

Landlord and tenants disputes: anchor tenant trouble

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US private equity fund Oaktree has completed its acquisition of the Square Shopping Centre in Tallaght, Dublin, [reports Irish newspaper The Irish Independent](#).

At €250 million, the transaction represents one of the largest retail deals to have taken place in Ireland and is likely to be Nama's final disposal of a major single asset. Prior to offering the Square for sale, Nama acquired and amalgamated various borrower's interests in the scheme, putting it in a position to sell over 90% of the its units and 100% of its redevelopment potential.

Oaktree's acquisition gives it control of 118 of the Square's 160 shop units, a cinema and more than 2,400 car spaces.

The car park at the Square has been at the centre of a bitter Court case between Nama and one of the Square's anchor tenants, Dunnes Stores, for the last number of years.

In 2014 planning permission was granted for a €40 million extension totalling 200,000 sq. ft to the Centre. The project also included a multi-storey car park over six levels that would have more than 800 car parking spaces.

In challenging the permission, Dunnes claimed that, apart from the inconvenience that would be caused to its shoppers from being forced to travel further as a result of the extension layout, that the tenant had acquired certain rights to the car park by virtue of "easement by prescription" (long use) which allowed the supermarket to use the car park without having to own the property

Dunnes appealed the planning permission to An Bord Pleanala in September 2014 but failed in their quest. Not one to step down quietly, Dunnes then issued judicial review proceedings against the Bord in November of that year. Unsurprisingly the retailer was unsuccessful in its the High Court proceedings

Fed up with continued attempts by Dunnes to frustrate the development, Nama sought declarations from the High Court declaring that Dunnes has no estate, interest or claim over the car park.

In March 2017 Mr Justice Barrett found in favour of Nama and confirmed that the anchor's lease for the Centre entitled the Landlord to carry out development on the car park and Dunnes did not enjoy an irrevocable right for its customers to park there. The Court held that Dunnes did not have an easement of right of way over the car park area either.

Dunnes appealed the decision of the High Court however it was upheld by the Court of Appeal in October 2017.

With the Dunnes litigation now out of the way the path was clear for the sale of the last of the five major M50 retail schemes to have changed hands since the crash.

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