

Appeal No. VA06/2/045

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

Orange Tree Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

and

Dun Laoghaire Rathdown County Council

NOTICE PARTY

RE: Shop at Lot No. 141, Dundrum Town Centre, Dundrum, Dundrum Sandymore,
Dundrum, County Dublin.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

Patrick Riney - FSCS FRICS FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF OCTOBER, 2006

By Notice of Appeal dated the 6th day of June, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €54.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal and in a letter attached thereto, copies of which are at Appendix 1 to this judgment.

1. The appeal proceeded by way of an oral hearing, held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 25th July, and the 6th and 7th September, 2006.
2. At the hearing the appellant was represented by Mr. Donal O'Donnell, SC, and Mr. Owen Hickey, BL, instructed by Mr. Mark Traynor of BCM Hanby Wallace, Solicitors. The respondent, Commissioner of Valuation, was represented by Mr. Anthony Aston, SC and Mr. James Devlin, BL, instructed by the Chief State Solicitor's Office. Mr. James Macken, SC, appeared on behalf of the notice party, Dun Laoghaire/Rathdown County Council, instructed by Ms. Dorothy Kennedy, Solicitor to the Council.
3. Valuation evidence on behalf of the appellant was given by Mr. Adrian Power-Kelly, FSCS, FRICS, of Costello Commercial and by Mr. Joseph Bardon of Bardon & Company. Mr. Christopher Hicks, a Valuer in the Valuation Office, appeared on behalf of the respondent and Mr. Patrick McMorrow, the Appeal Officer in this case, also gave evidence.
4. Prior to the oral hearing, written préces and valuations were received by the Tribunal from Mr. Power-Kelly, Mr. Bardon and Mr. Hicks and these were received into evidence at the oral hearing. Each party also submitted a comprehensive book of authorities and a schedule of the cases and authorities referred to therein is set out in Appendix 2 attached to this judgment.

From the evidence tendered, the following material facts emerged or were so found:

5. The property concerned is a retail unit on Mall level one within Dundrum Town Centre and known as Unit 141. The agreed accommodation of Unit 141 is:

Ground Floor Retail	83.4 sq. metres
Mezzanine (Offices, Stores & wc)	62.3 sq. metres
ITZA is agreed at	72.9 sq. metres

6. Dundrum Town Centre is a major mixed development scheme being built in a phased manner which, when completed, will include an enclosed shopping centre on three

principal levels, together with ancillary facilities including a multi-screen cinema complex, public house, restaurants etc.

7. The property concerned is one of 110 retail units within the Centre valued by the Revision Officer in or about July, 2005.

8. **Rating History**

1. On the 28th July, 2005, the Revision Officer issued a proposed valuation certificate assessing the rateable valuation of the property concerned at €479.00.
 2. Written representations by Mr. Power-Kelly, on behalf of the appellant, were lodged on the 24th August, 2005.
 3. On 12th October a Valuation Certificate was issued by the Revision Officer wherein the rateable valuation was stated to be €521.00.
 4. On 18th November, 2005 an appeal was lodged against the assessment of €521.00.
 5. On the 10th May, 2006 a Valuation Certificate issued wherein the rateable valuation was stated to be €554.00.
9. At the hearing a number of issues of a legal and valuation nature arose, which may be summarised as follows:
 - a. In arriving in his opinion of rateable valuation the valuer acting on behalf of the appellant concluded there were no comparable properties within the Dun Laoghaire/Rathdown Rating Authority area and consequently relied upon comparisons located in other Rating Authority areas. In his opinion Section 49(1) of the Valuation Act, 2001 did not apply.
 - b. The valuer acting on behalf of the Commissioner of Valuation on the other hand came to a different conclusion and relied solely on comparisons from within the Dun Laoghaire/Rathdown Rating Authority area in strict compliance with Section 49(1) of the Valuation Act.
 - c. On a without prejudice basis, the valuer on behalf of the appellant put forward a second opinion of value on the assumption that Section 49(1) did apply and likewise the valuer on behalf of the Commissioner of Valuation put forward a valuation based on comparisons drawn from outside the Dun Laoghaire/Rathdown Rating Authority area.

- d. From evidence adduced at the hearing, it became apparent that during the appeal process there was substantial interaction between the Revision Officer and the Appeal Officer. Counsel for the appellant contended that the level of this involvement with the Revision Officer and the absence of a similar level of engagement with the appellant in the appeal process was such as to render the appeal procedure a nullity and effectively render the revision invalid.
- e. Counsel for the appellant also stated that the valuation method adopted by the Revision Officer and the Appeal Officer was so remote from the requirements of Section 49(1) as to constitute non-compliance.
- f. Counsel for the respondent and the notice party countered those arguments put forward by the appellant and contended that the Tribunal did not have power to determine the revision to be a nullity nor did it have power to “strike out a valuation”.
- g. Counsel for the respondent also contended that the provisions contained in Section 49(1) were appropriate for valuing the property concerned as there were a number of properties which are “*similar in use, location and nature of construction or any other factor that would have a bearing on value*” within the Dun Laoghaire/Rathdown Rating Authority area.
- h. Counsel for the respondent and the notice party also contended that Section 33(5) gave the Commissioner of Valuation power to “*employ such procedures as he or she considers appropriate for the purposes of the consideration of the appeal*” and that it was not within the powers of the Tribunal to review that procedure. The Tribunal’s function, they said, was to review the evidence put forward to it and make its own judgment of valuation. If the Tribunal came to the conclusion that the appeal to the Commissioner was not conducted in compliance with the tenets of fair procedures this did not deprive the Tribunal of jurisdiction to decide the appeal and value the property concerned at what it considered to be an appropriate level.

10. Mr. Hicks arrived at his opinion of rateable value of the property concerned by reference to comparisons drawn from within the Dun Laoghaire/Rathdown Rating Authority area only, in compliance with Section 49(1). His opinion of rateable value on this basis was €54.

On a without prejudice basis Mr. Hicks submitted an alternative valuation on the assumption that he was not restricted from considering comparisons outside the Dun Laoghaire/Rathdown area. In this instance Mr. Hicks' opinion of rateable value was €47.

11. Mr. Power-Kelly on behalf of the appellant arrived at his opinion of rateable value of the properties concerned by reference to comparisons drawn from without the Dun Laoghaire/Rathdown area. On the basis of his comparisons Mr. Power-Kelly assessed the rateable value of the property concerned at €30.

On the assumption that he was restricted to comparisons from within the Dun Laoghaire/Rathdown area, i.e. in compliance with Section 49(1), Mr. Power-Kelly was of the opinion that on that basis the rateable valuation of the property concerned was €85.

12. We now proceed to deal with the issues raised and which touched on the appeal process, the jurisdiction of the Valuation Tribunal and the proper statutory basis for the valuation of the property concerned in this appeal individually as follows.

The Appeal Process

13. The Valuation Act, 2001 which came into effect on 2nd May, 2002 repealed (with some minor exceptions) all then existing statutory provisions dealing with the valuation of property for rating purposes. Inter alia the Act introduced new procedures for the revision of valuations and for appeals to the Commissioner of Valuation.
14. Under Section 19 of the Valuation Ireland Act 1852 "*any Person aggrieved by reason of the Valuation of any Tenement or rateable Hereditament*" could send to the relevant rating authority a notice, setting out the grounds of such grievance, which was then forwarded to the Commissioner of Valuation for consideration.
15. Under Section 20 of the Act of 1852, the Commissioner was required to investigate the subject matter of such a notice and "*if necessary, direct a Valuator or Surveyor, as the Case may require, who shall not have been previously employed in making the original Valuation contained in the Lists as aforesaid, to view such Hereditament or Tenement,*

and investigate the Complaint stated in such Notice, and report thereon to the said Commissioner of Valuation.”

16. Sections 30 – 33 of the Valuation Act, 2001 deal with appeals arising from a revision of valuation (Section 28) or a valuation carried out under Section 19. Under Section 33(5) *“The Commissioner may employ such procedures as he or she considers appropriate for the purposes of the consideration of the appeal.”* At Section 11 the Commissioner has power to delegate in writing a specific function of the Commissioner under the Act to any officer of the Commissioner. Section 11 (3) states that *“Any function, when performed by an officer to whom it has been delegated under this section, shall be deemed to have been performed by the Commissioner.”*

17. From the evidence tendered at this appeal the procedures put in place may be summarised as follows:

- a. Mr. Jim Gormley is the Appeal Manager.
- b. Mr. Gormley as Appeal Manager supervises the procedure and the functions carried out by the two Appeal Officers, Mr. Patrick McMorrow and Mr. Paschal Conboy.
- c. In furtherance of his duties as Appeal Manager, Mr. Gormley issued an internal memo to all staff in the Valuation Office, dated 24th January, 2004 entitled *“New Appeal Procedures”*.
- d. Initially all appeals go through an administration process to ensure that they comply with the requirements of Sections 30 and 31 of the Valuation Act.
- e. Paragraph 6 of the memo sets down how the Appeal Officer shall treat an appeal allocated to him or her and states as follows:
 - *“In cases where the Appeal Officer is satisfied that all of the issues raised by the appellant have been dealt with at revision/representation stages, he may decide the appeal without reference to the Revision Officer.*
 - *Where issues are raised at appeal, which appear not to have been taken into account by the Revision Officer, the Appeal Officer will refer the case to the Revision Officer for comment or clarification on the specific issues. In such cases the Revision Officer will deal only with the issues specified by the*

Appeal Officer. In some cases further discussion between the Revision Officer and the appellant may be required.

- *The Revision Officer will report back to the Appeal Officer within one month in the majority of cases.*
- *The practice of agreement with the agent/appellant is being discontinued. The Appeal Officer will decide the appeal in all cases.”*

18. From the above it is clear that the procedure allows for a considerable amount of interaction between the Appeal Officer and the Revision Officer during the consideration of an appeal. Indeed Mr. McMorrow and Mr. Hicks confirmed this to be the case in their evidence but Mr. McMorrow was at pains to point out that despite this interaction the determination at the end of the process was his and his alone.

19. In his evidence Mr. McMorrow outlined in some detail his approach to the appeals allocated to him in relation to Dundrum Town Centre. At the outset it is clear that he accepted the Revision Officer's opinion that Section 49 (1) applied in this instance and that Mr. Hicks' valuation methodology was appropriate. Indeed, it would appear that Mr. McMorrow's sole contribution to the valuation process was to seek additional information from the valuers acting for the many appellants regarding rents and other relevant facts in relation to shops in other shopping centres in the Dun Laoghaire/Rathdown rating area. Having obtained this information, Mr. McMorrow analysed it in the same manner as the Revision Officer had analysed the information he had assembled and thereby established a relationship between rateable valuations as appearing in the Valuation Lists and 2004 rental values using an enhanced database. Having carried out this exercise, Mr. McMorrow then referred his findings to the Revision Officer asking that he verify the facts contained therein. As a result, the Revision Officer altered his opinion of rateable valuation (for the second time) and reported back to Mr. McMorrow. Mr. McMorrow, having considered the Revision Officer's response, confirmed the value of the property concerned at the new figure now being put forward by the Revision Officer.

20. There are a number of elements in this process which give rise to some concern.

21. Firstly, apart from his initial request for rental information, Mr. McMorrow made no further effort to contact the representatives of the appellants. Whilst the Revision Officer was at all times during the appeal process aware of what Mr. McMorrow was thinking and doing, the appellants were not. In addition, the Revision Officer was asked to comment on and indeed verify the information provided by the appellant and its impact on the valuation of the property concerned. The appellants were not similarly advised, nor were they provided with an opportunity (as was the Revision Officer) of reconsidering their opinions of value in the light of this new information and the conclusions reached by Mr. McMorrow. In fairness it should be said that there is no evidence that the valuers acting for the appellants displayed any great urgency for meetings with Mr. McMorrow. Perhaps it was a case of each party expecting to hear from the other and in the event neither party took any action.
22. An appeal is defined in Black's Law Dictionary as being "*a proceeding undertaken to have a decision reconsidered by a higher authority*". Any appeal process must, procedurally, be and be seen to be carried out in a transparent manner and in compliance with the principles of fairness and in accordance with the law. Rating is a form of taxation and it is important therefore that any appeal process dealing with the valuation of property for rating purposes must not only be fair in operation, but be clearly seen to be so if it is to maintain respect and acceptance by the ratepayer. In the circumstances of this appeal, we have no doubt that Mr. McMorrow performed his function in a manner that he considered to be fair, but the absence of any report or notes setting out his thought processes, his consideration of the Revision Officer's valuation methodology, his consideration and ultimate rejection of the appellants' representations and the absence of any conclusions upon which he arrived at his final determination do little to enhance the reputation of the appeal process as presently operated by the Valuation Office. Moreover, the degree of ongoing interaction and communication between the Appeal Officer and the Revision Officer in this appeal could give rise to the impression that the Appeal Officer had not acted independently. This level of engagement compared to that between the Appeal Officer and the appellant's representatives perhaps added to the perception that both parties were not being treated equally.

The Jurisdiction of the Tribunal

23. This Tribunal is a creature of statute and its powers are set down in Section 37 of the Valuation Act. In the case **VA05/3/054 - Pfizer Ireland Pharmaceuticals** the Tribunal expressed the view

“that the existence or otherwise of the declaratory jurisdiction in the Valuation Tribunal is a matter of considerable uncertainty. However even if the Tribunal did have such a declaratory jurisdiction it is in our view not a jurisdiction we would exercise in the instant case. It is not clear to us that there has been such a flagrant breach of the obligation to provide fair procedures that the entirety of the process culminating in the Appeal Officer’s decision should be deemed to be a nullity. We note that there was a suggestion by Mr. McMillan that despite their offer to attend a meeting with the Appeal Officer no meeting in fact took place. However they were able to correspond with the Appeal Officer and there is no suggestion that the Appeal Officer did not consider the correspondence in question.”

24. In our opinion, the chain of events in this case is not dissimilar to that in the Pfizer case and hence we come to a similar conclusion as the Tribunal arrived at in the Pfizer case, viz. that it would in all the circumstances be inappropriate to declare the process before the Appeal Officer a nullity and strike out the valuation. Nonetheless, we are strongly of the view that it would be expedient for the Commissioner of Valuation to review and amend the appeal procedure within the Valuation Office in order to render the process more transparent and visibly equitable in operation. In particular, we would suggest that the Appeal Officer be required to record and maintain in writing all steps taken and conclusions reached by him or her in arriving at his or her determination. We would also suggest that the Revision Officer’s role in the appeal process be kept to a minimum and be restricted to that in the nature of responding to requests for clarification on specific issues and commenting on some new material introduced by the appellant. Under no circumstances should the Revision Officer have access to the Appeal Officer’s file nor have any further contact with the appellant as part of the appeal process. After all, once the Revision Officer has carried out his function he has no further role in the matter, which is now in the hands of the Appeal Officer. The introduction of such procedures will, we believe, improve the process and clearly indicate that an appeal will be treated in a transparent, independent manner that conforms with all the requirements of fair

procedure. In no circumstances should correspondence regarding an appeal be directed to any party other than the Appeal Officer and the appellant or his/her representatives.

25. We note that the memo from Mr. Gormley, Appeal Manager, dated 24th January 2004 and entitled “New Appeal Procedures” states:

“The practice of agreement with the agent/appellant is being discontinued. The Appeal Officer will decide the appeal in all cases.”

We consider this directive to be unduly restrictive and an interference with the independence of the Appeal Officer to conduct the appeal process in the manner he considers appropriate. Indeed, this Tribunal has always accorded more weight to those valuations that have been agreed at whatever stage in the review/appeal process than to those where the valuation has merely been accepted.

26. In making our suggestions for changes in the appeal procedure, the Tribunal is conscious that it has no power to interfere with the independence of the Commissioner of Valuation in the performance of his duties. Nonetheless the Tribunal is mindful of its own role in the valuation appeal process and the suggestions are put forward in an effort to improve the procedure by making it more transparent in operation and manifestly conducted in an independent manner in accordance with the precepts of fair procedure. Such changes may indeed have the effect of reducing the number of appeals to this Tribunal.

27. **The Basis of Valuation**

Section 49 of the Valuation Act, 2001 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) For the purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same Rating Authority area as it is situated in then—

(a) in case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in [section 48\(1\)](#), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of [section 20](#),

(b) in case an existing valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in [section 48\(1\)](#) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988, but the amount estimated by those means to be the property's net annual value shall, in so far as it is reasonably practicable, be adjusted so that the amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act.”

Section 49 (1) may be paraphrased as saying that the value of the relevant property shall be determined in accordance with the “tone of the list”. In effect this means that the determination shall be made “*by reference to the net annual values of properties....on 1 November 1988.*” This is borne out by the wording of Section 49(2)(b), although this section may not of itself be relevant in this appeal.

28. It is common case in this appeal that ordinarily the valuation of the property concerned must be valued in compliance with Section 49(1). However in those instances where there are no properties comparable to the property concerned, then Section 49(2) comes into play. In effect the parties are agreed that if the Tribunal finds that there are no comparable properties to the property concerned within the Dun Laoghaire/Rathdown Rating Authority area then it is proper to have regard to comparisons drawn from without the Dun Laoghaire/Rathdown area.

29. The property concerned in this appeal (and in many others for which this appeal serves as a test case) is a retail unit within the recently developed Dundrum Town Centre which is still in the process of being developed.
30. The Revision Officer in the first instance came to the conclusion that there were sufficient retail properties in the Dun Laoghaire/Rathdown area of a comparable nature upon which he could arrive at a determination of value in accordance with Section 49(1). These comparisons were retail units located in established shopping centres in the Dun Laoghaire/Rathdown area such as Stillorgan, Dun Laoghaire, Frascati and Ballinteer Shopping Centres.
31. The valuer on behalf of the appellant, on the other hand, concluded otherwise. In his opinion, (an opinion shared by several other valuers representing a host of appellants) the nature and scale of the Dundrum Town Centre was such as to render any comparison with the shopping centres put forward by the Revision Officer to be not well founded. In his opinion the only centres in the greater Dublin area which could fairly be said to be comparable were Tallaght Town Centre, Blanchardstown, Liffey Valley and the Pavilions, all of which, he said, could be correctly described as being regional centres providing a wide range of retail and other ancillary activities onsite. Of the four centres mentioned he considered Liffey Valley to be the most appropriate for valuation purposes. Accordingly he had valued the property concerned by reference to the values of retail units in Liffey Valley Shopping Centre.
32. Obviously what is or what is not comparable is very much a subjective exercise and indeed the Tribunal considered the interpretation of Section 49(1) in **VA04/1/024 – Gerri Cobbe & Mary McGibney** and stated as follows to be appropriate:

“In the absence of any definition in the Act as to what is comparable the word must be interpreted in its normal sense and mean equivalence, likeness or sameness. That being the case, comparable must be interpreted as being similar in use, location and nature of construction or any other factor which will have a bearing on value. The fact that property by its very nature is not homogenous requires the valuer to use all his skills of analysis to arrive at what he or she considers to be the appropriate level of assessment in each individual case.”

33. It is clearly the function of the valuer when valuing a property for the purposes of revision to first have regard to Section 49(1). Only when the valuer is satisfied that there are truly no comparable properties within the relevant Rating Authority area can Section 49(1) be rejected and 49(2) be considered. In such an exercise it is not sufficient to opt for Section 49(2) by virtue of the fact that there may be “better comparisons” outside the Rating Authority area than within. Section 49(1) cannot be set aside if there are comparables available, no matter how unsatisfactory the valuer may consider these to be. It is part of the valuer’s skill to examine and analyse all the relevant information available and to make such adjustments and allowances as may be necessary or appropriate in order to make the exercise one of some consequence. In some instances the range and extent of the allowance and adjustments necessary may indeed render such an exercise impractical or unworkable.
34. In the context of this appeal the Tribunal is of the view that from a purely property perspective the better comparisons are those located outside the Dun Laoghaire/Rathdown area. That said however, the Tribunal is satisfied that there are, within the Dun Laoghaire/Rathdown area, properties which are comparable in the normal sense of the word in that they are retail units in shopping centres, although they are somewhat different in scale and quality of finish to Dundrum Town Centre. Nonetheless there is available to an experienced, competent rating valuer sufficient material to enable him or her to carry out a meaningful analysis which would enable the valuation to be made in accordance with the statutory provisions and more particularly Section 49(1).
35. Following the introduction of the Valuation Act, 1986, an extensive exercise and analysis was carried out by the Valuation Office in order to establish a relationship between net annual value as defined in Section 11 of the Valuation (Ireland) Act, 1852 and rateable valuation. The conclusion drawn from this analysis, in respect of the major conurbations, was that rateable valuation was equivalent to 0.63% of net annual value as at November 1988 and subsequently this became the tone of the list which tone will prevail until such time as a revaluation of all properties in a Rating Authority area is prepared in accordance with Section 19 of the Valuation Act, 2001.
36. When a property is to be valued for rating purposes the rent at which it is let may be taken as a starting point. Obviously the more closely the circumstances of the letting

arrangements correspond to the statutory requirements the more weight is to be attached to it. Similarly the greater the time between the date on which the rent is agreed and the relevant date for valuation purposes the lesser the weight to be accorded to the rental evidence. In the context of this appeal, a substantial number of retail properties have been valued in the Dun Laoghaire/Rathdown area since the introduction of the 1986 Act and currently appear in the valuation list. These assessments which have either been agreed or determined or are unchallenged give rise to a pattern of values or in other words a settled tone of the list. At this stage, some 17-18 years after November, 1988, rating valuers when asked to value a property will have little regard to actual rents but will, as Section 49(1) directs, have regard to the assessments of comparable properties. Similarly, the material facts in regard to these comparable properties must be examined, analysed and accorded such weight as the valuer may consider appropriate in order to reflect differences in location, size, use and other factors that would have a bearing on value. This is the only way to ensure that all properties are valued on a common basis in accordance with the principles of uniformity, fairness and equality.

37. The Revision Officer in this case when first requested to value the units in Dundrum Town Centre, came to the conclusion that their values should be determined in compliance with Section 49 (1), there being in his opinion sufficient comparable properties in the Dun Laoghaire/Rathdown Rating Authority area. Having taken this preliminary decision, the Revision Officer then proceeded to evolve a method of comparison in order to arrive at his opinion of appropriate net annual value.
38. Any comparative analysis exercise is a very subjective one and in this instance the Revision Officer used as his starting point the fact that the current Zone A rent in Dundrum Town Centre was agreed as being €2,700 per square metre as at the relevant valuation date. Armed with this agreed fact he then proceeded to compare this Zone A rent to that prevailing in other shopping centres in the Dun Laoghaire/ Rathdown Rating Authority area at or about the same date. This was based either on rents current at that date or deduced from rents at earlier dates adjusted by reference to the Jones Lang LaSalle retail index. A similar but more extensive exercise was carried out by the Appeal Officer and the outcome of this extended exercise was that the net annual value of the property concerned and other similar retail units in Dundrum Town Centre in accordance with section 49(1) was equivalent to 41.5% of the 2004 rents.

39. In the Tribunal's view the nature of the exercise carried out by the Revision Officer and maintained by the Appeal Officer is flawed:

- i. Section 49 (1) requires the value of the property concerned to be determined by reference to the *values* appearing in the Valuation List, not by reference to rents at 2004, which is effectively what the Revision Officer and the Appeal Officer did.
- ii. If the Revision Officer and the Appeal Officer decided that the 2004 Zone A rent of €2700 per sq. metre was the starting point surely it would have been more logical to adjust this figure by reference to the Jones Lang LaSalle retail index or any other appropriate index in order to establish the rental value/net annual value as at November, 1988. After all, if the Jones Lang LaSalle retail index was considered appropriate to adjust 1997 rents and others in the analysis carried out on the rents of retail units in the other shopping centres, it is equally appropriate to use it in order to arrive at an estimate of the 1988 rent/net annual value levels of the property concerned. No evidence as to what result this exercise might have produced is available to the Tribunal and we are therefore unable to postulate what it might be. Nonetheless, it would certainly be our opinion that it would not show that rental levels in November, 1988 were equivalent to 41.5% of rental levels in 2004.
- iii. The exercise carried out by the Revision Officer and the Appeal Officer in our opinion is a re-run of the 1986 exercise which led to the establishment of the rates reduction factor of 0.63% now used in valuing properties in all the main urban areas. This exercise would in our opinion introduce a new level of values above and beyond the settled tone of the list that currently prevails in the Dun Laoghaire/Rathdown Rating Authority area. As stated elsewhere in this judgment the tone of the list is the standard by which the values of properties must be determined at revision in order to ensure fairness and equality. This is not to say that anomalies may not from time to time emerge within the valuation list over a period of time and it is for this very reason that revaluation of all properties in a Rating Authority area should be carried out on a regular basis as envisaged in Section 25 of the Valuation Act, 2001.

Findings and Determination

1. The parties to this appeal were represented by Counsel and the Tribunal is indebted to them for the depth and quality of their submissions. This, accompanied by the scope of authorities, legal precedents and statutory provisions referred to, was of immense assistance to the Tribunal in arriving at its determination.
2. The Tribunal has carefully considered all the arguments advanced and evidence adduced at the oral hearing and has had regard to the many authorities referred to and finds and determines as follows:
3. Having regard to our conclusions in relation to the appeal process, the jurisdiction of the Tribunal and the basis of valuation we have decided that the respondent's method of valuation was flawed and not in accordance with Section 49(1) of the Valuation Act, 2001. In line with the Tribunal's decision in **VA05/2/007 - Independent Biomass Systems Limited** case, we believe it is open to us to remit the matter to the Commissioner of Valuation so that the value of property concerned may be determined in accordance with our decision and in accordance with the provisions of Section 49(1). Accordingly the Tribunal expresses no view on the valuation of the property concerned at this time. It is of course open to the parties to agree the valuation and if this is not possible the appeal can be re-entered before the Valuation Tribunal for determination.

And the Tribunal so determines.

Rider

This appeal is in the nature of a test case for all other appeals to the Tribunal in respect of properties in the Dundrum Town Centre which share similar grounds of appeal. It follows therefore that our determination to remit the matter to the Commissioner of Valuation applies equally to these other appeals.