

Appeal No: VA19/5/1470

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020**

Shaws

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2196743, Retail (Shops) at B1 Peter Street Mall, Laurence Town Centre,
Drogheda, County Louth

B E F O R E

Eoin McDermott - FSCSI, FRICS, ACI Arb

Claire Hogan - BL

Martin Connolly - MAgrSc, M.Sc., MSCSI, FCInstArb

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25th DAY OF March , 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th 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 €365,000.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

“1. The valuation is excessive having regard to the location of the subject property on the lower ground / basement level of a secondary provincial shopping centre with high vacancy rates by reference to the tone of list and similar lettings.

2. The appellant is of the opinion that a lower valuation of €229,157.50 is more representative of a reasonable Net Annual Value in accordance with Section 48 (3) of the Valuation Act 2001, as amended.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €195,400.00; the figure of €229,157.50 was entered in the Revaluation Appeal in error.

2. REVALUATION HISTORY

2.1 On the 15th day of March 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 €416,000.

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 €365,000.

2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €365,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 25th day of February 2022. At the hearing the Appellant was represented by Niall Brereton BSc. MRICS, MSCSI of Bannon Chartered Valuation Surveyors and the Respondent was represented by Gillian Beale BSc. (Hons) Property Studies, MSCSI, MRICS, RICS Registered Valuer 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 their précis as their evidence-in-chief in addition to giving oral evidence.

4. FACTS

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

4.1 The subject property is a department store located in the Laurence Town Centre, Peter Street, Drogheda. The centre was built in the mid-2000s, and its fitout and condition are typical of a property of its age.

4.2 The property is one of two anchor stores in the Centre, the other being Marks and Spencer. It is located mainly on the lower ground floor, with access from Peter Street and lift access from the underground car park. There is direct access to the upper floors via a travelator.

4.3 The subject property is owner occupied and held under a 700-year lease at a nominal rent.

4.4 There is agreement between the parties that the Laurence Centre is trading poorly, the least successful of the three centres in Drogheda. Vacancy levels are high; 78% on the lower ground floor (Level 0) and 63% overall.

4.5 Floor areas are agreed by the parties as follows:

Floor Level 0. Department Store	2,355.1 sq. m.
Floor Level 0. Office/Store	477.8 sq. m.
Floor Level 1. Store.	<u>564.0 sq. m.</u>
Total	3,369.8 sq. m.

5. ISSUES

The dispute concerns the appropriate quantum NAV to be applied on the Valuation Date, 15th September 2017.

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 Brereton on behalf of the Appellant contends that the NAV of €365,00 is excessive. In the Notice of Appeal, the Appellant sought a NAV of €229,157.50, which is higher than the figure now contended for, €195,400. In cross examination, Mr Brereton explained that this was as a result of an error in calculation; the NAV of the department store was applied in error to office/storage areas also.

7.2 The Appellant maintains that Laurence Centre is trading poorly, the least successful of the three centres in Drogheda.

7.3 The Appellant maintains that vacancy levels are high; 63% on average and 78% on the lower ground floor.

7.4 The Appellant argues that the service charge of €147,000 is onerous and as part of “*other expenses*” should be considered in determining the NAV under S 48 (3) of the 2001 Act.

7.5 The Appellant argues that but for the fact the property is owner-occupied, the occupier would have ceased trading in the Laurence Town Centre.

7.6. Four letting transactions were put forward on behalf of the Appellant.

They are located in Mullingar (No 1), Tullamore (No 2), Athlone (No 3), and Drogheda (No 4). Lease dates ranged from July 2015 (No 3) to Q1 2021 (No 4). Net Effective Rents were: No 1 €60 psm; No 2 €85 psm; No 3 €106 psm; and No 4. €32 psm.

7.7 Six properties were put forward as evidence of the emerging tone of the list.

Property Number	Property	Description	Area sq m	NAV psm
5005094	TK Maxx, Drogheda Retail Park	Retail Warehouse Mezzanine	2,126.4 189	€70 €21
2182108	Dunnes Stores, Scotch Hall, Drogheda	Floor 0. Floor 1. Floor 2. Mezzanine.	2,839.3 3,643.5 676.5 1,086.0	€110 €110 €55 €20
2187140	M&S, Laurence Centre, Drogheda	Floor 0. Floor 1	1,901.9 607.3	€105 €52
1278468	Penneys, West St., Drogheda	Floor 0. Floor 1. Floor 2 Yard.	1,803.4 1,210.4 183.3 162.0	€95 €90 €90 €6
1278467	Dunnes Stores, West Street, Drogheda	Floor 0 Floor -1 Floor 1 Floor 2	921.2 237.0 919.1 69.1	€95 €47.50 €47.50 €7.50
1277479	Tesco, West Street, Drogheda	Floor 0 Floor 1 Floor 2	1,075.2 271.0 88.4	€95 €47.50 €47.50

7.8 The Appellant maintains that the correct NAV as of 15th September 2017 should be €195,400. This figure is calculated as follows:

Floor	Area sq. M	Rent psm	Rent PA
Department Store Lr Ground Floor	2,355	€65	€153,074
Office/store Lr Ground Floor	478	€32.50	€15,526
Store Ground Floor	564	€32.50	€18,300
Fit-Out		5%	€8,430
Total			€195,360
		Say	€195,400

8. RESPONDENT'S CASE

8.1 Ms Beale, on behalf of the Respondent stated that the valuation has been carried out in accordance with the requirements the Valuation Acts, 2001-2015. The Net Annual Value (NAV) of the property has been estimated in accordance with S 48 of the Act and the requirements of S 19 (5) to:

Achieve both (insofar as is reasonably practical (a) correctness of value (b) equity and uniformity of value between properties on that valuation list.

8.2 She accepted that the Laurence Street Centre is the poorest performing shopping centre in Drogheda, a fact reflected in the NAV of €105 per square metre entered on the List for both of the department stores in the centre, and that a NAV of €90 per square metre for the subject is now being contended for by the Respondent.

8.3 There were no rental transactions of department stores in County Louth available to the Commissioner on which to base a valuation scheme.

8.4 Five properties were put forward as evidence of the emerging tone of the list. Of these four were in Drogheda, three were common to the Appellant and one the result of a recent determination by the Tribunal relating to a property in Dundalk.

Property Number	Property	Description	Area sq. m	NAV psm
2182108	Dunnes Stores, Scotch Hall, Drogheda	Floor 0.	2,839.3	€110
		Floor 1.	3,643.5	€110
		Floor 2.	676.5	€55
		Mezzanine.	1,086	€20
1278285	Dunnes Stores, Unit 28, Drogheda town Centre	Floor 0	3,782	€105
		Floor 1	232.25	€52.50
		Fit-Out Allowance	5%	€14,607.18
2187140	M&S, Laurence Centre, Drogheda	Floor 0.	1,901.9	€105
		Floor 1	607.3	€52
1278468	Penneys, West St., Drogheda	Floor 0.	1,803.4	€95
		Floor 1.	1,210.4	€90
		Floor 2.	183.3	€90
		Yard.	162	€6
1318819	Penneys, Long Walk Shopping Centre, Dundalk.	Floor 0	2,102.38	€80
		Floor 1	691.53	€45
		Floor 2	74.17	€22.50

8.5 Regarding the four rental transactions put forward by the Appellant, Ms Beale had the following comments:

- (a) Three were outside of County Louth, geographically removed from Drogheda.
- (b) Two had turnover rents, which made analysis difficult.
- (c) One was valued on a zoned basis, and therefore not a department store.
- (d) The three towns outside of County Louth had significantly smaller populations, approximately half that of Drogheda.
- (e) The transaction in Drogheda was not comparable. It is a supermarket with a lease date of 2021. It was a transaction completed during the COVID pandemic and as such would be subject to uncertainty.

8.6 She did not accept that Property Number 5005094, TK Maxx, Drogheda Retail Park was comparable. It was located in an out-of-town retail park, not a shopping centre.

8.7 The onus of proof rests with the Appellant. This was accepted in cross examination by Mr Brereton.

8.8 Ms Beale advised that the Commissioner had looked again at the NAV of the Property in light of the evidence put forward by the Appellant and put forward an amended valuation of €293,000, calculated as follows: -

Floor	User	Area sq. m	NAV/sq. m	Total NAV
0	Department Store	1,848.90	€90	€166,401.00
0	Department Store	506.20	€90	€45,558.00
0	Department Store	478	€90	€43,002.00
2	Store	428	€45	€19,260.00
2	Store	136	€45	€6,120.00
0	*Department Store (fit out allowance)			€12,748.05
	Total			€293,089.05
	Say			€293,000.00

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 Louth County Council.

10.2 The Tribunal had 12 items of market evidence put before it, comprising four rental transactions and eight tone of the list comparisons.

10.3 The Tribunal finds that the rental transactions were of little assistance. Three were located in other counties remote from the subject. The fourth, a former supermarket in Drogheda, has a lease date of 2021, removed in time from the valuation date.

10.4 The M&S property in the Laurence Town Centre, Property Number 2187140, which is under appeal to the Tribunal, was submitted in evidence by both parties. This particular comparator is of little evidential value following the judgement of the Court of Appeal in the case of Stanberry Investment Limited and the Commissioner of Valuation. [2020] IECA 33. It was held at 76 that

[the Court] must conclude that the Tribunal in referring to the emerging tone of the list was erroneously referring and attaching significant weight to, the valuation of properties under appeal.

10.5. Evidence was presented on behalf of the Respondent of a recent Tribunal determination, VA19/5/0790, Primark Stores Limited T/A Penneys and the Commissioner of Valuation. The NAV was determined at €80 psm in a department store that has lain vacant since 2014, in the Long Walk Shopping Centre, Dundalk, Co Louth. It was accepted that this is a shopping centre that is performing badly, with vacancy rates of 60%. Ms Beale for the Respondent contended that it was in an inferior location to the subject. This was not rebutted by the Appellant.

10.6 Under cross examination Ms Beale accepted that she did not specifically have regard to the service charge of €147,000 pa when calculating the NAV, in circumstances where high street units such as Penneys, Property Number 1278468, and Tesco, Property Number 1277479, paid no service charge. She did point out that high street retail units usually commanded lower rents than similar units in shopping centres. No evidence was provided on the level of service charges paid by the department stores in the Scotch Hall or Drogheda Town Centre shopping centres.

10.7 The Tribunal notes agreement between the parties on the overall floor areas. However, there is a discrepancy on how these areas are used in the respective valuations. Mr Brereton for the Appellant distinguishes between the office/store on the lower ground floor, 478 sq. m, which he values at €32.50 psm compared with the department store floor area of 2,355 sq. m which he assessed at €65 psm. On the other hand, Ms Beale values the entire lower ground floor on an overall basis. On cross examination, Mr Brereton accepted that all other department stores in Drogheda are valued on a similar overall basis.

10.8 There is a longstanding principle in rating valuation that reliable rental evidence should be accorded more weight than rating assessments unless there is an established tone of the list, which itself would have been derived from rental evidence. It is acknowledged by both parties that there is no rental evidence of department stores in County Louth. This lack of evidence makes it very difficult to establish a correct, equitable and uniform valuation.

10.9 However, there is an emerging tone of the list, with a clear hierarchy evident in Drogheda. Unit 1 Scotch Hall, Property Number 2182108, was referred to the Tribunal but the NAV was agreed prehearing at €110 psm. In Unit 28 Drogheda Town Centre, Property Number 1278285, the NAV was agreed at €105 psm at Representation stage. In the Laurence Town Centre, both department stores were entered on the List at an NAV of €105 psm following representations, but both are under appeal.

10.10 The Tribunal considers Mr Brereton's contention that the NAV should be €65 psm is too great a discount on the levels pertaining in Scotch Hall and Drogheda Town Centre.

10.11 In the opinion of the Tribunal an NAV rates of €85 psm for the department store and €42.50 for the office/storage space (50% of department store used in both submissions) are more appropriate acknowledging that there is no rental evidence available, but that a prospective tenant would be aware of the high vacancy levels in the Laurence Town Centre.

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 €276,800.

The revised NAV is calculated as follows:

Floor	Use	Area	NAV psm	NAV
0	Department Store	2,832.9	€85.00	€240,796.50
1	Store	564	€42.50	€23,970.00
0	Fit-out		5%	€12,093.83
			Total	€276,860.33
			Say	€276,800

