Appeal No: VA19/4/0052

## AN BINSE LUACHÁLA VALUATION TRIBUNAL

### NA hACHTANNA LUACHÁLA, 2001 - 2015 VALUATION ACTS, 2001 - 2015

### Arcadia Group Limited (Topshop/Topman)

and

**Commissioner of Valuation** 

In relation to the valuation of

Property No. 1040194, Retail (Shops) at Ground, First and Mezz, Unit 1, Jervis Centre, County Borough of Dublin.

B E F O R E <u>Eoin McDermott - FSCSI, FRICS, ACI Arb</u> <u>Michael Brennan - BL, MSCSI</u> <u>Brian Meldon - FSCSI, FRICS, Reg Val, Arb</u>

Deputy Chairperson Member Member

### JUDGMENT OF THE VALUATION TRIBUNAL ISSUED ON THE 5<sup>th</sup> DAY OF OCTOBER, 2022

### **1. THE APPEAL**

1.1 By Notice of Appeal received on 5<sup>th</sup> day of December 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  $\in$ **1,091,000** 

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *"excessive and area overstated"* 

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €481,000.

## 2. VALUATION HISTORY

APPELLANT

**RESPONDENT** 

2.1 On 26<sup>th</sup> September 2019 a copy of a valuation certificate proposed to be issued under section 29(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of  $\notin$ 1,091,000.

2.2 A Final Valuation Certificate issued on  $8^{\text{th}}$  November 2019 stating a valuation of  $\notin 1,091,000$ .

#### **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely, on 16<sup>th</sup> August 2022. At the hearing the Appellant was represented by Ms Clare Mason of Avison Young and the Respondent was represented by Mr John O'Brien MSCSI, MRICS, ACIArb 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

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

4.2 The subject property forms part of Jervis Street Shopping Centre, located in Mary Street, Dublin 1. The Centre was opened in 1996. It trades mainly on two levels, ground and first floor.

4.3 The subject property is located at the north-eastern section of the Centre and has direct access to Mary Street as well as internal mall access and frontage. The property comprises an L shaped unit at ground floor level with additional retail space at upper ground floor level and retail and ancillary space at mezzanine level. Access to the entire is at ground floor level only.

4.4 The property has a Gross Internal Area ("GIA") of 1,740.32 M2 as follows: -

Floor level	Floor use	Area (M2)
Ground	Retail	868.57
Upper Ground	Retail	444.99
Mezzanine	Retail	186.01
Mezzanine	Stores/Staff	240.75
Total area		1,740.32

The property has a Net Internal Area ("NIA") of 1,541.91 M2 as follows: -

Floor level	Floor use	Area (M2)
Ground	Retail	800.77
Upper Ground	Retail	408.08
Mezzanine	Retail/ Stores/Staff	333.06
Total area		1,541.91

The NIA can also be zoned, as follows: -

Floor level	Floor use	Area (M2)
Ground	Retail Zone A (Mary St.)	90.12
	Retail Zone B (Mary St.)	99.88
	Retail Zone C (Mary St.)	93.07
	Remainder (Mary St.)	120.75
	Retail Zone A (Jervis Centre)	91.61
	Retail Zone B (Jervis Centre)	91.48
	Retail Zone C (Jervis Centre)	91.48
	Remainder (Jervis Centre)	122.38
Upper Ground	Retail	408.08
Mezzanine	Retail	164.63
Mezzanine	Stores/Staff	168.43
Total area		1,541.91

# **5. ISSUES**

This issue is one of quantum.

### 6. RELEVANT STATUTORY PROVISIONS:

The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

"(1) If the value of a relevant property (in subsection (2) referred to as the "first-mentioned property") falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.

### 7. APPELLANT'S CASE

7.1 Ms. Mason described the property, using photographs and plans contained in her précis. She described the property as being well located with an unusual "L" shaped ground floor retail unit allowing for dual access onto Mary Street and the centres internal mall. She indicated that the unusual shape of the property restricted the layout at ground floor level. She also noted that the property was currently vacant following the liquidation of the tenant's parent company in November 2020.

7.2 In Ms. Masons opinion the property had been wrongly valued as a standard retail unit, measured on a Zoned basis. It was her opinion that the property should have been valued as a Department Store, on a GIA basis and valued on an overall rate per M2. To support this point, she drew attention to a Valuation Office Information Paper entitled "Valuation Guidance Note. Fitting out of Department Stores and Supermarkets" which was contained in her precis. This documents states that Department Stores and Supermarkets are defined as being those with a total retail floor area in excess of 1,000 M2.

7.3 Ms. Mason put forward four comparisons, all within the Jervis centre, as follows: Comparison 1 – PN 2209389 – New Look

Level	Use	Area (M2)	NAV € per M2	NAV
0	Department Store	555.00	250	€138,750
-1	Department Store	3,142.00	250	€785,500
Additional Items				€92,425

				€1,016,675
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It was noted that this property was valued on a GIA basis as a Department Store, and that a Fit-Out allowance had been added.

Level	Use	Area (M2)	NAV € per M2	NAV
0	Department Store	1,130.00	255	€288,150
1	Department Store	2,238.00	255	€570,690
2	Department Store	2,210.00	255	€563,550
3	Store	928.00	100	€92,800
Additional Items				€142,239
				€1,657,429

Comparison 2 - PN 1040210 - Forever 21

It was noted that this property was valued on a GIA basis as a Department Store, and that a Fit-Out allowance had been added. This property also benefits from dual frontage to Mary Street and Jervis Centre.

Comparison 3 - PN 1040206 - Argos

Level	Use	Area (M2)	NAV € per M2	NAV
0	Shop	512.63	750	€384,472.50
1	Store	569.94	200	€113,998.00
Additional Items				
				€498,460.50

It was noted that this property, a ground floor mall unit, was described as a "Shop", measured on an NIA basis and valued on an overall rate per M2. It was Ms. Masons opinion that this represented the tone of the list for other large retail units that had been valued on an overall basis.

Level	Use	Area (M2)	NAV € per M2	NAV
1	Shop	521.34	600	€312,804
1	Store	111.12	200	€22,824

Additional Items		
		€335,628

It was noted that this property, a first-floor mall unit, was described as a "Shop", measured on an NIA basis and valued on an overall rate per M2. It was Ms. Masons opinion that this represented the tone of the list for other large retail units that had been valued on an overall basis.

7.4 In addition to her comparisons, Ms. Mason also drew attention to the approach of the Respondent in valuing units in Blanchardstown Shopping Centre. While accepting that these units lay outside the Local Authority area, it was her evidence that these units demonstrated the approach of the Respondent in valuing similar sized units on a Department Store basis.

7.5 Ms. Mason also referred to comparison evidence put forward by Mr. O'Brien and stated that, having discussed this evidence with the valuers involved for the ratepayers in the respective cases, they had adopted a different approach in analysing the figures agreed with the Respondents, in each case looking at the valuation on an overall basis.

7.6 Ms. Mason contended for a valuation of  $\notin$  507,000, based on valuing the property as a Department Store on a GIA basis. This figure was calculated as follows: -

Floor level	Floor use	GIA (M2)	NAV € per M2	NAV
Ground	Shop	868.57	300	€260,571
Upper Ground	Shop	444.99	300	€113,497
Mezzanine	Shop	186.01	200	€37,202
Mezzanine	Stores/Staff	240.75	200	€48,150
				€47,492
Total area		1,740.32		€507,362

7.7 Ms. Mason also put forward an alternate valuation of  $\notin$ 530,000, based on valuing the property as a large retail unit on a NIA basis at an overall rent per M2. This figure was calculated as follows: -

Floor level	Floor use	Area (M2)	NAV € per M2	NAV
Ground	Retail	800.77	500	€400,385.00

Upper Ground	Retail	408.08	175	€71,414.00
Mezzanine	Retail/	333.06	175	€58,810.50
	Stores/Staff			
Total area		1,541.91		€530,609.50

7.8 In response to cross examination from Mr. O'Brien, Ms Mason did not accept that the valuations of the original components of what is now the subject property provided the best evidence, noting that they were very differently sized units to what was there now. She noted that while the SCSI retail zoning guidelines made reference to ground floor units of less than 1,000 M2 being generally zoned, the Respondent had adopted a different approach in its Information Paper and in practice, as could be seen from her evidence both within the Jervis Centre and Blanchardstown Shopping Centre. She accepted that Blanchardstown Shopping Centre lay outside the Local Authority area but said that there was a dearth of evidence of similarly sized shopping centre units within the Local Authority area that could be used. She accepted that her comparison no.1 was over twice the size of the subject property but noted that she had adjusted her valuation upwards to reflect this. She accepted that dual frontage to Mary Street and Jervis Mall would generally be considered an advantage and that a loading for this may apply if the property was to be valued as zoned unit but reiterated that she did not accept that the property should be valued on a zoned basis. She noted that her comparison no. 2 was valued as a Department Store with no apparent loading for the dual frontage that it enjoyed. She agreed that smaller units within the Jervis Centre were valued on a Zoned basis and advised that her research showed that the prevailing Zone A rate for 6 of the 8 retails units at ground floor level was €2,000 Zone, with the remaining 2 units being valued at €2,100 Zone A.

7.9 In response to queries from the Valuation Tribunal, Ms. Mason confirmed that 3 properties (including her comparisons nos. 1 & 2) were valued as Department Stores within the Jervis Centre, 2 properties (including her comparisons nos. 3 & 4) were valued as shops on an overall basis while the rest of the properties within the Centre were valued on a zoned basis. She accepted that there may be a degree of ambiguity in the treatment of larger units that may be larger than normal retail units but below the size of large department stores. She accepted that the Respondents comparisons nos. 3 & 4 were similar in size to the subject property but were valued on a zoned basis, although she felt that they could be analysed on an overall basis as

well. She accepted that the Respondents comparisons nos. 3 & 4 were shown on the list as zoned properties. She confirmed that the date of the information paper "Valuation Guidance Note. Fitting out of Department Stores and Supermarkets" was November 2010.

#### 8. RESPONDENT'S CASE

8.1 Mr. O'Brien described the property, using photographs and plans contained in his précis. He explained that the reason for the revision of the valuation was that the new property was an amalgamation of two former units (his comparison nos. 1 & 2), together with extra space from a third unit (his comparison no. 3).

8.2 Mr. O'Brien stated that he considered his valuation approach to be fair and equitable and in accordance with S. 49 of the Act. He advised that the property had been let at an annual rent of  $\in$ 1,250,000 in 2016. He believed that the size and location of the subject property meant that it should be categorised as a standard retail shop, and not a department store as sought by the Appellant. He included in his precis the Valuation Office Information Paper entitled "Valuation Guidance Note. Fitting out of Department Stores and Supermarkets" dating from 2010 and a further Valuation Office document entitled "Valuation Guidance Note – Department Stores" dating from August 2017. He noted that he proposed to reduce the value appearing the list from  $\in$ 1,019,000 to  $\in$ 995,000 as a result of a joint measurement exercise conducted with the Appellants agent.

Floor level	Floor use	NIA (M2)	NAV € per M2	NAV
Ground	Retail Zone A	56.34	2,500.00	€140,850.00
	Retail Zone B	66.19	1,250.00	€82,735.50
	Retail Zone C	72.35	625.00	€45,218.75
	Remainder	30.21	312.50	€9,440.62
	Store	15.60	200.00	€3,120.00
Total		240.69		€281,366.87

8.3 Mr. O'Brien put forward four comparisons, all within the Jervis Centre, as follows: Comparison 1 – PN 1040194 – Arcadia Group

This comparison was originally valued as a standalone unit in the Jervis Centre with frontage onto Mary Street. It now forms part of the subject property, which has the same Property Number.

Floor level	Floor use	NIA (M2)	NAV € per M2	NAV
Ground	Retail Zone A	31.43	2,500.00	€78,575.00
	Retail Zone B	38.43	1,250.00	€48,037.50
	Retail Zone C	17.64	625.00	€11,025.00
Basement	Shop	83.20	170.00	€14,144.00
Total		170.70		€151,781.50

Comparison 2 - PN 731231 - McKillen & Drayne

This comparison was originally valued as a standalone unit in the Jervis Centre with frontage onto Mary Street. It now forms part of the subject unit.

Total		2,521.22		€1,117,921.70
	10% addition for fit out			€101,628.00
	allowance			
	10% frontage to depth			-€83,753.00
First	Shop	1,500	175.00	€262,500
	Remainder	432.36	262.50	€113,494.50
	Retail Zone C	197.25	525.00	€103,556.25
	Retail Zone B	194.28	1,050.00	€203,994.00
Ground	Retail Zone A	198.33	2,100.00	€416,493.00
Floor level	Floor use	NIA (M2)	NAV € per M2	NAV

Comparison 3 – PN 1040198 – Arcadia Group

This comparison was originally valued as a standalone unit within the Jervis Centre and now forms part of the subject unit. The valuation was agreed with the Appellants then agent on appeal prior to a Valuation Tribunal hearing.

Comparison 4 – PN 1040201 – Boots

Floor level	Floor use	NIA (M2)	NAV € per M2	NAV
Ground	Retail Zone A	112.40	2,100.00	€236,166.00

	5 % frontage to depth allowance			-€23,772.13
Fourth	Store	611.97	100.00	€61,197.00
	Store	70.47	200.00	€14,094.00
	Shop	747.62	200.00	€149,524.00
First	Offices	164.74	200.00	€32,948.00
	Remainder	176.71	262.50	€46,386.37
	Retail Zone C	119.47	525.00	€62,721.75
	Retail Zone B	123.97	1,050.00	€130,168.50

Located on the ground floor mall close to the subject. Valued on a zoned basis. The valuation was agreed with the occupants agent prior to a Valuation Tribunal hearing.

8.4 Mr. O'Brien contended for a valuation of €995,000, based on valuing the property as a retail shop on a zoned basis. This figure was calculated as follows: -

Floor level	Floor use	Area	NAV€ per	NAV
		(M2)	M2	
Ground	Retail Zone A (Mary St.)	90.12	€2,500.00	€225,300.00
	Retail Zone B (Mary St.)	99.88	€1,250.00	€124,850.00
	Retail Zone C (Mary St.)	93.07	€625.00	€58,168.75
	Remainder (Mary St.)	120.75	€312.50	€37,734.37
	Retail Zone A (Jervis Centre)	91.61	€2,100.00	€192,381.00
	Retail Zone B (Jervis Centre)	91.48	€1,050.00	€96,054.00
	Retail Zone C (Jervis Centre)	91.48	€525.00	€48,027.00
	Remainder (Jervis Centre)	122.38	€262.50	€34,124.75
	Frontage to Depth allowance			-€36,858.67
	10%			
Upper Ground	Retail	408.08	€175.00	€71,414.00

Mezzanine	Retail	164.63	€175.00	€28,810.25
Mezzanine	Stores/Staff	168.43	€175.00	€29,475.25
	Fit out allowance 10% (retail)			€87,500.84
Total area		1,541.91		€995,281.24

8.5 In response to cross examination from Ms. Mason, Mr. O'Brien denied that he had valued the property as two separate units but said that he had taken account of the dual frontage and different rates applying to Mary Street frontages and Jervis Centre frontages. He did not accept that the prevailing Zone A rate within the Jervis Centre was €2,000/M2 and believed that his figure of €2,100/M2 was correct. He said that the annual rent of €1,250,000 achieved for the property in January 2016 could be indexed back to 2011 but accepted that he had not undertaken this exercise. He stated that he considered his comparisons nos. 1-3 as being the primary evidence, as they comprised the elements of what is now the subject property. He also said that he had not considered any other units within the Jervis Centre when preparing his valuation. He accepted that his comparison no.3 was listed for revision as part of the that property was now contained within the subject property and therefore there was an element of double counting. He accepted that his original valuation of the property did not contain any additions for fit-out and valued the Jervis Street mall at €2,000/M2 and that these changes to the valuation were only made after the areas were reduced. He accepted neither of his comparisons nos. 1 & 2 were currently on the Valuation List, as they had been subsumed into the subject property. He accepted that the Valuation Office document of 2010 stated that Department Stores were defined as being those with a total retail floor area in excess of 1,000 M2 but noted that these guidelines had been updated by the 2017 document also contained in his precis. He said he would generally zone properties with a retail area of less than 1,000 M2 on the ground floor. He noted that the Appellants comparisons nos. 1 & 2 were substantially bigger than the subject property and explained that that is why they were valued as Department Stores. He argued that it was appropriate to apply a Fit-Out allowance to his comparisons nos. 3 & 4, which were valued on a zoned basis, but was unable to say whether such additions were standard practice. He said that the valuation breakdowns provided in his comparisons nos. 3 & 4 were those shown on the valuation list and he had no knowledge or comment on what breakdown the occupiers valuers may have provided to their clients. He accepted that, based on the 2010 Valuation Office Information Paper, the application of a fit-out allowance to a

property valued on a zoned basis could be considered was somewhat contradictory but said that he stood over his approach.

8.6 In response to queries from the Valuation Tribunal, Mr. O'Brien confirmed that his comparisons nos. 1 & 2 were not currently on the valuation list but said that he deemed them to be still relevant. He said that he believed that the subject property was the best comparison. He confirmed that, to the best of his knowledge, no other property within the Jervis Centre was valued at  $\epsilon$ 2,500/M2. He also confirmed that no other units within the Jervis Centre was valued with dual Zone A rates. He confirmed that his comparison no. 3 was currently listed to be revised although it remained on the valuation list. When asked why he did not value the entire as a Department Store or Large Shop as set out in the 2010 Valuation Office paper he said it was because the ground floor was less than 1,000 M2 and that the adoption of a Department Store approach would undervalue the unit in his opinion. He said that he had not applied any weight to the 2017 Valuation Office document when preparing his valuation as he was valuing it as a standard retail unit.

#### 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 Dublin City Council.

10.2 This is a Revision type appeal where the Tribunal is directed to consider the relative Net Annual Value ("NAV") of the Property by reference to comparable assessments of NAV from the tone of the Valuation List only by virtue of sec. 49 of The Valuation Act 2001.

10.3 The parties are in disagreement on the approach to be adopted in assessing the NAV of the property. The Appellant has put forward two approaches, both of which rely on a 2010 Valuation Office Information Paper entitled "Valuation Guidance Note. Fitting out of Department Stores and Supermarkets." The Respondent believes that the property should be valued as a standard retail unit and measured on a zoned basis.

10.4 Both parties included the 2010 Valuation Office paper in their precis. The document does not contain any definition of what constitutes a "Department Store." However, Section 5 of this document reads as follows: -

### 5. 0 Start Size of a Department Store/Supermarket and Large Shops/Showrooms

The Republic of Ireland has smaller formats than in the UK due to various factors and the impact of the Retail Planning Guidelines. For the purposes of this guidance note, Department Stores and Supermarket and Large Shops/Showrooms are defined as being those with a total retail Gross Internal Area (GIA) in excess of 1,000m2

In addition, Section 7 reads as follows: -

### 7. 0 Survey and Measurement

Large Department Stores and Supermarkets should be measured to Gross Internal Area (GIA), as defined by the Valuation Office Code of Measuring Practice.

10.5 It appears to the Tribunal from the evidence adduced that the approach envisaged by the Valuation Office at the time of the 2011 Dublin City Revaluation was to value retail properties with a retail GIA in excess of 1,000M2 on a different basis from those properties with a retail GIA under 1,000M2. The Tribunal accepts that these properties are generally valued on a zoned basis.

10.6 It should also be noted that while the 2010 Valuation Office is concerned with the Fitting Out of Department Stores and Supermarkets, no fitting out allowance is contemplated for Large Stores or Showrooms within that document.

10.7 The Appellants first two comparisons are both valued as Department Stores. However, both are substantially larger properties than the subject, more than double the size, and the Tribunal does not consider them to be particularly comparable to the subject. Comparisons 3 and 4 are both valued as retail stores on an overall net internal area basis. The Tribunal prefers Comparison 3, which has a ground floor access and an NIA of 1,082.7 M2 to Comparison 4, which is accessed at first floor level and has an area of NIA of 635.46 M2. Comparison 3 is valued at €750/M2 at ground floor level and €200/M at upper ground floor level. The Tribunal considers this to be a strong comparison.

10.8 In giving her evidence Ms. Mason made reference to information that she had obtained from other agents who had been involved in the agreements that made up the Respondents comparisons nos. 3 & 4. There was no supporting precis from these agents, and they were not available for cross examination by the Respondent. Accordingly, the Tribunal has disregarded this portion of Ms. Masons evidence.

10.9 The Respondents first two comparisons are not currently on the Valuation list and therefore are not valid comparisons. The Tribunal accepts that they were put in to give context to the approach taken by the Respondent but would not attach any weight to them even if circumstances permitted, given the difference in sizes of the two comparisons and the subject property. Comparison 3, while currently on the list, is listed for Revision and it emerged during cross examination that part of the premises in Comparison 3 is part of the subject property being valued. However, it is noticeable that this property has a NIA of 2,521.22 M2, is valued on a zoned basis and has a fit-out allowance applied. Comparison 4 has a NIA of 2,126.41 M2, is valued on a zoned basis and has a fit-out allowance applied. The Tribunal considers Comparisons 3 and 4 could be analysed on an overall basis and while the Respondent correctly pointed out that his analysis was what was on the list, the Tribunal believes that analysing the total figure on a "stand back and look" basis can be a useful exercise.

10.10 The Tribunal is therefore left to consider two comparable properties that have been valued in completely different ways. On balance, the Tribunal prefers the approach as advocated by the Appellant in her comparison no. 3, mainly as it appears to be more in line with the 2010 Valuation Office paper.

10.11 The Appellants comparison no. 3 has a ground floor NAV of  $\notin$ 750/M2 and upper ground floor level of  $\notin$ 200/M2. However, the Tribunal believes that account must be taken of the dual frontage enjoyed by the subject property and therefore finds that a 10% increase in the ground floor NAV to  $\notin$ 825/M2 would be appropriate in this case. The Tribunal sees no reason to change the level applying to the upper ground floor from that applying in Comparison no. 3. This gives an overall NAV of  $\notin$ 808,000, which equates to  $\notin$ 524/M2 on an overall basis. In contrast, the NAV of Appellants comparison no. 3 equates to  $\notin$ 460/M2 and the Respondents comparison no. 4 equates to  $\notin$ 362/M2. The Tribunal is satisfied that the differential adequately reflects the dual frontage enjoyed by 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 €808,000, calculated as follows: -

Floor level	Floor use	Area (M2)	NAV € per M2	NAV
Ground	Retail	800.77	825	€660,635.25
Upper Ground	Retail	408.08	200	€81,616.00
Mezzanine	Retail/	333.06	200	€66,612.00
	Stores/Staff			
Total area		1,541.91		€808,863.25