

Appeal No: VA17/5/360

**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. 2213161, Miscellaneous at 3AA.1, Hazelhatch Road, Celbridge, County Kildare.

B E F O R E

Majella Twomey – BL

Deputy Chairperson

Dairine Mac Fadden - Solicitor

Member

Hugh Markey – FRICS FSCSI

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH 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 €45,800.

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. 20 year FRI lease from 2009 at €55,000 per annum inclusive of VAT (€44,715 NET). The market was significantly better in 2009 for the letting of crèches than it was at the valuation date.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €33,300.

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 €62,400.

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 of the Property was reduced to €45,800.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €45,800.

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 15th day of October, 2018. At the hearing, the Appellant was represented by Mr Eamonn Halpin, BSc (Surveying), MRICS, MSCSI and the Respondent was represented by Mr John O’Connor, BA Hons., 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.

The property comprises a modern (2008) single storey, purpose built, building operating as a crèche. The premises are located in the Hazelhatch Park housing estate, Celbridge, Co. Kildare. The area of the accommodation has been agreed at 416.48 sq. m.

5. ISSUES

The issue in this appeal is solely one of quantum.

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, in his direct evidence, suggested that the crèche sector was a highly regulated business operating off very low profit margins and the subject had to compete with crèche operators in the locality who were not commercially rated. He also said that the operator could only afford the level of reserved rent due to the particularly high occupancy of the operation; something he suggested was applicable to the business acumen of the operator.

He outlined the rental evidence from the letting of the subject which was at a level of €107.36 per sq. m.

7.2 Mr. Halpin's view was that the Commissioner had erred in applying a uniform rate per square metre to all crèches in County Kildare. He suggested this did not take into account factors such as location or size or specification and the approach was flawed. He drew the Tribunal's attention to his Comparison No 1(Appendix 1). This crèche, he evidenced, was 50% larger than the subject; was let at twice the rent and by "any objective measure" was a better facility. He indicated that the original rent was €141,500 in 2007 and this lease was renewed in 2017 at €91,500 pa. This had been valued by the Commissioner at €70 per sq. m. and Mr. Halpin had adopted this rate in reaching his opinion of value for the subject under appeal.

7.3 Mr Halpin posited that the Commissioner had erred in his assessment of crèches and referred to Section 19 (5) of the Valuation Act 2001 (as amended). He considered the relative NAV's applied to the subject and his Comparison No 1and suggested that there was a lack of uniformity and as a result, inequity resulted.

7.4 Mr. Halpin outlined his other rental comparisons as supporting his view on value. In response to questions under cross examination by Mr O Connor, he confirmed that the initial rent on the subject had not been varied but that the rent review was on an 'upwards only' basis. With regard to his Comparison No. 2, he confirmed that the rent was subject to a turnover top up of 12.75% but suggested that the operator's business acumen was being taken into account. He accepted that the lease of Comparison 4 was between related parties and the rent reflected finance costs.

8. RESPONDENT'S CASE

8.1 Mr O Connor, in his direct evidence, outlined his two key rental transaction comparisons and five NAV comparisons and suggested they supported his opinion of value. These are set out in Appendix 2.

8.2 In response to a query from the Tribunal with regard to the NAV level set in the case of the Appellant's Comparison No. 1, Mr O Connor responded by suggesting that 'mass appraisal' had been used in arriving at valuations and a level of €110 per sq. m. had been adopted for crèches in the county. He indicated that he had inspected this comparison and when it was being valued, it was not realised that there was planning permission for the use as a crèche and suggested it had been valued in line with the equivalent sized offices in the business park. This was despite being in operation as a crèche at the time.

8.3 Mr O Connor suggested that the location was not ideal for a crèche as a petrol filling station was located nearby and there were considerable heavy vehicle movements in the area due to the nature of the occupants of the business park.

8.4 Mr O Connor's two rental comparisons devalued at €107.36 and €106 as of the effective date in October 2015. The comparisons he submitted as evidence of equity and uniformity were all valued at the uniform level of €110 per sq. m. None were subject to appeal.

8.5 In cross examination, Mr Halpin enquired as to the rental evidence used by the Respondent in arriving at the rate of €110 per sq. m. used in assessing crèches in the county? Mr O Connor responded that there had been a poor return of the S 45/46 forms; the Commissioner had initially adopted a rate of €150 per sq. m. and subsequently adopted a rate of €110 per sq. m.

8.6 Mr O Connor accepted that he had inspected Mr Halpin's comparison No 1 because there had been an issue over the floor area. He said that he had not realised at the time that there was planning permission for the use. He went on to state that 53 properties in this size category, in this location and another similar business park in the county were all valued at the same rate of €70 per sq. m. but all crèches in the county were valued at €110 per sq. m.

He rejected the view that this Comparison 1 was superior to the subject and rejected the suggestion that the ruling in the 'Carlton' case, insofar as it referred to the universal application of a mistake, was relevant in this instance. He pointed out that there was rental evidence in relation to the subject which supported his view on value. He further accepted that as this valuation was now in the list, that Mr Halpin's client was free to rely on it.

9. FINDINGS AND CONCLUSIONS

9.1 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 CONSIDERATION OF THE EVIDENCE

10.1 In this appeal, the Tribunal heard evidence that a single rate was applied to crèches in County Kildare – this was referred to by the Respondent as ‘mass appraisal’. The Appellant suggested that this approach was flawed and inequitable and relied heavily on his Comparison No.1 which was valued at a rate of €70 per sq. m. The Respondent accepted that applying this rate was, in fact, an error and it should have been valued at the same rate as the other crèches in the county.

10.2 The Tribunal accepts that while it now appears in the list and must be deemed to be correct, it considers that it would be unsafe to rely on what is acknowledged by the Respondent to be an error; in the same way as it would be if the mistake was in the opposite direction (in favour of the Respondent) and therefore has chosen not to attach weight to the Appellant’s Comparison No. 1.

10.3 In considering the other evidence presented to it, the Tribunal considered the Appellants other comparisons. The second comparison is under appeal to the Tribunal and while the rent was set in 2015, there was also a turnover top up element suggesting that the reserved rent may, as is usual practice, be set below the market rate; as such limited weight can be attached to this as rental evidence.

10.4 The information for his Comparison No. 3 was gleaned from the Commercial Leases Register, without any supporting information and the Tribunal can attach little weight to this evidence.

10.5 In an appeal, the onus is on the Appellant to give good cause why the valuation should be altered and in this instance, the only information that can be relied upon is the rental of the subject. The Tribunal finds that most weight should be attached to the rental evidence of the subject which is a level of €107.36 per sq. m. This is the ‘best’ evidence for establishing the NAV of the subject.

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 €44,500.

Level 0: Crèche 4169.48 sq. m. @ €107per sq. m. = €44,563.36

Say €44,500

And the Tribunal so determines