

Appeal No: VA19/5/0680

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 to 2015
VALUATION ACTS, 2001 to 2015**

AN POST

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5002794, Retail (Shops) at Unit E Swords Central Shopping Centre, Main Street, Swords, County Dublin

B E F O R E

Carol O'Farrell

Barrister-at-Law

Chairperson

Caroline Murphy

Barrister-at-Law

Member

Raymond Finlay

FIPAV MMII Arb TRV PC

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28th DAY OF SEPTEMBER 2022

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 14th 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 (hereinafter 'Unit E') was fixed in the sum of €176,600.
- 1.2 The sole ground of appeal is that the determination of Unit E's value is not a determination that accords with that required to be achieved by section 19 (5) of the Valuation Act, 2015 as amended by the Valuation (Amendment) Act 2015 because it is excessive, and not in accordance with the definition of net annual value in section 48 of the Valuation Act, 2001 as amended or by reference to market evidence in accordance with section 19(5) and by the actual passing rent of the subject property and other market evidence.
- 1.3 The amount the Appellant considered ought to have been determined as being the valuation of Unit E was revised upwards from €109,100 as stated in the Notice of Appeal to €91,700 at the hearing.

2. REVALUATION HISTORY

- 2.1 On the 15th of March 2019 a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 in relation to Unit E was sent to the Appellant indicating a valuation of €176,600.
- 2.2 Being dissatisfied with the valuation proposed, representations were made on behalf of the Appellant to the valuation manager and following consideration of those representations, the valuation manager did not consider it appropriate to reduce the valuation. A Final Valuation Certificate issued on the 10th of September 2019 stating a valuation of €176,600.
- 2.3 The date by reference to which the value of Unit E is to be determined is the 15th of September 2017.
- 2.4 The valuation list for the Fingal rating authority area was published on the 10th September 2019.

3. THE HEARING

- 3.1 The Appeal proceeded by way of remote hearing on the consent of the parties on the 29th of October 2020. Mr. Paul Mooney MSCSI MRICS (Hons) Dip Rating, of Avison Young represented the Appellant and Ms. Clair Power of the Valuation Office represented the Respondent.
- 3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective Précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal.

4. ISSUE

- 4.1 In determining this appeal the Tribunal is required to decide whether the rate of €1,100.00 per square metre ('psm') ITZA (area in terms of Zone A) applied by the Respondent in the valuation of Unit E has been shown by the Appellant to be excessive and, if so, by how much.

5. RELEVANT STATUTORY PROVISIONS:

- 5.1 The NAV of Unit E 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.”

- 5.2 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.”

- 5.3 Section 19(5) of the Act inserted by section 7 of the Valuation (Amendment) Act 2015 requires the valuation list to be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates and to achieve both (insofar as is reasonably practicable) (i) correctness of value, and (ii) equity and uniformity of value between properties on the list and so that the value of each property on the list is relative to the value of other properties comparable to that property on the list or, if no such comparable properties exist, is relative to the value of other properties on the list in that rating authority area.

6. UNIT E

- 6.1 The parties’ valuers were agreed upon the physical characteristics and dimensions of Unit E and likewise those of the comparable units. From the evidence adduced the Tribunal finds the following facts.
- 6.2 Unit E is one of twelve retail units in the Swords Central Shopping Centre (‘Swords Central’) which is situated on Main Street, Swords in County Dublin. Swords Central is approximately 16 km north of Dublin City Centre and 4 km from Dublin Airport and is approximate to the M1 motorway. Swords Central has an internal link with The Pavilions Shopping Centre.
- 6.3 Swords Central was built circa 2001 and includes a retail area of approximately 2,742.98m. It is anchored by Penneys and comprises a single mall with 12 retail units and 320 basement car spaces. The front entrance is on Main Street, and it has an internal link corridor with the larger Pavilions Shopping Centre which comprises over 90 shops, cafes, restaurants and a cinema. The tenant retailers in Swords Central include many familiar names including Dealz, Subway, Holland and Barrett, Starbucks and Specsavers.
- 6.4 Unit E is an irregularly shaped corner unit beside a secondary mall entrance into Penney’s and it is opposite a pedestrian side entrance to the mall. It is a double fronted corner unit with mezzanine offices occupying a central location in the mall. The net internal area of Unit E measures 310.47m². It is in good condition throughout. Unit E was fitted out by the Appellant in 2010 to incorporate a mezzanine, stairs and lift for disabled access to the mezzanine. The ground floor measures 218.5m² and comprises open plan customer service area with self service facilities, a counter sales area, a staff/customer meeting area and a small office and staff area to the rear of the customer service area. The mezzanine, accessible by stairs and a lift, measures 91.97m² and accommodates staff toilets, a canteen, a stationery store, a meeting room, communications room and a cleaner’s store.

6.5 Unit E is occupied by the Appellant under a full repairing and insurance lease that commenced on the 30th June 2010 for a term of 15 years at a yearly rent of €100,000 with five year rent reviews. Neither party submitted a copy of the lease or a summary of its most salient terms. Mr. Mooney stated in his Précis of evidence that there was an inducement rent of €90,000 for the first four years and this evidence was not challenged. Despite the rent review clause, the yearly rent remained unchanged at the valuation date.

7. CASE FOR THE APPELLANT

7.1 Mr Mooney adopted his Précis of Evidence as his evidence in chief. He described Unit E as an attractive reasonably sized unit with a good corner profile but perhaps too large for retailers seeking a unit in Swords Central. The fit out is modern and there are large display windows onto the main mall. There is a return frontage which is currently not used for display purposes. While Unit E is well located beside Penney's Mr Mooney indicated that Penney's has its own separate entrance from Main Street and another entrance onto the concourse nearer to the Pavilions Shopping Centre which enables shoppers to move between Main Street and the Pavilions without having to enter Swords Central. He said there is no incentive for shoppers to use the entrance to Penney's that runs alongside Unit E.

7.2 Mr Mooney said that at the valuation date four retail units were vacant suggesting that Swords Central as struggling and that retailers preferred to take lettings in the Pavilions Shopping Centre.

7.3 Mr Mooney stated that while at first glance one might be inclined to conclude that the rent passing carries very little weight because it was negotiated in 2010, the landlord had chosen not to engage with the rent review process in 2015 or in 2018 despite the Appellant's efforts to trigger a review. Mr Mooney devalued the passing rent of Unit E on a price psm at €457 (ground floor area only) and in terms of Zone A at €679.34 psm.

7.4 Mr Mooney considered there to be a serious lack of reliable and credible rental information available at or around the valuation date. He put forward one rental comparison, namely unit Y and Y1, which is smaller unit measuring 140.73 m² which was let almost 12 months after the valuation date on the 1st of October 2018 for a term of 15 years at a rent €80,000. Mr Mooney said he sourced this information from the Irish Times and from the Property Price Register. This rent devalues at €637.04 psm ITZA. The only other evidence he gave in respect of rent concerned unit W, another small unit measuring 70.56m², which was vacant and to let on the 4th September 2017 which the landlord's letting agent advertised at a rent of €60,000 per annum, which when analysed devalues at €1,048 psm ITZA. Mr Mooney accordingly relied upon the rental evidence relating to Unit Y and Y1 and said that he would have relied on rents payable in respect of the two KRT transactions adduced on behalf of the Respondent had that information been available to him as useful indicators of rental values in Swords Central. Mr Mooney stated that the Appellant is placed at a disadvantage because the Respondent has access to rental information which is not known or disclosed to the Appellant and such information as was relied upon by the Respondent to determine the NAVs of units in the Swords Central is not fully disclosed to the Tribunal.

- 7.5 Mr Mooney said the first-floor mezzanine valuation at €160 psm bore no relationship to the ground floor level of €1,100 psm ITZA and pointed out that mezzanine levels were also valued at €160 psm in the Pavilions Shopping Centre where retail units were valued at €1,580 psm ITZA.
- 7.6 Based on the Respondent's valuation of €176,600, Mr Mooney said that if the value attributed to the mezzanine was excluded, the Respondent was taking the view that Unit E would rent for €160,000 in September 2017. It was his view that a rental increase of 60% over a 7 year period would effectively shut down any business. He commented that bizarrely the NAV of the KRT1 unit was assessed by the Respondent at €369,000 in circumstances where an open market letting of that property was made in March 2017 at a substantially lower rent.
- 7.7 For the purpose of his valuation, Mr Mooney assessed the ground floor rental value by taking €679.30 psm ITZA (based on the passing rent) rounded to €700 psm and reduced the mezzanine rate of €160 psm to €105 psm which is equivalent to 15% of his proposed rate of €700 psm ITZA. He arrived at a NAV of €110,000.

Floor	Use	Area	NAV per m ²	Total NAV
0	Retail Zone A	90.30	€700	€63,210
0	Retail Zone B	99.40	€350	€34,790
0	Retail Zone C	28.80	€125	€ 3,600
Mezz	Offices	91.97	€105	€ 9,656
Total				€111,256
Rounded €110,000				

- 7.8 In response to a question from the Tribunal Mr Mooney confirmed that the Tenancy Schedule in Appendix 4 of his Précis (N/A to the public) was an extract from the Sales Brochure that was prepared by the selling agents JLL for marketing Swords Central in 2018 and that the final column headed 'Contracted Rent' in that Schedule was left blank in the Brochure. When asked under cross examination whether the rent of unit Y and Y1 was a turnover rent, Mr Mooney stated that is not so stipulated in the Property Price Register.

8. CASE FOR THE RESPONDENT

- 8.1 The Respondent's valuer, Ms. Power, having taken the oath, adopted her Précis as her evidence in-chief in addition to giving oral evidence. Ms Power furnished a Précis without outlining her qualifications of experience. When questioned by the Tribunal she stated that she is a UCD graduate with a Honours Bachelor of Science and Legal Studies and holds a Honours Degrees in Bachelor of Science from Bolton Street. She stated that she has 17 years' experience in valuing properties for rating purposes.
- 8.2 Ms Power's Précis contained an outline of her case, photographs, layout plans, details of two key rental transactions, five comparable properties, a rebuttal of Mr Mooney's Précis and her NAV valuation of Unit E based on €1,100 psm ITZA.

- 8.3 Ms. Power described Unit E as a double fronted corner retail unit with mezzanine offices. She confirmed that Unit E is in excellent condition throughout having been fitted out by the Appellant in 2010 which included the provision of a lift and the construction of the mezzanine offices. She contended that Unit E should be valued based on €1,100 psm ITZA. Ms. Power accepted that Swords Central is inferior to the adjoining Pavilions Shopping Centre and has a lower footfall to the Pavilion Shopping Centre and said these factors were reflected in that units in Swords Central were valued at a rate 30% lower than those in the Pavilion Shopping Centre, The ground floor retail units in the Pavilions Shopping Centre were valued at €1,580 psm ITZA and first floor units at a €1,350 psm ITZA. She rejected the assertion that the Respondent had applied €1,100 psm ITZA to units in Swords Central based on a rent quoted by a Letting Agent's in 2017 for Swords Central. She said that regard was had to passing rents in Swords Central, the Pavilion Shopping Centre and other shopping centres in Fingal rating authority area before determining the NAV levels to be applied to retail units in the various shopping centre.
- 8.4 She said that in 2017 the weekly footfall in Sword Central was approximately 100,000 people and according to Hammerson that of the Pavilions Shopping Centre was approximately 230,000 people per week.
- 8.5 In terms of Mr Mooney's observation that the valuation applied to the mezzanine stores in Swords Central and the Pavilions is €160 psm which represents approximately 15% and 10% respectively of their Zone A rates, she pointed out that the mezzanine rate applied in the valuation of units in the Charlestown Shopping Centre is 15% of the Zone A rate of €400 psm and the mezzanine rate applied in the valuation of units in Airside Retail Park is 20% of the Zone A rate.
- 8.6 In response to Mr Mooney's evidence that Unit J is the best comparable for Unit E, Ms Power clarified Unit J was given a 10% allowance as it has a large frontage to depth ratio and unlike Unit E has no return frontage. There is no frontage to depth ratio allowance in respect of Unit E as any such allowance is negated by the 10% addition arising from the benefit derived by Unit E from its double frontage.
- 8.7 In her Précis, Ms. Power stated that from the full pool of available evidence from the shopping centres in Fingal, certain transactions were identified as being more aligned with the requirements of the hypothetical letting. She said that there was a shortage of rental evidence close to the valuation date and that each key rental transaction was investigated and analysed in accordance with Valuation Office policy and procedures. Yet, Ms. Power adduced evidence of only two key rental transactions to inform her estimate of the NAV of Unit E, both of which are in Swords Central. Neither of these properties which were valued at the Zone A rate of €1,100 per m², were appealed to the Tribunal. The two key rental transactions were:

KRT 1 - retail units A-D in Swords Central measuring 435.06 m² held under a 10-year lease from the 1st of March 2017. (In Appendix N/A to public)

KRT 2 - retail unit K in Swords Central measuring 181.95 m² held under a 10-year lease from the 15th June 2018 . (In Appendix N/A to public)

- 8.8 Ms Power relied upon five comparable properties, three of which are located in Swords Central and valued at the Zone A rate of €1,100 per m², one is Unit G33 in the Pavilions Shopping Centre valued at the Zone A rate of €1,580 per m², and one is a two storey shop located at 76 Main Street opposite the main entrance to Swords Central which is valued at a Zone A rate of €700 psm which Ms Power said represented the tone of the list for retail properties from that location on Main Street to the junction of Bridge Street, North Street and Main Street. The two storey shop located at 76 Main Street is long and narrow and benefitted from a front to depth ratio allowance as well as an adjustment to its first floor valuation due to its size (167.93 m²). Unit G33 in the Pavilions was chosen as a comparator due to its similar size and location near to the entrance into Swords Central. It has a narrow frontage of 9.6m and despite having been valued at a higher Zone A level psm, the overall NAV is lower than that of Unit E. Ms. Power's view was that the rate of €1,100 psm remained appropriate.
- 8.9 There was only representations and appeals to the Valuation Tribunal from two occupiers of twelve units in Swords Central and only five appeals were made to the Tribunal in respect of the ninety retail shops and café, restaurant occupiers in Pavilion Shopping Centre. The majority of the appeals in the Pavilions were related to the relativity of the valuation of department stores to those of retail units measuring in excess of 500 m².
- 8.10 Ms. Power requested the Tribunal to refuse the appeal and confirm the valuation determined by the Respondent of €176,600 (rounded) based on €1,100 psm ITZA which devalued as follows:

Floor	Use	Area	NAV per m ²	Total NAV
0	Retail Zone A	90.3	€1,100	€99,330
0	Retail Zone B	99.4	€550	€54,670
0	Retail Zone C	28.2	€275	€7,920
Mezz	Offices	91.97	€160	€14,715.20
Total				€176,635.20

- 8.11 In answer to a question from the Tribunal as to how the two KRTS she relied upon translated into the tone for Swords Central, Ms Power stated that the tone was established by reference to rental evidence from other shopping centres in the rating authority area and essentially no rental evidence in Swords Central had informed the emerging tone.

9. FINDINGS AND CONCLUSIONS

- 9.1 On this appeal the Tribunal must determine the value of Unit E to achieve, in so far as is reasonably practical, a valuation that is correct and equitable.
- 9.2 The relevant question on this appeal concerns the amount a hypothetical tenant would pay in rent for a tenancy of Unit E on the terms set out in section 48 of the 2001 Act as amended. The rent for which Unit E might in its actual state be reasonably be expected to let is measured by the rental value on a hypothetical tenancy on a year-to-year basis and not by reference to the actual occupier's business or financial means or by the rent the occupier is actually paying unless it is an open market rent agreed close to the valuation date.

- 9.3 It is common case that the immediately adjacent Pavilions Shopping Centre is a better trading location and consequently the retail units located there are more valuable than those in the Swords Central and the adjacent shops on Main Street.
- 9.4 The rent payable in respect of Unit E under the 2010 Lease was negotiated almost 7 years prior to the valuation date. The lease was not produced in evidence. In the absence of any evidence as to rental values in Swords Central or its vicinity between June 2010 and September 2017 the rent passing is too distant in time from the valuation date to be considered to reflect the terms of the hypothetical tenancy under section 48 of the Act. There would be some force in Mr Mooney's argument if there were reliable evidence, closer to the valuation date, which was consistent with the passing rent of Unit E. A valuer can take a rent agreed before the valuation date and adjust it forward, and a rent agreed after the valuation date and adjust it back. On this appeal no evidence was adduced to show that the rental market had not moved significantly between 2010 and 2017 or between September 2017 and October 2018.
- 9.5 It is always the case that in considering whether the passing rent is a good indicator of value, other available evidence must also be looked at as it may confirm the level of value indicated by the passing rent on the or it may cast doubt upon it. The rent agreed in respect of Unit A-D (KRT 1) on the 1st of March 2017 is considerably higher than the passing rent of Unit E, the rent agreed in respect of Unit K (KRT 3) in June 2018 is somewhat higher than the passing rent of Unit E, and the rent agreed in October 2018 respect of Unit Y/Y1 though less than the passing rent of Unit E is for a retail unit with an inferior mezzanine which is less than half the size of Unit E and is located in a less prominent position in Swords Central.
- 9.6 The Tribunal can place no weight on the deconstruction of the passing rent of Unit E to ascertain the NAV which is the central plank of Mr Mooney's case. Once his principal argument falls away, Mr Mooney's remaining evidence was, at best, rather thin given the general dearth of rental evidence. Unit Y/ Y1 is not comparable to Unit E in terms of location within Swords Central, or in terms of size and physical characteristics so little weight can be given to the rent of this premises. In the Tribunal's view Unit E would command a rental value higher than Unit Y/Y1. The evidence in respect of unit W is of no assistance as it was not let at the valuation date.
- 9.7 Looking overall at the material placed before the Tribunal, the Tribunal is not persuaded that the Appellant has provided anywhere near sufficient evidence to demonstrate that the Respondent's Zone A value is clearly wrong.
- 9.8 As to Mr Mooney's arguments as to the valuation of the mezzanine level at the overall rate €160 psm, the Tribunal accepts that this rate is too high. Ms Power gave evidence that mezzanine floors in retail shopping centres such as Swords Central were valued at a percentage of ground floor Zone A rate. Mr Mooney pointed out that the rate of €160 psm is not in fact 15% of the Zone A rate applied in Swords Central or 10% of the Zone A rate applied in the Pavilions Shopping Centre. The Pavilion Shopping Centre and Swords Central are immediately adjacent and interlinked. The use of percentages of Zone A is well established as an approach to valuing mezzanine and first floor area in retail units. The Tribunal considers that there should be a pattern of relativities in respect of Pavilion

Shopping Centre and Swords Centra yet two different percentages (i.e., 10% and 15% of the Zone A rate) were adopted so that the mezzanine levels would be valued at the same level. As a matter of principle, the same percentage of Zone A rate i.e., 10% should be adopted in respect of two shopping centres. Furthermore, the Tribunal considers in valuing a mezzanine floor regard should be had to the use to which the mezzanine floor is put, and a different rate applied to areas depending on their use. Mr Mooney gave evidence that the mezzanine level accommodates staff toilets, a canteen, a stationery store, a meeting room, a communications room and a cleaner's store. The Respondent valued the mezzanine as offices yet the mezzanine floor plan on page 15 confirms that the following uses: a small cleaners store, a small strong room, staff toilets, a canteen, a training room, a communications room, and a stationery store. The mezzanine measures 91.97m² but neither valuer provided a breakdown of the various areas. The Tribunal considers that 10% of Zone A should be put on the area comprising the storeroom, the training room, the canteen, toilets and the communications room and a second lower rate (5% of the Zone A) should be put on the area comprising the cleaner's store and the stationery store. As area measurements were not provided the Tribunal considers it reasonable to attribute 25m² to the cleaner's store and stationery store areas and 61.97m² to the remaining mezzanine areas.

9.9 In the Tribunal's opinion, the NAV of the Property should be reduced.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal in part and determines that the NAV of Unit E should be reduced to €170,600 (rounded down), calculated as follows:

Floor	Use	Area m ²	NAV per m ²	Total NAV
0	Retail Zone A	90.3	€1,100	€99,330
0	Retail Zone B	99.4	€550	€54,670
0	Retail Zone C	28.80	€275	€7,920
Mezz	Staff	66.97	€110	€7,366.70
Mezz	Stores	25.00	€55	€1,375
Total				€170,661.70

RIGHT OF APPEAL

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.