Appeal No: VA17/5/875

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

AN tACHTANNA LUACHÁLA, 2001 to 2015
VALUATION ACTS, 2001 to 2015

BLUE COW RETAIL LIMITED T/A NAME IT **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of
Property No. 2195135 Retail (Shop) Unit 30 Athlone Town Centre, Mardyke Street, Athlone, Co. Westmeath.

B E F O R E

Carol O'Farrell - BL	**Chairperson**
Fergus Keogh - MRICS, MSCSI	**Member**
Raymond Finlay - FIPAV MMII Arb TRV PC	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF APRIL, 2021

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 €40,200.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the Property's value is not a determination that accords with that required to be achieved by section 19(5) of the Valuation Act, 2015 as amended by the Valuation (Amendment) Act 2015 as the valuation is considered to be excessive by reference to

- (i) the rent payable in respect of the Property
- (ii) the tone of the list of similarly circumstanced properties
- (iii) the letting evidence in the shopping centre
- (iv) the letting evidence of comparable properties and

1.3 The amount the Appellant considered ought to have been determined as being the valuation of the Property was revised downwards to €29,300 from the figure of €30,000 as state din the Notice of Appeal.

2. REVALUATION HISTORY

2.1 On the 12th of January 2017 a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 in relation to the Property was sent to the Appellant indicating a valuation of €40,200. Being dissatisfied with the valuation proposed, representations were made to the valuation manager and following consideration of those representations, the valuation manager did not consider it appropriate to reduce the valuation.

2.2 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €40,200.

2.3. The date by reference to which the value of the Property is to be determined is the 30th day of October 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of remote hearing on the consent of the parties on the 29th of October 2020. Mr. Niall Brereton BSc MRICS, MSCSI of Bannon Chartered Valuation Surveyors and Commercial Property Consultants represented the Appellant and Ms. Tríona McPartlan B. Sc (Hons) Estate Management of the Valuation Office represented the Respondent.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective Précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal.

4. ISSUE

4.1 The appeal raised the sole issue as to whether the NAV of the Property as determined by the Respondent is excessive.

5. RELEVANT STATUTORY PROVISIONS~~:~~

5.1 The NAV of the Property must 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."

5.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be considered 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."

5.3 Section 19(5) of the Act inserted by section 7 of the Valuation (Amendment) Act 2015 requires the valuation list to be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates and to achieve both (insofar as is reasonably practicable) (i) correctness of value, and (ii) equity and uniformity of value between properties on the list and so that the value of each property on the list is relative to the value of other properties comparable to that property on the list or, if no such comparable properties exist, is relative to the value of other properties on the list in that rating authority area.

6. THE PROPERTY

6.1 The parties' valuers were agreed upon the physical characteristics and dimensions of the appeal Property and likewise those of the comparable units upon which they each relied. From the evidence therefore, the Tribunal finds the following facts.

6.2 The Property is a retail unit in the Athlone Town Centre ('the Centre') which is situated on the east side of Athlone Town approximately 1 kilometre from the nearest point of access to the M6 motorway. The Centre is situated in low density residential area which also comprises small-scale retail save for the standalone Dunnes Stores located at a distance of 160 metres and the Golden Island Shopping Centre located at a distance of 450 metres.

6.3 The Centre opened in 2007 and includes 56 retail units (excluding mall kiosks) over two floors and an underground car park which provides parking spaces for 1,200 vehicles. A four-star hotel also forms part of the development. There are three pedestrian entrances to the shopping centre from Civic Square, Mardyke Street and Gleeson Street. From the underground car park, the Centre can be accessed by stairs and lifts. The tenants of the Centre include Marks & Spencer, Next, TK Maxx, H & M, Easons, River Island, Warehouse, Clarks, and Starbucks. The majority of the units face onto the internal malls save for 6 external units that face onto the street.

6.4 The Property is a mid-terrace unit on the ground level of the Centre opposite the centrally located food court area and is laid out on a largely regular shaped floorplate. It is situated closest to the Mardyke Street entrance. The Appellant opened the store in 2013 following a refit. The net internal area of the Property measures 105.40 m² and it has a fully glazed frontage of 15.7 m. The Property is laid out as a retail fashion store. It is in good condition throughout. Typical finishes include plastered and painted walls and ceilings. The walls are fitted with racking and lighting is by way of spotlights fitted to a suspended metal structure.

6.5 The Property is held by the Appellant under a Lease dated the 1st of September 2013 for a term of 10 years from the 1st September 2013. {See Appendix for rent details]

6.6 The net annual value of the Property's as determined by the Commissioner devalues as follows:

Ground Floor Zone A	46.70 m²	x €550.00 per m²	€25,685.00
Ground Floor Zone B	47.50 m²	x €275.00 per m²	€13,062.00
Ground Floor Zone C	11.20 m²	x €137.50 per m²	€ 1,540.00

Total €40,287.00 Rounded €40,200.00

7. THE APPELLANT'S EVIDENCE

7.1 Mr. Brereton, having taken the oath, adopted his Précis after correcting two typographical errors as his evidence-in-chief in addition to giving oral evidence.

7.2 He confirmed that the Property was let on a 10-year lease from the 1st of September 2013. A 15 months' rent-free period was agreed, and the lease contains a break clause. Mr. Brereton pointed out following rent review in 2018 the new rent when analysed was well below the NAV of €550 per m² ITZA determined by the Respondent. [See Appendix for rent details]

7.3 Mr. Brereton stated that economic data released in the first half of 2015 indicated that the Irish economy was likely to continue on the positive trends that emerged in 2014. He stated that according to the ESRI, GNP growth figures were forecast to reach 4.8% in 2015 as the economy continued to stabilise with unemployment set to fall to below 10% for the first time since 2008. GNP grew by 13.6% in 2015 and unemployment fell to 9.1%. Though consumer spending was forecast to grow by 2.7% in 2015, it actually grew by 5.4%. The economic growth permitted the Government to reduce the income tax burden somewhat in Budget 2015. The unemployment rate stood at 9.7% in June 2015, down from a peak of 15.2% in 2012. He stated that these and other developments were largely due to the improvement in the labour market and a rise in disposable income. However, significant growth in consumer spending was still some way off.

7.4 Mr. Brereton said he assessed the Property by reference to letting comparisons in the Centre and the emerging tone of the list for other small retail units in the Centre. He said the best comparisons are located within the Centre itself and thus represent the best comparable evidence available to the Tribunal in adjudicating on the NAV of the Property at the valuation date. He summarised the best comparable rental transactions closest to the valuation date as follows:

RT1. a ground floor unit measuring 190.1m², held under a 10-year lease from 9th February 2015 with a rent of €30,000 or 7.5% of gross turnover, which is higher, rent review at year 5; Break-option at the end of year 3; 8 months' rent free in year 1 and 6 months in year 4; net effective rent of €23,000 per annum. In his expert report Mr. Brereton analysed this rent at €266 per m² ITZA (in terms of Zone A).

RT2. a ground floor unit measuring 152.2m², held under a 15-year lease from 2nd November 2015 with a rent review at year 5 and year 10; Initial rent was €47,500 abated to €45,000 for first two years; break clause in year 5; net effective rent of €46,500 per annum. Mr. Brereton analysed this rent at €559 per m² ITZA.

RT3. a first-floor unit measuring 53.9m², held under a 10-year lease from 7th August 2015; initial rent of €20,000 was abated to €15,000.00 for the first two years; landlord break at year 5; net effective rent of €18,000 per annum. Mr. Brereton analysed this rent at €360 per m² ITZA.

RT4. a ground floor unit measuring 48.6m², let under a 5-year lease from 10th January 2015; stepped rent: €17,150 for two years, €18,000 for the next two years and €20,000 for year 5; 3 months' rent free; net effective rent of €17,150 per annum. Mr. Brereton analysed this rent at €430 per m² ITZA.

RT5. a ground floor unit measuring 60.1m², held under a 2-year licence from 3rd November 2015; no rent-free concessions; net effective licence fee of €20,000 per annum. Mr. Brereton analysed this licence fee at €364 per m² ITZA.

RT6. a ground floor unit measuring 189.9m², held under a 10-year lease from 11th October 2016; stepped rent of €32,500 for first two years; €65,000 for third year and €70,000 for fourth and fifth years; 15 months' rent free; break clause in 2023, net effective rent of €45,875p.a. Mr. Brereton analysed this rent at €328 per m² ITZA.

RT7. a first-floor unit measuring 196.82m², let on a 10-year lease from 18th February 2013 at an annual rent of €42,500.00; no rent-free concessions**;** break clause year 5; Mr. Brereton analysed this rent at €478 per m² ITZA.

7.5 Mr. Brereton said that he also took account of the emerging tone of the list in arriving at his opinion of the NAV and paid particular regard to the determinations of the Valuation Tribunal in respect of other units in the Centre. He adduced evidence of four comparisons within the Centre, units 6, 13/14, 33 and 34/35, the NAVs of which range between €400 and €550 per m² ITZA. He identified Unit 6 which is occupied by Warehouse as the best comparable property in terms of size (166m²) and proximity to the appeal Property on the ground floor, the NAV of which was reduced to €400 per m² ITZA from €550 per m² ITZA by the Valuation Tribunal (Appeal Reference VA17/5/1083).

7.6 From his analysis of the open market letting evidence and the emerging tone of the list for retail units within the Centre, Mr. Brereton observed that the units RT1 and RT2 appeared to be outliers as their rents devalued at €266 per m² and €559 per m² ITZA, respectively. He pointed out the NAVs of retail units within the Centre range from €350.00 per m² ITZA to €480.00 per m² ITZA. He pointed out that the Property is assessed at a rate of €550 per m² ITZA which is at the very top end of the scale and is considerably in excess of the open market letting of the Property some 24 months prior to the valuation date.

7.7 He said that the most appropriate evidence was the letting of the unit RT3 as the letting took place shortly before the valuation date and the rent analyses at approximately €360 per m² ITZA for a unit measuring 53.9m². In terms of the emerging tone, he pointed to Unit 6 on the ground floor of the Centre measuring 166m² as being of particular importance because the Valuation Tribunal had assessed its NAV at €400 per m² ITZA (Appeal Reference 17/5/1083) and he considered it to be the most comparable in terms of size and proximity to the appeal Property.

7.8 Mr. Brereton's proposed valuation, using a base figure of €400.00 per m² ITZA produced a value of €29,300 which devalued as follows:

Ground Floor Zone A	46.70 m²	x	€400.00 per m²	€18,680.00
Ground Floor Zone B	47.50m²	x	€200.00 per m²	€ 9,500.00
Ground Floor Zone C	11.20m²	x	€100.00 per m²	€1,120.00

7.9 Under cross-examination Mr. Brereton was asked about turnover rents and he confirmed that the Appellant's turnover figures for the past four years were such that the rent payable in respect of the Property was the agreed base rent. He did not accept the proposition put to him that a base rent is not a market rent. He said a base rent is an estimation of where the rental market is at and reflects what a reasonable landlord and tenant would agree as appropriate. In agreeing a base rent, the parties would not settle upon a rent that is way above or way below market rent. He said turnover rents are prevalent especially in the letting of property to fashion retailers and an indicator of the struggles being experienced by fashion retailers. He said the base rent of the Property represents the minimum that a landlord would accept having regard to rents payable in respect of other stores in the Centre. He pointed out that if the rent had been agreed as a turnover rent of 8%, the annual rent of the Property over the past few years would have been between €26,000 and €30,000.

7.10 Mr. Brereton considered there to be a high appeal rate arising from the valuation of the retail units in the Centre, especially in the context of the overall appeal rate of 4.16% across the rating authority area. He stated that the adopted Zone A level of €550 per m² was inherently excessive having regard to the rental evidence available at the valuation date. He considered that the Respondent had for spurious reason disregarded relevant rental evidence which in his opinion indicated a Zone A level of €400 per m². The fact that a number of occupiers of the Centre had not appealed was not relevant, given the significant number of appeals that had been made. He pointed out that only one Tribunal decision had affirmed the Zone A rate applied by the Respondent which by coincidence was the first appeal to be heard when perhaps the extent of the evidence available to the Tribunal was less than that which was placed before the Tribunal on subsequent appeals.

8. THE RESPONDENT'S EVIDENCE

8.1 Ms. McPartlan, having taken the oath, adopted her Précis as her evidence-in-chief in respect in addition to giving oral evidence.

8.2 In her Précis Ms. McPartlan stated that actual rent for any individual property may be material in deriving the NAV but such rent is not in itself conclusive of the NAV in the context of section 48 and section 19(5) of the Act. She stated that NAV of the Property was estimated on the basis of the rent a hypothetical tenant would pay in accordance with section 48, not necessarily by the rent being paid by any particular tenant. She said that the analysis of a number of market rents assisted in estimating the NAV and mitigated the impact of outlying rents that may not represent what a hypothetical tenant would bid. The analysis provided the Net Effective Rent (NER) in each case which she said equates to the basis of valuation as set out in s.48 of the Act (as amended), on the valuation date. She said this collection of NERs provides the basis for deciding the appropriate NAV per square meter or Zone A to be applied to the units in the Centre sharing similar characteristics, including the Property and that a valuation level of €550 Zone A per m² was applied to the Property which resulted in a NAV of €40,200.

8.3 Ms. McPartlan stated that the Centre occupies a prime location in Athlone town. The Centre is spread over two floors and has an underground car park which caters for over 1,200 car parking spaces with up to 3 hours parking is available for €2.00. The larger units in the Centre are occupied by Marks & Spencer, Next, Zara, H&M and since 2016 TK Maxx occupies a large retail space of approximately 2,000m².

8.4 Ms. McPartlan referred to Golden Island Shopping Centre which is approximately 450 metres from the Centre which is single storey shopping centre built in 1997 comprising 47 units. The anchor tenant is Penneys. Other tenants include Tesco, Argos, Benetton, Burger King, Dealz, Elverys Sports, Lifestyle Sports, Boots, Peter Mark, Carrig Donn and Costa Coffee. This shopping centre has surface fee paying carparks to the front and side. There is also an IMC cinema within the grounds of this shopping centre. The rents are higher which is reflected in the Zone A level applied to the retail units in Golden Island which is €700 per m². No standard retail units within Golden Island shopping centre were appealed to the Valuation Tribunal. Dunnes Store is situated approximately 160 metres from the Centre and is located in the area between the Centre and Golden Island shopping centre.

8.5 Ms. McPartlan described the Property as being a well-positioned ground floor standard retail unit in the main mall of the Centre which is in excellent condition throughout with tiled floors, suspended ceiling with painted and plastered walls. She confirmed that there was no dispute as to size of the Property or to the terms upon which it had been let to the Appellant.

8.6 Ms. McPartlan relied upon two key rental transaction as the basis for estimating the NAV of the Property. She said each of these transactions was investigated and analysed in accordance with Valuation Office policy and procedures and regard was had to the date of the transaction relative to the statutory valuation date, any inducements which were included in the transaction and any other individual features of the transactions. She pointed out that the vast majority of the leases within the Centre were made in 2007 and contained upward only rent review clauses. The two key rental transactions to inform the estimate of the NAV of the Property were as follows:

KRT 1- a ground level unit measuring 196.6 m², held under a 10-year lease from the 14th March 2016 at a net effective rent of €75,000.00 per annum. [See Appendix for further details]

KRT 2 - a ground level unit measuring 381.15 m², held under a 10-year lease from March 2013 at a net effective rent of €88,279.00 per annum. [See Appendix for further details]

8.7 It was pointed out that the valuation of KRT2 had been appealed to the Tribunal and that the valuation had been affirmed based on the Zone A rate of €550 per m² (VA17/5/387 Eurogiant).

8.8 Ms. McPartlan stated that 37 retail units in the Centre had been valued at €550 per m² ITZA and that of those 37 units, 21 occupiers exercised their right to make representations to the valuation manager. Of those 21 occupiers, 17 were represented by experienced agents. Of the 37 units, 16 occupiers made appeals to the Tribunal: the amalgamation of one of those units with another, resulting in the amalgamated unit being valued on an overall basis rather than on a retail zone basis. She advised that two appeals had been settled in light of the Tribunal's decision in VA17/5/387 Bushgrove Limited T/A Eurogiant v Commissioner of Valuation, the zone A rate remaining unchanged at €550 per m².

8.9 Ms. McPartlan relied upon Unit 11, Unit 53, and Unit 15 of the Centre as comparable properties, all of which were valued at the Zone A rate of €550 per m² and had not been appealed to the Tribunal. Ms. McPartlan's view was that the rate of €550 per m² remained appropriate.

8.10 Under cross-examination Ms. McPartlan explained that she did not rely on any of the eight rental transactions relied upon by Mr. Brereton as she considered that they were turnover rents, or concerned units occupied under licence agreements or that were vacant. It was put to her that only two of the rental transactions had a turnover element and one transaction was a temporary licence agreement. When asked why she had ignored the five other transactions, she replied that the units were vacant. It was pointed out to her that those units were all let at the valuation date. When asked whether she had analysed the rent-free period of 20 months in respect of the rent pertaining to KRT1, she said she was unaware of it. She stated that Mr. Brereton should have informed her of that fact. Mr. Brereton advised the Tribunal that he had only himself become aware of it that morning and had been unsuccessful in trying to contact Ms. McPartlan as she was giving evidence before the Tribunal in respect of other appeals. He put it to her that it would have reduced the NER of KRT1 by 20%.

8.11 Ms. McPartlan accepted that the rent in respect of the unit occupied by Eurogiant had been agreed 18 months prior to the valuation date and that the Tribunal had only affirmed the Zone A rate of €550 per m² in one appeal and that following the hearing of five further appeals the Tribunal had determined a Zone A rate of either €400 or €480 per m². When asked why the rent of Unit 11/12 was not considered relevant or useful as an open market letting, Ms. McPartlan responded that she had considered other rents. When asked what other rents were considered, she mentioned Fairgreen Shopping Centre in Mullingar and the nearby Golden Island shopping centre. It was pointed out to her that she had given evidence that she was only relying upon two key rental transactions in the Centre.

8.12 Ms. McPartlan confirmed to the Tribunal that she accepted Mr. Brereton's evidence that the Appellant, Blue Cow Retail Limited, is the occupier of the appeal Property and that '*Name It*' is a trading name. She agreed that the Tribunal should correct the name of the occupier in the valuation certificate.

9. FINDINGS AND CONCLUSIONS

9.1 On this appeal the Tribunal must determine the value of the Property to achieve, in so far as reasonably practical, a valuation that is correct and equitable.

9.2 The relevant question on this appeal concerns the amount a hypothetical tenant would pay in rent for a tenancy of the Property on the terms set out in section 48 of the 2001 Act as amended. The rent for which the Property might, in is actual state, be reasonably be expected to let is measured by the rental value on a hypothetical tenancy of the Property on a year-on-year basis and not by reference to the actual occupier's business or financial means or the rent the occupier actually pays.

9.3 Most of the 56 retail units in the Centre are held under leases negotiated in November 2007. The rent passing on the Property at the valuation date cannot be considered to reflect the terms of the hypothetical tenancy under section 48 of the Act as the Property is held under a lease made in 2007 when market rents were exceptionally high. It is rare to find a property with a lease rent that completely satisfies the statutory terms but there are certain rents which are of little evidential use either because they are not open market rents or because they cannot be made to conform to the rating hypothesis. When the actual rent of a property is of little or no assistance open market rents of similar properties generally provide the best evidence but care still needs to be taken as a tenant may be desperate to secure space at a particular location or a landlord may need to secure immediate income. Some open market rents though not conforming with the terms of the rating hypothesis can be adjusted to conform. Once these rents are ascertained they can then be analysed and reduced to a comparative basis such as €/m² ITZA for retail properties. Evidence of rent agreed within a year prior to the valuation date and of rent agreed within 12 months after the valuation date is worth analysing and adjusting (provided the market has remained stable and confirms the trend) but rents agreed 12 months or more after the valuation date are less helpful because at the valuation date the hypothetical tenant could not have known of these later transactions.

9.4 In recent years, turnover rents on a standalone basis, or on the basis of the higher of a percentage of turnover or a base rent in shopping centre leases are becoming a more attractive option. A base rent is fixed and less volatile and provides certainty to the landlord. A turnover rent is riskier due to seasonal variances in income and the nature of the goods being sold. The Tribunal accepts Mr Brereton's evidence that a base rent is an estimation of market rent and reflects what a reasonable landlord and tenant would agree as appropriate that is neither way above or way below market rent and that the base rent of the Property represents the minimum that the landlord would accept having regard to rents payable in respect of other stores in the Centre.

9.5 On behalf of the Appellant Mr. Brereton relied on the rents of seven other units in the Centre and the Tribunal's decision in VA17/05/1083 (*Warehouse)* in support of his proposed Zone A rate of €400.00 per m². The rents of RT1, RT2, RT3, and RT4 were all agreed in 2015, the rents of RT2 and RT3 being nearest to the valuation date. The rent of RT6 was agreed almost a year post valuation date and the rent of RT7 was agreed 2 years and 8 months prior to the valuation date. In respect of these six units the Zone A rate ranges between €266 per m² and €559 per m². RT5 is unreliable as a comparable as it is occupied under a licence agreement the terms of which are not compatible with the terms of the hypothetical tenancy as outlined above.

9.6 On behalf of the Respondent for the purpose of this appeal Ms. McPartlan considered the rents of only two units in the Centre neither of which were agreed in 2015 and the Tribunal's decision in VA17/056/387 (*Eurogiant)* which supported the adopted Zone A rate of €550.00 per m². The rent of KRT1 was agreed less than 5 months after the valuation date, the rent of KRT 2 was agreed 2 years and 7 months prior to the valuation date. On previous appeals (VA17/5/387 Bushgrove Ltd, VA17/5/914 Hurley Property ICAV, VA17/5/1029 Oasis Fashions Ltd, VA17/5/931 Hurley Property ICAV, VA17/5/920 Hurley Property ICAV) Ms. McPartlan relied on the rent of a ground floor unit in the Centre measuring 83.1 m², held under a 10-year lease from July 2016 at a net effective rent of €40,000.00 per annum which analysed at €615 per m²

ITZA and to which the Tribunal had regard in valuing three other properties in the Centre at €480.00 per m² ITZA. It is perplexing that different rental transactions were relied upon by the Respondent on the hearing of appeals relating to units within the Centre. When asked what rental evidence the Respondent had relied upon to derive a NAV of €550 per m² ITZA Ms. McPartlan replied that she had regard to properties in other shopping centres in Westmeath, yet she put forward only two rental transactions. The rental evidence of all properties analysed by the Respondent to derive a NAV of €550 per m² ITZA for the property should have been adduced in evidence.

9.7 The Tribunal has to decide what weight should be given to the rental evidence adduced by the valuers which shows a disparity between rental levels in the Centre. In the Tribunal's view the hypothetical tenant would be guided by rents which had been agreed closer to the valuation date and agree a rent level somewhere between the extremes. Rental transactions were agreed in respect of the RT1, RT3 and RT4 units in 2015 prior to the valuation date, and a fourth rental transaction was agreed 3 days after the valuation date in respect of the RT2 unit which has a zone A rent equivalent of €559.23 per m^2. The passing rent of RT1 is well below that of RT2, RT3 and RT4. The rent of KRT1 is well in excess of rents agreed in 2015. The 20-month rent-free period in respect of this property which was not known to the Respondent until the date of the hearing reduces the net effective rent of that property to €50,000. The rent of the KRT 2 property is significantly higher than the KRT 1 property and is unreliable having been agreed 2 years and 7 months before the valuation date.

9.8 The rent payable in respect of the Property at the valuation date was negotiated more than 2 years prior to the valuation date and as such provides light assistance in terms of the Property's value at the valuation date.

9.9 The Tribunal does not accept that evidence of rent in respect of a letting in the open market of a unit in the Centre which comprises a base rent or a percentage of turnover should be disregarded or rejected out of hand particularly when such rents are becoming a more common feature in the retail property market. All available evidence should be looked at. Rents with turnover elements may have evidential value in either confirming or casting doubt upon rental levels.

9.10 The rental evidence must be looked at in the round. On any basis, this evidence provides a very mixed picture. The Tribunal considers that the key evidence of the rate to be applied to the ground floor retail space is the evidence of open market transactions twelve months agreed prior to the valuation date and rents for a period of less than 12 months after the valuation date provided such rents are consistent with the state of the market at the valuation date. The Tribunal attaches little weight to RTI as it is a value outlier or to RT5 which is a retail unit reportedly held pursuant to a licence agreement which was not adduced in evidence to enable the Tribunal to determine whether it is in fact a lease. The rental evidence in respect of the units RT7 and KRT2 are of no assistance as those rents were agreed more than 2½ years prior to the valuation date. The Tribunal is also excluding from consideration the rent of RT4 due to its size and the fact that it is more an external unit than an internal one.

9.11 In light of the more relevant and compelling rental evidence adduced by the Appellant relating to units in the Centre which were agreed a year either side of the valuation date., the Tribunal considers that the NAV of the Property as determined by the Respondent is excessive. On previous appeals the Tribunal was informed that the net effective rent of the KRT 1 unit was €75,000. The net effective of rent of that unit is in fact €50,000 per annum as the occupier negotiated a 20-month rent free period and that rent analyses at €560 per m² ITZA. Having regard to the rents of units RT2, RT3, RT6, KRT1 and the rent to which regard has been had by the Tribunal in other appeals of the ground level unit that is held under a 10-year lease from July 2016 which range between €328 per m² ITZA and €615 per m^2 the Tribunal considers that the Property should be valued at a Zone A rate of €480 per m² ITZA m².

10. **DETERMINATION:**

10.1 Accordingly, the Tribunal allows the appeal and decreases the net annual value of the Property as stated in the Valuation Certificate to €35,100 as follows:

Floor Use	Area per m^2	NAV (€ per m^2)	NAV €
Retail Zone A	46.70	€480	€22,416
Retail Zone B	47.50	€240	€11,400
Retail Zone C	11.20	€120	€1,344
			€35,160 SAY €35,100

10.2 The Tribunal further directs that the name of the occupier as stated in the valuation certificate in respect of the Property is to be amended to read "Blue Cow Retail Limited trading as Name It".

APPENDIX

Appeal Property
At the valuation date the annual rent was €34,037 or 8% of turnover, whichever is the higher.

Key Rental Transaction 1: PN 2195132

Skechers, Unit 27 Athlone Town Centre, Athlone, Co. Westmeath.

Total Floor Area	196.6m2
Lease commencement	14th of March 2016
Lease Term	10 years
Rent per annum	€75,000
NER @ 30th October 2015	€50,000
Retail Zone A (NER)	46.70 m^2 @ €560
NAV Zone A	€550 m^2

NAV €49,000

Key Rental Transaction 2: **PN 2195146**,

Euro Giant Athlone, Unit 13/14, Athlone Town Centre, Athlone, Co. Westmeath

Total Floor Area	381.15m2
Lease commencement	1st of March 2013
Lease term	10 Years
Rent per annum	€112,897
NER @ 30th October 2015	€88,279
Retail Zone A (NER)	82.35 m^2 @ €543.75
NAV Zone A	€550 NAV m^2