

**Appeal No: VA17/5/089**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**D & M (CALLAN) SUPERMARKETS LTD**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 192489, Retail (Shops) at Floors: 0,1, 69,70,71,72 Green Street, Callan, County Kilkenny.

**B E F O R E**

**Stephen J. Byrne - BL**

**Deputy Chairperson**

**Mairead Hughes - Hotelier**

**Member**

**Kenneth Enright - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 16<sup>TH</sup> DAY OF JANUARY, 2020.**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 4<sup>th</sup> 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 €88,700.

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 as set by the Commissioner is not in line with its potential rental value.

- The subject property is assessed at the same level as supermarkets in Kilkenny City (€80/m<sup>2</sup>). Callan is a vastly inferior location for trading and would be unlikely to exceed €60/m<sup>2</sup> on the ground floor retail (with the 1<sup>st</sup> floor valued at 50% of this level.)
- The subject property is not in excess of 1,000m<sup>2</sup> and hence does not qualify for fitout allowance.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €64,000.

## **2. REVALUATION HISTORY**

2.1 On the 11<sup>th</sup> 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 €90,600.

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 of the Property was reduced €88,700.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September 2017 stating a valuation of €88,700.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> day of October 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 30<sup>th</sup> day of July 2018. At the hearing the Appellant was represented by Mr. Eamonn Halpin BSc (Surveying), MSCSI, MRICS of Eamonn Halpin & Co Limited and the Respondent was represented by Mr. Terry Devlin BSc, MSCSI, MRICS.

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 is a purpose-built Supervalu supermarket with off-licence, constructed in the 1990s with some developments since. It has an onsite carpark to the side and rear.

4.3 The floor areas are agreed as follows:

<b>Accommodation</b>	<b>Area m<sup>2</sup></b>
Supermarket	791.03
Store (1 <sup>st</sup> floor)	275.42

#### **5. ISSUES**

5.1 The sole issue arising concerns the level of value to be applied to the Property.

#### **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 expected to let from year to year, on the assumption that the probable average 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 for the Appellant described the property as a supermarket located in the centre of Callan, a town with a population of 2,330 (in 2011). He said it was a modern building that had evolved over the years with more basic attributes to the rear, a type of premises not uncommon in country locations.
- 7.2 Mr. Halpin identified the lack of rental evidence as a difficulty. There was no evidence before the Tribunal of open market transactions involving supermarkets in county Kilkenny. In the absence of such evidence, he felt that the assessment of the appropriate level was an exercise in relativity, by reference to other similar properties on the valuation list.
- 7.3 In Mr. Halpin’s view, the retail profile of Callan was poor. The subject property was the only property on the main street that did any significant business.
- 7.4 Callan is located, Mr. Halpin said, between 12 to 15 kilometres from Kilkenny city. He said Callan had become a dormitory town for Kilkenny and that the relative proximity of the city drew potential customers away from Callan.
- 7.5 Mr. Halpin presented a table showing the 9 counties subject to the 2017 Revaluation (all with the same valuation date as the subject property of 31 October 2015) and stated that in all of the counties with the exception of Kilkenny, standalone supermarket properties in the prime population centre were valued at a premium on those in the secondary population centres. In Sligo, for example, properties in the prime location were valued at €80/m<sup>2</sup> and those in secondary locations at €60/m<sup>2</sup>. In Roscommon, the differential was €5; €70 in Roscommon town and €65 elsewhere. Mr. Halpin argued that in a county such as Kilkenny, where the population clustered around the city, one would expect a greater differential than in a county like Roscommon where, he said, the population was more evenly spread. It was put to Mr. Halpin in cross-examination and accepted by him that a differential did in fact apply to county Kilkenny and that

there were supermarket properties in secondary locations outside Kilkenny city that were valued at €70.

- 7.6 Mr Halpin introduced 10 properties as comparisons, all of which are listed in Appendix One. Comparison 1 was valued in terms of Zone A (at €160/m<sup>2</sup> Zone A) rather than on an overall basis and Comparison 2 was a retail showroom with ancillary accommodation. Mr. Halpin, in circumstances where there was no rental evidence, put forward comparison 9, a supermarket property located outside the area of the relevant rating authority, as a “context comparison” with a notional rent extrapolated, somewhat speculatively, from its purchase price in 2017. The Appellant’s comparisons which the Tribunal found most useful in coming to its decision, all supermarket properties located in county Kilkenny, are mentioned hereunder.
- 7.7 In his evidence, Mr. Halpin referred to Comparison 3, the only other supermarket in Callan, an Aldi on West Street with full corner profile on a site with 100 car spaces to the front, and stated that if a hypothetical tenant wished to acquire a supermarket in Callan, the Aldi premises would be the preferred option. The tenant would pay more for the Aldi due to its superior type, fit-out, location and profile. Hence, Mr. Halpin argued, the subject property should have a lower NAV. The Aldi was valued at €80/m<sup>2</sup> by the Respondent but is subject to appeal.
- 7.8 Comparison 4 is a former SuperValu in Thomastown, valued at €70/m<sup>2</sup>. The property is of a size and style similar to the subject property. Mr. Halpin stated that it closed in 2006 following the construction of a new purpose-built unit on a greenfield site at the edge of the town. Mr. Halpin argued that SuperValu’s decision not to re-develop the existing site was an indication of the general lack of interest in town centre supermarkets.
- 7.9 Mr. Halpin’s Comparisons 5, 6, 7 and 8 were all modern, purpose-built supermarkets, a EUROSPAR, an Aldi and two Lidl stores, located in or about Kilkenny city. All of them were, he argued, superior or “vastly superior” to the subject property.
- 7.10 Comparison 10 put forward by Mr. Halpin was Ken Black Toys, a retail warehouse in Kilkenny Retail Park, located on the N10 ring road with 750 onsite car park spaces. Mr.

Halpin accepted that retail warehouse units are generally inferior to supermarket premises but argued that given the fact there is only one such retail park in Kilkenny that this property would be more valuable than supermarket accommodation in secondary towns like Callan.

7.11 Mr. Halpin also referred to the comparisons put forward by Mr Devlin in his Précis. He noted that supermarkets in Castlecomer, Mooncoin, Thomastown and Urlingford, the Respondent's comparisons 1, 2, 3 and 4, were valued at €70/m<sup>2</sup>. He said that if the Tribunal felt the Appellant was wrong in his view that €60/m<sup>2</sup> was the appropriate rate then these comparisons should guide it towards an assessment at the level of €70/m<sup>2</sup>.

7.12 In cross-examining Mr. Halpin, Mr. Devlin referred to these comparisons and put it to Mr. Halpin that Callan was a larger town than any of Castlecomer, Mooncoin, Thomastown or Urlingford. Mr. Halpin said that the population of Thomastown at 2,273 was not that different from Callan. He said that the supermarket in Urlingford, unlike the subject property, did not have to compete with an Aldi up the road. Mr Halpin acknowledged that the subject property was somewhat better located within Callan than its counterpart was in Thomastown.

7.13 The Appellant sought an NAV of €64,000 on the following basis:

Level	Use	Area/m <sup>2</sup>	NAV €/m <sup>2</sup>	NAV €
0	Supermarket	791.03	60.00	47,462
1	Store	275.42	30.00	8,263
	Off-licence		15%	8,359

## 8. RESPONDENT'S CASE

8.1 Mr. Devlin stated that Callan was, outside of Kilkenny city, the largest town in the county and that the subject property was well-located within it. To have a car park in the middle of the town was, he said, a significant benefit.

8.2 There were, said Mr Devlin, 9 other similar supermarkets in the area of the relevant rating authority, valued between €70 and €80/m<sup>2</sup>. Four of these were accepted at a value

of €70/m<sup>2</sup> and the other five were appealed. Four of the five appeals concerned properties valued at €80/m<sup>2</sup>. He noted that all of the supermarkets outside of Kilkenny city were either valued at €70/m<sup>2</sup> or had been appealed.

8.3 Mr Devlin acknowledged the paucity of rental evidence which he said was not unusual in such cases as this type of store was usually owner occupied.

8.4 Mr Devlin had four comparisons, as follows:

Comparison 1 was a EUROSPAR in Castlecomer, a town with a population much smaller than Callan, at 1,456.

Comparison 2 was a Centra in Mooncoin, a town with a population smaller still, at 1,166.

Comparison 3 (identical to the Appellant's comparison 4) was a vacant property in Thomastown. This premises, in Mr. Devlin's view, did not have a great profile compared to the subject property.

Comparison 4 was a vacant property in Urlingford, population 970. The subject property was obviously located in a significantly larger town and, unlike the Urlingford property, had the advantage of onsite parking.

8.5 The NAV of all four properties was determined at €70/m<sup>2</sup>.

8.6 In cross-examination Mr. Devlin accepted that the property had stores on the first floor and that this was unusual.

8.7 Mr. Devlin sought confirmation of the NAV of €84,200 on the following basis:

Level	Use	Area/m <sup>2</sup>	NAV €/m <sup>2</sup>	NAV €
0	Supermarket	791.03	80.00	63,282.40
1	Store	275.42	40.00	11,016.80

	Off-licence			10,000
--	-------------	--	--	--------

## 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 Kilkenny.
- 10.2 In circumstances where first hand market information and rental evidence is virtually non-existent and, moreover, where quite a number of valuations of similar properties in the list are under appeal, the Tribunal must have regard to valuations that have been accepted by occupiers and endeavour to identify the subject property's place within the emerging tone of the list.
- 10.3 It is clear from the comparisons that the upper end of the value for supermarket premises in Kilkenny is €80/m<sup>2</sup>. This level has been applied to the supermarkets in Kilkenny city brought forward by Mr. Halpin in his Précis and oral evidence, as well as to the supermarket located closest to the subject property, the Aldi in Callan, the valuation of which, the Tribunal notes, is under appeal. Given their city location, the Appellant's comparisons 5 (the EUROSPAR), 6 (the Waterford Road Lidl), 7 (the Hebron Road Aldi), and 8 (the Johnswell Road Lidl) are all much better situated than the subject property. Moreover, it is clear from the evidence presented, including the photographic evidence, that comparisons 6, 7 and 8 are more modern, more fit for purpose and have a more impressive profile than the subject property.
- 10.4 The Tribunal notes that the four comparisons brought forward by the Respondent are all located outside of Kilkenny city, in secondary population centres, as Mr. Halpin puts it, and that all of these properties, valued at €70/m<sup>2</sup>, are quite similar to the subject property in terms of size, profile and building style. While Castlecomer, Mooncoin and Urlingford are smaller towns than Callan, Thomastown is of similar size and it is the Tribunal's view that the retail environment in all four towns is much closer to that of

Callan than it is to the rather more vibrant scene in and around Kilkenny city. Any marginal advantages that the subject property might have on these four properties in terms of profile, car-parking or local population would likely be offset by the presence of the nearby Aldi.

10.5 It is the Tribunal’s view that, given the subject property’s similarities in terms of size, type, location and specification to the four properties referred to in paragraph 10.4 above, the appropriate NAV is to be set at the same level as those properties, €70/m<sup>2</sup> for the supermarket and, consequently, €35/m<sup>2</sup> for the stores.

10.6 The off-licence element is 15% of the NAV up to a maximum of €10,000.

10.7 The Tribunal notes that while a fit-out allowance was applied to the property on the Valuation Certificate, the Respondent did not seek for it to be applied at the hearing of the appeal.

**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 **€74,760**.

<b>Level</b>	<b>Use</b>	<b>Area m<sup>2</sup></b>	<b>€/m<sup>2</sup></b>	<b>NAV €</b>
0	Supermarket	791.03	70	55,372.10
1	Store	275.42	35	9,639.70
			<i>SUB-TOTAL</i>	65,011.80
	Off-licence		<i>ADD 15%</i>	9,751.77
			<b>TOTAL</b>	74,763.57
			<b>SAY</b>	<b>€74,760</b>

And the Tribunal so determines.