

Appeal No. VA02/6/006

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

Moffit Shoes

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No: Unit G Pavilion Shopping Centre, Swords Village, County Dublin

B E F O R E

Tim Cotter - Valuer

Deputy Chairperson

Patrick Riney - FSCS FRICS MIAVI

Member

Brian Larkin - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF JUNE, 2003

By Notice of Appeal dated 13 December 2002, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €70 on the relevant property above described.

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

"The rateable valuations are excessive and inequitable having regard to the provisions of the Valuation Act, 2001.

The net annual value determined by the Commissioner of Valuation in respect of the above units is incorrect having regard to the rental levels of similar type properties in the immediate vicinity. The rateable valuation determined by the Commissioner of Valuation is incorrect having regard to the levels of rateable valuations of similar type properties in the immediate vicinity which have recently been revised and agreed on appeal with the Commissioner of Valuation."

The appeal proceeded by way of an oral hearing that took place in the Tribunal Offices, Ormond House, Ormond Quay, Dublin 7 on the 21st day of May 2003.

At the hearing the appellant was represented by Mr. Tom Davenport ASCS MRICS Chartered Surveyor of Lisney Estate Agents Auctioneers and Surveyors. Mr. Noel Lyons B.Comm District Valuer in the Valuation Office appeared on behalf of the respondent. Having taken the oath both parties adopted their written submission as their evidence in chief which had previously been exchanged between the parties and submitted to the Tribunal. Both parties offered in their précis, comparisons, maps, charts, comparing shopping centres in the Dublin area and an indices listing all of these are appended to this judgement.

Valuation History

The property was included in the November 2001 Quarterly Revision of Valuation Lists and assessed for the first time at RV €380.92.

An appeal against this valuation was lodged to Fingal County Council on the 19th November 2001.

The Commissioner of Valuation on the recommendation of the Appeal Valuer reduced the rateable valuation from RV €380.92 to €370.

An appeal against the RV €370 was lodged to the Valuation Tribunal on the 13th December 2002.

Tenure

The property is held on a 21 year lease from 15th May 2001 at a rent of €152,368 per annum exclusive.

In accordance with the term of the lease, the tenant is responsible for the internal repairs, plus the shop front, the payment of rates and a service charge.

The lease provides for rent reviews every five years.

Location

The Pavilions Shopping Centre is located just off the east side of Main Street, Swords, between Swords by-pass and Main Street and approx. 12km north of the city centre. A location plan is appended to this judgment.

The unit shown outlined on the attached trading plan is situated at the southern end of the main mall within Pavilions Shopping Centre.

Immediate adjoining occupiers include Boots Chemist, HMV Music Store and Birthday's Card Shop.

The Pavilions Shopping Centre consists predominantly of a linear shopping mall on two floors. The ground floor comprises 32 shop units with two anchor tenants namely Dunnes Stores located at the southern end and Superquinn located at the northern end of the mall.

The first floor comprises 23 shops units and Dunnes Stores occupy the first floor.

Amongst the well-known retailers located at the centre are Eason's, Lifestyle, Champion Sports, Pamela Scott, A-Wear and Peter Mark. Financial institutions are represented by three Bank of Ireland ATM machines located at the southern end of the ground floor mall. There are a total of three entrances to the shopping centre.

Car parking is provided by a five-storey car park together with surfaced car parking divided into five sections.

Description

The subject unit is one of a number of standard lock-up units. The unit has a net internal frontage of 7.31 metres and an overall depth of 44.58 metres.

The unit is constructed with concrete block walls, plastered and painted internally, concrete floor with wood block covering, suspended ceilings with inset lights and aluminium frame full length plate glass display frontage.

Approximately 50% of the accommodation is laid out as retail area with the remaining areas being used for storage and staff facilities.

The storage area has been left in a shell state and does not have the benefit of a suspended ceiling or floor covering.

Headroom in the storage area is approximately 5 metres and averages approximately 3.5 metres in the retail section.

Accommodation

The accommodation has been agreed with the Commissioner of Valuation as follows;

Gross Internal Floor Area: 283 sq.metres

Net Internal Frontage: 7.31sq.metres

Appellant's Case

The Pavilions Shopping Centre is essentially a suburban shopping centre which caters for the needs of the population of Swords and surrounding areas. It is an inferior shopping centre to Blanchardstown, Liffey Valley and The Square, Tallaght, which are regional shopping centres located at the intersection of the M50 with national primary roads. Both Blanchardstown and The Square have floor areas in excess of 50,000 sq.m. retail whilst Liffey Valley has an area in excess of 25,000 sq.m. retail.

Blanchardstown Shopping Centre which is located in the same rating area as the Pavilions Shopping Centre has footfall figures of 350,000 per week compared to 110,000 for Pavilions Shopping Centre.

The managing agents for the Pavilions Shopping Centre have confirmed that a recent survey of footfall figures has indicated that 70% of its shoppers are within a ten-minute drive from the centre. Footfall figures have also indicated a substantial increase in the pedestrian traffic to the centre and an increase in basket shopping in the supermarkets.

This would indicate that the centre caters mostly for its immediate catchment area and could not be classified as a regional centre.

The Pavilions Shopping Centre suffers from a number of disadvantages, notable acute problems with vehicular access to and from the centre. Access to the centre is circuitous and is either via the narrow Malahide Road from its junction with Swords village or via a link road, which provides access to Swords village from the Swords by-pass.

Both access roads converge at a small roundabout in front of the shopping centre, which must cater for all incoming and outgoing traffic.

Severe difficulties have been experienced to date in entering and leaving the centre primarily due to the complete inadequacy of the surrounding road network. Lengthy delays are normal at busy times. This has resulted in considerable queues trying to enter and exit the centre mainly in the evenings.

This has been highlighted as a major problem affecting the entire centre and adversely affects trading and ultimately the letting value of the subject units within the centre.

Despite the fact that the centre has been trading for over two years, roadway signs to indicate its presence or directions thereto are practically non-existent. It appears that all applications which have been made to the National Roads Authority for signage fronting on to the Swords by-pass have been refused.

Charges are imposed on customers who remain in the car park for more than 3 hours. This factor coupled with the much-publicised difficulties in entering and leaving the centre at peak times, combine to act as a serious deterrent to shoppers.

Although the centre has been opened for almost two years there are still some four units vacant and available for letting on the ground floor, which is the prime retail area where Superquinn and Dunnes Stores are located. Mr. Davenport listed these as G9, G12, G23 and G30.

Generally speaking the configuration of the shop units within the centre is quite poor. Relative to their overall depth the shop units have quite a narrow frontage. The frontage to depth ratio in the majority of units varies from 1:4 to 1:8. In the subject unit the ratio is 1:6. Consequently this factor should be borne in mind when assessing a fair net annual value for the subject unit. Prime units are normally in the ratio 1:2.

The tenant mix within the centre is quite poor with a large amount of business in the clothing and fashion trade. There is a lack of food outlets, which must restrict the attractiveness of the centre somewhat. The centre does not have the benefit of a cinema complex, retail warehouses and drive through restaurant, which is now the norm for shopping centres. The modern concept of shopping as a leisure pursuit is best evident in the Blanchardstown centre, which has all the aforementioned facilities on one campus.

The Pavilions Shopping Centre is in direct competition with the existing retail units in Swords. Over the past number of years almost all of the retail units within Swords both on Main Street and with a number of Shopping Centres within Swords have had their valuation revised on appeal by way of first appeal to the Commissioner of Valuation or determined by the Valuation Tribunal. In effect therefore the tone of the valuation list has been established within the retail area of Swords and it is Mr. Davenport's submission that the Pavilions Shopping Centre should be valued in line with the tone of the list established within Swords as a result of recent revisions / appeals.

The subject unit is set back c 1.8 metres from the line of the adjoining shop units within the centre. This has resulted in the unit being less visible to shoppers within the centre and in Mr. Davenport's opinion this factor adversely affects the rental level of the unit. This fact should be reflected when assessing the net annual value of the unit.

Mr. Davenport stated that Superquinn Shopping Centre is located on Main Street, Swords. The majority of the units are currently vacant and Superquinn has relocated to the Pavilions Shopping Centre. All of the units in this centre are small in size with good frontage to depth ratio of 1:2.

These were all valued as brand new units in 1990 and regarded at the time as the prime retail centre within Swords. For NAV purpose the Zone A's range from €393 per sq.m. to €451.66 per sq.m.

Mr. Davenport stated that the entire Main Street, Swords was revalued for the rates purpose in the period 1990-1995. The Valuation Office have confirmed that Zone A rates of €10 per sq.m. - €478 per sq.m. were applied to the prime retail area of Main Street for the purpose of assessing rateable valuations and establishing a "tone of the list".

Mr. Davenport also quoted Valuation Tribunal Appeal No. VA00/2/011 – Fiat Auto (Ireland) Ltd. "The Tribunal stated that the following "The Tribunal is not aware of any indices that would be appropriate to this type of property. As a general rule the Tribunal considers such indices to be of limited assistance in individual cases as they are based on information relating to a basket of properties in various locations in Dublin and elsewhere. Nonetheless they do serve as an indicator of general trends and as such they do serve a purpose."

Mr. Davenport's Opinion of Rateable Valuation is as follows: -

Estimate of Net Annual Value as at November 1988.

Gross Internal Floor Area 283 sq.metres

Net Frontage 7.31sq.metres

Ground Floor Retail Zone A 44.19 sq.metres @ €478 per sq.m. = €21,213

Zone B 44.59 sq.metres @ €239 per sq.m. = €10,657

Zone C	44.31 sq.metres @ €19.5 per sq.m. = €2,295
Remainder	149.90 sq.metres @ €9.75 per sq.m. = €1,457
Sub Total	€3,752
Less 5% of lack of visibility of unit within centre	€1,876
Total Net Annual Value as at November 1988	€1,876
Estimate of Fair Rateable Valuation	€1,876 x .63% = RV €1,181

Mr. Davenport when cross-examined by Mr. Lyons stated that Blanchardstown was slow to build to its current trading figures.

Mr. Davenport agreed with Mr. Lyons that the Pavilions has 3 hours free parking compared to 1 hour in the main street.

Mr. Davenport felt rents were too high in the Pavilions and that is why units were vacant and he also felt that the ratios in Blanchardstown were far better than the Pavilions.

Mr. Davenport accepted that Advanced Tyres were adjacent to Mc Donald's on Main Street, Swords.

Respondent's Case

Mr. Lyons stated that there are three anchor tenants i.e. Dunnes Stores with the ground and first floor accommodations, Superquinn which is located in the ground floor and TK Maxx on the first floor.

There are two car parks attached to the centre comprising 650 surface spaces located to the front of the centre and 1,070 spaces in a multi-storey facility on five levels – level 1,3 and 5 (rooftop level) have escalator, passenger lifts and stairs access to the shopping areas, while levels 2 and 4 provide passenger lifts and stairs access.

The centre is not designated and has 57 units including anchor tenants Dunnes Stores trading on the ground floor and first floor, Superquinn on the ground floor and TK Maxx on the first floor. All of the first floor units are occupied (2 were vacant at appeal stage) with 5 remaining vacant

ground floor units from 7 at the time of appeal inspections. There is a good mix of quality, high street traders on the upper floor (22 units) and for convenience more durable communal goods located in the ground floor units. Many of the tenants have units in the Blanchardstown and Liffey Valley Centres.

Aside from the anchor tenants the units range in size from 23.9m² to 1,207m² with the majority in the range of 185m² to 372m² with ceiling heights generally 4.9m clear. There is slight variation in the configuration of the shop units. In the 6 ground floor units appealed to the Valuation Tribunal the average frontage to depth ratio is 1:4.46.

A number of the units are wider at the back by up to 1.35m and frontages in some cases are at a slight angle to the mall. The frontage depth ratio of units in Blanchardstown centre generally from 1:4.6 to 1:5.6

The shopping centre site is bounded on the side by a dual carriageway providing access to the centre and the main street from the Malahide Road roundabout. As a source of egress from the centre, this roundabout which is controlled by traffic lights causes traffic congestion and long delays at peak times. These problems should be alleviated when the new M1 Motorway extension from Dublin Airport to Balbriggan is completed (Airport to Lissenhall, north of Swords, to be completed June 2003 and the remaining section to Balbriggan in October 2003).

The Pavilions is not a regional centre but differs from many other suburban shopping malls as it is located in the town of Swords, and will have additional facilities when the 7 screen cinema, 6 restaurants/bar units, 6 office suites and additional 8 retail units complex for which planning permission has been obtained is developed. Other proposed developments will be a pedestrian link with the centre of Swords, which is currently available via the Malahide Road footpaths.

It is reasonably argued that the Pavilions is in direct competition with existing retail units in Swords and the appropriate comparisons would be the rateable valuations of shop units within the existing shopping centres and also shop units located on Main Street. In addition a "tone of

the list” which has been established for the general area by the 1990 revision, subsequent revisions and appeals of non-domestic properties should be maintained and applied.

In examining rental and rateable valuation evidence on retail premises in Swords village with units of similar size in the Pavilions Mr. Lyons decided to reduce all the information on the rents, which were fixed at various lease or review dated to a common dated i.e. November 1998 using Jones Lang La Salle Index.

The index measures movements in the property market and may not reflect the better trading environment in 2001 compared with 1996 and subsequent years, however in this case by reducing all the information to a common level he found it to be reasonably satisfactory system in easily identifying any major deviation or trend between the different rents and NAV’s. (See VA97/2/025 and VA97/6/058 for the Valuation Tribunal responses to the use of indices).

In addition it should be noted that the population of the immediate Swords area was 17,705 in 1991 and had increased to 24,946 at the 1996 census.

By comparing the relationship of adjusted rents of similar sized units in Swords and in the Pavilions with the relationships of NAV it would appear that the related NAV’s for the Pavilions compare favourably with the relationship of the adjusted rent for Swords town and in most cases are lower.

In comparing “like with like” it appeared to Mr. Lyons to be unreasonable to compare a shopping centre in a “start-up” situation with centres that had been trading for a number of years and where the reviewed rents reflect the effects of additional structural developments and a customer base expanded from years of trading and advertising. A start up situation should, in general, reflect the expectations of a landlord and willing tenants, and tenants would usually formulate their business plans by allowing for a possible loss making “start-up” period until an anticipated profitable trading pattern would emerge. However some ventures have not reflected expectations i.e. The Stillorgan Plaza – opening strong rents but closed within a few years. The Merrion Centre – apparently traded poorly and rents and rateable valuations were reduced.

Mr. Lyons when cross-examined by Mr. Davenport, accepted that Liffey Valley and Blanchardstown were superior to the Pavilions.

Mr. Lyons said he was asked to compare Swords itself with the Pavilions. He said the tone of the list was based on 1988 levels and said that he would compare the Pavilions with Grafton Street syndrome – High Fashions.

Mr. Lyons accepted that there was no indices for shopping centres. He accepted they had to be treated with caution and said they were not an exact science.

Mr. Lyons accepted that the customer net was wider for Blanchardstown and Liffey Valley than for the Pavilions. The Pavilions at this point was driven by local trade and he said that there was a big turn down in the area at the moment.

Mr. Lyons accepted that the three regional shopping centres had easier access than the Pavilions and that they had countrywide appeal.

Mr. Lyons outlined his NAV/RV as follows: -

Valuation Office Estimate of Rent / NAV €9,238.41

Valuation

Ground Floor area 293.00 m² with net frontage of 7.31m zoned as follows:

Zone A	44.19 m ² @ €15.04 / m ²	=	€27,178.62
Zone B	44.59 m ² @ €307.52 / m ²	=	€13712.32
Zone C	44.31 m ² @ €153.75 / m ²	=	€6,812.66
Remainder	149.90 m ² @ €76.95 / m ²	=	€1,534.82
Rateable Valuation	€9,238.41 x 0.63%	=	€373.20

Say €370

Findings

1. The Pavilion was probably marketed as a regional shopping centre but on the evidence to date it has failed.
2. The footfall figures supports the Tribunals conclusion at No. 1 on the basis that the footfall at Blanchardstown has 350,000 per week compared to 110,000 for the relevant property.
3. On the basis that the population of Swords increased by only seven thousand in five years it is difficult to see the Pavilions ever becoming a regional shopping centre.
4. The Tribunal is obliged to look at comparisons in the same rating area and also to take note of the “tone of the list”.
5. Generally at the start up stages in shopping centres some companies will pay high rents in order to secure a unit.
6. Rents will generally balance out when first reviews are carried out.
7. When a large company such as Superquinn move from the main street to a shopping centre like the Pavilions it indicates an obvious shift in trading with in an area. It was also noted that other units moved with Superquinn from their shopping centre.
8. The Tribunal must make its decisions on the evidence before it.
9. Mr. Lyons appears to contradict himself in his evidence by accepting that the Pavilions is not a regional centre, however he applies the same Zone A rate as Blanchardstown, which has a 3-1 higher footfall ratio.
10. It is obvious that in any start situation there will drop outs along the way and also some units will be slow to be taken up.
11. It was accepted by both sides that access to say the least was convoluted and this in itself would severely affect business.
12. Mr. Lyons in cross-examination accepted that the centre has a narrow catchment area and there was currently a down turn in trade.
13. Both sides accepted the view that indices should be treated with caution and this view has been stated by the Tribunal in many occasions.
14. The Tribunal is of the view that Mr. Davenport’s comparisons were of most assistance to the Tribunal and in particular his comment that the Valuation Office has confirmed a Zone A rating of €110 to €178 per sq. m. for Swords Main Street.

15. The Tribunal is of the view that the relevant unit is excellently located by virtue of the close proximity to anchor tenant Dunnes Stores and disallows Mr. Davenport's claims for a lack of visibility.

Determination

Having regard to the evidence adduced and arguments proffered the Tribunal assess the rateable valuation of the relevant property as follows: -

Zone A	44.19 m ² @ €500 / m ²	=	€2,095.00
Zone B	44.59 m ² @ €250 / m ²	=	€1,147.50
Zone C	44.31 m ² @ €125 / m ²	=	€5,538.75
Remainder	149.90 m ² @ €59.75 /m ²	=	€8,957.00
Total NAV		=	€47,738.25
Rateable Valuation	€470738.25 x 0.63%	=	€300.75

Say €300.

And the Tribunal so determines.