

Appeal No: VA17/5/533

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

GLANWAY LTD

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5008688, Industrial Uses at Local No/Map Ref: 19N/1 Unit 5-6, Gorteens, Rathpatrick, Waterford, County Kilkenny.

B E F O R E

Carol O'Farrell - BL

Chairperson

Liam Daly – MSCSI, MRICS

Member

Annamaria Gallivan – MRICS, MSCSI, BSc Hons, TRC

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF OCTOBER, 2019**

1. THE APPEAL

1.1 By Notice of Appeal received on the 12th 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 €131,000.

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 for the following reasons:

- i The Valuation of the subject property is excessive and inequitable as it is not in line with its potential rental value.

- ii The valuation levels assessed in Belview Port are not in line with industrial rents in the surrounding areas nor assessed industrial levels. Whilst the Appellant accept that some premium must be paid in certain circumstances for property which benefits from Port use, the premium applied (of up to 100%) is not justified.
- iii The failure to apply a quantum allowance is inequitable.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €74,900.

2. REVALUATION HISTORY

2.1 On the 30th June 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 €66,700.

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 increased to €131,000

2.3 A Final Valuation Certificate issued on the 7th September 2017 stating a valuation of €131,000.

2.4 The date by reference to which the value of the Property was determined is the 30th 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 13th day of August 2019. At the hearing the Appellant was represented by Mr. Eamonn S. Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. Ltd 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 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 Property is located in Belview Port which is one of the most southerly points in County Kilkenny, just 1 mile from the Waterford County border. It is an industrial location with access to Waterford Harbour via the River Suir and access to the sea via the River Barrow.
- 4.3 The Port specialises in bulk general cargo and is equipped with 4 rail sidings located on the quays.
- 4.4 The Property comprises unit Nos. 5 and 6 in a series of 7 basic storage sheds. The Property is a modern industrial unit used as a recycling plant and occupied by Appellant to process waste, extract recyclables, biomass and process waste into sustainable fuels for export. The Property has an eaves height of 10 metres with mass concrete to 6.5 metres and double skin side panels and double skin roof above. The Property measures 3,741.26 m² and a Portacabin measuring 25.2 m². The units have no office content and have no internal fittings.
- 4.5 The Appellant is the tenant and occupier of the Property.

5. ISSUES

- 5.1 The matter at issue is quantum. The Appellant claims that the valuation of the Property is excessive and inequitable and ought to have been valued at €74,900. The Respondent contends that the valuation of €131,000.00 is in line with the tone of the list for the rating authority area and requests that the Tribunal affirm same as representing its Net Annual Value in accordance with Section 48 of the Valuation Act 2001 and the requirements of section 19(5) of that Act as amended.

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 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.”

7. APPELLANT’S CASE

7.1 Mr. Halpin for the Appellants adopted his Précis and described the Property as a series of basic industrial units, located in Belview Port, Co. Kilkenny, suited only for storage use.

7.2 Mr. Halpin was not aware of any open market rental evidence from within the Port and stated that the Respondent had not given any indication of being in possession of any rental evidence to support his level of €35/m². In Mr. Halpin’s view the most important piece of evidence from the Port is the valuation applied to his first comparable property PN 746975. Though he believed this to be a superior property, he pointed out that it had been valued at €20/m². It was beyond his understanding how the Property could be valued at €35/m² in circumstances where a superiorly located property though only 100 metres away from the appeal Property could be valued at €20/m².

7.3 Mr. Halpin argued that while there was ample rental and tone of the list evidence available to support the level of €20/m² outside of the Port area, there was none to support the level of €35/m². which had been applied to the Property. He observed that that the level of €35/m² was only applied in the industrial estates of Kilkenny City, almost 60 kilometres north. Mr. Halpin further stated that local industrial units outside

of the Port, industrial units in Waterford City (Co. Kilkenny); and New Ross (Co. Kilkenny) were all valued at €20 to €25/m². In Mr. Halpin's opinion the hypothetical tenant would not consider these locations to be strategically inferior. Mr. Halpin stated that rental evidence of his comparison properties ranged between €13.45 to €20.16/m². Mr. Halpin queried whether properties in Belview Port should command a premium in terms of rent as Port properties in the south-east devalued at €13/m² implying an inverse premium.

- 7.5 In Mr. Halpin's view the absence of any office content in the Property was a key criterion in determining the hypothetical rent of an industrial property, particularly when considering against a basket of rents which have office content. Mr. Halpin referred to Appeal VAI7/5/110 - Hebron Industrial Estate, Kilkenny City, where the Tribunal determined that a property without office content was €10 per sq. m. less valuable than an equivalent property with office content. He surmised that even if the Appellant accepted €35/m² as being the prevailing level in the Port, this would imply that the Property should have more appropriately have been valued at €25/m². Mr. Halpin relied upon the following observation of Ms. Justice O'Malley in *Commissioner of Valuation v. Carlton Hotel Dublin Airport Ltd & Ors* [2013] IEHC 170

"Like must be treated alike. However, there is a logically prior issue and that is whether liability to the tax in question has been properly assessed in the first place. There is no merit in the uniform application of a mistake."

- 7.6 In contending for a NAV which reflects actual letting values and the emerging tone of the list, Mr. Halpin introduced 4 market comparisons to support a claim for a reduction (more fully detailed in Appendix 1).

Comparison 1.

Lease Details: 5 Year lease from 1st December 2017 at €60,000 per annum.

Warehouse in a port setting with its own jetty on the River Suir measuring 3,544.13m² valued @ €13/m².

Mr Halpin described this property as older warehousing with 6 metre eaves but fundamentally similar to the Property in terms of usage for basic storage in a port setting with its own jetty.

Comparison 2

Lease Details: 5 Year lease from 1st January 2014 at €55,000 per annum

Warehouse with office content Warehouse/Offices measuring 3,117.96m²

Net effective rent €17.64/m²

Mr. Halpin characterised this property as purpose-built warehousing with office content, with an eaves height of 7 metres. He considered that given its location and type, the appeal Property should be valued in a similar value range to this property.

Comparison 3

Let in April 2019 at €25,000/annum.

Modern warehouse measuring 1,302.90m²

Net effective rent €16.50/m²

Mr. Halpin acknowledged that this property is slightly inferior to the appeal Property due to its location and type.

Comparison 4

Lease Details: 3 Year lease from 1st May 2012 at €66,900 per annum. 6 months' rent free, no breaks. Net effective rent €55,750.

Superior purpose-built warehouse measuring 4145 m². Net effective rent €13.45/m²

This property was acknowledged to have been constructed to a superior industrial specification that the appeal Property.

7.7 Mr. Halpin also adduced evidence of 7 tone of the list comparisons as follows:

PN 746975 Belview Port

Warehouse with 12 metre eaves located 100 metres from the Property in a superior location with access to the water.

Warehouse area of 3312 m² assessed at €20/m²

Luffany Roundabout, Waterford City (Co. Kilkenny)

Located 3.5 kilometres from Property with dual profile to N25 and N29.

PN 2107652 Warehouse area of 2858.25 assessed at €20/m²

PN2187379 Warehouse area of 3559.78 assessed at €25/m²

PN 229312 Kilmurray, Waterford City (Co. Kilkenny)

Engineering complex with office content located 3 kilometres from the Property

Warehoused area of 3277.06 assessed at €20/m²

PN 226666 Christendom, Waterford City (Co. Kilkenny)

Located 6 kilometres from Property and 1 kilometre from jetty at Waterford Harbour.

Large purpose-built cold storage facility

Store level assessed at €25/m² (Cold room at €35/m²)

PN203515 Raheen, New Ross (Co. Kilkenny)

Industrial complex located 17 kilometres from Property

Modern warehouse area of 2052 assessed at €17.50/m²

PN210231 Freshford Road, Kilkenny

Located on the edge of Kilkenny City, valued by the Tribunal

Warehouse area of 7576 assessed at €17.50/m²

PN 2166232 Gowran, Co. Kilkenny

Modern industrial units, with exceptional height of up to 18 metres in some sections.

Warehouse area of 8632.59 assessed at €14/m²

- 7.8 In conclusion, Mr. Halpin stated that there was no market rental evidence to support the Respondent's valuation. He argued that the valuation of PN 746975, a superior facility in Belview Port at €20/m² only 100 metres from the appeal Property, and the valuations applied to comparable properties within the locality but outside the Port, at €20 to €25/m² for similar or superior quality warehousing supported his contention that the Respondent's determination of value was excessive and inequitable. Rental evidence from other port locations such as New Ross did not indicate the payment of a premium for port property that was strategically insignificant in the national context. The evidence from comparable and superior industrial units indicate a rental level of €13 to €20/m² across the county of Kilkenny and in Waterford City.

7.9 During the course of cross examination Mr. Halpin confirmed that the location was actually nearer to Waterford City and that a hypothetical tenant would not be tied to a specific location. He agreed that some of the rental evidence he had adduced was not relevant due being too far ahead or too far beyond the valuation date. He also agreed that rural locations would not have the same benefits of the Property's location. When queried by Mr. Devlin as to whether he agreed that the Property was of good quality and well built, Mr Halpin replied it was fit for purpose but had no embellishments or offices. When queried as to whether he agreed that the Property was of non-standard reinforced construction with 10 metre eaves, Mr. Halpin replied that the Property lacked final finishes and cited PN 210231 Freshford Road, Kilkenny as an example of a comparable of similar construction and mass concrete walls. When asked to confirm that the Property has good location, Mr. Halpin expressed the view that the site was narrow to the front due to the railway running line along the quay but did accept that the Appellant would view the Port location as an attraction.

8. RESPONDENT'S CASE

8.1 Mr. Devlin adopted his Précis of evidence. He pointed out that the Property's location is 10 kilometres east of Waterford City via the N29 and although in County Kilkenny it was at the edge of Waterford City. He stated that Belview Port specialises in bulk general cargo.

8.2 Mr. Devlin described the Property as a modern industrial unit used as a recycling plant having reinforced concrete walls with a 10 metre eaves height and a floor area of 3,741.26 square metres and Portacabin with a floor area of 25.2 square metres.

8.3 Mr Devlin stated that the Property was purpose built and not for light industrial use. He confirmed that there was a shortage of rental evidence as many of the units were owner occupied or held under older leases.

8.4 Mr. Devlin said because the available rental evidence related to smaller units, he had reduced the rate per square metre from €40 to €35. He pointed to the fact that his key rental transactions were proximate to the Property. He believed that Mr. Halpin's tone of the list comparison PN 746975 in Belview Port had not been valued at the incorrect

level as it may have been mistakenly believed that it was of older rather than modern construction. He believed there may be a premium on rent for properties in the Port.

8.4 To support the Respondent's valuation, Mr. Devlin relied on 3 items of market information in [detailed in Appendix 2)

1. **Hebron Industrial Estate, Kilkenny.**

Old industrial warehouse measuring 155.02 m².

Lease 4 years 9 months from 01/01/2016 at €8,400 per annum:

Net effective rent €40.68/m².

2. **Loughboy Industrial Estate, Kilkenny**

Old industrial warehouse measuring 334.28 m².

Lease 4 years 11 months from 24/11/2012 at €15,000 per annum:

Net effective rent €43.53/m².

3. **Hebron Industrial Estate, Kilkenny**

Old industrial warehouse measuring 332.31 m²

Lease 5 years from 01/04/2014 at €13,650 per annum:

Net effective rent €41.08/m²

8.5 Mr. Devlin stated that the Property is 1 of 6 properties which were appealed to the Valuation Tribunal. Appeal VA17/5/524 (PN 2166275) was withdrawn and Appeal VA17/5/530 (PN 2163306) was agreed with the warehouse level remaining unchanged at €35.00/m².

8.6 In addition, Mr. Devlin submitted 7 NAV comparisons to support his case:

1. **PN 2163306 - Gorteens, Belview Port, Co. Kilkenny**

Portacabin	154.80	14.00	2,167.20
Warehouse	16,863.90	35.00	590,236.00
Weighbridge	2.00	1800.00	3,600.00
		Total NAV	€599,000

2. **PN 2166275 - Gorteens, Belview Port, Co. Kilkenny**

Office	38.95	35.00	1,363.25
Store	25.00	35.00	875.00
Warehouse	10,121.50	35.00	354,252.50

	Weighbridge	2.00	1,800.00	3,600.00
			Total NAV	€360,000
3.	PN 2163303 - Gorteens, Rathpatrick, Waterford, Co Kilkenny			
	Warehouse	9,646.80	40.00	385,872.00
			Total NAV	€385,000
4.	PN 1136393 - Gorteens, Belview Port, Co. Kilkenny			
	Office	431.99	40.00	17,279.60
	Warehouse	6,410.00	40.00	256,412.00
	Plant/ Silo	800.00	130.00	104,000.00
	Tank	1.00	2,387.75	2,387.75
			Total NAV	€380,000
5.	PN 2200332 - Gorteens, Rathpatrick, Waterford, Co Kilkenny			
	Office	40.20	40.00	1,608.00
	Warehouse	5,691.11	40.00	227,644.40
			Total NAV	€229,000
6.	PN 2200333 - Gorteens, Rathpatrick, Waterford, Co Kilkenny			
	Dock Leveller	1.00	2,000.00	2,000.00
	Warehouse	7,475	40.00	299,000.00
			Total NAV	€301,000
7.	PN 2200334 - Gorteens, Rathpatrick, Waterford, Co Kilkenny			
	Warehouse	1,950.00	40,00	78,000.00
			Total NAV	€78,000.00

8.7 Mr. Devlin's stated that the Property is quite close to Waterford City notwithstanding it has a Kilkenny address and, therefore, it has, in his opinion, a superior location in the Port.

8.8 In cross examination Mr. Devlin disagreed with Mr. Halpin's contention that his tone of the list comparison PN 746975 in Belview Port supported his valuation of the

Property and maintained it was an ‘outlier’ that may have been incorrectly assessed as being of older rather than of modern construction. Mr. Devlin did not accept Mr. Halpin’s contention that PN 746975 had been assessed at €10/m² less by reason of not having any office content and not due to the mistake surmised on his part. When it was put to him that most of his comparable properties were not truly comparable to the Property due to their smaller size, Mr. Devlin stated that the rental evidence provided a base for establishing rental values and that adjustments had been made to reflect the size type and location of the properties. When Mr. Halpin put it to Mr. Devlin that there was no evidence for a level of €35/m² in the Port, Mr. Devlin said there was an established and unchallenged level of €35 m². He confirmed to the Tribunal stated that the range of values in Belview Port is €25 to €55/m².

- 8.9 At the Tribunal’s request Mr. Devlin submitted additional information on the 16th August 2019. Mr. Devlin pointed out at that time that he had erred in stating in his Précis that 21 properties had been valued at €35/m² in Belview Port. He clarified that initially 21 properties had been valued at the same level per m² but that the level had been amended to €35 and €40/ m² to reflect location within the Port and the nature of the property. This amendment impacted upon 12 properties and as a result 6 warehouse properties were valued at €35/m² and 6 were valued at €40/m².

He also clarified that Belview Port has a total of 26 properties and that they are valued as follows:

Industrial valued at €20 m² - 1 unit
Industrial valued at €27 m² - 1 unit
Industrial valued at €35 m²- 6 units
Industrial valued at €40 m²- 6 units

Offices valued at €70 m² - 1
Offices valued at €80 m² - 3
Offices valued at €90 m² - 8

In the rating area of Waterford there are a total of 89 industrial properties valued between €20/m² and €40/m², and 12 of those 89 properties situated in the Port area, are valued at €35 to €40/m². Of those 12 properties only 3 comprise office accommodation and in each case the offices are valued at the industrial level.

- 8.10 This additional information was furnished to Mr. Halpin and it is noted that Mr. Halpin chose not to make any observations upon it when invited to do so by the Tribunal.

9. SUBMISSIONS

- 9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

- 10.1 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 value of the Property is relative to the value of other comparable properties on the valuation list in the rating authority area of Kilkenny County Council.
- 10.2 The Tribunal has examined the particulars of the Property and considered the written and oral evidence adduced by Mr. Halpin who contended for a revised valuation of €74,500 and by Mr. Devlin who sought confirmation of the Respondent's determination of €131,000 as being fair and equitable.
- 10.3 The Appellant's case was that rental evidence was available for similar properties outside the Port area. The Respondents' case was that while the key rental transactions relied on by the Respondent did not provide evidence of open market rents for properties in Belview Port, appropriate adjustments had been made by the Respondent to the rental evidence that was made available pursuant to section 45 of the Act.
- 10.4 In determining the rent at which it is estimated a relevant property might reasonably be expected to be let, the best evidence would be evidence of lettings of comparable premises in the open market. Use of the rental method of valuation depends, however, on sufficient, appropriate and reliable comparable evidence being available from the marketplace; if it is available then it is top of the evidential hierarchy.

- 10.5 On this appeal, there was no evidence of lettings of comparable premises in the Port area at or around the valuation date.
- 10.6 If geography were the sole influencing factor, property PN 746975 in Belview Port would be the best comparable. The assessment of PN 746975 at €20/m² would suggest that the appeal Property should also be assessed at €20/m² given its close proximity, similar construction, mode of use and similar lack of office space. But the Tribunal agrees with Mr. Devlin that the valuation assessment of that property cannot necessarily be considered correct and the evidence heard by the Tribunal on this appeal would suggest that PN 746975 was undervalued.
- 10.7 As for whether it can be assumed that Belview Port attracts a premium rent, there is some force in Mr. Devlin's view that the Port location would attract higher rents, but there was no real evidence adduced in support of that. Even without Mr. Halpin getting home on that point, an analysis of the emerging tone of the list comparison indicates that the Property should be valued somewhere lower than €35/m².
- 10.8 The sizes of the key rental comparisons relied upon by the Respondent were too small to be any real assistance. With fairly sparse and poor rental evidence, it is the Tribunal's opinion that the NAV of the Property should fully reflect the lack of office space as this intrinsic characteristic of the Property reduces its relative value compared with other warehouses that have such accommodation.
- 10.9 As the rental evidence is poor, it is therefore appropriate to take into account the value of comparable properties on the valuation list so as to ensure that the value of the Property is relative to the value of those other properties.
- 10.10 In the Tribunal's opinion, the NAV of the Property should be reduced by €5/m².

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 €112,300

Portacabin 25.20 m² @ € 4.00 = € 100.80

Warehouse 3,741.26 m² @ €30 = €112,237.80

€112,338.60

Say €112,300

And the Tribunal so determines
