Appeal No: VA19/4/0039

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

MARKS & SPENCER (IRELAND) LTD **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of:
Property No. 519908, Retail (Shops) at Frascati Shopping Centre, Blackrock, County Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11th DAY OF NOVEMBER, 2022

BEFORE

Hugh Markey - FRICS FSCSI, **Deputy Chairperson**

1. THE APPEAL

1.1 By Notice of Appeal received on the 25th day of November, 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 €885,000.

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 assessment is excessive and bad in law. The floor areas, pricing and addition for fit-out are excessive and should be reduced. The use should be changed from a Department store to a supermarket."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €759,000.

2. RE-VALUATION HISTORY

2.1 This appeal to the Valuation Tribunal arises from a Revision Request submitted by Dun Laoghaire Rathdown County Council seeking to value the unit which "has been extended under new development overall size is increased" (sic).

2.2 On the 13th day of September, 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 €885,000

2.3 A Final Valuation Certificate issued on the 30th day of October, 2019, stating a valuation of €885,000.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is 30th day of September, 2005.

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 Appellant's Representative submitted their summary of evidence and Expert Opinion to the Tribunal.

3.3 A Report was submitted to the Tribunal on behalf of the Respondent. This was digitally signed by a Ms. Carol Spain but did not include any evidence as to this person's qualification or expertise, nor did it contain a 'Declaration/Statement of Truth' as required by Rule 41 of the Valuation Tribunal (Appeals) Rules, 2019. As such, the Tribunal can only consider the factual aspects of this Report; there being no grounds for considering any expert opinion adduced.

4. FACTS

4.1 Accommodation: The parties are agreed on the following areas:

Floor	Use	Area		
Level 0	Dept. Store/Supermarket	1,485.00		
Level 0	Store/Ancillary	491.00		
Level 1	Store/Ancillary	240.00		

The Appellant described the main Level 0 area as 'supermarket; the Respondent described this space as 'department store'.

The Appellant noted there is a further 'fallow' area at Level 1 of 339.35 sq. m. and commented that *'this area is not fitted or currently capable of being used for storage as it does not meet the necessary fire safety regulations'.*

The Respondent's Report does not include this area.

4.2 Location/Description

The property which is the subject of this appeal is located in Frascati Shopping Centre, Blackrock, Co. Dublin. The Respondent noted that the subject is the *'main anchor tenant of the centre, following the departure of Debenhams'*. The Appellant suggested the centre is located in an 'affluent suburb'; was extensively refurbished and extended to comprise 38 retail units. It further noted the centre was anchored by Marks and Spencer, Aldi and Boots. They noted the Debenhams store had been vacant since April 2019. They further noted the centre trades over 2 levels with 29 units on the ground floor and 9 at first floor with stairs, lifts and escalators linking the 2 levels. The Appellant went on to note there were 3 pedestrian entrances, with the main entrance from Frascati Road; there are approximately 550 pay car parking spaces. There does not appear to be any dispute as to the nature and scale of the shopping centre. The Appellant noted that previously the occupier had operated a department store from the subject property but following the refurbishment and extension of the centre in 2019, converted the entire to a supermarket.

5. ISSUES

The issues in this appeal are of quantum, and the appropriate fit out allowance to be applied.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of s.**49.—**(1) of the Valuation Act 2001 (as amended) which states *'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*.

"*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 Mr MacLynn on behalf of the Appellant submitted that the valuation placed on the original hereditament – a rate of €450 per sq. m. was out of line with other supermarket valuations in the Dun Laoghaire Rathdown Rating Authority area. He noted that this had previously been used as a department store but as it is now in use as a supermarket falls into the category of 500 sq. m – 2,500 sq. m supermarkets, as set out in the Valuation Office Practice Note. The other categories being 200 sq. m – 500 sq. m. and > 2,500 sq. m.

He outlined how the lease of the subject had been regeared but suggested the net effective rent deriving from this transaction was of no evidential value in assessing the NAV of the subject due to the circumstance of a regear, the timing – it was 13 years and 3 months after the effective valuation date and a revision should be based on reference to other comparable properties in accordance with s. 49 (1) of the Act.

He introduced a table (included at Appendix 1 to this Judgment, N/A to public) of all 23 supermarkets falling into the same size category as the subject. The NAV rates varied between €200 per sq. m. and €300 per sq. m. of retail area. There is only one supermarket valued at this higher level – PN 2195751, Aldi, Nutgrove Retail Park. The subject was valued at €450psm.

He further noted and included a schedule of the 8 supermarkets in this rating authority area in the >2,500 sq. m category. These valuations varied between the lowest at €200 per sq. m. and the highest at €285 per sq. m. This schedule is included at Appendix 2 to this judgment (N/A to public).

Mr MacLynn considered the relative qualities of these supermarkets and ranked them in order of his view of comparability. He suggested Tesco, Dundrum Town Centre (PN 2178554) as being at the top of the hierarchy with the subject better than most others. He suggested the best comparator for the subject is the SuperValu supermarket in Blackrock Shopping Centre (PN 519935). This is located about 100m on the other side of the Frascati Road and is valued at a rate of €260 per sq. m. on the retail area.

He noted that both centres have a similar number of shop units and had also been recently refurbished and extended. He suggested they competed for the same catchment of shoppers.

Mr. MacLynn noted that while the Respondent had, on occasion, applied different rates to the retail and storage areas (PN's 526462, 400368, 439861, 327061 & 336944), he had adopted a single rate for the entire ground floor with no differential as between the retail and storage areas.

He contended for a rate of €260 per sq. m on the retail area. This rate is slightly higher than the rate applied to the Tesco supermarket in Stillorgan Shopping Centre (PN 400368) but somewhat lower than that applied to the Tesco supermarket in Dundrum Town Centre. It is also the rate applied to the SuperValu supermarket in the Blackrock Shopping Centre (PN 519935)

He suggested a rate of €120 per sq., m., in line with the rate adopted by the Respondent in Supervalu, Blackrock Shopping Centre as well in PN's 329756, 2189878, 309320, 400368, 505645 & 33694. These are included at Appendix 3 to this judgment (N/A to public).

He contended for an 'end allowance' for fit out of 7% to be applied the ground floor area only. He introduced the Respondent's 'Guidance Note on Fitting Out of Department Stores and

Supermarkets (Appendix 4, N/A to public) and suggested the rate of 7% should be applied to the entire ground floor area as per this 2010 Guidance Note.

He suggested the 'fallow' or unused area at first floor be valued at a rate of €80 per sq. m and that this rate was in line with that applied to ancillary space in PN's 5009392, 2178554 & 5018142 and higher than that applied in PN's 400368, 439861 & 2204978.

He set out his opinion of Net Annual Value (NAV) as follows:

Level	Use	Area (sq. m)	Rent (per sq. m.)	NAV
0	Supermarket	1,485.00	€260	€386,100
0	Store/Ancillary	491.00	€260	€127,660
0	Fit Out (supermarket)	1.0	7%	€35,963
1	Store/Ancillary	240.00	€120	€28,800
1	Fallow Area	399.35	€80	€31,948
	Off Licence			€10,000
			Total	€620,471
			NAV say	€620,000

8. RESPONDENT'S CASE

8.1 Respondent's Submission

As noted earlier, a document was submitted to the Tribunal by the Respondent. This document recites the history of the valuation of the original premises at a rate of €450 per sq. m on the ground floor retail area; a rate of €225 per sq. m to the ground floor store and €168 per sq. m to the first floor storage. This gave rise to a NAV of €885,000 – a figure which was not subject to representations or appeal. The Respondent further noted that the area of the subject had increased by 1,138 sq. m. (30.42%) at ground level and the storage areas by 60.4% to include stores at first floor.

It went on to note that the NAV had been arrived at as follows:

Floor	Use	Area	Rate per sq. m.	NAV €
0	Department Store	1,485.00	€450.00	€668,250.00
0	Fit out @ 10%			€66,825.00
0	Store	491.00	€225.00	€110,475.00
1	Store	240.00	€168.00	€40,320.00
NAV				€885,000

The Respondent cited extracts from Dayhoff v The Commissioner of Valuation [HC No. 2020/952 SS] in support of the view that regard should be had to the pre MCC valuation of the properties-

42. The circumstances can vary considerably from one amalgamation to another. The amalgamation may arise where an existing property is simply being expanded, e.g. by the addition of another warehouse, or by the addition of an extra floor of bedrooms in a hotel, or offices in an office block; to circumstances where two separate properties are converted into a single property, which may have a radically different use to that of the two pre-MCC properties, e.g. where two buildings, housing offices and a shop, are amalgamated into a single building, which may be used as a gym.

43. In the former type of situation, use of the so called "bolt on" method of valuation, along with comparisons with other comparable properties, may be an appropriate method to adopt on the revision. One could look at the valuation of the original property and see what valuation will be obtained by simply increasing the rateable valuation of the subject property by the rate per square metre, which had been used in the original valuation, as applied to the additional section. However, it would also be necessary to have regard to the resultant value of the subject property, when compared to other properties of comparable size and use in the area and having considered all of that evidence, the revision officer would end up at a fair valuation which was in accordance with the tone of the list.

Furthermore the case held that:

58. The court is satisfied that the correct approach, which does not exclude reference to the pre-MCC valuations of the properties, where appropriate, is consistent with the correct interpretation of s.49 of the Act

- The court is satisfied that the correct approach, which does not exclude reference to the pre-MCC valuations of the properties, where appropriate, is consistent with the correct interpretation of s.49 of the Act.

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.

Finding 1. The appropriate rates to apply to the various areas of the subject are as follows:

Level 0 Retail - €260 per sq. m.

Level 0 Stores/Ancillary - €260 per sq. m.

Level 1 Stores/Ancillary - €120 per sq. m.

Level 1 Fallow Area - €80 per sq. m.

The Tribunal is charged with 'slotting in' the subject's valuation to the established 'tone' of those comparable properties in the same rating authority area. It is clear from the evidence adduced by the Appellant that the rate of €450 per sq. m applied in the 2005 valuation placed the subject at the upper end of the range of valuations applied to 'comparable' supermarket properties. This level placed it above the level applied to the supermarket in the shopping centre 100m away which, albeit in the next notional category set by the Respondent, is not so different in scale as to suggest this level of variation.

The rate adopted by the Respondent for the retail area of the subject is 50% higher than the next highest supermarket in this category, which is located in a retail park. The rate is in the order of €250 per sq. m higher than that applied to supermarkets in this size category. This suggests the tone is more in the order of €225/€250 per sq. m and not the one off €450 per sq. m. which was applied to the subject.

The evidence as to the 'tone of the list' being the valuation rate prior to the property being extended is contradicted by the extensive evidence as to the rates adopted for supermarkets provided by the Appellant. This evidence demonstrated that the rate applied to this Property was not in line with the 'Tone of the List'.

The Tribunal notes the inclusion of a single department store in the Appellant's schedule of supermarkets >2,500 sq. m in Dun Laoghaire Rathdown. This is PN 315075, Penneys, Nutgrove Shopping Centre, which is valued at €230 per sq. m. for a department store in a covered suburban shopping centre. This suggests the tone for such stores does not differ greatly, if at all, from that of supermarkets.

For the above reasons, the Tribunal's view is the appropriate level to apply to the Level 0 retail area is €260per sq. m., as contended for by the Appellant. Only two supermarkets in Dun Laoghaire Rathdown have higher rates applied; the first is a supermarket in a retail park at €300per sq. m., and the second, a high street supermarket, valued at €280 per sq. m.

In the Tribunal's view, nothing turns on the fact that no representations were made or appeal lodged against the original valuation. The Material Change in Circumstances (MCC) which gave rise to the local authority seeking this revision was an extension of the retail and storage areas. The change in use from department store to supermarket would not, of itself, constitute a material change of circumstance and as such has no material impact on the net annual value.

The Tribunal further accepts the evidence of the Appellant that a rate of €120 per sq. m. be applied to the first floor storage. This is in line with the established tone as set in the supermarket on the other side of Frascati Road and 6 other nominated supermarkets as set out above. A detailed schedule of rates applied to the various areas and allowances made by the Respondent is included at Appendix 4 to this judgment (N/A to public).

The Tribunal noted that the Respondent has not valued the 'fallow area' at first floor and in the absence of evidence to the contrary, accepts the level of €80 per sq. m applied to this area by the Appellant.

In any appeal to the Tribunal, the onus is on the Appellant to show reason why the valuation set by the Respondent should be disturbed. In the instant case, it is the view of the Tribunal that this standard has been met.

The Tribunal notes the Respondent's reference to Dayhoff. That case related to the amalgamation of two rateable valuations following a Material Change of Circumstances. In the instant case, no such merging of rateable valuations took place. The Tribunal's role is to position the revised valuation relative to the value of other comparable properties on the valuation list in the rating authority area.

Finding 2. The appropriate fit out allowance to apply to the subject Property is 7%.

The Appellant introduced the Valuation Office's 2010 Guidance Note on Fitting out of Department Stores and Supermarkets and relied on this Guidance Note to apply the 'supermarket' rate of 7%. The Tribunal accepts this is the correct allowance to apply for the fit out as the premises are no longer in use as a department store – which usage would have commanded a higher fit out allowance rate of 10%.

Finally, the Tribunal commends the Appellant's witness for his helpful evidence which assisted the Tribunal greatly in its deliberations.

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 €620,500.

Level	Use	Area (sq. m)	Rent (per sq. m.)	NAV
0	Supermarket	1,485.00	€260	€386,100
0	Store/Ancillary	491.00	€260	€127,660
0	Fit Out (supermarket)	1.0	7%	€35,963
1	Store/Ancillary	240.00	€120	€28,800
1	Fallow Area	399.35	€80	€31,948
	Off Licence			€10,000
			Total	€620,471
			NAV say	**€620,500**

And the Tribunal so determines.