

Appeal No: VA20/1/0011

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020**

EFIV Irish Property ICAV

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5020133, Office(s) at Building 6 Liffey Park Business Campus, Barnhall Road, Parsonstown, Leixlip, County Kildare

B E F O R E

Eoin McDermott - FSCSI, FRICS, ACI Arb

Deputy Chairperson

Liam Daly - FSCSI, FRICS

Member

Caroline Murphy - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF DECEMBER, 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on the 29th day of January, 2020 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 **€175,200**.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: “(a) *The Valuation is Incorrect. The valuation of the subject property is excessive taking into account the fact that at the relevant date Liffey Business Campus has a high degree of vacancy and taking into account the tone of the list. The valuation as assessed is also excessive taking into account the poor turnover the restaurant is currently achieving.* ”

1.3 The amount the Appellant considered ought to have been determined as being the valuation of the subject property was revised upwards from €36,000 as stated in the Notice of Appeal to €94,000 at the hearing.

2. VALUATION HISTORY

2.1 On the 11th day of November, 2019 a copy of a valuation certificate proposed to be issued under section 29 of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €175,200.

2.3 A Final Valuation Certificate issued on the 2nd day of January 2020 stating a valuation of €175,200

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 11th day of March 2022. At the hearing the Appellant was represented by Mr Martin O’Donnell BA(Econ) FRICS, FSCSI, Head of Business Rates and Compulsory Purchase in CBRE and the Respondent was represented by Sean Donnellan B.Sc. (Hons) Property valuation & management, 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 subject property is located in Liffey Park Business Campus which is just off the M4, south of Leixlip and east of Celbridge in Co. Kildare.

4.3 The subject property is currently used as a canteen for the business campus. The space was originally part of the Hewlett Packard purpose-built facility in the mid 1990’s. The subject property is connected to the remainder of the complex via a walkway that spans the entire width of the main buildings. There is no external access to this property, only an internal access via the internal spinal walkway.

4.4 The floor areas have been agreed between the parties as follows:

Offices(Canteen)	2,317.30 sq. m.
Total Floor Area	2,317.30 sq. m.

4.5 The property is freehold.

5. ISSUES

5.1 The sole matter at issue is one of quantum

6. RELEVANT STATUTORY PROVISIONS:

The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.

7. APPELLANT’S CASE

7.1 Mr. Martin O’Donnell, on behalf of the Appellant, explained the subject property is located within Liffey Park Business Campus, on the Barnhall Road, Parsonstown, Leixlip, County Kildare. Liffey Park Business Park is located off Junction 6 on the M4 motorway and is 5 km from Celbridge, 4 km from Leixlip, 23 kms from Dublin City centre and 24 kms from Dublin Airport.

7.2 Mr. O’Donnell identified the property within Liffey Park Business Campus as Building 6, the “cafeteria building”. Mr O’Donnell described how Building 6 comprises of 2,317.30 square metres (GEA) of canteen space, which was part of the original Hewlett Packard purpose-built

facility in the mid 1990's. Mr. O'Donnell explained that the building is connected to the remainder of the complex via a walkway that spans the entire width of the main buildings. There is only an internal access to this property via the internal spinal walkway. The property is open plan and in reasonable condition.

7.3 It was Mr. O'Donnell's opinion that the Commissioner of Valuation has valued the subject property as an industrial office. Mr. O'Donnell believed this to be incorrect, that the subject property should be valued as a canteen in a large-scale industrial complex.

7.4 Mr O'Donnell explained he acknowledged that the rate per square meter applied in this valuation represents industrial office levels. This however should not be the rate applied to what he described as a canteen in a now outdated industrial complex. The canteen was originally designed to service a much larger industrial facility being operated by Hewlett Packard. The configuration of the entire industrial facility has changed significantly since Hewlett Packard sold the premises. The original industrial facility has been sub-divided. The subject property is therefore occupying a much larger space than is required to service the catering needs of the occupiers in the now sub-divided units. Mr. O'Donnell rationalised that utilising the excess space for an alternative use would not be feasible due to the significant amount of funds required for such alterations.

7.5 Mr O'Donnell said the canteen has made a loss every year since it was purchased from Hewlett Packard. Mr. O'Donnell stated that the current occupiers of the complex are now paying €40,000 through the service charge to assist the finances to keep the canteen open. It was therefore inconceivable that a hypothetical tenant would pay anything in the region of €175,200 in rent for the subject property at the relevant date.

7.6 Mr. O'Donnell stated that he could not find a similar comparable to the subject property in the area, therefore he adopted a "stand back & look" methodology. From this exercise, Mr. O'Donnell submitted that a 50% discount to the industrial office rate should be applied to the subject property as it stands in its current location within the Liffey Business Campus and applied a valuation rate of €35.00 per square meter to the subject property.

7.7 Mr O'Donnell's opinion was that the NAV should be €94,000, calculated as follows:

Use	Area (sq. m)	Rate psm	NAV
Canteen	2,315.70	€35.00	€81,050
Additional items	(agreed)		€13,000
		Total	€94,050

7.8 Cross Examination of Mr. O'Donnell

Mr. Donnellan asked whether Mr. O'Donnell had been involved with the subject property during the revaluation stage, Mr. O'Donnell confirmed he acted for the previous owners at that stage. Mr. Donnellan then queried Mr. O'Donnell as to why the valuation was acceptable during the revaluation process but was unacceptable now. Mr. O'Donnell answered that during the revaluation stage, he was instructed by his then client to agree a figure at an overall level for the entire facility.

Mr. Donnellan queried Mr. O'Donnell's contention that the subject property would require extensive renovations for the area to be utilised as office space as opposed to its current use as a canteen and referenced page 10 of his precis, which included pictures of the area, where he described it as "very bright, light office space." Mr. O'Donnell did not agree with Mr. Donnellan's description.

Mr Donnellan asked Mr. O'Donnell would he agree the reason he was unable to find a suitable comparable was because all other similar properties have been valued in the same way as the subject. Mr. O'Donnell rejected this, he said all the properties had been valued on an overall basis, therefore he was unable to ascertain a specific breakdown, thus it was not possible to find a similar canteen on the list.

Mr. Donnellan asked why there was such a difference between the NAV figure of €36,000 submitted in the Appellant's Notice of Appeal and the figure of €94,000 in his precis. Mr.

O'Donnell explained the reason for the increase was due to his conducting further investigation work following the lodging of the original appeal.

Mr. Donnellan stated that the costs put forward by Mr. O'Donnell relating to proposed alterations required for an alternative use were not substantiated and were purely hearsay. Mr. O'Donnell accepted the costs were based on hearsay; however, he stated the Tribunal members would be able to interpret the validity of these figures through their own experience.

Mr. O'Donnell was asked by the Tribunal if he had sought comparables from outside the rating authority area. Mr. O'Donnell replied he had; however, the subject property is unique in terms of its size, therefore a suitable comparable could not be found. It was Mr. O'Donnell's contention that if a suitable comparable was available, it would have been used also by the Valuation Office.

8. RESPONDENT'S CASE

8.1 Mr. Donnellan on behalf of the Respondent gave the following oral evidence.

8.2 Mr. Donnellan explained that the entire facility was assessed under the revaluation process. The Appellant was now seeking a revision valuation so that the subject property could be assessed differently.

8.2 Mr. Donnellan stated that having reviewed the grounds of appeal submitted by the Appellant, there had been no Comparisons put forward by the Appellant that the valuation is excessive having regard to the tone of the list. The subject property had been valued in accordance with the Valuation Act 2001-2015 representing its Net Annual Value in accordance with Section 49 of the Valuation Act 2001-2015.

8.3 In addressing the specific valuation issues raised by the Appellant, Mr. Donnellan stated the description of the property is an office currently used as a canteen. It was Mr. Donnellan's opinion that although the property is currently used as a canteen, it could be let as an industrial office. It was Mr. Donnellan's contention that as the subject could be used as industrial office,

this was the most appropriate rate to apply. Mr. Donnellan also noted that the rate had been acknowledged by the Appellant as been an acceptable rate to apply to industrial office space.

8.4 Mr. Donnellan argued that the profitability of the enterprise is not a relevant consideration in arriving at a valuation under the Valuations Act 2001-2015. The property had been valued in its actual state. The property was measured as per the code of measuring practice for this type of property.

8.5 Mr. Donnellan explained that equity and uniformity were achieved by the consideration of ‘similarly circumstanced’ comparables. Mr. Donnellan noted the location and condition of the property and stated that three NAV comparisons were relied upon in arriving at the valuation scheme from which the NAV of the property was derived. A valuation level of €70 per square metre was applied to the area. Mr. Donnellan explained there were additional items in the valuation which included a distribution of the value of common areas and plant areas between all the valuations on the complex. Mr. Donnellan stated that this amount is agreed between the parties. Mr. Donnellan relied on the following three NAV comparisons:

Comparison 1

Property Number	5020129
Occupier	Hewlett Packard Enterprise
Address	Building 1 Liffey Park Business Campus
Total Floor Area	8,676.68 sq.m
NAV	€656,000

Description	Size (sq.m)	NAV per sq.m
Ground floor Office	4,145.98	€70
First floor Office	4,530.70	€70
Additional items	-	€48,676.17
Total	8,676.68	€656,000

Comparison 2

Property Number	5020132
Occupier	GES IRELAND LTD t/a DXC
Address	Building 4 Liffey Park Business Campus
Total Floor Area	8,855.93 sq.m
NAV	€669,000

Description	Size (sq.m)	NAV per sq.m
Ground floor Office	8,855.93	€70
Additional items	-	€49,681.77
Total	8,855.93	€669,000

Comparison 3

Property Number	5020136
Occupier	EFIV Irish Property ICAV
Address	Building 1a Liffey Park Business Campus
Total Floor Area	226.48 sq.m
NAV	€23,900

Description	Size (sq.m)	NAV per sq.m
Ground floor Office	226.48	€100
Additional items	-	€1,270.55
Total	226.48	€23,900

8.6 Cross Examination of Mr. Donnellan

Mr. O'Donnell asked Mr. Donnellan to look at the internal image photographs shown on page 20 of Mr. Donnellan's precis. Mr. O'Donnell argued this showed what an office fit-out looked

like, it contrasted with the subject property as the comparison has no windows. Mr. Donnellan, disagreed with this, saying that the windows in the subject property would provide good daylight. Mr. O'Donnell responded that this would be of little benefit during winter.

Mr. O'Donnell asked Mr. Donnellan if the subject property had previously been described as restaurant space. Mr. Donnellan said he could not clarify if it had, however irrespective of previous descriptions, it had been valued as industrial office space at that time.

It was Mr. O'Donnell's opinion that the costs associated with fitting out an office and a restaurant are different. Mr. Donnellan said he would not necessarily agree.

Mr. O'Donnell queried Mr. Donnellan on his statement that "a property should be valued in its natural state". Mr. Donnellan acknowledged the subject property is laid out as a restaurant, however he contended there was nothing preventing it been used for office space.

Summing up:

In summing up, Mr. O'Donnell said that the original facility has been sub-divided and that the subject property is occupying a much larger space than is required to service the catering needs of the occupiers in the now sub-divided units.

In summing up, Mr. Donnellan said that the subject property had been valued in line with the comparisons and no comparisons were put forward by the Appellant. He said the valuation submitted by the Appellant would undervalue the subject property having regard to the tone of the list in the area as outlined by comparisons.

9. SUBMISSIONS

9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

10.1 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.

10.2 This is a Revision type appeal where the Tribunal is directed to consider the relative Net Annual Value (“NAV”) of the Property by reference to comparable assessments of NAV from the tone of the Valuation List only by virtue of sec. 49 of The Valuation Act 2001.

10.3 The Tribunal finds that in this appeal, and in all appeals before the Tribunal, the onus of proof rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal’s determination.

10.4 The witness for the Appellant in his evidence gave a background to how the subject property originally formed part of a much larger industrial facility. The subject property was used as a canteen area to service the entire facility. The larger facility has now been subdivided into independent entities, therefore impacting the scale of canteen services required. This, the Appellant contended has resulted in the subject property having excess space for the trade that is been now generated from the area. The Appellant’s witness acknowledged that the space could be utilised for other uses, however he argued that adapting the property for such uses would be cost prohibitive.

10.5 The Appellant argued that applying an industrial office space use to the subject area was incorrect as the space is in use as a canteen. The Appellant stated that from his research, he was unable to source another suitable comparable to illustrate a rate for canteen use, as other similar properties were considered in their entirety, rather than identifying specific uses. The Appellant had therefore introduced his own methodology as to how the NAV should be determined, an application of a 50% discount to the industrial office space rate which is currently been applied.

10.6 The Respondent did not accept the Appellants argument as to the suitability of the subject property for alternative uses. It was also not accepted as to the profitability of the enterprise as this was not a relevant consideration in arriving at the valuation under the Valuation Act 2001-2015.

10.7 The witness for the Respondent outlined during the course of his evidence that all comparisons used by the Respondent were properties in the same development. The Respondent claimed that no comparisons had been put forward by the Appellant to demonstrate the NAV was excessive having regard to the tone of the list.

10.8 The Tribunal acknowledges that the sub-division of the entire facility ultimately would have had an impact on the original proposed functionality of the subject property. However, as was highlighted by the Respondent, the current profitability of the enterprise was not a relevant consideration in arriving at the valuation under the Valuation Act 2001-2015.

10.9 The Tribunal found the Appellant's argument that adapting the subject property to an alternative use would not be cost effective to be unsubstantiated. The Appellant had relied on hearsay evidence as to the likely costs incurred in transforming the existing canteen area into office space. Furthermore, there was nothing presented by the Appellant to contradict the Respondent's claim that a change of use was not such an unsurmountable challenge.

10.10 The Tribunal finds that the rate applied to industrial office space by the Respondents is supported by the evidence submitted and presented. The Appellant has accepted that the rate is appropriate for industrial office space; however, he was of the opinion that this was the incorrect level for the subject property. The Tribunal's opinion is that the space can be used as industrial office space. There was no evidence introduced to convince the Tribunal otherwise. The Tribunal finds that the proposed discount of 50% by the Appellant is arbitrary and without foundation. The Tribunal acknowledges the challenges associated in ascertaining valuations when there are variances in property types and uses, however in this instance, the Tribunal finds the methodology been utilised by the Respondent was fair.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.