

Appeal No. VA07/3/035

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

**BOFH Holdings Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Lot No. Unit 14.15, Whitewater Shopping Centre, Moorefield, Droichead Nua Urban, Naas 1, County Kildare

**B E F O R E**

**John Kerr - BBS. ASCS. MRICS. FIAVI      Chairperson**

**Frank O'Donnell - B.Agr.Sc. FIAVI.      Member**

**Mairéad Hughes - Hotelier      Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 21ST DAY OF JANUARY, 2008**

By Notice of Appeal received on the 25th day of July, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €713.00 on the above described relevant property.

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

"The valuation is excessive, inequitable considering comparative information, use of zoning method inappropriate."

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin, on the 9<sup>th</sup> November, 2007. The appellant was represented by Ms. Helen Fletcher, BA, FIAVI, MRICS, ASCS, ACI Arb, of Douglas Newman Good Commercial Property. The respondent was represented by Mr. Ian Power, B.Sc., Property Management & Valuations, MIAVI, a District Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to the Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

### **The Property**

The property is a ground floor retail shop (Units 14 & 15) at the new Whitewater Shopping Centre, which is located south of Edward Street, being an extension of Main Street in Newbridge, Co. Kildare. The unit is occupied by and trades under the name and style of Health Express, being a dispensing Pharmacy, retailing associated over-the-counter cosmetic, health-care, nutritional and pharmaceutical products, and a dedicated photographic processing and related services facility.

The Centre is bounded on the east by Cutlery Road and at the rear by Athgarvan Road. The Shopping Centre is considered the largest purpose built regional facility of its kind outside Dublin, boasting a retail area of almost 32,000 sq. metres, spread over two floors, together with approximately 5,300 sq. metres of mall area, circa 1,400 sq. metres food-court, 10 office/commercial units, 84 apartments and ancillary parking for up to 1,700 vehicles.

The subject retail premises was one of a large number revised in December 2006, of which 22 were appealed to the Commissioner and subsequently 18 of those were appealed to the Valuation Tribunal with just two reaching Hearing stage.

The Shopping Centre is described as having both internal main and secondary malls on the ground floor, with two corresponding entrances. The development would be considered, in

terms of design, fit-out, building specifications, layout, mix of tenants and services, to be “best of class” for a regional Shopping Centre.

### **Tenure**

Leasehold, held on a 25 year Lease which commenced April 2006, with rent per annum of €700,000.

### **Services**

All connected to mains.

### **Floor Area**

Total floor area measured on GIA basis was agreed by the parties at 492.3 sq. metres.

### **Valuation History**

The subject relevant property, being one of 52 retail units, was valued at Revision stage in December 2006 and the Commissioner issued a rateable valuation of €505. Following First Appeal, a Final Valuation Certificate was issued by the Commissioner of Valuation on 4<sup>th</sup> July, 2007, declaring an RV of €713. However, subsequent to same and to maintain consistency with rateable valuations which were later agreed by the Valuation Office and the 16 former appellants, the Commissioner reduced the RV on the subject from €713 to €670.

### **Appellant’s Case**

Proceedings commenced when Ms. Fletcher assumed her position in the stand, took the oath and provided the Tribunal with a review of her submission. Commencing her deliberations and in response to a query from the Tribunal, Ms. Fletcher acknowledged that the final sentence of page 1, paragraph 2.0 in her submission, may be considered deleted from same.

Ms. Fletcher, having introduced her submission, indicated that her client’s difficulty in terms of the RV now declared on the premises was based on the adoption by the Valuation Office of the ITZA approach of determining a common standard by which to compare, analyse, evaluate and reach a representative RV for similar type premises within a large complex such as the subject Whitewater Shopping Centre. She contended that the Valuation Office failed to consider an apparent anomaly which had arisen as a result of the application of the zoning method on the subject when compared with other premises within the Centre. She argued that

the employment of the zoning method resulted in a calculation producing a much higher value on the subject, which she declared to be totally at odds with the “tone-of-the-list”.

Ms. Fletcher stated in her deliberations that the location and configuration of her client’s premises was not fully considered by the Commissioner in as much as, in her opinion, the configuration and various frontage and associated depth dimensions were either overlooked or misunderstood when Mr. Power, on behalf of the Valuation Office, established the ITZA area for the subject relevant property.

The dimensions of the subject were advised, as follows:-

**Frontage**

Facing main mall	=	8.5 metres
Facing secondary mall	=	22.65 metres
Facing entrance / exit leading to Cutlery Road	=	10.8 metres
Frontage onto Cutlery Road	=	7.9 metres

**Depth**

From secondary mall	=	19.4 metres
From main mall	=	31 metres

Ms. Fletcher expressed the view that the profile of the shop to the main mall is poor because of narrow frontage and somewhat compromised by stairs, a café, passenger lifts and a pillar, all in close proximity. She indicated that ITZA provides substantial variation of areas when calculated from either the frontage to the main mall or secondary mall, namely 188.9 sq. metres and 284.9 sq. metres respectively. Pursuing this issue further, she concluded that the resultant variations in ITZA calculations may be reflected by reference to a percentage of the gross floor area of the subject relevant property, being either 38% or 58%, again respectively. Having regard to these anomalies and the challenges underlying such an approach, Ms. Fletcher contended that it was not appropriate under the circumstances to use such a zoning method and further argued that such a method disregards the differences which arise between the value of her client’s unit and the other units within Whitewater Shopping Centre. To support her case Ms. Fletcher quoted from an extract relating to zoning in the Tribunal Judgment **VA95/6/025 – AIB Bank (Sutton)**.

Addressing matters of comparative evidence, she provided the Tribunal with summary details of RV, NAV and rates per sq. metre applicable to four other retail units, one within the nearby Courtyard development and the other three, being High Street shops, but none of which were retail dispensing pharmacies (a copy of which is at Appendix 1 attached to this judgment). She also noted that the Valuation Office had looked, for comparative evidence, to the Manor Mills Shopping Centre in Maynooth to arrive at an appropriate NAV for the Whitewater Shopping Centre. However, she stated that such units were all much smaller, the largest being 297 sq. metres, and in her view, not appropriate comparison properties. She concluded that the best comparisons for evidential purposes may be taken from those existing within the Whitewater Shopping Centre and evidence currently on the Valuation List.

In so doing, she offered an opinion that the net annual value of her client's premises should be calculated at €86,000 per annum, which would produce a resultant RV being sought by her client in the amount of €430.

#### **Cross-examination by Mr. Power**

Mr. Power cross-examined Ms. Fletcher, querying her on her views expressed on differences between what she described as the main mall and the secondary mall, a concept which he contended was not supported by evidence.

#### **Respondent's Case**

Mr. Power then assumed his position in the stand, took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. In reviewing his submission he again summarised for the Tribunal the location and provided a description of the Whitewater Shopping Centre, and details of tenure, services, accommodation and Valuation History on the subject relevant property.

He stated that the rateable valuation was assessed at 0.5% of the net annual value, and consistent with the basis adopted for other properties revised in the area. He also noted that his references to values of other comparable properties were those appearing in the Valuation List for the relevant Kildare County Council area.

He then apprised the Tribunal of the valuation history of the Whitewater Centre since its first Revision when the development was completed in 2006. He summarised the evolution of

events which led away from the initial approach adopted by the Valuation Office to calculate net annual value by reference to an overall rate per sq. metre of each of the relevant properties, to a zoning method commonly referred to as ITZA, the latter adopted as the common and agreed method for a large group of owners of other shops at Whitewater.

In accordance with the foregoing, he stated that the commonly agreed rate for a ground floor ITZA premises was €470 per sq. metre. Using an ITZA area of 285.5 sq. metres, based on dimensions relating to the greatest frontage dimension of the subject premises, the calculated NAV amounted to €134,185 and a resultant rateable valuation of €670.

Mr. Power provided the Tribunal with a schedule of nine comparisons, a copy of which is attached at Appendix 2 to this judgment, taken from within the Whitewater Shopping Centre, the first six of which were all on the ground floor, with ITZA areas ranging from 75.07 sq. metres to 203.95 sq. metres, each of which had previously been appealed to the Valuation Tribunal but agreed prior to a Tribunal hearing, with ITZA at the agreed common rate of €470 per sq. metre as noted earlier.

#### **Cross-examination by Ms. Fletcher**

Ms. Fletcher, while cross-examining Mr. Power, again addressed her concerns with regards to adoption of the zoning method to reach a fair and equitable rateable valuation on her client's premises, and in addition, challenged the elevation or frontage used by the Valuation Office as incorrect, as she considered such to be facing the secondary mall, when in her view, they should have used the frontage facing the main mall. Further challenging the use of ITZA, Ms. Fletcher contended that such a method does not produce fair comparisons, citing other stores within the Centre such as Nature's Way, Doctor China and Peter Mark, all of which are located directly opposite the subject, noting that her client pays a premium on rent, as a dispensing pharmacy, in line with traditional practice for such units, and for "exclusivity of use" rights.

Ms. Fletcher also queried the comparisons chosen by the Valuation Office, as all of the ground floor comparisons, numbers 1 – 6 inclusive in Mr. Power's précis, enjoyed considerable footfall, located as they are on the interior section of the mall between the main entrance and Marks & Spencer at one end, and Debenhams at the other end. Mr. Power responded by saying that her arguments were flawed as the ITZA levels had already been established and agreed, which took such matters into account. Ms. Fletcher queried why the Commissioner

had not considered the application of an overall rental value per sq. metre, declaring further that the ITZA method was not fair to her client as the configuration of the subject relevant property did not allow for ideal or even suitable front-to-depth dimension ratios, as was evident from and to the advantage of Comparison property No. 4, being units 19 and 20, trading as Easons. She expressed the view that the ideal ITZA ratio in that unit of 1:293 resulted in a net annual value of €5,800 assessed, though having a Gross Internal Floor Area considerably larger than her clients, of 642 sq. metres, while the subject premises at 492 sq. metres has been assessed at a much higher net annual value. She expressed the opinion that the declared NAV of €6,400 on the premises trading as Monsoon, which was not dissimilar in size to the subject, compared to the NAV of €134,185 on the subject was anomalous. Mr. Power, in reply to these queries, reiterated that the value and shapes of the units were considered carefully by all concerned parties prior to reaching the recent agreement on ITZA on the ground floor units, benchmarked at €170 per sq. metre.

### **Findings**

The Tribunal has carefully considered all of the oral and written evidence provided by the parties, and the arguments adduced at the hearing, and make the following findings:

1. It was not demonstrated to the Tribunal that the zoning method was either inappropriate or incorrect, as a method to assist in the determination of rateable valuation.
2. The Tribunal was not provided with evidence to support the adoption of the so-called “main mall” frontage as the appropriate line from which to determine the ITZA area.
3. The written and oral evidence provided by the appellant’s Consultant failed to provide sufficient clarification on the calculation of net annual value as set out in page 8 of her précis of evidence. The supporting calculations which set out the Consultant’s comparisons of Monsoon, Easons, Sasha and Stilo Barratt, together with her analysis of zoning, and then the summary valuation on the bottom of the same schedule at Appendix 3 attached to this judgment appears to rely upon an overall rate per sq. metre by reference to the ITZA method which Ms. Fletcher conversely contended in her submission was a flawed approach in determining value, and one not capable of producing a fair and representative NAV for the subject. It would appear that a rate per sq. metre of €175, when applied as a factor to the total area of 492 sq. metres produced the proposed NAV of

€6,152.86 in her submission. However, the manner by which the said €175 was calculated was not explained or outlined for the Tribunal.

4. The Tribunal was not provided with evidence to support or indicate a preference for the employment of a rate per sq. metre in this particular appeal for the subject premises.
5. The evidence submitted and adduced at hearing by the respondent concluded that there exists broad support and acceptance of the use of the zoning method and the application of €470 per sq. metre for ground floor Zone A space, as set out in his précis, Section 4, copy attached as Appendix 2 to this judgment.

### **Determination**

The Tribunal acknowledges the efforts and diligence of both parties to this appeal and in particular the professional content and manner of presentation of their respective positions at hearing. Whilst the merits of the selection of frontage for the purpose of ITZA might, in this case, merit some consideration and debate, the Tribunal was provided with a request for consideration on such without cogent argument to consider varying from current industry practice and guidelines on such matters. Though mindful of the need to exercise caution when considering ITZA and appropriate front-to-depth ratios when comparing other premises on the same method, the frontage-to-depth ratio determined as it is, in this case, by reference to the front dimension of 22.65 metres does not produce a ratio particularly out of line with normal or ideal levels.

In reaching its Determination, the Valuation Tribunal has been required to consider only the evidence submitted and adduced, and having regard to all of the foregoing concludes that the rateable valuation, as advised by the respondent, adjusted by the Commissioner of Valuation noted above, is correct and accordingly, the rateable valuation of €670 is affirmed.

And the Tribunal so determines.