation principles at applying similar rates per sqm to what are materially different areas. The Respondent acknowledged this but noted that this was consistent within the comparisons relying on Unit 7A – Mandikas Icon (**Respondent's Comparison 5**) which was valued at the same rate as the other comparisons in spite of being half the size (at 228 sqm) of the majority of other comparisons relied on by the Respondent.
- 11.4 The Appellant relied on the approach in the Elaine Byrne comparison (**Appellant's Comparison 3**). The Tribunal notes that it formed part only of a unit and found that the overall rate applied to the Elaine Byrne property was consistent with the tone of the list as established by the Respondent.
- 11.5 The Tribunal noted that the percentage of total floor area represented by the mezzanine floor of the subject property was smaller those of the Respondent's Comparisons and concluded that this would be a factor relevant to the hypothetical tenant in comparing properties.
- 11.6 The Tribunal concludes that the subject property has a superior profile to the other amusement centre in the estate. The Tribunal is satisfied of a good standard of internal fit-out of the subject property based on the evidence. The Tribunal concludes that in the particular circumstances of this case, the Tribunal determines a rate of €40 per sqm to be an appropriate rate to the total floor area having regard in particular to the superior location of the property and the relatively smaller mezzanine to overall area. The Tribunal is mindful that applying the same rate to ground floor space and mezzanine space would not normally be standard valuation practice. However, in this instance, the Valuation Office has adopted this approach to the valuation of the only other amusement centre in the estate. Also, the Tribunal is satisfied that a similar result may be achieved by adopting what the Respondent submits to be the tone of the list and adjusting it for a quantum discount.
- 11.7 The Tribunal concludes a quantum discount to be appropriate in the circumstances of the case. Therefore, the Respondent's tone of the list figure of €54.67 per sqm

on the ground floor is determined to be too high to apply to the subject property in circumstances where the ground floor area is three times the size of the majority of the Respondent's comparisons. A figure of approximately €49.20 per sqm (representing a 10% reduction on the tone) is considered to be an appropriate adjustment.

11.8 The Tribunal finds that the tone of the list indicates a figure of €13.67 per sqm is the established rate for the valuation of mezzanine levels in the estate. It is also observed that the Appellant in its original notice of appeal adopted this rate for the valuation of the mezzanine level. On the basis of the Respondent's tone of the list as adjusted for quantum gives a rental value of approximately €70,000 and a NAV of €350 as follows:

Respondent's Tone of the List Approach			
Description	area m <sup>2</sup>	Rate per sqm	NAV
Ground Floor	1,322.72	€48.58	€64,257.74
Mezzanine	420.80	€13.67	€5,752.34
Totals			1,743.52
Totals			€70,010.07
Multiplier			0.005
Estimated NAV			€350.05
Say			€350
Appellant's Approach			
Description	Area m <sup>2</sup>	Rate sqm	NAV
Ground Floor	1,322.72	€ 40.15	€53,107.21

Mezzanine	420.80	€40.15	€16,895.12
Totals	1,743.52		€70,002.33
Multiplier			0.005
Estimated NAV			€350.01
Say			€350

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal decreases the valuation of the Property as stated in the valuation certificate to €350.

And the Tribunal so determines.