Appeal No. VA08/5/098

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Next Group plc **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 1544670, Department Store at Unit 1-4, Liffey Valley Shopping Centre, Quarryvale, County Dublin

B E F O R E

Fred Devlin - FSCS.FRICS	**Deputy Chairperson**
Michael F. Lyng - Valuer	**Member**
Patrick Riney - FSCS.FIAVI	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF NOVEMBER, 2008

By Notice of Appeal dated the 24th day of July, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €1,507,000 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:
"The valuation is excessive."

This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 7th day of October, 2008. At the hearing the appellant was represented by Mr. John Algar, BSc (Property Valuation & Management), of Bardon & Co. Chartered Surveyors, Rating Consultants & Valuers. Ms. Orlaith Ryan, BSc (Surveying), (Dip. in Prop. Ec.), IAVI a Team Leader in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation.

The Property Concerned

The property concerned is a purpose built, two-storey retail unit in the Liffey Valley Shopping Centre occupied by Next plc. The Liffey Valley Shopping Centre is a regional centre located close to Clondalkin and Lucan villages and convenient to the intersection of the M4 and the M50. The centre which is anchored by Marks and Spencer and Dunnes Stores is linear in configuration with over 70 retail units and a multi-screen cinema complex. Access from the car-parks is at each end of the mall and by way of a short mall leading to a central concourse area.

The property concerned is located immediately beside the Marks and Spencer unit and has the benefit of access from the mall and directly from the car-park. The mall area from Marks and Spencer to the central concourse is dominated by fashion outlets. Retailing activity within the subject premises is carried out at both levels although some 60% of the space at first floor level is given over to stockroom and staff accommodation. Access to the first floor is by means of internal stairways and escalators. The accommodation was fitted out by Next and has the benefit of a full air-conditioning system.

Accommodation

The area of the property concerned measured on a gross internal area basis is 3,046 square metres with 1,504.7 square metres at ground floor level and 1,541.4 square metres at first floor level.

Tenure

The subject property is occupied under a 25 year lease from the 1st January, 2004 with provision for rent reviews at 5 yearly intervals. The initial rent payable under the lease is the sum of a base rent of €1,000,000 per annum plus a turnover rent of 4% of the gross turnover. In any event the yearly rent payable for the first 5 years of the term cannot exceed €1,215,000 per annum. The rental terms of the lease were agreed by way of an agreement for lease dated the 13th January, 2003.

As part of the agreement for lease the occupier was given a 22 week rent free period so that the actual amounts paid in rent for the first 4 years are as follows:

Year	Base Rent	Turnover Rent	Total
2004	€576,923	€77,745	€654,668
2005	€1,000,000	€37,086	€1,037,086
2006	€1,000,000	€0	€1,000,000
2007	€1,000,000	€0	€1,000,000

The store opened for trading on the 1st January, 2004.

Rating History

On the 12th December, 2007 the Valuation Office issued a valuation certificate pursuant to section 28 of the Valuation Act, 2001 to the effect that the value of the property concerned had been assessed at €1,507,000. There had been no representations from the appellant at the draft certificate stage. No change was made following an appeal to the Commissioner of Valuation and it is against this decision by the Commissioner of Valuation that the appeal to the Tribunal lies.

The Appellant's Evidence

Mr. Algar having taken the oath adopted his précis of evidence and valuation which had previously been received by the Tribunal and the respondent as being his evidence-in-chief. In his evidence, Mr. Algar contended for a rateable valuation of €1,338,000 calculated as set out below:

Ground floor 1,504.70 sq. metres @ €450 per sq. metre	=	€677,115
Mezzanine 1,541.40 sq. metres @ €350 per sq. metre	=	€539,490
Total		€1,216,605
Add for fit out at 10% =		€121,661
Total		€1,338,226
NAV say €1,338,000.		

Mr. Algar said that in arriving at his valuation he applied a lower rate per square metre to the first floor accommodation to reflect the fact that only 40% of the space was given over to actual retailing activities. Mr. Algar also said that his valuation was supported by an analysis of the rent payable under the lease for the first 5 years of the term as set out below:

Base Rent				€1,000,000 per annum
Rent for 5 years	x5		=	€5,000,000
Less Rent Free Allowance - €1,000,000 x 22/52		say	=	€423,000
Actual Base Rent payable for five years				€4,577,000
Average Annual Rent payable per annum		say	=	€915,400
Allow for Rental Growth				
(Jan. '03 to Sept. '05 as per JLL Retail Index)				x 1.2184
Adjusted Rent payable per annum			=	€1,115,323

The above figure may be devalued as follows:

Ground floor	1,504.7 sq. metres	@ €450 per sq. metre	=	€677,115
First floor	1,541.4 sq. metres	@ €285 per sq. metre	=	€439,299
Total				€1,116,414

Mr. Algar analysed the rent being paid for the Boots unit as follows:

Annual Rent payable from 14th October, 2003		€1,075,000
No Rent Free period		
Allow for Rental Growth		
(Oct. '03 to Sept. '05 as per JLL Retail Index)		x 1.1396
Adjusted Rent	=	€1,225,070

This figure may be devalued as follows:

Ground floor - Retail	2,341.31 sq. metres	@ €440 per sq. metre	=	€1,030,176
First floor – Offices & Stores	1,259.74 sq. metres	@ €150 per sq. metre	=	€188,961
Total			=	€1,219,133

Under examination Mr. Algar agreed that the property concerned had planning permission for retail use at both levels and that it was the only such unit at mall level in the Liffey Valley Shopping Centre. He also agreed that the retail space at the upper level should be valued at the same rate per square metre as the ground floor space: that is €450 per square metre. The €350 per square metre figure he had attributed to the first floor accommodation reflected the fact that only approximately 40% of the space was dedicated to actual retail use whilst the balance was used for stock storage and staff accommodation. In any event he reiterated his view that the analysis of the actual rent being paid supported his opinion of net annual value.

The Respondent's Evidence

Ms. Orlaith Ryan having taken the oath adopted her précis and valuation which had previously been received by the Tribunal and the appellant as being her evidence-in-chief.

In her evidence Ms. Ryan contended for a rateable valuation of €1,507,000 calculated as set out below:

Department Store (2 levels) 3,046.12 sq. metres @ €450 per sq. metre	=	€1,370,754.00
Addition for fit out at 10%	=	€137,075.40
Total		€1,507,829.40
NAV say €1,507,000.		

In support of her opinion of net annual value Ms. Ryan introduced 7 comparisons details of which are set out in the Appendix attached to this judgment.

Ms. Ryan in her evidence said that the property concerned was the only purpose-built, two-storey, retail store in the centre which had access from the mall and the car-park. The valuation of the property, she said, was based upon an analysis of all the rental evidence within the centre including the subject itself and the Boots unit.

Ms. Ryan said in turnover situations the market norm for a store such as Next was that the "base" rent represented about 80% of open market rental value and she had taken this into account in arriving at her opinion of net annual value. Ms. Ryan also said that she took the view that both floors should be valued at the same rate per square metre as each floor had planning permission for retail activities. In this regard it was to be distinguished from the Boots unit where the first floor accommodation only had planning permission for office and storage purposes. In relation to the Boots store Ms. Ryan drew attention to the fact that the ground floor retail space was valued at €450 per square metre for an area of 2,341 square metres; that is more than 50% greater than the ground floor space in the Next unit. She also expressed her view that the Boots unit occupied an inferior location to the property concerned. In such circumstances she considered her valuation of the property concerned to be fair and reasonable.

Under cross-examination Ms. Ryan said she did not give details of actual rents being paid for the properties which she had cited as being comparable. The reason for this was that the information was given to her on a confidential basis and under such circumstances she felt that it would not be proper to put this information into the public domain. However, she was prepared to give the information to the Tribunal and indeed she did.

In relation to her comparisons Ms. Ryan agreed that comparisons 2 – 5 were standard retail mall units valued on a zoning basis. All of them had additional space at mezzanine levels which was used for a mixture of retail and storage purposes. In all instances the mezzanine space was valued at a uniform level of €270 per square metre except for comparison No. 2 where the mezzanine space was valued at €200 per square metre because of its greater size.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced by the parties including that in relation to the comparisons and finds as follows:

1. The statutory basis of valuation is set down in section 48 of the Valuation Act, 2001 wherein at subsection 3 the net annual value of the property is defined as being *"the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual costs of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant".*
2. Under rating law the burden of proof that the valuation of the property concerned as it appears in the valuation list is incorrect lies with the appellant.
3. Of all the comparables introduced the Boots unit, which is a common comparison, is the most relevant in that it is a large ground floor outlet with ancillary accommodation at first floor level. Comparisons 2 to 5 are of little if any assistance by virtue of the fact that they are standard mall units valued on a zoning basis.
4. Ms. Ryan's comparisons numbers 1 and 7 are also relevant in that they are retail units trading at three and two levels respectively. In regard to comparison No. 1 the ground floor retail space would appear to have been valued on a zoning basis whilst the two upper floors are valued at a uniform square metre rate of €420 per

square metre. Comparison No. 7 which is located at first floor level is valued at an overall rate of €411 per square metre.

5. It is common case that the property concerned is a purpose-built, two-storey unit with planning permission for retailing use at both levels. It is also common case that the internal layout of the store is such that the stockrooms and staff facilities are at first floor level. Presumably the present occupiers of the unit consider this to be the optimum use of the space available. It is their choice to use the space in this manner of configuration.
6. The only issue in this appeal is the value to be attributed to the accommodation at first floor level. Ms. Ryan was of the view that both floors should be valued at the same figure having regard to the fact that the store was purpose-built with planning for retailing activities at both levels. Mr. Algar valued the first floor at a lower rate per square metre to reflect the fact that only 40% of the space was given over to actual retail activities. Whilst it might be reasonable to value the area given over to retailing activities at first floor level at the same rate per square metre as the ground floor, the remaining area used for stock and staff purposes should be valued at a lower rate per square metre. Rather than carry out this exercise he had decided to apply a composite rate of €350 per square metre.
7. In Liffey Valley there are three large stores which trade at more than one level and all are valued at a uniform rate per square metre; they are the property concerned, the New Look store and the upper floors of the H&M store. In the circumstances and for the sake of consistency the Tribunal prefers Ms. Ryan’s valuation approach, that both floors be valued at the same rate per square metre and also having regard to the fact that the property concerned was designed and built as a two-storey retail outlet. That said, it is the occupier’s choice to design the internal layout in whatever manner they decide that makes the best and optimum use of the available space for their type of operation.
8. The Boots unit according to Ms. Ryan (and not disputed by Mr. Algar) occupies an inferior location and is valued at €450 per square metre. The upper levels of the H&M unit and the New Look unit are valued at overall square metre rates of €420 and €411 respectively. These levels of value support the valuation attributed to the property concerned.

Determination

Accordingly the Tribunal determines that the net annual value of the property concerned in accordance with section 48(3) of the Valuation Act, 2001 is €1,507,000.

And the Tribunal so determines.