

Appeal No. VA11/5/141

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

Abrakebabra Ltd. t/a Bagel Factory

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2178508, Kiosk at Level 2, Unit 19b, Dundrum Town Centre, Dundrum, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Frank O'Donnell - FRICS, B Agr Sc, MIREF

Member

Brian Larkin - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 18th day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €10,000 on the above described relevant property.

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

1. *"The valuation is excessive having regard to the passing rents in the centre."*

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 16th day of January, 2012. At the oral hearing the appellant was represented by Mr. Declan Bagnall, MRICS, MSCSI, of Bagnall + Associates. Mr. Dean Robinson, BSc (Hons) Surveying, appeared on behalf of the respondent, the Commissioner of Valuation.

2. Prior to the commencement of the oral hearing each valuer forwarded to the Tribunal and exchanged a précis of the evidence and argument that they proposed to present at the oral hearing. From the evidence so tendered and additional evidence received orally during the course of the hearing, the following facts material to and relevant to the determination were agreed or are so found.

The Dundrum Town Centre

3. By common consent Dundrum Town Centre is the most prestigious regional shopping centre development in Ireland. The Town Centre development is not merely a shopping centre but provides a range of other activities including a twelve screen cinema complex, the Mill Theatre, a Town Square around which is arranged a number of restaurants and several retail outlets, including “The Cottages”, which are old terraced houses converted and adapted to commercial use. There is also a public house and a petrol filling service station within the overall development, which also includes 3,400 car spaces at surface and within an enclosed multi-storey car park.
4. It is agreed that the Town Centre development is strategically located, within easy reach from all the long established south Dublin suburban areas of Ranelagh, Rathgar, Milltown, Dundrum, Terenure, Stillorgan, etc. It is also agreed that the Centre is well served by public transport, including the Luas Red Line which links the Centre to Dublin city centre. The Town Centre is also located close to junction 13 of the M50 orbital motorway which provides direct access to the national motorway system.
5. The main shopping element of the Town Centre development is within an enclosed shopping centre building which provides malls at three principal levels, all of which have the benefit of direct access to car parking levels. Internal vertical pedestrian movement within and around the Centre is provided by way of escalators, travelators, lifts and staircases. The shopping centre contains some 140 outlets of various sizes

and is anchored by the House of Frazer, Marks and Spencer, Penneys, Tesco and several other international and national major retailers. Harvey Nichols has a store without the main centre building, at its main entrance, overlooking the Town Centre square where there are a number of retail and food outlets, in an area which is known as the Pembroke District. Elsewhere in the development there is a sector known as Wickham Way, which provides a number of retail outlets accessed from the surface car parking level.

6. It is the commonly held view that Dundrum Town Centre has been designed, built and finished to uncommonly high standards and it provides a shopping centre at three principal mall levels. It is also agreed that the design of the Centre is such as to provide standard retail units of a size and configuration to meet the requirements of major international retailers and their customers. It is also common case that the range and quality of the anchor stores and other major retailers and the general tenant mix are such that the Town Centre is perceived by traders as being a well located centre with a widespread catchment area which includes a substantial number of households with higher than normal discretionary spend, and by virtue of its good transportation links.

The Property Concerned

7. The property concerned is a mall kiosk, trading as “The Bagel Factory,” situated on level 2, close to the entrance from the Red Car Park and adjacent to the A-Wear outlet and the Penneys store.

Accommodation

8. The accommodation measured on a net internal area basis has been agreed as follows:
Retail Kiosk – 84.50 sq. metres
Remote Store – 18.90 sq. metres

Tenure

9. The property concerned was originally occupied under a lease dated 31st March, 2005 for a term of 4 years and 9 months at an initial yearly rent of €159,625. In due course, the tenant was granted a new lease in December, 2009 for a term of 15 years at a yearly rent of €110,000 with provision for rent reviews at 5 yearly intervals.

According to Mr. Bagnall the rent included €9,000 per annum attributed to the remote store and the tenant was granted a rent free period of 3 months at the commencement of the new lease arrangement.

The Issue

10. The only issue in dispute is the quantum of the valuation of the property concerned, determined by the Commissioner of Valuation in the sum of €10,000, in accordance with Section 48 of the Valuation Act, 2001 at the specified valuation date of 30th September, 2005.

Summary of Evidence

(Mr. Declan Bagnall)

11. In his evidence, Mr. Bagnall contended that the net annual value of the property concerned, determined by the Commissioner was excessive and in the alternative put forward his opinion of net annual value as follows:

Kiosk –	84.50 sq. metres @ €1,600 per sq. metre =	€135,200
Remote store –	18.90 sq. metres @ €400 per sq. metre =	<u>€7,560</u>
Total		€142,760
Opinion of Net annual value is therefore €143,000		

12. In support of his opinion of net annual value, Mr. Bagnall included six comparisons (comparison 1 being the subject property), details of which are set out in Appendix 1 attached to this judgment. Mr. Bagnall said that, before arriving at his opinion of net annual value, he had analysed the rents being paid in respect of the five comparable properties, above referred to, in addition to the property concerned. As a result of this analysis, he had arrived at the following conclusions:

- *“There is a degree of consistency between the rents paid for the 3 main kiosks, on the 3 levels at the southern end of the scheme. BB’s and Bagel factory are both paying €160,000 from early 2005. In addition Yo! Sushi are paying an average rent of €172,000 pa from August 2007. These units are also relatively similar in size.*

- *Of these 3 kiosks mentioned above I would consider the Bagel Factory to be the best in terms of location. BB's has equally as good a profile but level 3 would not be considered as good a mall as level 2. With regard to Yo! Sushi although level 1 is considered the best of the 3 malls, this unit does not have the same profile. It is set back a little from the landing point of the escalators and does not have the same visibility from the mall as the other two.*
- *Butlers Chocolates NAV is €129,100 whereas the rent is €121,000 and the agreement for lease was signed in 2003. This unit was settled on appeal with the respective valuer and is not subject to a Tribunal Appeal.*
- *The December 2009 rent for Bagel Factory has still not reached the €2,400 psqm level applied by the Valuation Office. This new rent was agreed with a tenant who had no rights of renewal under the Landlord and Tenant (amendment) Act 1994. Similarly the unit was fully fitted for the user and was therefore a turnkey unit.*
- *The BB's letting in 2005 reflects a kiosk rate psqm of €1,271 psqm.*
- *The Yo!Sushi letting in 2007 reflects a kiosk rate psqm of €1,268 psqm.”*

13. Having carried out his analysis, Mr. Bagnall said that in his opinion, most weight should be given to the following transactions:

- The actual rent of €159,625 being paid for the subject property in March, 2005. (Breakdown – Kiosk €1,700 per sq. metre – Remote storage €400 per sq. metre)
- The actual rent being paid for the subject property from December, 2009. (Breakdown – Kiosk €2,379 per sq. metre – Remote storage €476 per sq. metre)
- The “BB's” letting in March, 2005 at a rent of €160,000 with a top-up turnover provision, which to date, had not yet been implemented. (Comparison No. 3)

- The Yo! Sushi letting in August, 2005 at an average yearly rent of €172,000. (Comparison No. 2) Breakdown – Kiosk €1,268 per sq. metre – Remote storage €476 per sq. metre.

14. Under examination Mr. Bagnall said he understood that the agreement for lease in relation to the subject property was first agreed in late 2004, at a time when the occupier would have no knowledge of what the footfall might be at this end of the mall. This lease provided for an initial yearly rent of €159,625. He agreed that the rent agreed in December 2009 of €10,000 per annum represented an uplift of approximately 33% over the 2005 rent. Mr. Bagnall also agreed that when the Yo! Sushi unit was first let in March 2005, the yearly rent had been €107,800 and that the 2007 lease agreement represented an uplift of approximately 60% based upon the average yearly rent of €172,000. He also agreed that mall level 3, on which the BB's unit is located, is by general consent considered to be inferior to mall level 2 on which the subject property is situated.

(Mr. Robinson's Evidence)

15. Mr. Robinson, in his evidence said that, in his opinion the net annual value of the property concerned, determined in accordance with Section 48 of the Valuation Act, 2001 at the specified valuation date of 30th September, 2005 was €10,000 calculated as follows:

Retail Kiosk – 84.50 sq. metres @ €2,400 per sq. metre = €202,800

External Store – 18.90 sq. metres @ €400 per sq. metre = €7,560

Net annual value, Say €10,000

In support of his opinion of net annual value, Mr. Robinson included two comparisons, details of which are included at Appendix 2 attached to this judgment.

16. Mr. Robinson said that there were several kiosk type units in the shopping centre at all three principal mall levels. Each kiosk, he said, was unique in configuration and tended to be located adjacent to escalators, travelators and lifts which greatly added to their trading potential, due to the level of footfall that these internal circulation points gave rise to.

17. Mr. Robinson said he had examined all the available rental evidence but found it difficult to identify a consistent level of values expressed in terms of rates per sq. metre. This, he said, was due to a variety of factors, including the size of the unit, its location and its proximity to the main anchor tenants. In the final analysis, he had come to the conclusion that the “BB’s” comparison was relevant in a number of respects – the valuation had been determined at Section 30 appeal stage and had not been further appealed to this Tribunal. This unit, he said, was somewhat similar in size and configuration to the property concerned. Furthermore, the BB’s unit was located immediately above the property concerned at the entrance from the Red Car Park on mall level 3, which is considered by all involved in rating practice as being inferior from a trading point of view to mall level 2, where the subject property is located.
18. Under cross-examination Mr. Robinson expressed the view that, the Butlers unit (Mr. Bagnall’s Comparison No. 6) was not a kiosk unit and to that extent was different to the property concerned. He acknowledged, however, that there was a close relationship between the rent of this unit, €121,000 and its NAV of €129,000, agreed at the Section 30 appeal stage. In response to further questions, Mr. Robinson said that, all the comparisons produced by Mr. Bagnall and himself were relevant to some extent and each had to be considered in the light of its size and location. In this regard, he said he had attached little weight to the 3G letting (Comparison No. 2) because he felt it was non typical by virtue of its size.

Findings

1. The Tribunal has carefully considered all the evidence, arguments and submissions adduced by the parties, including the contents of the various reports included in the appendices, introduced as part of the evidence put forward by the respondent.
2. From the evidence so tendered, it is common case that the Dundrum Town Centre is the premier regional shopping centre in this country. It is also common case that it is strategically located in Dundrum and within easy reach of the surrounding well established suburban areas of south Dublin and indeed Dublin City Centre. Dundrum

is well served by public transport, including the Luas Green Line and is located convenient to Junction 13 of the M50 orbital motorway.

3. The parties are also agreed that the Town Centre is more than solely a shopping centre and provides a host of other activities, including a twelve screen cinema complex, theatre, town square and an array of restaurants. On site parking for 3,400 cars are provided at surface and underground levels, all of which have direct access to the various shopping mall levels.
4. It is clear that the Town Centre has been built to a high standard of construction, specification and finish and the design is in accordance with prevailing international standards. The quality and layout of the Centre is manifest by the number of awards and accolades it has received from various professional and other representative bodies involved in retail and commercial property services activities.
5. The main shopping centre element of the complex provides retail activities at three main levels and provides about 140 retail outlets and is anchored by the House of Fraser, Marks and Spencer, Penneys, Tesco and several other major national and international traders. Harvey Nichols occupies a three storey building at the main entrance to level 1, overlooking the Town Square where there are a number of other retail and food based outlets. The covenant quality of the anchor stores and other major tenants are further testimony to the primacy of the location of the centre from a trading point of view.
6. The facts in relation to the subject unit are agreed. The parties are also agreed that, the unit is located within what they have identified as being, the prime retail area on the mall at level 2. Similar prime retail areas have been identified at mall levels 1 and 3. In this regard the various parties involved have agreed that, the determination of the Tribunal in this appeal shall form the basis of arriving at agreed assessments of a number of units at each level, which are the subject of appeals to this Tribunal under Section 34 of the Act.
7. Most of the units in the development have a common lease commencement date, i.e., 3rd March, 2005 – some seven months before the relevant Section 20 valuation date of

30th September, 2005. It is common case that all of the leases in question were entered into on foot of agreement for leases negotiated from 2002 onwards.

8. It is common case that, in general, retail rents increased on a year on year basis up until some time in late 2007 or early 2008, which is some six to seven years after the initial rents were agreed in Dundrum under the various agreements for lease. The respondent's contention is that the rents agreed at that time represented the then current rental levels and consequently were substantially below rental levels prevailing in September, 2005.
9. The Tribunal has carefully examined the details of all the comparisons introduced by both parties. By far most of the comparisons are in regard to the rents agreed some two to three years before the Centre first opened in March, 2005 and the relevant valuation date of 30th September, 2005. A number of the comparisons refer to agreements entered into in 2008 and 2009. The Tribunal attaches little weight to this type of evidence, other than that it supports a trend of increasing rental values from 2002 to 2009.

Conclusion

In relation to the subject property, the Tribunal agrees with Mr. Robinson's comments that, each unit is to some extent unique and that there is no consistent pattern of rental values. In the final analysis, this Tribunal attaches most weight to three items of evidence as set out below:

- The BB's valuation determined at Section 30 appeal stage.
- The actual rent(s) being paid in respect of the property concerned.
- The relationship between the passing rent and the net annual value of the Butlers unit which was agreed at Section 30 appeal stage.
- The Tribunal is not convinced that there is any discernible pattern of values in the rents of kiosks at various levels within the centre and to that extent concurs with Mr. Robinson's expressed opinion, that to some extent each individual kiosk is to some degree unique.

- Kiosks by their very nature are different to mall units and are also more reliant upon levels of footfall at the particular location on the mall in which they are situate.

Valuation

Having regard to the above conclusions, the Tribunal determines the net annual value of the property concerned as follows:

Kiosk –	84.50 sq. metres @	€2,000 per sq. metre =	€169,000
Remote Store –	18.90 sq. metres @	€400 per sq. metre =	<u>€7,560</u>
Total			€176,560

Net annual value, Say €176,000.

And the Tribunal so determines.