

Appeal No: VA17/5/863

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Inditex Ireland T/A Zara

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2195142, Retail (Shops) at Unit 28.29 Athlone Town Centre,
Mardyke Street, Athlone, County Westmeath.
("the Property")

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH JUNE DAY OF 2022**

BEFORE

Fergus Keogh - MSCSI MRICS

Member

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 €281,000
- 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:

“The valuation applied is considered excessive having regard to the following:

- *The nature and scale of the unit as an MSU.*
- *By reference to tone of the list of similar circumstanced properties.*
- *By reference to letting evidence within the Shopping Centre.*
- *By reference to letting evidence of comparable properties.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €140,735

2. RE-VALUATION HISTORY

2.1 On the 12th day of January, 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 €384,000.

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 €281,000.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €281,000.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is 30th day of October, 2015.

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. FACTS

- 4.1 The parties are agreed as to the following facts.
- 4.2 Athlone Town Centre ('the Centre') is a purpose built development constructed in the mid 2000's which opened for trade in 2007. It is a modern shopping centre which trades over two floors with an underground car parking for 1,200 cars. Access to the Centre is via three pedestrian routes from Dublin Gate Street, Gleeson Street and the Civic Square. Escalators provide internal circulation. There is approximately 56 no. shop units within the Centre and traders and occupiers include Marks & Spencer, Next, H&M, River Island and the Sheraton Hotel.
- 4.3 The Property comprises a two storey retail unit located at ground and first floor levels. At ground floor level the immediately adjacent occupiers are M&S and River Island and at first floor level the Property is in the section between Next and River Island. Internally the Property is fitted-out as a retail fashion store. The first floor provides a larger footprint and access between levels is via an escalator.

The parties have agreed that Property extends to a combined area of 1,164 sq. m. as follows:

Floor	Use	Sq. M.
Ground Floor	Retail	477.90
First Floor	Retail	686.10
Total		1,164

- 4.4 The Parties agree that the Property is held under a lease dated 1st November 2007 for a term of 25 years from the 1st November 2007 subject to five yearly rent reviews and a tenant break-option on the 1st November 2022 subject to 6 months prior notice.

5. ISSUES

5.1 The sole issue in this Appeal is one of quantum.

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 On behalf of the Appellant Mr. Byrne in his précis advised the Tribunal that the initial rent to be paid was the higher of €200,000 pa or 5% of turnover and that on rent review the rent to be paid was the higher of the rent contractually payable immediately before the Relevant Review Date or the open market rent on the Relevant Review Date.

7.2 Mr. Byrne contended for an NAV of the Property of €141,000 as follows:

Floor	Area Sq. M.	€ Rent PSM	Rent PA
Ground Floor	477.90	€110	€52,569
First Floor	686.10	€110	€75,471
Fit-out Allowance @ 10%			€12,804
Totals	1,164		€140,844
		Say,	€141,000

7.3 Mr. Byrne described the Property as being a medium sized retail unit in a centre extending to 16,407 sq. m. that contained 56 no. units and advised the Tribunal that there was limited evidence available of lettings involving units in excess of 1,000 sq. m. as at the valuation date. In support of his opinion of NAV he relied upon two letting comparison, one within the Athlone Town Centre and one in the Fairgreen Shopping Centre Mullingar and also advised the Tribunal that he had considered the Emerging Tone of the List in Athlone town.

7.4 The letting comparisons relied upon by Mr. Byrne were as follows;

RT 1 - a unit of 1,893 sq. m. located on two levels within the Athlone Town Centre and let to a multiple international fashion retailer for a term of 15 years from July 2015. The lease incorporates a tenant's break option in year 10 and a 12 months rent free period in year 1. The rent in years 2 & 3 was to be €100,000 pa or 2.5% of turnover with subsequent years to be €200,000 pa or 5% of

turnover. Mr. Byrne analysed this letting as a net effective rent at €180,000 pa or €95 psm.

RT 2 - a unit of 2,334 sq. m. located within the Fairgreen Shopping Centre Mullingar and let to a multiple international retailer for a term of 15 years from September 2015. The lease incorporates a tenant's break option in years 5 & 10. The rent was to be 5% per annum of turnover with the named tenant in occupation and €140,000 pa should the named tenant not be in occupation. Mr. Byrne analysed this rent at €40.70 psm.

7.5 In addition to the above retail letting comparison Mr. Byrne advised the Tribunal that he had considered the Emerging Tone of the List in arriving at his opinion of value and adduced as evidence four comparisons of large retail occupiers (being in excess of 1,000 sq. m.) within Athlone town where the NAV'S ranged between €85 psm - €120 psm as follows;

ETL 1 - a two storey over lower ground floor department store of 1,777 sq.m. located in the centre of Athlone and valued at €90 psm for lower ground & ground floor accommodation and €85 psm at first floor level. Mr. Byrne considered that this comparable and proximate to the subject Property.

ETL 2 - a two storey department store in Golden Island Shopping Centre of 4,696 sq.m. and valued at €120 psm overall.

ETL 3 - a stand-alone department store of 5,424 sq.m. located in the centre of Athlone town and valued at €120 psm.

ETL 4 - a stand-alone two storey department store of 4,846 sq.m. located on the northern periphery of Athlone town and valued at €90 psm overall.

Details of Mr. Byrne's Letting Comparisons and Emerging Tone of the List Comparisons as submitted are set out in Appenix (N/A public) 1 attached.

7.6 In summary Mr. Byrne contended that an analysis of both open market lettings and the Emerging Tone of the List for large retail stores in excess of 1,000 sq. m. suggested a range of NAV's in the order €60 psm to €120 psm depending on the quantum, location and nature of the property in question which contrasted with the subject Property which is valued at €220 psm which Mr. Byrne considered inequitable in light of the available evidence.

Mr. Byrne considered that the most appropriate evidence in this regard was RTL 1 being located within the Athlone Town Centre and the letting occurring shortly before the valuation date which he analysed at a net effective rent of €95 psm on accommodation of 1,893 sq.m. and considered ETL 1 of particular relevance being a building of 1,777 sq. m. in the centre of Athlone town and valued at €90 psm on the ground & lower ground floors and €85 psm on the first floor.

8. RESPONDENT'S CASE

8.1 On behalf of the Respondent Ms. McPartlan contended for the affirmation of the existing NAV of the Property of €281,000 which included a 10% allowance for fit-out based on her opinion of rental value of €220 psm as follows:

Floor	Area Sq. M.	€ Rent PSM	Rent PA
Ground Floor	477.90	€220	€105,138
First Floor	686.10	€220	€150,942
Fit-out Allowance @ 10%			€25,608
Totals	1,164		€281,688
		Say,	€281,000

- 8.2 Ms. McPartlan outlined the location and description of the Athlone Town Centre, the date it was developed and when it opened to the public naming a selection of occupiers. She described the location of the Property within the Centre. These details were in keeping with those as described by Mr. Byrne.
- 8.3 Ms. McPartlan provided the Tribunal with the Revaluation History of the Property confirming that the Valuation Date was the 30th October 2015 and advising that the Final Valuation Certificate had issued on the 7th September 2017 in the amount of €281,000 following receipt of Representations on the 21st February 2017 whereby the Proposed Valuation Certificate in the amount of €384,000 that had issued on the 12th January 2017 was reduced.
- 8.4 Whilst Ms. McPartlan confirmed the lease Term and Commencement Date she advised the Tribunal of a different rent and rent payment provisions as that advised by Mr. Byrne. Ms McPartlan advised that the lease specified a headline rent of €545,000 pa and that a Supplemental Agreement agreed in November 2007 provided for the rent to be calculated at the higher of 8% of turnover or 80% of the turnover rent for the previous 12 month period.

Ms. McPartlan provided the Tribunal with a schedule of annual rents paid for the five year period commencing 1st November 2010 and ending on the 31st October 2015. The rents for these years are set out in Appenix (N/A public) 2 attached. Ms. McPartlan advised that she did not have information as to rents payable for the years 2015 - 2017 and commented that she would have expected an increase due to the general improvement in economic activity.

- 8.5 Due to the differences in the tenancy and rental information provided by the Parties, the Tribunal sought clarification from Mr. Byrne as to the exact lease terms and rents paid and whether Ms. McPartlan's understanding of the lease terms and rents paid was correct.

The Respondent's Representative confirmed that the information as provided by Ms. McPartlan was correct and provided the Tribunal with a copy of the Lease, a copy of the Supplemental Agreement and a detailed summary of the lease terms.

The Tribunal was also provided with details of the rents payable for the years 2015 - 2017 which are set out in Appenix (N/A public) 1. In addition, copies of two Tribunal Determinations in relation to appeals which have been decided by the Tribunal since the appeal process for the subject Property commenced were also submitted these being VA17/5/569 and VA17/5/1000.

Copies of all documents submitted by the Appellant's Representative in response to the Tribunal's request for the clarification of lease terms and rents were forwarded to the Respondent.

8.6 In support of her opinion of value of the Property Ms. McPartlan provided the Tribunal with details of two Key Rental Transactions which were analysed to establish a Net Effective Rent for each property. Details of each Transaction are set out in Appenix (N/A public) 2.

- **Key Transaction 1.** Property PN 2195132 Athlone Town Centre is a unit of 196.6 sq.m. and located in close proximity to the subject Property. It is let under a 10 year lease from March 2016 at €75,000 pa and with a Net Effective Rent of €75,000 pa. It is valued on the basis of a Zone A of 46.70 sq.m. @ €550 psm. The total NAV is €49,000.
- **Key Transaction 2.** Property PN 2195150 Athlone Town Centre is a unit of 83.10 sq.m. and located in close proximity to the subject Property. It is let under a 10 year lease from July 2016 at €40,000 pa and with a Net Effective Rent of €40,000 pa. It is valued on the basis of a Zone A of 46.80 sq.m. @ €550 psm. The total NAV is €35,700.

Ms. McPartlan also included in her precis one NAV Comparison as follows;

- **NAV Comparison No 1.** Property PN 2195128 Athlone Town Centre is a large 2-storey unit within the centre with a ground floor area of 639.40 sq. m. and a first floor area of 475.90 sq. m. It is valued at €220 psm on the ground and first floors with a 10% add-on of €24,536.60 for fit-out to give a total rounded valuation of €269,000. Ms. McPartlan advised that no appeal was made to the Tribunal in relation to this property.

9. FINDINGS AND CONCLUSIONS

- 9.1 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.
- 9.2 The Tribunal notes that the parties are in agreement as to the physical characteristics of the Property including the size of the Property being a ground floor of 477.90 sq. m. and a first floor of 686.10 sq.m. giving a combined area of 1,164.10 sq. m. They are also in agreement as to the lease terms and the rents paid, as set out in Appendices 1 & 2 attached, following clarification by the Appellant's representative. The Tribunal also notes that both parties valued the subject Property by applying an overall rate per square metre and are in agreement as to the percentage to be allowed in the valuation of the Property and applied to the for fit-out element. In their valuations both Parties applied their adopted rate per square metre to both the ground and first floor levels of the Property and did not differentiate on the rate to be applied to the two levels.
- 9.3 Mr. Byrne contended for a valuation of €141,000 which included a 10% allowance for fit-out based on his opinion of rental value of €110 psm. Mr. Byrne relied on his analysis of the terms of the open market letting of a unit of 1,893 sq.m. in Athlone Town Centre which was analysed as having a net effective rent of €95 psm and also the open market letting of a unit in the Fairgreen Shopping Centre of 2,334 sq. m. which was analysed as having a net effective rent of €40.70 psm.

Mr. Byrne also relied upon his analysis of the valuation assessments of four retail properties from the 'Emerging Tone of the List' of varying sizes between 1,777 sq. m. and 5,423 sq. m. which are located in Athlone town and assessed at values ranging from €120 psm to €85 psm.

Mr. Byrne commented that the most appropriate evidence was that of his comparison RT1 analysed at €95 psm and his comparison ETL 1 analysed at €90 psm and €85 psm for ground and first floor accommodation respectively. The Tribunal notes that Mr. Byrne's comparisons both within and outside of the Athlone Town Centre are each of a size substantially larger than the subject Property.

- 9.4 Ms. McPartlan requested the Tribunal to affirm the valuation of the Property as it appears on the Valuation List in the amount of €281,000 which included a 10% allowance for fit-out and which was based on her opinion of rental value of €220 psm.

In support of her valuation Ms. McPartlan relied on her analysis of two Key Rental Transactions within the Athlone Town Centre. KRT 1 is a unit of 196.60 sq.m. analysed as having a Zone A area of 46.70 sq. m. and valued at €550 psm. KRT 2 is a unit of 83.10 sq. m. analysed as having a Zone A area of 46.80 sq. m. and valued at €550 psm.

Ms. McPartlan also relied upon one NAV Comparison, to indicate equity and uniformity. This comparison is a similar sized unit as the subject Property located within the Athlone Town Centre having a ground floor area of 639.40 sq.m. and a first floor area of 475.90 sq.m. and is valued at €220 psm.

The Tribunal notes that Ms. McPartlan's KRT comparisons are both of units within the Athlone Town Centre that are of a size that is substantially smaller than the subject Property and are both analysed by reference to the 'ITZA' zoning method. The Tribunal also notes the analysis of Ms. McPartlan's one only NAV Comparison which is of a similar size to the subject Property and her comment that that the valuation was not appealed to the Valuation Tribunal.

- 9.5 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, as at the valuation date. The rent for which the Property might, in its actual state, be reasonably be expected to let is measured by the rental value of 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.
- 9.6 The headline rent reserved in respect of the Property under the 2007 lease was negotiated almost 8 years prior to the valuation date when market rents were exceptionally high which is confirmed by the actual rents payable under the terms of the Supplemental Agreement whereby the highest annual rent paid in the years 01/11/2010 to 31/10/2017 was approximately 58% of the headline rent with the lowest year being approximately 30% reflecting the progressive decline in the property market occurred after 2008.
- 9.7 In recent years varying forms of letting incentives have become common place including rent free periods, stepped rents, fit-out contributions, break clauses and reverse premiums to encourage tenants to sign leases. These changes have made it harder to interpret some market transactions and to determine exactly what the agreement equates to, in rental terms. Furthermore, turnover rents in shopping centre leases are becoming a more common option and analysing turnover rental provisions in a lease or in this instance in a supplemental agreement also presents challenges given the different type of turnover arrangements that can be made.
- 9.8 The Tribunal has examined and considered the written evidence adduced by the parties including the clarification information submitted on behalf of the Appellant and considers that it is necessary to consider all of the evidence in the round to arrive at a valuation that is correct and equitable. The Tribunal considers that the rental evidence contained in both Précis of Evidence on any basis, provides a very limited picture mainly due to the limited evidence available to the parties at the date of the commencement of this appeal.

9.9 The Tribunal considers that Mr. Byrne’s opinion of value of €141,000 is not supported by and varies very substantially from the rents actually paid under the terms of the turnover provisions of the Supplemental Agreement in the years 2010 - 2017 which indicate a steady increment over that period. The evidence of rent in respect of a letting in the open market of a unit in the Athlone Town Centre which comprises a base rent or a percentage of turnover should be regarded particularly when such rents are becoming a more common feature in the retail property market. All available evidence should be considered. Rents with turnover elements have evidential value in either confirming or casting doubt upon rent levels.

The Tribunal considers that the one only NAV comparison as submitted by Ms. McPartlan to not necessarily indicate evidence of equity and uniformity and that the two KRT comparisons to not be of properties sharing similar characteristics to the subject Property in terms of size and the analysed zoning method of valuation is of little assistance in valuing a unit of the size of the subject Property.

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 **€224,000** as follows::

Floor	Area Sq. M.	€ Rent PSM	Rent PA
Ground Floor	477.90	€175	€83,633
First Floor	686.10	€175	€120,068
			€203,700
Fit-out Allowance @ 10%			€20,370
Totals	1,164		€224,070
		Say	€224,000

Appenix (N/A public)

Appenix (N/A public)