

Appeal No: VA18/5/0006

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Camgill Property A Se Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2199902, Retail (Warehouse) at 13 Unit 5 Barrow Valley Retail Park, Sleaty Road, Carlow, County Laois.

B E F O R E

**Donal Madigan - MRICS, MSCSI
Frank O'Grady - MA, FSCSI, FRICS.
Michael Brennan - BL, MSCSI**

**Deputy Chairperson
Tribunal Member
Tribunal Member**

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4th DAY OF NOVEMBER, 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on the 13th day of November, 2018 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 **€120,500**.

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 :

- 1) The rental value applied to the property is excessive.
- 2) The floor areas in the valuation are incorrect.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of **€ 60,000**.

2. REVALUATION HISTORY

2.1 On the 26th day of February, 2018 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 €192,400.

2.3 A Final Valuation Certificate issued on the 18th day of October, 2018 stating a valuation of €120,500. At the hearing the Ms Scanlon of the Valuation Office, stated that the property was inspected on the 3rd of October 2019 and a new revised valuation of €117,100 was applied to the property.

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

3. THE HEARING

3.1 The Appeal proceeded by way of a remote hearing on the 10th day of October, 2022. At the hearing the Appellant was represented by Paul Kelly, MSCSI, MRICS, MCI of Mason, Owen & Lyons and the Respondent was represented by Angelina Scanlan, Valuer, 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/her précis as 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 in Barrow Valley Retail Park on Sleaty Road, 1.5 km to the northwest of Carlow town. This section of the town is located in County Laois.

4.2 The subject comprises a detached retail warehouse with a display yard and canopy to the front. The building occupies a central position within the park fronting the car park.

4.3 The accommodation and floor areas have been agreed between the parties.

4.4 The property is held under 25year lease from 2019 at a stepped rent of
Years 1 and 2 €35,000 pax.
Year 3 €70,000 pax.
Years 4 and 5 €75,000 pax.
The average annual rent for years 1-5 is €58,000.

5. PRELIMINARY ISSUE

5.1 The Tribunal was requested to deal with a preliminary issue relating to the inclusion of additional evidence at hearing, following the submission and exchange of précis of evidence between the parties.

5.2 On 5th October 2022, the Respondent sought to introduce a property brochure for the purposes of highlighting the location of the subject property. There was no objection by the Appellant in relation to this and the Tribunal allowed this evidence to be introduced.

5.3 On 5th October 2022, the Appellant sought to introduce two documents. One document comprised of a NAV analysis of three supermarkets in County Laois larger than 2,500 sq m and the second document comprised of a NAV analysis of seven properties located in Portlaoise Retail Park. Mr Kelly stated that he sought to include this additional evidence in order to fully examine the NAV that was applied to supermarkets larger than 2,500 sqm and to examine the NAV's that were applied to the subject retail park as well as to facilitate his cross-examination.

5.4 Ms Scanlon for the Respondent stated that Mr Kelly had adequate opportunity to include this information within his submitted précis and that she did not have adequate time to consider the additional evidence that Mr Kelly now sought to include. It was her view that the Respondent was prejudiced by the late submission especially considering that Mr Kelly was acting in a professional capacity as opposed to being a lay litigant.

5.5 The Tribunal held that late submission of additional evidence fell outside the timelines provided for in the Valuation Act, 2001 (Appeals) Rules, 2008 (the "Appeals Rules"). The Tribunal was of the view that the reasons offered for the late submission were not factors to excuse non-compliance with the Appeals Rules in the circumstances. Furthermore, the Tribunal was of the view that the Respondent would indeed be prejudiced in circumstances where it had insufficient opportunity to consider such new evidence at such a late stage and where its submission was significantly outside the timelines set down in the Appeals Rules.

6. ISSUES

6.1 The matter at issue is quantum.

6.2 The Appellant claims that the valuation is excessive and is seeking a reduction in the NAV to €44,500 in his précis of evidence which he adjusted to € 44,800 at the hearing.

6.3 The Respondent states that the NAV is in line with the tone of the list for Laois County Council. at €117,100 (reduced from € 120,500, being the figure in the Valuation List) and requests the Tribunal to affirm same in accordance with the Valuation Acts.

7. RELEVANT STATUTORY PROVISIONS:

7.1 All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.

7.2 In Revaluation type appeals, as in this appeal, sec. 37 provides that the Valuation Tribunal must reach a determination having regard to the provisions of sec. 19 (5) of the Valuation Act, 2001, that shall achieve both (insofar as is reasonably practicable)—

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list, and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

7.3 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.”

7.4 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the basis 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.”

8. APPELLANT’S CASE

8.1 Mr. Paul Kelly appeared for the Appellant and confirmed the description, location, accommodation, and lease details. He stated that at the valuation date there were 8 vacant units in the park and that Dunnes Stores was the main anchor outlet. He further stated that Dunnes Stores had a restrictive trading covenant in operation in the park and was the exclusive groceries, furniture and household goods operator.

8.2 Mr. Kelly described the competition in the greater Carlow area and the number of competing retail parks including Carlow Retail Park, Fairgreen Shopping Centre, Four Lakes Retail Park and The Range, all within a short distance of the subject. He stated that Carlow Retail Park was the dominant centre and that there was a lesser demand for the secondary parks including the subject.

8.3 To support his case Mr. Kelly introduced rental and capital value evidence on several units in the retail park, as set out in the Appendix (N/A to public) and with redacted extracts below;

1. No. 17 Barrow Valley Retail Centre --- The subject property.
He analysed the rent on the original 2019 lease stating that this was the best evidence available which gave a rate of €27.50/sqm. for the retail warehouse

2. Nos. 2,7,8,10,12,13,14,15,16 & 17 Barrow Valley Retail Park.
Mr. Kelly analysed the 2018 sale price of €1,500,000. to arrive at a capital value of €157/sq.m. overall on the accommodation and a rental value of €19.50/sqm. on the ground floor.

3. Unit Barrow Valley Retail Park.

This property was sold by online auction on 24/9/2019 for €400,000

Mr. Kelly analysed the sale price as above to arrive at a capital value of €235/sq.m. overall and a rental value of €28.80/sq.m. on the ground floor.

4. Unit at Barrow Valley Retail Park.

Mr. Kelly has agreed terms for the letting of the above on a new 25 year lease @ €60,000 pax. reduced to €30,000 pax for years 1 & 2 and a 6 month rent free period in year 1.
The average rent equates to €45,000 pax. and €33.02/sq.m. on the ground floor.

5. Unit at Four Lakes Retail Park, Dublin Road, Carlow.

This comparison is in Carlow Co. Co. district and is located a short distance from the subject on the outskirts of Carlow town.

Similar size Retail Warehouse let in July 2017 @ €54,575 pax. with a rent -free period of 12 months and a net effective rent of €43,659 pax. with a rental value of €14.80/sq.m. on the ground floor

8.4 Mr Kelly stated that the restrictive covenant which prevents other “Big Box” operators from trading in the park seriously deflates the potential rental values in the park. In his opinion the NAV of the subject is as follows:

Level	Description	Area M2	€ /p s m	NAV €
0	Lobby	33.09	20.00	661.80
0	Retail W/H	1,746.31	20.00	34,926.20
0	Stores	69.71	15.00	1,045.65
0	Stores	82.30	15.00	1,234.50
1	Office/staff	152.01	10.00	1,520.10
0	Warehouse	279.72	15.00	4,195.80
	Display yard	600.00	1.50	900.00
TOTAL		2,363.14		44,484.05
			NAV	€44,500.00

At the hearing he adjusted his valuation slightly to reflect the division of the display yard which he now considered should be amended to Yard of 391.14 sq.metres @ € 1.50 giving € 586.71 and Canopy of 208.86 sq.metres @ € 3.00 giving € 626.58 resulting in an increase in his overall valuation of € 313.29 which gave a total of € 44,797.34 which he rounded to € 44,800.

9. RESPONDENT'S CASE

9.1 Ms Scanlan appeared for the Respondent and confirmed agreement with the details provided, regarding location, description and title and presented additional photographs of the property. She stated that following her inspection of the property the figure published in the Valuation Certificate €120,500 was reduced to €117,100.

9.2 To support her case 4 Key Rental Transactions were introduced as set out in the Appendix (N/A to public) with redacted extracts below;

1. Property at Clonminam Business Park, Portlaoise.

Detached industrial building with two storey offices to the front and large yard at rear.
2,061 sq.m. Let at €60,000 pax. Devalued to €25.17 /sq.m. on the warehouse/office.
The property has an NAV of €47,600 and devalues @ €20 /sq.m for the building.

2. Property at Clonminam Industrial Estate, Portlaoise.

Detached older style industrial building with showroom to front and large yard at rear.
1,378.37 sq.m. Let at €25,994.31 pax. Devalued to €14.53 /sq.m. for the building.
The property has an NAV of €29,400 and devalues @ €17 /sq.m.

3. Property at Ballymacken Industrial Estate, Portlaoise.

End of terrace industrial building with two storey offices to the front.
3,535.18 sq.m. Let at €127,008 pax. Devalued to €35.92 /sq.m. on the warehouse/office.
The property has an NAV of €73,400 and devalues @ €20 /sq.m.

4. Property at Portlaoise Retail Park, Portlaoise.

A mid terraced retail warehouse in retail park.
2,395 sq.m. Let at €200,00 pax. Devalued to €63.49 /sq.m.
The property has an NAV of €121,500 and devalues @ €50 /sq.m.

9.3 Ms Scanlan stated that there were 17 retail warehouse properties and two motor showroom properties in Barrow Valley Retail Park and that 5 retail warehouse properties including the subject have been valued at €50 /sq.m. on the ground floor. Three of these have been subject to agent representation to the Commissioner. Representations were not received on the subject but the NAV was reduced in line with the other similar properties. The remainder of the retail warehouse properties in Barrow Valley Retail Park have been valued by the Valuation Office at €60 /sq.m.

9.4 Five NAV comparisons were submitted, four from Barrow Valley Retail Park and one from Lismard Business Park all valued at €50 /sq.m. Brief summary details of these NAV comparisons are set out hereunder, as follows:

NAV Number 1. PN 2179297, 9.3 Barrow Valley Retail Park (Unit 18) The Dome
Two storey Warehouse unit now fitted out as entertainment centre of 3,045.10m² assessed at the NAV of € 122,200 reflecting unit value rates of € 50.00 per m² on the ground floor and € 30.00 per m² on the first floor.

NAV Number 2. PN 2188667, 9/Unit 1 Barrow Valley Retail Park (Dunnes)
 Supermarket plus ancillary space (total: 6,357.50m²) assessed at the NAV of € 307,000 of which the ground floor Store area of 226.00m² is valued at the unit value rate of € 50.00 per m².

NAV Number 3. PN 2188668, 9/Unit 2 Barrow Valley Retail Park.
 Retail warehouse plus two-storey stores of total 1,576.50m² assessed at the NAV of € 74,500 which reflects a unit value rate of € 50.00 per m² on the ground floor space.

NAV Number 4. PN 2209804, 9/Unit 8 Barrow Valley Retail Park.
 Ground and first retail warehouse of 1,113.28m² currently in use as a snooker hall which is assessed at the NAV of € 38,900 reflecting a unit value rate of € 50.00 per m² for the ground floor space.

NAV Number 5. PN 5016448, Unit 11 Lismard Business Park, Portlaoise.
 This property is situated in Lismard Business Park on the outskirts of Portlaoise, directly opposite Portlaoise Retail Park. It comprises an end of terraced retail warehouse building. The property consists of a ground floor retail warehouse currently used as a gym comprising 1,726.02m² which is assessed at the NAV of € 86,300 reflecting a unit value rate of € 50.00 per m².

9.5 In addition M/s Scanlan produced a summary table of 14 comparison properties valued in Laois County. Council at a rate between €50 - €60 /sq.m

9.6 Ms Scanlan set out her opinion of value;

Level	Use	Area sq.m.	€/sq.m.	NAV €
0	Entrance lobby	33.09	50.00	1,654.50
0	Retail warehouse	1,746.40	50.00	87,320.00
0	Stores	82.30	50.00	4,115.00
0	Offices	69.71	50.00	3,485.50
0	Warehouse	279.72	50.00	13,986.00
1	Offices	152.01	20.00	3,040.20
0	Display Yard	391.14	5.00	1,955.70
0	Canopy	208.86	7.50	1,566.45
TOTAL				€117,118.85
Say NAV				€117,100

10. SUBMISSIONS

There were no legal issues.

11. FINDINGS AND CONCLUSIONS

11.1 On this appeal the Tribunal must determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is both correct and also 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 Laois County Council.

11.2 The Tribunal has examined the particulars of the property and considered the written and oral evidence adduced by Mr. Kelly on behalf of the Appellant who contended for a revised valuation of €44,800 and Ms. Scanlan for the Respondent who sought confirmation of the revised NAV at €117,100 as being fair and reasonable.

11.3 The onus of proof is on the Appellant to demonstrate his claim in the context of comparable properties. Evidence of capital values submitted by the Appellant, had limited if any relativity to the requirements of section 48 of the Act. The Respondent did submit four Key Rental Transactions to support her claim and an extensive list of NAVs from similar neighbouring properties

11.4 Mr. Kelly's evidence, though accurate and well presented, was not sufficient to overturn the weight of comparisons provided by the Respondent. There is a case to be made on the rental levels at the valuation date as with all new developments and reliance by the Appellant's Surveyor on rents and sales that occurred well after the valuation date attach limited weight when set against certain market rental evidence and an emerging tone of NAV's. The Respondent has shown that there was an active rental market generally and had sufficient information to arrive at her valuation figure. The evidence submitted by the Appellant was insufficient so as challenge its veracity.

11.5 The tone of the list has been established for Barrow Valley Retail Park at between €50 - €60 /sq.m. and the valuation had previously been reduced to bring the subject into line with the adjoining properties.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent as stated in the revised valuation certificate at €117,100.