

Appeal No: VA17/5/568

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

FRINGEGLADE LTD.

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 220145, Retail (Shops) at Local No/Map Ref:29B, Cloghabrody, Thomastown, County Kilkenny.

B E F O R E

Eoin McDermott – FSCSI, FRICS, ACI Arb

Deputy Chairperson

Barra McCabe – BL, MRICS, MSCSI

Member

Fergus Keogh – MSCSI, MRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF FEBRUARY, 2020

1. THE APPEAL

1.1 By Notice of Appeal received on the 25th September 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 €168,700.

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:

1. *“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.*

2. *The subject property is assessed at the same level as supermarkets in Kilkenny City (€80/m²). Thomastown is a vastly inferior location for trading and would be unlikely to exceed €60/m² on the ground floor retail (with the 1st floor valued at 50% of this level).*
3. *The subject property's 1st floor measurement is over-stated.*
4. *The goods intake should not form part of the supermarket retail valuation as it is an unfitted basis structure.*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €118,800.

2. REVALUATION HISTORY

2.1 On the 11th 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 €168,100.

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 increased to €168,700.

2.3 A Final Valuation Certificate issued on the 7th September 2017 stating a valuation of €168,700.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th 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 14th January 2020. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Mr. Terry Devlin B.Sc., 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. At the commencement of the hearing the parties confirmed agreed areas.

4. ISSUES

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

5. RELEVANT STATUTORY PROVISIONS:

5.1 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.”

5.2 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. APPELLANT’S CASE

6.1 Mr. Halpin, on behalf of the Appellant, opened his evidence by noting that the subject was one of 10 supermarket properties located outside of Kilkenny City and that 5 were under appeal. He pointed to the decision of the Tribunal in the Ballyragget case (VA17/5/277) and argued that this set the Tone for such properties, especially in the absence of any rental evidence.

Mr. Halpin described the location and layout of the property. He described it as a modern purpose-built unit with parking to the front. He noted that there were two other units in the scheme, a pharmacy and a vacant unit. It was noted that the vacant unit had never been let and it was argued that this raised questions on the desirability of the location. It was also noted that Lidl had a store close by.

The lack of rental evidence was identified 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, Mr. Halpin was of the opinion that the assessment of the appropriate NAV was an exercise in relativity, by reference to other similar properties on the valuation list.

Mr. Halpin noted that the Respondent had valued virtually all modern supermarket property in the Local Authority area at €80/M2. He contrasted the population of Thomastown, at under 2,500, with that of Kilkenny City (c. 26,000) and argued that the population difference was significant enough to warrant a reduced rental value. He presented a table of the 9 counties subject to the 2017 Revaluation (all with the same valuation date as the subject property of 31 October 2015) and showing the various rate/M2 applied to differing towns, and the populations of those towns. It was noted that the rate/M2 sought by the Respondent would put Thomastown at the same level as county towns such as Kilkenny (26,000), Carlow (population 24,272), Sligo (19,199) and above such large towns as Athlone (21,349) and Mullingar (20,928).

6.2 Mr. Halpin put forward 8 supermarket NAV comparisons for the Tribunals attention.

No.	Location	Supermarket area M2	Supermarket NAV/M2
1	Former SuperValu, Thomastown	712.40	€70
2	SuperValu, Ballyragget	674.80	€60
3	Eurospar, Kilkenny	1,080.00	€80
4	Lidl, Waterford Rd, Kilkenny	1,328.15	€80
5	Aldi, Hebron Rd, Kilkenny	1,125.00	€80
6	Lidl, Johnswell Road, Kilkenny	1,326.32	€80
7	SuperValu, Bunclody, Carlow	1,379.59	€50
8	SuperValu, Tullow, Carlow	1,495.00	€60

Comparison 1 is the former SuperValu in Thomastown, closed and vacant since the opening of the subject property.

Comparison 2 is to date, the only published decision by the Tribunal relating to a supermarket located outside Kilkenny City. The Tribunal ruled that the NAV of the supermarket should be reduced from €70/M2 to €60/M2.

Comparisons 3-6 are all modern, purpose-built supermarkets being a Eurospar, an Aldi and two Lidl stores each located in or about Kilkenny city. All of them, it was argued, are superior to the subject property.

Comparisons 7 and 8 are located in Carlow and were valued as at the same date and using the same schematic as the subject.

6.3 The Appellant sought an NAV of €122,600 made up as follows: -

Use	Area M2	NAV/M2	NAV
Supermarket (GF)	1,485.90	€60.00	€89,154.00
Fitout		7.00%	€6,274.00
Off licence			€10,000.00
Store/Office (FF)	558.24	€30.00	<u>€16,747.20</u>
			€122,175.20
NAV			€122,000.00

6.4 In response to cross-examination by the Respondent, Mr. Halpin accepted that the location of the property could be described as good and that it benefitted from good car parking. He accepted that the property in Comparison 1 had poorer parking than the subject property. He would not agree that the subject enjoyed a better location than Comparison 1, which he noted had been vacant for a decade.

He accepted that Thomastown was larger than Ballyragget (population 1,082) but noted that Comparison 2 was the only supermarket in the town. He accepted that Comparison 2 had limited parking. He accepted the Respondents contention that Comparisons 3-6 were located in and around Kilkenny City and were therefore not “like for like” comparisons. He accepted that Comparisons 7 and 8 were located in a different Local Authority area but argued they were valued under the same schematic.

Finally, he noted that his opinion of value of €60/M2 predated the Tribunal decision in Ballyragget.

6.5 In response to queries from the Tribunal, Mr. Halpin confirmed that Thomastown was the second largest town in Kilkenny.

7. RESPONDENT'S CASE

7.1 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 car parking. 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.

It was noted that there were 9 other similar supermarkets in the area of the relevant rating authority, valued between €70 and €80/m2. Four of these were accepted at a value of €70/m2 and the other five were appealed. Four of the five appeals concerned properties valued at €80/m2.

7.2 Mr. Devlin put forward 4 supermarket NAV comparisons for the Tribunals attention.

No.	Location	Population	Supermarket area M2	Supermarket NAV/M2
1	Former SuperValu, Thomastown		712.40	€70
2	Centra, Mooncoin	1,166	651.85	€70
3	Eurospar, Castlecomer	1,456	752.90	€70
4	Vacant, Urlingford		365.00	€70

7.3 The Respondent sought an NAV of €159,500 made up as follows: -

Use	Area M2	NAV/M2	NAV
Supermarket (GF)	1,485.90	€80.00	€118,872.00
Fitout		7.00%	€8,321.00
Off licence			€10,000.00

Store/Office (FF)	558.24	€40.00	<u>€22,329.60</u>
			€159,522.60
NAV			€159,500.00

7.4 In response to cross-examination by the Appellant, Mr. Devlin agreed that a schematic had been prepared in the absence of relevant rental evidence. He disagreed that it was the same schematic as was used in Carlow, saying that each had been done on their own merits.

He accepted that his submission had made no reference to the Tribunal decision in Ballyragget but noted that it was substantially smaller than the subject property and was located in a smaller town. When asked by Mr. Halpin if the Respondent should not take account of Tribunal decisions when considering subsequent cases, he replied that each case had to be considered on its own merits.

Finally, he accepted that both his comparisons 1 and 4 had been vacant and boarded up at the date of valuation but did not accept that that was why no objection had been made to the valuations put on them.

7.5 In response to queries from the Tribunal, Mr. Devlin was unsure whether there was full relief from rates for vacant properties in Kilkenny. He confirmed that the Lidl property in Thomastown was of a similar size and had a similar valuation to the subject, but was under appeal. He was asked why the valuation appeared to take no account of the likely catchment areas of the respective units but noted that while certain towns might have a larger population, there was generally more competition in these areas.

8. SUBMISSIONS

8.1 There were no legal submissions.

9. FACTS

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

9.2 The subject property is a purpose-built Supervalu supermarket with off-licence, constructed c. 2007. It has an onsite carpark to the front.

9.3 The floor areas are agreed as follows:

Accommodation	Area m2
Supermarket	1,485.90
Store/Office (1 st floor)	558.24

9.4 The fit-out allowance shall equate to 7% of the Ground Floor supermarket NAV and that the off licence shall be valued at €10,000. The first floor shall be valued at 50% of the ground floor supermarket rate.

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/m². This level has been applied to the supermarkets in Kilkenny city brought forward by Mr Halpin in his precis and evidence, as well as to the supermarket located closest to the subject property, the Lidl in Thomastown, the valuation of which, the Tribunal notes, is under appeal.

Given their city location, the Appellant's comparisons 3 (the Eurospar), 4 (the Waterford Road Lidl), 5 (the Hebron Road Aldi), and 6 (the Johnswell Road Lidl) are all much better situated 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 and that all are valued at €70/m². While Castlecomer, Mooncoin and Urlingford are smaller towns than Thomastown, it is the Tribunal's view that

the retail environment in all three towns is much closer to that of Thomastown 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 Lidl. The Tribunal also notes that two of the Respondents comparisons were vacant at the valuation date.

10.5 The Tribunal notes the decision reached in VA 17/5/287 (the Ballyragget case) but considers that this must be differentiated from the current case by the differences in unit size, parking and catchment area. The Tribunal also notes that the Ballyragget property was originally valued at €70/m².

10.6 It is the Tribunal's view that the location of the subject property has more in common with the four properties referred to in paragraph 10.4 than to Kilkenny city. Therefore, the appropriate NAV is to be set at the same level as those properties, €70/m² for the supermarket and, consequently, €35/m² for the stores.

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 **€140,800**

Use	Area M2	NAV/M2	NAV
Supermarket (GF)	1,485.90	€70.00	€104,013.00
Fitout		7.00%	€7,280.91
Off licence			€10,000.00
Store/Office (FF)	558.24	€35.00	<u>€19,538.40</u>
			€140,832.31
NAV			€140,800.00

And the Tribunal so determines.