

Appeal No. VA11/4/023

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001**

Forever 21 Fashion Ireland Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 1040210, Department Store at Unit 19, Jervis Centre, North City, North City 2A, Dublin, County Borough of Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Frank O'Donnell - FRICS, B Agr Sc, MIREF

Member

James Browne - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF JUNE, 2012**

By Notice of Appeal dated the 22nd day of December, 2011, the appellant appealed against the determination in fixing a rateable valuation of €5,717 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are as follows:

"The valuation is excessive having regard to the tone of the list established in the centre."

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 13th day of April, 2012. At the hearing, the appellant was represented by Mr. Declan Bagnall, MRICS, MSCS. The respondent was represented by Mr. Sean Donnellan, BSc (Hons) Property Valuation & Management, Assoc SCSI, a valuer with the Valuation Office. Both parties, having taken the oath, adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered and additional evidence received orally at the hearing, the following emerged as being the facts relevant and material to the appeal.

At Issue

Quantum.

The Property Concerned

The property concerned is a department store within the Jervis Street Shopping Centre which first opened in late 1996. The centre is located within that section of Mary Street between Liffey Street and Jervis Street and immediately adjoins the Marks and Spencer store on Mary Street, which store can also be accessed directly from within the centre.

The Jervis Street Shopping Centre provides malls at ground and first floor levels and off-street car parking for 750 vehicles accessed from Jervis Street. When the centre first opened one of the major anchor tenants was Debenhams which in due course transferred their operation to the former Roches Store premises on Henry Street. The subject property, which trades as Forever 21, occupies the major portion of the space previously occupied by Debenhams.

The Forever 21 premises has frontage onto Mary Street and may also be accessed from within the centre at ground and first floor mall levels. Within the store, retailing space is provided at three levels with additional storage and office accommodation overhead. Internal movement within the store is by means of escalators and staircases. It is agreed that the store is fitted out to a high standard and provides excellent modern retailing accommodation.

Accommodation and Areas

The area of the store for rating valuation purposes has been agreed as follows:

Ground Floor Retail	1,130 sq. metres
Upper Ground Floor Retail	2,238 sq. metres

Mall Level Retail	2,210 sq. metres
Top Floor (3 rd), Stores and Office	928 sq. metres
Total Area	6,506 sq. metres
Frontage to Mary Street	22 metres

Tenure

The subject property is held under the terms and conditions of a 20 year lease from the 1st September, 2010, at an initial yearly rent of €2,750,000 subject to rent reviews at five-yearly intervals.

Rating History

On the 30th March, 2011 a valuation certificate was issued to the effect that it was proposed to value the property concerned in the sum of €5,805 arising out of a revision of valuation carried out in accordance with Section 28 of the Valuation Act, 2001. No representations were received in respect of this proposal and accordingly on the 6th May 2011 a valuation certificate in final form was issued. Following an appeal to the Commissioner of Valuation in accordance with Section 30 of the Act, the valuation of the property concerned was reduced to €5,717. The appellant, being dissatisfied with the determination of the Commissioner, lodged a further appeal with this Tribunal in accordance with Section 34 of the Act.

The only issue in dispute is the quantum of the valuation determined by the Commissioner of Valuation in accordance with Section 49(1) of the Valuation Act, 2001.

Summary of Evidence

The Appellant's Evidence

Mr. Bagnall, having taken the oath, adopted his written précis which had previously been received by the Tribunal and the respondent as being his evidence-in-chief. In his evidence Mr. Bagnall said that, in arriving at his opinion of the net annual value (NAV) of the subject property, he had regard to Section 49(1) of the 2001 Act, which stipulates that the valuation of the property concerned is to be made by reference to the values of other similar properties appearing on the valuation list, i.e. by having regard to the tone of the list. In this regard Mr. Bagnall said the most relevant comparison was the valuation of the original Debenhams premises of which the subject property formed a major part of and which was initially valued as set out below:

Ground Floor Retail	1,548.92 sq. metres @ €286.85 per sq. metre
Basement Retail	2,938.98 sq. metres @ €95.62 per sq. metre
Ground Floor Upper Retail	2,066.47 sq. metres @ €95.62 per sq. metre
First Floor Retail	1,515.20 sq. metres @ €81.96 per sq. metre
Top Floor (3 rd) Office/Store	420.74 sq. metres @ €54.64 per sq. metre

Taking into account that the subject property had a greatly reduced frontage onto Mary Street and the main mall from the Mary Street entrance, together with the reconfigured nature of the store, Mr Bagnall said that he felt a downward allowance of 5% was warranted in relation to the ground floor retail space. Having regard to the fact that the ground floor retail space was reduced by approximately a third, Mr. Bagnall said he felt an upward adjustment of 2.5% was reasonable. Taking these two factors into account, Mr. Bagnall said he arrived at his figure of €280 per sq. metre for the ground floor retail space. No adjustment, Mr. Bagnall said, was necessary in regard to the retail space at upper ground floor level. However, having regard to the fact that the first floor retail area was almost 50% greater than that in the Debenhams store, he decided that a small reduction was necessary, i.e. from €81.96 per sq. metre to €80 per sq. metre.

Having carried out this exercise, Mr. Bagnall said he had examined the assessments of other large stores in the immediate vicinity such as Penneys and Marks and Spencer on Mary Street and Dunnes Stores and Debenhams (formerly Roches) on Henry Street, and was satisfied that the valuation put forward by him in regard to the property concerned was fair and reasonable, taking into account the comparative size and location of these other stores. In this regard Mr. Bagnall said that it was clear that Henry Street was recognised as a better trading location than Mary Street by virtue of the fact that both Dunnes and Debenhams were valued at €27.83 per sq. metre as compared to Penneys valued at €273 per sq. metre and Marks and Spencer at €287 per sq. metre. In the circumstances, he stated, the respondent was incorrect in valuing the ground floor retail space of the subject property at €27 per sq. metre, when it was clear that the established tone for large stores on Mary Street was in the range of €273 per sq. metre (Penneys) and €287 per sq. metre (Marks and Spencer).

In the event, Mr. Bagnall put forward his opinion of NAV as follows:

Ground Floor Retail	1,130 sq. metres @ €280 per sq. metre = €16,400
Upper Ground Floor Retail	2,238 sq. metres @ €95.62 per sq. metre = €213,998

1 st Floor Mall	2,210 sq. metres @ €80 per sq. metre	= €176,800
Top Floor Store/Offices	928 sq. metres @ €54.64 per sq. metre	= €50,706
	Total NAV	= €757,904
Fraction 0.63%		
RV €4,773.80		
Say €4,775		

In support of his opinion of NAV Mr. Bagnall introduced six comparisons, details of which are contained in Appendix 1 to this judgment.

Under cross-examination Mr. Bagnall agreed that the property concerned occupied a prime retail location, but stressed that Henry Street was recognised as being the best retailing street in the north Dublin city centre area. In his opinion, Mr. Bagnall said, the tone of the list in relation to department stores recognised that Henry Street was a better trading location than Mary Street.

The Respondent's Evidence

Mr. Donnellan, having taken the oath, adopted his written précis and valuation which had previously been received by the Tribunal and the appellant as being his evidence-in-chief. In his evidence, Mr. Donnellan estimated the NAV of the property concerned in accordance with Section 49(1) of the Valuation Act, 2001 as set out below:

Department Store (ground floor)	1,130 sq. metres @ €327.83 per sq. metre	= €370,447.90
Dept. Store (ground floor upper)	2,238 sq. metres @ €109.34 per sq. metre	= €244,702.92
Dept. Store (first floor)	2,210 sq. metres @ €109.34 per sq. metre	= €241,641.40
Office and Stores (second floor)	928 sq. metres @ €54.64 per sq. metre	= €50,705.92
Total NAV		= €907,498.14
RV: €907,498.14 @ 0.63% = €5,717.24		
Say, €5,717		

In support of his opinion of NAV, Mr. Donnellan introduced three comparisons details of which are contained at Appendix 2 attached to this judgment. In this Appendix there is also an analysis of the subject property and the three comparisons referred to previously.

Mr. Donnellan in his evidence said that, in arriving at his opinion of NAV, he had regard to the fact that the subject property was considerably smaller than the original Debenhams premises and was significantly different in configuration. The original premises had a ground floor retail area of 1,548.92 sq. metres, whilst the property concerned had a ground floor area of 1,130 sq. metres and no basement retail space. These were factors, Mr. Donnellan said, that must be taken into account when valuing the property concerned. Furthermore, all of the comparisons were considerably larger than the property concerned and Penneys in particular, which was almost opposite to the property concerned, had a ground floor retailing space of 3,136 sq. metres and was a standalone store without the added benefit of being part of a major shopping centre. This, Mr. Donnellan said, was an important consideration which must be taken into account when arriving at the valuation of the property concerned.

Findings

The Tribunal has carefully considered all the evidence and submissions made by both parties and finds as follows:

1. This appeal arises out of a request for a revision of valuation occasioned by the subdivision of the original Debenhams department store. The basis of valuation for a revision of valuation is contained in section 49(1) of the Valuation Act, 2001 which provides as follows:

“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.”

2. It is common case that the subject property is a department store in the Jervis Street Shopping Centre which is located in the prime retail area of north Dublin city centre.
3. The subject property has the benefit of direct access from Mary Street in addition to access from each of the two mall levels within the centre. This is a characteristic enjoyed by Marks and Spencer and similarly also enjoyed by Dunnes Stores and Debenhams premises on Henry Street, both of which have access to the ILAC Shopping Centre mall as well as Henry Street.

4. The Tribunal accepts Mr. Bagnall's evidence that Henry Street is considered to be a better trading location than Mary Street and would attract higher levels of rent.

5. Both valuers, in arriving at their respective opinions of NAV, first had regard to the original assessment of the Debenhams store, of which part is now the property concerned. Both valuers also had regard to the valuation of other department stores in the immediate vicinity, i.e. Penneys and Marks and Spencer on Mary Street (Mr. Bagnall) and Dunnes Stores and Debenhams (formerly Roches Stores) on Henry Street (Mr. Donnellan). On balance, the Tribunal attaches most weight to the comparisons introduced by Mr. Bagnall by virtue of the fact that they are both located on Mary Street and in particular the Marks and Spencer premises which can also be accessed from within the Jervis Street Shopping Centre. However, these stores are considerably larger than the property concerned and hence some adjustment to the rate per sq. metre applicable to the retail space at ground floor level must be made. Minor adjustments must also be made to the retail space at upper ground floor level and second floor level.

Determination

Having regard to the foregoing, the Tribunal determines the NAV of the property concerned to be as follows:

Ground Floor Retail	1,130 sq. metres	@ €300 per sq. metre	= €39,000
Upper Ground Floor Retail	2,238 sq. metres	@ €100 per sq. metre	= €223,800
First Floor Retail	2,210 sq. metres	@ €85 per sq. metre	= €187,850
Top Floor Stores & Offices	928 sq. metres	@ €4.64 per sq. metre	<u>= €50,706</u>
NAV			€801,356
RV @ 0.63%	= €048.54		
Say €,048			

And the Tribunal so determines.