

Appeal No. VA04/1/047

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**Sam McCauley Chemists Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Lot No. Unit 25.26, Manor West Retail Park, Tralee Urban, County Kerry

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Joseph Murray - Barrister**

**Member**

**Maurice Ahern - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 7TH DAY OF SEPTEMBER, 2004**

By Notice of Appeal dated the 4th day of March, 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €370.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"Valuation excessive, no regard has been had to the 'Tone of List' in the Shopping Centre."

## **Introduction**

This appeal proceeded by way of an oral hearing held in the Offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 30<sup>th</sup> of June 2004. At the hearing the appellant was represented by Ms. Sheelagh O Buachalla, BA, MRICS, a director in GVA Donal O Buachalla. The respondent was represented by Mr. Shay Aylward, B.Comm, FCCA, a Staff Valuer in the Valuation Office.

## **Background**

In February 2004 a valuation certificate was issued in relation to the property concerned with the rateable valuation shown as being determined at €370. No change was made at first appeal stage and it is against this decision that the appeal to this Tribunal lies.

## **The Property Concerned**

The property concerned is a retail unit in the Manor West Retail Park which is located in the immediate outskirts of Tralee. The development comprises an enclosed shopping mall, a number of retail warehouse units and external surface car parking facilities. The shopping mall contains 13 retail units including those occupied by the anchor tenants Tesco and Roches Stores.

The subject property which trades as a chemist's comprises a double-fronted unit located at the entrance to the Mall directly opposite to the units occupied by Lifestyle and Tesco. The agreed accommodation is as set out below:

Ground Floor- Retail	506.8 sq.metres
First Floor- Office	9 sq.metres
Canteen	15 sq.metres
Store	64.8 sq.metres
Press/lift	2.9 sq.metres

The property concerned is occupied under a 35-year lease from September 2002 at a current rent of €186,000 per annum. The lease provides that the passing rent be reviewed at 5-yearly intervals.

### The Appellant's Evidence

Ms. Sheelagh O Buachalla having taken the oath adopted her written submission and valuation which had previously been received by the Tribunal as being her evidence-in-chief. At the hearing Ms. O Buachalla amended her opinion of rateable valuation as originally submitted as follows:

Retail	506.8 sq.metres @ €97	=€49,159
Offices	9 sq.metres @ €54.67	=€492
Canteen	15 sq.metres @ €41	=€615
Stores	64 sq.metres @ €27.33	=€1,749
	<b>Total NAV</b>	=€1,915
	RV @0.5%	=€259

In support of her opinion of Net Annual Value Ms. O Buachalla introduced five comparisons details of which are set out in Appendix 1 attached to this judgment. Three of Ms. O Buachalla's comparisons are retail units in the Manor West Retail Park development whose valuations were agreed at 2001 first appeal stage. Her other two comparisons are located in the town of Tralee.

Ms. O Buachalla, in evidence, pointed out that access to the first floor accommodation was separate from the retail area and that this interfered with the efficient operation of the business.

Ms. O Buachalla also said that in arriving at her opinion of Net Annual Value she had regard to valuations of other shops in the Manor West Retail Park development and in particular she considered the premises occupied by Lifestyle to be the most relevant comparison.

Ms. O Buachalla said that from what she could ascertain Mr. Aylward had arrived at his opinion of value by applying what he considered to be an appropriate percentage to the passing rent. Such an approach she said was contrary to the provisions of the Valuation Act, 2001 and furthermore the valuation arrived at by Mr. Aylward on this basis did not concur with the tone-of-the-list in the Manor West Retail Park development established at first appeal stage. Ms. O Buachalla drew attention to the

Tribunal's findings in the **AIB v The Commissioner of Valuation-VA02/4/067** and **Champion Sports Ltd. V The Commissioner of Valuation -VA95/1/104** cases.

### **The Respondent's Evidence**

Mr. Aylward having taken the oath adopted his written précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief. In his evidence Mr. Aylward contended for a rateable valuation of €370 calculated as set out below:

Ground Floor	Shop	506.8 sq.metres @ €136.67 per sq.metre	= <del>€</del> 69,264
First Floor	Store	64.8 sq.metres @ €4.67 per sq.metre	=€3,542
	Office	9.1 sq.metres @ €2 per sq.metre	=€746
	Canteen	15.2 sq.metres @ €8.34 per sq.metre	=€1,038
	Press/ Lift	2.9 sq.metres @ €1 per sq.metre	= <del>€</del> 19
Total	Net Annual Value		=€74,709
Take 0.5%	= €373.54	Say	=€370

Mr. Aylward pointed out that the Net Annual Value as proposed represented 39.86% of the passing rent and that this was lower than the comparative figures for other retail units in the Manor West Retail Park development.

In support of his valuation Mr. Aylward introduced three comparisons details of which are set out in Appendix 2 attached to this judgment.

In evidence Mr. Aylward said the property concerned occupies a good location at the entrance to the enclosed shopping mall almost opposite the anchor tenant. The property concerned had an extensive frontage and this had to be taken into account when valuing a property for rating purposes. Mr. Aylward said that the net annual value of the Lifestyle unit (his comparison A and Ms. O Buachalla's comparison No. 1) was arrived at by reference to the Jones-Lang-Wooten Retail Index. The relevant figures for 1988 and 2001 being 387 and 863 respectively. If he were to apply these figures to the current rent of the subject property it would give a net annual value of €3,400 and a rateable valuation of €117. In the circumstances therefore his proposed valuation of €370 was fair and reasonable.

## Findings

1. The Valuation Act, 2001 which came into effect on the 2<sup>nd</sup> of May 2002 set down the basis for arriving at net annual value. Section 49(1) is particularly relevant to this appeal and it states;-  
49(1)- *“If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”*
2. It is common case that the most relevant comparisons are those other units in the shopping mall section of the Manor West Retail Park development whose valuations were agreed at the 2001 first appeal stage.
3. Mr. Aylward in his evidence adduced details of the valuation of three units in the mall but in the Tribunal’s opinion the Roches Store unit (comparison C) is not of much assistance due to the disparity in the area between it and the subject property.
4. Ms. O Buachalla in her evidence also adduced details of three retail units in the Manor West Retail Park scheme but in the Tribunal’s opinion the Mothercare unit (comparison No.3) is not of much assistance as it is much smaller than the subject property.
5. The Lifestyle unit and the Harry Corry unit are common comparisons and the Net Annual Value of these units devalues at €88.52 per sq. metre and €86.20 per sq. metre respectively on an overall basis.
6. The effect of section 49 and section 63 of the Valuation Act, 2001 means that the correctness or otherwise of a challenged assessment must be decided *prima facie* by reference to the levels of values appearing in the relevant valuation list. These levels which have become established either by acceptance or as a result of the appeal procedures in accordance with section 30 and/or section 34 of the Valuation Act, 2001 are now commonly referred to by rating practitioners as the “tone-of-the-list” although these words have as yet never appeared in any statutory provision.
7. Having regard to the evidence in this appeal the Tribunal accepts as a matter of fact that the tone-of-the-list for retail units of a size similar to the property

concerned is in the order of €88 per sq.metre on an overall basis. However, having regard to the configuration of the subject property compared to that of the Lifestyle unit the Tribunal is of the opinion that an adjustment should be made to reflect the added advantages of having additional frontage and its prime location in the Mall.

### **Determination**

Having regard to all the evidence adduced and to the foregoing findings the Tribunal determines the Net Annual Value of the property concerned to be €7,000 calculated as set out below:-

Ground Floor- Retail 506.8 sq. metres @ €105	=€3,214
First Floor- Offices 9.1 sq. metres @ €70	=€637
Canteen 15.2 sq. metres @ €5	=€790
Stores 64.8 sq. metres @ €35	= €2268
Press/Lift -	No Value
Net Annual Value -	=€6,909 say €7,000
Rateable Valuation at 0.5% -	=€285