

Appeal No: VA17/5/674

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

Helen O' Regan

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2175618, Creche (Purpose Built), Local No/Map Ref: 21 B/1, Ballyragget,
Castlecomer, County Kilkenny.

B E F O R E

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Frank O'Grady – MA, FSCSI, FRICS, FIABCI

Member

Sarah Reid - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 24th 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 €20,600.

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 because:

1. *“The Valuation of the subject property is excessive and inequitable. The property’s value as set by the Commissioner is not in line with its actual and potential rental value.*
2. *The subject property is let at €12,000 per annum. Though the rent itself is related parties, the only reason the subject is currently occupied at all is because of this arrangement. The subject property had lain vacant for a significant period following a number of different tenancies. The maximum rent ever paid even at the top of the boom was €14,400 per annum. There is very limited demand for crèche services in Ballyragget, and very low spending capacity even where there is demand.*
3. *The yard is of no additional value in this context.*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €12,070.

2. REVALUATION HISTORY

2.1 On the 11th day of May, 2015 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 €20,600.

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.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €20,600.

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 13th day of September, 2019. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying) MRICS, MSCSI and the Respondent was represented by Mr. Terry Devlin B.Sc., 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:

4.1.1 The area to be valued is 322 m². It was agreed between the parties that the yard attached to the property (measuring 251.24 m²) would not be included for rateable purposes.

4.1.2 Between 2003 & 2007 the property achieved a rental income of €12,000. In 2007 a figure of €20,400 was secured on the property though that tenant subsequently forfeited the lease in 2009. Prior to this, the rent paid on the property was €12,000 pa. and this is the rate currently paid for the subject property noting the property is not let at arm's length, the owner and occupier being related.

4.1.3 There are two crèches in Ballyragget (one being the subject property) however the other is exempt from commercial rates due to its status as community childcare. It has not therefore been considered as comparator by either party.

4.1.4 As a childcare facility regulated by TUSLA the property is subject to extensive statutory conditions, restrictions and requirements. The maximum number of children permitted in the facility is 33.

4.1.5. The Respondent did not consider these statutory restrictions in determining an appropriate NAV for the present property.

5. ISSUES

5.1 At the opening of the hearing, the Respondent confirmed that the yard space adjacent to the property was not being pursued as a distinct rateable area.

5.2 The Appellant argued that given the inferior location of the property, the limited childcare numbers approved for the property (ie a maximum of 33 children) and the nature of the childcare industry whereby profitability is driven by licenced numbers and mandatory staff ratios, a NAV of €60 per m² did not reflect the economic reality of the property.

5.3 The Respondent maintained that the Commissioner was obliged to, and did so, apply a valuation based on the property rather than the particular business circumstances that applied to that property. In this regard the Respondent confirmed that no consideration was given to the regulatory framework that applied to the occupier of the property in determining an appropriate NAV for the said premises.

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 on behalf of the Appellant gave evidence that the property represented one of two childcare facilities in Ballyragget, both of whom service a population of approximately 1,100 people. He also gave evidence that the crèche in question was a purpose build crèche and was restricted to accommodating a maximum of 33 children being the figure derived by TUSLA based on their inspection of the property. It was not therefore open to a tenant (either the present one or a hypothetical one) to provide childcare places in excess of this number.

7.2 As a result of the very particular regulatory framework the tenant operated within, Mr. Halpin was of the view that to apply a uniform view of NAV across all childcare facilities created an injustice as it could result in one occupier paying double what a competitor paid depending on the number of children permitted in each facility (this figure being set by TUSLA).

7.3 As a result of the foregoing, Mr. Halpin suggested a figure of €40 per m² was a more realistic figure in the present case, though no supporting evidence was put forward to explain or justify this figure.

8. RESPONDENT'S CASE

8.1 Mr. Devlin, on behalf of the Respondent, submitted that the property was valued at a level of €60 per m² which was in line with other commercial properties (certain of which were direct comparators as crèche facilities, others being commercial practices in the locality of the subject property).

8.2 Mr Devlin further contended that the role of the Commissioner was to value the property in question irrespective of the particular use that property could be put to and in the present case such an approach was appropriate to ensure uniformity in the application of commercial valuation.

8.3 Specifically as regards comparative rental transactions, the Respondent provided two examples in their evidence in support of their calculation. The first was a childcare facility in Kilmacow, Waterford with an annual rent of €25,000 and a NER per sq.m of €201.48. The second rental transaction provided was a veterinary practice in Castlecomer, Kilkenny with an annual rent of €10,000 and NER per sq.m of €104.34.

8.4 In cross examination by Mr. Halpin, it was put to Mr. Devlin that the above examples produced an effective NAV that far exceeded the figure being relied on in the present case and did not reflect the rent in each case. It was further suggested to him the lack of consistency in calculating the NAV in this manner showed the Respondent simply decided on a figure he deemed fair and that was how the NAV was achieved in both cases. In reply Mr. Devlin agreed that the properties relied on were outliers and the figures relied on were not helpful in the present case. However, he disagreed that his proposed figure of €60 was not supported in evidence, referring to the six comparison properties which had the same figure applied.

9. SUBMISSIONS

9.1 There were no submissions of a legal nature.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine the value of the subject property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable relative to the value of other comparable properties on the valuation list in the rating authority area of County Kilkenny. In approaching this task, the Tribunal is mindful of the distinct regulatory framework that applies to crèches, such as the present one, and determines that this merits particular consideration in the context of the present appeal.

10.2 The essence of the Appellant's case was succinctly put by Mr. Halpin when he said the Respondent's failure to consider the economic reality of the tenant's situation – as dictated by a State regulator – sacrificed equity for the sake of uniformity. In cross examination, Mr. Devlin confirmed that the Commissioner did not take into account the unique restrictions that applied to the business operating from the premises. The Tribunal must therefore determine if that failure renders the subsequent calculation of the NAV by the Respondent incorrect and/or inequitable in the circumstances.

10.3 The Tribunal is of the view that the number of children permitted in a crèche facility is an important factor that should be taken into consideration when determining the NAV of the relevant property. At the hearing, the Appellant provided the approved licenced figures (per TUSLA) for each of the properties in his precis. The Respondent had no similar figures for any of his properties. Further, the Respondent provided examples of businesses that were well outside the range of comparison (specifically Key Rental Transaction 2 PN 2200437 being a

veterinary practice and NAV comparison 5 PN 992839 a commercial office) and the Tribunal's view that these were entirely inappropriate were made known to the parties during the course of the hearing.

10.4 In the present case the Appellant has proposed a figure of €40 per sq. m as a fair and equitable NAV for the property in question. The Respondent submits €60 per sq. m as the appropriate rate in the circumstances. The Tribunal is not satisfied that either party presented evidence to support their figures or explain how they were arrived at. In fact, in the case of the Appellant no reference was made to it in his evidence save insofar as the Appellant's precis was adopted into evidence and the figure was contained within it. The Respondent provided similar properties where a rate of €60 per sq. m was applied, however for reasons outlined above, the Tribunal is dissatisfied that the differing economic reality for each crèche operator referred to was not considered by the Respondent in coming to his conclusion.

10.5 The rules of Valuation are clear that if licencing requirements attach to a particular property (for example in the case of public houses) then the economic reality of that business is relevant in arriving at a NAV that is fair and equitable in the circumstances. The Tribunal is of the view that the licencing requirements imposed on crèches by TUSLA (specifically regarding the maximum number of children permitted per facility) fall to be considered in the same vein and as such ought to be factored into the Respondents determination.

10.6 As a result of the foregoing, the Tribunal is not satisfied the figure of €60 per sq.m is reflective of a fair and equitable NAV in the particular circumstances of this case given the inferior location of the property in question and the economic reality of the tenancy that a maximum of 33 children are permitted in the subject property.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate determining that an adjusted figure of €50 per sq.m is appropriate in the circumstances of the case.

DEVALUED

Ground Floor Crèche 322 sq. m. @ €50 / sq. m. NAV €16,100