

Appeal No. VA11/5/015

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

Harvey Norman Trading Ireland Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2195767, Retail (Warehouse) at Unit 230, The Park, Carrickmines,
County Dublin.

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb

Deputy Chairperson

Tony Taaffe - Solicitor

Member

Thomas Collins - PC, FIPAV, NAEA, MCEI, CFO

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF DECEMBER, 2011

By Notice of Appeal dated the 13th day of June, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €1,379,000 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:

"The valuation is excessive having regard to the passing rent and the valuation of the Anchor
in Phase 1."

The appeal proceeded by way of an oral hearing, held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin, on the 11th day of October, 2011. The appellant was represented by Mr. Declan Bagnall, MRICS, MSCSI, Bagnall & Associates, and the respondent was represented by Mr. Dean Robinson, BSc, (Hons) Surveying, Valuer in the Valuation Office.

In accordance with the rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence in chief. This evidence was supplemented by additional evidence given either directly at, or between, the hearings or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At issue

Quantum

The Property

The subject relevant property comprises a ground floor retail warehouse with a partial mezzanine constructed to a high standard with portal frame, cladded walls and roof. The subject unit is part of The Park, Carrickmines development which consists of a retail park and three large office buildings, built in two phases: the first phase completed in late 2005 and the second during 2007. The subject relevant property was constructed during Phase 2 of the development. The internal layout of the property comprises a large retail area with mezzanine office. A car park of 72 surface spaces and 329 basement spaces provides customer parking for the unit in common with the other retail units in Phase 2 of The Park, Carrickmines (The Park) namely TK Maxx, Heatons, Lifestyle Sports, Howards Storage World, Mothercare and Petstop.

Tenants in Phase 1 of The Park include Woodies, PC World, Currys, Furniture Depot, Cost Plus Sofas, Halfords, Smyths Toys, 53 Degrees North and Home Focus. Approximately 424 surface car parking spaces are provided for Phase 1 customers. Smaller units within the development include Costa Coffee, O'Brien's Wines, BB's Coffee & Muffins, Brown Cow, Ora Kitchens, The Vanilla Pod Eatery and The Carphone Warehouse.

Location

The subject property is located in The Park on the Glenamuck Road, just off the M50 from the Carrickmines exit (exit 15). Carrickmines is an outer suburb of Dublin and is located approximately 13 km south-west of Dublin city centre.

Services

The subject relevant property is served with mains power, water, telephone, storm and foul sewer.

Tenure

The property is understood to be held under a 20 x 5 FRI lease commencing on 8th January, 2008. The tenant was provided with a break option at the end of year 15, a capital contribution by the landlord and a 12 month rent free period.

Floor Areas

The agreed floor areas, measured on a Net Internal Area (NIA) basis, are as follows:-

Block	Use	Area Sq. Metre
Ground Floor	Retail:	4,770.0 sq. metres
Mezzanine	Office:	<u>204.4 sq. metres</u>
Total		4,974.4 sq. metres

Valuation History

June 2010: Valuation Certificate (proposed) was issued with an RV of €1,425,000.

July 2010: Representations lodged to the Commissioner of Valuation by the appellant's agent. Following consideration, the valuation was reduced to €1,379,000.

February 2011: Appeal submitted to the Commissioner of Valuation. Following consideration, the valuation remained unchanged after first appeal.

June 2011: The appellant appealed the decision to the Valuation Tribunal by Notice of Appeal dated 13th June, 2011.

Appellant's Case

Mr. Declan Bagnall, took the oath, adopted his précis as his evidence-in-chief, , and provided the Tribunal with a review of his submission:

1. Having adjusted for the staggered rents payable over the initial five year term of the lease and the capital contribution made by the landlord, Mr. Bagnall concluded that the net effective rent payable by his client from January 2008 amounted to a figure equivalent to €262 per sq. metre per annum.
2. He concluded that the respondent had primarily relied upon the rent paid by Woodies DIY Ltd (Woodies) in Phase 1 at The Park, without taking account of an exclusivity trading clause granted to Woodies and the fact that the floor area of same is considerably larger than the subject at circa 6,000 sq. metres compared with the 4,770 sq. metres of the subject.
3. He contended that the respondent failed to make the necessary adjustment on the subject passing rent, which commenced in early 2008, to make it relative to market rents which he contended were approximately 15% lower at the valuation date of September 2005.
4. He argued that the Commissioner of Valuation did not take account of the significant open use planning consent granted on circa 50% of Phase 2 at The Park, which in total provides for approximately 10,800 sq. metres of retail floor space.
5. Stating that the Commissioner of Valuation had applied a rate of €285 per sq. metre on the subject retail area of 4,770 sq. metre, the consultant valuer argued that such rate represents an increase of 8.5% in the rate per sq. metre applied by the Commissioner over the net average passing rent of €262 as noted above, paid by his client, though the lease commenced two and a half years following the valuation date.

6. Mr. Bagnall concluded that market rental rates from September 2005 to January 2008 had risen at The Park.
7. The valuer contrasted the foregoing apparent increase in rate per sq. metre applied by the Commissioner on the subject, with apparent reductions applied by the respondent ranging from 1% up to 40% on the rents passing of 10 other units within Phases 1 and 2 of The Park. (This analysis is attached at Appendix 1 to this judgment.)
8. Mr. Bagnall also noted that the configuration of his client's unit is somewhat unusual insofar as though benefiting from approximately 40 metres of frontage, a greater area of circa 58 metres returns behind another demised unit within the store and accordingly the subject unit does not benefit from frontage or profile in the normal sense, resulting in a restrictive layout for the efficient operation of the store.
9. Unlike Phase 1 with its 424 surface car parking spaces, the subject unit located at Phase 2 is served by only 72 surface spaces, with the remaining 329 spaces provided for in a basement setting, requiring the use of an escalator by customers to access ground level services and return to their vehicles.
10. Mr. Bagnall argued that the Commissioner of Valuation did not adequately factor the premium on the rent paid on the primary comparator relied upon, namely Woodies in Phase 1, linked to the exclusivity clause granted by the landlord to that tenant for that unit. The consultant valuer emphasised that on the other hand, his client Harvey Norman, without the benefit of such an exclusivity trading clause, is compelled to compete for trade within The Park with a number of other tenants making similar retail offerings such as Currys, PC World, Home Focus, Furniture Depot at Hickeys and Cost Plus Sofas.
11. He added that there is a 26% difference in floor area between the larger Woodies and his client's retail floor area, though the Commissioner has calculated net annual value (NAV) based on a higher rate per sq. metre of €285

12. He further argued that the units occupied by Smyths Toys and Halfords, with the former occupying a floor area of 37% greater than the latter, are valued at the same rate per sq. metre.
13. He also contended that notwithstanding a 29% difference in floor area between Howards Storage World and Lifestyle Sports, the Commissioner has valued those two units on a same rate per sq. metre basis to determine their respective NAVs.
14. Mr. Bagnall contended that the foregoing evidence appeared to contradict any argument made by the respondent that a quantum allowance should be reflected in the rate per sq. metre determined for the larger Woodies unit when compared to the subject Harvey Norman unit.

The foregoing considered, Mr. Bagnall, on behalf of the appellant, estimated the NAV on the subject property, as follows:-

Description	Sq. Metre		€/Sq. Metre		NAV
Ground Floor Retail	4,770	@	€20	=	€1,049,400
Mezzanine Floor	204.40	@	€100	=	<u>€ 20,440</u>
Total					€1,069,840

NAV Rounded to €1,070,000.

Comparison Properties

Mr. Bagnall provided the Tribunal with 13 comparison properties, i.e. all of the other tenants within Phase 1 and 2 of The Park, the details of which in terms of occupied area, rent per sq. metre and lease commencement dates are attached at Appendix 2 to this judgment. The comparison properties are occupied by the following tenants, namely: - Woodies, TK Maxx, Heatons, PC World, Smyths Toys, Currys, Cost Plus Sofas, Halfords, Mothercare, 53 Degrees North, Home Focus, Howard's Storage World and Lifestyle Sports.

In addition, Mr. Bagnall provided a summary Heads of Terms and his analysis of the NAVs calculated by reference to each of the foregoing in his précis.

Cross-examination of the Appellant

In response to questions raised by Mr. Robinson and the Tribunal, Mr. Bagnall stated that: -

1. He did not know if any unit at The Park other than the subject had basement access provided via escalator to same but suggested that same would not be viewed as a benefit when compared with the extensive surface car parking fronting Woodies.
2. He did not have empirical evidence at the hearing to support the alleged 15% increase in market rents paid at The Park between the period September 2005 and early 2008.
3. He acknowledged that the rental terms for Woodies as set out in the appellant's précis did not include the provision of lease inducements, whereas Harvey Norman's rental terms incorporated a capital contribution and a break clause at the end of year 15.
4. He could not confirm the specific nature or term of the exclusivity trading clause granted to Woodies but estimated that it may have reflected a burden of between 10 – 15% on the value of the landlord's interest in such lease.
5. He confirmed that all executed leases at The Park, with one exception, contained an "upwards only" rent review provision.
6. He acknowledged that the subject retail unit was let on a shell & core basis and is currently fitted to a reasonably high standard.
7. He did not acknowledge that Woodies was the main comparator employed by him in the rental analysis exercise and added that his précis and evidence adduced at the hearing earlier had regard to all of the rents paid by all of the other tenants at The Park.
8. He confirmed that the average rent at The Park may be in the region of €350 per sq. metre per annum but cautioned that the variance in terms of from three to 20 years, break clauses and other rental differences made it difficult to assume an average rate

per sq. metre and would not agree that €285 per sq. metre should be considered a fair and reasonable rent as at September 2005.

9. He reminded the Tribunal that such level is not only €10 higher than that applied per sq. metre by the Commissioner of Valuation on Woodies, but is also significantly higher than the net average rent as calculated by him on the subject property.
10. He confirmed that in calculating the net average rent, he had ignored any costs of fit-out or the value of the break clause available for exercise at the discretion of the tenant in year 15. He added that if a fit-out allowance or the cost of providing same were to be calculated, it may not have a material effect on the rent in the instant case as it would be amortised over a 15 year period.
11. He also confirmed that Harvey Norman is the only tenant known to him to have been given a one-year rent free period by the landlord at The Park.

Respondent's Case

Mr. Dean Robinson took the oath. Before adopting his précis he noted one amendment, namely that the accommodation was measured on an NIA basis rather than Gross Internal Area (GIA), as noted therein. He then confirmed that the areas were agreed by the parties with retail measuring 4,770 sq. metres and the mezzanine office area at 204.4 sq. metres for a total NIA of 4,974.4 sq. metres.

Mr. Robinson stated that the rent determined by the Commissioner of Valuation on the subject was €285 per sq. metre applied to the ground floor and €100 per sq. metre to the mezzanine area. He noted that these values equated to market rents established during September 2005 and added that retail warehouse rents since that time up to 2008 when the subject premises was rented remained stagnant. Mr. Robinson brought the Tribunal through the salient points of his précis of evidence and concluded by noting that a number of valuations within The Park were determined on the basis of *circa* €340 per sq. metre, whereas Woodies, as the largest anchor store, occupying 6,000 sq. metres and leased two months prior to the valuation date of September 2005, was assessed for NAV purposes at a level of €275

per sq. metres. He added that this figure is €10 per sq. metre lower than the level applied to the subject relevant property, namely Harvey Norman.

Comparison Properties

Mr. Robinson provided three comparison properties with the subject to support the NAV which applies to the subject relevant property (details of which are attached at Appendix 3 to this judgment).

Comparison No. 1

Unit 1, Symths. Retail floor area = 1,386 sq. metres @ €340 per sq. metre.

Comparison No. 2

Unit 6, Woodies DIY. Retail floor area = 5,990 sq. metres @ €275 per sq. metre.

Comparison No. 3

Unit 2, Halfords. Retail floor area = 1,013.36 sq. metres @ €340 per sq. metre.

All of the foregoing are located within The Park.

The respondent availed of the foregoing available data to determine the NAV of the subject property, which was calculated as follows:-

Ground Floor Retail: 4,770 sq. metre @ €285 = €1,359,450

Mezzanine: 204.4 sq. metre @ €100 = € 20,440

NAV Rounded to €1,379,000

Cross-examination of the Respondent

Responding to various questions raised by the Tribunal and the appellant, Mr. Robinson stated the following:-

- 1) He indicated that the trading activity of Woodies, Harvey Norman, TK Maxx, Heaton's, Mothercare, Currys, PC World, 53 Degrees North, Lifestyle Sports and

others at The Park are not linked to or directly influenced by the proximity to activities or trends in residential development. He added that from his point of view, rents paid for retail warehousing in the area between 2005 and 2008 were neither rising nor declining and accordingly remained stagnant.

- 2) For the foregoing reasons, Mr. Robinson saw no reason to allow for a reduction in the NAV of premises assessed in The Park, Phase 2.
- 3) In reply to an assertion by Mr. Bagnall that reductions were factored by the Commissioner of Valuation into Phase 2 rents actually paid to reflect a common NAV rate per sq. metre in The Park, Mr. Robinson replied that any adjustments made were to reflect quantum floor area differences on rents paid.
- 4) In reply to a further question as to the reason for the 26% difference in floor area between Woodies and the subject property meriting only a €10 difference in the NAV per sq. metre, Mr. Robinson explained that quantum allowances are applied to floor area band spreads of 1,000 sq. metres each.

Closing Submissions

Mr. Bagnall made the following points on behalf of the appellant:-

1. Quantum allowances were not in this case consistently applied by the Commissioner of Valuation.
2. The appellant is the only tenant at The Park for whom the NAV was assessed at a rate per sq. metre in excess of the net average rent per sq. metre paid by his client, as calculated and outlined above. Mr Bagnall noted that Currys and PC World are related parties.
3. The Commissioner of Valuation had failed to consider Woodies and Harvey Norman as the anchor tenants in Phase 1 and Phase 2 of The Park.

4. The NAV in Phase 2 of The Park compares with rents paid in Phase 2 but these demonstrate a marked difference with the rents paid in Phase 1.
5. The Commissioner had not adequately reflected the value of the exclusivity trading clause granted to the main anchor tenant, i.e. Woodies trading from the more desirable Phase 1 location which provides the latter with a significant trading advantage of being placed in a position to command a specific share of the market for their goods and services, for which his client has to compete with other tenants at The Park.
6. His client has been penalized as a result of the approach adopted and the calculations made by the respondent.

The respondent made the following points:-

1. The respondent stated that when he analyzed the rent on the subject property, he could not reach the same conclusion as Mr. Bagnall and concluded that the appellant's approach and analysis failed to consider the "upwards only" rent review provision in the lease and the fit-out provided by the tenant at the subject property.
2. The appellant had failed to provide any evidence to the Tribunal to support an alleged increase in rental values of retail warehouses in the area of The Park.
3. Mr. Robinson considered that having regard to the NAV established at Woodies of €75, a €10 increase on same to a level of €85 per sq. metre on the retail floor area of the subject is fair and reasonable.

Findings

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at the hearing and makes the following findings:

1. Retail Phase 2 of The Park at Carrickmines offers substantially less retail trading area and consequent activity, lower footfall and perceived retail offerings than Retail Phase 1 at The Park.

2. The opening of Phase 2 some couple of years after Phase 1 at The Park resulted in the introduction of additional retailing operations and competitors trading from the same general location.
3. Having regard to the nature of bulky goods generally sold from retail warehouse units in general and the subject property in particular together with the association with the use of customers' vehicles to carry such goods away from such stores, the Tribunal is of the view that in this case the use of an escalator to provide ingress and egress to and from a basement car park may be less desirable and accordingly less convenient to the customers and by extension, the retailer, than the facility of open surface car parking.
4. The majority of NAV rates per sq. metre, as outlined by the appellant, are set lower than the rents passing at The Park, including that of the primary comparator, Woodies.
5. Both parties accepted that The Park at Carrickmines features two anchor retailing tenants, namely Woodies DIY and Harvey Norman.
6. All of the foregoing considered together with the contents of the respective précis of evidence and arguments adduced at the hearing, the Valuation Tribunal is of the view that the rate per sq. metre to be applied to the subject property retail area of the unit as outlined above should be €280 per sq. metre.
7. The Tribunal notes that there was no dispute between the parties on the rate of €100 per sq. metre set on the mezzanine offices.

Determination

Accordingly, the NAV for the subject property is calculated as follows:-

Ground Floor Retail	4,770 sq. metres	@ €280 per sq. metre	=	€1,335,600
Mezzanine Floor	204.40 sq. metres	@ €100 per sq. metre	=	<u>€ 20,440</u>
Total				€1,356,040

NAV Say €1,356,000

And the Tribunal so determines.