

Appeal No: VA20/1/0006

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Super Fresh Foods T/A Freshii

APPELLANT

and

Commissioner Of Valuation

RESPONDENT

In relation to the valuation of
Property No. 5015381, Retail (Shops) at LG05 Vantage, Central Park Carmanhall &
Leopardstown, County Dublin.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF SEPTEMBER, 2023**

BEFORE

Barry Smyth, FRICS, FSCSI, MCI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 17th of February, 2020 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 €60,000.

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 28(4) of the Act because

“ The Valuation is Incorrect

I believe this is 30% over valued based on our turnover and rent on the unit.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €42,500.

2. VALUATION HISTORY

2.1 A Final Valuation Certificate issued on the 21st day January, 2020 stating a valuation of €60,000.

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. FACTS

The parties are agreed as to the following facts.

4.1 The property is located in Vantage, Central Park, Dublin 18 a mixed office, residential and retail development.

4.2 The property comprises a ground floor retail unit in a multi storey building with other retail units at ground floor level and residential use on the upper floors.

4.3 The agreed floor area on a net internal area basis is 133.39 sq.m.

4.4 The user is a healthy food restaurant with ancillary accommodation.

4.5 The title is Leasehold.

5. ISSUES

The only matter in dispute is the quantum of the net annual value.

6. RELEVANT STATUTORY PROVISIONS:

The value of the 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 property”

7. APPELLANT’S CASE

7.1 The Appellant’s case was set out in a submission from the Directors of Super Fresh Foods Ltd., Ross Lange and Linda Tolan dated the 7th June 2022 and noted the following:

7.2 The property has not been valued on a zoned basis as other units in the area including property no. 5015379.

7.3 The passing rent, which is due to be lowered, is less than the proposed Net Annual Value of €60,000.

7.4 Customer footfall is down to a fraction of the pre Covid 19 level because of office staff working from home.

7.5 Net sales are below 30% of pre Covid 19 levels.

7.6 The Profit and Loss figures for quarter 1 2022.

7.7 In the Notice of Appeal they stated that in their opinion the property was 30% overvalued and that an NAV of €42,500 should have been determined.

8. RESPONDENT'S CASE

8.1 The Respondent's case was set out in Mr. David Maguire's precis of evidence of the 23rd September 2022.

8.2 In addition to the matters noted above as facts agreed Mr. Maguire noted that the property is located directly opposite the Luas station.

8.3 The Appellants comparison property no. 5015379 was valued on a zoned basis on the previous valuation date 30th September 2005 with a Zone A rate of €650 per sq. m. less 10% equating to €585. When analysed on an overall basis the NAV is €500 per m² which is higher than proposed for the subject property.

8.4 The Lease agreement is from 2017, whereas the statutory valuation date in this instance is the 30th September 2005 and therefore the Lease rent would not impact on the valuation. The property has been valued in line with the tone of the list, as per Section 49(1) of the Valuation Act 2001 to 2020.

8.5 Whilst noting that the footfall and turnover levels are considerably less than pre-Covid 2019 figures, as the relevant valuation date is 30th September 2005 these are not factors that affect the valuation.

8.6 Mr. Maguire provided three comparisons of Net Annual Value ascertained at the same valuation date as the subject property, namely the 30th September 2005, in support of his opinion of the correct NAV.

Comparison 1:

Property No. 5012296, Unit LG06 Vantage, Central Park, Dublin 18.

Shop Area: 70.27m² at €450 per sq. m.

Total NAV: €31,600.

Comparison 2:

Property No. 2200204, Block P, Central Park, Dublin 18.

303m² at €450 per m².

Total NAV: €136,300.

Comparison 3:

Property No. 2185243, Leopardstown Retail Park.

101.6m² at €500 per m².

Total NAV: €50,800.

8.10 Mr. Maguire's opinion of the correct NAV for this property is €60,000 calculated as follows:

Shop 133.39m² at €450 per m² = €60,025.50, say €60,000.

He added that the zoning method was considered inappropriate for this property due to its configuration and it has therefore been valued on an overall basis in line with similar properties.

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 Dun Laoghaire Rathdown County Council.

10.2 Section 49(1) of the Act provides that if the value of a relevant property falls to be determined for the purposes of Section 28(4) (or of an appeal from a Decision under that section), as is the case here, 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 property.

10.3 The statutory valuation date of Dun Laoghaire Rathdown County Council's previous revaluation prior to the inclusion of this property on the list was the 30th September 2005 and this is the relevant valuation date.

10.4 The sole comparison introduced by the Appellant which is in the immediate locality of the subject property is, when analysed on an overall basis as opposed to a zoned basis, €500 per sq. m which is higher than the proposed level of valuation for the subject property.

10.5 The Respondent provided comparisons of three properties, two within the immediate locality of the subject with NAVs calculated at €450 per sq.m , and one in a similar but busier location at €500 per sq.m.

10.6 The irregular shape of the property does not lend itself to zoning and assessing the valuation on an overall basis is preferable in this instance.

10.7 The Lease of the subject property and the rent reserved post date the relevant valuation date and therefore have no bearing on the matter in dispute.

10.7 The effect of Covid 19 on footfall and turnover long postdate the valuation date and therefore is not relevant from the point of view of assessing the NAV of the subject property.

10.8 The onus of proof lies with the Appellant and in this instance the Appellant has not proven that the valuation entered on the list is incorrect whereas the Respondent has supported the valuation with suitable comparisons.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent in assessing the Net Annual Value at €60,000.

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.