

Appeal No: VS 22/6/0005

**VALUATION TRIBUNAL
AN BINSE LUACHÁLA**

**URBAN REGENERATION AND HOUSING ACT, 2015
AN tACHT UM ATHBHEOCHAN UIRBEACH AGUS TITHE 2015**

WOODHAVEN DEVELOPMENTS LTD.

APPELLANT

AND

CLARE COUNTY COUNCIL

RESPONDENT

In relation to the market valuation of Land at Smithstown, Shannon Town, County Clare (VSR 2).

TRIBUNAL	Barry Smyth FRICS FSCSI MCI Arb	Deputy Chairperson
	Ken Enright Solicitor	Member
	Killian O'Higgins FRICS FSCSI	Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7th DAY OF MARCH, 2023**

Appearances

For the Appellant: Helen Gallery BA HDip MRICS, Helen Gallery Auctioneers & Valuers, 68 Parnell Street, Ennis, Co. Clare

For the Respondent: Liam Brown MRICS MSCSI, REA Paddy Browne & Company, Harbour House, Weed Quay, Ennis, Co. Clare, V95 V2SF

THE APPEAL

On the 22nd of February 2022 a copy of Notice of Valuation issued in accordance with section 12 of the Urban Regeneration and Housing Act, 2015 Act ('the Act') was sent to the Appellant indicating a market value of €2,223,000 in respect of the vacant site situated at Smithstown, Shannon Town, Co. Clare, **formerly** part of Folio CE45063F and now comprised in Folio CE61242F. (hereinafter referred to as 'the Vacant Site'). [

1. The date by reference to which the value of the Vacant Site was determined by the Respondent planning authority is the 26th of August 2021.

2. By Notice of Appeal received on the 22nd day of March 2022 the Appellant appealed against the Respondent's determination of value. The ground(s) of appeal as set out in the Notice of Appeal is that the determination of the valuation of the derelict site is incorrect because: The lands were purchased on the open market on the 20th November 2020 for Euro 1,200,000.00 Euro. The Valuation presented by the Council was only an estimate and they failed to engage or seek confirmation of the open market value of the property. Market conditions in Shannon are different to the rest of County Clare due to ground conditions that any future development would have to be piled as regards foundations, services etc. The comparable prices submitted by the Council's agents are not based on land area equivalent to the property associated with this valuation. When property exceeds 1m in value in county Clare you do not have the same interest in purchase as you would have in property less than 1m.
3. The Appellant considered that the market value of the Vacant Site ought to have been determined in the sum of € 1,200,000.

THE HEARING

4. The appeal proceeded by way of a remote hearing held via Zoom platform, on the 26th of September 2022.
5. In accordance with the Valuation Tribunal (Appeals) Rules 2019 the parties' valuers exchanged their respective valuation reports prior to the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted their valuation report as their evidence-in-chief in addition to giving oral evidence.

RELEVANT STATUTORY PROVISIONS

6. A planning authority is required by s.12 of the Act to determine as soon as may be, after a vacant site has been entered on the register of vacant sites maintained under s.6 of the Act, and at least once every 3 years thereafter, the market value of the unencumbered fee simple of a vacant site if it was sold on the open market on the date of the determination. In that regard, a planning authority must authorise a person it considers suitably qualified for that purpose to inspect the site and report to it on the site's value.
7. Under s.3 of the Act the 'market value' of a vacant site is to be construed in accordance with s.12 which requires the market value to be determined

*"by estimating or causing to be estimated the price which the unencumbered fee simple of such site would fetch if it was sold on the open market on the date of the determination in such manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the site."*¹

¹ Please note that this definition differs from that used by the International Valuation Standards Council

8. Under s. 14 of the Act the Tribunal may, where it considers it appropriate in all the circumstances, deem that a vacant site has a zero-market value, in particular where
- (a) no market exists for the site, or
 - (b) the site is situated on contaminated lands and the estimated costs of remedial works necessary in order to use or develop the site exceed the market value of the site itself.

THE FACTS

9. On the basis of the evidence adduced by the parties, the following facts in respect of the physical condition of the Vacant Site were agreed or proved to the satisfaction of the Tribunal:
- (i) The site comprises 5.72 hectares (14.13 acres) and is a level greenfield site used for agricultural purposes at the date of valuation. The site is accessed by a T shaped service road linking the Airport Road, R471, and the Smithstown Road and has road frontage of approximately 260 metres on its west and north sides. The site is approximately 236.4 metres from the 150 millimetre diameter water mains on Smithstown Road and the sewage pumping station is 121 metres from the site, although another pumping station will be required to facilitate development on site. Electricity services are close by.
 - (ii) The site is located to the rear of Tracy's Oakwood Arm Hotel, a few hundred yards from Shannon Town Centre, on the north side of the R471 and is adjacent to existing residential development as well as commercial services including Dunnes Stores, a shopping centre, a petrol filling station and a hotel. The location is approximately 23 kilometres from Ennis, the County Town, and 22 kilometres from Limerick City via the M18 motorway.
 - (iii) The duration of and reason for vacancy were not in dispute.
 - (iv) In the County Clare Development Plan 2017 to 2023 the lands are zoned "R1" residential. At the valuation date of 26th August 2021 no planning permission existed for the development of this site. However, permission has subsequently been granted by An Bord Pleanála, by Bord Order ABP-311994-21, dated the 3rd of May 2022, for 48 houses, subject to conditions and levies totalling €187,000.
Clare County Council issued a notification of a decision to grant permission on the 28th of July 2022 for the construction of 55 houses and a 2-storey childcare facility building with a schedule of conditions including a levy of €311,801 to Clare County Council in respect of public infrastructure and facilities benefitting the development and €70,000 toward the upgrading and lighting of section of the L3172 road.

- (v) The only evidence adduced in relation to immediately contiguous lands or buildings was the Appellants evidence in relation to the neighbouring hotel.

- (vi) There was no evidence of a 'special purchaser' being considered in arriving at a valuation of the Vacant Site or in relation to comparable evidence submitted.

APPELLANT'S CASE

10. Ms Gallery noted the location and description of the property and stated that lands in Shannon generally need to be pile-driven to achieve successful foundations for development. She noted the distances from this site to services as set out above under The Facts and that a sewage pumping station will be required within the site. She noted the proximity of the hotel to the site which Ms Gallery stated would result in special acoustic requirements in development.

She said that the site was put on the market in August 2020 at an asking price of €1,500,000 and that it was sold in November 2020 for €1,200,000. Richard John Hamilton, Solicitor of Kerin, Hickman & O'Donnell, Bindon Street, Ennis, Co. Clare V95 V2TH certified copies of the essential elements of the contract and the Deed of Transfer confirming the purchase price on 20th November 2020 at €1,200,000. The sale price reflected, among others, the estimated cost of bringing services to the site, the additional costs associated with having to pile drive foundations, and likely special requirements as regards roadways and services due to ground conditions generally experienced in Shannon; the likely level of development levies and the objections that were expected from the nearby hotel to any development on the lands. Ms Gallery stated that, with the exception of gas (which was not required) otherwise all other mains services required for development were available in reasonable proximity to the lands.

Ms. Gallery advised that the land was zoned 'Residential' (R1) in the Shannon Town & Environs Local Area Plan 2012-2018 (LAP) and referenced the comment in the LAP specifically referencing the lands - "the site shall be developed for a high density scheme of residential units". She also referenced "Special Development Contributions" of €187,000 contained in a grant of planning permission (May 2022) subsequent to the valuation date.

She stated that the level of demand for building land in towns of similar size to Shannon was strong provided the land coming to the market was for a small manageable development. From her research she found no development lands in Shannon/Newmarket/Sixmilebridge/Tullagh/Clarecastle/Crusheen or Kilrush for more than one million euro from 2008 to 2021 and attributed this to the difficulty in obtaining finance for purchases in excess of this amount.

11. Ms. Gallery provided 4 comparisons and in summary are as follows:
1. Land at Tullyvarraga, 1.74 hectares sold in 2016/17 subject to the purchaser obtaining planning permission. Sale agreed quarter three 2016. Subsequently planning permission was granted for 47 units on the site. Sale closed 2017. The price is equivalent to €431,000 per hectare or the equivalent of €16,666 per site
 2. Lands at Crusheen, County Clare, 7.5 hectares. Sold 2017 for €285,000. Equivalent to €38,000 per hectare. Not subject to planning
 3. Lands at Newmarket on Fergus, Co. Clare, 2018 – 2.7 hectares sold for €175,000 or €64,815 per hectare. Not subject to planning permission
 4. Lands at Tullagh, County Clare. 1.598 hectares sold 2021 €425,000, equivalent to €265,957 per hectare. This site was zoned for mixed use and included an old school.

Ms. Gallery valued the property at the 26th of August 2021 at €1,200,000, which is equivalent to €209,790 per hectare.

In cross examination Ms. Gallery said that market conditions in Shannon Town Centre were stronger than Tullagh but not as strong as Ennis. She accepted that average house prices were in the order of €300,000 which is closer to the Ennis market than Tullagh, or Sixmilebridge. She did not accept that development levies were the same throughout the County and said that in Shannon they were more than the average in the Local Authority area.

Ms Gallery confirmed that the sale of the land in November 2020 was an “arm’s length” transaction between unrelated parties.

RESPONDENT’S CASE

12. Mr. Liam Brown in his evidence noted that the majority of residential development in Shannon is located on the southern side of the R471 and because of the proximity to the town centre, the Shannon Free Zone and the M18 motorway, the location of this site would be a highly desirable residential location.

He noted that due to the size of the lands the holding costs would be more substantial due to the length of time it may take to construct and sell the development, and this would be taken into account by any prospective purchaser.

He stated that he had been advised by the planning office for the region that the site could accommodate approximately 171 residential units but acknowledged, in light of the planning permissions that were granted post the valuation date, that it was looking more like 158 units could be accommodated on the site and this would reduce his valuation.

He noted that the average price of houses in Shannon was in the order of €240,000 to €270,000 for a three-bedroom semi-detached house and in Ennis €260,000 to €270,000 and that three bedroom town houses were selling for €300,000. He also

noted that there had been no private development in Shannon for 10 or 15 years. Second hand homes in the Ballycasey region of Shannon would be in line with or above values being achieved in the Ennis area and that this would indicate that any new development on this site would achieve or exceed the amounts being achieved for new houses in the Ennis area and he provided examples of three bedroom terraced houses selling for €300,000.

Mr. Brown provided two comparisons, Comparable 1 being, the same as Ms. Gallery's, the Appellant's Valuer, at Tullyvarraga, Shannon, Co. Clare and there was no dispute between them in relation to the terms of that sale. This site of 1.74 hectares, which was sold for €750,000 to "an affordable housing agency", was at the rate of €431,000 per hectare or €16,666 per site.

Comparable 2 – Drumcliffe Road, Ennis, Co. Clare., site of 0.18 hectares, zoned residential, sold for €575,000. This site by his estimate could accommodate approximately 24 residential units and therefore devalues at €23,958 per site or €709,876 per hectare. The site was acquired by the Local Authority.

13. Mr. Brown valued the site in his report at €2,223,000 but when he became aware that it would accommodate less houses than he had been advised, he revised his valuation downwards on the basis of €13,000 per site x 158 sites to €2,054,000.

14.

In cross examination, Mr. Brown conceded that he was not certain where services are located precisely and accepted that they might be somewhat further away than he had assumed and are as described in Ms. Gallery's report. He accepted that purchasers generally prefer to live in Ennis or Limerick and that Shannon New Town is not as popular but noted that prices in Shannon are still quite strong.

He acknowledged that he was not aware that the property was sold on the open market in November 2020 and accepted that the sale was not subject to any planning permission.

In response to questions from the Tribunal, he stated that development levies were a factor which have to be taken into consideration, but other sites with similar levies or above have sold for the same value or more and that site values in Ennis without planning permission were €14,000 to €16,000 per unit. In relation to the sale of this site for €1.2 million, seven months before the valuation date he stated that despite Covid values had increased but not by 50% as in his valuation. The market for new homes was strong and values increased by 12/14% from 2020 to 2021.

FINDINGS AND CONCLUSIONS

1. On this appeal the Tribunal is required to determine the market value of the Vacant Site as of 26th August 2021 in accordance with s.3 of the Act which is to be construed in accordance with s.12 of the Act.

2. There was no dispute between the parties about the location, description, advantages and disadvantages of the property, the only dispute being its value.
3. Six comparisons were put before the Tribunal, the first a common comparison, the lands at Tullyvarraga, comprise only 1.74 hectares compared with the subject site of 5.72 hectares, and it was sold on a subject to planning permission basis – it is of little assistance to the Tribunal other than to indicate that a party paid approx. €16,000/unit without taking a planning risk for a site 30% the size of the subject property, closing in 2017.

Lands at Crusheen (Appellant) comprises 7.5 hectares sold, not subject to any planning conditions, for €38,000 per hectare. This is considered to be of no assistance to the Tribunal. It is a 2017 comparison and if it were applied to the subject property, it would represent a value of approximately €217,000 in circumstances where both valuers have proposed valuations at a multiple of this number.

The lands at Newmarket on Fergus (Appellant), comprising 2.7 hectares, sold at €64,815 per hectare, not subject to any planning conditions. This is considered to be of no assistance to the Tribunal. It is a 2018 comparison and if it were applied to the subject property, it would represent a value of approximately €371,000. Again, both valuers have proposed valuations at a multiple of this number.

The lands at Tulla, Co. Clare, (Appellant) 1.598 hectares, sold at €265,957 per hectare in 2021. This property is zoned “mixed uses” and includes an old school building so the value may not relate totally to the lands and may also reflect the different zoning. The site is approximately 28% the size of the subject property. In the absence of greater clarity, this evidence is of little assistance to the Tribunal.

The site at Drumcliffe Road in Ennis (Respondent) is only 0.87 hectares (compared with the subject property’s area of 5.72 hectares) and has the benefit of defined block boundary walls and all services on the abutting main road. This site is approximately 15% the size of the subject property and was stated by the Respondent to have been recently acquired by the Local Authority without any planning conditions. . The Respondent said it was capable of delivering 24 units indicating a rating per unit of almost €24,000 per site. Mr. Brown elected to use a figure of €13,000 per unit in approaching his valuation on behalf of the Respondent and therefore, and given the size relative to the subject property, this comparison is of little evidential value to the Tribunal.

The sale of the subject site in November 2020, seven months before the valuation date, is in itself a comparison. In the period, between being offered for sale in August 2020 and the sale in November 2020, a sale was agreed on this site at a price that has not been disclosed or may not be available, but the sale did not proceed as the purchaser, explained by Ms. Gallery (and not contested by Mr. Browne) could not get the necessary funding. The property was then sold for €1,200,000 (one million two hundred thousand euro). The Purchaser also purchased on notice of the correspondence from Clare County Council in connection with the site and the vacant Sites register (Documents Schedule of the Certified Copy Contract).

4. In view of the wide diversity of sizes of sites offered as comparisons, their dates, locations, and zoning differences, the obvious comparison to utilise is the sale of the subject site in November 2020 in an “arm’s length” open market transaction after marketing. A copy of the Deed of Transfer including the essential elements of the contract were supplied to verify the contract date, parties thereto and confirming a contract price of €1,200,000 in November 2020. This is the obvious and best evidence, particularly where other comparative evidence adduced was of little evidential value to the Tribunal.

5. There is no evidence that development land market values were increasing in the Covid affected period between November 2020 and the valuation date of August 2021. Furthermore, nothing had changed in relation to the site and no planning permission had been obtained.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and determines that the market value of the Derelict Site falls to be amended to €1,200,000 (one million two hundred thousand euro) as of the valuation date the 26th of August 2021.