

Appeal No: VA19/5/1917

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

ABBAY FARM EQUIPMENT LTD

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5017124, Warehouse/Warerooms at Unit 7, Martyr's Road, Nenagh, County Tipperary.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF JULY, 2024**

BEFORE

Sarah Reid – BL

Tribunal Member

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 14th day of October 2019 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 €17,060.
- 1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because:

"(a) The Valuation is Incorrect.

As per a report from our letting agent, this property has very poor letting potential for a number of reasons: 1) it is located to the rear of former Abbey buildings and has restricted access from the road; 2) The premises is not visible from the road

and signage is a problem; 3) there are no toilet or canteen facilities; 4) the concrete yard to the front of the premises is shared with other tenants.

The access mentioned is through an unsurfaced area which is in very poor condition, and due to factory closures there is a surplus of rental property in the area.

The mezzanine floor has been rated and we believe this is incorrect. The lofted area in question is a temporary structure, has been bolted in, has not been used for many years and is in poor condition. The lofted area is available to view by appointment and if necessary we can remove access to this area.”

- 1.3 Per their representations to the Commissioner, the Appellant considered that the valuation of the Property ought to have been determined in the region of €32 - €34 m². However, no estimation of valuation was included in the Appellant’s grounds of appeal lodged with the Tribunal and in the section designated for the value contended for, the Appellant stated: “We believe that the valuation is overstated and should have excluded the mezzanine level.”

2. RE-VALUATION HISTORY

- 2.1 Per the Respondent’s *précis*, on the 29th day of March 2019 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 €17,060.
- 2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.
- 2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €17,060.
- 2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is 15th day of September 2017.

3. DOCUMENT BASED APPEAL

- 3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.
- 3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. FACTS

The parties are agreed as to the following facts.

- 4.1 The Property is an industrial unit located in Nenagh, Co. Tipperary. It is in an industrial development approximately 300m from Nenagh train station and close to Nenagh town centre. It can be accessed to the front from Wells Road and to the rear by Martyr's Road and is approximately 3km from junction 25 on the M7 Motorway.
- 4.2 From the pictures put in evidence before the Tribunal the Property benefits a large yard to the front and the rear of the property, though this is shared with neighbouring properties in the development.
- 4.3 The property comprises a 1008.66 sqm modern metal clad warehouse with two roller shutter doors. Internally it has 7.5 metre eaves and a Mezzanine level.

5. ISSUES

- 5.1 This appeal concerns the Respondent's valuation of the Property at a rate of €27/m² when the Appellant's letting agent has indicated an appropriate rental rate of €15/m² is all that would likely be achieved for the Property on the open market when / if the current tenant ceases occupation.
- 5.2 A second issue arises in respect of the floor areas in the Property where the Appellant takes issue with the Respondent's measurements (determined on a gross external area (GEA) basis). The Appellant accepts GEA for the purposes of the ground floor warehouse element of the Property but maintains that the mezzanine component should be measured on a Gross Internal Area (GIA) basis which would result in an area of 405.66sqm for the mezzanine compared to the Respondent's (GEA) area of 434.91sqm.

6. RELEVANT STATUTORY PROVISIONS:

- 6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

- 6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might,

in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

6.3 Rule 34 (b) of the Valuation Tribunal (Appeals) Rules 2019 relates to documents required in a Document based appeal and provides:

Timetable

34. (b) Documents relating to a document-based appeal under the Act must be delivered pursuant to the following timetable –

(i) Within 10 working days of receiving a written direction from the Valuation Tribunal the appellant shall deliver to the Valuation Tribunal his précis of evidence together with any supporting documents.

(ii) The Registrar shall send a copy of the document received from the appellant to the other party and the party to whom such documents are sent shall, within 10 working days of receipt of the documents from the Registrar, deliver to the Valuation Tribunal its précis of evidence in reply together with any supporting documents;

(iii) The Registrar shall send a copy of the documents received under Rule 34(b) to the other party to the appeal.

(iv) The Tribunal may if it thinks fit require any party to furnish in writing further particulars of the grounds of appeal relied on and of any relevant facts or contentions.

(v) Where the Tribunal requires a party to furnish further particulars, the Registrar shall, following receipt, send a copy of such particulars to the other party to the appeal.

(vi) A party shall, within 10 working days of receipt from the Registrar of a copy of the particulars referred to in paragraph (v), deliver to the Registrar any further information he or she wishes to provide by way of response.

(vii) As soon as reasonably practicable, after all documents have been received, the Tribunal will consider whether it is appropriate to determine the appeal based on the written documentations submitted. The Tribunal may at any time direct that the appeal be determined at a hearing.

6.4 Rules 35, 36 & 39 of the Valuation Tribunal (Appeals) Rules 2019 pertain to the format and content of précis of evidence in an appeal and provide:

Précis of Evidence

35. *The appellant's précis of evidence must state in a precise but comprehensive way -*

- (a) each ground of appeal relied on by the appellant;*
- (b) the argument relied on in support of each ground of appeal;*
- (c) the facts relied on in support of each ground of appeal; and*
- (d) any authorities relied on in support of each ground.*

36. *The appellant's précis must include the following documents:*

- (a) where appropriate, a copy of the relevant valuation certificate or notification of the valuation manager or revision manager;*
- (b) a copy of any written record of the decision appealed;*
- (c) a copy of the notice of appeal to the Tribunal;*
- (d) maps and photographs of the property the subject of the appeal and of all comparator properties relied upon. Photographs must be dated and titled. Maps must be to scale, with north-point, road names, the property the subject of the appeal and the comparator properties clearly marked;*
- (e) where appropriate, all relevant market evidence relating to the property the subject of the appeal and a copy of any lease affecting that property;*
- (f) a copy of any other document verifying facts or particulars relied upon by the appellant.*

39. *Any précis of evidence on behalf of any party as to the value of the property the subject of the appeal must include particulars of -*

- (a) the location of the property the subject of the appeal and the nature of the location, for example, residential, retail park, commercial, office, industrial;*
- (b) an accurate description of the property the subject of the appeal (for example, single storey, workshop building, hotel, public house);*

(c) the size of the property the subject of the appeal measured in square metres, and where appropriate dimensions, height, and frontage, as agreed between the appellant and the respondent;

(d) the general condition of the property the subject of the appeal;

(e) the title of the property the subject of the appeal and, if leasehold, the details of the lease to include the names of the landlord and tenant, any side letter or concession letter pertaining to the lease, details of any additional relationship or association between the landlord and tenant, commencement date, term of the lease, the rent and when agreed or fixed, rent review pattern, repairing liabilities, insuring liabilities, break-options, rent-free periods, capital contributions or concessions;

(f) the comparator properties that he or she considers to be similarly circumstanced to the property the subject of the appeal and relevant to the assessment of its net annual value and giving such details of the comparators as specified in subparagraphs (i) to (v) above;

(g) the witness's opinion on the valuation of the property the subject of the appeal and how such opinion is supported by the comparator evidence.

(h) The précis of evidence of each party must be signed by the person who has written the précis.

7. APPELLANT'S CASE

7.1 By email dated 2 January 2024 the Appellant was invited to submit a précis of evidence in support of their appeal and was further advised of the Valuation Tribunal (Appeals) Rules 2019, in particular rule 34 (b) which sets out the timeframe for the submission of evidence in addition to Rules 35, 36, 39 and 41 which set out information relating to what should be included in a précis of evidence in an appeal to the Tribunal. Thereafter the Appellant sought and was granted an extension of time to compile their evidence and submitted various documents to the Tribunal on 16 February 2024 but did not to submit formal précis.

7.2 Accordingly, the documents before the Tribunal in this Appeal, and on which the Tribunal bases its decision, are as follows:

A. Grounds of Appeal as filed with the Tribunal and recited in paragraph 1.2 above.

B. A copy of the Appellant's handwritten representations (noted as Revision Representations) dated 11 March 2019. These refer to an attached letter from their letting agent (letter at C hereunder) and provides the following reasons for why the Respondent's Valuation is considered incorrect:

As per the attached report from our letting agent, this property has poor letting potential for the reasons stated. Also, the access mentioned is through an unsurfaced area which is in very poor condition. Due to factory closures, there is a surplus of rental property in the area. The lofted area is a temporary structure, bolted in, has not been used for many years and is in poor condition. If necessary, we can remove the access to this area.

As to what the valuation should be the representations state: *We suggest that in our opinion the valuation should be no more than €32 - €34.00*

C. Letter dated 11 March 2019 from Mr. William Talbot of Sherry Fitzgerald Talbot to Mr. Cavanagh (for the Appellant) confirming he had been retained as sole letting agent for the Property. This letter confirmed that an asking rent of €15/m² would be quoted in respect of the property and outlined the following restrictions on the said property:

- i. It is located to the rear of former Abbey buildings and has restricted access from Martyrs road.*
- ii. The premises is not visible from Martyrs road therefore signage is a problem.*
- iii. There are no toilet or canteen facilities.*
- iv. The concrete yard to the front of the premises is shared with other tenants.*

D. Letter dated 16 February 2024 from Mr. William Talbot of Sherry Fitzgerald Talbot to Mr. Cavanagh (for the Appellant) noting that although the Subject Property was now let, when this tenant vacates demand will be extremely limited for the following reasons:

- It is located to the rear of the former Abbey buildings and has restricted access over a narrow gravel road from Martyrs Road.*
- The Premises is not visible from Martyrs Road, therefore signage is a problem.*
- There are no toilet or canteen facilities*
- The concrete yard to the front of the premises is shared with other tenants.*

The premises comprise of a ground floor area of 555 sq.m. There is also a mezzanine structure of 216 sq. m, however, this is a temporary structure, bolted in, has not been used for many years and is in poor condition. If necessary, access can be removed to this area.

E. Declaration of Mr. William Talbot of Sherry Fitzgerald Talbot in respect of his statement dated 16 February 2024.

- F. Letter dated 24 January 2018 (presumed in error) from Mr. Cheevers (Financial Controller for the Appellant) to the Valuation Tribunal referring to their representation dated 11th March 2019 and confirming that a rental for the building has been agreed but the property had been empty for the three years prior to this. This letter also refers to Mr. Talbot's letter (Document C) and notes that the lofted area in the property is a temporary structure, bolded in and has not been used for many years and is in poor condition. Further Mr. Cheevers notes that they could remove access to this area and it should not be considered for rating purposes.
- G. Four photographs of the subject Property.
- H. Response from Mr. Cheevers (Financial Controller for the Appellant) to the Valuation Tribunal dated 22 March 2024 commenting on the Respondents précis and the information therein. The following points are noted in that regard:

“Key Rental Transaction 1

While we are not familiar with the property, we note size at 219.6 m² and rental income of €12,000. This represents a rate of €54.64 per m² rental income with a NAV of €30.00

NAV Comparison 1

Occupier [REDACTED]

We are familiar with this property; the location is in the centre of town and middle of the business area with high footfall. The location is far superior to the AFE Unit 7 property.

The warehouse at 537.6 m² and mezzanine at 281.2 m² @ 20% = 56.24 m² equal total area of 593.84 m² with rental income of €16,810. This is a rate of €28.31 per m²

Also, this property is not as per photographs provided.

NAV Comparison 2

The occupier is [REDACTED]. We are familiar with this property. We would suggest that the description and photographs do not properly reflect the property. This property has significant road frontage onto Martyrs Road.

The information provided suggest a rental income of €16,430 for 442 m² which suggests a rate of €37.17 per m².

NAV Comparison 3

We are familiar with this property. It is located on the Limerick Road out of Nenagh, which also connects the town to the M7. This is a higher profile industrial rental property than AFE Unit 7.

With 686 m² at rental income of €19,420 suggests a rate of €28.31 per m²

The AFE Unit 7 property based on valuation office measurements of warehouse 573.75 m² plus mezzanine of 434.91 m² @ 20% = 86.98 m² = Total 660.73 m². The comparable rent for AFE Unit 7 at the same time used in the report of 2018/19 was rental income €16,992 p.a., equals a rate of €25.72 per m².

This rate is substantially below all of the other compared properties.

We disagree that the location is comparable, AFE unit 7 has only access via an unsurfaced road to the rear of the property and only during normal business hours, there is no access at all other times.

The occupier only has access from the Well Road with consent from the main tenants of the overall property and has no control over the gate referred to in report.

Unit 7 is not in the town centre, it has no road frontage and has as described limited access.

It has no running water, no sewage connection and only single phase power, no industrial equipment can be used.”

7.3 Though not included in the Appellant’s bundle of documents, an email dated 11.03.2024 and appended to the Respondent’s précis, Mr. Cheevers (Financial Controller for the Appellant) asked the Respondent’s valuer to consider the following points in respect of the property:

- The building is currently rented to an opportunistic tenant and has been vacant for a number of years prior to this.
- The building has only building hours access down a narrow gravel lane, a long distance from the public road.
- There is no independent power supply to the building.
- There is no running water, toilet or sewerage connection.

7.4 Per the grounds of appeal The Appellant argues that the Respondent’s valuation of the property is incorrect and the reasons for same are as outlined across the various documents above.

8. RESPONDENT'S CASE

- 8.1 The Respondent was represented by Mr. Murphy valuer, who provided a formal précis of evidence and asked that the NAV for the Property be let stand in circumstances where it was in line with comparable properties and had been valued as part of a scheme for the Tipperary local authority area.
- 8.2 Outlining the relevant valuation scheme, the Respondent's valuer stated that the Commissioner prepared a scheme for valuing warehouses in Tipperary, based on 20 items of market information (Key rental transactions / KRT's) and these were used estimate of the Net Annual Value of the subject property. The Respondent submitted one KRT example from Tipperary in this appeal as follows:

Level		Size (sq.m)	NER per sq.m	NAV per sq.m
0	Warehouse	219.60	€50	€30
	Total	219.60	€10,980	€6,580

- 8.3 Having regard to this KRT and the scheme, the Respondent determined that a fair and equitable valuation for the subject property was €27 per square metre for the warehouse level and the Mezzanine level was valued at €5.40 (20% of the Warehouse level). This equated to a NAV of €17,060.00 which the Respondent maintained was in line with similarly circumstanced properties in the area.
- 8.4 In support of the valuation, the Respondent also provided four comparison properties, all of which were located in Nenagh, and all of which were classified as warehouses. These are as follows:

Property No.	NAV per sq.m	NAV
2108768	€27.00	€16,810
1338302	€27.00	€16,430
1338928	€27.00	€19,420
1339509	€27.00	€5,690

- 8.5 Having considered the Appellant's position and documentation, the Respondent's valuer stated that the property has been valued in line with similar industrial type properties in the Tipperary County council rating area. Where the Appellant argued that the property is in a poor location to the rear of the old Abbey machinery factory, the Respondent argues the property is situated in Nenagh Town, within 3km of Junction 25 on the M7 Dublin to Limerick Motorway providing links to Dublin and Shannon Airport. Insofar as the Appellant stated the property suffers poor condition, the Respondent argues it occupies a secure site with access via an automatic roller gate. As regards the visibility of the building, Mr. Murphy does not consider this as an important factor to an industrial property as would

be the case with a retail property noting many industrial properties, such as those in an industrial estate, do not benefit from main road profile. Lastly, as regards the mezzanine level in the property, Mr, Murphy notes this is a solid steel structure with solid steel staircase access and it would be of benefit to any potential tenant so it has been valued.

- 8.6 In the circumstances and having discounted the reasons put forward by the Appellant to justify a lower NAV being applied, the Respondent maintains that the subject Property was valued in line with comparator properties on the List (i.e. those identified in paragraph 8.4 above), and accordingly that the NAV entered on the Valuation List should not be disturbed. Notwithstanding this, the Respondent seeks to amend the final valuation where the floor areas in the Property were found to be larger when inspected by the Respondent. In that regard, the Respondent’s revised valuation for the Property

Use	Floor	M2	NAV (€)
Warehouse	0	573.75	€27
Mezzanine	Mezz	434.91	€5.40
Total	-	1008.66	€17,839.76
Total say			€17,830

9. SUBMISSIONS

There were no submissions in this Appeal.

10. FINDINGS AND CONCLUSIONS

- 10.1 In 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 Tipperary County Council.

Onus of proof

- 10.2 The Tribunal finds that the onus of proof rests with an Appellant in all appeals before the Tribunal. Further, the comments of the Tribunal in *FGM Properties v Commissioner for Valuation* (VA19/5/1091) refer wherein it was confirmed that in order to succeed in their appeal, an Appellant must demonstrate, through cogent evidence, that the Respondent has erred. In advancing their case in this appeal, the Appellant was obliged to substantiate their grounds of appeal that the Respondent’s valuation was incorrect and the Commissioner’s approach to valuation resulted in an incorrect valuation of the Property. In that regard,

cohesive, relevant evidence was required to advance the Appellant's case in order to give full consideration to the issue as to the appropriate valuation of the Property on the valuation date in September 2017.

Discrepancies and inconsistencies in the evidence

- 10.3 In the absence of a formal précis from the Appellant, the Tribunal was at a disadvantage in determining the claim being made and had to instead piece together the Appellant's arguments from their various correspondence and representations. A letter dated 11 March 2019 from Mr. Talbot of Sherry Fitzgerald Talbot to Mr. Cavanagh for the Appellant, was put in evidence noting difficulties in letting the property, but another letter dated 24 January 2018 (presumed incorrect as it referred to the Appellants March 2019 representations) confirmed that a tenant had been secured for the Property though the tenant was described as 'opportunistic' in a later email from March 2024.
- 10.4 A further issue arose in that the Appellant placed reliance on a consideration of rental values in March 2019 but the Valuation date in issue in this appeal is September 2017. There was a suggestion in the January 2018 (sic) letter, that the Property may have been vacant at the valuation date, however no further information or evidence was advanced in that regard in support of the Appellant's case.

GIA versus GEA as a basis of measurement.

- 10.5 Insofar as the Appellant questions the Respondent's use of Gross external area (GEA) as the basis of measurement, the Tribunal finds that the floor areas were measured in accordance with the SCSI Code of Measuring practice, a copy of which was put in evidence by the Respondent, and the Appellant has not satisfied the Tribunal that this approach was incorrect or unlawful in the circumstances.

Insufficient valuation evidence put before the Tribunal

- 10.6 The Appellant did not submit a formal précis as required by the Valuation Tribunal (Appeals) Rules 2019 but cited in his Grounds of Appeal that the valuation was incorrect. This was expanded on, as set out in paragraph 1.2 above and in support of their position, the Appellant included various documents, set out paragraph 7.2 above. There was much repetition across these documents however the Tribunal notes that the letter from Mr. Talbot, letting agent dated 11 March 2019 opined a value of €15/m² as the likely letting rate that could be achieved for the Property. This was not expanded on or advanced in evidence and instead a NAV figure of 'at most €32 - €34' was all that was included in the papers before the Tribunal as the Appellant's estimation of value.

- 10.7 As noted above, the Appellant didn't provide a formal calculation as to their opinion of NAV for the Property as required under Rules 39(f) & (g) of the Valuation Tribunal Rules (cited above). The closest evidence before the Tribunal was a figure indicated at representation stage, that 'between €32 and €34' was an appropriate NAV. However no further evidence of value or comparable properties were put before the Tribunal to support that contention or the assertion that an incorrect valuation had been arrived at by the Respondent. No evidence was provided as to the basis for the NAV contended for, nor was the commercial information that informed these figures put before the Tribunal yet the Tribunal was asked to direct a revised valuation be entered on the Valuation List.

Statutory task and role of the Tribunal

- 10.8 The task of valuation is to apply a NAV to a property that reflects the building on a vacant and to let basis and the use to which that property could be put. The Appellant highlighted both in their grounds of appeal and in documents from Mr. Talbot of Sherry Fitzgerald that the Property had poor rental prospects because of its location and restricted access. Signage and a lack of services were also noted as restrictions on the Property and the concrete yard to the front of the premises was noted as shared with other tenants. Based on this the Appellant sought to challenge the Respondent's valuation.
- 10.9 The Tribunal, while an expert body knowledgeable in matters of rating, is not at large to blindly approve NAV figures presented to it. The Tribunal relies on the parties and looks to the evidence put before it to instruct what is a fair and accurate valuation for a property given its circumstances and the valuation of similarly circumstanced properties on the Valuation List in the same rating area. Not only is it unclear what valuation was contended for by the Appellant in this appeal, no evidence was proffered by the Appellant as would explain or otherwise justify the NAV levels sought. In those circumstances the Tribunal did not have before it, evidence that was reliable or capable of being tested.
- 10.10 In light of the foregoing, the Tribunal finds that the Appellant has not made out their case in this appeal. The Tribunal further finds that the floor areas, which were examined by the Respondent and increased following that inspection, are per the Respondent's calculation of NAV at paragraph 8.6 above.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent to enter the property on the List, revising the NAV for the property as €17,830 reflecting the changed floor areas following inspection.

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.