

Appeal No. VA06/3/017

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

**New Look Retailers Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Lot No. Unit 49, Douglas Court Shopping Centre, Douglas, Cork Lower,  
County Cork

**B E F O R E**

**Michael P.M. Connellan - Solicitor**

**Deputy Chairperson**

**Mairéad Hughes - Hotelier**

**Member**

**Michael F. Lyng - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 15TH DAY OF JANUARY, 2007**

By Notice of Appeal dated the 24th day of July, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €80.00 on the above described relevant property.

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

"The Revision Officer has not had regard to the established tone of the list within this shopping centre. The Revision Officer is not entitled to have regard to comparisons valued at the same time as the subject property."

The appeal proceeded by way of an oral hearing, held at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 31<sup>st</sup> day of October, 2006. At the hearing the appellant was represented by Mr. Joseph Bardon, FSCS, FRICS. The respondent was represented by Mr. Terry Dineen, B.Agr.Sc., a District Valuer in the Valuation Office.

### **Location and Description**

The property is a large reformulated kiosk-type unit in the central mall of Douglas Court Shopping Centre. Douglas is a suburb of Cork City located about 4 kilometres south of the City Centre. The accommodation includes the retail area together with fitting rooms, staff rooms and stores. The unit is constructed with tiled concrete floors, smooth plastered walls, PVC framed windows and smooth plastered ceilings. The minimum headroom is circa 3.2 metres. There is frontage to the mall on three sides totalling about 25 metres. The accommodation has been agreed and comprises a gross internal floor area of 496 sq. metres.

### **Services**

The usual mains services of water, drainage, electricity and telephone are supplied and connected. Heating is by means of an air conditioning system.

### **Title**

The property is held under a 25 year lease with 5 year rent reviews from June, 2005 at an initial rent of €466,500 p.a.

### **Area**

The accommodation has been agreed and comprises a gross internal floor area of 496 sq. metres.

### **Appellant's Evidence**

Mr. Bardon gave evidence under oath on behalf of the appellant. Prior to the hearing a written précis and valuation were received by the Tribunal, and Mr. Bardon adopted this précis and

valuation as being his evidence-in-chief. He said the area was agreed at 496 sq. metres and amended the valuation he was contending for to reflect this agreed area. His amended estimate of valuation was €475 calculated as follows:

$$\begin{array}{rcl}
 496 \text{ sq. metres} & @ \text{ €}191.35 \text{ per sq. metre} & = \text{NAV €}4,909 \\
 \text{RV @ 0.5\%} = \text{€}474.54 & & \text{Say RV €}475
 \end{array}$$

He said that there were a total of 60 units in the Centre and car parking for about 900 cars around the Centre. There were three entrances into the Centre with a double entrance at the busiest area. The other two entrances are known as the South Entrance and the Market Entrance.

The premises was previously a coffee shop which closed down and the appellants took it over with one or more other units so the property was now larger, at 496 sq. metres, than when trading as a coffee shop.

He stated that Mr. Dineen had indicated that he had approached the rateable valuation by reference to the "Tone of the List" as set out in his Valuation Report. He had had no regard to the other kiosk unit (occupied by NEXT) in the Centre and no allowance was made by the Valuation Office for the larger area of the subject. There was, he said, a lack of consistency on the part of Mr. Dineen. The two comparisons quoted in his report, Unit 45 Jean Scene and Unit 2 Vera Moda were much smaller than the subject property. The subject property is similar in size to the premises used by NEXT, is 39% larger than Jean Scene and 5.5 times the size of Vero Moda.

There are 15 kiosk type units in the Centre with the balance being conventional units located around the edge of the Centre. He submitted that it was more appropriate to value the subject premises by reference to other kiosk units rather than conventional units and that the only kiosk type unit comparable in size to the premises under appeal was the NEXT unit which was valued by Mr. Dineen in 2000.

NEXT had an RV of €14.24, the retail portion being valued at €191.34 per sq metre and the stores at €54.59 per sq. metre. The subject premises were valued by Mr. Dineen at €275.00

per sq. metre for the entire unit. Mr. Bardon introduced one comparison, NEXT, in support of his estimate of net annual value.

Cross-examined by Mr. Dineen, Mr. Bardon reiterated that it was preferable, though not an absolute requirement, that a kiosk unit should be compared with a kiosk unit – the subject property with the property occupier by NEXT. The only other kiosk unit of comparable size was NEXT. He said that both NEXT and the subject premises are similar in size, both in the middle of the centre, close to Dunnes Stores and each had two entrances. Mr. Dineen put it to him that the double entrance at Jean Scene premises was the least used of the three entrances. Mr. Bardon did not accept this. He also said that rents in Ireland for the purpose of valuation were irrelevant. The RV should be fixed by reference to the ‘tone of the list’ – Section 49 (1) of the Valuation Act, 2001. He then referred to the recent decision of the Valuation Tribunal in **VA06/2/045 – Orange Tree Ltd.**, wherein it is stated at page 15 thereof that Section 49 (1) requires the value of property concerned to be determined by reference to the values appearing in the valuation list, not by reference to rents.

### **Respondent’s Evidence**

Mr. Dineen adopted his précis as his evidence-in-chief and gave evidence under oath. He said that he had done all the preliminary valuations in Douglas Court Shopping Centre since it opened for the first time in March, 1990.

Initially the Centre traded poorly so that by the first gale day in June, 1990 rents were rebated to 50% of the negotiated figures – to continue until an acceptable level of customer numbers was reached.

In 1990 and on the basis of this rent rebate he had made 32 unit valuations with a 60% reduction of the headline rents and at that time the reducing percentage in this area was 0.63%. He had advised the tenants that these valuations were interim only and would be reviewed when trading improved.

At appeal stage in mid 1991 the situation was that the negotiated rents were to hand and the rent reductions turned out to be between minus 20% and minus 33.3% of the headline figures and not 50% as already stated.

In 1996, by Tribunal decision the reducing percentage for Cork Lower was changed to 0.5% from 0.63% but no reviews took place in the valuations for Douglas Centre.

Since 1990 mixed valuation methods had been employed, some based on areas and some on rentals.

He went on to say that at all times the aim had been to establish as best one could what the NAV in 1988 would be, taking into consideration the state of the Centre as it stood on the revision date.

He then quoted an extract from the **Orange Tree** case at page 11 therein, wherein it is stated:

*“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.”*

He said his valuation was in line with this decision.

Under cross examination by Mr. Bardon, Mr. Dineen said that he was involved in this Centre since 1990. He would not agree that the NEXT premises should be taken as a comparison just because it was a kiosk. There were flaws in the kiosk comparison as it was not a rental based comparison.

He said that he was not inconsistent in his 5 comparisons [see the Appendix attached to this judgment] as set out in his précis. In his first comparison he valued the restaurant at €278 per sq. metre. In his second comparison he valued the entire at €288.90 per sq. metre and in the third he valued the entire at €220.90 per sq. metre. In the fourth comparison he valued at €72.72 per sq. metre and in his fifth, the NEXT premises, he valued the entire ground floor at €191.34 per sq. metre. None of these valuations were appealed to the Tribunal.

In his third comparison Jean Scene, which was a 2000 revision, the rate was €220.90 for an entire area of 357 sq. metres. In the NEXT premises the revision was also in 2000 and the rate per sq. metre was €191.34 for the entire ground floor area of 458 sq. metres, a per sq. metre difference of €29.56. When asked to explain this differential in the two revisions in 2000 he said that he could not.

## Findings

The Tribunal has carefully considered all of the submissions, evidence and arguments put forward by the parties and finds as follows:

1. That the basis of valuation is set out clearly in Section 49(1) of the Valuation Act, 2001. To quote from the **Orange Tree** decision:  
*“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”.*
2. With regard to evidence based on comparison properties valued at the same time as the subject property and not appealed, the Tribunal accepts such evidence and gives it such weight as it sees fit in the circumstances of the particular appeal. However, as commented by the Tribunal in Appeal **VA04/1/023 - Buy4Now** such evidence *“is somewhat in the nature of a self-proving exercise and consequently must therefore be treated with a certain degree of caution.”* Apart from that reservation, in the present case the Tribunal finds that the fact that the subject property is a kiosk is not a barrier to its being compared with conventional units in the Centre.
3. Mr. Bardon put forward the NEXT unit which is situate in the middle of the Centre and which, according to Mr. Dineen’s evidence, is in a better situation than the subject premises or his comparisons. Mr. Dineen gave four other units in the Centre as comparisons which had a rate per sq. metre varying from €191.34 to €288.90. There is clearly an inconsistency in these valuations.
4. The Jean Scene unit and the NEXT unit were both revised in the year 2000. Jean Scene for the entire ground floor area of 357 sq. metres was valued at €220.90 per sq. metre, whereas the NEXT unit with a ground floor area of 458 sq. metres was valued at €191.34 per sq. metre. This is obviously inconsistent – the smaller area being valued at more than the larger area - €29.56 per sq. metre of a differential.

## Determination

Having regard to the above, the Tribunal has determined the NAV and RV of the subject property to be as follows:-

496 sq. metres	@ €205 per sq. metre	= €101,680
NAV €101,680	@ 0.5%	= €508.40

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The Tribunal considers this determination as fair and equitable in the circumstances.

And the Tribunal so determines.