

Appeal No: VA23/5/1149

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Aldi

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5017446, Retail (Shops) at Unit G26 Frascati Shopping Centre, Blackrock, County Dublin.

B E F O R E

Eoin McDermott FSCSI, FRICS

Sarah Reid, BL

Suzy Quirke, MSCSI, MRICS, Dip. Arb. Law.

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF DECEMBER, 2024**

1. THE APPEAL

- 1.1 By Notice of Appeal received on 18th 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 €550,000.
- 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:

“The Valuation is Incorrect

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. In consideration of the tone of the list, I believe a lower valuation as set out herein is more representative of a reasonable Net Annual Value in accordance with Section 48 of the Act.”

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €430,000.

2. REVALUATION HISTORY

- 2.1 On 25th May 2023 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 €550,000.
- 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 15th September 2023 stating a valuation of €550,000.
- 2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is 1st February 2022.

3. THE HEARING

- 3.1 The Appeal proceeded by way of an oral hearing held remotely on 19th November 2024. At the hearing the Appellant was represented by Ms. Claire Mason B.Sc (Surv) of Avison Young and the Respondent was represented by Mr. Ian Power B.Sc (Hons) of Tailte Éireann
- 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 their précis as their 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 Property (hereinafter called “the Subject Property”) is a supermarket and forms part of the Frascati Shopping Centre, Frascati, Blackrock, Co. Dublin. The shopping centre is located off the Frascati Road. The Subject Property was constructed in 2019 as part of the expansion and development of the Frascati Shopping Centre. It comprises a ground floor supermarket with a small loading bay/store to the rear. There is office/staff accommodation, and a store located at first floor level. The centre itself is laid out across three levels with 23 retail units and eight food & beverage units. There are 550 spaces in a multi storey car park.

- 4.3 The Subject Property is accessed internally via an entrance at the eastern end of the shopping mall. To the front there are lifts and a stairwell on either side of its entrance. The ground floor is laid out with an entrance and internal lobby at the front with the main retail area behind and a small store area and loading bay at the rear.
- 4.4 The main store area and staff accommodation on the first floor are accessed via an internal stairs and goods lift. The unit is fitted with tiled floors, panelled walls and a suspended ceiling.
- 4.5 The floor areas are agreed by the parties' valuers as set out in the table below.

Floor	Description	Area (M2)
0	Supermarket	1,221.00
1	Stores/Offices	<u>364.00</u>
	Total	1,585.00

- 4.6 The Subject Property is held under an occupational lease for a term of 25 years from 26th March 2018. The initial rent was set at €613,980.00 per annum and this was increased in March 2023 in accordance with the provisions contained in the lease which mandate that the rent is to be reviewed in line with changes in the Consumer Price Index ("CPI")

5. ISSUES

The issue in this Appeal is one of 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."

6.3 Section 19 (5) of the Act provides:

“The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable) —

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list, and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned ...”

7. APPELLANT’S CASE

- 7.1 Ms. Mason opened her case by providing a brief resume of the previous Valuation Tribunal hearing on the property (VA21/1/0008). She went on to describe the Subject Property and its location, both within the centre and the village of Blackrock, using photographs and maps contained in her précis. It was noted that the entrance to the supermarket is not directly accessible from the car park and that there are no adjoining retail units on either side of the property.
- 7.2 Ms. Mason gave a summary of the lease under which the Subject Property is held. She noted that the majority of supermarkets are owner occupied and that obtaining rental evidence on them is problematic. It was her opinion that little weight could be attached to the passing rent on the Subject Property as it had been set in 2018, four years prior to the valuation date and prior to the onset of the Covid pandemic. She stated that Covid 19 had had a significant effect on the general office, retail and industrial markets and that this was also demonstrated in the rents achievable post Covid for standard retail units in Frascati Shopping Centre.
- 7.3 Ms. Mason noted that the property is categorized in the Valuation List as Supermarket 2 (500 – 2,500 sq.m.). She provided details for all of the properties in that category within the Local Authority area which showed that NAVs ranged from €170 to €360 per sq.m. (see Appendix A, N/A to public). She stated that only two properties were valued at €360 per sq.m., the subject and another unit in the Frascati Centre and that both were under appeal. Excluding the two properties in the Frascati Centre, the highest valuation placed on a Supermarket 2 property was €280 per sq.m.. In her opinion this did not achieve correctness of value and equity and uniformity of values between similar circumstanced properties on the Valuation List. She questioned whether the Respondent had relied exclusively on the two lettings in the Frascati Centre when drawing up the valuation scheme and queried why the two units within the Centre were valued at a significantly higher level than those falling within the same category.

- 7.4 For completeness, Ms. Mason also listed all the properties categorised as Supermarket 3 (>2,500 sq.m.) on the Valuation List (See Appendix B, N/A to public). These NAVs ranged from €200 to €320 per sq.m., and Ms. Mason gave her opinion that this served to demonstrate that the value attributed to the Subject Property did not achieve correctness of value and equity and uniformity of values as required under S.19 (5). She noted that the Tesco unit in Dundrum Town Centre, which in her opinion is the best located supermarket in the Local Authority area, is valued at €320 per sq.m.. It was also noted that the SuperValu unit in Blackrock was also valued at €320 per sq.m..
- 7.5 Ms. Mason put forward six comparisons from the Valuation List as follows:

Property	Valuation	Supermarket Area (M2)	Valuation analysis
SuperValu, Dun Laoghaire SC	€369,000	1,780.40	Supermarket at €170 per sq.m. Stores at €85 per sq.m.
Aldi, Pearse St, Sallynoggin	€414,000	1,717.00	Supermarket at €220 per sq.m.
SuperValu, Deansgrange	€397,000	1,350.62	Supermarket at €230 per sq.m. Stores at €115 per sq.m.
Lidl, Deansgrange	€279,000	1,200.09	Supermarket at €220 per sq.m.
Tesco, Glenageary Rd	€428,000	1,136.89	Supermarket at €240 per sq.m. Stores at €240 per sq.m.
Lidl, Dundrum SC	€338,000	1,222.59	Supermarket at €230 per sq.m. Stores at €120 per sq.m.

- 7.6 Ms. Mason gave her opinion that her comparisons showed that the requirements for correctness of value, and equity and uniformity of value between properties on the Valuation List for the Local Authority area had not been met. She drew the Tribunals attention to what she described as disadvantages in both the layout of the property and its location within the centre. She accepted that there will be differences in valuation for properties falling within the same category in any Local Authority area to reflect the unique considerations of individual properties but said that range of these changes would generally be small at €20 to €40 per sq.m.. In this case values ranged between €170-€360 per sq.m. which in her view results in a two-tier tone of the list.
- 7.7 Ms. Mason contended for a net annual value of €426,000 calculated as below. She applied a 7% fit out to the ground floor only, in line with the valuation approach for supermarkets and included an additional €10,000.00 for the off licence.

Floor	Description	Area (M ²)	NAV (€ per M ²)	NAV
0	Supermarket	1,221.00	280	€341,880.00
1	Stores/Offices	364.00	140	€50,960.00
0	Fit out allowance		7%	€23,931.60
0	Off licence			€10,000.00
				€426,771.60
			Say	€426,000

- 7.8 In response to cross examination by Mr. Power for the Respondent, Ms. Mason accepted that her comparison 1 was the only one located in a shopping centre. She stated that she did not use SuperValu in Blackrock Shopping centre as a comparison as it was designated by the Respondent as Supermarket 3, and she had confined her comparisons to those in the same designation as the subject property. She stated when asked that she considered the SuperValu unit to be overvalued and that this was demonstrated by the breakdown of values she had provided for Supermarket 3 properties. She noted that it was valued at the same level as Tesco in Dundrum SC and stated that she did not believe the two centres to be comparable. She did accept that SuperValu in Blackrock was a supermarket but pointed out that it was the Respondent who had applied the different categories. She agreed with Mr. Power that size was the defining difference between the categories and pointed out that she was obliged to compare the values of similarly circumstanced properties. When asked why she had not analysed the rental evidence on the subject property, she reiterated that it was her opinion that little weight could be attached to the passing rent on the subject property as it had been set in 2018, four years prior to the valuation date and prior to the onset of the Covid pandemic. She stated that the entire thrust of her case was that the requirement for equity and uniformity had not been met in this instance.
- 7.9 In response to a query from the Tribunal Ms. Mason undertook to establish the result of the rent review on the Subject Property due in March 2023 and confirm whether it was a market or a CPI review. It was subsequently confirmed by Ms. Mason that the rent had been increased on a CPI basis.

8. RESPONDENT'S CASE

- 8.1 Mr. Power opened his case by giving a brief description of the Subject Property and its location, using maps and photographs contained in his précis. He confirmed that he believed that the property valuation had met the requirements of correctness, equity and uniformity. He pointed to the difficulty in obtaining rental evidence for supermarkets generally and underlined the importance of his two key rental transactions – the subject property and the Marks and Spencer unit in the Frascati Centre.
- 8.2 Mr. Power did not accept the points raised by Ms. Mason in respect of the perceived disadvantages of the property and noted that these would all have been apparent to the occupier before they took a lease on the property. He stated that the lease on the property demonstrated that the NAV was fair and reasonable, and noted that no supporting evidence

had been provided to support Ms. Masons contention that retail rents had declined because of Covid. He gave his opinion that Blackrock as a location commanded premium rents as it was a very affluent area with a high concentration of retail, office and residential developments.

- 8.3 Mr. Power put forward two Key Rental Transactions, the Subject Property and the Marks and Spencer unit in the Frascati Centre. The rent for the Subject Property dated from October 2018 and he analysed the supermarket rent at €396.70 per sq.m., after allowing for the fit-out allowance and off licence. The rent on the Marks and Spencer unit dated from January 2019 and he analysed the supermarket rent at €366.60 per sq.m., after allowing for the fit-out allowance and off licence.
- 8.4 Mr. Power put forward 7 NAV comparisons. He explained that properties which are *'similarly circumstanced'* are considered comparable. This means they share characteristics such as use, size, location and/or construction. He argued that his comparisons demonstrated that both correctness and equity & uniformity of value had been achieved in assessing the NAV of the subject property. His NAV comparisons were as follows:

Property	Valuation	Supermarket Area (M2)	Valuation analysis
SuperValu, Blackrock SC	€995,000	2,605.48	Supermarket at €320 per sq.m. Stores/offices at €160 per sq.m.
Tesco, Dundrum Town Centre	€1,855,000	5,347.00	Supermarket at €320 per sq.m. Offices at €160 per sq.m. Store at €80 per sq.m.
Dunnes Stores, Cornelscourt SC	€2,159,000	7,163	Supermarket at €280 per sq.m. Stores at €140 per sq.m.
Tesco, Stillorgan SC	€667,000	1,690.5	Supermarket at €280 per sq.m. Stores at €140 per sq.m.
Lidl, Nutgrove	€488,000	1,659.05	Supermarket at €280 per sq.m.
Home Store & More Department Store, Frascati SC	€354,000	GF 158.4 Bsmnt 2,247.9	GF at €340 per sq.m. Bsmnt at €130 per sq.m.
Marks & Spencer, Frascati SC	€814,000	1,976	Supermarket at €360 per sq.m. Stores/offices at €180 per sq.m.

Mr. Power noted that the valuations of SuperValu in Blackrock, Tesco in Dundrum and Lidl in Nutgrove had been the subject of representations from agents but had not been appealed to the Valuation Tribunal. He confirmed that Home Store and More had been listed by the Tribunal but agreed prior to hearing. He noted that the Marks and Spencer valuation was under appeal to the Tribunal at present.

- 8.5 Mr. Power requested that the Tribunal affirm the valuation of €550,000, calculated as follows:

Floor	Description	Area (M ²)	NAV (€ per M ²)	NAV
0	Supermarket	1,221.00	360	€439,560.00
1	Stores/Offices	364.00	180	€65,520.00
0	Fit out allowance		7%	€35,355.60
0	Off licence			<u>€10,000.00</u>
				€550,435.60
			Say	€550,000

- 8.6 In response to cross examination by Ms. Mason for the Appellant, Mr. Power did not consider that the Subject Property occupied an inferior location to the Marks and Spencer unit in the same development, although he did accept that the latter was more centrally located. He agreed that size was one of the main considerations in considering similarly circumstanced properties and highlighted his comparisons in Nutgrove and Marks and Spencer as being of a similar size to the Subject Property. He did not attach any weight to the size categories appearing in the Valuation List, stating that he considered them all as supermarkets, although he did accept that that they were categorized by size on the Valuation List. He pointed out that smaller retails units were generally valued at a higher rate per sq.m. than larger retail units. He agreed that his main criteria when considering comparisons was whether or not a property was located within a shopping centre, as he considered those to be more similarly circumstanced. He did not accept that the location of Blackrock Shopping Centre was superior to that of the subject property and gave his opinion that Frascati had a better layout and was a superior centre. He agreed that Dundrum Town Centre was a significantly better retail location than the Frascati Centre but did not accept that this created an anomaly even though Tesco in Dundrum was valued at the same level as SuperValu in Blackrock, noting that the Tesco unit was over twice the size of the SuperValu one. He accepted that the Home Store and More unit was a different type of unit to the Subject Property and was unaware if the lease contained a user restriction. He did not accept that SuperValu in Dun Laoghaire Shopping Centre was in any way comparable to the subject, although he accepted that he had not been in that Centre for some time. He did accept that there was a significant difference between the €170 per sq.m. value on the Dun Laoghaire unit and the €360 per sq.m. for the Subject Property but said that this was justified by the relative strengths of the two shopping centres. He considered Tesco in

Stillorgan and Lidl in Nutgrove, both valued at €280 per sq.m., as being the next best comparisons after Blackrock and Dundrum Town Centre but was unable to explain why there was an €80 per sq.m. difference between those valuations and the Subject Property.

- 8.7 Responding to cross examination as to how the Valuation Scheme was devised, Mr. Power confirmed that the Respondent would have received rental evidence in respect of a number of retail units. He stated that his Key Rental Transactions were very useful pieces of information when considering values of properties in the Frascati Centre but did not answer a question as to whether the two supermarket units in the Frascati Centre were valued in isolation from other supermarkets in the Local Authority area. He agreed that €360 per sq.m. was the highest value applied to any supermarket in the Local Authority area. He did not dispute that the values applied to supermarkets in Blackrock were higher than those applying elsewhere but argued that they reflected the evidence available. He pointed out that only one of the Appellants comparisons was located in a shopping centre and that that is a basement unit. He noted that the rental comparisons he provided supported the NAV placed on the subject property. When asked why the rental evidence had not been applied to other supermarkets in the Local Authority area, given that the rental comparisons were considered so useful and the general lack of rental evidence for supermarket properties, he gave his opinion that the Frascati Centre was considered the best centre (bar Dundrum Town Centre) in the Local Authority area and that Blackrock generally was the best location in the Local Authority area. He said that the valuation of €360 per sq.m. was supported by €320 per sq.m. valuation applied to SuperValu in Blackrock, noting that the SuperValu was over twice the size of the Subject Property. He reiterated his opinion that equity and uniformity had been achieved by the valuation.
- 8.8 In response to cross examination by the Tribunal, Mr. Power explained that the difference in the values applied to Tesco in Stillorgan and the Subject Property by saying that they had relied on rental information and information on the respective Centres. When specifically asked if the scheme for valuing supermarkets in the Local Authority area broke down the supermarkets by size, he accepted that while there were different categories in the Valuation List, the supermarket category tended to be considered as a whole, with possibly some allowance being given to extra-large units such as Dunnes Stores in Cornelscourt. Finally, he accepted that the fit-out allowance should apply to the ground floor only in this instance.

9. SUBMISSIONS

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 The Tribunal has found on several occasions that the onus of proof rests with the Appellant in an appeal (See *Proudlane Ltd. t/a Plaza Hotel* (VA00/2/032) and *AIB Group PLC v Commissioner for Valuation* (VA20/4/0053)). The position was expanded on in Tribunal decision *FGM Properties v Commissioner for Valuation* (VA19/5/1091) wherein it was held: “*The onus of proof rests on the Appellant to demonstrate, through cogent evidence that the Respondent has erred.*”
- 10.3 Arising from these decisions, in order to succeed in their appeal, an Appellant must demonstrate, through cogent evidence, that the Respondent has erred in their valuation of the property under appeal. In that respect, the Appellant was obliged to satisfy the Tribunal, through evidence, that the Respondent’s valuation was incorrect and failed to meet the requirements of correctness of value, together with equity and uniformity of value between properties on the valuation list required under S. 19 (5).
- 10.4 The Appellant advanced the appeal on two main grounds. Firstly, that the Respondent had relied too heavily on the rent that was agreed for the Subject Property in March 2018 and had not made any allowances for changes in the market since that time, including the effects of Covid 19; and secondly, that the valuation of €360 per sq.m. applied to the property was significantly ahead of similarly circumstanced properties in the Valuation List and therefore the valuation failed to meet the requirements of equity and uniformity.
- 10.5 The Tribunal notes that no evidence was put forward to support the Appellant’s opinion that rents in the Frascati Centre had declined since the lease was signed. The Tribunal agrees with the Respondents contention that the letting of the Subject Property (and, indeed, the nearby Marks and Spencer unit, which is the subject of a separate appeal to the Tribunal) provided very useful evidence in assessing the rental value of the Subject Property.
- 10.6 The Appellant put forward two very comprehensive tables showing all the properties categorized as Supermarket 2 and Supermarket 3 in the Valuation List for the Dun Laoghaire Rathdown County Council area. The table for the Supermarket 2 properties (500 – 2,500 sq.m.), which includes the Subject Property, showed very clearly that the valuation of €360 per sq.m. for the Subject Property was significantly higher than the other properties within that category, which ranged from €170 - €280 per sq.m.. Despite repeated questioning from both the Appellant and the Tribunal, the Respondent was unable to provide any factual evidence to explain why the valuation per sq.m. of the Subject Property was almost 30% higher than the next highest property in the Supermarket 2 category.
- 10.7 The Tribunal was surprised that the Respondent appeared to attach little weight to the different categories of supermarket as shown on the Valuation List, preferring to look at all supermarkets as a single category and differentiating between those forming part of a shopping centre and those operating on a stand-alone basis. This approach is difficult to reconcile with the values appearing on the Valuation List as shown by the evidence of the

Appellant and further, does not account for the fact the Respondent does in fact draw a distinction between the various categories of supermarket insofar as they are differentiated on the Valuation List as described in paragraph 10.6 above.

- 10.8 The Tribunal finds that while the initial rent placed on the Subject Property in 2018 gives a reasonable context for the valuation put forward by the Respondent, the Appellant has satisfied the Tribunal that the difference in the rate per sq.m. applied to the Subject Property and the rates per sq.m. applied to other supermarkets in the same category have not been justified from the evidence in this appeal. It is the Tribunal's opinion that either the Subject Property is overvalued or some or all of the properties in the same category are undervalued.
- 10.9 Having considered all the evidence placed before it, the Tribunal believes that the strongest comparison is the Tesco unit in Stillorgan Shopping Centre. This is a Category 2 supermarket in a recently refurbished shopping centre, located close to the subject property, and is valued at €280 per sq.m. The second-best comparison is the SuperValu unit in Blackrock Shopping Centre, a Category 3 supermarket in a recently refurbished shopping centre, located across the road from the subject property, which is valued at €320 per sq.m.. The Tribunal accepts the evidence of the Respondent that Blackrock commands a rental premium over other locations in the Local Authority area (barring Dundrum Town Centre) and attaches significant weight to the fact that the valuation of SuperValu in Blackrock Shopping Centre was not appealed to the Tribunal, despite representations having been made. The Tribunal finds that €320 per sq.m. is the appropriate level to apply to the Subject Property, with €160 per sq.m. to be applied to the stores and the fit-out allowance applying to the ground floor only in this instance.

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 **€486,000**, calculated as follows:

Floor	Description	Area (M²)	NAV (€ per M²)	NAV
0	Supermarket	1,221.00	320	€390,720.00
1	Stores/Offices	364.00	160	€58,240.00
0	Fit out allowance		7%	€27,350.40
0	Off licence			<u>€10,000.00</u>
				€486,310.40
			Say	€486,000

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.