

Appeal No: VA23/5/0232

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

FLEURTATIOUS LTD

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2195599, Shop at Unit 13, Leopardstown Shopping Centre, Ballyogan Road,
Dublin 18, County Dublin.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF APRIL, 2024**

BEFORE

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 9th day of October 2023 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 €15,070.

- 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: *“The valuation is excessive and would result in an increase of nearly 100% on previous years. Our business was accessed at €450/ per m2 which is the same as all the other retail units which are internal to the shopping centre. However, our unit is not inside the unit, it is the ONLY retail unit on the outside of the centre and has no access or visibility from inside. It is not even at the front it is at the side*

of the shopping centre so is away from and does not benefit from the main thoroughfare of the shopping centre.”

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €9,380.

2. RE-VALUATION HISTORY

- 2.1 On the 23rd day of September 2022 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 €15,070.
- 2.2 A Final Valuation Certificate issued on the 15th day of September 2023 stating a valuation of €15,070.
- 2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is 1st day of February 2022.

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

- 4.1 The Tribunal has extracted the following facts from the Respondents precis which have not been disputed.

4.2 The subject property is referred to as Unit 13 Leopardstown Shopping Centre and not Leopardstown Valley Shopping Centre as stated by the Respondents. It forms part of Leopardstown Shopping Centre a unitary shopping centre anchored by Dunnes Storey and included a variety of retail units located on an internal mall as well as a number of retail units with dual internal and external frontages and two units including the subject property with an external frontage only.

4.3 The property is located off Ballyogan Road approximately halfway between the M50 between exits 14 and 15. The centre has the benefit of access to the M50 a number of bus routes and the LUAS green line. It is adjacent to Leopardstown Valley Shopping Centre which has frontage to the Ballyogan Road.

4.4 The subject property comprises a small ground floor retail unit facing onto the shopping centre car park. The property was in a good state of repair.

4.5 The reported floor areas published by the Valuation Office which were not disputed is as follows:

Floor level	Floor Use	Area M₂
Ground	Retail Zone A	33.50

4.6 A Final Valuation Certificate issued on the 15th September 2023 stating a valuation of €15,070.00.

5. ISSUES

The issue in dispute is quantum.

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 The Appellant Karen Massey stated that the revised rate was excessive and would result in an increase of 100% over previous years’ rates. She stated that the assessment had originally been based on €280/sqm which had now been increased to €450/sqm resulting in an increase in rates from €9,380 to €15,070.

7.2 She stated that the subject property was the only external retail unit in the shopping centre but that it had been treated as if it was part of the internal units within the centre. She included various drawings and plans indicating the location of the subject property as an external unit.

- 7.3 She stated that she attended a Walk In Valuation Office Clinic and that she had been advised by a member of Tailte Eireann Valuation Team of a change in treatment previously applied and that all units in the centre were now being treated identically but she claimed that the adviser indicated to her that she had a good basis for an appeal.
- 7.4 She added that the subject property was the only retail unit on the outside of the centre with no access or visibility from within and that it was set back from the main frontage along the side of the shopping centre away from the main thoroughfare access to the centre.
- 7.5 She concluded and stated that the appropriate valuation for the subject property should be based on €280/sqm.
- 7.6 Unusually Mr Halpin on behalf of the Appellant provided a replying submission which was agreed with the Respondents on the understanding that Mr. Halpin would not be permitted to enter or extend the grounds of appeal. Secondly Mr Halpin's reply would be limited to the Respondents precis only and would not include any new comparative evidence. And thirdly the Respondent would be allowed to respond to Mr Halpin's comments if required.
- 7.7 In his replying submission Mr Halpin accepted points one and three whoever in relation to point two he took issue stating that in preparing his report and giving evidence he was aware that his primary duty was to the Tribunal and that this duty overrides any obligation to the party to whom he was engaged and the person who has paid for his services. He argued therefore that it is impossible for his submission to be complete to the Tribunal. He added that in his opinion this was particularly prejudicial as the Appellants are lay appellants and had offered no comparison evidence in the first instance. He indicated that if the Tribunal sought comparisons from the Appellants such could be provided following further directions from the Tribunal however no such directions were provided.
- 7.8 He reiterated the grounds of appeal and agreed that the Appellants lease which dated from 2007 was of no assistance in establishing an NAV for 1st of February 2022.

- 7.9 He claimed that the subject property was the only bona fide external retailer in the centre and that the shop had been fashioned out of a store and two hallways. He noted that the only other external unit without an internal entrance was Domino's Pizza which was a takeaway with full planning permission, a commercial kitchen and could not be held to be the same as the subject property. He noted that despite offering three rental comparisons and four tone of the list comparisons the Respondents had not offered Domino's Pizza as a comparison. He noted that the Respondent witness had made specific mention of Domino's Pizza but had clearly correctly discounted it from the comparative evidence.
- 7.10 Mr Halpin acknowledged that the Appellants had no difficulty with the application of €450/sqm zone for a unit with both internal and external frontage or simply internal frontage and he noted that the Commissioner had provided rental comparisons from inside the centre, and he argued the Commissioner should have made an allowance for the external nature of the property.
- 7.11 Mr Halpin argues that the inequity of the subject's valuation is exacerbated by its shape as the entire property is Zone A which means it is being entirely valued by reference to its frontage, however he argues that the subject property fronts onto the side of the development and is located between two non-retail uses HSE and LDLS. He added that if the side frontage was of substantial value the highest and best use of the two adjacent units would not be offices occupied by State bodies. He noted that the Respondents drew attention to the fact that the Vanilla Pod which has entrances from both the side and the mall had chosen primarily to use their side door but added that the Respondents did not advance this property as a comparison.
- 7.12 Mr Halpin addresses the Respondents three comparisons from Leopardstown Valley Shopping Centre which is a neighbourhood parade directly fronting the Leopardstown Shopping Centre (the shopping centre which includes the subject property) and that this centre has no internal units all the units were external facing. He took issue with that suggestion that the subject property being located to the rear of the shopping centre facing

the car park could have the same value as a parade fronting the main road which was not sustainable.

- 7.13 Mr Halpin refers to the third comparison from Nutgrove Shopping Centre and states that this centre is predominantly enclosed however it does have a portion of external units facing the car park. He claims that the external units are valued at a discount of 35% Zone A to those on the internal mall. He noted that Eamonn Halpin had been involved in one of those units before the Tribunal which showed this level of discount and a further discount of 5% was made as it comprised a double unit. He added that this practise in his opinion was by no means unique to Nutgrove, but this was the only other development mentioned in the Respondents submission. He concluded by stating that discounting the rate of €450/sqm should be reduced to €292.50/sqm which is very close to the passing level of €280/sqm, and he argued for no change and the Nav should be confirmed at €9,380 in line with the tone of the list.

8. RESPONDENT'S CASE

- 8.1 Mr Oliver Parkinson submitted a precis of evidence on behalf of the Respondents.
- 8.2 He stated that the subject property was a retail unit in Leopardstown Valley Shopping Centre which is located in Dublin's South suburbs just off Ballyogan Road approximately halfway between the exits 14 and 15 on the M50. He stated that the Leopardstown area benefits from exceptional transport links served by various bus routes, a commuter service from the nearby LUAS green line.
- 8.3 He described the subject property as comprising a ground floor retail unit with dual entrances which faces onto the car park to the east of the main shopping centre entrance. He stated that one of the entrances appears to be covered by the cold room/ display inside the subject property and he added that there is a rear entrance to the subject property which connects to the service corridor. He confirmed the property was in a good condition.

- 8.4 He stated that the floor area was 33.5sqm and that the area was not in dispute. He provided a block plan which showed the subject property together with an internal and external photograph.
- 8.5 He referred to the fact that the property was held on a 25-year lease from 2007 and that the passing rent was €22,501 per annum but noted that no further information was available.
- 8.6 He noted that no representations had been made to the valuation manager.
- 8.7 Addressing the Appellants precis of evidence he noted that the previous NAV of €280/sqm was derived from the Valuation Date 30th September 2005 and that under Reval 2023 the Valuation Date was 1st February 2022 where market rental analysis of commercial properties was analysed to create a scheme of valuations some of which were included in his precis. He added that the revaluation will result in a redistribution of the commercial rates liability between ratepayers depending on the relative shift in the rental values of their properties in relation to each other. He noted that the Appellant had not cited any comparisons except for the subject property's historical NAV as evidence to support their claim of valuation.
- 8.8 He took issue with the Appellants claim that the subject property was the only external unit in the shopping centre, and he included photographs of Domino's Pizza which had an external frontage and the Vanilla Pod and Capital Credit Union which had dual frontages in support of this statement.
- 8.9 He stated that the process of revaluation requires the collation and analysis of available market evidence to develop schemes of valuation. He added that this evidence is obtained from a variety of sources including directly from the occupiers from the Revenue Commissioners database of stamp duty transactions and from the commercial lease register administered by the PSRA. He described these transactions as Key Rental Transactions which when analysed provided net effective rents in each case. He added that it is important to note that the application of the scheme is only the starting point. Following application

of the scheme values, if there are any relevant individual considerations in relation to the subject property, relative to that group further adjustments may be made to the subject property's estimate of NAV.

- 8.10 He provided three key rental transactions the first was located in an internal retail unit in Leopardstown Valley Shopping Centre from December 2018 (should be Leopardstown Shopping Centre). He stated that this unit was located in the same shopping centre as the subject property was similar in size and confirmed that no representations had been made, the tenant was not represented by an agent and there was no appeal to the Valuation Tribunal.
- 8.11 The second was located in Leopardstown Valley Shopping Centre from November 2018 and comprised an external retail unit (should be Leopardstown Shopping Centre). He noted that this property was located within a parade of retail units on the grounds of Leopardstown (Valley) Shopping Centre near the subject property and was approximately twice the size of the subject property and confirmed that no representations had been made, the tenant was not represented by an agent and there was no appeal to the Valuation Tribunal.
- 8.12 The third referred to Nutgrove Shopping Centre and was dated May 2018. He stated this property was located in Nutgrove Shopping Centre within the same rating authority as the subject property and was a superior property anchored by Tesco, Dunnes Stores and Penneys.
- 8.13 Details and analysis of the KRT's are included in the appendix (N/A to public).
- 8.14 The Respondents provided 4 NAV comparisons.

NAV Comparison 1

Property Number	5020475
Occupier	NDLS

Address	Unit 7 Leopardstown (Valley)SC
Total floor area	94.39sqm
Total	€27,000

Level	Description	Size sqm	NAV/€sqm
0	Retail Zone A	43.07	€450
0	Retail Zone B	29.79	€225
0	Store	21.53	€45
	Total	94.39	€27,000

Comments: Located in Leopardstown (Valley) SC near the subject property. This property was approx. three times the size of the subject property which is reflected by using the Zoning method of Valuation. No representations; no agent appointed and no appeal to the Tribunal.

NAV Comparison 2

Property Number	2200213
Occupier	0'Coillean Food Company
Address	Unit 6 Leopardstown (Valley) SC
Total floor area	103.25sqm
Total	€31,000

Level	Description	Size sqm	NAV/€sqm
0	Retail Zone A	43.26	€450
0	Retail Zone B	43.31	€225
0	Retail Zone C	16.68	€112.50
	Total	103.25	€31,000

Comments: Located in Leopardstown (Valley) SC near the subject property with an entrance on to the main shopping mall. It was approx. three times the size of the subject property which is reflected by using the Zoning method of Valuation. No representations; no agent appointed and no appeal to the Tribunal.

NAV Comparison 3

Property Number	885470
Occupier	Paddy Power Bookmakers
Address	Unit 3 Leopardstown Valley SC
Total floor area	68.32sqm
Lease commencement date	€23,000

Level	Description	Size sqm	NAV/€sqm
0	Retail Zone A	34.16	€450
0	Retail Zone B	34.16	€225
		68.32	23,000

Comments: Located in Leopardstown Valley SC this in an external unit in a parade of shops which fronts Ballyogan Road near the subject property. It is approx. twice the size of the subject property which is reflected by using the Zoning method of Valuation and provides evidence of equity, uniformity, and Tone of the List. No representations; an agent was appointed and there was no appeal to the Tribunal.

NAV Comparison 4

Property Number	885461
Occupier	Farmer's Pharmacy
Address	Unit 7 Leopardstown Valley SC
Total floor area	68.32sqm
Lease commencement date	€23,000

Level	Description	Size sqm	NAV/€sqm
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0	Retail Zone A	34.16	€450
0	Retail Zone B	34.16	€225
	Total	68.32	€23,000

Comments: Located in Leopardstown Valley SC this in an external unit in a parade of shops which fronts Ballyogan Road near the subject property. It is approx. twice the size of the subject property which is reflected by using the Zoning method of Valuation and provides evidence of equity, uniformity, and Tone of the List. No representations; an agent was appointed and there was no appeal to the Tribunal.

8.15 In conclusion the Respondent stated that having investigated all of the particulars of the appeal, considered both the grounds and the evidence of the Appellant, and agreed matters of fact, that he was of the opinion that the correct NAV for this property was €15,070 based on a Zone A floor area of 33.50sqm x €450/sqm. He added no rental evidence was cited by the Appellant to support their Zone A claim of €280 per square metre. He stated that it was not correct to say that the subject property was the only external unit and he claimed that no comparable properties were provided by the Appellant in their evidence and that other than an unsupported opinion the Appellant offered no other evidence to support their opinion that the valuation was too high. This concluded the respondent's precis. The Respondents did not make a further submission following receipt of Mr Haplin's replying submission.

9. SUBMISSIONS

9.1 No legal submissions were made.

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 The Tribunal finds that the subject property is an external retail unit whereas the Credit Union and Vanilla Pod a café restaurant have dual frontages to the internal retail mall and the external car park and are more prominently located close to the main shopping centre entrance. The Tribunal finds that they have superior locations whereby customers going to the anchor store Dunnes Stores must pass by them which does not apply to the subject property. The Domino's Pizza unit also had twin frontages, but its relevance would appear to have been discounted by the Respondents as it comprised a fast-food unit for which separate planning permission would have been required. Furthermore, the details of the NAV were not provided.
- 10.3 It is accepted by both parties that the established Zone A rent of €450/sqm is correct following the analysis of the KRT'S as they apply to the internal units however the Tribunal finds that the subject property is more isolated than the internal or dual frontage units and does not benefit from the proximity to the main retail mall entrance. And accordingly, the Tribunal finds that there are relevant individual considerations in relation to the subject property relative to that group and that an adjustment must be made to the estimate of NAV.
- 10.4 The Valuation date is 1st February 2022 and the Tribunal noted that the KRT's predated the valuation date by 3 years 2 months; 3 years 3 months and 3 years 9 months all pre-Covid.
- 10.5 The Respondents referred to Nutgrove Shopping Centre as one of their KRT's however Mr Halpin noted from his direct experience in Nutgrove that in a recent Tribunal case settlement a discount of 35% was agreed to distinguish between the internal and external units.
- 10.6 The Tribunal finds that the NAV for the subject property should follow this example which was not contested and that a reduction of 35% should apply to the rate of €450/sq.

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 €9,800.

$$\text{NAV of } \text{€}450 \times 0.65 = \text{€}292.50 \times 33.5\text{sqm} = \text{€}9,798.75 \text{ say } \text{€}9,800.$$

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.