

Appeal No: VA20/4/0029

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Eli Lilly

APPELLANT

and

Commissioner of Valuation

RESPONDENT

**In relation to the valuation of
Property No. 970393, Factory at Dunderrow, County Cork**

B E F O R E

Dairine Mac Fadden - Solicitor

Deputy Chairperson

Mema Byrne BL

Member

Liam Daly - FSCSI, FRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF MARCH, 2024**

1. THE APPEAL

1.1 By Notice of Appeal received on the 25th day of November 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 **€61,500**.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: “the property is not complete. the occupier cannot conduct his business in a portion of the property as it is not finished or fully developed to the specified standard which is necessary for the occupier to fulfil his required manufacturing ability.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €50,000.

2. VALUATION HISTORY

2.1 On 28 September 2020 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 €61,500.

2.2 A Final Valuation Certificate issued on the 13th November 2020 stating a valuation of €61,500.

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 22nd day of June, 2022. At the hearing the Appellant was represented by Mr Tadhg Donnelly and the Respondent was represented by Mr Andrew Cremin of the Valuation Office. Evidence was given on behalf of the Appellant by Mr. Peter Doyle, Capital Project Manager of the Appellant.

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 Dunderrow, County Cork approx. 5.3km northwest of Kinsale and about 27km south of Cork city.

4.3 The areas been included in this revision are :

- IE9C Extension.
- Small building/offices s/storey.
- T-40 Pond extension.
- IE43 Extension.
- Biotech building T2.
- IE40 Construction (two storey Office building identified as IE 43)
- 150 carparking spaces.
- Assorted ancillary Plant.

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

	Floor	Sq.m
Factory & Office	0	67,685.18
Factory & Office	1	14,035.00
Factory	2	79.90
Total	-	81,800.08

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. Tadhg Donnelly, on behalf of the Appellant, began his evidence by stating part of the subject property (building identified as IE 43) was not completed at the date when the revision was conducted. Mr. Donnelly asked the Tribunal for permission to read from correspondence he was provided with by Eli Lilly which referenced the status of the building at that date.

7.2 As the correspondences been referred to by Mr. Donnelly had not been part of his submitted précis, the Tribunal asked the Respondents had they any objection to the introduction of this correspondence as evidence. The Respondent said they had no objection.

7.3 Mr. Donnelly read directly from the correspondence (author’s details appendix 1, N/A to public) as follows:

“Building IE 43 T2 was not completed, in that it was incapable of beneficial occupation by Eli Lilly at the date of inspection. The building was not complete as of the date of the inspection, it was not capable of producing product to the standard that we have to produce to for sale and, as such, it could be considered as very best a warehouse. The rental levels that have been applied to the building on the site that were in full production reflected the completed status of the building and this building was not finished to that standard. The Valuation office valued this building in line with the completed status of the manufacturing buildings on the rest of the site, so a considerable discount has to be made to reflect the status of this building. I have photographs to reflect this but also, and more importantly, we can show extra investment which had to be made to complete this building to the acceptable standard for manufacture of our product. It is important to note that for at least a year after the building was finished, tests had to be carried out for us to be able to market the product, all these tests had to be certified to be acceptable for distribution of our product”

7.4 Mr. Donnelly requested permission from the Tribunal to enter a second correspondence as evidence. Similar to the previous correspondence, this had not been included in the Appellant’s précis. There was no objection from the Tribunal or the Respondent, to the introduction of this material.

7.5 Mr. Donnelly read directly from the correspondence:

“Building IE 43 T2 was not completed, in that it was incapable of beneficial occupation by Eli Lilly at the date of inspection. The building was not complete and, as of the date of the inspection, it was not capable of producing product to the standard to which we must produce for sale. To illustrate this point, I can share that from November 1st 2020 to June 30th, 20221, capital invoices of more than € (Appendix 2, N/A to public) were paid out on the IE 43 T2 Project.”

7.6 Mr. Donnelly completed his evidence by stating it was not possible to put a value on a property which is incomplete. Therefore, the Valuation Office need to apply a valuation which reflect this. It was Mr. Donnelly’s contention that there was no logic in valuing the property until it (the building) was complete. The Respondent rejected this argument as it had not been included in the Appellant’s précis.

Cross Examination of Mr. Donnelly

The Respondent’s agent, Mr Andrew Cremin began his cross examination by asking Mr. Donnelly to clarify the valuation date is the 20th November 2020 and confirm Mr. Donnelly’s agreement to the floor areas shown on page 9 (3.4) of the Respondent’s précis. Mr. Donnelly agreed to both.

Mr. Cremin asked Mr. Donnelly, did he have any rational or methodology other than what he had shown in his précis for arriving at his proposed valuation of the subject property. Mr. Donnelly explained his rational was that the building was not finished at that time (date of inspection)

Mr. Cremin asked Mr, Donnelly, in terms of his proposed valuation of €30,000 as set out in his précis was this a “stab” at an assessment given that using comparables of finished buildings does not work?

Mr. Cremin sought clarification on the identity of the building been appealed. Mr. Donnelly identified the building as IE 43T2 (as shown on page 9 of the Respondent’s précis)

Mr. Cremin queried Mr. Donnelly’s repeated referral to the subject property as not been capable of the use it was required to fulfil. Mr. Donnelly responded to this by referencing photographs of the interior of the property and that this issue would be dealt with more comprehensively by Mr. Doyle (Eli Lilly representative).

Mr. Cremin asked Mr. Donnelly, what was the figure of €30,000 in his précis based on. Mr. Donnelly explained, the building was not completed, in his opinion, valuation is premature when the building is unsuitable for use. Mr. Donnelly further explained, in such circumstances, comparables are irrelevant, therefore he had taken a “stab” at a figure, in what he described as a “common sense” approach. Mr Cremin queried further as to an explanation /methodology as to how this “stab” was reached. Mr Donnelly’s answer was to refer to floor areas highlighted on page 9 of the Respondent’s précis.

Mr. Cremin moved his questioning on to the basis of beneficial occupation. Mr. Donnelly reiterated his “common sense” approach, the building was not capable of use (at the date of valuation). Mr Cremin referenced to beneficial occupation from the Act, which he explained did not stipulate a specific definition.

The Tribunal asked Mr. Donnelly, what licences were required for the building? is it the building or the process? Mr. Donnelly explained the building is included in the licence. Mr. Donnelly added that Mr. Doyle would be able to clarify this point during his evidence. The Tribunal also asked about the reference to the unfinished building and where was the money spent on this building. Mr. Donnelly explained, this would be clarified during Mr. Doyle's evidence.

Mr. Doyle's Evidence.

Following the cross examination, Mr. Peter Doyle gave additional evidence to clarify certain technical items referenced during the course of Mr. Donnelly's evidence.

Mr. Doyle explained the floor areas were not in dispute. Mr. Doyle explained the inspection was virtual because the valuation was conducted during Covid. Mr. Doyle shared videos of the interior of the building with the Valuation Office at that time. Mr. Doyle acknowledged that the images may have portrayed a building that was fit for occupation, however it was not (in terms of Eli Lilly product production requirements).

Mr. Cremin requested that Mr. Doyle provide a commentary on the various images submitted. Mr Cremin noted during this time, that the valuation is based on the building that is constructed, not on what the occupier's end used may be. The Tribunal asked Mr. Doyle if the building had an architect's certificate of compliance at that time, Mr. Doyle replied he was unsure.

8. RESPONDENT'S CASE

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

8.2 Mr. Cremin explained the subject property is located in Dunderrow, County Cork approx. 5.3km northwest of Kinsale and about 27km south of Cork city. The property is positioned on the north side of the River Bandon about halfway between the towns of Kinsale and Inishannon along the R605 regional road. The entire Kinsale facility is approx. 62.7 hectares in area with development currently covering about 42.5 hectares. The Lilly facility is surrounded by pasture land and tillage, in a rural setting.

8.3 Mr. Cremin went on to provide a background to the Eli Lilly facility. Mr Cremin outlined how the facility has been in production since early 1981, construction having commenced in 1978. Initially the site manufactured only human pharmaceuticals. The developed site is occupied by a mixture of production, production support and administration facilities. Active pharmaceutical ingredients and intermediates for human use are manufactured at the plant.

8.4 In dealing with the specifics of the appeal, Mr Cremin identified the subject properties which were subject to the review. Mr. Cremin listed the properties as:

- IE9C Extension.
- Small building/offices s/storey.
- T-40 Pond extension.
- IE43 Extension.
- Biotech building T2.
- IE40 Construction is a two storey Office building.
- 150 carparking spaces.

- Assorted ancillary Plant.

8.5 Mr. Cremin outlined how it was his opinion that the précis of evidence submitted by the Appellant is bereft of any detailed information upon which to make a considered or adequate response. To illustrate his point, Mr Cremin quoted a statement from the Appellant's précis "*the occupier cannot conduct business in a portion of the property as it is not finished/ fully developed to the specified standard which is necessary for the occupier to fulfil their required manufacturing ability*". This statement explained Mr. Cremin, was the only grounds for appeal in the précis, the Appellant's opinion of value of €30,000 included no rationale or methodology as to how this figure was reached.

8.6 Mr Cremin deliberated further on this point by questioning the Appellant's logic on their adopted approach. It was Mr. Cremin's opinion that a common-sense approach to the argument been made by the Appellant would have been to provide a marked out plan with areas shown to be of that status, with some photos, this had not been done.

8.7 Mr. Cremin explained that equity and uniformity were achieved by the consideration of 'similarly circumstanced' comparables (Appendix 3, N/A to public). It was Mr. Cremin's opinion that the three comparables used all shared the characteristics such as use, size, location and/or construction.

8.8 Mr. Cremin rejected the Appellant's claim that parts of the building referred to as IE 43 and IR 40 were not capable of beneficial occupation. Mr. Cremin claimed no evidence had been provided to substantiate this claim. It was Mr. Cremin's opinion that the subject buildings were in fact complete and capable of beneficial occupation on the valuation date. The fit out and commissioning aspects of that fit out are not prerequisites to prevent the valuation from being valid. The only activity remaining on site on the valuation date were the commissioning and final fit out of offices and production plant. Mr. Cremin rejected the Appellant's contention that the rateable valuation should not have been applied until commissioning and fit out had been completed. Mr. Cremin maintained there was no basis or precedent for this contention been provided by the Appellant.

Cross Examination of Mr. Cremin

The Appellant's agent, Mr. Donnelly did not cross examine the Respondent, Mr. Donnelly opted instead to summarise his earlier evidence and stated the comparables utilised by the Respondent were not suitable as they were all completed buildings. The Tribunal followed Mr. Donnelly statement with a question to the Respondent, to the Appellant's point about the fairness of using completed buildings as comparables. Mr. Crimin responded that the comparables used were all fair.

9. SUBMISSIONS

9.1 There was no legal submission.

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 Cork County Council.

10.2 The Appellant had rejected the Respondent's comparables as all three were based on completed properties and had argued that it was not possible to put a valuation on a property when it was incomplete. Therefore, the only option available to the Appellant's agent in determining a suitable valuation for the subject property was in what he termed, to adopt a "common sense" approach. The Respondent rejected this methodology as it was not in their opinion supported by any rational as to how this figure was reached. While the Tribunal accepts the subject property may not have been ready for the Respondent's very specific manufacturing use, the Tribunal rejects the argument the subject property was not capable of beneficial occupation, especially in the consideration of the hypothetical tenant.

10.3 The onus of proof is on the Appellant. The Tribunal finds that the Appellant has not demonstrated that the valuation of the Property is incorrect.

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.