

Appeal No: VA19/4/0028

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Lidl Ireland GmbH

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of
Property No. 5018193, Retail (Shops) at Belgard Complex, Cookstown Road, Kingswood,
Dublin 24,

B E F O R E

Hugh Markey - FRICS FSCSI,

Deputy Chairperson

Rowena Mulcahy – Solicitor, C.Arb., FCI Arb.

Member

Thomas J. Kearns - B.Sc. (Surv), MRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF MARCH, 2023

1. THE APPEAL

1.1 By Notice of Appeal received on the 25th 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 €374,000.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the subject property is not a determination that accords with that required to be achieved by section 28(4) of the Act because : *“I believe the valuation of the subject property is excessive and does not accord with Section 19(5) of the Valuation Act, 2001 as amended by the Valuation (Amendment) Act, 2015 (the Act) as in my opinion it does not*

achieve both correctness of value and equity and uniformity of value between comparable properties on the list.

It does not achieve correctness of value, more particularly, as the floor area of the is understated by the Valuation Office as previously detailed to the Valuation Office, through the Representations stage and therefore the valuation should be reduced to reflect a reasonable Net Annual Value in accordance with Section 48 of the Act as per my valuation set out herein. Furthermore, I do not believe that equity and uniformity of value have been achieved between comparable properties as I believe the subject property has unique considerations which differentiate it from similarly categorised properties in the List including its size.”

1.3 The Appellant considers that the valuation of the subject property ought to have been determined in the sum of €305,000.

2. VALUATION HISTORY

2.1 On the 19th day of August, 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 subject property was sent to the Appellant indicating a valuation of €374,000.

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 manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 16th day of October, 2019 stating a valuation of €374,000.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 29th day of November, 2022. At the hearing the Appellant was represented by Ms. Claire Mason B.Sc. (Surv) of Avison Young and the Respondent was represented by Ms. Kathy Farrelly 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 her précis as her 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 are not disputed:

- (i) The subject property under appeal comprises a single storey, modern, detached building in use as a discount supermarket. The area comprises 2,445.20 square metres. The subject property has the benefit of an off-licence. The complex of which the subject property forms part also includes a number of other retail outlets together with a Costa Coffee outlet. There are 139 surface car parking spaces.
- (ii) The subject property is located on Cookstown Road close to the junction with Belgard Road approximately 3 km from Tallaght Village and 12 km south-west of Dublin City Centre.
- (iii) An allowance of 7% is to be applied in respect of fit-out.
- (iv) An allowance of €10,000 is to be applied for the off-licence.

5. ISSUES

The sole issue in this appeal is one of quantum.

6. RELEVANT STATUTORY PROVISIONS:

The value of the subject property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment) Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that subject property.

7. APPELLANT'S CASE

7.1 Ms. Mason, on behalf of the Appellant, outlined the history of the appeal and the representations made. She outlined the basis for the Appeal and stated that the subject property is categorized as "Supermarket 2" (between 500 -2,500sq.m) and the rate applied by the Respondent to such stores varies between €100 to €160 per square metre, with the prevailing tone of the list being €120 per square metre. She noted that 42.86% (12 of 28) of the properties in this category were valued at this level, while 14.29% (4 properties) were valued at €140 per square metre. She outlined that the subject property extends to 2445.2 square metres and this was significantly larger than most supermarkets in the "Supermarket 2" category. She provided details of six properties as comparisons - these are included at Appendix 1 to this judgment (n/a to public). These six comparators comprised five properties occupied by the Appellant company in Tallaght and Lucan with a further discount supermarket occupied by ALDI at Tallaght Cross, Tallaght. She went on to suggest that the prevailing tone in the South Dublin County Council local authority area is €120 per square metre. She suggested that the level of €140 euro per square did not achieve correctness of value and equity and uniformity of values as between similarly circumstanced properties on the valuation list

7.2 Questioned by Ms. Farrelly as to the Appellant's comparison number 1, PN 5010047 and as to its valuation, Ms. Mason confirmed that this discount supermarket fell into the Respondent's "Supermarket 3" category, being in excess of 2,500 square metres. She noted that the ground floor area of this comparator property, which comprised the supermarket part of the property only marginally exceeded this level, comprising 2,507 square metres, and that there were also first floor offices in that. This comparator property, which she stated is directly comparable in terms of size, construction and age to the subject property and is located 3km from the subject property in a superior central location in Tallaght Village, is valued at €110psm on the ground floor and €50 psm on the first floor.

7.3 In response to a question regarding the Appellant's Comparison No. 2 PN 5020485, a discount food store located at Fortunestown Lane, Tallaght, Ms. Mason responded by saying that this was a ground floor supermarket with part first floor. She noted that the Appellant's preference was to have the ancillary areas located at ground floor level, except where site constraints dictated otherwise.

7.4 Ms. Farrelly then questioned the witness as to the Appellant's third comparison PN5022774, a discount supermarket in Lucan. She suggested that this was a similarly circumstanced supermarket, particularly based on the overall size of the property at 2,399.61 square meters. Ms. Mason accepted that this was a first floor supermarket with undercroft car parking. She confirmed that the policy was to value such supermarkets as if they were located at ground floor level. She suggested that both this and the subject property were located on main roads and other than this comparison being at first floor level, this comparator property and the subject property were similar.

8. RESPONDENT'S CASE

8.1 Ms. Farrelly, noted how the Appellant had relied on 6 comparables, all being supermarkets located in the South Dublin County Council area and ranging from 1,571 to 2,507 square metres. She noted that while five of the comparisons are occupied by the Appellant company, the 6th was occupied by ALDI. She stated that there are subtle nuances that differentiate the subject property from the comparisons cited by the Appellant. She outlined these as some of the supermarkets having staff/ancillary areas on the first floor; one of the comparisons (No 2) has the supermarket located at first floor level, accessed via an escalator, lift and stairs. She noted how the valuation level for both of these properties was reduced at representations stage from €140 per square metre to €120 per square metre respectively, she suggested that these properties were situated in what she described as arguably more secondary locations than the subject property. As regards the Appellant's comparison No. 4, she noted that this had shared car spaces with other retail units and the level applied had been reduced from €140 per square metre to €120 per square metre prior to a Tribunal hearing.

8.2 With respect to the Appellant's Comparison No 5, she noted that this was a standalone, older style development and was not comparable to the subject property under appeal. As regards the Appellant's Comparison No 6, she noted that the level had been reduced from €120 to €110 per square metre prior to a Tribunal hearing to reflect both the location and ongoing struggles to attract retail operators.

8.3 Ms. Farrelly introduced 6 comparisons on behalf of the Respondent to support her opinion of value of €140 per square metre in respect of the subject property. These are included at Appendix 2 to this judgment (n/a to public). These are variously, discount supermarkets

occupied by ALDI at Newlands Cross and Nangor Road in Clondalkin, Dublin 22 and a further discount supermarket with the same occupier at Belgard Road, Tallaght, Dublin 24. The Respondent's remaining comparisons are occupied by Tesco at Kiltipper Gate, Tallaght, Dublin 24 and Rathfarnham Shopping Centre, Dublin 14 and by SuperValu at Knocklyon Shopping Centre, Dublin 16. All of these comparators have been valued by the Respondent at a level of €140 per square metre with the exception of the Respondent's Comparison No.5, Rathfarnham Shopping Centre which is valued at €150 per square metre. Ms. Farrelly evidenced that these comparators supported her opinion of the valuation level of €140 per square metre applied to the subject property.

8.4 Under cross examination by Ms. Mason, the witness resisted any suggestion that the Respondent's comparisons were in some way different to the subject property. She agreed that in respect of the Appellant's comparisons Nos 1, 2 and 3, the overall floor areas were similar into the subject property. She confirmed that the Appellant's Comparison No.4 was in a central location in Tallaght Village but the Appellant's Comparison No 5 at Greenhills Road was older and therefore the fit out allowance had been reduced from 7% to 3% to reflect its age.

8.5 In response to a question regarding the Respondent's comparisons Nos. 1 and 2, Ms. Farrelly accepted that the tone of the list was €140 per square metre in that location, Clondalkin, but disagreed that there was any difference between Clondalkin and Tallaght. With regards to the Respondent's comparison No.4 PN 2186557, she accepted that it was significantly larger than the subject property but resisted the suggestion that it was irrelevant, noting that it was on the list and categorised as 'Supermarket 2'.

8.6 In her summing up for the Appellant, Ms. Mason suggested that she had chosen her comparisons on the basis of their size and location, noting that all had been recently constructed. She stated that the tone in her opinion is €120 per square metre and asked the Tribunal to confirm her opinion of the Net Annual Value as being €323,000.

8.7 Ms. Farrelly, in summing up for the Respondent, noted that the subject property was in an ideal location, was convenient and had a car park. She noted that the burden of proof in any appeal lay with the Appellant and contended that to achieve equity and uniformity, the subject property should be valued at €140 per square metre, giving a Net Annual Value of €376,000.

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 subject property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the subject 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's role in any appeal is to determine whether the Appellant has provided sufficient grounds to show that the NAV placed on the subject property by the Respondent should be adjusted. In the instant case, the Tribunal is of the opinion that there is a sufficient body of comparable evidence to assist it in arriving at the conclusion that the NAV of the subject property requires adjustment in order to fulfill the requirements of section 48 (3) – *'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 expected to let from year to year....'*

10.3 The Tribunal preferred the evidence of Ms. Mason on behalf of the Appellant. Her comparisons were, with perhaps one exception, – that of PN 5002309 which is part of a multi-storey complex and with basement car parking, are all similarly circumstanced to the subject property and are located in the general Tallaght area. All are valued at rates of €110/120 per square metre. On the other hand, only two of the comparisons provided by Ms. Farrelly on behalf of the Respondent could be regarded as being 'similarly circumstanced'. The Tribunal is of the opinion, that insofar as there is a tone of the list for this category of supermarket, it is €120 per square metre.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the subject property as stated in the valuation certificate to €323,000.

Level 0 Supermarket 2,445.20 sq/ m @ €120 psm €293,424.00

Fit out @7%	€20,539.68
Off License	€10,000.00
	<u>€323,963.68</u>

NAV say, €323,000

And the Tribunal so determines.