

Appeal No: VA17/5/285

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

LEINSTER CO-OP MARTS LIMITED

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1207331, Industrial Uses at Fenagh Road, Borris, County Carlow.

B E F O R E

Carol O'Farrell - BL

Chairperson

Pat Riney - FSCSI, FRICS, ACI Arb, FIABCI

Member

Claire Hogan - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF FEBRUARY, 2019.**

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 €27,900.

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 summarised as follows:

- The Property is a little used old cattle mart with hay barn open type sheds and tubular railed cattle pens, all constructed about 1967/68. There is no comparable property in the area.
- The Property is not a warehouse building and is unsuitable for any purposes other than holding cattle-capacity approximately 100 animals or possibly for grazing purposes.
- The Property is in a deteriorated state but is still used occasionally (twice per year) as a cattle mart.
- The office building is in poor condition and is only used on a sale day. The entire building is not up to modern standards.
- The sheep yard with fixed sheep pens is not usable for any other purpose.
- The Co-Op is kept open on a goodwill basis and subsidised by other marts. The local community and the County Council use the car park for events locally and the County Council had over the past decade given substantial rates reduction.
- The Property cannot be let for rent as the Appellant has repeatedly offered the Property for lease without success. The valuation as determined will result in closure of the seasonal mart facility.
- The valuation is excessive.

1.3 The Appellant considers that the NAV of the Property ought to have been determined in the sum of €7,000.00.

2. REVALUATION HISTORY

2.1 On the 11th day of May 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 €27,900.

2.2 Being dissatisfied with the valuation proposed, representations were made in June 2017 to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property remained unchanged.

2.3 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €27,900.

2.4 The Respondent amended the valuation of €27,900 to €16,150 at the appeal hearing to reflect the nature of the open sided stores building and to reflect the value of the balance of the other building comprising stores and office.

2.5 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 11th September 2018. At the hearing the Appellant was represented by Mr. James Walsh and the Respondent was represented by Mr. Terry Devlin BSc, MSCSI, MRICS 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. ISSUES

4.1 The sole issue is one of value and the effect, if any, the physical and economic factors existing at the valuation date have on the valuation of the Property.

5. RELEVANT STATUTORY PROVISIONS:

5.1 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.”

5.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be considered 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. APPELLANT’S CASE

6.1 Mr. James Walsh joined the Appellant as an accountant in 1974 and took over as General Manager in 1988 at the Appellant’s head office in Carlow. The Borris Mart is a co-operative mart that is part of the Leinster Co-Op Marts which was established in 1970. The group currently consists of 900 shareholders of which 150 come from the South Carlow-Borris area. The Appellant also operates marts at Carlow and Kilcullen. Mr. Walsh explained that livestock marts evolved from the old country fairs and that the mart business has been in steady decline throughout his career. He gave a general summary of how the mart business had changed over the years due to a combination of an ageing farmer population, changes in farming practice, environmental concerns due to overgrazing, and low farm incomes. He emphasised that the Property which holds the Borris Mart is now significantly subsidised from the Appellant’s main centre in Carlow as its gross annual income is such that it cannot continue to exist as a standalone operation. Evidence was given that the gross commercial earnings of the Property are less than ██████ per annum and the net earnings vary between ██████ and ██████. Mr. Walsh outlined the history of the Borris Ewe, sheep specially bred in the Blackstairs Mountains, the decline in their numbers and the efforts of the Blackstairs Farming Group, inspired by the success of the BurrenLife project in Clare, to halt the decline in upland farming and improve the economic viability of the community through European Innovation Partnership funding.

6.2 As regards the valuation as determined by the Commissioner, Mr. Walsh asserted:

- (a) That the valuation determined by the Respondent is flawed as the Property is incapable of being let or yielding an income commensurate to the valuation applied.
- (b) The covered area is not usable for any alternative purpose; the sales yards cannot be converted to any other use without serious investment and the small office area is in very poor repair. The Property is only maintained marginally as the cost of upgrading work is not feasible.
- (c) There are no comparable properties in the area of the Property; the nearest mart is 17 miles away in Tullow town. Other marts located in Kilkenny, New Ross and Carlow are approximately 16-20 miles from the Property.
- (d) The properties relied upon by the Respondent as being comparable to the Property are generally smaller, in use for industrial or commercial purposes or are warehouses or car parks that are properly serviced with lighting, heating and ventilation and as such are not appropriate comparables.
- (e) Cattle sales are held twice a year in March and October, while sheep sales are held four times a year to oblige local farmers. There has been a fall in the sale of lowland sheep. Borris is at the foot of the Blackstairs Mountains in an area noted for its ruggedness. Sheep production is largely seasonal, and sales are limited to August-September and sometimes October.
- (f) The Mart business is not really comparable to anything else; it is a unique business in a unique area.
- (g) The Property is not suited for warehousing and is unsuited for other uses save for grazing animals. The Appellant's efforts to let the Property to a Veterinary Centre and to a motor dealer were unsuccessful.
- (h) There are a lot of vacant properties in the area and accordingly there is no demand for the Property. Borris is a much more rural location than the comparisons offered by Mr. Devlin.
- (i) The objective of the legislation cannot be to penalise the ratepayer.

7. RESPONDENT'S CASE

7.1 Mr. Terry Devlin pointed out that there are a number of industrial properties in the vicinity of the appeal Property. He produced details of rental transactions in respect of four properties which

were relied upon to inform the estimate of the NAV of the Property. Two of the properties are situate in Tullow and the other two in Bagenalstown. The net effective rents of these four properties at the valuation date ranged between €33.02 and €19.89 per sq. m. and these rents provided the basis for determining the appropriate NAV per square metre, subject to adjustment. Mr. Devlin said a valuation level of €17 per sq. m. was applied to arrive at an NAV of €27,900.

7.2 Mr. Devlin stated in his Précis that there are 26 properties valued at the level of €17 per sq. m in rural Carlow and that the Property is one of four which is under appeal to the Tribunal. He relied on 9 comparable properties all of which, with the exception of Comparisons 2, 3 and 5, were valued above €17 per sq. m. Comparison 2 - PN 1207323- is situate in Borris and comprises steel framed buildings having a combined measurement of 1,241.59 sq. m. with concrete walls to approximately 3 metres, an asbestos roof and an eaves height of approximately 5 metres. Comparison 3 – PN 1207412- which is situate in Tullow is a warehouse measuring 1,667 sq. m. with corrugated walls and roof , a block wall to 2 metres and an eaves height of 4 metres. Comparison 5 - PN 1207335 - which is situate in Leighlinbridge is a property comprising workshop, stores and yard having a combined measurement of 1,916.80 sq. m.

7.3 Mr. Devlin pointed out that as the buildings comprised in the appeal Property are relevant property capable of beneficial occupation and that the Property had to be valued and not the Appellant's business. He did not regard the limited use of the Property to be of relevance as it related to the business carried out and not the Property itself. He pointed to other commercial activity in the area of Borris to emphasise that the Property's location cannot be considered remote. He described the buildings comprised in the Property as being of an industrial nature but accepted that they look like hay barn structures. He stated that the level of €17 per sq. m. had been reduced by the Respondent to €15 per sq. m. which was the lowest value applied to any old industrial building in the rating authority area of County Carlow and that half of that rate had been applied to the open sided stores buildings and that the yard and animal pens had not been valued. In his view, Comparison 8 - PNPN 5008844 - a workshop situated in Ballycrogue measuring 107.57 sq. m. was the most suitable comparable. Accepting that the key rental transaction properties were different types of building located in town centres, he stated that these differences were reflected in the 25%-30% adjustment that had been made when valuing the Property.

8. FINDINGS OF FACT

8.1 The Appellant is a co-operative mart established in 1970 consisting of 900 shareholders of which about approximately 150 are from the south Carlow-Borris region.

8.2 The Property is located approximately a ½ mile outside the town of Borris, which had a population of about 646 in the 2011 Census. The Appellant is the freehold owner and occupier of the Property.

8.3 The Property is currently in use as a cattle and sheep mart and is made up of a combination of mainly open sided buildings and a smaller closed building comprising an office; the agreed measurement of the open sided buildings is 1,099.32 sq. m. and that of the closed buildings 527.21 sq. m. There are also a large number of external cattle and sheep pens together with a large yard area for parking which were not included in the valuation.

8.4 The Property has been available for let for a period of 4 years but has remained unlet as there is no market demand that would give rise to a market rent for an old purpose built cattle mart in this rural location. The undisputed evidence is that the Borris Mart is effectively used on only six occasions per year for the sheep and cattle sales to facilitate local farmers and the community and the gross commercial earnings of the Property are less than ██████ per annum with net earnings varying between ██████ and ██████ per annum.

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.

9.2 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. The rent for which the Property might, in its actual state, be reasonably be expected to let is measured by the rental value on a hypothetical tenancy of the Property on a year on year basis and not by reference to the actual occupier's business or financial means. Except for a few exceptional cases where there is restricted demand for a property such as in a case where you have a single

hypothetical tenant, any question as to the ability of the hypothetical tenant or the ratepayer to pay rent or rates is irrelevant.

9.3 The Appellant asserted that there would be no tenant willing to take a letting of the Property. All possible occupiers, including the actual occupier, however, must be considered as possible tenants. The evidence established that despite the Appellant's efforts to let the Property over a period of approximately four 4 years no tenant could be found for some alternative use of the Property. In Tomlinson v Plymouth Argyll Football Co Ltd (1960) 31 DRA 788, Pearce LJ warned at 793 that:

"The court must not assume hypothetical tenants for the hereditament if there is in respect of that particular hereditament no reasonable possibility of such tenants existing."

In Great Western and Metropolitan Railway Cos. v Hammersmith Assessment Committee ([1916] 1 AC 23 at 35) Lord Buckmaster said:

"The phrase "hypothetical tenant", which has for a long time described the character of the tenancy, must not be allowed to introduce the idea of creating hypothetical competitors or hypothetical circumstances by which to fix the rent."

In this case the Tribunal is satisfied that it is clear that there could be no hypothetical tenant other than the Appellant for the Borris Mart which consists predominantly of open sided buildings without services, tubular railed animal pens, all of which are generally in poor condition. There was no evidence that some tenant might be found for some alternative use and without such evidence it would be wrong to assume it.

9.4 The Tribunal has to determine whether the valuation determined by the Respondent would have resulted from the probable negotiation between the hypothetical landlord and the Appellant as the only hypothetical tenant. The Property is not comparable to other properties in the area; it is in very poor physical condition and has very limited use. Nonetheless, the Appellant wishes to maintain the use of the Property to facilitate the small local farming community despite the low

margins. The fact that the Appellant is the only possible tenant would influence the negotiations for the hypothetical tenancy. Accordingly, as the Property has some value to the occupier, the Appellant has a motive to pay rent for the Property and a reasonable compromise between the hypothetical landlord and the hypothetical tenant would represent the rent.

9.5 The Tribunal acknowledges that the Respondent has submitted key rental transactions and comparative properties to justify the assessment of the NAV. The comparative method is one of the principal methods of valuation. The valuer identifies the characteristics of the property to be valued and then seeks other properties possessing some or all of those characteristics with which he may compare the property he is valuing. When no directly comparable property exists, the valuer makes certain allowances. The less closely analogous the property chosen for comparison, the greater the allowance or the allowances that have to be made. There are no open market rents for properties comparable to the appeal Property and there are no comparable properties in the rating authority area. The properties relied upon by the Respondent have either different construction or are in superior locations or have services such as lighting and heating and so cannot be said to be truly comparable to the Property which comprises mainly open sided buildings. For want of anything better, local industrial values were considered as the starting point. While Mr. Devlin made an allowance by adjusting the rent per sq. m. in respect of the open sided stores building to €7.50 per sq. m., the Tribunal considers that the appropriate ground floor rate for those buildings should be lower having regard to the fact that it is a non-conventional building having the external appearance of an open sided hay barn and the absence of any services such as lighting, heating and a proper drainage system. The Tribunal is satisfied to adopt the level of €15 per sq. m as proposed by Mr. Devlin at the appeal hearing for the closed buildings.

9.6 The Tribunal having considered all of the above, the evidence submitted and adduced, assesses the Net Annual Value of the Property as follows:

Open– Sided Stores	1,099.32 sq. m. @ €3.00 p.s.m.	= €3,297.96
Stores / Office	527.21 sq. m. @ €15.00 p.s.m.	= €7,908.15
	TOTAL	€11,206.11
	SAY NAV	= €11,200.00

9.7 Accordingly, the Tribunal allows the appeal and decreases the value of the Property as stated in the valuation certificate to €11,200.

And the Tribunal so determines.