

Appeal No: VA19/5/0977

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL
NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

Dunnes Stores

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1281017, Retail (Shops) at Demesne, Dundalk, County Louth.

B E F O R E

Barry Smyth - FRICS, FSCSI, MCI Arb

Deputy Chairperson

Barra McCabe - BL, MRICS, MSCSI

Member

Caroline Murphy - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF DECEMBER, 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 €584,000.

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 : *“Excessive and inequitable. I do not believe threat equity and uniformity of value have been achieved between comparison properties as I believe the*

subject property has a unique considerations which differentiate it from similarly categorised properties in the list including it's out of town location and inferior specification. I believe a lower rate psm should be applied to the subject when it is considered on the context of other department store & supermarket rates per sqm in Louth."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €500,000.

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 €547,000.

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 increased to €584,000.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €584,000.

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 7th day of February, 2022. At the hearing the Appellant was represented by Ms. Siobhan Murphy MSCSI, MRICS, IRRV (Hons) of Avison Young 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 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 stand-alone single storey retail unit with a surface level customer car park to the front immediately off Árd Easmuinn Demesne. The structure comprises concrete framework construction dating from the 1990's and is located just over a kilometre west of Dundalk town centre in a mainly residential area. The main Dublin to Belfast train line runs in a north-south direction immediately to the east of the subject property.

4.3 Internally the retail area comprises a mix of grocery and drapery / textile offer with storage, offices and staff area at the rear of the property.

4.4 The tenure is freehold and the property has been categorised as Retail (Shop) with use Supermarket 3 [>2,500 sq.m].

4.5 The floor areas have been agreed between the parties as follows:

Supermarket	4,027 sq.m.
Stores	1,509.19 sq.m.
Offices	<u>511 sq.m.</u>
Total	6,047.19 sq.m.

5. ISSUES

5.1 The matter at issue is quantum.

5.2 The Appellant claims that the valuation is excessive and does not achieve both correctness of value and equity and uniformity of value between comparison properties on the list. This is because the subject property has unique considerations which differentiate it from similarly categorised properties in the List including its out of town location and inferior specification.

5.3 The Appellant is seeking a reduction in the NAV to €433,000.00

5.4 The Respondent states that the NAV is in line with the tone of the list for Co. Louth and requests the Tribunal affirm 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 Ms. Siobhan Murphy for the Appellant adopted her précis as her evidence in chief and went on to describe the location and physical nature of the site and property. It was pointed out at the hearing that the subject property originally had planning as a shopping centre, which did not proceed. The subject property is located in a primarily residential area with a council estate to the north of the property subject to a state funded regeneration project.

7.2 Ms Murphy then undertook a review of a number of NAV Comparisons, which are included at Appendix 1 of this decision (N/A to public). The floors areas and NAV contained at page 17 of the Appellants précis contained incorrect floor areas and NAV however, the correct floors areas and NAV for this property was contained in the details of the next comparison on page 18 of the Appellant’s précis. As a result the Tribunal was asked to substitute the floors areas and NAV from page 18 of the Appellant’s Précis for those on page 17 and thereafter to ignore the details of the property on page 18. The Tribunal notes however, that the schedule of NAV comparisons or “SUPERMARKET 3 COMPARISONS” contained at page 12 of the Appellant’s précis appears to contain the correct information.

7.3 In reviewing NAV comparisons, the Tribunal's attention was also drawn to a retail cash and carry business that traded out of a retail warehouse close to the subject property. It was noted that comparisons 3 and 4 were under appeal and that two of these properties located off Long Walk had been vacant since 2005 and 2014 respectively. Ms Murphy contended that while the retail focus of Dundalk had shifted away from the Long Walk area to the east of the town around Clanbrassil Street, the supermarket 3 comparisons on Long Walk continue to be in a better location than the subject property and that this should be taken into account.

7.4 Ms. Murphy stated that the Respondent had not given enough consideration to the location, trade and retail mix or lack thereof at the location of the subject property. She once again drew the Tribunal's attention to the significantly lower level of rent paid by a cash and carry business located in close proximity to the subject property, which operated out of a retail warehouse, but was not a 'Supermarket 3' comparison.

7.5 The level of NAV applied by Ms. Murphy to her Valuation of the subject property was at the same level as was applied to the retail and part storage space used in Comparison 7, which was located some 20 kilometres south of Dundalk in Ardee, County Louth.

7.6 By way of summation, Ms. Murphy said that the residential areas in which the subject property was located were not affluent. She said this was one of Dunnes worst performing stores and that a discount of €5 was not enough. Following her final comments Ms Murphy contended for a NAV of €433,000 on behalf of the Appellant and asked the Tribunal to confirm the same.

8. RESPONDENT'S CASE

8.1 Ms. Tanya Vasileva for the Respondent adopted her precis as her evidence in chief. It was brought to the Tribunal's attention that the mezzanine level was not valued because of the low eaves. Ms. Vasileva said that the subject property was in good condition with large frontage. She spent some time analysing the Appellant's NAV Comparisons details of which are contained at pages 28 to 31 of the Respondent's précis. She said that NAV of €80 per sq.m contended for by the Appellant was based on a mid-terrace retail unit that was situated inside a shopping centre, in a substantially smaller town than Dundalk. In addition, the Respondent challenged the evidence provided by the Appellant at Representation stage.

8.2 In respect of the Appellants NAV Comparisons provided for the appeal, Ms Vasileva stated that comparison No.6 was entirely on the first floor however, the Appellant had previously withdrawn this comparison.

8.3 The Respondent provided one key rental transaction details of which are contained at Appendix 2 (N/A to public). In addition, three NAV Comparisons were submitted by the Respondent, all of which are summarised at Appendix 3 (N/A to public)

8.4 Under cross examination Ms. Vasileva was asked about the relevance of the Respondent's NAV Comparisons No's. 1 and 2. She said that under Scheme of Valuation (the "Scheme"), the Respondent values Category 2 and Category 3 retail property in the same way. She went onto say that she did not have the information available to establish whether the Respondent have given any weight to vacant or older supermarkets in Dundalk.

8.5 When put to her that the Respondent had not submitted NAV comparisons that were similar to the subject property, Ms. Vasileva responded that the Respondent did not discern between categories of retail property when valuing for the purposes of the Scheme. She said that the Respondent's NAV Comparison 1 and 3 were stand alone retail units and Comparison No.2 was a neighbourhood unit. Ms. Vasileva said it was correct to contend that the size difference between the Respondent's NAV comparisons and the subject property were not taken into account by the Respondent. No reply was provided to the Appellants submission that the Respondent's Key Rental Transaction was not a property occupied by Dunnes Stores, but instead a different retailer using the trading name "Dunne's" [Centra]. A similar reply was provided to the Appellants contention that the Respondent's NAV Comparison 1 equated to a NAV of €58.61 per sq.m. on an overall basis.

8.6 Ms. Vasileva confirmed that the Respondent's NAV Comparison 1 was much smaller and in a different Category to the subject property, notwithstanding that she had earlier confirmed that the Respondent did not discern between Categories of retail property under the Scheme. She also acknowledged that NAV Comparison 2 had been constructed significantly more recently than the subject property and was at a superior location.

8.7 Following a number of further questions from Ms. Murphy on the Respondents Key Rental Transaction, Ms Vasileva acknowledged that this property, located in Ardee was a very weak comparison. She said only one rental comparison was used because the subject property is owner occupied and that there were no other similar properties held under a lease.

8.8 In her summation, Ms Vasileva contended that a NAV of €90 per sq.m should be applied because the subject property was a stand alone unit and this would be fair. This equates to a valuation figure of €554,200.

9. SUBMISSIONS

9.1 No legal submissions were made by either party.

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 comparison properties on the valuation list in the rating authority area of County Louth.

10.2 The Tribunal notes at first instance that the valuation figure of €554,200 contended for by the Respondent at the Appeal is lower than the Respondent's valuation in the Final Cert issued on 10 September 2019, which was a figure of €584,000.

10.3 The Tribunal has examined the particulars of the property and considered the written and oral evidence adduced by Ms. Murphy on behalf of the Appellant who contended for a revised valuation of €433,000 and Ms. Vasileva on behalf of the Respondent who sought confirmation of a valuation which was amended downwards for the purposes of the Appeal to €554,000.

10.4 The Tribunal has noted the location of the property along with the size of the unit and the general property market for this category of property in Dundalk and in the county of Louth. The lack of market information from both parties is a hinderance to the Tribunal as all the evidence was based on the interpretation of the tone of the list. This matter is further compounded when half of the Appellants NAV comparisons submitted to the Tribunal are under appeal. In addition, the Respondent's Key Rental Transaction is of little or no assistance to the Tribunal when considering the valuation of the property under appeal and two of the

Respondent's NAV comparisons are in a different category of retail property to the subject property. The Tribunal does acknowledge however, that there are few rental comparisons for this type of retail property in Dundalk, where many such units are owner occupied.

10.5 The Tribunal is in a position where it can only rely on the emerging tone of the list for County Louth. In considering the tone of the emerging tone of the list, the Tribunal finds that there is a significant amount of competition to the east of the rail line, which effectively divides the subject property from the main retail centre of Dundalk, something which the Tribunal does not believe is off set significantly by the fact that the property is located in the middle of a residential area such that it is. It is also clear that unsuccessful efforts have been made to rent Category 3 Supermarkets in Long Walk as a result of newer Category 3 Supermarkets opening up to the east of Long Walk. The Tribunal also notes the subject property is significantly older and larger than any of the other NAV Comparisons provided by both parties. In the opinion of the Tribunal the NAV rate of €80 per square metre is more appropriate for the above reasons.

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 €493,775

Floor	Use	Area (m2)	NAV € / m2	Total NAV €
0	OFFICES	511	€80	€40,880.00
0	STORE	1,509.19	€80	€120,735.20
0	SUPERMARKET	4,027	€80	€322,160.00
	OFF LICENCE			€10 000.00

And so the Tribunal Determines

