

**Appeal No: VA17/5/528**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**ARGOS LIMITED/HOME RETAIL GROUP**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2203655, Retail (Warehouse) at Unit 5 Cleveragh Retail Park, Sligo, County Sligo

**B E F O R E**

**Majella Twomey - BL**

**Deputy Chairperson**

**Liam Daly – MSCSI, MRICS**

**Member**

**Caroline Murphy - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 30<sup>TH</sup> DAY OF JANUARY, 2020**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 11<sup>th</sup> day of October, 2019 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 €40,500.

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 :

*“Previously we appealed to the Valuation Office regarding the proposed Valuation Certificate however only a part reduction was applied by the Valuation Office. The basis of the appeal on the valuation refers our opinion of value for the NAV.*

*We have considered the NAV (€ per m<sup>2</sup>) determined by the Valuations Office and are of the opinion that the valuation exceeds the market rent level in Sligo for a property with such a large floor area as at the valuation date of 30<sup>th</sup> October 2015. The table below shows both the VO valuation and our opinion of Value for unit 5. We are of the opinion that the NAV (€ per m<sup>2</sup>) for the mezzanine should be €4.3.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €23,000.

## **2. REVALUATION HISTORY**

2.1 On the 16<sup>th</sup> day of March, 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 €48,600.

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 reduced to €40,500.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €40,500.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> 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 9<sup>th</sup> day of October, 2019. At the hearing the Appellant was represented by Mr. Paul Harvey B.Sc. (Hons), MRICS, MSCSI of BNP Paribas Real Estate Advisory and Property Management Ireland Ltd and the Respondent was represented by Mr. Neil Corkery 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 is situated in Cleveragh Retail Park, which is located approximately 2km south east of Sligo Town Centre.

4.3 The subject property comprises a mid-terrace retail warehouse unit with mezzanine store.

4.4 The accommodation has been agreed between the parties;

Retail Warehouse : 704 sq. m.

Mezzanine Store : 711.89 sq. m.

4.5 We are advised that the subject property is held leasehold with a passing rent of €70,000 per annum.

#### **5. ISSUES**

5.1 The sole matter at issue is Quantum

5.2 The Appellant claims that the valuation is excessive and inequitable and should be set at €23,000.00 to reflect the type, nature and quantum of the property.

5.3 The Respondent is contending for a valuation of €40,500.00.

5.4 The Respondent has relied on two key transactions in arriving at a valuation level of €50 per sq. m. to be utilised in determining the NAV.

#### **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 Mr. Harvey on behalf of the Appellant adopted his precis as his evidence-in-chief. Mr. Harvey explained that the subject property is a retail warehouse unit of steel portal construction with block work infill and profile metal cladding to the exterior. Internally, this provides retail space at ground floor level and mezzanine storage area.

7.2 Mr. Harvey explained how the subject property is held under a 20 year 1 day lease from the 15<sup>th</sup> September 2008, subject to 5 yearly upwards only rent reviews at a current rent passing of €70,000 per annum. The current rent was agreed at the commencement of term in 2008. There has been no change in subsequent rent reviews. It was Mr. Harvey’s opinion this was an indication the subject property was over rented. Mr. Harvey stated that a Deed of Variation was executed by the parties in 2013 (See Appendix 1)

7.3 Mr. Harvey introduced one rental comparisons from Cleveragh Retail Park (See Appendix 2). Mr Harvey also introduced two rental comparisons from Sligo Retail Park (See Appendix 3).

7.4 Mr. Harvey stated that when one analysed both the rental comparisons and the NAV comparisons in Sligo Retail Park they showed anomalies (See Appendix 4). It was, therefore, Mr. Harvey’s opinion that the NAV should be €23,000.

## **8. RESPONDENT'S CASE**

8.1 Mr. Corkery, for the Respondent, adopted his precis as his evidence-in-chief.

8.2 Mr. Corkery commenced his evidence by explaining that a valuation level of €50 sq. m was applied to the subject property which arrived at a NAV of €40,500

8.3 Mr Corkery stated that 2 key rental transactions were relied upon in arriving at the NAV for the subject property. (Appendix 6) All of the key retail transactions are valued at €50 per sq. m, the same as the subject property. Of the subsequent key rental transactions, none were subject to further consideration at Representation Stage. Furthermore, none of the key rental transactions are subject to a Valuation Tribunal Appeal.

8.4 Mr. Corkery explained that equity and uniformity was utilised in compiling the NAV comparisons on the list (See Appendix 5). The three NAV comparisons were all within the Cleveragh Retail Park. NAV Comparison 1 was similar to the subject property at €50 per sq. m. Mr. Corkery explained NAV Comparison 2 & 3 are at higher rate of €60 per sq. m to reflect floor areas of less than 500 sq. m.

8.5 Under cross examination the Respondent acknowledged that Sligo Retail Park had a better tenant mix than Cleveragh Retail Park. The Appellant questioned the Valuation Offices' reliance on certain historical rental evidence (See Appendix 6). The Appellant put it to the Respondent that the quality of the a certain covenant in a lease was reflected in the fact that a security deposit was required. The Respondent stated he was not in a position to comment on this as it was purely speculation.

8.6 Taking all of this into consideration, Mr. Corkery requested the Tribunal affirm the valuation of the subject property appearing on the relevant valuation list as representing its Net Annual Value in accordance with Section 48 of the Valuation Act 2001 and the requirements of section 19(5).

## **9. SUBMISSIONS**

9.1 There were no legal submissions

## **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 Sligo County Council.

10.2 The Tribunal has examined the particulars of the property and considered the written and oral evidence adduced by Mr. Harvey, on behalf of the Appellant, who contended for a revised NAV of €23,000 and Mr. Corkery, on behalf of the Respondent, who sought confirmation of the Valuation Office's determination of an NAV of €40,500.

10.3 Mr Harvey presented evidence highlighting the significance of the deed of variation and the implications on what he argued was an overstatement of the current rental value of the unit.

10.4 Mr Harvey also contended that the Commissioner had placed overreliance on historical rental evidence namely (See Appendix 6) and was aligning rental values with what he considered the far superior location of Sligo Retail Park.

10.5 Having weighed and evaluated the evidence before it, the Tribunal was not persuaded, on the balance of probabilities, by the evidence put forward by the Appellant, in particular the evidence relating to the alleged inferior quality of a certain covenant in a lease, which was utilised in arriving at the NAV.

10.6 The Tribunal finds that the Appellant attempted to illustrate this point by a reliance on inadmissible hearsay evidence relating to a purported security deposit being taken into account in relation to the NER of another property. The Appellant invited the Respondent to comment upon this during cross examination. The Respondent said that he could not speculate upon this matter as he had no information on it. The Tribunal finds that nothing turns upon this point as there was no clear, objective evidence to suggest that the aforesaid security deposit affected the quality of the covenant in that lease.

10.7 The Tribunal finds, and it was accepted by all parties, that Argos had the benefit of legal advice at the time of entering into the lease and this is a matter of significance in relation to the claim that the Appellant is at a disadvantage due to being party to the aforesaid lease.

10.8 The Tribunal finds that, notwithstanding the fact that the lease on the subject property is historic, from 2008, that there was a subsequent Deed of Variation whereby the Appellant could have left the premises but they chose to remain.

10.9 The Tribunal accepts the differing characteristics between the subject location and Sligo Retail Park. However, having taken into account the evidence of Mr. Corkery, the Tribunal does not find that the Valuation Office failed to take this into account in arriving at an appropriate NAV.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent

And the Tribunal so determines.