

Appeal No. VA06/2/083

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

Smyths Toys Superstore

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Retail Warehouse at Lot No. 3AB/Unit 6&7, Maudlings, Naas Rural, Naas 1, County Kildare

B E F O R E

John Kerr - BBS. ASCS. MRICS. FIAVI

Deputy Chairperson

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

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF DECEMBER, 2006

By Notice of Appeal dated the 15th day of June, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €800.00 on the above described relevant property.

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

"Incorrect floor areas; failure to allow for larger unit; excessive rent per square metre."

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 20th September, 2006. The Appellant was represented by Mr. Donal ffrench-O'Carroll, FRICS, FCI Arb Dip LS, Director Professional Services, CB Richard Ellis, Dublin. The Respondent was represented by Mr. Denis Maher, MRICS., a Valuer Grade 1 in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their 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 their evidence-in-chief. Mr. ffrench-O'Carroll made some amendments to his précis, detailed elsewhere in this Judgment, prior to so adopting it. 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, namely Units 6 & 7, comprises a double unit retail warehouse, in a row of similar type premises located within the Globe Retail Park on the north side of Monread Road close to its junction with the Dublin Road and also adjacent to the M7 Naas interchange. The property is part of a new development located about two miles north of Naas town. Access to the property is from the Monread Road.

There are nine similar units within the Park, eight of which face south fronting the car park which provides 481 surface car parking spaces. Units 2 to 9, which measure variously from 700 sq. metres up to 1,150 sq. metres, are positioned adjacent to each other. Unit No. 1, which measures 4,650 sq. metres, fronts the car park effectively at right angles to the parade of retail warehouses No's 2 to 8, and is occupied by Woodies. Units 2 to 8 generally have a frontage of approximately 24 metres for each unit, but the subject has a frontage of 48 metres and features separate entrances and exits.

The subject property is constructed to a modern design, comprises a steel frame structure with concrete block rising and partition walls, features insulated steel cladding walls and roof, concrete floors at ground level, full height glazing at front elevations with architectural structural steel protruding features at the entrance and exit, over the front pedestrian walk.

Prior to the hearing, the Valuation Office had determined the areas as follows:-

Ground Floor:

Retail warehouse (incl. ancillary areas): 1,957 sq. metres

First Floor:

Stores: 436.5 sq. metres

Total: 2,393.5 sq. metres.

By contrast, the Appellant's Consultant Valuer had concluded that though the Ground Floor area measured similarly to that noted above, the Mezzanine Floor (or First Floor) area measured 399 sq. metres. The difference in the figures was resolved prior to hearing and, as a consequence of same, the Appellant accepted that the Mezzanine area, when measured on a Gross Internal Basis, calculated to 436.5 sq. metres, i.e. that already established by the Respondent. Accordingly, the agreed total area amounted to 2,393.5 sq. metres.

Tenure

The property is held on a 20-year FRI Lease from Spring 2005, with 5 year Rent Reviews at €14 psf (€150.70 per sq. metre) on a [then agreed] gross internal floor area of 1,954.34 sq. metres.

Valuation History

This property was first revised in 2005 with an RV of €800 issued by the Commissioner of Valuation on 6th December, 2005. Smyths Toys Superstore, through their Agents CBRE Gunne, lodged an Appeal against the RV, dated 11th January, 2006.

Without a change being effected by the Commissioner of Valuation on the Rateable Valuation figure of €800, the Appellant, again through its Agent, lodged a Notice of Appeal to the Valuation Tribunal dated 15th June, 2006 seeking a reduction in the Rateable Value from €800 to €627.

Appellant's Case

Proceedings commenced when Mr. French-O'Carroll assumed his position in the stand, took the oath, formally adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission.

He confirmed that the floor areas, as summarised above, had been agreed prior to hearing and also advised the Tribunal that his précis contained a typographical error in item no. 4 of the summary of his client's Grounds of Appeal on page 1 of the submission, which erroneously cited an RV of €617, whereas the Notice of Appeal to the Tribunal dated 15th June, 2006, sought an RV of €627. In any event, and mindful of the agreement between the parties on the Gross Internal Area of the mezzanine floor, Mr. French-O'Carroll then advised the Tribunal that the adjusted RV being sought was now in the sum of €620 on the following basis:

Retail	1,956.60 sq. metres	@ €61.00 per sq. metre
Mezzanine Stores	436.50 sq. metres	@ €10.25 per sq. metre

He explained that access to the Globe Retail Park was provided, at the time of valuation, from a slip road, an issue he was obliged to consider when following the principle of *rebus sic stantibus*. He explained that road works had been ongoing at the Naas Roundabout for a period of two years from 2004 to 2006. He contended that the Valuation Office had not adequately considered the poor profile and relative isolation of the Park and the limited access to the property, in addition to their failure to make sufficient allowance for the scope, nature and duration of the road works noted above which had negatively impacted upon customer vehicular access to the property. He noted that, though close to the Motorway, Globe Retail Park does not benefit from direct access from same.

He referred to rates per square metre cited by the Commissioner in his précis of evidence as applying generally to comparable type structures in the Kildare County Council area. Among these he referred in particular to the Atlantic Homecare facility valued at €57.41 per sq. metre measured on a gross external basis per Commissioner's précis, and argued that, on one hand, it may be an inappropriate comparison, as it had all the added advantage of being immediately adjacent to Dunnes Stores at the Newbridge Shopping Centre which he considered to be an ideal retail warehouse park. He asserted that the subject property was positioned at a location which would be deemed to be suitable for destination shopping activities only. On the other hand, he regarded the Atlantic Homecare facility as his prime comparison property. It was first revised in 2000 and later agreed, allegedly with a 10% reduction in RV, at First Appeal. The retail area there was reported to have been agreed at €60.31 per sq. metre and the mezzanine at €10.15 per sq. metre.

The appellant's comparisons are at Appendix 1 to this Judgment.

Cross-examination

Mr. Maher then commenced cross-examination of Mr. ffrench-O'Carroll and had the latter confirm that parts of the Globe Retail Park were visible from the M7 whereas the Newbridge Retail Park, which includes the common comparison of DID Electrical, fronts onto the high profile by-pass route. Mr. Maher expressed his view that the location of the Globe Retail Park and the services offered from there, are of a local nature, and that the trading is not dependent on traffic passing over the Motorway. Mr. ffrench-O'Carroll acknowledged under further cross-examination that the nature of the shopping experience at the Newbridge Shopping Centre is different and is conducted in a more congested area. He also replied that he felt the RV on Atlantic Homecare was determined in part by its proximity to Dunnes, and that Atlantic Homecare benefits from the generous parking facilities shared with Dunnes and others in the Newbridge Park.

Mr. Maher queried why Mr. ffrench-O'Carroll considered a 10% allowance appropriate on the RV based on the quantum floor area of Units No's 6 and 7 taken together, and Mr. Maher also indicated that the OMRV for both units taken together, would not qualify for a 10% discount. To support his argument Mr. Maher noted that Woodies, a substantially larger unit at circa 4,650 sq. metres, was valued at €75 per sq. metre on its retail/warehouse component. Mr. ffrench-O'Carroll responded by indicating that the location of Woodies, though sharing the same access route, enjoyed a much higher profile and exposure to the roundabout, and in his view, was accordingly more valuable. Under further cross-examination, Mr. ffrench-O'Carroll stated that shopping trips to the location are essentially planned and, as such, the subject should not have been compared to units located at shopping centres which facilitate impulse purchasing and frequent visits for numerous social and/or commercial reasons.

Asked if he would have applied a similar reduction factor if the road works were not taken into consideration, Mr. ffrench-O'Carroll responded that he had to consider all of the reasons cited in his précis together, excluding the agreed issue of measurement on the mezzanine floor, and went on to explain that his approach was not one of applying a discount on the Newbridge Shopping Centre levels, but rather calculating the NAV by applying a rate of €61 per sq. metre having recognised and adjusted for reductions of up to 25% total, as set out in

his analyses on page 5 of his submission, such reductions having considered size, two years of ongoing road works, and proximity/distance to the nearest shopping centre. Mr. Maher queried the validity of applying such an approach and then noted that Naas is a bigger town than Newbridge and traditionally achieved higher levels of valuation on properties. Mr. ffrench-O'Carroll contended that the revision of Atlantic Homecare and Arramount Stores in the Newbridge Shopping Centre pre-dated the revision of DID Electrical and speculated that, when the former were revised, there were no true comparable properties in the revision year 2000 to consider and, as a result, their revisions may have been too high. He said that Atlantic Homecare was first revised at €88.57 (£54.00) per sq. metre but on First Appeal the rate was reduced to €60.31 per sq. metre on its retail floor area, whereas DID Electrical and World of Wonder Toy store, within the same complex, were set at €75 per sq. metre. He also noted that Atlantic Homecare has a long and impressive frontage and concluded that possibly Arramount Stores should have had its RV adjusted downwards following the outcome of the Appeal on Atlantic Homecare. Mr. ffrench-O'Carroll mused that the Commissioner might have been selective in the properties which he chose for the "tone of the list", as he felt that Arramount, which did not appeal, should not have been given the same consideration or even introduced as Comparison No. 2 by the Commissioner, in his submission to the Tribunal.

Mr. ffrench-O'Carroll contended that a quantum allowance should be granted in a situation where the occupier does not need excessive floor space from which to trade in an industrial type area such as the subject. Both Valuers debated this issue further and Mr. ffrench-O'Carroll added that he felt that the mezzanine floor should be rated for the purpose of storage at a rate per sq. metre equating to that applying to Arramount and Atlantic Homecare at or about €10.16 per sq. metre and not the €30 per sq. metre employed by the Commissioner. Mr. Maher responded by asserting his view that the subject is actually in a better location than Atlantic Homecare and that there should be no allowance offered for the difference in profile to the Monread Roundabout between Woodies and the subject, and repeated that in his view the traffic to Globe Retail Park is of a local nature. Mr. Maher stated that he did not distinguish from retail to office to staff areas within the premises, whereas the rear of the ground floor of Woodies is actually blocked off with masonry block wall and with a consequent reduction in value behind same.

Respondent's Case

Mr. Maher then assumed his position in the stand, took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission.

Having confirmed the agreement on the Gross Internal Area reached earlier with the appellant, Mr. Maher provided the Tribunal with the salient points of his submission and his four Comparisons, which he argued were appropriate and offered in accordance with the 2001 Valuation Act. He concluded by repeating that the subject is a modern purpose built retail warehouse constructed and finished to a high standard, in an excellent location within a dedicated Retail Park close to Naas town, with good access, parking, a profile on to the nearby Motorway M7, and in an area generally developing and improving. He added that the Valuation was carried out on a Gross Internal Basis, now the adopted norm for a majority of similar type uses in recent times, and finally concluded that the comparables he used were representative and appropriate for the purpose and stated, to counter some of the views of the Appellant, that other newer adjoining units including Harry Curry Interiors, Tile Market, Furniture Depot, Expert Electrical, Heiton's, Computer Store and Harvey Norman's had been valued at similar levels. He contended for an RV of €800 on the following basis:

Retail Warehouse (gr. fl)	1,957 sq. metres	@ €75 per sq. metre
Stores (1 st fl)	436.5 sq. metres	@ €30 per sq. metre

The respondent's comparisons are at Appendix 2 to this Judgment.

Cross-examination

Mr. ffrench-O'Carroll commenced cross-examination of Mr. Maher who, in reply to queries on the rate of €75 per sq. metre applied to Woodies, stated that the same rate per sq. metre applied to both of their locations in Newbridge and Naas. Mr. Maher noted that the common Comparison, being DID Electrical, also located at the Newbridge Shopping Centre, had its retail floor area valued at €75 per sq. metre, and queried why Mr. ffrench-O'Carroll was seeking a reduction of €14.00 per sq. metre on same to calculate the Rateable Valuation on the subject relevant property. Mr. Maher did not agree with Mr. ffrench-O'Carroll's views that the "tone of the list" in the Newbridge Shopping Centre, and by extension beyond in the area, for retail warehouses, was established by reference to overstated values per sq. metre when Atlantic Homecare was first revised.

Mr. French-O'Carroll concluded his evidence by saying that the key points of his appeal were: whether the value of Atlantic Homecare was enhanced by reason of proximity to Dunnes Stores; whether height plays a part in the valuation and whether, where height is reduced, the NAV should also be reduced; if the ground floor NAV was not reduced a very marginal rate should be adopted for the first floor; whether the Commissioner had erred in not separately valuing the floor under the overhead stores; the use of Atlantic Homecare as a comparison for all subsequent warehouse valuations had led to an inbuilt error in Kildare.

Mr. Maher concluded his evidence by declaring that, in his view, the location of the subject for the purpose of trade, is as good as or better than Dunnes Stores in the Newbridge Shopping Centre, and that there was no evidence to contradict same as there is no report of higher Passing Rents on retail premises near Dunnes Stores and, consequently, location could not be considered as a factor to support an argument in this case for a lower rate per sq. metre to calculate Net Annual Value.

He stated that road works would be a matter which would be considered by a hypothetical tenant to have a completion date and which would ultimately benefit trade provided from the Globe Retail Park and, accordingly, such works should not be interpreted as a reason to reduce or discount the rate per sq. metre applicable to the subject. He further added his opinion that there were no grounds for a quantum allowance to be sought or granted in the circumstances. He stated that Atlantic Homecare had not been inappropriately valued for rating purposes, was not a relevant factor to the case, and that DID Electrical in Newbridge with a rate per sq. metre of €75.00 applied on its retail area represented the "tone of the list".

During the review of the evidence post hearing, the Tribunal felt it necessary to seek additional information from both the Appellant and the Respondent on particular floor areas and measured distances from floor to ceiling or underside of roof supports.

Both parties kindly responded to the written request of the Registrar and confirmed agreement of measurements, as follows:-

- | | |
|--|------------------|
| 1. Height of warehouse area: | 7.8 metres |
| 2. Floor to ceiling measurements under the mezzanine: | 2.5 metres |
| 3. Floor area under the mezzanine: | 433.4 sq. metres |
| 4. Floor to ceiling height of mezzanine / first floor: | 5 metres |

5. Floor area of mezzanine / first floor: 436.5 sq. metres

Findings and Determination

The Tribunal is grateful to both Mr. Maher and Mr. French-O'Carroll for the quality of their submissions and arguments adduced at the hearing. The Tribunal has carefully considered all of the evidence, both oral and written, submitted by the parties and the arguments adduced, and makes the following findings:

1. The subject location, being a Retail Park, located approximately two miles from the centre of Naas town, is representative of many other similar type Retail Warehouse Parks developed in recent years.
2. The Globe Retail Park should be considered as one offering a destination shopping experience anticipating a journey taken by private vehicle and for the purpose of purchasing specific goods and not one typified by impulse purchasing or availing of more frequent daily retail offerings more typical of Shopping Centre and/or "High Street" locations.
3. Profile and exposure to the adjoining M7, though unquestionably useful for brand and store name awareness and branding reinforcement purposes, traffic to the Globe Retail Park and to the subject relevant property must really be considered as of a local nature and trade from which, not being heavily dependent on passing traffic over the Motorway.
4. The architectural design features, display, aspect, services and layout of the subject Units 6 and 7 were chosen to integrate with and complement the remainder of the units in the Park, and the use, occupier mix and retail offerings there appear to reflect strategic planning and experience by the Park developers, presumably to generate maximum customer visitations, while providing for convenient parking, and optimum goods inwards and outwards dynamics.
5. The Tribunal was not provided with empirical evidence to support the argument made that the Net Annual Value of Atlantic Homecare had been incorrectly established and/or subsequent similar retail warehouse properties had been incorrectly revised in recent years in the Newbridge area.

6. The Tribunal is mindful of the evidence in the case of DID Electrical, which was a common comparison on both submissions, that its First or Mezzanine floor area had a rate applied of €20.51 per sq. metre.
7. The Tribunal recognises the proliferation in recent years of Retail Parks similar to the Globe Retail Park development in most regional towns throughout the country. The Tribunal holds the view that good parking facilities serving a retail/warehouse complex may be imperative to its successful operation, and believes that generous levels of adjacent surface parking is a critical element to destination type shopping and accordingly, may merit higher weighted value than the actual location, when considered in the context of proximity to other retail services.
8. The Tribunal holds with the Appellant's view that where warehouse ceiling clear heights have been reduced by, in this case, the installation of a mezzanine floor, it consequently qualifies for a reduced rate per sq. metre.

In reaching its determination, the Tribunal has been required to consider only the evidence submitted and adduced and in so doing reaches a Rateable Value on the subject relevant property by the following calculations:-

Retail Warehouse (Gr. Floor)	1,523.20 sq. metres @ €70 per sq. metre =	€106,624.00
Rear of warehouse (under Mezz Floor)	433.4 sq. metres @ €50 per sq. metre =	€ 21,670.00
Stores (Mezzanine Floor)	436.5 sq. metres @ €20.51 per sq. metre =	<u>€ 8,952.62</u>
	Total NAV:	€137,246.62

NAV of €137,246.62 @ 0.50%

RV €686.23

Say:

RV €686

And the Tribunal so determines.