

Appeal No. VA11/5/072

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

Coltard

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 526525, Retail (Shops), at Unit 4 Georges St. Mall, Dun Laoghaire Shopping Centre, Georges St. Upper, Dun Laoghaire, Co. Dublin.

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Michael Connellan Jr - Solicitor

Member

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

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF JANUARY, 2012

By Notice of Appeal dated the 11th day of July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €3,400 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are attached at Appendix 1 to this judgment.

The 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 17th day of October, 2011. At the hearing the appellant was represented by Mr. Michael Purcell, Senior Surveyor, Property Management. The respondent was represented by Ms. Triona McPartlan, BSc (Hons) Estate Management, a Valuer in the Valuation Office. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

At issue

Quantum

Appellant's Evidence

On behalf of the appellant, Mr. Michael Purcell gave evidence. He adopted his précis as a summary of his evidence. He noted the quantum had been further reduced by agreement with the Valuation Office because of a discrepancy in relation to measurements and that the Valuation Office quantum was now €33,400.

Mr. Purcell then drew the Tribunal's attention to various aspects of his report. At Appendix 1, page 30, he identified the location map. In his submission, the George's Street Mall is the main mall. He indicated his firm had acted for the landlord of many of the tenants in the George's Street Mall and there had been no issue in relation to the rates struck for those units.

However, in his view the George's Mall was in a significantly poorer location. He described it as a "*secondary mall*". While the Valuation Office would suggest a valuation for Zone A in George's Mall of €750 per sq. metre, he believed that a valuation of €600 per sq. metre in Zone A was more appropriate for George's Mall.

Mr. Purcell then looked at a number of the comparators referred to in his report. Unit 3 in the George's Mall (the "*Grandstand*" premises) had a rent agreed in October 2005 at €40,000 per annum, indicating a Zone A rent payable of €16 per sq. metre. Mr. Purcell noted there had been no increase in rent in 2010, even though an upward-only rent review clause had been in the lease. He noted that the valuation date for the purposes of the appeal was the 30th

September 2005, and in the circumstances he felt that the date for the agreement as to rent of October 2005 was a reasonable guide.

He noted that in the subject property (Unit 4) rent had been agreed at €22,500 *per annum* in December 2004 which indicated a Zone A rent of €505 per sq. metre. Unit 2, George's Mall had a rent of €34,000 per annum agreed in December 2004 which equated to a rent of €659 per sq. metre for Zone A. Unit 1 had a rent of €39,000 per annum, agreed in December 2002, which equated to a Zone A rent of €335 per sq. metre.

The parties acknowledged that this was a test case; the determination of the Tribunal in respect of the subject property (Unit 4) would act as an appropriate guide for Units 1, 2 and 3 in the George's Mall.

Mr. Purcell noted that rents in the George's Mall had fallen significantly since 2005 and indeed some of the units were occupied on a licence basis only or else were vacant. He noted also that since the opening of Dundrum Shopping Centre in March 2005 a significant amount of trade had been drawn away from other shopping centres such as the shopping centre in which the subject property was located. However, Dun Laoghaire Shopping Centre had been trading poorly before this in any event.

In cross-examination he agreed that there were two entrances from George's Street to George's Mall and that the third entrance (which was the biggest entrance) was an entrance to George's Street Mall. He indicated that the ceiling height of George's Street Mall was more attractive than the ceiling height of George's Mall (which was lower). He contended that the fact that other units were visible from the ground floor of George's Street Mall made it more attractive than the location of the subject property, though he agreed that units at level 3 of the George's Street Mall, although providing a view of other levels and other units, were nonetheless set at a much lower Zone A rent level; indeed many units in level 3 of the George's Street Mall were vacant.

Mr. Purcell accepted the rent reductions up to and including 2010 were of limited relevance. He also accepted that the various property indexes which he had added to his report setting out how properties in Grafton Street and Henry Street had fared were of little or no relevance, indicating as they did a dip in the retail market which occurred post-2005. He agreed,

however, he had no specific information in relation to Dun Laoghaire. In his view, his figure of €600 per sq. metre for Zone A was justified because there was a better quality of tenant in the George's Street Mall compared to the mall in which the subject property was located. There was a higher footfall in the George's Street Mall. He noted that some units had gone out of business in the George's Mall. In his view, the George's Street Mall was the "*main mall*". He emphasised that it was essential for any retailer to ensure above all that it had the right location. If a prospective tenant was offered the same unit in the George's Street Mall and the George's Mall his advice unhesitatingly would be to take the George's Street Mall unit.

He did not accept that the respondent's valuation of €750 per sq. metre, (representing as it did a discount from the €800 per sq. metre for Zone A in the George's Street Mall) represented a sufficient discount.

In answer to the Tribunal he indicated the occupation level within the shopping centre had fallen further since Tesco, the anchor tenant, pulled out in April 2011. He estimated occupation in the mall in which the subject property is located, was at present no higher than 44%. He indicated there was no direct car park access to George's Mall and that it would be necessary for anybody wishing to access that mall to go through the main part of the building. In his estimate, the figure of €600 per sq. metre for a Zone A rental would leave Zone B rental at 50% of that, i.e. €300 per sq. metre. He indicated that his firm had spoken to O'Brien's Sandwich Bar to see if they were interested in challenging their valuation but because O'Briens were embroiled in insolvency proceedings in the High Court the company did not wish to become involved in any challenge to the valuation determined by the respondent.

Respondent's Evidence

On behalf of the respondent, Ms. Triona McPartlan gave evidence. She adopted her précis as a summary of her evidence. She confirmed that although the original valuation had been €48,000 this had been reduced, following a re-measurement, to €33,400. This equated to a rate of €750 per sq. metre for Zone A (39.16 sq. metres) and €375 for Zone B (10.87 sq. metres).

She referred first to Golden Discs which was another unit within the George's Mall. For the purpose of the valuation it had been assessed at a Zone A rental figure of €800 per sq. metre. This was higher than the figure applied to the other units (of €750) but this was because Golden Discs had access both internally from the mall and externally from the street outside. She noted the rent had been reviewed on the 29th September 2006 at €64,000 per annum which equated to a rate of €1,020.40 per sq. metre.

The next comparator referred to by Ms. McPartlan was O'Brien Sandwich Bar which unit was not far away from the subject property in George's Mall. This had been assessed at a rate of €750 per sq. metre for Zone A. She noted the rent had been agreed in November 2004 at a figure of €6,000 per annum which equated to a figure of €1,379.31 per sq. metre for Zone A. She pointed out that the O'Brien's unit was to some extent hidden under an escalator and so was not as visible as the subject unit.

Ms. McPartlan also referred us to the Meteor unit. She accepted that this was in the George's Street Mall but noted that on the 29th May 2004 a rent of €28,595 per annum was fixed, equating to a Zone A rental rate of €1,049.35 per sq. metre.

Ms. McPartlan also referred us to a helpful map setting out the location of the various comparators as well as the subject property and the entrances.

Ms. McPartlan indicated in her view the overall "*feel*" of the George's Mall was that it was slightly inferior to the George's Street Mall. Accordingly she had discounted the rate per sq. metre for a Zone A rental from €800 (in George's Street Mall) to €750 (for the George's Mall properties, including the subject property).

In cross-examination she indicated the €800 fixed for Zone A for Golden Discs reflected the fact that it had internal as well as external access. She indicated some food retailers may have to pay a premium because of user restrictions, but did not believe this was an issue in the case of O'Brien's here; in her view the rent fixed had been fixed on an open market transaction basis. She denied that the respondent valued the properties based on who the occupier was and asserted that the respondent valued properties based on the requirements set out by statute, i.e. what a willing tenant would pay. She denied also "*cherry picking*" rents and made the point that on the basis of the rental figures in some of the comparators supplied

by her she could have inserted a Zone A rating of €1,300 (which she said she had not done, as a matter of fairness).

She indicated she had included the Meteor unit as a comparator, even though it was in the George's Street Mall, because it helped to give an overall flavour of what the rents payable were in the centre.

In answer to the Tribunal she confirmed that all units in the George's Street Mall had been valued for Zone A rental at €800 per sq. metre.

She indicated that the main mall (George's Street Mall) was a lot brighter and indeed had recently been refurbished. The George's Mall on the other hand was more dated and was darker. Apart from Golden Discs and Motion Picture (a unit beside Golden Discs also having dual access) all the units in the George's Mall were €750 per sq. metre, whereas all the units in the George's Street Mall were valued at €800 per sq. metre for Zone A. In her view, the discount allowed from €800 to €750 (being just over 6%) was the appropriate one in all the circumstances.

Both parties made brief oral submissions by way of conclusion.

The Law

There is no dispute on the law applicable which is Section 48 of the Valuation Act, 2001.

There appeared to be a considerable degree of agreement between the appellant and the respondent on the secondary nature of the George's Mall being the mall where the subject property is located. Mr. Purcell described George's Street Mall as being the main mall. Ms. McPartlan accepted that George's Mall was slightly inferior, was somewhat dated and was also darker (presumably because of the lower ceiling height). Photographs supplied by both parties confirmed the honest and forthright evidence given by both valuers at the hearing.

The Tribunal notes also the evidence of Ms. McPartlan that there are two entrances which lead into the George's Mall, whereas there is only one (albeit a substantially larger) entrance leading to the George's Street Mall. The Tribunal notes also the evidence that persons using the George's Mall do not have direct access to the car park; this is likely to reduce the

attractiveness of the George's Mall as a shopping location and therefore reduce its attractiveness to any potential tenant. The relative airiness and brightness of the George's Street Mall is, in the Tribunal's view, in considerable contrast to the somewhat claustrophobic atmosphere which appears in the photographs to be present in George's Mall in the vicinity of the subject property. The Tribunal notes also the rents which appear to have been agreed in the immediate vicinity of the subject property in 2004 and 2005. The rent fixed in respect of the O'Brien's unit is undoubtedly high, though we note the O'Brien's franchise declined to engage in any appeal of the valuation in respect of its unit.

In the Tribunal's view, while the rate of €800 per sq. metre may be appropriate for units located in the George's Street Mall, a reasonable discount must be given for units in the George's Mall. We note a discount has already been given of just over 6%, but in our view this is insufficient to reflect the differing nature and "*atmosphere*" of the George's Mall and the location of the subject property in particular. We note also the evidence of Mr. Purcell that there was less footfall through George's Mall, where the subject property was located, than through George's Street Mall. This does not appear to have been challenged. Taking these matters and the other factors set out above into account we believe the appropriate discount to be applied in respect of the subject property is a discount of 15% from the rate per sq. metre in respect of properties in the George's Street Mall.

Accordingly, the Tribunal would apply a rate per sq. metre for Zone A of €80 (x 39.16 sq. metres) = €6,628.80. We would apply a rate per sq. metre of €340 for Zone B (being 50% of the Zone A figure as agreed) (x 10.87 sq. metres), giving a total of €3,695.80, making a total NAV of €30,324.60 (say €30,300).

DETERMINATION

The Appeal is allowed. The valuation will be reduced from €33,400 to €30,300.

And the Tribunal so determines.