

Appeal No: VA19/5/1599

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Holland & Barrett

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of
Property No. 5002883, Retail (Shops) at H1 Swords Central Shopping Centre, Main Street
(Swords), County Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF MAY, 2023

BEFORE

Eoin McDermott - FSCSI, FRICS, ACI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on 14th 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 €122,300.

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 is excessive and bad in law. The pricings and floor areas are excessive.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €95,100.

2. RE-VALUATION HISTORY

- 2.1 On 15th 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 €101,500.
- 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 increased to €122,300.
- 2.3 A Final Valuation Certificate issued on 10th September 2019 stating a valuation of €122,300.
- 2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is 15th September 2017.

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. The Appellant's summary was prepared by Mr. Thomas MacLynn BSc (Hons) MRICS, of RHM Commercial and the Respondents summary was prepared by Ms. Clair Power BBLs (Hons) BSc (Hons). As Ms. Power had the opportunity to consider the Appellants summary before preparing her own, Mr. MacLynn was offered the opportunity to respond to Ms. Power's summary and did so.
- 3.3 Both summaries contained the Declaration and Statement of Truth required under Tribunal Rules.

4. FACTS

4.1 The parties are agreed as to the following facts.

2.1 Swords Central Shopping Centre is located on Main Street close to the junction of the Malahide Road. There are 12 units within the Centre, which is anchored by Penney's. The Centre has 3 pedestrian entrances from Main Street, Malahide Road, and internal access from the adjoining Pavilions Shopping Centre.

2.2 The subject property is a standard retail unit with mezzanine offices and stores located in a central location within the Centre. The main frontage of the property opens out onto the central mall.

2.3 The area of the property has been agreed between the parties as follows:

Floor level	Floor use	Area (M ²)
0	Retail Zone A	47.64
0	Retail Zone B	52.28
0	Retail Zone C	29.30
0	Remainder	3.66
1	Staff/Office/Store	146.78
Total area		279.66
GF ITZA		81.58

2.4 The current occupier took a 10-year lease on the property from 4th July 2018 at a headline rent of €95,000 per annum. The lease is on standard FRI terms. As part of the letting agreement and by way of side letter, the tenant also received a rent-free period and a tenant break option. These incentives are personal to the named tenant and cannot be assigned.

5. ISSUES

5.1 The issue is one of quantum.

6. RELEVANT STATUTORY PROVISIONS:

2.1 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.”

2.1 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

2.1 Mr. MacLynn, on behalf of the Appellant, described the property and its location using photographs and plans contained in his submission. He also provided detailed evidence of the 2018 letting, together with a copy of the lease and side letter. He calculated the Net Effective Rent (“NER”) of the property at €87,083.33 per annum, allowing for the rent-free period and devaluing over the term certain.

2.2 Mr. MacLynn also produced evidence of several lettings of which he was aware within the Centre between 2010 and 2021 (see Appendix A, N/A to public). His analysis shows that five lettings took place within the Centre within 12 months of the valuation date (two - Units C and X -before the valuation date and three -Units H1 (the subject), K and Y/Y1 after). He further analyses the NER ITZA rents as ranging from €537.88/ M² to €867.49/ M². The NER ITZA of the subject property is calculated at €846.19/ M². Mr. MacLynn considers that, on balance, the evidence supports a fair and reasonable Zone A pricing of €725/ M².

2.3 Mr. MacLynn also draws attention to the valuations applied to Mezzanine space in the subject Centre and the adjoining Pavilions' Centre. He summarises the current pricing of the two schemes by the Respondent as follows: -

Scheme	Level	Zone A (€/M²)	1F Mezz (€/M²)	1F (% of ZA)
Swords Central	0	€1,100	€160	14.55%
Pavilions	0	€1,580	€160	10.13%
Pavilions	1	€1,350	€160	11.85%

He notes that the Respondent has accepted that the Pavilions is a superior centre to the subject, as shown by the respective Zone A pricing. He gives his opinion that maintaining the same first floor mezzanine pricing over the two centres is illogical and suggests that it should remain at 14.55% of the Zone A level.

2.4 Mr. MacLynn concludes his case by noting that the rental evidence within the subject Centre does not support the Zone A rental level of €1,100/M² sought by the Respondent. He seeks a valuation of €74,600, calculated as follows: -

Floor level	Floor use	Area (M ²)	Price (€/M ²)	NAV
0	Retail Zone A	47.64	€725.00	€34,539
0	Retail Zone B	52.28	€362.50	€18,952
0	Retail Zone C	29.30	€181.25	€5,311
0	Remainder	3.66	€90.63	€332
1	Staff/Office/Store	146.78	€105.45	€15,478
Total				€74,612
say				€74,600

8. RESPONDENT'S CASE

2.1 Ms. Power, on behalf of the Respondent, describes the property and its location using photographs and plans contained in her submission. She describes the property as a standard retail unit with mezzanine offices and stores located in a central location within the Centre and says that the property is well maintained and in excellent condition. She sets out the terms of the lease but notes that the information relating to the rent-free period was only disclosed to the Respondent when the Appellants submission was made.

2.2 In response to the Appellants submission, Ms. Power queries how Mr. MacLynn can justify a valuation of €74,600 when the property was let at a headline rent of €95,000 and when he has assessed the net effective rent at €87,083. She also queries his Zone A pricing of €725/ M² given the rental evidence that he put forward in respect of the subject Unit and Unit K. She notes that €160/ M² is the emerging tone of the list in respect of Mezzanine floors in the subject location. As a general comment she notes that the rental evidence put forward by Mr. MacLynn is unsubstantiated.

2.3 Ms. Power gives her opinion that the 2018 market evidence for the Centre was reflective of the then Landlords efforts to ensure full occupancy prior to sale rather than the real market value of the Centre. She points to the wide swing in values between the lettings prior to the valuation date and after to suggest that this evidence cannot be relied on. She notes that the ground floor units in Pavilion Shopping Centre are valued at €1,580/ M² ITZA and those in Blanchardstown Shopping Centre are valued at €2,400/ M² ITZA.

2.4 Ms. Power puts forward two Key Rental Transactions (“KRT”) on which the Respondent relied in arriving at the scheme of valuation for the Swords Centre. These are set out in Appendix B (N/A to public). She also puts forward 5 NAV comparisons as follows: -

Property No	Unit	NAV/ M ²	NAV
5002681	Unit O, Swords Central SC	€1,100	€176,800
5004910	Unit J, Swords Central SC	€1,100	€145,600
5004059	Unit K, Swords Central SC	€1,100	€129,900
2194082	G33 Pavilions SC, Swords	€1,580	€176,400
361154	76 Main Street Swords.	€700	€107,100

Finally, Ms. Power notes that of the twelve units within Swords Central SC, only two made representations and are going to appeal and that this confirms the emerging tone of the list.

2.5 Ms. Power seeks a valuation of €113,200, calculated as follows: -

Floor level	Floor use	Area (M ²)	Price (€/M ²)	NAV
0	Retail Zone A	47.64	€1,100.00	€52,404.00
0	Retail Zone B	52.28	€550.00	€28,754.00

0	Retail Zone C	29.30	€275.00	€8,057.50
0	Remainder	3.66	€137.50	€503.25
1	Staff/Office/Store	146.78	€160.00	€23,484.80
Total				€113,203.55
say				€113,200.00

2.1 Replying to the Respondents submission, Mr. MacLynn notes that both submissions support the Appellants contention that the Zone A pricing of €1,100/ M² as adopted by the Respondent is excessive. He does not accept the contention that the wide swing in values between 2016/7 and 2018 means that this evidence cannot be relied upon. He considers that the best available evidence is that from within the Centre itself and does not believe that either the Pavilions Centre or Main Street Swords to be truly comparable or similarly circumstanced. He also notes that no rental evidence has been put forward to support the differentials in values between the three locations.

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 Fingal County Council.

10.2 The Tribunal finds that in this appeal, and in all appeals before the Tribunal, the onus of proof rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal's determination.

10.3 The Appellants case is that the rental evidence from the Centre does not support the valuation level sought by the Respondent, either in respect of the Ground Floor retail area or the first-floor mezzanine. The Appellant believes that this opinion is supported by details of lettings that took place between 2010 and 2021.

10.4 The Respondents case is that the wide disparity in the unsubstantiated letting evidence put forward by the Appellant means that it cannot be relied upon, that market rents were effectively depressed by the then Landlords desire to ensure full occupancy of the shopping centre prior to placing it on the market and that the NAV levels arrived at by the Respondent were accepted by 10 of the 12 units within the Centre, thus confirming the emerging tone of the list.

10.5 In determining the rent at which it is estimated a relevant property might reasonably be expected to let, the Tribunal is of the view that the best evidence comprises lettings of comparable premises in the open market. Use of the rental method of valuation depends, however, on sufficient, appropriate, and reliable comparable evidence being available from the marketplace; if it is available then it is top of the evidential hierarchy.

10.6 The subject property was let on a 10-year lease on an annual rent of €95,000 from 4th July 2018, approximately 9.5 months after the valuation date. The lease is on FRI terms. There is no suggestion by either party that the lease was not agreed on an arm's length basis. There is no evidence to suggest that there was a substantial change in the market between the valuation date and the date that the letting was concluded. The Tribunal does not accept the Respondents opinion that the then Landlord was prepared to accept a below market rent to ensure occupancy of the property, and notes that no evidence was put forward to support this position. The Appellant has analysed the NER at €87,083.33 and this has not been challenged by the Respondent.

10.7 In addition to the letting of the subject unit, rental evidence is available from four lettings within 12 months of the valuation date. The parties do not agree on the analysis of these lettings as the Appellant has allowed for rent free periods and applied a lower rate per M² to the mezzanine level, while the Respondent has analysed the headline rent and applied a flat figure of €160/ M² to the mezzanine level. Irrespective of which approach has been taken, no evidence has been put forward to sustain the Zone A pricing of €1,100/ M² sought by the Respondent.

10.8 Having considered the evidence put forward by both sides, the Tribunal accepts the basic point made by the Appellant, that the rental evidence from the Centre does not support the valuation level sought by the Respondent.

10.9 The Tribunal is under a duty to ensure that its valuations are correct and ensure equity and uniformity between properties on the valuation list. It appears to the Tribunal that in this case the correct figure can only be based on those rents negotiated freely and fairly on the open market close to the valuation date.

10.10 Of the five properties that were let within twelve months of the valuation date, one (Unit C) has a retail area significantly larger than the subject and this must impact on the weight that can be attached to this evidence. In relation to Unit X, the Appellant has measured the property from online plans and the Respondent has no record at all of the unit, despite having revalued the Centre. Given that there is no evidence of either an agreed area or an area measured on site, this comparison must be considered as being of limited evidential value. Finally, in relation to Units Y/Y1, the Appellant accepts that the evidence should be treated with an element of caution as the full details of the lettings are unavailable. The Tribunal agrees with this position.

10.11 Of the remaining two units, the subject property has been dealt with at 10.4 above. The final unit (K) was let at approximately the same time as the subject at a headline rent of €115,000 per annum. The Appellant has analysed the NER at €102,500 and this has not been challenged by the Respondent.

10.12 The Appellants analysis of the NERs of the subject property and Unit K show Zone A rates of €846.19/ M² and €867.49/ M² respectively. The Tribunal finds that these provide the best evidence of rental values pertaining in the centre close to the valuation date and has applied a Zone A rate of €850/ M² in assessing the NAV of the subject property.

10.13 The Appellant has also queried the approach of the Respondent in applying a flat figure of €160/M² to mezzanine space in both the Swords Central schemes and the adjoining Pavilions scheme. He points out that the Respondent has applied different valuation levels to the retail elements of both schemes, and it makes little sense to apply a flat level to the mezzanine element, suggesting that the mezzanine levels should be valued at a percentage of the Zone A level.

10.14 The Tribunal considers the issue of the mezzanine rent to be mainly an analysis point in this case. Evidence has been put forward of two lettings which the Tribunal considers

to be the best available. These rents can be analysed by apportioning €160/M² to the mezzanine, which will reduce the Zone A rent, or by applying a percentage of the Zone A rent to the mezzanine space, which will result in a higher Zone A rent. Then Tribunal has decided, on balance, to accept the Appellants approach of valuing the mezzanine levels at a percentage of the Zone A level and has applied the percentage of 14.55%, equivalent to that used in the Respondents valuation and adopted by the Appellant.

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 €87,400.

Level	Use	Area M2	Price (€/M2)	NAV
0	Retail Zone A	47.64	€850	€40,494
0	Retail Zone B	52.28	€425	€22,219
0	Retail Zone C	29.30	€213	€6,226
0	Remainder	3.66	€106	€389
1	Mezzanine	146.78	€123.68	<u>€18,153</u>
	Say			€87,481 €87,400