

Appeal No. VA07/3/037

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

**H & M Hennes Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Lot No. Unit 22.23.47, Whitewater Shopping Centre, Moorefield, Droichead Nua Urban, Naas 1, County Kildare

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Leonie Reynolds - Barrister**

**Member**

**Patrick Riney - FSCS FRICS FIAVI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 18TH DAY OF JANUARY, 2008**

By Notice of Appeal received on the 27th day of July, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,257.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"In our opinion the RV is excessive and inequitable."

1. This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 31<sup>st</sup> day of October, 2007.

At the hearing the appellant was represented by Mr. David Potter, a Director and joint head of the Retail Department in Savills Hamilton Osborne King. Mr. Ian Power, BSc (Property Management and Valuation), MIAVI, a District Valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation.

### **The Property Concerned**

2. The property concerned is a large retail unit with mezzanine space at first floor level in Whitewater Shopping Centre. This development is located in Newbridge, Co. Kildare just off Edward Street, the principal retailing street in the town.
3. Whitewater Shopping Centre is a four storey mixed development scheme with shopping malls at ground and first floor levels and parking for 1,700 cars at basement level and adjoining multi-storey car-park. The retail areas laid out on a conventional “dumb-bell” design with large anchor units at each end of the malls with unit shops in between. There are two entrances at ground floor level and there is also access from the multi-storey car-park at first floor level. There is internal access for the property between the malls by means of escalators, lifts and stairwells. Public toilets and baby changing facilities are at first floor level.
4. The property concerned in this appeal is a two-storey retail unit with mezzanine space at the rear of the first floor. There is pedestrian access to the store at each mall level and internally between the two sales floors.

### **Accommodation**

5. The accommodation measured on a gross internal area basis is as follows:

Ground Floor Retail	515.97 sq. metres
First Floor Retail	920.80 sq. metres
Mezzanine (Stores/Canteen/Offices)	256.26 sq. metres

### **Tenure**

6. The subject property is occupied under lease for a term of 25 years from April, 2006 at an initial yearly rent of €575,000 per annum, subject to review at five yearly intervals.

### **Rating History**

- The property concerned was one of 52 retail units in this centre valued at revision in December, 2006 when its rateable valuation was assessed at €1,317.00. On foot of an appeal to the Commissioner of Valuation this assessment was reduced to €1,257.00 and it is against this assessment that the appeal to this Tribunal lies.

### **The Appellant's Evidence**

- At the hearing, Mr. Potter adopted as his evidence-in-chief a written précis and valuation which had previously been received by the Tribunal and copied to Mr. Power.
- In his evidence, Mr. Potter put forward two valuations – one prepared on the 'Zoning' basis and the other on an overall rate per square metre basis as set out below:

#### **(a) Zoning Basis**

Ground Floor

Retail ITZA 226.62 sq. metres @ €423.00 per sq. metre = €95,860.00

First Floor (Retail) 920.73 sq. metres @ €100.00 per sq. metre = €92,073.00

Mezzanine Storage 256.20 sq. metres @ €40.00 per sq. metre = €10,248.00

Total NAV €198,181.00

RV @ 0.5% say €990.00

Less 10% end allowance for single occupation and Quantum = €891.00

#### **(b) Overall Basis**

Total Area 1,691.00 sq. metres @ €100.00 per sq. metre = €169,100.00

RV @ 0.5% = say €845.00

- Having regard to the above, Mr. Potter said he believed it realistic to adopt a figure mid-way between the above two figures, giving a rateable valuation of €68.00
- In his evidence, Mr. Potter said he was aware that the appropriate zoning rate for the ground floor units had been agreed at €170 per square metre. That said, however, there were difficulties associated with zoning, particularly in regard to shop units with a relatively wide frontage. In support of this contention, Mr. Potter drew the Tribunal's attention to a document entitled "Retail Zoning Guidance Note" published by the Society of Chartered Surveyors in September, 2003. In particular, Mr. Potter said, he would draw the Tribunal's attention to the following paragraph:

**"Quantum Discount for Frontages to Depth Ratio.**

*It has become apparent that the application of zoning can at times overvalue smaller relatively wide premises and at the same time undervalue narrow deep premises.*

*In terms of frontage to depth a ratio of 1:3 is felt to be ideal.*

*For the purpose of discounting the Zone A rate it is suggested that a discount of up to 10% be applied to units with a frontage to depth ratio of less than 1:2.*

*This is a guideline figure only and will vary depending on the actual configuration of the unit. It is being suggested as a guideline figure and not one to be applied rigidly.*

*In conjunction with this it is suggested that particularly deep units with frontage to depth ratios in excess of 1:4 should be loaded by up to 10%.*

*There will be exceptions to the above where units are particularly small c. 20 sq. m and effectively trade as kiosks and where units are exceptionally narrow at 4.5 metres or less.”*

12. The subject property, Mr. Potter said, had a frontage of 19.673 metres and a depth of 26.62 metres, giving a frontage to depth ratio to 1:1.35. In the circumstances, a 10% reduction in Zone A rates at €470 was warranted. In order to illustrate the anomalies associated with zoning, Mr. Potter drew the Tribunal’s attention to the assessment of Easons which was larger and better configured from a retailer’s point of view.

<b>Occupier</b>	<b>Ground Floor Area (sq. metres)</b>	<b>ITZA</b>	<b>NAV at €470.00 per sq. metre</b>	<b>Overall rate per sq. metre</b>
<b>H&amp;M</b>	514.61	226.62	€106,513.00	206.98
<b>Easons</b>	642.50	203.64	€95,710.00	148.96

13. This example, Mr. Potter said, clearly illustrated the anomalies created by a slavish use of the zoning method.
14. In relation to the first floor accommodation, Mr Potter said, the subject property was, with the exception of Debenhams, the largest shop at this level as illustrated in the table set out below:

**Whitewater Shopping Centre – First Floor Units**

Unit	Tenant	Sq. Metres	ITZA	NAV €423 per sq. metre	€/per sq. metre
31	Card Gallery	147.38	80.72	34,144	232
37	Club Denim	204.90	107.01	45,265	167
32	Esprit	226	89.48	37,850	167
40	Jane Norman	244	87.54	37,029	152
45	Pull & Bear	340	140.14	59,279	174
44	River Island	378.84	133.14	56,318	149
45A	A-Wear	374.50	132.77	56,161	150
45B	Virgin	418	133.14	56,318	134
33B	Champion	437	179.14	75,776	173
41-42	New Look	535.39	186.33	79,663	149
47	H&M	920.73	N/A	Suggested	€100

15. Mr. Potter said that, in his opinion, the valuation put forward by Mr. Power had not adequately reflected the overall size of the subject property, the area of the accommodation at first floor level and the fact that it traded at two levels with mezzanine storage at first floor level. In his opinion, the first floor space should be valued significantly below other shops at this level and furthermore there should be an end allowance of 10% for quantum and the fact that the shop traded at two levels.

16. Under examination, Mr. Potter agreed that the SCS Guidance Note specifically referred to “smaller relatively wide premises” and not necessarily to a shop with an area in excess of 500 square metres. He further agreed that 10% was a maximum allowance but in this case the 10% was justified, he said, having regard to the frontage to depth ratio of 1:1.35 and justified by the valuation of the Eason’s unit which, he said, was larger and, by virtue of its configuration, better for retailing purposes. Zoning, Mr. Potter reiterated, whilst being appropriate for valuing retail units, could give rise to serious anomalies unless used with some degree of caution and judgment.

### **The Respondent’s Evidence**

17. Having taken the oath Mr. Power adopted his written précis and valuation which had previously been received by the Tribunal and Mr. Potter as being his evidence-in-chief.

18. In his evidence, Mr. Power contended for a rateable valuation of €1,223,000 calculated as set out below.

ITZA: (Ground Floor)	226.62 sq. metres @ €470.00 per sq. metre = €106,511.40
First Floor Shop:	920.80 sq. metres @ €36.67 per sq. metre = €25,845.70
Mezzanine: (Stores)	256.26 sq. metres @ €47.83 per sq. metre = <u>€12,256.92</u>
Net Annual Value	€44,614.10
RV 0.5% = €1,223.07	
Say €1,223.00	

(It is noted that Mr. Power's valuation is below the figure of €1,257.00 currently appearing in the list.)

19. Mr. Power in his evidence said that Whitewater Centre was the largest shopping centre in County Kildare. At revision stage the retail units at ground and at first floor levels had all been valued on an overall rate per square metre basis as there was no evidence of zoning in the County Kildare rating authority area. Indeed, it was only after the appeal to the Commissioner stage and pending the hearing of a number of appeals by the Tribunal, that agreement was reached with several appellants on the basis of a zoning rate of €470.00 per square metre for the units on the ground floor and €423.00 per square metre on the units at first floor level. However, having regard to the size of the accommodation of the subject property at first floor level, Mr. Power said that he had taken the view that zoning would not be an appropriate method of valuation and in the alternative had valued this space at what he considered to be a reasonable overall rate per square metre of €36.67 having regard to its size and his assessment of other larger shops at this level.
20. Under examination, Mr. Power said he could see no good reason to devalue assessments made on a zoning basis, on an overall basis. Once the decision was taken, he said, to use the zoning method there was no merit in carrying out a second valuation on an overall basis.
21. Under further examination Mr. Power agreed that his comparisons, which were all valued on a zoning basis, devalued at markedly different levels per square metre on an overall basis but said that nothing could be inferred from this, since the shops were all different in size and configuration.

## Findings

The Tribunal has carefully considered all the evidence both written and oral and arguments adduced at the hearing and finds as follows:

1. It is common case that the appropriate zoning rate for shops at ground floor level is €470.00 per square metre and €423.00 per square metre at first floor level. The Tribunal notes that these figures emerged following negotiations and discussions with a number of rating consultants acting for various occupiers in the Centre.
2. The zoning method of valuation was devised in order to provide a means whereby all shop assessments for either rental or rating purposes could be made on a uniform basis. As a consequence, it also provided a basis upon which the assessments of larger shops could be made, by reference to the assessments of smaller shops. It is implicit when using the zoning method that the resultant assessments, when devalued on an overall basis, will, not surprisingly perhaps show substantial variances, as it is most likely that the shops included in the exercise will be of different sizes and configurations.
3. It is clear from the Guidance Note published by the Society of Chartered Surveyors that care must be exercised when using the zoning method to ensure that due regard is given to the configuration of the property being valued and that due allowance be made when valuing smaller shops which have an unsuitable frontage to depth ratio. That said however, it cannot be said that the subject property is “a smaller unit” in the context of the Guidance Notes.
4. On balance the Tribunal accepts Mr. Power’s method of valuation as being the most appropriate having regard to the size and layout of the property concerned, i.e. valuing the ground floor by use of the zoning method and the first floor on an overall basis.
5. The Tribunal accepts Mr. Potter’s argument that some allowance must be made to reflect the configuration of the retail space at ground floor level and the area of the retail space at first floor level.

## Determination

Having regard to the foregoing the Tribunal determines the rateable valuation of the property concerned to be €1,150.00 calculated as set out below:

### Ground Floor

ITZA                      226.62 sq. metres @ €450.00 per sq. metre = €101,979.00

**First Floor**

Retail Space	920.80 sq. metres @ €125.00 per sq. metre = €15,100.00
Mezzanine storage space Say	<u>€2,257.00</u>
Net Annual Value Say	€230,000.00
RV @ 0.5% =	€1,150.00

And the Tribunal so determines.