

**Appeal No: VA19/5/0589**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Eurogeneral Retail Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**  
Property No. 2185081, Retail (Shops) at Unit G4 & G3 Scotch Hall Drogheda County Louth.

**B E F O R E**

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

**Michael Brennan- BL, MRICS**

**Liam Daly – MSCSI, MRICS**

**Deputy Chairperson**

**Member**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 12<sup>th</sup> DAY OF May, 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 €75,600.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *“The valuation is excessive and inequitable. It does not achieve correctness of value and equity and uniformity of value as between comparable properties.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €48,000.

**2. REVALUATION HISTORY**

2.1 On the 15<sup>th</sup> 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 €75,600.

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

2.3 A Final Valuation Certificate issued on the 10<sup>th</sup> day of September 2019 stating a valuation of €75,600.

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 remotely, on the 25<sup>th</sup> day of March 2022. At the hearing the Appellant was represented by the Donal O' Donoghue, Director of OMK Property Advisors & Rating Consultants and the Respondent was represented by Tanya Vasileva 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/her précis as his/her 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 situated on the ground floor of a modern (circa 2006) shopping centre in the centre in Drogheda, Co Louth.

4.3 The property comprises a double unit ground floor shop.

4.4 The floor area is   Zone A 95.12 sq. meters,  
                              Zone B – 96.23 sq. meters,  
                              Zone C 89.09 sq. meters,  
                              Remainder 20.51 sq. meters.  
                              Total net internal floor area 300.95 sq meters.

4.5 The property is held on an internal repairing lease for a term of 15 years from 23/9/2013 at an initial rent of €60,000 per annum. The tenant pays a service charge to cover insurance, exterior repairs and common services. A 14 month rent free period was granted over the first two years of the term. The tenant had a break option on 4<sup>th</sup> March 2019 which was exercised and further negotiations between the landlord and tenant extended the effective termination date until 31<sup>st</sup> January 2020. The tenant is currently holding over on their lease by agreement and have been paying a rent of €42,000 per annum since June 2020.

4.6 The emerging tone of the list for unit shops on the ground floor in the Scotch Hall Development is €450 per sq. meter Zone A.

4.7 This is the only shop unit NAV in Scotch Hall appealed to the Valuation Tribunal, all other ground floor units having been agreed or accepted at €450 per sq meter Zone A

### **5. ISSUES**

The sole issue in this case is the net annual value of the property.

## 6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value 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.”

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

Mr O’Donoghue’s arguments on behalf of the appellant are:

7.1 that not enough account has been taken by the Commissioner of the passing rent or the net effective rent of the premises and the proposed NAV is almost double the net effective rent. Allowing for the 14-month rent free in the first two years of the term to the tenants break option in year 6 devalues to a net effective rent of €48,330 pa.

7.2 that there are restrictive covenants in the lease particularly in relation to the sale of any food products from the premises and this is limiting for a discount retailer such as the present occupier as it is commonplace for discount retailers to sell food items as they are an important driver of footfall.

7.3 that no allowance has been made for the frontage to depth ratio as recommended in the SCSI Information Paper on “Retail Zoning for the Chartered Surveyor”. He quoted from the paper:

*Quantum discount for frontage to depth ratio*

*It has become apparent that the application of zoning can at times overvalue relatively wide premises and at the same time undervalue narrow deep premises. In terms of frontage to depth a ratio of 1:3 is felt to be standard.*

*For the purpose of discounting the Zone A rate it is suggested that a discount of plus or minus 10% be applied to units with a frontage to depth ratio of less than 1:2.”*

He noted that this unit has a frontage to depth ratio of 1:1.35, comfortably within the allowances suggested in the SCSI paper

7.4 In providing his opinion of NAV he noted that the ground floor Zone A rent for Scotch Hall is established at €450 per sq. meter

Zone A, 95.12 sq. meters at €450 per sq meter -	€42,804.00
Zone B, 96.23 sq. meters at €225.2 per sq meter -	€21,651.75
Zone C, 89.09 sq. meters at €112.5 per sq meter -	€10,022.63
Remainder 20.51 sq. meters at €56.25 per sq meter -	€1,153.69
Total	€75,632.07

From this he made a deduction of 10%  
for restrictive covenant in relation to  
food and grocery sales - €7,563.20

and 10% for frontage to depth allowance - €7,563.20.

Total €60,505.67,

Say NAV €60,500.

In cross examination

In relation to the ratio of frontage to depth, he accepted that some net annual values in Scotch Hall have similar frontage to depth ratios as the subject.

In his opinion the passing rent cannot be ignored and reflects the restrictive covenants. He acknowledged that the stock in the shop was similar to that in other Euro Giant outlets and that restrictive covenants are not unusual.

To a question from the Tribunal in relation to valuing the premises vacant and to let he said that the lease forms part of the actual state of the property.

Summing up Mr O'Donoghue stated that this was a discount store with a current passing rent of €42,000 per annum and a headline rent of €60,000 per annum and allowing for the initial rent-free period the net effective rent was €43,333 per annum. Yet the Commissioner was proposing a NAV of €75,600. The tenant had been in occupation since 2013 and had never paid more than €60,000 per annum. He felt that the restrictive covenant in relation to the sale of food items, which was important to a discount retailer, had to be considered as had the frontage to depth issue. Noting that even the highest rent at €60,000 per annum is 20% lower than the Commissioner's NAV he asked the Tribunal to determine a NAV of €60,500.

## 8. RESPONDENT'S CASE

Miss Vasileva outlined her qualifications with a degree in economics, membership of the IPAV and associate membership of the SCSi and that she had almost 5 years' experience in the valuation office.

In her commentary on the Appellant's evidence, she noted that

8.1 the Appellant had applied the same Zone A rate as the Commissioner and sought allowances for restrictive covenants and frontage to depth ratio.

8.2 the permitted user allows for the sale of a wide variety of goods typical of a Euro Giant shop and the restrictive covenant disallows the sale of food, food products or groceries such as in a Spar or Aldi. The valuation of a commercial unit under the Valuation Acts is for the unit itself and not the use of it or the occupier's business.

8.3 most of the units have similar ratio characterisers to the subject which is not of an unusual shape which could negatively affect its performance as a retail unit. The three comparisons utilised by the appellant have the following frontage to depth ratios:

PN 2185081 (subject) 1-1.35

PN 2185089 1-1.34

PN 2185083 1-2.25

And each is valued at €450 per sq.m Zone A

8.4 the current rent of €42,000 per annum was reduced in June 2020 which was after the relevant valuation date of 15<sup>th</sup> September 2017 and was agreed during the Covid lockdown period.

8.5 She provided three key rental transactions from the Scotch Hall Shopping Centre the details of which are attached in the appendix. In each case she analysed the Net Effective Rent at the valuation date. In summary these are as follows:

Property	Lease Date	NER at Val date	NER Zone A at Val Date	NAV	Zone A NAV
KRT1	30/11/16	€38,800	€494.83	€35,200	€450
KRT2	24/10/17	€53,829.44	€556.17	€43,400	€450
KRT3	20/10/2016	€31,827.72	€299.20	€43,200	€450

8.6 She then provided three NAV comparisons summarised as follows:

Property	Overall Area	Zone A area	Frontage to Depth Ratio	NAV Zone A per sq.m	Total NAV
NAV 1	239.49 sq.m	77.04 sq.m	1:1.34	€450	€62,200
NAV 2	380.07 sq m	84.79 sq m	1:1.53	€450	€75,900
NAV 3	393.02 sq m	96.38 sq m	1:1.38	€450	€81,400

Miss Vasileva then set out her valuation of €75,600 calculated as follows:

Retail Zone A	95.12 sq m	@ €450 per sq m	€42,804.00
Zone B	96.23 sq m	@ €225 per sq m	€21,651.75
Zone C	89.09 sq m	@ €112.5 per sq m	€10,022.63
Zone Remainder	20.51 sq m	@ €56.25 per sq m	€ 1,153.69
		Total	€75,632.07
			say €75,600

In cross examination, Ms Vasileva acknowledged that only three rents were available to the Commissioner to form the scheme of valuation. She accepted that her key rental transaction 1 was of a unit of very regular shape with a frontage to depth ratio more in line with standard shopping centre units.

She accepted that her key rental transaction 2 had a high rent but did not know why or if it was related to the food user and accepted that the headline rent was 50% higher than the net annual value and the net effect of rent was 20% higher than the net annual value. In relation to her third comparison, she agreed that the rent was low and that Zone A rent was €299.20 per sq meter. In response to questions from the Tribunal, she acknowledged that for her key rental transaction 2 that there were tables and chairs in the mall for the use of this unit and that these were not separately valued.

Summing up Ms Vasileva stated that the NAV was in accordance with Section 48 and Section 19 (5) of the Act and therefore requested that the Commissions determination of €75,600 be affirmed.

## 9. SUBMISSIONS

There were no legal submissions.

## 10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine the value of the Property 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 Co Louth

10.2 There is a very clear emerging tone of the list in relation to the ground floor of Scotch Hall Shopping Centre at €450 per square meter Zone A. Only this unit is on appeal to the Valuation Tribunal.

10.3 As each valuer has accepted that the appropriate Zone A rate is €450 per square meter the only matters in dispute are whether the restrictive covenant as to what may be sold from the property and the frontage to depth ratio would persuade the Tribunal to discount the otherwise established Zone A rate in calculating the NAV.

10.4 Quoting the relevant prohibited uses from the eight schedule of the lease, they are as follows:

1. As a supermarket
2. As a convenience store (such as Spar or Centra or similar type convenience store) or discount food store (such as Aldi or Lidl) or grocery shop or frozen food store or mini food market.
3. For the sale of any food, food products or grocery in or from any such food store.

In the opinion of the Tribunal the restriction of the sale of any food or food products or groceries only relates to any such food store as noted in 10.4.1,2 and 3 above and therefore does not apply to the current user in the subject premises.

The emerging tone of €450 per sq.m Zone A applies invariably across the various types of retail users.

10.5 The Tribunal acknowledges the Society of Chartered Surveyors Ireland information paper in relation to Retail Zoning for Surveyors and generally endorses it. However, in this instance the evidence of the Net Annual Values and Zone A rate accepted and agreed by all other unit shops in Scotch Hall Shopping Centre irrespective of any restrictive covenants and frontage to depth ratio sets a tone of the list and to vary it would run counter to the provision in Section 19 (5) of the Valuation Act in relation to equity and uniformity.

#### **DETERMINATION:**

Accordingly for the above reasons the Tribunal disallows the appeal and confirms the decision of the respondent and the Net Annual Value in the sum of €76,500 and the Tribunal so determines.