

Appeal No: VA17/5/852

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Shaws Ltd

APPELLANT

and

Commissioner Of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1445753, Retail (Shops) at Austin Friars Street, Mullingar, County Westmeath.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22nd DAY OF DECEMBER 2022**

BEFORE

Hugh Markey FRICS FCSI,

Deputy Chairperson

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 €149,700.

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 location and nature of the property at the periphery of the town core;*
- *The nature of the upper level as a mezzanine rather than a first floor proper;*
- *By reference to the tone of the list of similar circumstanced properties;*

- *By reference to the purchase price of the property which was €610,000 as at August 2015, approx. 2 months prior to the relevant valuation date;”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €97,721.

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 €136,100.

2.2 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €149,700.

2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is the 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. The Property comprises a large retail outlet, with a mezzanine to the rear, also in retail use. This latter area is accessed by stairs and an escalator. The main entrance to the store is from Austin Friars Street, while there is a secondary entrance from the access road to the adjacent local authority owned car park.

Internally, the Property is fitted out as a retail outlet with suspended ceilings, recessed lighting and plastered and painted walls.

4.2 The following floor areas have been agreed:

Ground Floor: 1037.67 sq. m

Mezzanine: 324 sq. m.

5. ISSUES

The sole issue 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 Mr Byrne, for the Appellant, set out a commentary on the economic factors prevailing in the final quarter of 2015. The indicators were generally positive.

7.2 The Appellant noted that the approach he adopted in arriving at the NAV for the Property was based on a consideration of the ‘Emerging Tone of the List’ for large retail stores in the

locality. He also adduced two comparisons of open market lettings of large retail stores of over 1,000 sq. m, which he had considered.

7.3 The Appellant suggested the most direct letting comparison was that of TK Maxx, Unit 3 Fairgreen Shopping Centre, Mullingar. He suggested this was a superior location, in a busy centre and analysed at a rate of €60 per sq. m., for a unit of approximately 2,334 sq. m. This letting took place in September 2015, one month before the relevant valuation date.

7.4 He adduced a second open market letting comparison – that of Boots on Church Street, Tullamore, Co. Offaly. He suggested this analysed at a net effective rent of €84.82 for a unit of 1,509 sq. m. This letting took place in May 2016, 7 months after the valuation date. Details of these comparisons are included at Appendix 1 (n/a to public) to this judgment.

7.5 The Appellant also submitted four comparisons as evidence of the ‘Emerging Tone of the List’. These are:

- a) PN 2096250 - Supermarket adjacent to the Property. This is valued at €70 per sq. m on the ground floor. The unit extends to 2,804 sq. m.
- b) PN 2096146 - Department Store in Harbour Place Shopping Centre, Mullingar. This extends to 6,334 sq. m and is valued at €90 per sq. m.
- c) Supermarket at Mullingar Shopping Centre and extending to 3,763 sq. m; valued at €70 per sq. m.
- d) Discount Store on the eastern periphery of the town and extending to 3,763 sq. m.; valued at €70 per sq. m.

Details of these comparators are included in Appendix 2 (n/a to public) to this judgment.

7.6 The Appellant suggested the rate of €100 per sq. m applied by the Respondent to both the ground and mezzanine levels of the Property was in contrast with the rates applied to other large retail stores of over 1,000 sq. m. The range of values was from €60 – 90 per sq. m. with the rate varying depending on size, location and quantum. He further suggested that a lower rate be applied to the mezzanine as the headroom, at 2.62m, was he posited, restrictive. He further noted that the escalator operated in a single direction, from ground to mezzanine.

7.7 Mr Byrne contended for an NAV of €98,000 as set out below.

Floor	Area Sq. M.	Rent P.S.M.	Rent P.A.
Ground Floor	1,037.67	€70.00	€72,637
First	324.00	€50.00	€16,200
Fit-out allowance 10%			€8,884
Total	1,361.67		€97,721
			Say €98,000

8. RESPONDENT'S CASE

8.1 Mr. Murphy, on behalf of the Respondent, outlined the revaluation history of the property and the outcome of representations. He then considered the grounds of appeal before the Tribunal. In response to same, he noted that the property is situated in a prominent location in Mullingar town. He noted how it enjoys frontages onto Austin Friars Street and also to the entrance to the adjacent car park. He noted the building has dual frontage and two entrances; he suggested the carpark to the rear was a major advantage.

8.2 He said all economic factors were taken into account as at the valuation date, October 2015. He then dealt with the two open market lettings adduced by the Appellant. He suggested that the letting of Unit 3 Fairgreen Shopping Centre was not an open market letting, as it was based on turnover. He noted that it was in the list, valued at €110 per square metre. It is subject to an appeal to the Tribunal.

8.3 As regards the letting in Tullamore, he suggested this is not a irrelevant rental comparison as it is not in the same local authority as the subject. He noted the ground floor has an area of 538.89 square metres and has been valued, by the Respondent, on a zoning basis with a total valuation of €91,000.

8.4 Mr. Murphy then considered the Appellant's four 'Emerging Tone of the List' comparisons and commented on each;

a) Supermarket on Austin Friars St. He said this is a supermarket and not a department store and has a ground floor of 1782 square metres which, he suggested, is 'far in excess' of the subject property's ground floor area of 1038 square metres. He suggested that this supermarket does not have the profile enjoyed by the subject property.

b) Department Store at Harbour Place Shopping Centre. He noted that the total valuation for this property is €586,000, and is 'very far in excess of the subject property'. He noted that the ground floor area of 5467 square metres was 'far in excess of the subject' at 1038sq. m.

c) Supermarket at Mullingar Shopping Centre. He noted this property is a supermarket and not a department store and the ground floor is 'nearly 3 times the size of the subject'.

d) Discount Supermarket. The Respondent noted that this comparison is located on the outskirts of the town, approximately 1.2 kilometres from the town centre and the ground floor area is in excess of that of the subject.

8.5 The Respondent submitted details of two Key Rental Transactions (KRT's) on which reliance was placed in informing the estimate of the net annual value of the subject property. These are included at Appendix 3 (n/a to public) to this judgment.

The first is a letting of a unit of 463.36 square meters in Fairgreen Shopping Centre, Mullingar. This also had a mezzanine store of 113.05 square metres. The Respondent analysed the letting in March 2016 as representing an overall rate of €206 per square metre with €55 square metre applied to the mezzanine store. On a zoned basis, this analysed at a rate of €450 per square metre.

The second key rental transaction is also located in Fairgreen Shopping Centre, Mullingar and is a unit of 656.701 square metres. It was let in May 2005 and reviewed in September 2016. The Respondent analysed the rent review as representing a Net Effective Rent of €350.66 per square metre, overall. On a zoned basis this represents a rate of €450 per square metre zone A.

8.6 The Respondent introduced 3 NAV comparisons – these are included at Appendix 4 (n/a to public) to this judgment.

a) The first is a common comparison.

NAV Comparison 1- PN 2096146 - Department Store at Harbour Place Shopping Centre, Mullingar. The witness noted that this department store has a total valuation of €586,000, far

in excess of that of the subject. He further noted that the ground floor is 5467 square metres which is far in excess of the subject's 1038 square metres. He noted that the level of valuation applied to the subject is €10 per square metre more than this property. He said representations had been submitted and the valuation is not subject to appeal.

NAV Comparison 2 - PN1333122. This is a department store located on Church St Athlone and the retail areas on basement and ground floors are valued at €90 per square metre. The witness noted this is an old building with a number of different levels on the ground floor. Representations were received but the property is not subject to an appeal.

NAV Comparison 3 - PN133 3459 - Department Store located at Irishtown, Athlone, County Westmeath. The Respondent noted that this location was in the main retail area of the town and had a ground floor area of 5433.5 square metre, which he noted is far in excess of the subject property. He further noted that the valuation level applied to this property is €120 square metre per square metre versus the €100 per square metre applied to the subject. Representations were received and the property is not subject to an appeal to the Tribunal.

8.7 The Respondent contended for a NAV of €149,700 as set out below:

Level	Use	Area (sq.m)	€/per sq.m.	NAV
0	Department Store	1037.67	€100	€103,767
Mez	Department Store	324.00	€100	€32,400
	10% Fit out			€13,610
			Total NAV	€149,777

SAY €149,700

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 Westmeath County Council.].

10.2 Consideration of the Comparisons.

10.3 The Respondent's Key Rental Transactions.

The Respondent's KRT'S are of limited assistance to the Tribunal insofar as they postdate the relevant valuation date by between 6 and 12 months and are of a size under 1000 square metres with overall rents of €206 and €350 per square metre. It is difficult to understand how the Respondent's rental rate applied to the Subject was derived from these key rental transactions (one being a rent review).

10.4 The Appellant's Rental Comparisons.

The Appellant introduced two rental transactions. The first is a letting of Unit 3 Fairgreen Shopping Centre, Mullingar. While the Respondent took issue with this letting, suggesting it was not a rental transaction due to their being a turnover element, the Tribunal finds it of assistance. There is a base rent and as such, this is the only rental the landlord is guaranteed; it is not a purely turnover based letting. There is no suggestion that this is other than an arm's length letting, as anticipated by the Act. Also, the letting took place one month prior to the valuation date. The letting has been analysed by the Appellant as representing a rate of €60 per square metre.

The Appellant's second rental transaction is of limited assistance to the Tribunal, as it occurred sometime after the relevant valuation date and is in a different local authority area.

10.5 The 'Emerging Tone' Comparisons

10.6 PN 2096146 - Department Store Harbour Place Shopping Centre - this is a common comparison and as such is of assistance to the Tribunal. It is located in a covered shopping centre with other retail units, as opposed to a street environment. Both have car parks adjacent. It also provides modern accommodation. It is difficult to see how the subject property could be worth as much, on a rental rate per square metre basis, to the notional occupier as this comparison. The Tribunal finds that the rate applied by the Respondent in this case sets the upper limit on that to be applied to the Subject.

10.7 PN 2096250 Supermarket at Austin Friars Street, Mullingar. This Appellant's emerging tone comparison is located adjacent to the subject, is also in excess of 1000 square metres and has been valued by the Respondent at €70 per square metre. The Tribunal finds the comparison helpful. Some adjustment is required to reflect the smaller floor area of the Subject, proximity of the car park and the greater profile and considerable frontage of the Subject.

10.8 PN 1445707 This is a supermarket at Mullingar Shopping Centre and an 'emerging tone' comparison submitted by the Appellant. This unit is also in excess of 1000 square metres and is valued at €70 per square metre. The Tribunal finds this comparison to be of assistance.

10.9 Discount Supermarket. The Appellant introduced this comparison as evidence of the emerging tone. It is located on the periphery of the town centre; is in excess of 1000 square metres and is valued at €70 per square metre. It is a standalone building, This comparison is of limited assistance to the Tribunal.

10.10 The Respondent's two other 'Emerging Tone of the List' NAV Comparisons (PN1333122 and PN133 3459) are located in Athlone. While located in the same local authority area, they are in another town with different demographics etc.. Absent evidence from the immediate vicinity of Mullingar, these 'Emerging Tone of the List' NAV comparisons would have been of assistance.

10.11 The Tribunal notes that the 'Tone of the List' is still 'emerging' and as such is not settled. Furthermore, there is not a single tone emerging and cognizance must be taken of the individual locational and physical characteristics of each property.

11 Issues to be considered

11.1 The Tribunal considers that there are two issues to be considered in this appeal. The first is the rate to be applied to the ground floor retail area and the second is whether the same rate should be applied to the mezzanine floor and if not, what discount should be applied.

11.2 There is compelling evidence in the immediate vicinity at the rate of €70 per square metre and indeed a rate of €60 per square metre in an open market letting at around the relevant date in Fairgreen Shopping Centre, Mullingar. Some allowance must be made to reflect the superior qualities of the subject and the smaller scale, as against the immediate supermarket comparator. The Tribunal finds that 10% is an appropriate adjustment to make to reflect these differences. The appropriate level to apply to the ground floor retail area is €77 euro per square metre.

11.3 As regards the level to apply to the mezzanine retail area, it is inappropriate to apply the same rate to this area as to the ground floor. The turnover capacity of a mezzanine will be much less than that of the ground floor, thus the rental rate should be lower. This mezzanine is better than usual, as it is served by an escalator but as evidenced by the Appellant, this brings customers to the mezzanine but they have to use the stairs to return to ground level. The Tribunal confirms the rate of €50 per square metre contended for by the Appellant. This rate is approximately 2/3 of the rate applied to the ground floor and reflects the attributes of this

mezzanine. It is also in line with the rental rate on the ‘remainder’ ground floor retail area of the Respondent’s KRT’s in Fairgreen Shopping Centre, when analysed on a zoning basis (€56.25 per square metre).

12 Fit Out Allowance

12.1 There was no dispute as to the fit out allowance to be applied and the Tribunal adopts the rate of 10% as used by both parties to the appeal.

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 €105,700.00

Level	Area – sq. m	Rent per sq. m.	Rent €
0	1,037.67	77	79,900.59
Mezzanine	324.00	50	16,200.00
Fit out Allowance	10%		9,610.06
			105,710.65
		say	€105,700.00

NAV €105,700,000

And the Tribunal so Determines

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.