

Appeal No: VA17/5/155

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

HICKSON SUPERMARKETS LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1207556, Retail (Shops) at Floors: 0,1, 9.10.11.12/A Bridge Street, Tullow, County Carlow.

B E F O R E

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Orla Coyne - Solicitor

Member

Eoin McDermott – FSCSI, FRICS, ACI Arb

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF DECEMBER, 2018**

1. THE APPEAL

1.1 By Notice of Appeal received on the 4th day of October, 2017 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 €138,600.

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

- The Valuation of the subject property is excessive and inequitable. The property’s value is not in line with its potential rental value.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €87,200.

2. REVALUATION HISTORY

2.1 On the 11th day of May, 2017 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 €138,600.

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 it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €138,600.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th day of May, 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 16th day of November, 2018. At the hearing the Appellant was represented by Mr David Halpin MSc (Real Estate), BA (Mod) and the Respondent was represented by Mr Terry Devlin BSc, MSCSI, MRICS 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.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The subject property comprises a supermarket premises located on the northern side of Bridge Street, close to the centre of Tullow. The premises originally comprised a standard high street shop and this has been significantly extended over the years. There is car parking to the

side and rear of the property. Stores and associated staff areas are located at first floor level. The River Slaney lies to the rear of the property.

4.3 The areas are agreed as follows: -

| Use | Area (M2) |
|--------------------------|------------------|
| Ground floor supermarket | 1,495.00 |
| First Floor | 544.00 |

4.4 The parties have agreed that the fit-out allowance shall equate to 3% of the Ground Floor supermarket NAV and that the off licence shall be valued at €10,000.

5. ISSUES

5.1 The issue that arises in this appeal is the quantum of value.

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 Mr. Halpin, on behalf of the Appellant, opened his evidence by describing the location and layout of the property, using photographs contained in his précis. Mr. Halpin noted that the property was not a modern purpose-built supermarket but had been extended on a piecemeal basis over the years. He also noted that the car park of the property had suffered from flooding in the past, most recently in 2010, and argued that a tenant would discount a rental bid to reflect the potential of future flooding.

Attention was drawn to the fact that there were three competing supermarkets each from a different large supermarket chain in Tullow and that a hypothetical tenant would factor this into their rental bid. Mr. Halpin also argued that a hypothetical tenant would not value the first-floor element of a supermarket property at the same level as the ground floor and noted that Carlow appeared to be the only county where the Respondent had adopted this approach. He drew attention to research that he had carried out across the country (contained in his evidence) that showed first floor levels of valuation (expressed as a percentage of ground floor valuation levels) on a number of counties across the country with the same valuation date as the subject. He drew particular attention to the rates per M2 applied in Kilkenny, where first floor space in supermarkets was valued at 50% - 57% of the level applied to ground floor space. Mr. Halpin pointed out that modern purpose-built supermarkets tended to be located at ground floor level only and noted that it was only older, converted properties such as the subject that had a first-floor element. Mr. Halpin argued that a first floor NAV of 50% of the ground floor level would be appropriate in this case.

7.2 Mr. Halpin put forward five NAV comparisons as follows: -

| No. | Property | Use | Area M2 | NAV/M2 | NAV |
|-----|----------------------------------------------------------------------------------------------------------|-------------------------------------------------|-----------------------------|----------------------------|-------------------------------------|
| 1 | Supervalue, Carlow Road, Bunclody (extrapolating December 2007 rent using Lisney Retail Rental Index) | Supermarket (GF) First Floor | | €46.25 €23.12 | |
| 2 | Supervalue, Bagenalstown | Supermarket (GF) Store (GF) Store (Bsmnt) | 1,415.00 656.30 10.80 | €60.00 €60.00 €45.00 | €84,900.00 €39,378.00 €486.00 |

| | | | | | |
|---|---------------|------------------|----------|--------|-------------------|
| | | Office (FF) | 468.70 | €60.00 | €28,122.00 |
| | | Additional Items | | | <u>€18,490.00</u> |
| | | | | | €171,376.00 |
| | | NAV | | | €171,300 |
| 3 | Lidl, Tullow | Supermarket (GF) | 1,065.00 | €70.00 | €74,550.00 |
| | | Store (GF) | 230.00 | €70.00 | €16,100.00 |
| | | Office (GF) | 50.00 | €70.00 | €3,500.00 |
| | | Additional Items | | | <u>€15,218.50</u> |
| | | | | | €109,368.50 |
| | | NAV | | | €109,300 |
| 4 | Aldi, Tullow | Supermarket (GF) | 905.00 | €70.00 | €63,350.00 |
| | | Store (GF) | 375.50 | €70.00 | €26,285.00 |
| | | Office (GF) | 70.92 | €70.00 | €4,964.40 |
| | | Additional Items | | | <u>€14,434.50</u> |
| | | | | | €109,033.90 |
| | | NAV | | | €109,000 |
| 5 | Tesco, Tullow | Supermarket (GF) | 1,718.20 | €70.00 | €120,274.00 |
| | | Store (GF) | 192.83 | €70.00 | €13,498.10 |
| | | Cold room | 217.80 | €70.00 | €15,246.00 |
| | | Office (GF) | 190.94 | €70.00 | €13,365.80 |
| | | Additional Items | | | <u>€18,419.00</u> |
| | | | | | €180,802.90 |
| | | NAV | - | | €180,800 |

It was accepted by all parties that there was a lack of market evidence of supermarket properties. Mr. Halpin noted that his comparisons 1, 2 and 4 were under appeal to the Tribunal. In relation to Comparison 1, Mr. Halpin noted that he was trying to analyse the sale price of the property to determine what rent a hypothetical tenant might pay. He also noted that the Respondent had valued the other supermarkets in Tullow at €70/M2, but that the subject was valued at €60/M2, and he accepted that there was little between this figure and his suggested

valuation of €55/M2. He pointed out that none of the comparisons suffered from flooding and suggested that this needed to be reflected in the final figure.

7.3 The Appellant sought an NAV of €98,600 made up as follows: -

| Use | Area M2 | NAV/M2 | NAV |
|--------------------|----------|---------|--------------------|
| Supermarket (GF) | 1,495.00 | €55.00 | €82,225.00 |
| Fitout | | 3.00% | €2,466.75 |
| Off licence | | | €10,000.00 |
| First Floor | 544.00 | €27.50 | <u>€14,960.00</u> |
| | | | €109,651.75 |
| Flooding allowance | | -10.00% | <u>-€10,965.18</u> |
| | | | €98,686.58 |
| NAV | | | €98,600 |

7.4 In response to cross-examination by the Respondent, Mr. Halpin accepted that the property had been extended by the supermarket owners and done to their specification. He accepted that the property comprised a modern good quality supermarket but argued that it was not of the same quality as the Aldi unit. He did not accept it was purpose-built as it had not been built from scratch, as, for example, the Aldi unit had been. He accepted the property had good parking to the side and rear but argued that it was not substantial. There was some debate as to whether the location of the property close to the town centre was an asset, with Mr Halpin believing the proximity to the town centre was diluted somewhat by the difficulty in accessing the property. There was further discussion as to the nature of the access that was available from Barrack Street and the level of competition in the town.

Dealing with cross-examination on the comparisons, Mr. Halpin accepted that there was no rent currently payable on comparison 1 and that the matter was currently under appeal to the Tribunal. He accepted that his analysis was subjective but argued that given the limited rental market evidence available, analysing a sale price could give the Tribunal an indication of where rental values could be. Mr. Halpin was surprised to be informed that his comparison 2 was not under appeal and noted that he had been told in a different hearing before a Valuation Tribunal that it was. He agreed that Bagenalstown was smaller than Tullow. He also agreed that the three remaining comparisons, all in Tullow, were valued at €70/M2 and noted that while the subject

property was valued at a lower rate of €60/M2, in his opinion a sufficient discount had not been applied.

The Respondent then queried why Mr. Halpin had not produced any hard evidence to justify his claim for a reduction due to flooding. It was noted that no photographs of the area showing flooding had been included, nor had a flood plain map showing the affected area. Mr. Halpin argued that videos of the flooding were available on-line but accepted that no photographs had been included with his evidence.

In response to cross-examination by the Tribunal, Mr. Halpin confirmed the historic rental figure of comparison 1 and dealt with further queries on the flooding issue.

8. RESPONDENT’S CASE

8.1 Mr. Devlin, on behalf of the Respondent, opened his evidence by describing the location and layout of the property, using photographs contained in his précis. He stated that the property was a good quality supermarket, well located with good access and car parking to the front and rear.

8.2 Mr. Devlin put forward two NAV comparisons as follows: -

| No. | Property | Use | Area M2 | NAV/M2 | NAV |
|-----|---------------|------------------|----------|--------|-------------------|
| 1 | Lidl, Tullow | Supermarket (GF) | 1,065.00 | €70.00 | €74,550.00 |
| | | Store (GF) | 230.00 | €70.00 | €16,100.00 |
| | | Office (GF) | 50.00 | €70.00 | €3,500.00 |
| | | Fit-out addition | | | €5,218.50 |
| | | Off Licence | | | <u>€10,000.00</u> |
| | | NAV | | | €109,368.50 |
| 2 | Tesco, Tullow | Supermarket (GF) | 1,718.20 | €70.00 | €120,274.00 |
| | | Store (GF) | 192.83 | €70.00 | €13,498.10 |
| | | Cold room | 217.80 | €70.00 | €15,246.00 |
| | | Office (GF) | 190.94 | €70.00 | €13,365.80 |
| | | Fit-out addition | | | €8,419.00 |

| | |
|-------------|-------------|
| Off Licence | €10,000.00 |
| | €180,802.90 |
| NAV | €180,800 |

Mr. Devlin noted that his comparisons had not been appealed and were at levels that exceeded those proposed for the subject property.

8.3 The Respondent sought an NAV of €135,000 made up as follows: -

| Use | Area M2 | NAV/M2 | NAV |
|-------------------|----------|--------|-------------------|
| Supermarket (GF) | 1,495.00 | €60.00 | €89,700.00 |
| First Floor Store | 544.00 | €60.00 | €32,640.00 |
| Fit-out | | 3.00% | €2,691.00 |
| Off licence | | | <u>€10,000.00</u> |
| | | | €135,031.00 |
| NAV | - | | €135,000 |

8.4 In response to cross-examination by the Appellant, Mr. Devlin accepted that there was no direct market evidence for supermarket properties in the Carlow area. He explained that the Respondent had considered all the retail market evidence available to it in arriving at its valuation for supermarkets in the area, concentrating mainly on high street shops and showrooms. When asked by the Appellant why none of this evidence was before the Tribunal to assist it with its deliberations, he noted that it was a valuation exercise and that he had set out the results of that exercise. He also noted that the result of that exercise was broadly in line with Mr. Halpin's opinion of rental values for such properties, although he accepted there were some differences.

Mr. Halpin queried why a hypothetical tenant would pay a rent of €135,000 for the subject property when he could rent the Respondent's comparison 1 for €109,000. Mr. Devlin noted that this was simply a function of the size of the respective properties and that comparison 1 was a smaller property valued at €70/M2.

When queried whether flood risk was something that would cause a tenant to discount a rental bid, Mr. Devlin noted that there were a number of variables involved in assessing any rental

bid. He accepted that it was possible if a property was located in a recognised flood plain but pointed out that no evidence had been put forward in this regard.

Mr. Halpin then asked what analysis had been used to determine that first floor space in supermarkets should be valued at the same level as ground floor space. Mr. Devlin replied that the approach was consistent across the county but agreed that there was no evidence to justify the approach.

In response to queries from the Valuation Tribunal, Mr. Devlin stated that he accepted Mr. Halpin's research into the varying approaches to first floor levels of supermarket properties. He was unable to explain why the decision was made to apply the same level to first floor space as for ground floor space in Carlow while a totally different approach had been taken in Kilkenny but argued that the approach had been consistently applied.

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 Carlow County Council.

10.2 The issue that arises in this appeal is the quantum of value.

10.3 The Appellant argued that the ground floor supermarket space should be valued at €55/M². The main evidence for this was a valuation analysis carried out on the sale price of a supermarket premises (Appellants comparison 1) where the purchaser was the existing tenant. The Tribunal does not accept that this provides sufficient grounds for reducing the Respondents valuation of €60/M² and notes that this is a lower figure than has been applied to modern, purpose-built supermarkets in the immediate locality. The Tribunal therefore finds the ground floor supermarket value of €60/M² as put forward by the Respondent is appropriate for the property.

10.4 The Appellant also argued that a 10% overall discount should be allowed for the proximity of the property to the River Slaney and the potential for flooding should it burst its banks. The Tribunal notes that no substantial evidence was put before it to suggest that the property is at risk of flooding and finds that no allowance should be made for this.

10.5. The Appellant queried why the first floor of the subject property was valued at the same rate as the ground floor supermarket. The Appellant is of the opinion that the appropriate rate should be 50% of the ground floor rate. The Tribunal notes that the Respondent could offer no evidence to justify its' approach and finds that the appropriate rate for the first-floor portion of the subject property should be valued at 50% of the ground floor rate.

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 €118,700.

| Use | Area M2 | NAV/M2 | NAV |
|-------------------|----------|--------|-------------------|
| Supermarket (GF) | 1,495.00 | €60.00 | €89,700.00 |
| First Floor Store | 544.00 | €30.00 | €16,320.00 |
| Fit-out | | 3.00% | €2,691.00 |
| Off licence | | | <u>€10,000.00</u> |
| | | | €118,711.00 |
| Say | - | | €118,700 |

And the Tribunal so determines.