

**Appeal No: VA17/5/1080**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**DIXONS CARPHONE T/A CARPHONE WAREHOUSE**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2148934, Retail (Shops) at Unit 4, Ashleaf Shopping Centre, Crumlin Cross,  
County Borough of Dublin.

**B E F O R E**

**Stephen J. Byrne - BL**

**Deputy Chairperson**

**Frank O'Grady – MA, FSCSI, FRICS.**

**Member**

**Michael Brennan – BL, MSCSI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 26<sup>TH</sup> DAY OF MAY, 2021**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 12<sup>th</sup> day of October, 2017 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 €39,100.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

The valuation as set on the Final Valuation Certificate in relation to the subject property is excessive and not in accordance with the definition of Net Annual Value as per section 48 of

the Valuation Act, 2001 as amended by the Valuation (Amendment) Act, and by reference to the values of comparable properties published on the Valuation List in accordance with Section 19 (5) of same Acts and by reference to market evidence.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €29,000.

## **2. REVALUATION HISTORY**

2.1 On the 13<sup>th</sup> day of April, 2017 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 €43,000.

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 of the Property was reduced to €39,100.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €39,100.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> day of October, 2015.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 22<sup>nd</sup> day of October, 2020. At the hearing the Appellant was represented by Mr John Algar BSc (Surveying), MRICS of Avison Young and the Respondent was represented by Ms Fidelma Malone BSc (Hons), MSCSI, MRICS of the Valuation Office.

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 a single storey lock up mid terraced retail unit in Ashleaf Shopping Centre.

4.3 The centre is situated in the residential suburb of Crumlin c.5 km. south of Dublin City centre. The centre extends to c. 16,723 sq.m. (180,000 sq.ft.) and is anchored by Dunnes Stores with 23 retail units, public house, medical centre, offices and 600 underground car spaces.

4.4 The agreed floor area is 127.81 sq.m.

#### **5. ISSUES**

5.1 The matter at issue is quantum.

5.2 The Appellant claims that the valuation is excessive and is seeking a reduction in the NAV to €29,300.

5.3 The Respondent states that the NAV is in line with the tone of the list for South Dublin County Council @ €39,100 and requests that the Tribunal affirms same in accordance with the Valuation Acts.

#### **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.”

## 7. APPELLANT’S CASE

7.1 Mr. Algar for the Appellant adopted his precis as his evidence in chief and went on to describe the Shopping Centre and the location of the unit therein.

7.2 He stated that the unit was held on an IRI lease for 13 years from 1<sup>st</sup> October 2010 at a headline rent of €67,000 pa. and that there was a break option in year 8 which the tenant triggered to exit the lease in 2018.

7.3 To support his case Mr. Algar gave details of the 3 rental transactions detailed in **Appendix 1** hereto. These lettings occurred in January 2016 shortly after the Statutory Valuation Date 30<sup>th</sup> October 2015 which gave Zone A (ITZA) levels as follows:

|            |                           |        |               |             |
|------------|---------------------------|--------|---------------|-------------|
| PN 2148942 | (Average Rent) €36,833.40 | Zone A | €462.78/sq.m  | NAV €35,900 |
| PN 2148968 | NER (Rent) €28,000        | Zone A | €368.86/sq.m. | NAV €28,000 |
| PN 2148969 | NER (Rent) €28,000        | Zone A | €199.49/sq.m. | NAV €28,000 |

And the 3 units were all valued by the Commissioner at €500/sq.m. Zone A and have the following NAVs:

1. NAV €39,700
2. NAV €37,900
3. NAV €70,100

7.4 Mr Algar stated that these three rental transactions are the most relevant because they are close to the valuation date and are the best and most accurate view of a fair and reasonable valuation. He also confirmed that his KRT 1 was a common piece of evidence between the parties.

7.5 Mr. Algar stated that the flat rate of €500/sq.m. Zone A across the entire centre was unequitable and queried how it was arrived at. There was no flat rate rental value in the centre as shown in the 3 KRTs supplied.

7.6 He stated that taking the above transactions into consideration a level of €500/sq.m. was excessive and suggested €375/sq.m. Zone A and therefore a reduction in the NAV to €29,300.

7.7 Under cross examination from Ms. Malone it was put to Mr Algar that KRT 3 was out of line with the centre. He confirmed that he did not believe that it was out of line given that, as frontage is key for retail, it was his opinion that the zoning approach was correct and a large frontage credits a low Zone A rate. He excepted that this Zone A rate was substantially lower when questioned by Ms Malone and he confirmed that he allowed a marginal uplift in comparison to his other KRT's to reflect this. He also confirmed that notwithstanding that it was a much bigger unit, it did not impact the ITZA analysis and it had a fact a similar ratio to the subject property. He also confirmed that it had the same Zone A accommodation as the subject property notwithstanding that it was a bigger unit overall.

7.8 When questioned by Ms Malone regarding the prominence of the subject property and being adjacent to the escalator for the car, he confirmed that it was directly opposite Dunnes Stores but as the centre was small all units were relatively adjacent to the anchor.

7.9 Mr Algar confirmed that the adjacent units were valued at €500 ITZA when the question was put to him by the Respondent. It was also put to Mr Algar why he was not relying on any NAV comparisons, he confirmed that he was not relying on any tone of the list comparisons because the best evidence is pertaining to lettings and is more appropriately accordance with the Act. He concluded by stating that broadly applying a Zone A rate across the entire centre is incorrect.

7.10 In summarising his evidence, Mr Algar confirmed a valuation of €500 across the board in 2015 is excessive and that there is rental evidence from this period to demonstrate this. He confirmed that there were a total of 5 KRT's available to Respondent and according to the commercial lease register no other lettings to place. It was his opinion that the letting of Unit 8C (KRT 2 of the Respondent) in November 2013 was an outlier. It was his opinion that the January 2016 letting is the most relevant (KRT 1 of the Applicant). He did not except Ms

Malone's position on his KRT3 and that if €199 was not relevant then €580 (KRT 3 of the Respondent) was equally as non-relevant.

## 8. RESPONDENT'S CASE

8.1 Ms. Malone for the Respondent adopted her precis as her evidence in chief and contended for an NAV of €39,100.

8.2 She confirmed agreement with the location, description, lease details and floor areas.

8.3 Ms Malone confirmed that the Zone A rate was reduced to €500 from €550 following representations. To support her case Ms. Malone introduced 9 NAV comparisons referred to in detail in **Appendix 2** hereto. She confirmed that they all of which had a Zone A of €500/sq.m. and had not been appealed to the Tribunal. She also relied on 3 KRTs referred to in detail in **Appendix 3** and she confirmed that none of them were subject to representations nor appeals. These KRT's can be summarised as follows:

|                              |  |
|------------------------------|--|
| PN 2148942 (as listed above) | NER €42,500 : Zone A €500/sq.m. : NAV €39,700  |
| PN 2148963                   | Rent €22,000 : Zone A €500/sq.m. : NAV €18,990 |
| PN 2148973                   | Rent €35,000 : Zone A €500/sq.m. : NAV €34,400 |

8.4 In relation to KRT 1, Ms Malone accepted that the NER is €36,833 which equates to €462.78 ITZA and is located beside the subject property. She stated that the subject was a standard unit, well positioned in the centre, one of 20 units with a rental of €67,000 pa. and asked the Tribunal to affirm the valuation at NAV €39,100 in equity and uniformity in accordance with the Valuation Acts.

8.5 She stated that the Unit 10 and the subject unit where the only units under appeal in the shopping centre. She was of the opinion that the NER of KRT 3 of the Appellant was out of line with the shopping centre as a whole and out of line with the Respondent's assessment of NAV. It was her view that the 9 NAV comparisons demonstrated this.

8.5 Under cross examination from Mr. Algar she was asked how the €500/sq.m. was arrived at and Ms. Malone stated that the Respondent relied on the S.45 replies together with the rental evidence of units 5, 8c and 15 as detailed in Appendix 3 hereto. Or view that this deduced to

€500/sq.m. ITZA and was determined as accurate and generally accepted by the other occupiers of the centre.

8.6 When Mr Algar put it to her that if unit 11 – 12 was let at €199 ITZA was it not a case that €500 ITZA was too high, she confirmed that the rate was reduced to €500 to reflect this. Mr Algar asked why his KRT 2 and KRT 3 were not considered by the Respondent given the relevance of the date being between 2013 and January 2016. Ms Malone stated that the rents were out of line and very low and that her KRT's put forward are close to the valuation date also and that €500 appears reasonable.

8.7 Mr Algar also asked if the Respondent based their valuation on any other evidence. She confirmed that all rental transactions would have been considered and in addition they would have looked to see where the shopping centre fitted in with other shopping centres in South County Dublin so all rents for South County Dublin would have been relevant.

8.8 Mr Algar put it to the respondent that there could be no inferior location in the shopping centre if they valued all the units at €500 ITZA.

8.9 When asked by the tribunal if the respondent had rental information for their nine NAV comparisons she confirmed that she didn't know but that the NAV comparisons highlight evidence of the equity and uniformity.

8.10 When questioned further Ms Malone stated that the NER for October 2015 was arrived at by adjusting the original lease rental information which had been supplied by the various occupiers.

8.11 in summarising her evidence she stated that the subject property was a standard unit and valued in line with 19 others. She stated that all 20 units in the shopping centre were valued at €500 Zone A and that this was in accordance with the Act. She stated that the NAV of €39,100 was fair and reasonable and in accordance with section 46 of the Act.

## **9. SUBMISSIONS**

9.1 There were no legal submissions.

## **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 South Dublin County Council.

10.2 The Tribunal has examined the particulars of the property and considered the written and oral evidence adduced by Mr. Algar on behalf of the Appellant who contended for a revised valuation of €29,300 and Ms Malone for the Respondents who sought confirmation of the NAV €39,100 as being fair and reasonable.

10.3 The Tribunal must assess the Appellant's claim in the context of comparable properties. The Respondent did supply 3 Key Rental Transactions to support her claim and a list of NAVs. However, the two most recent lettings (out of only five lettings in total) were not considered as relevant evidence by the Respondent notwithstanding that they fell within 3 months of the valuation date. The only evidence provided as to their exclusion was due to the fact they were "out of line and very low". It is difficult to agree with this position given that they have not been contradicted by subsequent lettings. It also must be stated that there was no transparent evidence to clearly show how a rate of €500 ITZA had been determined by the Respondent to the satisfaction of the Tribunal.

10.4 The evidence provided by the Respondent was helpful as two of the comparisons are detailed in both the KRT and NAV list and are of similar size and position.

10.5 The KRTs supplied by the Appellant were dated later than the Statutory Valuation Date, October 2015 but before the matter was addressed in 2017.

10.6 The Respondents tone of the list properties were also helpful to the Tribunal giving an overview of the shopping centre, however there is a case that they maybe somewhat flawed having regard to the market evidence and therefore the Tribunal has to regard them with some caution.

10.7 Two of the Appellants KRTs are helpful to the Tribunal as statement of facts and clear evidence of the rental/letting market prevailing in the shopping centre circa October 2015. The



Tribunal notes that PN 2148969 is also under appeal. It is apparent that there are various ITZA / rental levels in use in the centre as reflected in the actual rentals quoted and these variations do not appear to be taken into consideration by the Respondent who has adopted a flat rate for the entire centre. In the interest of equity rather than uniformity the Tribunal has to question this flat rate approach.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €32,100.

NAV calculation,

|                |        |             |                 |                    |
|----------------|--------|-------------|-----------------|--------------------|
| Ground Floor : | Zone A | 46.36 sq.m. | @ €410 /sq.m.   | =19,000.76         |
|                | Zone B | 46.36 sq.m. | @ €200/sq.m.    | = €9,503.80        |
|                | Zone C | 35.09 sq.m. | @ €100.50/sq.m. | = <u>€ 3596.72</u> |
|                |        |             | Total           | €32,101.28         |

Say                      NAV €32,100.00

And the Tribunal so determines.