

**Appeal No: VA19/5/0790**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**PRIMARK STORES LIMITED T/A PENNEYS**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 1318819, Retail (Shops) at 19AA26ABD/B The Long Walk Shop/Centre  
Dundalk, County Louth.

**B E F O R E**

**Carol O'Farrell - BL**

**Chairperson**

**Barry Smyth – FRICS, FSCSI, MCI Arb**

**Deputy Chair**

**Claire Hogan - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 5<sup>th</sup> DAY OF JANUARY 2022**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 14<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 €238,000.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of Property's valuation is not a determination that accords with that required to be achieved by section 19 (5) of the Act because:

*"The valuation is excessive for the following reasons:*

*i. The areas are incorrect.*

*ii. The valuation level applied to this department store is excessive in comparison to the tone of the list and taking into account the significant deterioration of the subject shopping centre due to the competition from Marshes Shopping Centre.”*

1.3 The Appellant considered that the valuation of the Property ought to have been determined in the sum of €125,000. In the précis for the Valuation Tribunal hearing the Appellant proposed a NAV of €148,000.

## **2. REVALUATION HISTORY**

2.1 On the 10<sup>th</sup> day of May 2019 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 €238,000.

2.2 No representations were made to the revaluation manager.

2.3 A final valuation certificate issued on the 10<sup>th</sup> day of September 2019 stating a valuation of €238,000.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is the 15<sup>th</sup> day of September 2017.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 5<sup>th</sup> day of November 2021. At the hearing the Appellant was represented by Mr. Terry Devlin B.Sc., MRICS, MSCSI of CBRE and the Respondent was represented by Mr. Joseph Turley MSCSI, MRICS 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 affirmed, 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 Property is located in Long Walk Shopping Centre ('Long Walk') constructed circa 1994 in Dundalk beside the Bus Station and in close proximity to the town centre.
- 4.3 The Property comprises a vacant large Department Store at ground floor with ancillary accommodation overhead on the first and second floors.
- 4.4 The area of accommodation is agreed as follows:  
Level 0 Department Store - 2,102.38 sq. mtrs.  
Level 1 Office - 691.53 sq. mtrs.  
Store – 74.17 sq. mtrs.
- 4.5 The Property is held on a 999-year Lease from 1992 at a Peppercorn Rent.
- 4.6 The Property was vacated first in 2005 when the occupier relocated to a new shopping centre in Dundalk, the Marshes Centre, but subsequently reopened in Long Walk and traded until 2014 when it closed again. The Property has since lain vacant and to let.

## 5. ISSUE

The floor areas having been agreed, the sole issue before the Tribunal for consideration is whether or not the Respondent correctly determined the NAV of the Property based on a ground floor rate per square metre of €90.00.

## 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 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.”*

## **7. APPELLANT'S CASE**

- 7.1 Mr. Devlin noted the location of Long Walk near Dundalk town centre and adjacent to the Bus Station. In his view this shopping centre was adversely affected by the opening of the Marshes Shopping Centre ('Marshes'), a larger and superior development nearby but on the other side of Dundalk's main street.
- 7.2 He further noted the Property to be a vacant former Department Store with retail on the ground floor and stores, offices and staff accommodation on first and second floors. He stated that Long Walk was originally anchored by Penneys and Tesco and in addition has 40 shop units and 450 common use car spaces serving the centre.
- 7.3 In his opinion the factors affecting the NAV of the Property are:
- i) that the Property has been vacant since 2014 and efforts to secure a tenant at any rent have been fruitless.
  - ii) the number of hypothetical tenants for a unit of 2,868 sq. metres at Long Walk is very limited, if there is a market at all.
  - iii) Until the opening of the Marshes nearby c.2005, Long Walk was the only significant shopping centre in Dundalk.
  - iv) Long Walk has not recovered from the closure of one of its two anchor stores and consequently, there are many unit shops also vacant.
  - v) The nearby Carroll Village Shopping Centre had been vacant for some years (now closed) which has had an adverse effect on this part of the town.

7.5 Mr Devlin drew a comparison between Long Walk and Marshes to illustrate the superiority of Marshes to Long Walk:

	Long Walk	Marshes
Total Number of Units	40	47
Number of Vacant Units	24	3
Anchor Tenants	Tesco	Penneys and Dunne's Stores
Shop unit tenants	Local businesses	National and International brands
Car Parking	450	1,530
Footfall	35,000 per week	76,000 per week
Anchor Tenant Valuation	€90/€95 per sq. mtr	€100/€120 per sq. mtr
Unit Shop Zone A Valuation	€300 per sq. mtr	€600 per sq. mtr

7.6 He then set out his valuation of an NAV €148,000 calculated as follows:

Floor Level 0	Department Store	2102.38 sq. mtrs	€55 per sq. mtr	€115,630.90
Level 1	Office Use	691.53 sq. mtrs	€45 per sq. mtr	€ 31,118.85
Level 2	Store	74.17 sq. mtrs	€22.50 per sq. mtr	€ 1,668.83
<b>Total</b>				<b>€148,418.58</b> <b>Say €148,000</b>

7.7 Mr. Devlin set out six NAV comparisons.

Dunnes Stores	Marshes	9,501.60 sq. mtrs	€100 per sq. mtr NAV
Tesco Supermarket	Long Walk	3,711.59 sq. mtrs	€90 per sq. mtr NAV
Eir Retail	Marshes	80 sq. mtrs	€600 per sq. mtr Zone A
Skechers	Marshes	71.25 Sq. mtrs	€600 per sq. mtr Zone A
Grace & O'Neill Opticians	Long Walk	119.04 sq. mtrs	€300 per sq. mtr Zone A
Eir Retail	Long Walk	93.14 Sq. mtrs	€300 per sq. mtr Zone A

7.8 He noted that he had included the unit shops at both Marshes and Long Walk to indicate the relativity between the two shopping centres and he assumed that the NAVs were based on rental evidence.

7.9 Under cross examination he accepted that there was another Department Store in the Marshes, namely Penneys, which was assessed at €110 per sq. mtr and that the Tesco unit in the Long Walk was agreed at €90 per sq. mtr. He accepted that in Long Walk Tesco was trading, albeit like a stand-alone Tesco unit, but did not accept that the NAV figure agreed on Tesco was evidence of what the subject should be valued at. In relation to his allowance for quantum he stated that the figure of €55 per sq. mtr is 50% of the anchor stores in Marshes because the Zone A rate in Long Walk is 50% of the Zone A in Marshes for unit shops. He also accepted that there was no restriction on the retail use of the subject Property and that Tesco did not have a solo position in relation to food sales in the Long Walk. He also accepted that there was less than a mile in distance between the two centres but stated that they were on opposite sides of the main street.

## 8. RESPONDENT'S CASE

8.1 Mr. Turley stated that there is a valuation distinction made between the Marshes and Long Walk and he accepts that the former is the better centre. He had agreed the subject floor area with Mr Devlin and consequently his valuation was reduced from €238,000 to €222,000. He stressed the importance of equity and uniformity in arriving at the NAV of similar circumstanced properties and therefore followed the €90 per sq. metre as accepted on the Tesco unit which in his opinion must be the guide to the valuation.

8.2 He provided six comparisons set out on the table below.

Property No.	Occupier	Address	NAV/sq. m	Floor area	NAV
1318817	Tesco	Long Walk	€90 & €45	3,826.88 sq.m	€309,000
2182105	Primark Stores Ltd T/A Penneys	4 The Marshes	€110	6,358.26sq.m	€725,000**
2214862	Tesco Irl. Ltd.	1st Floor Tesco Shopping Ctr. Dundalk	€90	7,918 sq.m.	€772,000
2187140	Marks & Spencer Ltd.	Unit 1a Laurence Ctr. Drogheda.	€105 & €52.50	2,510.61sq.m.	€240,000
2196743	Shaws Department Store Ltd.	Unit B1 Laurence Ctr. Drogheda	€105 & €52.50	3,607.79 sq.m.	€365,000

\*\*\*Reduced on appeal. Pending Tribunal Determination.

8.3 He then set out his determination of NAV for the subject Property as follows:

Level	Use	Area in Sq. mtrs	NAV € per Sq. mtr	Total NAV
0	Retail	1,894.72	€90	€170,524.80
0	Offices/stores	207.66	€90	€ 18,689.40
1	Offices/stores	691.53	€45	€ 31,118.85
2	Offices/plantroom	74.17	€22.50	€ 1,668.83
			<b>Total NAV</b>	<b>€222,001.88</b>
			Say	€222,000.00

8.4 Under cross examination, he stated that

- i) the subject Property could be occupied by a department store or large retailer and for different purposes. As he was not involved in the letting of the Property, he could not explain why it was unlet but that valuation levels have been established by the Tesco agreement.
- ii) although the Property is vacant there are comparable NAVs for similar size units and if the subject is distinguished in valuation from the Tesco €90/sq. m then there is no equity and uniformity.
- iii) the Zone A NAV on the unit shops had been reduced from €350 to €300 and in Marshes it is €600 and therefore equity and uniformity was achieved.
- iv) considered as a whole, the Marshes is the prime retail location in Dundalk, enjoying the largest pedestrian flow and largest retail units in the town and, therefore, has attracted the highest Zone A retail values for this location and that Long Walk is a different type shopping centre to Marshes with a smaller retail area and lower pedestrian flow.
- v) in relation to a question concerning the 50% difference in Zone A rates between Marshes and Long Walk for the unit shops which acknowledges the superiority of Marshes and why a reduction greater than 18% had not been applied to the Long Walk anchor units, his response was that they were not comparable.
- vi) He did not accept that the Tesco unit in Long Walk was equivalent to a stand-alone Tesco unit and noted that its access is through the malls. In relation to his Comparison No. 3, the Tesco unit on the 1<sup>st</sup> floor in the Tesco Shopping Centre, Dundalk, he said the unit shops on the ground floor were at €350 per sq. metre Zone A with the Tesco shop at €90 per sq. metre.

vii) He acknowledged that there was no rental evidence in the Rating Authority area for large supermarkets or department stores.

## **9. CLOSING ARGUMENTS**

- 9.1 Mr Devlin noted that the Property has been vacant for seven years and there has been no demand for it. Long Walk is a failing shopping centre with Tesco and some unit shops hanging on. The Zone A rate of €300 per sq. metre reflects that the Respondent accepts that Marshes with a Zone A rate of €600 per sq. metre is better than Long Walk yet the rate applied to the subject at 18% less than equivalent properties in Marshes does not reflect this. He asked the Tribunal to accept his valuation of €148,000.
- 9.2 Mr Turley said that most weight must be given to evidence concerning the Tesco shop in Long Walk, the NAV of which was agreed at €90 per sq. metre as well as to the Tesco Shopping Centre also valued at €90 per sq. metre. In his view, there was no sustainable argument for a quantum reduction. He asked the Tribunal to affirm his valuation of €220,000.

## **10. FINDINGS AND CONCLUSIONS**

- 10.1 On this appeal the Tribunal must determine the value of the Property to achieve both, insofar as is reasonably practical (a) correctness of value and (b) equity and uniformity of value between properties on the valuation list and 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 Louth County Council.
- 10.2 The Property comprises one of two anchor shops, the other being a Tesco supermarket, in Long Walk in Dundalk town centre. The Property had been vacant and available to let since 2014 when the occupier relocated to Marshes i.e., some three years prior to the valuation date. Despite marketing efforts, the Property has remained vacant up to the date of the hearing. This clearly indicates a lack of demand for a second anchor occupier in Long Walk and that Long Walk probably cannot support a second anchor.
- 10.3 The vacancy levels at Long Walk have reached as high as 60%. Other units apart from the subject have lain vacant for years. In the retail sector, shops rely upon passing trade, and high vacancy levels have a knock-on effect upon passing trade.



- 10.4 It is clear and undisputed that Marshes, a newer and bigger shopping centre, also in Dundalk town centre, is a better shopping centre and in rental terms more valuable than Long Walk. Zone A NAV rates per sq. metre for both Long Walk and Marshes were derived from rental evidence; the rate for Long Walk is €300 per sq. m whereas Marshes is €600 per sq. m. Furthermore, while more than half of the unit shops in Long Walk are vacant, only 3 shop unit are vacant in Marshes.
- 10.5 It is a longstanding principle of rating valuation, which properly reflects the statutory valuation hypothesis, that reliable rental evidence should be accorded more weight than rating assessments unless there is an established tone of the list. The exception in favour of valuation by reference to an established tone is not a true exception as the tone should itself have become established on the basis of reliable rental evidence. There is no rental evidence available in County Louth for large anchor tenant space. This is acknowledged by both parties. The lack of rental evidence for anchor space makes it very difficult to estimate a correct, equitable and uniform valuation.
- 10.6 While there is no direct correlation between the Zone A rate applied to unit shops and the overall rate applied to larger stores in any particular location it is noteworthy that the Zone A rate fixed and agreed in Marshes is double that for Long Walk and whereas the overall rate for large stores is €100/€110 per sq. metre in Marshes that proposed for Long Walk is €90 per sq. metre. The evidence demonstrates very convincingly that the vacancy levels at Long Walk at the valuation date would have reduced the bids of prospective tenants.
- 10.7 For the above reasons, the Tribunal accepts Mr Devlin's argument that there is insufficient differential between the rate of NAV of the similar anchor units in Marshes compared with the subject and that the Appellant has established that the NAV applied to the subject unit is excessive regardless of the fact that a negotiated agreement was reached in respect of the Tesco supermarket unit at a NAV rate of €90 per sq. metre.
- 10.8 The Tribunal considers that Mr Devlin's contention that the NAV should be based upon €55 per square metre, which is €35.00 below Mr Turley's estimate, is entirely unsupported by any evidence and represents too great a discount on the Marshes shopping centre level and to adopt it would imply a relationship between Zone A rates for unit shops and anchor store rates per sq. metre which would be entirely arbitrary.

10.9 In the opinion of the Tribunal an NAV rate of €80 per sq. metre is more appropriate, acknowledging that there is no rental evidence available, that the hypothetical tenant would know that the Property has been vacant for approximately 3 years, that Long Walk had other vacant units, that Long Walk is competing with Marshes in the same catchment area and these factors would have figured large in the negotiation between hypothetical parties.

**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 €200,000, calculated as follows:

Level	Use	Area in Sq. mtrs	NAV € per Sq. mtr	Total NAV
0	Department Store	2,102.38	€80	€168,190.40
1	Office	691.53	€45	€ 31,118.85
2	Store	74.17	€22.50	€ 1,668.83
			Total NAV	€200,978
Say				<b>€200,000</b>

And the Tribunal so determines.