

Appeal No: VA19/5/1093

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020**

Sean Burns

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of
Property No. 1282072, retail shops at Townparks, Dundalk, County Louth.

B E F O R E

Hugh Markey –FRICS FSCSI,

Deputy Chairperson

Liam Daly – FSCSI FRICS

Member

Michael Brennan – BL MSCSI

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 5TH DAY OF MAY, 2022

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 €134,800

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: *“Valuation is excessive and inequitable having regard to the location, quality, layout and physical characteristics of the property, market rental evidence and relativity to the Net annual Values of other comparable properties as stated on the Valuation list.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €77,000.

2. REVALUATION HISTORY

2.1 On the 15th 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 €126,700.

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 increased to €134,800.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €134,800.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September, 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 5th day of January, 2022. At the hearing the Appellant was represented by Ms. Pauline Madden B.Sc. (SURV) of Power Kelly & Company and the Respondent was represented by Ms. Tanya Vasileva 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 their précis as their evidence-in-chief, in addition to giving oral evidence.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 The subject property is located on Park Street, Dundalk, Co. Louth. It is situated to the south of Clanbrassil Street, with its rear facing Rampart Road. The property is approx. 1 km west from the N52 and 3km east from the M1.

4.2 The subject property is a single storey, mid terrace, retail unit with suspended ceilings and mezzanine store at its rear. The property contains a supermarket area, stores, offices and canteen. There is parking on the left side of the property and off-street parking to the front and rear.

4.3 The floor areas have been agreed between the parties:

| | | Sq. M. |
|-------------------------|--------------------------|----------------|
| Ground Floor | Supermarket | 1287.42 |
| | Store/office/staff areas | 61.71 |
| | Rear Stores | 188.59 |
| Mezzanine | Store | 130.22 |
| Total Floor Area | | 1667.94 sq. m. |

4.4 The property is freehold

5. ISSUES

5.1 The sole matter at issue is one of quantum

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 Ms. Pauline Madden, on behalf of the Appellant, explained that the Property was constructed in the 1960’s. It comprises of a mainly single storey, part two storey premises which is terraced to the front and semi-detached to the rear. The Property has a steel framed mezzanine which resulted in restricted headroom to part of the retail area.

The Property is situated on Park Street close to the intersection with Magnet Road/The Demesne.

7.2 It was Ms. Madden’s opinion that the opening of the Dundalk bypass, together with the introduction of the newer shopping centres on the edge of town, has relegated Park Street to a secondary trading location. Apart from the new shopping centres, she noted there was retail warehousing located on the Inner Relief Road. She suggested the effect of these shopping centres and retail warehouse park, with approximately 1,350 car spaces between them, was to attract consumers from the traditional town centre retail locations such as Park Street.

7.3 Ms. Madden stated it was also important to acknowledge the impact of the property’s physical characteristic on value. She outlined that it was constructed with a steel frame and

masonry block walls; the frontage had the original display windows. She noted the roof was double pitched with metal deck sheeting. Ms. Madden explained the building was constructed in the 1960's. She contended this brings considerable challenges in securing an occupier as the property suffers from being dated and with parts in a poor standard and condition. She noted the lower headroom under the mezzanine as well as the narrow nature of the extensions to the side. She said there was a maximum of 16 car park spaces at the Property.

7.4 It was Ms. Madden's opinion that the challenges associated with the building was demonstrated by the lack of success in securing a new occupier. She explained the unit has been vacant and to let since its purchase in 2019. She referenced the letting agent's brochure, which she included in her précis, referring to a rental figure of €80,000 per annum currently been sought for the premises. She noted the Property had been vacant and available to let since 2009.

7.5 Ms. Madden explained that when the property was acquired by the current owners in 2019, a restrictive covenant on use was included in the contract of sale at that time, whereby use for "any retail purposes or as a supermarket, hypermarket, grocery store, frozen foods, mini food market, convenience or discount foods store or for the sale of any food, food, food products, groceries or textiles" is prohibited. Ms. Madden questioned the rationale behind the methodology adopted by the Respondent in advocating for a rate of €95 per sq. m as a supermarket. It was Ms. Madden's opinion that the restrictive covenant deemed the subject property's "supermarket" status incorrect. Therefore, the property should not be valued on that basis. Ms. Madden posited that considering the property's characteristics and the restrictions on use, it was more closely aligned to be valued as retail warehousing,

7.6 Ms. Madden introduced seven NAV Comparisons which are include in appendix 1 hereto.

7.7 Ms. Madden opined her NAV comparable evidence supported her opinion of value. They demonstrated levels of between €60 per sq. m for larger units and €70 per sq. m for smaller units (less than 300 sq. m). Ms Madden elucidated further in proposing a methodology, namely the differential between the two levels is €10 per sq. m. or 14.28%. In arriving at her opinion of NAV, she suggested that, having allowed for the locational and physical characteristics and

applying this discount to the rate derived from her primary comparable (PN 1282648 – See Appendix 2), she arrived at a rate of €54.60, which she rounded to €55.00 per sq. m. to apply to the retail area.

7.8 Ms. Madden’s opinion that the NAV should be €74,750 calculated as follows:

| Floor Area Sq. M | @ € psm | € | NAV |
|--------------------------|----------------|------------|------------|
| Showroom - 1287.42 | €55.00 | €70,808.10 | |
| Staff areas - 61.71 | €10.40 | €641.78 | |
| Rear stores - 188.59 | €10.40 | €1,961.34 | |
| Rear Mezz store - 130.22 | €10.40 | €1,354.28 | |
| | | | €74,765 |

Say €74,750

Cross Examination of Ms. Madden

In response to questions from the Respondent, Ms. Madden confirmed her Comparison No. 2, that of the property on Dublin Street, was that which she regarded as being most similar and gave rise to her adopting the rate of €55 per sq. m. She also confirmed that her Comparison 3, 4, 5 and 6 were all purpose built retail warehouses.

She confirmed her understanding that the sale of the property had closed in 2019, after the Final Certificate had issued.

8. RESPONDENT’S CASE

8.1 Ms. Vasileva, on behalf of the Respondent gave the following oral evidence.

8.2 Ms. Vasileva noted the location and condition of the Property and stated that 3 key rental transactions were relied upon in arriving at the valuation scheme from which the NAV of the Property (Appendix 3) was derived. A valuation level of €95 per square metre was applied to the retail area/supermarket and €20 per square metre to the stores/offices/staff-canteen and mezzanine area, to arrive at an NAV of €129,900. Ms. Vasileva explained that €95 per sq. m was applied to the front retail area of the unit as it has been considered as a supermarket [500-

2500 sq. m.] due to its area of 1667.94 sq. m. Ms. Vasileva described how retail units with floor areas less than 1000 sq. m. were zoned by the Respondent and valued at €300-€400 per sq. m. for retail Zone A and this level applied to Park Street. With regard to the subject property, Ms. Vasileva highlighted that ancillary areas (stores, offices, canteen, and mezzanine) have been valued at €20 per sq. m. This, she explained, contrasts with the rate of €95 per sq. m. applied to all three NAV comparisons. The comparison properties were all subject to fit-out additions. This was not applied to the subject due to its age.

8.3 Ms. Vasileva explained that equity and uniformity were achieved by the consideration of ‘similarly circumstanced’ comparables. (7.3 of her Precis) (See Appendix 3). Ms. Vasileva explained that of the three NAV comparisons used, only one was the subject of representations and none had been appealed to the Tribunal. A level of €95 per sq. m. was applied to all floor areas (retail, supermarket, stores, offices)

8.4 During the course of her evidence, Ms. Vasileva made the following comments regarding the Appellant’s comparisons

- Comparable 1 – PN 1282767 The building has industrial characteristics and has been categorised as Industrial with use Showroom (Industrial)
- Comparable 2 – PN 1282648 This is a standalone industrial unit and consists out of 3 parts- 1 showroom, 1 office and 1 Store/workshop. The building has industrial characteristics and has been categorised as Industrial with use Showroom (Industrial)
- Comparable 3 – PN 2174140 This property is categorised as Retail (Warehouse).
- Comparable 4 – PN 2189323 This property is categorised as Retail (Warehouse).
- Comparable 5 – PN 2206443 This property has been categorised as Retail (Warehouse)
- Comparable 6 – PN 2206442 This property has been categorised as Retail (Warehouse).
- Comparable 7 – PN 2201059 This property has been categorised as Retail (Warehouse).

8.5 Ms. Vasileva stated all of the above comparisons had different characteristics to the Property, they are either industrial units or retail warehouses. Comparisons 1 and 2 are located on Rampart Road and both are industrial units. Comparisons 3 and 4 are situated in the same estate – Dundalk Retail Park. Both properties are valued as retail warehouses at €60 per sq. m. This rate was analysed by the Valuation Office during Revaluation 2019 and it is based on the submitted market evidence by the occupiers in Dundalk Retail Park. Comparisons 5, 6 and 7

are in same estate – TCS Retail Park. This estate has been considered by the Respondent as an industrial area. The analysed rate per sq. m, of €70 for this retail park is based on analysed market evidence submitted by the occupiers in the park. Ms. Vasileva explained that comparisons submitted by the Appellant were either industrial units or retail warehouses, and thus were not comparable. Ms. Vasileva contended that the Appellant's proposed an industrial / retail warehouse level to be applied to the subject; this was incorrect, as the subject is a retail unit.

8.5 Regarding the consideration for the implication of the restrictive covenant on values, Ms. Vasileva stated the property was purchased with the restrictive covenant. The property's sale was completed after the issuing of the final certificate and the condition of the restrictive covenant was not mentioned in the submitted representations and grounds of the appeal.

8.6 Cross Examination of Ms. Vasileva

Ms Vasileve confirmed that parts of Clanbrassil Street are valued at €400 per sq. m. and others at €300 per sq. m., zone A. She accepted that on street car parking was available on the street and furthermore that Earl Street was pedestrianised. She accepted that the supermarket comparisons (NAV comparisons 1, 2 & 3) are all modern buildings with dedicated car parking.

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 Louth County Council.

10.2 The relevant question on this appeal concerns the amount a hypothetical tenant would pay in rent for a tenancy of the Property on the terms set out in section 48 of the 2001 Act, as amended. The rent for which the Property might, in its actual state, be reasonably be expected to let is measured by the rental value on a hypothetical tenancy of the Property on a year on year basis and not by reference to the actual occupier's business or financial means or the rent the occupier actually pays.

10. 3. It is rare to find a property with a lease rent that completely satisfies the statutory terms and certain rents are of little evidential use because their inherent characteristics cannot be made to conform to the rating hypothesis. When the actual rent of a property is of little or no assistance and no evidence of open market rental values exist, the value of a property can be assessed by comparable NAV's. In assessing the relevant similarity of comparable NAV's and lease rents, careful analysis of each individual property is thus required. In this regard, the Tribunal had regard to, *inter alia*, the following factors which would be key considerations for a hypothetical tenant in assessing the value of the subject property:

(a) Location

(b) Physical characteristics

(c) Design & functionality

10.4 The Appellant relies on seven NAV comparables in support of her valuation. The Appellant also argues that the existence of a restrictive covenant contained within the 2019 contract of sale to the current occupier restricts the hypothetical retail use as a supermarket.

10.5 The Tribunal notes that Park Street has become a secondary retail location and that there is a significant purpose built retail and retail warehouse offering in Dundalk including the Marshes Shopping Centre, Long Walk Shopping Centre, Dundalk Retail Park that offers modern layouts, complementary occupiers and generous ancillary car parking in comparison to the subject property. The Tribunal considers that the Appellant's NAV Comparison 1 and 2 are very closely aligned with the Property. The Appellant's NAV Comparison 1 is located in close proximity to the subject property, comprises of a relatively large retail area and is of a traditional design that also aligns to the subject property. It is arguably in a better location because of its adjacency to the Marshes Shopping Centre. The Appellant's NAV comparison

2 also shares many similar characteristics in terms of location, design and functionality albeit its retail area is significantly smaller.

10.6 The Respondent introduced 3 no. Key Rental transactions, two of these are restaurants and are better located than the subject and the third is located in the much smaller town of Ardee, approximately 20km south of Dundalk. She also relied on three NAV comparisons that comprised of modern, purpose built out of town supermarkets with dedicated car parking. The Tribunal did not consider any of the Key Rental or NAV comparisons to be ‘similarly circumstanced’ with regard to the trading location, physical characteristics,, design and functionality. The Tribunal notes that although the Property’s prescribed use may be described as “Supermarket” at the valuation date, use alone does not necessarily translate in terms of occupier demand for the unit. The Respondent’s practice of assessing retail outlets in different size categories is not one which is reflective of actual market conditions; the various ‘bands’ adopted are purely arbitrary. While the occupier market is sensitive to size and rates payable vary accordingly, they do not change automatically once a level is passed, the change is much more incremental. For a property to be valued differently because it is 1 sq. m. outside a particular band does not reflect reality. The Tribunal also considered the condition and age of the Property as being factors that a potential occupier will bear in mind when formulating a rental bid. It is for these reasons the Tribunal believes it appropriate to consider the letting value of the Property in the context of rates prevailing in large retail units, including retail warehouses. It is quite possible that the notional occupier of the Property could equally locate in one of these latter.

10.7 The Tribunal cannot consider any impact on the rental value of the Property attributed to the restrictive covenant, as it came into existence after the valuation date and is not material to the hypothetical letting at this time.

10.8 The Tribunal believes an appropriate level to apply to the retail area of the Property is €55 per sq.m. It arrives at this view having considered the levels applied by the Respondent to similarly sized units both in the town centre and in retail parks in the town and allowing an adjustment for location, quantum and character of the building. The Tribunal found the Appellant’s Comparison – PN 12382767 to be particularly helpful.

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 €79,150 as follows.

| Floor | Use | Area (m2) | NAV € (m2) | Total NAV € |
|-------|---------------------------------|-----------|------------|-------------|
| 0 | STORE/OFFICE/CANTEEN/STAFF AREA | 61.71 | €52 | €3,208.92 |
| 0 | REAR STORE | 188.59 | €20 | €3,771.80 |
| 0 | SUPERMARKET | 1,287.42 | €55 | €70,808.10 |
| MEZZ | STORE | 130.22 | €10.40 | €1,354.29 |
| | | | | €79,143.11 |

€79,143.11 say €79,150.00