

Appeal No: DS21/0/0002

**VALUATION TRIBUNAL
AN BINSE LUACHÁLA**

**DERELICT SITES ACT, 1990
AN tACHT UM LÁITHREÁIN THRÉIGTHE, 1990**

Patrick Costigan

APPELLANT

AND

Carlow County Council

RESPONDENT

In relation to the market valuation of the vacant site behind - Somerton House, Leighlin Road, Carlow and bordering Somerton Court and Father Byrne Park

TRIBUNAL

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

Mema Byrne - BL

Member

TJ Kearns – B. Sc (Surv), MRICS

Member

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

Appearances

For the Appellant: Mr. Edward (Ned) Costigan, Mr. Marcus McCormack

For the Respondent: Ms Nicola Lawlor, Mr Harry Sothern, Mr Michael Rainey

THE APPEAL

1. On the 11th day of December 2020 a copy of Notice of Determination of Market Value issued in accordance with s. 22 of the Derelict Sites Act, 1990 Act ('the Act') was sent to the Appellant indicating a market value of € **100,000** in respect of urban land situated at the vacant site behind Somerton House, Leighlin Road, Carlow (hereinafter referred to as 'the Derelict Site').
2. The date by reference to which the value of the Derelict Site was determined is the 11th December, 2020.
3. By Notice of Appeal received on the 15th day of January 2021 the Appellant appealed the Respondent's determination of value. The ground(s) of appeal as set out in the Notice of Appeal are: *"Site overvalued on grounds that there are disputes over right of way / access and previous decisions by An Bord Pleanála"*
4. The Appellant considers that the market value of the Derelict Site ought to have been determined in the sum of €**5,000** in accordance with his Valuer's report.

THE HEARING

5. The appeal proceeded by way of a remote hearing held via the Zoom platform, on the 11th day of January, 2024.
6. 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 expert witness, having taken the oath, adopted their valuation report as their evidence-in-chief in addition to giving oral evidence.

PRELIMINARY MATTER

7. Shortly after the commencement of the hearing, Mr. Costigan, for the Appellant, sought to have the report of the Respondent's Valuer struck out as it referred to higher figures than the original valuation that was entered on the register of derelict sites, which he considered would act to sway the Tribunal in the formation of their opinion in arriving at the Determination, by putting into their minds the higher figures alluded to in the précis of evidence, which he contended is unfair. By way of clarification, he agreed with Ms Byrne, Member of the Tribunal, that he wanted his appeal to be unopposed; for his valuation of € 5,000 to be applied, and that the defence and response from the Respondent should be struck out.

8. The Tribunal rose to consider this application and, on resumption, rejected the application to allow the appeal proceed as an unopposed appeal for the following reasons:

(a) the Chairperson of the Tribunal had previously allowed, in reliance on Rule 135, that both Parties be granted more time to submit a revised précis of evidence.

Rule 135 of the Valuation Tribunal (Appeals) Rules 2019 states:

The time prescribed by the Chairperson or a deputy chairperson for taking any step in connection with an appeal under the Act of 1990 may be extended on an application by the party upon such terms as the Chairperson or deputy chairperson thinks fit and such extension may be ordered notwithstanding that the application for extension of time is not made until after the expiration of the time so prescribed.

(b) having regard to this grant of extension of time and to reduce costs for both parties (who each had their Valuers in attendance at this remote hearing), it was considered appropriate to proceed with the hearing as being prudent, being also the best use of the Tribunal's finite resources, and

(c) The Tribunal did not believe that it would be prejudiced by the figure as it is considering the evidence presented by both parties.

The Deputy Chairperson confirmed to the Appellant that, notwithstanding this decision, that he does have a right of appeal to the High Court against the entire Determination of the Tribunal on a point of law.

RELEVANT STATUTORY PROVISIONS

9. A local authority is required by s. 22 of the Derelict Sites Act to determine, after a derelict site has been entered on the derelict sites register maintained under s. 8 of the Act, the market value of that site, in such manner and by such means as they think fit. In that regard, a local authority may authorise a person suitably qualified to inspect the site and report to them on the market value of that site.

10. Under s. 2 of the Act ‘**market value**’ means the value of the relevant urban land assessed in accordance with s. 22. That assessment is undertaken:

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

THE FACTS

11. On the basis of the evidence adduced by the parties, disseminated at the hearing, the following are the agreed or unchallenged background facts:

(a) The subject site is situated approximately one kilometre south west of Carlow town centre to the west side of the Leighlin/Crossneen Road, adjacent to Somerton House, a former parochial house and protected structure, and is accessed from Somerton Court;

(b) This site was formerly the garden of Somerton House and comprises an area of 0.26 hectare (0.64247 acre) comprised in Folio CW 17600F;

(c) The site is now an irregular shaped, grassed area which backs onto Father Byrne Park which, in turn, is in County Laois but this appeal only concerns the area within the functional area of Carlow County Council. In the southwest part of the site there is a circular shaped ancient burial mound which is designated as an ancient monument, that is partly within the Carlow area section of the site;

(d) The site is zoned for residential purposes in the current Carlow Development Plan and it was also similarly zoned in the Plan in operation at the valuation date (11th December 2020) i.e. Carlow County Council Development Plan 2015-2021;

(e) The site was the subject of a planning permission granted by Carlow County Council (PD 3524) for the erection of 6 semi-detached houses and one detached house in 1998 subject to 19 conditions. This permission was subsequently refused, on appeal, by An Bord Pleanála:

(f) The site was the subject of a further planning permission granted by Carlow County Council (PD 5661) in 2006 for 12 dwelling units (application had been for 16) and this was subsequently refused, on appeal by An Bord Pleanála, for three reasons, as follows:

(1) It is considered that the proposed development, because of its bulk, height design and due proximity to the Old Parish House, a protected structure listed in the current Development Plan for the area, would significantly and detrimentally affect the character and setting of this protected structure. Furthermore, the proposed access to the site would involve the carrying out of works in front of this structure, partly on lands outside the site area and within the lands associated with the protected structure, which do not appear to be within the ownership or control of the applicant. The Board is consequently not satisfied that the applicant has demonstrated sufficient legal interest to enable him to carry out the development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

(2) It is considered that the proposed development, by reason of its three storey height, and its design form (duplex apartments), with external balconies and external stairs, and by reason of its proximity to adjoining residences, would be seriously injurious to the residential amenities of those adjoining residences, to the east, through undue overlooking and interference with their privacy. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

(3) It is considered that the proposed development would endanger public safety by reason of traffic hazard, resulting from the intensification of vehicular access through the existing entrance to the Leighlin Road, and the inadequacy of sightlines for traffic emerging from the site in a southerly direction, which inadequacy could not be mitigated as the relevant land is not in the ownership of the applicant. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

(g) The site was acquired by the present owners for a price in the region of IR£ 40,000 in 1995 (equivalent to € 50,789.52) and is freehold.

APPELLANT'S CASE

12. Mr. Costigan, for the Appellant, submitted a very comprehensive and detailed précis of evidence containing, inter alia, title and planning layout maps; detailed planning history including extracts from the An Bord Pleanála decision in the later appeal; title extract; National Monuments Advisory Council letter from July 1981; correspondence with the Tribunal and others and his Valuer's report.

13. Mr Costigan drew the attention of the Tribunal to what he perceived to be three main areas that depressed or nullified the value of the site, being, in summary, the restrictions in the Deed of Transfer of 12th February, 1996; the limitations caused by the presence on the site of an ancient burial mound and the inadequate access and sightlines from the Leighlin Road for vehicular traffic.

14. Mr. Costigan called valuation evidence from Marcus McCormack, a Valuer with DNG McCormack Properties, of 1 Tullow Street, Carlow who had presented his qualifications to the Tribunal and had submitted a report dated 31st May, 2023 in which he contended that the market value of the site is € 5,000. He gave confirmation orally to the requirements of Rule 41 of the Valuation Tribunal (Appeals) Rules 2019 in regard to the standard declaration and statement of truth. Mr. McCormack clarified that, although his inspection was made in 2023, that the value as submitted in his report that year would have been the same as at the valuation date of 11th December, 2020; that he had been briefed on its history by the Appellant and had seen the Land Registry document dated 12th February 1996 confirming ownership but referring to a period of 21 years in which the purchaser was to complete certain works and that those works had not been undertaken (referred to as the “21 year rule” at the hearing, for brevity); that planning had been granted but refused by An Bord Pleanála on two occasions and that, although there is a right of way to the Leighlin Road, it is only one way into the site and one way out, and that, having spoken with some Developer Clients of his to ascertain if they had any interest in acquiring the site, he formed the opinion from his research that with the planning history, difficulties with access, and the issue of the condition specified in the Land Registry document, that, notwithstanding any special interest from an adjoining owner such as a party purchasing Somerton House, that if brought to market, the site, on a standalone basis, would not generate any interest whatsoever. He clarified the site area as taken from the Folio as being 0.26 hectares (0.64247 acres). He explained that he was unable to find similar comparable properties to draw upon. In relation to the Respondent Valuer’s two comparable properties, he contended that these two were both not comparable with the subject site, as they are superior in quality having good frontages and easy to develop in contrast to the subject site which has restrictions and, which, ultimately, he considered is only the garden of an old house.

RESPONDENT’S CASE

15. Mr. Michael Rainey of Carlow County Council, the Respondent, called valuation evidence from Mr. Harry Sothern of REA Sothern of 37 Dublin Street, Carlow. In his precis of 25th August, 2023 Mr Sothern confirmed that he inspected the property and provided separately the standard declaration and statement of truth in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules 2019. He confirmed that the site area may be taken at 0.64247 acre as there was a misprint on this in his report. In summary he stated that he had reviewed the recent refusal decision by An Bord Pleanála and taking account of the residential zoning, together with the earlier planning history, he felt a more modest development would be granted planning consent and that the site could accommodate at least 4 units in this regard but most probably much more than that. In his report he made reference to the Planning Inspector’s Report dated 6th July, 2006 which formed the basis

for the decision from An Bord Pleanála (PL42.216737) highlighting extracts from that and drawing attention to the three reasons for the ultimate refusal being, in summary, (a) impact on the protected structure adjoining with questions over the Applicant's ability to treat adequately, given the apparent lack of legal interest in the adjacent area to do so; (b) the injurious effect of the development on adjoining residences by reason of height and design form of development and (c) danger by reason of traffic hazard from intensification of vehicles accessing the existing entrance to the Leighlin Road and inadequate sightlines which are not capable of being properly addressed by reason of the lack of legal interest in that portion of ground.

The basis for his opinion was reliant on two comparable transactions as follows:

(a) Lands on the Crossneen Road

10 acres of zoned residential land located some 400 metres further out of town than the subject site, sold in 2022 for a price reflecting € 185,000 per acre

(b) Lands in Crossneen

62 sites located approximately 350 metres further out from the subject site which were sold in 2022 at € 25,000 each reflecting € 300,000 per acre

Accordingly, he gave an opinion of the market value of the site at € 100,000 which was computed by applying comparable sales values and adjusting these down to a figure of € 114,700 with alternate suggestion of € 100,000-200,000 but which, because of the poor planning history, he reduced, ultimately, this to his final figure of € 100,000.

He supplemented his evidence by reference to internal communications in Carlow County Council from (a) the Senior Engineer, Mr Ray Wickham dated 25th August 2023 suggesting access from Father Byrne Park could be a possibility although this would involve contacting Laois County Council and from (b) Mr. Wesley Keogh, Senior Executive Planner, Carlow County Council dated 24th August 2023 who outlined, inter alia, the zoning and uses that are permitted in principle and open for consideration in that designation and also pointed out that, in regard to the refusal by An Bord Pleanála, that the first two refusal reasons are grounded on issues relating to overall layout and design and could therefore be potentially overcome by the formulation of a revised development proposal, that, for example, is sympathetic to the character and setting (including curtilage) of the protected structure; incorporates the reuse of the protected structure in a manner that appropriately integrates its reuse with layout and design of proposed new build elements; incorporates a revised red line development boundary to accurately account for the applicant's interest in the land and includes reduced building heights and omission of balconies/external stairs to ensure no overlooking and the loss of privacy to the adjoining existing two storey residences,

FINDINGS AND CONCLUSIONS

16. On this appeal the Tribunal is required to determine the market value of the Derelict Site as defined in s. 2 of the Act and assessed in accordance with s. 22 of the Act.

17. The scope of the Tribunal's powers in these appeals is limited to determining the market valuation at the relevant date and it is not in a position to adjudicate on matters relating to why a site is declared to be derelict; when and how it became to be entered on the derelict sites register or other matters, such as grounds for planning decisions, local authority interactions with an Appellant or other extraneous matters. The valuation issue is the only focus of the Tribunal's Determination.

18. (a) At the hearing there were several exchanges between the Tribunal and the Appellant and it was apparent that he somehow felt aggrieved that procedures had not been followed and that he had been put at some disadvantage in contrast to the Respondent local authority. It is appropriate, therefore, to address those concerns here.

(b) The Tribunal only becomes involved in the derelict sites process after an appeal is made and is not a party to whatever occurred before that. There has been considerable correspondence by way of email with the Appellant since his appeal was made and the Tribunal is satisfied, beyond any doubt, that correct procedures have been followed in dealing with him. To take just one example of this by way of illustration, is to quote from an email sent to both parties by the Deputy Registrar of the Tribunal as long ago as on 31st August 2023 at 14:04 which stated:

*In accordance with the Valuation Tribunal (Appeal) Rules, 2019, the Tribunal has granted the Appellant's hearing adjournment request for appeal **DS21/0/0002 Vacant Site behind Somerton House** which was scheduled for hearing on 21st September 2023 under rule 88 i.e. "A Tribunal may on its own initiative adjourn an appeal from time to time where it considers it appropriate to do so".*

The appeal will be relisted for hearing in November 2023. You are requested to provide available dates in November so that the Valuation Tribunal can fix a date that will suit both parties to the appeal and the Tribunal Members by 5pm on 8th September 2023.

Having reviewed both reports submitted, to date, the Tribunal considers that these are deficient and for the hearing it will require that both Valuer's reports (precis) set out clearly the date of valuation being 11th December, 2020 (as per the Register of Derelict Sites); the basis of valuation as per section 22 of the Derelict Sites Act 1990, the area of land as agreed between the parties, the computation of the valuation and comparable properties relied upon to support that opinion. Reference to other documents that affect the ascertainment of the valuation such as An Bord Pleanála or Local Authority decisions require to be provided in full - not merely referred to.

Accordingly, the Appellant has been granted an extension of time to lodge an expert witness precis with the Tribunal by 5pm on 6th October 2023, and the Respondent has been granted an extension of time to lodge an expert witness precis with the Tribunal by 5pm on 20th October, 2023.

Also, the witness who signs the market valuation report/expert evidence, must:

- (i) be suitably qualified to give an opinion on the market value of the site*
- (ii) complete and submit the declaration required by Rule 41 on page 9 of the 2019 Rules*

(iii) attend the Tribunal hearing to give oral evidence in respect of the contents of the market valuation report/expert evidence, to be cross-examined on that evidence and answer any questions that the Tribunal may have.

Both parties are requested to acknowledge receipt of this email.

Yours sincerely

This was acknowledged as received by the Appellant at 15:20 the same day.

Dear Jean,

I wish to acknowledge receipt of this email.

Many thanks,

Ned

(c) Accordingly, the Tribunal considers that there was no confusion for the Appellant regarding what he was required to do; no ambiguity in the direction issued and, furthermore, as the rules had been included in those communications, the Appellant could not have been unaware of the requirements of those rules and he was not placed at any perceptible disadvantage, be that either generally, or when compared to the Respondent.

19. The case for the Appellant has been put by Mr McCormack at a valuation of € 5,000 and he confirmed in evidence that this figure would have been applicable too at the valuation date of 11th December 2020, despite the wording and timing of his later report in 2023. He gave his view as a stated opinion without detailed calculations or supported in any way by reference to sales of comparable properties. He was not able to find suitable comparable properties to the subject which he regarded as being somewhat unique.

20. The case for the Respondent has been put by Mr Sothern at a valuation of € 100,000 which he supported by two transactions in 2022 for sites that yielded prices in 2022 equivalent to € 185,000 and € 300,000 per acre with one of these indicating site prices per plot of € 25,000. He adopted the lower range of these and further moderated the value to fix, ultimately, a figure of € 100,000.

21. Neither Valuer put forward sales details for comparable properties leading up to the valuation date of 11th December, 2020. Mr. Sothern, for the Respondent, put forward two comparable transactions, both being after the valuation date, being from unspecified dates in 2022. This lack of relevant evidence makes the task of fixing an accurate determination very difficult as the judgment must, in that unwelcome absence of reliable comparators, (and, indeed, in examining a sufficient number from which to elicit a pattern of values), be based on the opinions offered by the two expert witnesses who both affirmed their truth in those opinions, (one in his précis of evidence, the other orally at the hearing) augmented by the expertise and experience of the members of the Tribunal panel convened for the hearing of this appeal.

22. Before turning to the calculation of the market value, it is necessary to address certain issues that the Appellant has identified as being relevant in determining that value, which will be dealt with hereunder, in turn, under these summary headings for clarity, as follows:

(a) Land locked site

The submission that the Land Registry Transfer dated 12 February 1996 restricts the development of the subject site (referred to as the “21 year rule” at the hearing, for brevity) is not accepted by the Tribunal. The Transfer states at the Second Schedule

“Easements Rights and Privileges granted to the sold land and any buildings thereon. Full right and liberty for the Purchaser, his heirs, executors, administrators and assigns, his and their servants, agents, workmen, licensees, invitees, tenants and under tenants:

- (i) At all times by day and by night with or without horses, cars, motor cars, motor lorries and all other manner of vehicles or drawn laden or unladen however so propelled to go pass or repass over along all roadways and footpaths now laid over or at any time within twenty one years from the date of the above transfer laid over that part of the retained land coloured yellow and pink respectively on the map attached hereto leading from and to the sold land and to and from the Public Road”.

The Appellant baldly asserted that this would prevent any further development of the site as it is now landlocked. The Appellant had no evidence to support this submission such as a legal opinion or other supplementary information/evidence. The Tribunal, on the basis of the information placed before it, does not accept that the site is restricted in perpetuity from being developed and/or is land locked especially since both the Valuer for the Appellant and for the Respondent have each said in sworn testimony that there is/appears to be a right of way to the Leighlin Road, albeit narrow/one way;

(b) Ancient burial mound

The requirement from the National Monuments Advisory Council to keep a clear zone of 50 feet around the foot of the mound and not to build within 100 feet of it is taken as being a fact but not to be so detrimental such that, any moderate density development of the land could not encompass it, so as to prevent or greatly inhibit development overall. This is borne out by the drawing put in evidence by the Appellant in respect of the higher density scheme applied for (PD 5661) that was subsequently rejected by An Bord Pleanála, but that rejection was not for any reason concerning the presence of the mound or the requirement not to build close to it;

(c) Access & sightlines to Leighlin Road

Whilst An Bord Pleanála defined this point as being challenging, it did not rule it out entirely and in the context of a greatly reduced density on the subject site and in the absence of clear evidence to the contrary the Tribunal considers that this does not prevent a moderate density development of the site for valuation purposes.

23. (a) Having considered the opinions furnished and the limited comparable information used to support those views, the Tribunal considers that this derelict site could be sold for development purposes but acknowledges that any potential purchaser would discount their bid to reflect the subject properties negative planning history. The Tribunal favours the approach of the Respondent Valuer here in that it is reasonable to assume that an intending purchaser would include in their calculation of the value, potential for a minimum of four houses on the site. The sales devalued by the Respondent Valuer indicated two per acre values of between € 185,000 and € 300,000 (albeit for larger plots, further out from the town and both in 2022) and for this site of 0.64247 acre this analyses back at a per acre value of € 93,500 which is 49.5% below the lowest comparable price per acre and 61.4% below the mean value per acre.

This figure must be balanced against the lack of planning, the planning history and the earlier less favourable valuation date in December 2020. Being closer to the town the starting level with planning might be put at € 25,000 per site (reflecting the much smaller site) but this must be discounted for time and expense to obtain planning to reflect the reality of the site as it is at the valuation date and therefore, taking account of this as being a credible option, this would warrant a unit value of € 15,000 per site (a discount from the sites in Crossneen of 40% to reflect the various negative characteristics compared to more straightforward sites and reflecting the difficulty of a sale during the pandemic in December 2020 contrasted to sales in 2022) which provides a total of € 60,000

(b) In the absence of more directly comparable evidence at the relevant valuation date, the Tribunal considers this a reasonable estimate taking account of all the factors including size, location, topography, access, services, zoning, planning history, title, the market, the two professional affirmed opinions and the other characteristics.

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 € **60,000**, as of the valuation date.

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.