

Appeal No: VA17/5/1083

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

WAREHOUSE FASHION LIMITED

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2195155, Retail (Shops) at Unit 6 Athlone Town Centre, Mardyke Street, Athlone, County Westmeath.

B E F O R E

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Rory Hanniffy - BL

Member

Raymond J. Finlay – FIPAV, MMII, ACI Arb, TRV, PC

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF JUNE, 2019.**

1. THE APPEAL

1.1 By Notice of Appeal received on the 12th 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 €47,100.

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:

“The valuation is excessive”.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €35,100.

2. REVALUATION HISTORY

2.1 On the 12th day of January, 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 €47,100.

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 manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €47,100.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th 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 22nd day of February, 2019. At the hearing the Appellant was represented by Mr John Algar BSc (Surv), MRICS of GVA Donal O Buachalla and the Respondent was represented by Ms Triona Mc Partlan BSc (Hons) Estate Management 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.

4. FACTS

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

4.2 The subject property comprises a retail unit located in Athlone Town Centre Shopping Centre. The shopping centre is laid out over two floors and has an underground car park for approx. 1,200 cars and adjoins the Sheraton Hotel.

4.3 The agreed floor area is 166.6m² and the subject property is located on level 0 close to the Civic Square entrance.

4.4 The property is held on a 20-year 1-day lease from 1st November 2007 at a rent of €132,800pa. The lease includes upwards only rent reviews and the tenant was granted a short-term abatement to €60,000 which expired in 2017.

5. ISSUES

5.1 Quantum

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 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.”

7. APPELLANT’S CASE

7.1 The appellants relied on 8 rental transactions on level 0 to support its contention that the proposed NAV was excessive.

7.2 The first comparison referred to Unit 15 with a commencement date of 9th February 2015. The lease was for 10 years with 5 years rent reviews and a break option on 31st January 2018.

The initial rent was €30,000pa or 7.5% of gross turnover-whichever was the higher. The letting included a rent-free concession of 8 months in year 1 and 6 months in year 4 which provided a net effective rent of €23,000pa.

This was analysed as follows:

Zone	M²	€/M²	€
A	46.5	€265.34	€12,228.31
B	47.4	€132.67	€6,288.56
C	35.7	€66.34	€2,368.16
Remainder	60.5	€33.17	€2,006.63
			€23,001.66
		Say	€23,000

7.3 The second comparison referred to Unit 17 with a commencement date of 2nd November 2015. The lease was for 15 years with 5 years rent reviews and a break option on 1st November 2020. The initial rent was €47,500pa abated to €45,000for two years which provided a net effective rent of €46,500pa.

This was analysed as follows:

Zone	M²	€/M²	€
A	46.5	€559.23	€26,004.20
B	47.4	€279.62	€13,253.75
C	45.4	€139.81	€6,347.26
Remainder	12.8	€69.90	€894.77
			€46,499.97
		Say	€46,500

7.4 The third comparison referred to Unit 37 with a commencement date of 7th August 2015. The lease was for 5 years with a landlords break option at year 5. The initial rent was €20,000pa abated to €15,000 for 2 years which provided a net effective rent of €18,000pa.

This was analysed as follows:

Zone	M²	€/M²	€
A	46.2	€359.50	€16,608.90
B	7.7	€179.75	€1,384.08
			€17,992.98
		Say	€18,000

7.5 The fourth comparison referred to Unit 60 was located opposite the subject property and had an external frontage. It had a commencement date of 10th January 2015. The lease was for 5 years and the rent was €17,000 for two years, €18,000 for the next two years and €20,000 for the fifth year. The tenant had a 3-month rent free concession which provided a net effective rent of €17,100pa.

This was analysed as follows:

Zone	M²	€/M²	€
A	31.3	€427.50	€13,380.75
B	17.3	€213.75	€3,697.88
			€17,078.63
		Say	€17,000

7.6 The fifth comparison referred to Unit 21 with a commencement date of 3rd November 2015. The licence was for 2 years at €20,000pa and no rent-free concessions.

This was analysed as follows:

Zone	M²	€/M²	€
A	49.9	€363.64	€18,145.64
B	10.2	€181.82	€1,854.56
			€20,000.20
		Say	€20,000

7.7 The sixth comparison referred to Unit 30 with a commencement date of 1st September 2013. The lease was for 10 years with 5 years rent reviews and a break option on 1st November

2020. The initial rent was €34,037pa or 8% of turnover. The letting included a rent-free concession of 15 months which provided a net effective rent of €25,527.74pa.

This was analysed as follows:

Zone	M ²	€/M ²	€
A	46.7	€348.50	€16,274.95
B	47.5	€174.25	€8,276.88
C	11.2	€87.13	€975.80
			€25,527.63
		Say	€25,527

7.8 The seventh comparison referred to Units 11 & 12 with a commencement date of 11th October 2016. The lease was for 10 years with a stepped rent of €32,500 for two years€65,000 for the third year and €70,000 for the final two years. The letting included a rent-free concession of 15 months which provided a net effective rent of €54,000pa.

This was analysed as follows:

Zone	M ²	€/M ²	€
A	94.65	€386.16	€36,550.04
B	85.42	€193.08	€16,492.89
C	9.94	€96.54	€959.61
			€54,002.55
		Say	€54,000

7.9 The eighth and final rental comparison referred to Unit 49 with a commencement date of 18th February 2013. The lease was for 10 years with 5 years rent reviews. The initial rent was €42,500pa or 8% of gross turnover-whichever was the higher. The net effective rent was €42,500pa.

This was analysed as follows:

Zone	M²	€/M²	€
A	46.62	€477.74	€22,272.24
B	47.1	€238.89	€11,250.78
C	47.2	€119.44	€5,637.33
Remainder	55.9	€59.72	€3,338.21
			€42,498.56
		Say	€42,500

7.10 The appellant stated that the commissioner had used a rate of €550/m² and had not accounted for the rental variations therein. He further stated that there were 21 cases on appeal to the Tribunal and he argued that consequently no “tone of the list” had been established. He further argued that in his opinion that it was not appropriate to include as evidence information from units under appeal. He argued that the Civic Square entrance was inferior to the Glasson Street one and that the Athlone Town Centre did not have a traditional anchor tenant. He also referred to a detailed schedule of all the centres letting details and stated that the initial or 2007 rents were well in excess of the current market levels and that some more recent agreements were inclusive of service charges.

7.11 He concluded his evidence by claiming that the evidence adduced had supported his case that the proposed level was too high, and he stated that in his opinion that a fair rateable valuation should be based in a rate of €400 zone A which would provide a reduced NAV of €34,300.

Zone	M²	€/M²	€
A	47.1	€400.00	€18,840.00
B	47.4	€200.00	€9,480.00
C	47.4	€100.00	€4,740.00
Remainder	24.7	€50.00	€1,235.00
			€34,295
		Say	€34,300

7.12 Under cross examination the Appellant confirmed that the rent was €132,800 but that it had been based on 2007-pre-crash levels and the abatement was only temporary. He confirmed that it was not a market rent and that no rent reviews had been completed due to the upwards only condition in the leases. He did not accept that the rent for Unit 1530 and 49 were turnover rents as in all cases the actual base rents continued to be paid. He accepted that the letting in unit 17 supported the Commissioners position at €550/m². He agreed that unit 21 was a licence only agreement and had not been appealed. When questioned about Golden Island he accepted that the case for €700/m² was established based on rental evidence but did not accept that his proposed level of €400/m² was inconsistent with high street levels of €300-€375/m². He did not accept that the Sheraton Hotel was a significant draw or attraction for the shopping units and pointed out that the car park was subject to charges.

7.13 He concluded by stating that his evidence was based on rental transactions and the rents were not compromised by the turnover provisions.

8. RESPONDENT'S CASE

8.1 The Respondent adopted her submission and stated that her case relied on two key rental transactions namely Unit 4 and units 13/14.

8.2 The first comparison referred to Unit 27 with a commencement date of 14th March 2016. The lease was for 10 years with 5 years rent reviews. The initial rent was €75,000pa and the NER was stated at €75,000.

This was analysed as follows:

Zone	M²	€/M²	€
A	46.7	€840.00	€39,228.00
B	47.5	€420.00	€19,950.00
C	47.10	€210.00	€9,891.00
Remainder	55.30	€105.00	€5,806.50
			€74,875.50
		Say	€75,000

The Respondent confirmed that the NAV was €49,000 based on a Zone A rent of €550; a Zone B rent of €275; a Zone /C rent of €137.50 and a Zone D rent of €68.75 per square metre. She further stated that this NAV had not been appealed to the Tribunal.

8.3 The second comparison referred to Unit 13/14 with a commencement date of 1st March 2013. The lease was for 10 years with 5 years rent reviews. The initial rent was €112,897pa and the Respondent stated that the NER was €88,279.

This was analysed as follows:

Zone	M²	€/M²	€
A	82.35	€543.75	€44,777.81
B	82.35	€271.87	€22,388.90
C	94.13	€135.93	€12,795.09
Remainder	122.32	€67.97	€8,314.09
			€88,275.89
		Say	€88,200

The Respondent confirmed that the NAV was €88,200 based on a Zone A rent of €550; a Zone B rent of €275; a Zone C rent of €137.50 and a Zone D rent of €68.75 per square metre. She confirmed that this NAV is under appeal to the Tribunal.

8.4 In support of her evidence that the proposed level of €550/m² was fair and equitable the Respondent referred to unit11, unit 53 and unit 15 where the level of €550/m² had been accepted and was not under appeal to the Tribunal. In conclusion she reiterated her opinion that the NAV should be confirmed at €47,100 based on a Zone A rate of €550/m²

8.5 Under cross examination the Respondent agreed that relying on only two Key Rental transactions were not ideal. She stated that she did not accept the appellants turnover transactions as evidence of the market rent. In relation to her first key rental transaction she did not accept that it was an outlier but agreed that the rent was well in excess of the level of €550/m². In relation to the second key rental transaction she agreed that it was dated approx. 18 months before the valuation date. She did not agree that the uncontested NAV's for units

11,15 and 53 had disregarded the rental evidence. She confirmed that she was not aware as to how any turnover rent would be considered by the Commissioner.

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9. SUBMISSIONS

9.1 No submissions were received.

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 Westmeath County Council.

10.2 The Tribunal having reviewed the evidence adduced, examined the particulars of the subject property included in the written and oral evidence put forward by Mr. Algar on behalf of the Appellant who had contended for a reduced NAV of €34,300 and by Ms McPartlan on behalf of the Respondents who sought confirmation of the proposed NAV of €47,100.

10.3 The Tribunal noted the number of supporting comparisons -8- adduced by the Appellants, though they varied considerably from €265.34 Zone A to €559.23 Zone A. The final comparison provided by the Appellant was not of assistance as it was considered to be too historical in the context of the significant number of contemporary transactions available to the Tribunal mainly from 2015 and 2016. The Tribunal has not accepted that the rents containing turnover clauses should be disregarded as argued by the Respondents and further noted that the base rent in each case has not been increased by the turnover mechanism.

10.4 The comparisons provided by the Respondents referred to two Key Rental transactions, one of which was substantially in excess of the level claimed by the respondents - Zone A €840/ m² though the NAV was based on €550/m² and consequently the Tribunal has regarded it as an outlier. The second while the rates were similar the date of the transaction was 1st March 2013 approx. more than two years and seen months before the valuation date and was therefore disregarded.

10.5 The Tribunal has noted that there are many appeals outstanding from Athlone Shopping Centre and is persuaded that no 'tone of the list' has been established.

10.6 The Tribunal has therefore determined that the correct Zone A rent for the subject property is €400/m².

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 €34,300.

Zone	M²	€/M²	€
A	47.1	€400.00	€18,840.00
B	47.4	€200.00	€9,480.00
C	47.4	€100.00	€4,740.00
Remainder	24.7	€50.00	€1,235.00
			€34,295.00
		Say	€34,300.00

And the Tribunal so determines.