

Appeal No: VA19/5/0361

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Friends First Managed Pension Funds

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2107474, Retail (Shops) at Supermarket [$>3,635.93 \text{ m}^2$], 19CDEF.21E/Unit A
Carroll Village, Dundalk, County Louth.

B E F O R E

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

Sarah Reid - BL

Member

Martin Connolly - MAgrSC, M.Sc., MSCSI, FCInstArb

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF JANUARY, 2023**

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 €312,000.

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

"1. The Subject property is incapable of beneficial occupation....

2. Carroll Village is completely closed down. It is unlikely the centre will ever be occupied...

3. The subject property would be lucky to attract €45/m², even in a fully occupiable state."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.

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 €360,000.
- 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 €312,000.
- 2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €312,000.
- 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 2019.

3. THE HEARING

- 3.1 The Appeal was heard on 15th March 2022 by way of an oral hearing, heard remotely. The Appellant was represented by Mr. David ES Halpin M.Sc. (Real Estate) Ba. (Mod) of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Mr John O'Connor 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.
- 3.3 As Mr. Halpin for the Appellant was being cross examined, it became apparent that the Respondent had a dissimilar précis of evidence to the Appellant's, and it transpired that supporting documents in the Appellant's précis were not attached in full in the document originally submitted by him. The Appellant furnished a second (complete) précis when he spotted the error, but the first (incomplete) version of his précis had already been sent to the Respondent and the issue was not spotted until mid-hearing when the witness was cross examined on the document.
- 3.4 When it became clear that the parties did not have the same evidence before them, the Tribunal adjourned the hearing and directed that the Respondent's witness be provided with a complete précis and for the authors of the document in issue to be made available for cross examination at a resumed hearing.
- 3.5 Thereafter, and in advance of the resumed hearing, the Appellant provided two additional documents, each described as a 'précis' of evidence in August 2022, which were in fact replicas of the documents previously attached to his précis. The authors of the said documents attended the hearing and were cross examined on the contents of these documents.
- 3.6 At the resumed hearing on 16th November 2022, the Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2. The Appellant was represented by Mr. David ES Halpin M.Sc. (Real

Estate) BA. (Mod) of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Mr John O'Connor of the Valuation Office, Mr. Michael Collins of the Chief State Solicitors Office, and Ms. Rosemary Healy-Rae BL.

4. FACTS

- 4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.
- 4.2 The Subject Property, is a large vacant former supermarket in the Carroll Village Shopping Centre, Dundalk. Carroll Village comprised 31 units with the Subject Property as anchor.
- 4.3 The Subject Property ceased trading in 2009 and at the Valuation Date the entire centre was vacant except for one unit in religious use.
- 4.4 From both the oral evidence and the photographs supplied by both parties it is clear that the Subject Property is in poor condition. There is evidence of water ingress and extensive mould growth, broken and missing ceiling tiles and more recently graffiti on the internal walls. Services are available but disconnected.
- 4.5 The Subject Property is held freehold, and it was agreed by the parties that it is capable of beneficial occupation.
- 4.6 It was agreed by the parties that there was no rental evidence of department stores in Dundalk close to the Valuation Date. It was also agreed by the parties that the NAV should be assessed on an overall basis with a single rate/m² applied throughout.
- 4.7 The floor areas were agreed by the parties are set out in the table below.

Level	Use	Area(m ²)
0	Supermarket	2,939.08
1	Store	696.85
Total area		3,635.93

5. ISSUES

- 5.1 The primary issue in this appeal is the quantum of the valuation for the subject property. The Appellant contended for an NAV of €170,900 whereas the Respondent requested a revised value of €266,000. The differences between the parties are shown in the table below:

Floor	Area m ²	NAV €/m ²	
		Appellant	Respondent
0	2,939.08	€52.00	€80.00
1	696.85	€26.00	€45.00
Total NAV		€170,900	€266,000

- 5.2 Prior to the hearing resuming on 16th November 2022 and arising from the submission by the Appellant of two additional documents, the Respondent raised a preliminary objection to the said documents on the basis that they were not in compliance with Rule

35 of the Valuation Tribunal (Appeals) Rules, 2019 and did not fulfil the requirements outlined in that rule. On that basis, Ms. Healy-Rae BL for the Respondent sought to have them excluded. The Tribunal's preliminary ruling in that regard is outlined hereunder in Section 9.

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.”

- 6.3 Rule 35 of the Valuation Tribunal (Appeals) Rules, 2019 provides:

“The appellant’s précis of evidence must state in a precise but comprehensive way –

- (a) each ground of appeal relied on by the appellant;*
- (b) the argument relied on in support of each ground of appeal;*
- (c) the facts relied on in support of each ground of appeal; and*
- (d) any authorities relied on in support of each ground.”*

- 6.4 Rule 36 of the Valuation Tribunal (Appeals) Rules, 2019 provides:

“The appellant’s précis must include the following documents:

- (a) where appropriate, a copy of the relevant valuation certificate or notification of the valuation manager or revision manager;*
- (b) a copy of any written record of the decision appealed;*
- (c) a copy of the notice of appeal to the Tribunal;*
- (d) maps and photographs of the property the subject of the appeal and of all comparator properties relied upon. Photographs must be dated and titled. Maps must be to scale, with north-point, road names, the property the subject of the appeal and the comparator properties clearly marked;*
- (e) where appropriate, all relevant market evidence relating to the property the subject of the appeal and a copy of any lease affecting that property;*

(f) a copy of any other document verifying facts or particulars relied upon by the appellant.”

7. APPELLANT’S CASE

- 7.1 Mr Halpin for the Respondent described the Subject Property as a former supermarket in the Carroll Village Shopping Centre, The Long Walk, Dundalk. The Centre comprises 31 units with the Subject Property as anchor.
- 7.2 Mr Halpin stated that the Subject Property was in very poor condition, on the verge of being incapable of beneficial occupation. However, he did state, and confirmed on cross examination by Mr O’Connor, that the property was capable of beneficial occupation. The Appellant was no longer contending for a €0 valuation as had been submitted in the appeal to the Tribunal.
- 7.3 The Subject Property has been vacant and in a stripped-out shell condition since 2009. By the Valuation Date, 15 September 2017, all 31 units were vacant. When put to him by Mr O’Connor that one unit was occupied by the Armagh Diocese for religious purposes Mr Halpin would not accept that this was a commercial user.
- 7.4 Mr Halpin stated the Subject Property has been vacant and to let through Lisney since 2011, without success. Effectively, the incoming tenant would have to take on the entire Centre and also to invest substantial sums on capital works. When Mr O’Connor put it to him that he could find no evidence of any recent efforts to market the property Mr Halpin reiterated that his instructions were that it has been to let since 2011.
- 7.5 In cross examination Mr O’Connor challenged the competence of Mr Halpin, who is not a structural engineer, to comment on the substantial structural and fit out liabilities that he contended in précis that a hypothetical tenant would face. Mr Halpin replied that though not an engineer he has extensive experience of inspecting commercial property. He was satisfied that there is water ingress and that an incoming tenant would be faced with substantial costs.
- 7.6 Mr Halpin stated that there is a problem with large retail space in Dundalk. Of the four such units appealed to the Tribunal, three were vacant. Mr Halpin put forward six comparator properties from the List, four in Dundalk and two in Ardee. The Tribunal accepted that the data put forward for these comparisons are accurate and up to date.

Comparison No 1. PN 1282072, 80-81 Park Street, Dundalk.

Level	Use	Area (m²)	NAV €/m²
0	Canteen	64.75	€20.00
0	Office(s)	11.11	€20.00
0	Store	571.07	€20.00
0	Supermarket	1,283.21	€95.00
		Total NAV say	€134,800.00

This is a vacant supermarket, available to let at €80,000 per annum, which on Mr Halpin’s analysis equates to supermarket rent of €52.26 per m². In cross examination Mr O’Connor put it to Mr Halpin that the property is limited by the lack of off-street parking and that at the time of the hearing it was under appeal to the Tribunal. On the

morning of the resumed hearing Mr Halpin sought to introduce a copy of the Tribunal judgement, VA19/5/1093 but on questioning by Mr O'Connor, he accepted that this was not in his précis and was not available at the initial hearing.

Comparison No 2. PN 1318819, Long Walk Shopping Centre, Dundalk.

Level	Use	Area (m ²)	NAV/m ²
0	Department Store	2,102.38	€80.00
1	Office	691.53	€45.00
2	Store	74.17	€22.50
		Total NAV say	€200,000.00

This property was the subject of Tribunal judgement, VA19/5/0790. It is a vacant department store of broadly comparable size to the Subject Property in the nearby Long Walk Shopping Centre. Mr Halpin stated that the Long Walk Centre is trading, though poorly, with high levels of vacancy. However, he distinguished it from the Carroll Centre in that it has a trading anchor tenant, Tesco supermarket, and some other shops that were still open for business. He also contended, based on the text of Tribunal judgement for this property, that it had no issues with condition. This was contradicted by Mr O'Connor, who provide photographic evidence of dampness. Both Mr O'Connor and Mr Halpin agreed that this was closest comparator to the Subject Property both in size and location.

Comparison No 3. PN 2192545, Dublin Road, Dundalk

Level	Use	Area (m ²)	NAV/m ²
0	Supermarket	1,818.25	€90.00
1	Supermarket	875.07	€45.00
		Additional items	€14,091.06
		Total NAV say	€217,100.00

This is a modern, purpose-built supermarket, well located on the Dublin Road. On questioning, Mr Halpin would not agree with Mr O'Connor that this was located close to the Subject Property as it is about one kilometre away, which he said in the context of Dundalk, is significant.

Comparison No 4.PN 5016785, The Long Walk

Level	Use	Area (m ²)	NAV/m
0	Warehouse	609.11	€52.00
		Total NAV say	€31,600.00

This property is a warehouse adjacent to the Subject Property. Mr Halpin put this forward to illustrate his view that the asking rents for large retail units in Dundalk, e.g., Comparison No 1 and the Subject Property, are close to the NAV/m², €52.00, for this industrial property. On questioning from Mr O'Connor, Mr Halpin accepted that this property had an asbestos roof and also was smaller than the Subject Property. Mr O'Connor would not accept that this industrial comparison was of any relevance.

Comparison No 5. 2196374, Drogheda Road, Ardee, Co Louth

Level	Use	Area (m ²)	NAV €/m ²
0	Canopy	88.32	€10.50
0	Office(s)	60.00	€70.00
0	Store	273.60	€70.00
0	Supermarket	1,260.00	€70.00
	Additional items		€13,374.48
		Total NAV say	€125,800

This is a modern standalone supermarket with an NAV of €70.00/m². Mr Halpin contended that this figure is the maximum any hypothetical tenant would bid. In reply, Mr O'Connor questioned the need to take comparators from a town 20 kilometres away when evidence for exactly similar supermarkets in Dundalk, at higher rates of NAV/m² was available. Mr Halpin would not accept Mr O'Connor's contention that the Subject Property enjoyed greater footfall based on Dundalk having a larger population. Long Walk he contended was a poor business location. On questioning by the Tribunal neither party could produce actual footfall figures for Long Walk.

Comparison No 6. PN 2196377, Ardee Shopping Centre, Ardee, Co Louth

Level	Use	Area (m ²)	NAV/m ²
0	Store	443.20	€70.00
0	Supermarket	1,706.35	€70.00
1	Office(s)	406.56	€35.00
1	Store	2,441.40	€35.00
	Additional items		€25,046.85
		Total NAV say	€275,000.00

This is also a modern supermarket in Ardee. The same comments as outlined above for PN 21963274 were made by the Appellant and Respondent for this comparator.

- 7.7 On questioning by the Tribunal as to why he was not contending for a €0 NAV as originally submitted in the Appeal documents to the Tribunal, Mr Halpin replied that to do so could cause difficulties but did not elaborate further.
- 7.8 Mr Brian Gilson, Valuer with Lisney, gave evidence of the rental value and market value of the Subject Property prepared by Lisney as the External Funds Valuers for the owners and contained in a letter addressed to the Fund Manager's Head of Valuations and Research. Both figures showed a decline from 2004 to 2012.
- 7.9 Mr. Gilson confirmed to Ms Healy Rae BL that he inspected the Subject Property on 07 March 2022. He explained that the figures in his report were prepared for the Head of Valuations and Research in Aviva, the landlord, not the Valuation Tribunal. They were prepared regularly to enable the Fund Manager to price pension and other funds. He did not personally do the valuations and confirmed these valuations would have been prepared by different valuers over the years. The figures provided are a summary of the company's records.

- 7.10 Ms Emma Coffey, Valuer with Lisney, gave evidence of the company's efforts to let the Subject Property as set out in a letter dated 26 January 2022 to Aviva, which was submitted as an Appendix to Mr Halpin's précis (n/a to public) and resubmitted as a separate précis on 17 August 2022.
- 7.11 On questioning by Mr Halpin, Ms Coffey outlined the efforts made by Lisney to market the Subject Property. In summary they were unsuccessful from 2012 to date despite extensive marketing campaigns and offering very attractive terms, including those put to one potential occupier in particular.
- 7.12 On questioning by Ms Healy Rae BL, Ms Coffey confirmed that she prepared the report on the instructions of the Appellant. The initial letter issued on 26 January 2022 and subsequently as her précis on 17 August 2022. She had no personal involvement in with the property. Rather, she prepared a summary from Lisney's files. She inspected the property in Q4 2021.
- 7.13 Mr. Halpin contended for an NAV of €170,900 calculated as follows:

Floor	Use	Area (m ²)	NAV (m ²)	Total NAV €
0	Supermarket	2939.08	€52.00	€152,832
1	Store	696.85	€26.00	€18,118
			Total Nav	€170,950
			Say	€170,900

8. RESPONDENT'S CASE

- 8.1 In his précis Mr O'Connor provided revaluation statistics and the distribution of the rates burden in Co Louth following the revaluation; the revaluation history of the Subject Property; and a property description with maps, floor plans and photographs.
- 8.2 Mr O'Connor described the Subject Property as a vacant supermarket in the Carroll Village Centre, at Long Walk, on the outer end of Dundalk town centre. He describes it as being in a shell and core condition, with water and electricity available, in an almost vacant centre. When challenged by Mr Halpin on this latter point Mr O'Connor stated that one unit was occupied by the Armagh Diocese for religious purposes. Mr Halpin would not accept that this is a commercial user.
- 8.3 Mr O'Connor put forward no Key Rental Transactions. On questioning by the Tribunal, he stated that there was no relevant rental evidence for large retail units in Co Louth close to the Valuation Date and Mr Halpin agreed with this statement.
- 8.4 Mr O'Connor put forward six NAV comparisons from the List, four in Dundalk and two in Drogheda. The Tribunal accepted that the data included in these comparators are accurate and up to date.

Comparison No 1 (N1). PN 1318819, Long Walk, Dundalk.

Level	Use	Area (m ²)	NAV/m ²
0	Department Store	2,102.38	€80.00
1	Office	691.53	€45.00

2	Store	74.17	€22.50
	Total NAV say		€200,000

This is Comparison No 2 in the Appellant's precis and has been discussed at Paragraph 7.7. It was the subject of Tribunal judgement VA19/5/0790. Mr O'Connor described the property as being 100 metres from the Subject Property, vacant for a number of years and in similar condition. Mr O'Connor provided photographs to support this latter assertion, which differed from Mr Halpin's opinion of this property.

Comparison No 2. (N2) PN 1318817, Long Walk Shopping Centre, Dundalk.

Level	Use	Area (m ²)	NAV/m ²
1	Store	290.58	€45.00
0	Store	712.53	€90.00
0	Supermarket	2,451.78	€90.00
1	Office(s)	245.70	€45.00
0	Off licence	1 No.	€10,000
0	Security	11.00	€45.00
1	Plant room	115.29	€45.00
0	Fit out allowance	1	€0
	Total NAV say		€309,000

This is a supermarket, in a nearby shopping centre within 100 metres of the Subject Property. Mr. O'Connor gave evidence that the centre is trading but not well. It was represented by an agent but was not appealed to the Tribunal.

Comparison No 3 (N3). PN 2182105, The Marshes Shopping Centre, Dundalk.

Level	Use	Area (m ²)	NAV/m ²
0	Department Store	2,627.57	€110.00
2	Plant Room	160.86	€110.00
1	Store	800.75	€110.00
1	Department Store	1,910.64	€110.00
0	Store	296.45	€110.00
1	Offices	561.96	€110.00
0	Fit out Allowance	1 No.	€26,590.68
	Total NAV say		€725,000

This property is situated five kilometres from the Subject Property. The valuation was appealed to the Tribunal but was agreed before the hearing.

Comparison No. 4 (N4). 2214862. First Floor, Dundalk Shopping Centre.

Level	Use	Area (m ²)	NAV/m ²
1	Store	2,287.00	€90.00
1	Off Licence	1 No	€10,000

1	Office(s)	565.00	€90.00
1	Fitout Allowance	1	€49,883.40
1	Supermarket	5,066.00	€90.00
	Total NAV say		€772,000

This is a supermarket situated approximately one kilometre from the Subject Property.

Comparison No. 5. (N5) PN 2187140. Laurence Town Centre, Drogheda.

Level	Use	Area (m ²)	NAV/m ²
1	Office(s)	224.91	€52.50
0	Fit Out Allowance	2	€6,803.47
0	Store	194.91	€105.00
1	Store	315.18	€52.50
0	Department Store	1,707.88	€105.00
1	Cold Room	67.72	€52.50
	Total NAV say		€240,000

In his précis Mr O'Connor stated that this comparator had been appealed to the Tribunal and on questioning by the Tribunal he accepted that at the time of the resumed hearing this property was before the Tribunal. Following the Court of Appeal judgement in the case of *the Commissioner of Valuation and Stanberry Investments Limited, 2020 IECA 33*, the Tribunal finds that this comparator is of little or no evidential value.

Comparison No. 6 (N6) PN 2196743, Peter Street Mall, Laurence Town Centre, Drogheda.

Level	Use	Area (m ²)	NAV/m ²
0	Department Store	2,429.26	€15,978.99 ¹
0	Office(s)	507.13	€105.00
1	Store	564.00	€52.50
1	Store	108.40	€105.00
	Total NAV		€365,000

¹ This figure seems to be a typographical error, and probably should have read €105, in light of the NAV cited for other similar elements in the property.

Mr O'Connor stated in his précis that this property had been appealed to the Tribunal. On questioning by the Tribunal, he accepted that it had been subject of a Tribunal judgement, VA5/19/1470, and that the figures in his précis, (which was prepared before the said judgement issued), were not in accord with those in the judgement. For this reason and also following the Stanberry judgement the Tribunal finds that this comparator is of no evidential value.

- 8.5 On cross examination by Mr Halpin Mr O'Connor stated that the Subject Property was in shell and core condition with some damaged roof tiles. He saw no evidence of structural problems such as subsidence or cracking. He was not made aware of any issue with water ingress during his inspection and he said that the mould growth was because the building had been vacant without proper ventilation.

- 8.6 On further questioning, Mr O'Connor stated that he was not familiar with Dundalk. He said that on the day of his inspection, in December 2021 there was some foot fall in the area. He was unable to provide an example of another town in Ireland where three large department stores were vacant and to let.
- 8.7 When questioned by Mr Halpin on his comparator properties Mr O'Connor stated that his first Comparison, PN 1318819, Long Walk, was the best property for valuation purposes in relation to the Subject Property. It was the nearest, of comparable size and condition and had been vacant for some time. Regarding the Appellant's Comparison No 1, PN 1282072, 80-81 Park Street, Dundalk, which Mr Halpin contended gave a good indication of rental levels for large stores in Dundalk, Mr O'Connor replied that it was a 1960's building, there was no off-street parking and part had limited headroom.
- 8.8 When asked by Mr Halpin about the book valuations prepared by Lisney in respect of the Subject Property, Mr O'Connor replied that there was no accompanying comparable evidence, no rental evidence, and they were prepared for investment purposes. Therefore, he would not attach much weight to them. Similarly, Mr O'Connor would give little weight to Ms Coffey's evidence, and he noted that there was no brochure with an asking price for 2017.
- 8.9 On questioning by the Tribunal Mr O'Connor stated that he was not aware of any representations made by other occupiers in the Carroll Village, nor of any Section 45 information being provided.
- 8.10 Mr O'Connor contended for an NAV of €266,000 (revised down from the original valuation of €312,000), calculated as follows:

Floor	Use	Area (m ²)	NAV (m ²)	Total NAV €
0	Supermarket	2,939.08	€80.00	€235,126.40
1	Store	696.85	€45.00	€31,358.25

9. SUBMISSIONS

- 9.1. For reasons outlined above, the Tribunal adjourned the original hearing of this Appeal in order to facilitate the Respondent's witness consider the Appellant's Appendices documents (n/a to public) which were omitted in error from the précis as delivered. The said documents comprised, in the first instance a Lisney valuation report, prepared by them as external valuers for the Appellant, setting out their reported market values for the property for the period 2014 to 2021. The second document is best described as an executive summary and description of the property as well as the steps taken by Lisney to offer the property for rent between 2011 and 2022.
- 9.2 When the original hearing of this Appeal was heard on 15 March 2022 and the said documents were challenged by the Respondent's witness and it was indicated that if the figures contained in the documents were being relied on and advanced by the Appellant, the authors of same would have to be called to give evidence and be cross examined on same. Prior to the resumed hearing, Mr. Halpin provided these documents by way of two additional précis' (one from Mr. Gilson and one from Ms. Coffey of Lisney) and the witnesses attended the rescheduled hearing for the purposes of being cross examined on their documents.

- 9.3 The Respondent took issue with their précis' being advanced before the Tribunal on the basis that they failed to comply with Rule 35 of the Valuation Tribunal (Appeals) Rules, 2019 and ought to be excluded. The primary basis advanced in that regard was that they did not contain the information required under Rule 35 – outlined in paragraph 6.3 above - and were not presented in the same way as a précis ordinarily is. In reply, the Appellant stated that they were directed by the Tribunal to provide the witnesses and their documents, and they had complied with the direction and could put the matter no further.
- 9.4 The Tribunal then rose to consider the documents, Ms. Healy-Rae's position, and the status of the evidence before it. Having discussed the matter, the Tribunal held that the documents, while presented as précis' were in fact documents which the Appellant sought to rely on as part of their original précis, and so came within Rule 36(f) of the Valuation Tribunal (Appeals) Rules, 2019. To that end, they did not need to comply with the full schedule of criteria in Rule 35 and further, the Tribunal noted that the purpose of directing these parties attend and provide their documents, was to enable the Respondent to cross examine the parties thereby ensuring fair procedures in the conduct of the Appeal. In that sense, to exclude the evidence would be to deny them the opportunity they previously requested and had been directed.
- 9.5 Based on the above, the Tribunal did not accede to the Respondent's request to exclude the evidence of Mr. Gilson and Ms. Coffey but confirmed that their evidence must be confined to the information set out in their documents, to which the parties agreed.
- 9.6 The hearing then proceeded and resumed cross examination of the Appellant, which is where matters stood in March 2022 when the hearing had to be adjourned.

10. CLOSING ARGUMENTS

- 10.1 In summing up at the end of the resumed hearing, Mr Halpin stated that the subject property had been vacant for 11 years, eight at the Valuation Date, and the entire centre is vacant and in disrepair. The adjoining Long Walk Centre is also struggling but is still trading. This is not a good business area. There should be a discount relative to the Long Walk levels. He emphasised the need to balance the tone of the list with actual market conditions and contended for an NAV as low as the asking rent for his Comparison No 1.
- 10.2 Ms Healy Rae for the Respondent submitted that the Lisney evidence should be disregarded in full. Mr Gilson's letter updating his previous one had nothing to do with valuations and was of no assistance. Ms Coffey reviewed files and prepared a letter for her client. This was pure hearsay.
- 10.3 In summing up Mr O'Connor stated that Mr Halpin's Comparison No1, PN 1282072, 80-81 Park Street, Dundalk, had no off-street parking and part had limited head room. Comparison No 4, PN 5016785, The Long Walk, was an industrial unit inferior to the Subject Property. There is an established level in Long Walk and the Subject Property is similar in size and condition to his first Comparison. He stated that his estimate of NAV, €266,000, is in accordance with S 48 of the Valuation Act 2001 and the requirements for equity and uniformity of S 19(5).

11. FINDINGS AND CONCLUSIONS

- 11.1 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.
- 11.2 The Subject Property is a vacant former supermarket in the Carroll Village Shopping Centre, Dundalk. It has been vacant since 2009 and the entire Centre is now vacant except for one unit used for religious purposes, a user that the Tribunal finds is not of any commercial significance. The nearby Long Walk Shopping Centre also has high levels of vacancy, but it is still trading. Thus, the Tribunal accepts Mr Halpin's evidence that this is not a good commercial location. In addition, there remains a high vacancy rate for large stores generally in Dundalk, at the Valuation date with three units vacant.
- 11.3 The Subject Property is in poor condition. The Tribunal accepts Mr Halpin's evidence of signs of water ingress and that the incoming hypothetical tenant would have to incur significant expenditure in making the premises fit for use. The unit had been vacant and to let for a considerable length of time on the Valuation Date.
- 11.4 There is a longstanding principal in rating valuation that reliable rental evidence should be accorded more weight than rating assessments unless there is an established tone of the list, which itself would have been derived from rental evidence. It is acknowledged by both parties that there is no rental evidence of department stores in County Louth. This lack of evidence makes it difficult to establish a correct, equitable and uniform valuation.
- 11.5 The Tribunal does not accept that Mr Halpin's analysis of the asking rent for PN 1282072, 80-81 Park Street, Dundalk is of assistance in determining the rental value of the Subject Property in accordance with Section 48 of the Valuation Act 2001 at the Valuation Date, 15 September 2017. The rent is an asking rent, not an actual letting. The analysis is of necessity subjective, ascribing differing rates to the various elements of the property and it is too remote in time from the Valuation Date.
- 11.6 In the absence of reliable rental evidence the Tribunal must rely on evidence for similarly circumstanced properties on the List. Eleven comparator properties were put forward for the benefit of the Tribunal, one of which (PN 1318819, at the Long Walk Shopping Centre) was subject of Tribunal judgement VA19/5/0790, and was common to both parties. Three properties, (PN 1282072, adduced by the Appellant and PN 2196743, and PN 2187140, by the Respondent) were subject of Tribunal proceedings at the time of the initial hearing, consequently, they were considered of no assistance. Similarly, the Appellant's Comparison No 4 (PN 5016785) which is an industrial building, is not similarly circumstanced to the Subject Property and the two supermarket comparators in Ardee (PN 2196374 and PN 2196377), a town some 20 kilometres away, represented a totally different market.

- 11.7 The remaining comparators are large stores at various locations in Dundalk. Of these there is agreement between the parties, and the Tribunal also concurs, that the property at the Long Walk Shopping Centre, subject of the Tribunal judgement VA19/5/0790, is the most helpful. It is of comparable size, is located in close proximity, has been vacant for some time, and on the evidence of Mr O'Connor is also in poor condition. However, Long Walk Shopping Centre has an anchor tenant and was trading at the Valuation date, unlike the Subject and the Carroll Centre.
- 11.8 The Tribunal accepts Mr Halpin's contention that the NAV of the Subject Property should be at a discount to the €80/m² rate that the Tribunal found in the Long Walk property. He contended for a rate of €52/m² for the supermarket space. However, he put forward no comparative evidence to support this contention and in the Tribunal's view this figure is too low.
- 11.9 There was no market rental evidence available to the Tribunal. However, there is an established tone of the list, with evidence presented of a clear hierarchy for supermarkets/department stores apparent in Dundalk. From the evidence in this Appeal, NAV/m² ranges from €110/m² (in PN 2182105) to €90/m² in three trading supermarkets (PN2214862, PN 2318817, PN 2192545) and €80/m² for a vacant department store (PN 1318819).
- 11.10 Having regard to the tone of the list and the fact the Carroll Centre is vacant except for the religious use in one unit, which is of no commercial significance, the Tribunal finds that an NAV rate of €70/m² is more appropriate acknowledging that there is no rental evidence available and that the hypothetical tenant would be aware that the entire Carroll Village Shopping Centre was vacant.

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 €230,000, calculated as follows:

Level	Use	Area(m ²)	NAV/m ²	NAV €
0	Supermarket	2,939.08	€70.00	€205,735.60
1	Store	696.85	€35.00	<u>€24,389.75</u>
			Total NAV	€230,125.35
			Say	€230,000