

Appeal No: VA19/5/1656

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Marks and Spencer

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2187140, Retail (Shops) at Unit 1A, Laurence Town Centre, Drogheda.
County Louth

B E F O R E

Hugh Markey – FRICS, FSCSI,

Caroline Murphy -BL

Martin Connolly - MAgrSc, M.Sc., MSCSI, FCInstArb

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8th DAY OF DECEMBER, 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th day of October, 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV)’ of the above relevant Property was fixed in the sum of **€240,000.**

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *"THE VALUATION IS EXCESSIVE AND BAD IN LAW AND SHOULD BE REDUCED. THE PRICINGS AND ADDITIONS APPLIED TO THE RETAIL AND ANCILLARY SPACE ARE EXCESSIVE."*

- 1.1 1.3 The amount the Appellant considered ought to have been determined as being the valuation of the property was revised from €110,900. as stated in the Notice of Appeal to €148,700 at the hearing.

2. REVALUATION HISTORY

2.1 On the 15th day of March, 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €288,000.

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 €240,000.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €240,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September, 2017

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing, held remotely, on the 28th day of September, 2022. At the hearing, the Appellant was represented by Mr Thomas MacLynn BSc (Hons) MRICS of RHM Commercial LLP and the Respondent was represented by Mr Martin O'Donnell.

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 his précis as his 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 is a department store located in the Laurence Town Centre, Laurence/Peter Street, Drogheda. The centre was built in the mid-2000s, and its fitout and condition are typical of a property of its age.

4.3 The property is one of two anchor stores in the Centre, the other being Shaws. It is located mainly on the upper ground floor, Level 0, with storage and offices on the first floor, Level 1. There is a basement car park with accommodation for 450 cars.

4.4 There is direct access from Laurence Street and William Street to the upper ground floor with access also from Peter Street, via a traveller. Access from the basement is via goods and passenger lifts

4.5 The subject property is held under a 25-year lease from 13 March 2006, which was subject to subsequent changes by way of side agreements and deeds of variation. Details are provided in Appendix 1 (n/a to the public).

4.6 It is accepted by both parties that the Laurence Centre is not trading well compared with the other centres in Drogheda. Vacancy levels are high, approximately 50%. The floor areas, agreed between the parties, are set out in the table below.

Floor	Description	Square Metres
Level 0	Department Store	1,707.89
Level 0	Store	194.91
Level 1	Cold Room	67.72
Level 1	Office(s)	224.91
Level 1	Store	315.18
Total:		2,510.61

4.7 There is no dispute as to how the value of the fit-out works is to be apportioned between the department store and grocery section of the Property.

5. ISSUES

The dispute concerns the NAV to be applied on the valuation date, 15th September 2017. There is also disagreement on how the NAV is to be determined and in particular the relative weight to be given to the rent reserved in the lease of the Property compared with the Tone of the List.

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 In his precis Mr MacLynn contended that:

“The valuation is excessive and bad in law and should be reduced. The pricings and additions applied to the retail and ancillary space are excessive”

7.2 Four issues in dispute were identified.

- (i) The pricings to be applied to the ground and first floor accommodation.
- (ii) The percentage addition to the ground floor area to reflect fit out.
- (iii) What weight should be attached to the actual rent on the Property.

(iv) What weight should be attached to existing valuations on comparable properties in Co Louth.

The issue of the fitout had been resolved by the parties.

7.3. Details of the tenure are provided, see Appendix 1 (n/a to the public). Having regard to the lease terms and subsequent agreements Mr MacLynn analysed four possible scenarios to establish the Net Effective Rent, NER, of the initial letting. He arrived at rental values of -€953,835.62, -€24,611.87, €2,054.80 and €177,232.88 for March 2006 depending on the assumptions made.

7.4 Mr MacLynn contended that the Commissioner erred in applying the 5% department store rate to the fitout of the total ground floor storage area of 194.91 m². He contended that the department store rate of 5%, and the supermarket rate of 3%, should be applied pro rata with the areas of these elements in the Property. This would give: 125.64 m² @ 5% and 69.27 m² @ 3%.

7.5 Details of eight department store valuations in Co Louth were put forward on behalf of the Appellant. These are summarised in the table below.

Property No.	Address	Rent (€/m ²)	Valuation
2182108	Unit 1, Scotch Hall Drogheda	€110.00	€810,600.00
2182105	60B.61B/M, Unit 4, The Marshes Shopping Centre, Dundalk	€110.00	€725,000.00
1278285	Unit 28, Drogheda Town Centre, West Street, Drogheda	€105.00	€335,000.00
2187140 (Subject)	Unit 1A, Laurence Town Centre, Drogheda	€105.00	€240,000.00
2182104	60B.61B/M, Unit 1, The Marshes Shopping Centre, Dundalk.	€100.00	€919,000.00
1278468	6.7 West Street, Drogheda.	€95.00	€270,00.00
2196743 (VA19/5/1470)	B1, Peter Street Mall, Laurence Street Centre, Drogheda	€85.00	€276,800.00
1318819 (VA19/5/0790)	19AA26ABD/B, The Long Walk, Shopping Centre, Dundalk	€80.00	€200,000.00

The values range from €110.00/m² for Unit 1 Scotch Hall Drogheda to €85 and €80/m² for Unit B1 in the Laurence Centre Drogheda and 19AA26ABD/B, The Long Walk, Shopping Centre, Dundalk, respectively. The latter two comparables are the result of Valuation Tribunal judgments, VA19/5/1470 and VA19/5/0790, respectively. Details of Zone A rates, where available, are also given. These range from €600/m² in the Marshes, Dundalk to €300/m² in the Long Walk Centre in Dundalk. Zone A rates in the Laurence Centre are €340/m². However, it is conceded at 11.13 in the précis that there is no direct correlation between Zone A values for unit shops and the values applied to large department stores.

7.6 Mr MacLynn also provided details of all supermarket values in Co Louth. However, he did accept at 11.16, and also under cross examination, that department store values are of more assistance when considering the valuation of the subject.

7.7 At section 12 of his précis, Mr MacLynn considered the two Tribunal judgments of department stores in Co Louth, VA19/5/1470, B1, Peter Street Mall, Laurence Street Centre, Drogheda and VA19/5/0790, 19AA26ABD/B, The Long Walk, Shopping Centre, Dundalk. He highlighted the finding in both judgements that reliable rental evidence should be accorded more weight than rating assessments. However, he took issue with the findings in both judgments that there was a lack of rental evidence for anchor space in Co Louth. He pointed out that rental information for the subject was provided at the Representations stage. Details, which are provided in Appendices 2 and 3 (n/a to the public), indicated that the passing rent was set on 13 March 2006. Mr MacLynn avers at 12.8 in his précis that “[It] is very unfortunate that the rent on the subject department store was not carefully considered as part of the Louth County Council revaluation...” He considered that this transaction, as the only rental evidence of a department store in Co Louth, requires careful consideration and that this should have been done to arrive at a more robust and accurate valuation scheme for this type of property.

7.8 At Section 13 of his précis Mr MacLynn set out in detail his valuation approach.

- (i) He considered that the full repairing and insuring terms of the initial lease comply with the statutory definition in Section 48(3).
- (ii) The Tribunal judgment in VA19/5/0790, which states that the established tone should be based on reliable rental information, is cited at 13.5 and at 13.6 Mr MacGlynn contended that since the Commissioner did not consider any rental evidence when establishing the tone, that the rental evidence of the subject should carry more weight than the emerging tone.
- (iii) Having regard to the rental scenarios presented in this judgment at Paragraph 7.3 it is accepted that were the Property vacant and to let at the valuation Date, 17 September 2017, the property would have a positive value. However, in light of the recent five-year letting agreement, shown in Appendix 1 (n/a to the public), Mr MacLynn contended that it would only be a nominal figure.
- (iv) In order to establish the Nett Effective Rent at the Valuation Date, Mr MacLynn had taken what he described as “an optimistic analysis” of the Net Effective Rent at the lease date, €177,232.88 per annum; see Paragraph 7.3. He adjusted this figure by using the Jones Lang LaSalle Irish Property Index to derive a rental value of €141,780 per annum at the Valuation Date, 15 September 2017. This gave a rate of €65 per m², rounded.

7.9 Under cross examination, when Mr O'Donnell put it to Mr MacLynn that he was relying heavily on the rental information, he replied that he was having regard to the rent but not relying solely on it. He was also having regard to the tone of the list.

7.10 On further questioning Mr MacLynn agreed that equal weight should be given to rental evidence and the tone of the list.

7.11 When queried by Mr O'Donnell as to how a valuation of €65/m² could be justified in light of the two lowest values on the list of €80 and €85/m² Mr MacLynn replied that his analysis of the rent could support a nominal value. He also stated that the Penneys case, VA19/5/0790, which he agreed having regard to its circumstances would be towards the bottom of the list of department stores in Co Louth, may have produced a different result, had the Tribunal been provided with the rental information for the

Marks & Spencer letting. The Commissioner should have produced to the Tribunal the information on the 2006 letting that he was given.

7.12 Mr MacLynn would not accept the proposition put to him that the upper ground floor is superior to the lower. He had no evidence on the relative levels of foot fall at the respective entrances and in addition the Zone A level, €340/m², was the same on both levels. However, Mr MacLynn did accept that occupancy levels were higher on the upper floor.

7.13 On questioning by the Tribunal, Mr MacLynn, while accepting that they would be useful, was unable to provide data on footfall at the subject. Neither was he aware of any lettings of comparable premises in other counties around the valuation date.

7.14 Mr MacGlynn contended for a valuation in accordance with Section 48 of the Act of €148,700 calculated as follows:

Level	Use	Area (m ²)	Price (€/m ²)	NAV
0	Department Store	1,707.89	€65.00	€111,013
0	Store	194.91	€65.00	€12,669
1	Cold Room	67.72	€32.50	€2,201
1	Office(s)	224.91	€32.50	€7,310
1	Store	315.18	€32.50	€10,243
	Additional Items			
	Fit-out (dept store)	€71,564	5%	€3,578
	Fit-out (supermarket)	€39,449	3%	€1,183
	Fit-out (store)	€8,167	5%	€408
	Fit-out (store)	€4,503	3%	€135
			Total	€148,740
			NAV	€148,700

8 . RESPONDENT'S CASE

8.1 At the outset of his evidence, Mr O'Donnell stated that the Laurence Centre was not a successful centre. He agreed with the Appellant's approach to assessing the value of the fitout and also agreed with the Appellant that the value of the ancillary space should be valued at 50% of that applying to the retail space. He would be relying on a strong emerging tone, including two Tribunal judgments and agreements reached prior to hearing by experienced rating valuers representing large retailers who operated all over Ireland.

8.2 Mr O'Donnell put forward valuation evidence for five department stores in Co Louth, which are summarised in the table below.

Comparison	Property No.	Address	NAV/m²
1	2196743	Shaw Department Store, Laurence Centre, Drogheda	€85.00
2	1318819	Penneys, Longwalk Shopping Centre, Dundalk	€80.00
3	2182108	Dunnes Stores, Scotch Hall Centre, Drogheda	€110.00
4	1278285	Dunnes Stores, West Street, Drogheda	€105.00
5	1278468	Penneys, West Street, Drogheda	€95.00

Of these, No's 1 and 2 are Tribunal judgments, VA19/5/1470 and VA19/5/0790, respectively. No's 3 and 4 were appealed to the Tribunal but agreed before hearing. He suggested a clear hierarchy is emerging with values ranging from €110.00 to €80.00/m².

8.3 Mr O'Donnell stated that he had regard to all of the comparables put forward but was placing most reliance on No 1, Shaws Department Store, a similarly circumstanced property on the lower ground floor of the Laurence Centre, with an NAV of €85/m² as determined by the Tribunal, VA19/5/1470.

8.4 Mr O'Donnell contended that the upper ground floor is superior to the lower. It has better pedestrian access from Laurence Street and William Street as well as Peter Street; a superior tenant mix, including Boots and JD Sport and a lower vacancy level. On that basis he contended for a nominal increase in the NAV to €90.00/m².

8.5 Both in his précis and in cross examination Mr O'Donnell contended strongly that the rental information supplied by the Appellant is of limited assistance. The lease date of March 2006 is too remote from the valuation date of 15 September 2017. On questioning by the Tribunal as to how far from the valuation date rental evidence could usefully be considered, he was of the opinion that in a stable market two to three years may be useful, but that four years is too much.

8.6 Mr O'Donnell confirmed, on examination by Mr MacLynn, that he is head of rating in CBRE Ireland and in this case is acting as an authorised officer of the Commissioner of Valuation, appointed in accordance with the law, Section 19(6) of the Valuation Act 2001.

8.7 Mr O'Donnell rejected the suggestion of Mr MacLynn that he might have a conflict of interest. CBRE did, at one time manage the Laurence Centre but have had no involvement with it for many years. He had no personal involvement at any time and was not in any way conflicted. He also denied withholding any relevant facts. He did not consider the rental information dating from 2006 as relevant.

8.8 On questioning by Mr MacLynn, Mr O'Donnell reiterated his opinion that the upper ground floor was superior to the lower on the basis of better pedestrian access, better tenant mix and a lower vacancy rate. He was not familiar with the Zone A values in the Centre.

8.9 On questioning by the Tribunal, Mr O'Donnell confirmed that he had no data on footfall and did accept that such information would be helpful.

8.10 Mr O'Donnell contended for a valuation of €194,500, which he believed meets the requirements for equity and uniformity of Section 19 (5) of the Act. The figure is calculated as follows:

<i>FI</i>	<i>Use</i>	<i>Area</i>	<i>Rate</i>	<i>NAV</i>		
		<i>sq.m</i>	<i>psm</i>			
			€	€		
0	Department Store	1,707.89	90.00	153,710.10		
0	Store	194.91	90.00	17,541.90		
1	Store	315.18	45.00	14,183.10		
0	Cold Room	67.72	45.00	3,047.40		
0	Office	224.91	45.00	10,120.95		
	Additional Items			7,345.49		
				205,948.94		
			Say	194,500.00		
Additional Items - Breakdown of NAV						
<i>FI</i>	<i>Use</i>	<i>Area</i>	<i>Rate</i>	<i>NAV</i>	<i>Fit-Out</i>	<i>Fit-out</i>
		<i>sq.m</i>	<i>psm</i>			<i>NAV</i>
			€	€	%	€
0	Department Store	1,100.99	90.00	99,089.10	5%	4,954.46
0	Supermarket	606.90	90.00	54,621.00	3%	1,638.63
0	Gd FI Store	194.91				
0	Gd FI Store - Dept (64.46%)	125.64	90.00	11,307.51	5%	565.38
0	Gd FI Store - Super (35.54%)	69.27	90.00	6,234.39	3%	187.03
						7,345.49

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 County Louth.

10.2 On the evidence before it, the Tribunal finds that Mr O'Donnell has no conflict of interest in this case and that he complied in full with the requirements of his Statement of Truth, notwithstanding a typographical error with the date.

10.3 The Tribunal accepts the contention on behalf of the Appellant that the full repairing and insuring lease terms, correspond with the terms of Section 48 (3) of the 2001 Act.

10.4 Mr MacLynn went to considerable lengths to assist the Tribunal in analysing the rental payments under the 2006 lease. However, the Tribunal finds that the lease date, March 2006, is too remote from the valuation date, 15 September 2017, to be of any real assistance. In addition, side agreements and alterations to the lease make any such analysis a difficult and possibly very subjective exercise. For these reasons the Tribunal finds that the rental information put forward on behalf of the Appellant is of very limited assistance.

10.5 The Tribunal accepts the evidence of Mr O'Donnell that there was a strong emerging tone of the list for department stores in County Louth. The range of values is between €80 and €110 m².

10.6 On the evidence before it, the Tribunal accepts that the upper ground floor in the Laurence Centre is superior to the lower ground floor where Shaws is located. It further accepts the Respondent's estimate of value, €90/m², which represents a nominal increase of €5/m² on the value determined by the Tribunal in the Shaw judgment, VA19/5/1470, as appropriate, given that the two properties are similarly circumstanced with the exception of the difference outlined.

10.7 In any appeal before the Tribunal, the onus of proving that the Respondent's valuation should be disturbed lies with the Appellant. In this instance, the Tribunal finds that this has not been achieved.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and determines the Net Annual of the property is **€194,500**, calculated as follows:

Floor	Use	Area M²	Rate/M²	NAV
0	Department Store	1,707.89	€90.00	€153,710.10
0	Store	194.91	€90.00	€17,541.90
1	Store	315.18	€45.00	€14,183.10
0	Cold Room	67.72	€45.00	€3,047.40
0	Office	224.91	€45.00	€10,120.95
	Additional Items ¹			<u>€7,345.49</u>
				€205,948.94
			Say	€194,500

¹ Fitout.

NAV €194,500

And the Tribunal so Determines