Appeal No: VA23/5/1179

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

TJX EUROPE T/A TK MAXX **APPELLANT**

and

TAILTE ÉIREANN **RESPONDENT**

In relation to the valuation of
Property No. 2208673, Retail (Shops) at Unit 1 City Point, Eyre Square, County Galway.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF JULY 2026

BEFORE
Allen Morgan FSCSI, FRICS **Member**

1. THE APPEAL

1.1 By Notice of Appeal received on the 19th day of October, 2023 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 €581,000.

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 property is subject to a historic rent reviewed on an upwards only basis which is a basis that is now prohibited. The assessment by the VO of the NAV is not reflective of the specifics of the property or the tone of rents for similar property adjusted to reflect the edge of centre location of the subject premises."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €399,500.

2. RE-VALUATION HISTORY

2.1 On the 23rd day of September, 2023 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 €581,000.

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 manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 15th day of September, 2023 stating a valuation of €581,000.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is 1st day of February, 2022.

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.

The parties are represented as follows.

For the Appellant: James Farrelly, MSCSI, MRICS, Colliers Ireland
For the Respondent: Ian Power, B.Sc., (hons) Tailte Eireann

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**

Based on the evidence adduced by the parties, the following facts are agreed or not contested:

LOCATION

The subject property, Unit 1 City Point, is located in Galway City Centre in a multi-use building called City Point. It is situated a short distance away from north-eastern corner of Eyre Square and is part of a large mixed-use building located at the junction of Prospect Hill and Bothar na mBan.

Adjoining occupiers to City Point include Corrib Shopping Centre which is anchored by Sports Direct and Marks & Spencer, Galway County Council Buildings. Other occupiers located on Prospect Hill include Bank of Ireland, and The Dean Hotel. In terms of location, the subject building is close to all the major retail areas, office centres, universities, schools, shops, restaurants, bars and cafes.

DESCRIPTION

City Point comprises a relatively modern purpose-built mixed-use building extending to a stated lettable floor area of approximately 7,608.7 sq. m. (81,899 sq. ft.), arranged over a triple basement car park area with six upper floors.

The subject property comprises of a TK Maxx store with ground and first floor retail and a basement store and staff area. The City Point building incorporates a mixture of uses with retail at ground and first floors, offices at second and third floor levels, an Aparthotel comprising 17 no. one and two bed residential units on third and fourth floor levels and a three-bedroom penthouse on the fifth floor. A commercial gym and car park are located at three basement levels where there are 93 private car parking spaces with remote controlled access 24 hours a day, 7 days a week access available at the rear of the building from Bothar Irwin.

TK Maxx occupies the anchor retail store with own door access immediately off Prospect Hill and trades over ground and first floors with ancillary basement storage. Internally the ground and first floors are predominantly retail trading floors with ancillary toilet / staff accommodation. The basement section provides for staff canteen, offices and storage with a goods lift serving all three levels.

Internally, the subject property is laid out as follows.

• Ground floor comprises the retail section of the development along with stores and offices.

• First Floor: comprises a retail section and storage space.

• Basement: Stores/Offices

The retail section is finished to a modern specification. It has fitted laminated timber floors, smooth plastered walls and an acoustic tiled ceiling (first floor). There is LED lighting throughout the store also.

Condition

The property is stated by the parties to be in excellent condition.

Floor Areas

The area of the subject property is agreed by the parties to be as follows:

Description	**Floor**	**M2**	**Total m2 per floor**
Department Store	0	1,217.86	
Stores/Offices	0	267	
Total Grd. Floor			**1,484.86**
Department Store	1	1,664.58	
Stores/Offices	1	265	
Total First Floor			**1,929.58**
Stores	-1	385.27	

***Note:** whilst not specified by either party, given its commercial use, it is presumed that the parties are agreed it is measured/agreed on a Gross Internal Area basis.*

TITLE: Leasehold as follows: 20-year lease with 5-year reviews from 31/7/2009. Current passing rent of €800,000. (The same figure as per the original lease agreement, which contained an 'upwards only' rent review clause). A rent-free period of 16 months was granted to the lessee from the date of access.

Valuation Date: 1st. February 2022.

5. ISSUES

The issue under appeal 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. James Farrelly, the Appellants representative, stated that by notice dated 23rd of September 2022 the net annual value '(the NAV') of the above relevant Property was fixed in the sum of €581,000.

7.2 Mr. Farrelly stated that the Grounds of appeal as set out in the Notice of Appeal are that the Rateable Valuation of €581,000 is excessive & incorrect.

7.3 Referring to the floor areas and associated computations, he noted that the Total Ground Floor Area of 1,484.86 sq.ms is comprised as follows: Shop: 1,217.86 sq.m. Store: 267 sq.m.

7.4 He noted that the Respondents had determined a Final Valuation for the Ground Floor Area but did not reflect the use of this element of property, specifically that a portion of the ground floor is used for storage purposes. He stated that there was no explanation or discussion prior to this final certificate being issued or factoring in a value differential for the ground floor area according to use. Mr Farrelly stated in summary that the Valuation Office assessment ignored the ground floor actual layout which includes both retail and storage space.

7.5 He also contended that the property was subject to a historic rent reviewed on an 'upwards only' basis which is a basis that is now prohibited.

7.6 He concluded by stating that the assessment by the VO of the NAV was not reflective of the specifics of the property or the tone of rents for similar property, adjusted to reflect the edge of centre location of the subject premises.

7.7 Mr. Farrelly made his case, in the context of a number of issues he had identified, for an NAV **of €399,500** but also noted that following the making of representations that the Valuation Certificate issued with no change to the Valuation Certificate issued by the Commissioner of Valuations and the Final Valuation Certificate stated an NAV of **€581,000.**

7.8 Mr. Farrelly noted that in the Final Assessment by the Valuation Office the classification of the ground floor as regards user type was amended by the Valuation Office.

7.9 He asserted that the Respondents assessment had several inconsistencies, noting in particular a first-floor rate of €80 per sq. m. applied to two separate areas in clearly different uses, these being retail and storage. The Appellant stated that the Respondents NAV figure of €80 per sq. m. rate for the first floor storage area was reasonable, and was consistent with local comparator evidence, making appropriate adjustments for the quantum of the subject and the backward location of the property. Mr. Farrelly contended that the same NAV rate of €80 psm which had similarly been applied by the Respondents to the basement stores did not accord with an example of a city centre basement rate at €50 psm (see PN 2110246 below), and that the Appellants believed it was 'inconceivable' that 'edge of city' basement stores could be worth more than the most central of city centre basement storage space. In support of this contention Mr. Farrelly cited the following examples

2110246 – Basement space in Corbett Court @ €50 psm.
1154162 – Department Store - €140 psm. Tuck Mill Court – also off-pitch.

7.10 Appellants basis for appeal – Summary of.

1. That the Commissioner placed undue heavy reliance on an internal Tailte Eireann guide for valuers for Department Stores.
2. That the subject property is located in an out-of-centre location in an entirely isolated location.
3. That the Valuation placed on the subject property was excessive as no retailer would pay the rent that the property was being assessed at and the rent did not reflect comparables lettings.

In assessing the subject property Mr. Farrelly pointed to other retail parks, [APPENDIX A, N/A to public]. querying whether the subject property better or worse than Liffey Valley Retail Park, or Gateway Retail Park, also comparing these locations against the list of rental comparisons the Appellants had provided for the subject property. He said that the Appellant's assertion was that the location of the subject property was worse than all of those locations listed, and also in the context of its 'edge of centre' location which resulted in poor footfall, poor profile and significant negative locational factors, and which gave rise to significant challenges to trading that did not exist in the City Centre proper.

8.0 RESPONDENT'S CASE

8.1 Mr. Ian Power, valuer representing Tailte Eireann as Respondent, stated that in his opinion the property had been valued in accordance with Sections 48 and 19 (5) of the Valuation Act 2001 as amended, and the valuation order made for the Galway City Council area.

8.2 He stated that the subject property is a purpose-built department store and had been valued as such. He stated that the valuation is in line with other similar properties which are in similar locations throughout Galway City Council and that he was satisfied that the valuation levels applied to the relevant property were fair, equitable and supported by evidence.

8.3 Respondents commentary on the Appellant's Evidence

8.4 Mr. Power stated that Mr. Farrelly had relied upon four rental transactions located throughout the country. He contended that the transactional evidence located outside of Galway City Council rating area should be disregarded.

8.5 He noted that Department Stores are large units which are usually let on lease terms heavily incentivised or with turnover elements attached, or sometimes they are purchased outright. He expressed his view that it could be difficult therefore to get the full picture when deciding what the appropriate levels were. He also noted that most of the retail units located in Galway have been purchased by their occupiers.

8.6 Mr. Power stated that he believed that Mr. Farrelly had not provided any suitable rental transactions to support the Appellant's case. He noted that Mr. Farrelly's Comparison 2, Record 5021270 (Harvey Norman, located in Gateway Retail Park) was a purpose-built retail warehouse located on the outskirts of Galway City in a suburban area, and contended that as such it was not comparable.

8.7 Mr. Power contended that the Key Rental Transactions he had cited in his own precis [APPENDIX B, N/A to public] illustrated that the valuations levels applied by the Respondent were fair and equitable.

8.8 In terms of relativity to other similar comparisons located in Galway City, Mr. Power contended that Mr. Farrelly had only provided one NAV comparison [see PN 1154162 below] to illustrate that the valuation levels applied by the Respondent were not fair and reasonable. See below.

Mr. Farrelly's Valuation comparison – Property Number 1154162

Level	**Use**	**Area sqms**	**NAV (€ per m2)**	**NAV €**
0	Department Store	841.2	€140.00	€117,768.00
1	Department Store	723.21	€140.00	€101,249.40

Additional Items (€)	€5,475.42

Total (€)	€224,492.82
Rateable Valuation (€)	€224,000.00

Mr. Power's commentary: A purpose-built department store occupied by Anthony Ryan Ltd. Mr. Power contended that in his view this record supported the level applied to the subject and that despite both units being located in Galway City, the location of the subject was far superior to that of PN: 1154162.

8.9 Mr. Farrelly's Valuation comparison - basement storage – Property Number 2110246

Level	Use	Area sqms	NAV (€ per m2)	NAV €
-1	Store	102	€50.00	€5,100.00

Additional Items (€)	€0.00

Total (€)	€5,100.00
Rateable Valuation (€)	€5,100.00

Mr. Power's commentary: Basement Store in Corbett Court. There is no retail space in this development, it is only a basement store and therefore is not comparable.

8.10 Mr. Power noted that there were no large vacant retail units located in Galway City which he stated further illustrated that there was demand for such units and that the size of the unit in the subject property was not a negative aspect.

8.11 Mr. Power stated that the ground floor had been valued at one level overall despite the use and that this method had been accepted by other professional agents and by the Valuation Tribunal. He stated that the Appellants agent had not provided any evidence that this practice had occurred previously or reasons why it should.

8.12 He stated that regard had been given to the rental information of the unit but no "undue regard has been given to it". He noted that the date of the original lease agreement in 2009 was significantly different to the valuation date of 2022 but noting that the level applied to the development is in line with other similar developments in the locality and that the rent is €800,000, whilst the NAV is €581,000.

8.13 Mr Power asserted that the level applied to the basement area was in line with other similar comparisons. He noted that the comparison cited by the agent intended to show the level applied to the basement was incorrect, because it was only a store and that there was no retail element attaching to it.

8.14 He stated that Galway City is the main commercial centre for the west of Ireland which he said was reflected in the strong rental market in relation to the main towns and cities in Ireland.

8.15 Mr. Power stated that Mr. Farrelly had provided the valuations of Retail Warehouses valued across other Local Authorities and that in his opinion this exercise had no purpose as each Revaluation area was valued on its own merits.

8.16 He stated that in his opinion the subject was valued in accordance with Section 48 and Section 19 (5) of the Valuation Act as amended.

9. FINDINGS AND CONCLUSIONS

9.1 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 Galway City Council.

9.2 In order to succeed in the appeal, the Appellant must put forward a rationale as to why the valuation for the subject property entered on the valuation list should be altered. This flows from s.35 of the Act which provides:

> 35. – An appeal made under *section 34* shall, as appropriate-
>
> (a) specify –
>
>> (i) the grounds which the appellant considers that the value of the property, the subject matter in the appeal (in this section referred to as 'the property concerned') being the value as determined by the valuation manager or revision manager., <u>is not a determination of its value that accords with that required to be achieved by *section 19 (5)*</u> …. (Tribunal emphasis.)

9.3 The Tribunal relies upon and decides on appeals based on the evidence placed before it. It is a well-established principle that the onus rests with the Appellant to prove his / her case and provide evidence to the Tribunal that the Respondent's valuation of the property in question is incorrect and should be amended. It follows that the Tribunal must consider the nature of the evidence submitted to determine whether it supports the argument advanced on behalf of the Appellant

9.4 The précis, appendices, commentaries and oral evidence adduced by Mr. Farrelly and by Mr. Power have all been considered by the Tribunal in arriving at this Determination, which can only set out a summary of the evidence placed before the Tribunal. The fact that the Tribunal does not make specific reference to any particular document, argument, submission or piece of evidence does not indicate that it has not been into taken into account.

9.5 Mr. Farrelly contended that the Respondents, Táilte Eireann, appeared to have valued the property having regard to their internal guide for department stores which Mr. Farrelly claimed was an arbitrary approach to the subject property which he stated, was situated in an isolated location, remote from other department stores and the retail core of Galway City Centre. Mr. Power's response to this was that Department Stores are large units which are usually let on lease terms heavily incentivised or with turnover elements attached, or sometimes they are purchased outright. Mr. Power acknowledged that it could be difficult therefore to get the full picture when deciding what the appropriate levels are, noting that most of the retail units located in Galway had been purchased by their occupiers.

9.6 Mr. Power stated in his evidence that Mr. Farrelly had relied upon four rental transactions located throughout the country. Mr. Power contended that the transactional evidence located outside of Galway City Council rating area should be disregarded. The Tribunal finds that Mr. Power's contention on that evidence adduced by Mr. Farrelly of properties located beyond the city area and in a number of other locations around the country is of no assistance and has disregarded same.

9.7 In his evidence to the Tribunal Mr. Farrelly contended for a rate for the ground floor retail of €135per sqm, and €95 per sqm for the first floor retail. Mr. Power had assessed the same area of retail space at €160per sqm. Mr. Farrelly contended that no comparable evidence had been provided to the Appellant in the questioning of the Táilte Eireann assessment. Mr. Power's response was that Mr. Farrelly had not supplied any suitable rental transactions to support the Appellant's case, noting that one comparison submitted by Mr. Farrelly, PN 5021270 Harvey Norman, located in Gateway Retail Park, was a purpose-built retail warehouse located on the outskirts of Galway City in a suburban area, and which he thus contended was not comparable. Mr. Power asserted that the Key Rental Transactions cited in his own precis illustrated that the valuations levels applied by the respondent were fair and equitable. In terms of relativity to other similar comparisons located in Galway City, Mr. Power contended that the Appellant's agent had only put forward one NAV comparison PN 1154162, a department store on two levels, both levels rated at €140 per sqm, seeking to illustrate that the valuation levels applied by the Respondent to the subject were not fair and reasonable. Mr. Power's contention was that the location of the subject property was far superior to Mr. Farrelly's comparison. Mr. Power stated that the ground floor had been valued throughout at a single level, despite the type of use and that this method had been accepted by other professional agents and by the Valuation Tribunal. He stated that Mr. Farrelly had not provided any evidence that value differentiation within a single floor to reflect to specific types of use, had occurred before or reasons why it should.

9.8 Mr Power also stated in his evidence that a comparison cited by Mr. Farrelly in his evidence was intended to show that the level applied to the basement was incorrect. Mr. Farrelly had stated that the level applied to the basement area in his city centre comparison was in line with other similar comparisons. Mr. Power contended that the example cited was not comparable in that it comprised only a store and that there was no retail element involved. Mr. Farrelly stated in his evidence that he was in agreement with the rate of €80per sqm as applied by Tailte Eireann under their scheme for the area of stores on the first floor of the subject property, stating that this "was on the basis that it is consistent with comparable retail space making appropriate adjustments for the quantum of the subject and the backward location of the property." The Tribunal notes that by reference to his evidence, Mr. Farrelly accepts some parts, but not others, of the valuation parameters of the Respondents scheme.

9.9 Mr. Farrelly stated that it was clear at the representations stage that the Táilte Eireann Valuer was giving undue regard to the passing rent of the subject premises which was set in July 2009 with an 'upwards only' rent review clause, noting that the lease would end in June 2029 and that should the tenant elect to continue to occupy this off-centre location then the rent was likely to reduce to a significantly lower figure, or that failing that, that the tenant would be most likely to vacate the premises. He contended that the assessment by Tailte Eireann of the NAV was not reflective of the specifics of the property or the tone of rents for similar property, as adjusted to reflect the edge of centre location of the subject premises. Mr. Power stated in his evidence that regard had been given to the rental information of the unit but no "undue regard has been given to it".

9.10 Mr. Power noted that the date of the agreement in 2009 was significantly different to the valuation date of 2022 but noted that the level applied to the development was in line with other similar developments in the locality and that the rent was €800,000, and that the NAV was €581,000. Mr. Farrelly is contending that the subject premises would not attract a rent of €581,000 from any retailer in the national or international market; and that a rent of that level indicated that the Táilte Eireann Valuer was out of touch with the commercial realities of the retail property market.

10 DETERMINATION

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 Galway City Council.

10.2 For the reasons set out above, the Tribunal disallows the appeal and confirms the decision of the Respondent.

11 RIGHT OF APPEAL

11.1 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

11.2 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.