Appeal No. VA10/5/037

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Select Retail Holdings **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 482236, Shop at Unit 10, Superquinn Shopping Centre, Main Street, Blanchardstown, County Dublin.

B E F O R E

Fred Devlin - FSCS.FRICS	**Deputy Chairperson**
Tony Taaffe - Solicitor	**Member**
Patricia O'Connor - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 19th day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €37,500 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:
"Comparable evidence is available in support of a lower rent."

1. This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 14th day of December, 2010. At the hearing the appellant was represented by Mr. Dan Duggan BSc (Surveying), MIAVI, MRICS, MSCS, Dip Prop Econ, of Spain Courtney Doyle, the Letting and Management Agents for the Blanchardstown Superquinn Shopping Centre. Mr. Neil Corkery, BSc (Hons) Property Valuation and Management, MIAVI, a Valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation.

2. Prior to the commencement of the oral hearing and in accordance with the rules of the Tribunal each valuer submitted a written précis and valuation of the evidence they proposed to adduce at the oral hearing. From the evidence contained in the précis and additional oral evidence submitted at the hearing the following material facts emerged or are so found.

The Property Concerned

3. The property concerned in this appeal is known as Unit 10, in the Blanchardstown Superquinn Shopping Centre, located just off the Main Street in Blanchardstown at the rear of the Greyhound public house. The centre consists of a Superquinn supermarket and a covered parade of 10 retail units, together with ancillary off-street car parking and service areas.

4. Unit 10, which is currently vacant and to let, is rectangular in configuration, with an agreed area of 77.34 sq. metres, measured on a net internal area basis. The frontage to the mall is some 4.88 metres.

Rating History

5. As part of the revaluation of all relevant property in the Fingal Rating Authority Area, carried out in accordance with Section 19 of the Valuation Act, 2001, the net annual value of the property concerned was assessed at €38,000 and a Valuation Certificate (proposed) to this effect was issued on the 16th June, 2009. Following representations the valuation was reduced to €37,500. An appeal against this assessment was made under Section 30 of the Act and the appellant, being dissatisfied with the decision of

the Commissioner of Valuation to make no change, lodged a further appeal to this Tribunal under Section 34 of the Act.

The Issue

6. It is agreed that the only issue to be determined by this Tribunal is the quantum of the valuation on the property concerned as appearing on the valuation list.

The Appellant's Evidence

7. Mr. Duggan, having taken the oath, adopted his written précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief. In his evidence Mr. Duggan contended for a net annual value of €25,447 calculated as set out below:

Zone A: 28.87 sq. metres @ €524 per sq. metre =	€15,127
Zone B: 30.31 sq. metres @ €262 per sq. metre =	€7,941
Zone C: 18.16 sq. metres @ €131 per sq. metre =	€2,379
Total	€25,447

8. In support of his opinion of net annual value Mr. Duggan introduced details of 6 transactions which had taken place within the centre. Information in relation to these is contained in Appendix 1 attached to this judgment.

9. In his evidence Mr. Duggan contended that in arriving at their estimate of net annual value, in the first instance, the Valuation Office had disregarded what he considered to be a key piece of market evidence, ie the letting of Unit 11 in November, 2006 at an annual rent of €19,000 per annum, which devalues at a Zone A rate of €524 per sq. metre. This unit, he said, was vacant and to let at the relevant valuation date of the 30th September, 2005 and it was reasonable to assume that the landlord would have been prepared to accept a rent of €19,000 per annum at this date. Mr. Duggan said that in his opinion the Valuation Office had also placed undue reliance upon rent reviews which had taken place in 2007, without full knowledge of the facts in relation thereto.

10. In relation to his comparisons Mr. Duggan said most weight should be given to the letting of Unit 11 in November, 2006 and to a lesser extent the letting of Unit 4 in October, 2009. No weight, he said, should be attributed to the letting of Unit 9, in that the rent payable under the lease was grossly in excess of the market rent. This, he said, was borne out by the fact that the actual rent being paid by the tenant was €27,600 per annum. This rent Mr. Duggan said was more representative of the rental values in 2005 than the rent of €47,000 which was agreed by the tenants in November, 2007. This rent Mr. Duggan said was greatly in excess of the anticipated rent that the letting agents hoped to achieve.

11. Mr. Duggan said that in his opinion the rents for retail premises peaked in early 2007 and thereafter dropped sharply due to deteriorating economic circumstances. This pattern, he said, was borne out by the rent attained for Unit 11 in November, 2006 and the rent obtained for Unit 4 in October, 2009.

12. In relation to rent review evidence, Mr. Duggan contended that lesser weight should be accorded to this than to evidence based upon open market lettings. Furthermore, he said that there were additional factors which had to be taken into account in regard to each of the three reviews included in his list of comparisons and which diluted the weight to be attached to them.

Unit 6

- This review was agreed by him directly with the tenant who was not professionally represented in the negotiations.

Unit 7/8

- This review was also agreed by him directly with the tenant who was not professionally represented in the negotiations.
- It is well established that pharmacies pay an inflated rent at rent review. Mr. Duggan suggested that the premium rent would be in the order of 20%.

Unit 5

- The rent of €36,880 was agreed in November, 2002.

- The lease expired in 2007 and negotiations for renewal are still ongoing.

13. Under examination by Mr. Corkery, Mr. Duggan confirmed that there was only 1 unit currently vacant in the centre. When it was put to him that the rent being paid for Unit 4 in 2005 was €35,600 per annum, Mr. Duggan said he was not in a position to confirm that this was or was not so. However, if it was, he said, then it fully supported his contention that rental values had collapsed between 2005 and 2009. When asked if the property concerned was previously let at €43,600 per annum, Mr. Duggan again said he was not in a position to confirm that this was the case.

14. When asked by the Tribunal if standard rent review clauses directed that any effect on rent by virtue of tenant's goodwill and user be disregarded, Mr. Duggan agreed. He also agreed that the rent so revised would be an estimate of the full market rent of the subject premises, that might reasonably be expected at the rent review date, without the payment of a fine or premium.

The Respondent's Evidence

15. Mr. Corkery, having taken the oath, adopted his written précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief.

16. In his evidence Mr. Corkery contended that the net annual value of the subject property at the relevant valuation date of the 30th September, 2005 in accordance with Section 48 of the Act was €36,400 calculated as set out below:

Block 1: Retail Zone A:	28.87 sq. metres @ €750 per sq. metre =	€22,417
Block 2: Retail Zone B:	30.31 sq. metres @ €375 per sq. metre =	€11,208
Block 3: Retail Remainder	18.16 sq. metres @ €187.5 per sq. metre =	€ 3,903
Total NAV		€36,423

Valuation rounded to: €36,400

Note: This valuation differs from the final cert valuation as a result of agreed areas.

17. In support of his opinion of net annual value, Mr. Corkery submitted 5 comparisons details of which are set out in Appendix 2 attached to this judgment. Three of Mr. Corkery's comparisons are located in the Superquinn Shopping Centre and the other two are located close by in the Roselawn Shopping Centre. Roselawn is similar to the Superquinn Shopping Centre in a number of respects, in that it consists of a parade of retail units and a supermarket (Tesco), together with ample off street car parking and service facilities.

18. In paragraph 2.1 of his précis, Mr. Corkery outlined the basis of his valuation in the following terms:

> *"In the Revaluation of this Rating Authority* [sic], *valuation levels were derived from the analysis of available market information of comparable properties and applied to the subject property.*
>
> *The valuation of this property, on Appeal to the Commissioner of Valuation, was determined by reference to the values of comparable properties stated in the Valuation List in which the property appears."*

19. Under examination by Mr. Duggan, Mr. Corkery said that his Zone A rate was based upon open market lettings and rent reviews within the centre and in the adjoining Roselawn Centre. When asked if his comparison no. 1 (Peter Mark) was his strongest comparison, Mr. Corkery said that, in his opinion, equal weight should be attached to each of his 5 comparisons. When asked if he had been aware of the relevant facts in relation to Mr. Duggan's comparisons, 1, 2 and 3 at the time that he arrived at his decision to value all the units in the Superquinn Centre at a uniform Zone A rate of €750 per sq. metre, Mr. Corkery said he would not have changed his mind even if this information had been available to him at that time. When asked if more weight should be given to lettings than to rent reviews, Mr. Corkery said that he would consider all evidence to be of equal value. Furthermore, in relation to Mr. Duggan's first 3 comparisons, he pointed out that all the lettings had taken place some time after the relevant valuation date and, hence, would not have been known to the hypothetical tenant at the relevant valuation date of 30th September, 2005. When it was put to him

by Mr. Duggan that he had omitted the open market rental evidence in regard to his (Mr. Duggan's) comparisons 1, 2 and 3 because it was not consistent with what he considered to be the proper tone being used when valuing retail units in the Superquinn Centre, Mr. Corkery agreed that this was the case. As far as Mr Corkery was concerned, an analysis had been carried out and the result of that analysis indicated that the appropriate Zone A for retail units in the Blanchardstown area including the Superquinn Centre and the Roselawn Centre was €750 per sq. metre.

20. When asked by the Tribunal if he had any evidence to support his Zone A rate of €750 per sq. metre, Mr. Corkery responded as follows:

Unit 6

- Superquinn Centre – Rent review, November 2002 - Rent €42,800 per annum (Zone A equivalent €767 per sq. metre)

Unit 20

- Superquinn – Rent review, October 2002 and 2007 – Rent €19,400 per annum (Zone A equivalent €874 per sq. metre)
- Letting 2008 – Rent €7,400 per annum (Zone A equivalent €332 per sq. metre)

Unit 9

- Letting – November 2007 – Rent €47,000 per annum (Zone A equivalent €841 per sq. metre)

Unit E

- Roselawn – Letting October 2005 – Rent €41,300 per annum (Zone A equivalent €793 per sq. metre)

Unit G

- Roselawn – Letting September 2007 - €40,000 per annum (Zone A equivalent €771 per sq. metre)

Findings

The Tribunal has carefully considered all the evidence and arguments submitted and adduced by the parties and finds as follows:

1. This appeal is in respect of a revaluation carried out under Section 19 of the Valuation Act, 2001 whereby all relevant property in the Fingal Rating Authority

Area was subject to revaluation. The relevant valuation date under Section 20(2) is the 30th September, 2005.

2. It is noted that Mr. Corkery, in his evidence on behalf of the respondent, put forward a valuation of €36,400 as against the assessment of €37,500 that currently appears on the valuation list. Mr. Corkery indicated that this amended assessment came about as a result of the area of the property concerned being agreed after the appeal was made to this Tribunal. Why this agreement was reached only at this late stage in the appeal process is of some concern. It is hard to envisage how meaningful discussions could have taken place at representations and Section 30 appeal stages, without something as basic as the area of the property concerned being addressed.

3. In his evidence Mr. Duggan contended that most weight should be attached to the letting of the three units in the Superquinn Centre. While the lease commencement dates in all instances is post the relevant valuation date, it has to be said that the details in respect of two lettings (Units 11 and 9) would have been available for analysis and consideration before draft certificates were issued in respect of all the units in the centre in June, 2009. Actual rents, where available, are of course the best guide to net annual value. Nonetheless, it should be said that rents fixed after the relevant valuation date are admissible as evidence of rental value, in order to prove or disprove a trend and the weight to be attributed to this evidence will depend upon a number of factors, including, of course, the proximity of the lease commencement date and the relevant valuation date.

4. The Tribunal accepts Mr. Duggan’s uncontested statement that retail rents in general were rising up to early 2007 and thereafter fell quite sharply. That said, however, the rent for Unit 9 (a common comparison) is anomalous and the Tribunal accepts Mr. Duggan’s assertion that it is greater than might reasonably have been expected when offered to let on the open market, but not to the extent suggested by him.

5. The secondary market evidence, ie. that based on rent reviews - which is undoubtedly accorded a lesser weight shows, nonetheless, a more consistent

pattern and cannot easily be set aside. Indeed, the rent agreed in respect of Unit 7/8 in July 2005, despite Mr. Duggan's protestations, cannot be ignored, particularly since he was the person who carried out the negotiations on behalf of the landlord in this regard.

6. Mr. Corkery's evidence can be summarised by saying, that he accepted without question or reservation that the appropriate valuation level for valuing retail units in the Blanchardstown area was a Zone A rate of €750 per sq. metre, *"derived from the analysis of available market information of comparable properties and applied to the subject property."* It is of course to be expected that the Valuation Office, as a first step in a revaluation programme, would collate all available market evidence in order to provide what might be termed a valuation scheme for relevant properties, within the various use categories. These schemes, however, ought not be accorded a status greater than what they are and, where there exists evidence of actual rental value in relation to the property concerned or other properties that are truly comparable in terms of size, location and other material factors, that evidence is to be accorded appropriate weight. In accordance with rating law the valuation of each relevant property must be independently assessed in accordance with Section 48 of the Act.

7. Mr. Corkery's evidence in relation to the Roselawn Shopping Centre consists of two lettings which occurred in October, 2005 and September, 2007. This evidence is such as to indicate that a Zone A rate of €750 per sq. metre for units in this centre is well-founded. The question to be asked, therefore, is whether there exists adequate evidence to show whether there is or is not a discernible difference in rental values between the Superquinn Shopping Centre and the Roselawn Shopping Centre.

8. The Roselawn and Superquinn Shopping Centres are similar in many respects and are located relatively close to one other. Each centre has a well-known supermarket operator as its anchor tenant (Tesco and Superquinn) and a parade of retail outlets. Roselawn is the larger centre, having some 20 units, as compared to ten at the Superquinn Centre. Each centre has off-street car parking facilities and

can be best described as being in the nature of neighbourhood shopping centres, sharing a common customer base, drawn from the Blanchardstown area.

9. From an examination of the evidence put forward by Mr. Corkery in relation to the Roselawn Centre, the Tribunal finds that it is sufficient to support a Zone A rate of €750 per sq. metre. However, the Tribunal is of the view that the evidence adduced in relation to the Superquinn Centre is not sufficient to show that the same rate per sq. metre should be applied to the unit shops in the Superquinn Centre. Equally, the Tribunal is not convinced that the Zone A rate of €524 put forward by Mr. Duggan is correct either. This figure is based solely upon the letting of Unit 9 in November, 2006 and most certainly disregards the letting of Unit 10 in November, 2007. Whatever the circumstances surrounding this transaction, it cannot be set aside for the reasons referred to by Mr. Duggan in his written précis. Neither can the rent review evidence in relation to Unit 7/8 in July, 2005, particularly since Mr. Duggan participated in the negotiations and agreed the revised rent on behalf of the landlord. For Mr. Duggan to seek that lesser weight be attached to this evidence and that in respect of Unit 6 where he was also involved is, to say the least, unusual. However, the Tribunal has come to the decision that the Zone A rate for units in the Superquinn Shopping Centre should be €700 per sq. metre.

Determination

Having regard to the foregoing, the Tribunal determines the net annual value of Unit 10 in accordance with Section 48 of the Valuation Act, 2001 is €34,000, calculated as set out below:

Zone A: 28.87 sq. metres @ €700 per sq. metre =	€20,209
Zone B: 30.31 sq. metres @ €350 per sq. metre =	€10,608
Zone C: 18.16 sq. metres @ €175 per sq. metre =	€3,178
Total	€33,995

Net annual value, say €34,000

And the Tribunal so determines.