

Appeal No: VS.22/6/0003

**VALUATION TRIBUNAL
AN BINSE LUACHÁLA**

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

Robert, Patricia, Mark & Sarah Lynam

APPELLANTS

AND

Fingal County Council

RESPONDENT

In relation to the market valuation of Site to the south of 'River View', St. Colmcille's Court, Swords, County Dublin.

TRIBUNAL

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

Barra McCabe - BL, MRICS, MSCSI

Member

Fergus Keogh - MSCSI, MRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF APRIL, 2024**

Appearances

For the Appellants: Mr. Michael Greene MSCSI, MRICS, ACI Arb of Redmond Property

For the Respondent: Mr. Gabriel O'Brien B.Sc., FRICS, FSCSI of REA O'Brien Collins

THE APPEAL

1. On the 16th day of December, 2021 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 €200,000 in respect of the vacant site situated to the south of 'River View', St. Colmcille's Court, Swords, County Dublin and identified as being FCC VS/0130 on the Fingal County Council Vacant Site Register (hereinafter referred to as 'the Vacant Site').

2. The date by reference to which the value of the Vacant Site was determined by the Respondent planning authority is the 30th November, 2021.
3. By Notice of Appeal received on the 11th January, 2022, the Appellants appealed through their Agent against the Respondent's determination of value. The grounds of appeal as set out in the Notice of Appeal are that the determination of the valuation of the vacant site is incorrect because:

"The valuation assessed by Fingal County Council is excessive for the following reasons;

- 1. There is Japanese Knotweed on site. There is a public notice displayed on site to confirm this.*
 - 2. There is a risk of flooding. According to Fingal County Council's Strategic Flood Risk Assessment, the subject site is located within an area which is at risk of flooding. There needs to be a Flood Risk Assessment demonstrating compliance with the Planning System and Flood Risk Management Guidelines for Planning Authorities, November 2009.*
 - 3. There is limited access to carry out any development from a laneway. The subject property is located approximately 4 metres from the Ward River bank.*
 - 4. A Specific Objective of the Fingal Development Plan is for an Indicative Cycle Route to traverse along the laneway fronting the subject property. This was one of the reasons for a refusal of planning permission Reg Ref (f18A/0655)*
 - 5. The imposition of the Vacant Site Levy on a site that is not feasible to develop at present, has in effect further devalued the site.*
 - 6. The overlooking of the subject site by the existing housing development to the north will limit the extent of any future development.*
 - 7. Early O.S. maps for this site show that part of the site was used for the extraction of gravel. The nature and extent of the filling introduced to the site since then is not known but could have a significant cost implications in any future development.*
- NB We will forward a copy of the grant of permission referred to above (F18A/0655) separate, to the Valuation Office."*

THE HEARING

4. This appeal was subject to an initial brief hearing on 23rd September, 2022 which was adjourned to permit the parties' Surveyors to resubmit their reports in accordance with the Tribunal requirements and to provide further information.
5. A Direction issued to the parties by email on that date in 4 above as follows:

Dear Parties,

Following today's adjourned hearing for the appeal VS22/6/0003, the Tribunal Division directs you to submit a revised Précis before noon on the 21st of October, 2022 containing the following:

1. *A declaration and statement of truth as available under Rule 41 of the Valuation Tribunal Rules,*
 2. *Adoption of the correct Basis of valuation as set out in sec 12 of the Urban Regeneration and Housing Act 2015 and as at the Valuation Date of November 30th 2021,*
 3. *Comparables relied on in support of your valuation,*
 4. *The computation/evidence and methodology of how the valuations were arrived at, with calculations clearly shown,*
 5. *A map/plan of the strip of land the subject of the 14 metre reservation and how the reserve strip affects the remainder of the site.*
6. The appeal then subsequently proceeded by way of a remote hearing held via the Zoom platform, on the 15th day of November, 2022.
7. In accordance with the Valuation Tribunal (Appeals) Rules 2019 the parties' Surveyors exchanged their respective valuation reports prior to the hearing and, in accordance with the Direction of 23rd September, re-submitted them to the Tribunal. At the oral hearing, each expert witness, having made the affirmation, adopted their valuation report as their evidence-in-chief in addition to giving oral evidence.

RELEVANT STATUTORY PROVISIONS

8. 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, the market value of the vacant site if it was sold 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 the site's market value.
9. 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."*
10. 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

11. On the basis of the evidence adduced by the parties, the following are the background or undisputed facts:
 - (i) The subject Vacant Site is in the centre of Swords to the West of the town centre, just off Main Street, which is accessed from St. Colmcille's Court, a relatively narrow thoroughfare running between the Vacant Site and the Ward River. The site is bordered to the West by Colmcille's Court and to the south by a private car park (The Old Schoolhouse licensed premises). The River View apartment complex is situated immediately to the North, and to the East there is commercial development fronting on to the Main Street which includes the town's (former) Ulster Bank branch.
 - (ii) The Site comprises a partly clear, part overgrown, irregular undulating plot of 0.12 hectares (0.296 acres) with frontage of approximately 25 metres to Colmcille's Court, and which is vacant.
 - (iii) The title for the subject Vacant Site is freehold and is contained within Folio DN241414F.
 - (iv) The Vacant Site is zoned under the terms of the current Fingal Development Plan (Swords), 2017 - 2023, MC – To protect, provide for and / or improve major town centre facilities.
 - (v) There are notices on the Vacant Site warning of the presence of Japanese Knotweed.
 - (vi) Water, electricity, and sewerage/drainage are available.
 - (vii) The valuation date is 30th November 2021.

APPELLANTS' CASE

12. Mr. Michael Greene, for the Appellants, resubmitted a précis of evidence dated 19th October 2022 in response to the Direction of the Tribunal of 23rd September, 2022 in which he outlined his valuation of the Vacant Site at **€ 50,000**.
13. In his précis Mr. Greene outlined the location, description, size and characteristics of the Vacant Site and confirmed the basis of valuation and the date of valuation. He supplemented his text with a map, photographs and appended planning decisions and an SCSi report on the real costs of apartment delivery which he relied on to inform him in the exercise.

14. Mr. Greene, in his precis, also made the following points, that:
- (a) the presence of Japanese Knotweed would impact development of the site as most developers would seek to avoid sites so affected and that he had consulted with a contractor who had advised him that the cost of dealing with this issue would be between € 30,000-40,000;
 - (b) the only probable development of this site would be for apartments and with reference to the document attached in the Appendix to his precis entitled “The Real Costs of New Apartment Delivery” (Society of Chartered Surveyors Ireland, January 2021) he contended that the costs would be prohibitive based on his reckoning that a new 2-bedroom apartment of 75 m² in Swords would have a sale value of € 330,000 and that there are no new apartments for sale in Swords because of non-viability;
 - (c) there is a flood risk for this site;
 - (d) with reference to Planning reference F94A/0130 for 60/62 Main Street and from this he contends that there is no access to the Vacant Site from Main Street, but instead it is only accessible from St Colmcille’s Court. Furthermore, Condition 12 of this consent states that a reservation strip of 14 metres must be made off the river bank under the Applicant’s control to be free of development and available as open space if required for a riverside amenity scheme.
 - (e) that the imposition of a Vacant Site levy on a site that is not feasible to develop will further devalue it;
 - (f) the overlooking of the site by the adjacent apartment development (River View) will further restrict the extent of development of this site;
 - (g) the Vacant Site is subject to a cycleway reservation in the Fingal Development Plan.
15. Mr. Greene also set out copies of two other planning decisions in the Appendices to his précis (i) the site immediately to the South of the Vacant Site which was the subject of a refusal of planning (Register Reference F18A/0655) and which he contends was refused on account of the cycleway reservation and flood risk, and (ii) the adjacent site (Register Reference F22A/0254) where one of the reasons for refusal was due to the risk of flooding or increasing that risk.
16. In answer to questions posed at the hearing to him by Mr. O’Brien, Mr. Greene confirmed that:
- (a) he did not know if the Japanese Knotweed had been treated;
 - (b) he did not agree that the flooding risk condition was a standard protocol of the planning authority as contended by Mr. O’Brien;
 - (c) he was not aware why the River View apartment scheme to the North of the Vacant Site was granted planning as it has been built since 1994 [with reference to flood risk];
 - (d) he disagreed with Mr O’Brien that the inclusion of the planning decision for the Register Reference F22A/0254 dated 12th July, 2022 was not relevant by being after the valuation date [30th November, 2021];
 - (e) he stated that he could not find appropriate comparables to include in his precis;
 - (f) he had adopted a value of € 50,000 as a nominal amount to reflect the characteristics and restrictions of the site as that is all that is warranted;

17. (a) In answer to questions from the Tribunal he clarified that he had not undertaken a full Residual Valuation of the site and offered the view that the local authority would require/prefer apartments to be built on the site and that it might accommodate 20 units, but he caveated this by saying he did not do that exercise.
- (b) He further confirmed in answer to questions that the site enjoyed the same access as the River View apartments and that the SCSI report, which he tabled, did not only encompass pure construction costs but also site acquisition and other costs. Furthermore, he stated that he did not believe the investment funds would be interested in a buy to rent scheme on this site as they did not appear to be interested in Swords, as a location, in his opinion;
- (c) Later in the hearing he confirmed that the Vacant Site has been in the same ownership for the past 30-40 years.

RESPONDENT'S CASE

18. Mr. Gabriel O'Brien, for the Respondent, resubmitted a précis of evidence dated 20th October, 2022 in response to the Direction of the Tribunal of 23rd September, 2022 in which he outlined his valuation of the Vacant Site at **€ 200,000**.
19. In his precis, Mr. O'Brien outlined the location, description, size and characteristics of the Vacant Site and confirmed the basis of valuation and the date of valuation and supplemented his text with maps, photographs, zoning extract from the Fingal Development Plan and Folio extracts for the title.
20. Mr. O'Brien set out four comparable property transactions which he submitted in support of his valuation, as briefly summarised herewith as follows:

Comparable Number 1.

6 Malahide Road, Swords. Development site of 0.11 hectares (0.28 acre) which was sold on 15th December, 2019 for € 700,000 (which equates to € 2,500,000 per acre) and is similar zoning to the subject Vacant Site. Source: Savills

Comparable Number 2.

Old Walls, 27 Main Street, Swords. Derelict two storey office building situated on a site of 0.051 hectares (0.126 acre) which was sold in July 2021 for € 820,000 (which equates to € 6,507,936 per acre) and has similar zoning to the subject Vacant Site. This site had full planning permission for a four storey mixed use scheme. Source: CBRE

Comparable Number 3.

30-32 North Street, Swords. Property comprises site area of 0.14 hectares (0.35 acre) which is similar zoned to subject Vacant Site but which also had full planning permission for nine residential units and this was sold in the second quarter of 2020 for € 900,500 (which equates to € 2,572,857 per acre), Source: Cushman & Wakefield

Comparable Number 4.

7 & 8 Milton Terrace, Swords. Property comprises 2 x two storey houses in poor condition with similar zoning to subject Vacant Site on a site of 0.18 hectares (0.449 acre) which was sale agreed at the valuation date (Q4 2021) at € 1,250,000 (which equates to € 2,783,964 per acre). Source: PPR

21. Mr. O'Brien set out the rationale for his valuation indicating that the range of values demonstrated by his comparable property transactions in Swords, is in the order of €2,500,000 per acre to € 6,507,936 per acre but that he had discounted this range by 63% of the lowest price and 90% for the highest price to value the subject Vacant Site, by adopting a value per acre of € 675,675 per acre [0.296 acre X € 675,675 = € 200,000 rounded] and he fully accepts that the subject has less profile than any of the comparables cited by him and is on a one way roadway.

He believes that the presence of Japanese Knotweed would be taken note of by any purchaser but would not impede the development of the site. He considers that the subject is suitable for the development of an infill apartment scheme for buy-to-rent and that there would be significant financing support available from institutional investors and pension funds for this. He mentioned that the location will be further enhanced by the Metro link in 2030 which will affect both commercial and residential property values.

He notes that the adjoining River View scheme of 9 no. residential units is situated on a site which is much smaller than the subject property which he considers serves as a planning precedent. Given that density standards have increased significantly in recent years together with the split-level nature of the subject site, this would make it suitable for a high-density scheme, in his view.

With regard to the 14-metre reservation strip mentioned by Mr. Greene, he said this is not a policy decision of Fingal County Council and accordingly they cannot provide such a map. He does not believe that they are pursuing this as a policy, in any event, as the set back for the adjoining River View scheme is only for a distance of 5.2 metres. He further stated that he had not taken account of any special purchaser, such as the adjacent Schoolhouse licensed premises, or the occupiers of buildings fronting the Main Street, or the Developer of the River View scheme.

22. In answer to questions posed at the hearing by Mr. Greene to Mr. O'Brien, he confirmed that:
- (a) his comparables were in superior locations compared to the subject Vacant Site;
 - (b) with regard to his Comparable Number 1 he is aware that the purchaser of this property subsequently obtained planning permission for a retail unit and an aparthotel;

- (c) with regard to his Comparable number 2 he was not aware that the purchasers had chosen not to develop but simply use the building as Solicitors' offices which it had been used for many years ago but that, in any event, it had been marketed as a development opportunity and that he is only taking 10.37% of the price per acre achieved in that transaction to apply to the subject Vacant Site;
 - (d) he disagreed with Mr Greene that there is a difficulty comparing his cited comparables with "back land" as he had made significant adjustments to them to reflect this, and other factors, and he did not agree, either, that access was not from a back laneway, being, in his mind, a public roadway acting as a conduit for vehicular traffic along a one way thoroughfare which accessed existing apartments;
 - (e) the computation of his valuation was to take the evidence of the density which was achieved on the River View scheme adjacent, of 9 units, and as this is on a smaller site to the Vacant Site, he said it is not unreasonable to assume a build density of 10 units on the subject Vacant Site, and then to apply a modest value of € 20,000 per unit to yield his valuation of € 200,000;
 - (f) with regard to his Comparable Number 4 it was put to him that the purchaser is an adjacent owner (developer) which he denied stating it is a different purchaser;
23. (a) In answer to questions from the Tribunal, he clarified that he had not undertaken a full Residual Valuation of the site and offered the view that, based on the density of the smaller River View scheme of 9 units, that it should be possible to achieve a density of at least ten units on the subject. He said that he had not consulted the Development Plan in detail to establish permissible density but relied upon what had been achieved on the adjacent site, although he felt a developer might seek to gain more than this, ultimately;
- (b) He further confirmed in answer to questions that of his comparables the first three had been marketed as development opportunities but that, although the fourth was not, he considered it unlikely that anyone would pay a price as high as € 1.25m for a pair of rundown semi-detached houses in Swords;
- (c) He confirmed that the reservation for a cycle path is still pertinent in the Development Plan and was a fact at the valuation date too, but that cycle paths and roadways could live side by side harmoniously, in his view;

FINDINGS AND CONCLUSIONS

24. On this appeal the Tribunal is required to determine the market value of the Vacant Site in accordance with s.3 of the Act which is to be construed in accordance with s.12 of the Act as of the valuation date of 30th November, 2021.
25. The Tribunal is not empowered to determine whether a site is a Vacant Site but only to determine the amount of the valuation.

26. The Tribunal relies upon and decides an Appeal based on the evidence placed before it. It is a well-established principle that the onus rests with the Appellant to prove his / her case and provide evidence to the Tribunal that the Respondent's valuation of the property in question is incorrect and that the valuation should be amended.

The Tribunal must consider the nature of the evidence submitted by the Parties in their respective précis and in their oral evidence to determine whether it supports the argument advanced on behalf of the Appellant.

It is necessary to consider all of the evidence in the round. The Tribunal considers that the evidence submitted and arguments adduced on behalf of the Parties on any basis, provides a very mixed picture.

For the Appellants, Mr. Greene submitted an opinion of value at € 50,000 for the Vacant Site. He did not attach any computation of this amount, nor did he seek to make reference to any transactions of comparable properties to support his opinion. He drew attention to the presence of Japanese Knotweed, the liability to flooding; the effect of the site levy imposition on the viability of the site; overlooking from apartments to the North and the deterrent to new apartment construction on account of increased costs of delivery as highlighted by an SCSI study. He was unable to provide responses to items 3, 4 & 5 in the Direction from the Tribunal dated 23rd September 2022 in respect of the provision of any comparables, the computation of his valuation and the provision of a map confirming the 14-metre strip reservation previously alluded to. Mention was made in the original Notice of Appeal concerning the historic presence of a quarry on the Vacant Site but nothing further was advanced on that issue.

27. Neither Surveyor provided a full Residual Valuation; instead the Appellants' Surveyor elected to apply a spot value for the Vacant Site of € 50,000, whereas the Respondent's Surveyor chose to apply a value derived from adjusting the unit value per acre, analysed from four sales of comparable properties in the general Swords area, to derive a value of € 200,000. The first approach leaves much to be desired in that all the Tribunal can rely upon are the qualifications and experience of the Surveyor giving the opinion, he having signed a standard Declaration and Statement of Truth in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules 2019. The second approach is to be preferred by giving a background to the computation and providing comparable transactions in support of the opinion, but could be said to be lacking in precision to show how the factors such as lack of planning permission, the weed infestation and other issues had been explicitly reflected in that opinion.

28. The value of the development site is primarily dependent on what can be developed on it. Both experts seemed to be ad idem on the approach that the site might best accommodate apartments. That being said, there were exchanges on the probable density of any development and the range was quite broad in this respect with the possible number of units being from ten to twenty, though the higher figure was not a well-researched assertion. No planning evidence was presented to the Tribunal to establish the number of units that might be constructed on the site. Based on the limited information before the Tribunal and the absence of any planning or engineering

evidence, the estimation of the Respondent's Surveyor is accepted as being a modest conservative estimate resulting in the adoption of the figure of ten units, albeit that is based solely on the adjacent scheme, drawing inferences from what was ultimately permitted for that smaller site.

29. Whilst both Surveyors appeared to be in agreement on such matters as the area of the site, title, availability of services, etc there remain obvious differences between them on the correct interpretation of the Respondent Surveyor's comparisons; the effects of Japanese knotweed; liability to flooding; overlooking by the adjacent apartments; the effects of a cycleway reservation and the matter of the 14-metre reservation for amenity purposes having its origin as a condition in a 1994 planning permission. The latter issue of the 14-metre reservation for amenity is impossible to properly investigate in the absence of a plan showing this being provided. Whilst this point was advanced by the Appellants it seems extraordinary that the local authority in this appeal, being the Respondent planning authority, should not be able to provide such a plan, or, in the alternative, even a written statement to their Surveyor to present as evidence to the Tribunal to the effect that it is no longer planning policy, if that, in fact, be the case.
30. The Tribunal considers that neither Surveyor provided sufficient detail in their valuations to clearly demonstrate their assumptions and approaches and how the opinion in each case was formed. The Surveyor for the Appellants offered no in depth commentary, did not submit any comparables and was vague in his presentation of the case. He referred to various restrictions on the value but failed to show how exactly they impacted the valuation such as, for example, with the submission of the SCSi report which he entered in evidence as an entirety without drawing specifically from the contents to make his case. The Surveyor for the Respondent did supply a much more detailed report with comparables and a logical reasoning of where he made his computation, but this was still not fine-tuned, adequately, to be capable of easy understanding.
31. The Tribunal prefers, overall, the evidence by the Respondent's Surveyor, in that he provides a more compelling case of demonstrating how the value of the subject site relates to the comparables cited, albeit it is done at a per acre unit rather than brought down to an analysis of a per unit of development price equivalent. Two of his comparables (Numbers 2 & 3) had planning permission and the fourth was indicated in the exchanges at the hearing as not having been developed. Three of his comparables had similar prices per acre (Comparables, 1, 3 & 4) but the first is the most relevant in the context of the subject Vacant Site and this reflects a price per acre of € 2,500,000 as it did not have planning permission. The valuation indicated by the Respondent Surveyor is only 27% of that on a price per acre comparison which the Tribunal believes to be an adequate compensation for the contended disabilities of the subject site to this other site and the other comparable properties, reflecting inferior location site condition, perceived planning constraints and the fact of it being "back land".

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the market value of this Vacant Site at **€ 200,000** as stated in the Vacant Sites Register for Fingal County Council

RIGHT OF APPEAL

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.