

Appeal No: VA17/5/876

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

OMNIPLEX (CORK) LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1137099, Leisure at Floors: 0,1, 26D Carlow Shopping Centre, Bridewell Lane, Carlow, County Carlow.

B E F O R E

Hugh Markey – FRICS, FSCSI

Deputy Chairperson

Dairine Mac Fadden - Solicitor

Member

Raymond J. Finlay – FIPAV, MMII, ACI Arb, TRV, PC

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 9TH DAY OF JUNE, 2020.

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th 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 €138,700.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

- *“The condition of Carlow Shopping Centre is to be reflected on the valuation*
- *The almost breakeven trading of the cinema”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €25,000.

2. REVALUATION HISTORY

2.1 On the 25th 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 €198,200.

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 €138,700

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €138,700.

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 25th day of October, 2019. At the hearing the Appellant was represented by one of its directors, Mr Paul Anderson and the Respondent was represented by Mr. Adrian Power Kelly FSCSI FRICS RICS Reg. Val., 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 premises under review comprises a 5-screen cinema complex, part of Carlow Shopping Centre. This centre is located in the centre of the town and comprises a covered, single anchor (Penneys, previously Superquinn/SuperValu), shopping centre with a number of unit shops, a multi storey car park and the subject cinema complex. The venue has capacity for 428 patrons.

4.3 It is one of 2 cinemas in the town, the other is located in Fairgreen Shopping Centre.

5. ISSUES

5.1 The sole issue in this appeal is 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 Anderson related how the original 3 screen complex was constructed in 1994/5 and traded successfully until a second multiplex (IMC), comprising 42,000 sq. ft. and having 8 screens accommodating 1,500 patrons, opened approximately 500m away in Fairgreen Shopping Centre, in 2009. This caused his company to close the complex due to its non-viability.

7.2 Mr Anderson gave evidence of the appointment of an estate agent to market the vacant cinemas, but the only real proposal was at a level of €12,000pa and this was to include rates.

7.3 He outlined how his company closed a cinema in the centre of Waterford in 2008, following the opening, in 2007, of a new multiplex at Poleberry, Waterford. He outlined how it only became viable to reopen this facility following the Waterford valuation, whereby the NAV was reduced to €50,000.

7.4 Mr Anderson explained how the subject cinema was reopened in April 2015 following refurbishment and conversion to a 5-screen complex.

7.5 He suggested the approach adopted by the Respondent was flawed and the initial valuation placed on the property 'bore no semblance with reality' and the second (€138,700) was flawed as it had been arrived at by adopting a rate of 14% of turnover together with a fit out allowance of 18% of the cost; he suggested one should have one or the other, but not both.

7.6 Mr Anderson proposed 3 different valuation bases:

1. Based on rental value and a percentage of fit out costs. This resulted in an NAV of €33,168.
2. A consideration of the 'closest comparative site'. He had introduced the rates demand for the cinema in Waterford and contended that the subject should be valued at 50% to reflect the relative sizes. This resulted in an NAV of €25,000.
3. Adopting a percentage of turnover. Mr Anderson suggested that a figure of 14% may be appropriate for a cinema complex in Dublin but a figure of 7% would be more realistic for Carlow and that should be reduced by 50% to reflect the fact that there is a second cinema in the town. This results in an NAV of €29,400.

8. CROSS EXAMINATION OF MR. ANDERSON

8.1 Under cross examination by Mr. Power Kelly, Mr Anderson accepted that the rental proposal was in 2010; the relevant valuation date was 2015 and the Valuation Certificate issued in 2017. He further confirmed that the complex was significantly different in 2010, it had sloping floors and no seats.

8.2 He also confirmed that the Waterford cinema was 'derelict' when revalued.

8.3 He accepted that trading was improving year on year.

9. RESPONDENT'S CASE

9.1 Mr Power Kelly outlined the location of the property and the fact that it was beside a multi storey car park. He outlined how the valuation had been arrived at following a consideration of Fair Maintainable Trade, arrived at by a consideration of the accounts supplied by the Appellant; the valuation approach was in line with the Respondent's practice.

9.2 He outlined how the Waterford Revaluation was carried out under a separate enactment under s. 19 of the Valuation Act 2001; it was in shell condition when valued and that it was appropriate to consider properties only within the same local authority area. He further noted that a second cinema in Waterford was valued on an identical basis as he now proposed.

9.3 Mr Power Kelly outlined how the valuation had been arrived at based on a conservative approach to FMT; it reflected the settlement reached on the IMC in Fairgreen Shopping Centre (PN 2209009) and asked the Tribunal to affirm his valuation. This latter settlement, following an appeal, reflected the application of 14% to the FMT and 18% of the fit out costs. Full accounts had been made available to the Respondent. The Appellant was professionally represented.

10. CROSS EXAMINATION OF MR POWER KELLY

10.1 Mr Anderson questioned Mr Power Kelly on the methodology used by the Respondent in valuing cinemas, whether it was correct and whether it had ever been argued before a Tribunal. Mr Power Kelly responded that this methodology was accepted by practitioners and he had adopted this method when acting for appellants, while in private practice.

10.2 In response to a query from the Tribunal, he indicated that he was unaware of the existence of a guide outlining the methodology.

10.3 Mr Power Kelly, in response to a question from the Appellant, suggested that the rationale for adding a percentage of turnover was soundly based. He said that a divisible balance in the case of the IMC cinemas was in the order of 16% and this confirmed that the 14% adopted was correct.

11. SUMMING UP

11.1 In summing up, Mr Anderson suggested the only real evidence relied upon by the Respondent was the IMC cinemas and these were as 'chalk and cheese'. He outlined the seating capacity of the IMC as being 1,500 as compared with the appeal property's 428.

11.2 In summing up, Mr Power Kelly outlined how the property had been valued as fully refurbished at a substantial cost and that ability to pay was not a ground on which an appeal may be based.

11.3 He outlined how he had introduced valuation evidence in line with s. 63 of the Act; that the onus in any appeal is on the appellant to provide evidence to justify their case.

11.4 Mr Power Kelly concluded by noting that the Waterford comparison relied upon by the Appellant was in a different Local Authority area and was, at the time of the valuation, stripped out. He indicated that the proposed valuation was in line with the settlement reached in the case of the IMC where the occupier had been professionally represented; the FMT adopted was fair as the turnover was increasing.

12. SUBMISSIONS

12.1 There were no legal submissions.

13. FINDINGS AND CONCLUSIONS

13.1 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 Carlow County Council.

13.2 The Tribunal finds Mr. Power Kelly's evidence to be of most assistance. He relied on his Comparison, PN 2209009, IMC at Fairgreen Shopping Centre, Carlow, which is a short distance from the subject property, and had previously been settled by agreement before hearing.

13.2 In any appeal to the Valuation Tribunal, the onus is on the Appellant to give adequate reasons as to why the Respondent's valuation should be adjusted. In this instance, insufficient evidence was put forward by the Appellant's representative to meet this standard.

In this instance, the Tribunal found the evidence put forward by the Respondent to be compelling.

DETERMINATION:

The Tribunal disallows the appeal and confirms the decision of the Respondent

And the Tribunal so determines.