

Appeal No. VA11/5/144

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

Sushi Master Ltd. t/a Yo! Sushi

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2178480, Kiosk at Level 1, Unit 26a, 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 €16,000 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 rents in the centre."

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 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, 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, 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 kiosk type unit on mall level 1, at the entrance from the Red Car Park and directly opposite to the entrance to the Marks and Spencer store. At this point is one of the main banks of lifts, staircases and travelators which provide vertical access to all levels within the centre and the various car parking levels.

Accommodation

8. The accommodation, measured on a net internal area basis, in accordance with the code of measuring practice has been agreed as follows:

Kiosk Retail Area – 98.40 sq. metres

Remote Storage – 99.20 sq. metres

Tenure

9. The subject property was initially occupied under a short term arrangement from March, 2005 at a yearly rent of €107,800.
10. The kiosk is now occupied under a new lease from the 1st August, 2007 to 2nd March, 2030 subject to the following lease rental arrangement:
- Year 1: €130,000 per annum
 Year 2: €160,000 per annum
 Year 3, 4 & 5: €190,000 per annum
 Average rent equivalent to €172,000 per annum.
- At the end of the fifth year, the rent will be reviewed in accordance with the rent review provisions of the lease.

The Issue

11. The only issue in dispute is the quantum of the valuation determined by the Commissioner of Valuation, following an appeal to him under Section 30 of the Valuation Act 2001. Valuations are determined by the Commissioner in accordance with Section 48 of the Valuation Act, 2001 at the specified valuation date of 30th September, 2005 being €216,000.

Summary of Evidence

(Mr. Declan Bagnall)

12. In his evidence Mr. Bagnall contended that the net annual value of the property concerned, determined by the Commissioner of Valuation, in the sum of €216,000 was grossly excessive and in the alternative, he advanced his own opinion of net annual value in accordance with the statutory provisions as follows:

Kiosk –	98.40 sq. metres @ €1,100 per sq. metre =	€108,240
Remote Storage –	99.20 sq. metres @ €400 per sq. metre =	<u>€39,680</u>
Total		€147,920
Net annual value, Say		€148,000

13. In support of his opinion of net annual value, Mr. Bagnall introduced six comparisons (comparison 2 being the subject property) details of which are included in Appendix 1 attached to this judgment. Mr. Bagnall said that in arriving at his opinion of net

annual value, he had analysed the rents being paid in respect of his five comparisons above referred to in addition to the rent being paid for the subject property. 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.*
- *Generally speaking I would consider level 1 to be the best mall however the Yo Sushi location does not have the same profile as either Bagel Factory or BB’s Coffee and Muffins above it. It occupies a position at the side of the travellers as opposed to in front of it. This means that it doesn’t get the benefit of as much passing trade. Similarly it is located behind a column and a little set back from the main mall resulting in reduced visibility when walking down the mall.*
- *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 August 2007 letting represents a rate psqm of €1268 for the kiosk. Although the letting at this level would appear to suggest that the NAV should be more in line with Brambles and Butlers I do consider this a slightly better location, albeit that the unit is compromised.*
- *The BB’s letting in 2005 reflects a kiosk rate psqm of €1,271 psqm.*

14. Having regard to the analysis above mentioned, Mr. Bagnall said that in his opinion the most weight should be given to the following pieces of evidence:

- The actual rent being paid for the subject property from March 05 to August 07 (€107,860 per annum)

- The rent currently being paid for the subject unit from August 2007, which averages €172,000 per annum for the first five years of the term. The rent of €172,000 per annum devalues as follows:
Kiosk - €1,268 per sq. metre
Remote Storage - €476 per sq. metre
- The Bagel Factory (level 2 letting) in March 2005 – Breakdown: Kiosk €1,700 per sq. metre – Remote Storage €400 per sq. metre.
- “The Butler” Unit (level 1) the valuation of which was agreed at first appeal stage at €850 per sq. metre for the restaurant space. The rent in this regard was agreed in 2003 with effect from 3rd March, 2005. Rent payable €121,000 per annum – Net annual value agreed at €129,000. (Comparison No. 6)

15. Under examination Mr. Bagnall agreed that the rental agreed in August, 2007 represented an uplift of approximately 60% on the average rent payable over the five year term of €172,000 per annum. He also agreed that level 1, on which the subject property is located, is considered to be the best mall level for trading purposes.

(Mr. Dean Robinson)

16. 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, as at the specified valuation date of 30th September, 2005 was €16,000 calculated as follows:

Retail Kiosk – 98.40 sq. metres @ €1,800 per sq. metre =	€177,120
External Store – 99.20 sq. metres @ €400 per sq. metre =	<u>€39,680</u>
Total	€216,800
Net annual value, Say	€216,000

17. In support of his opinion of net annual value, Mr. Robinson introduced two comparisons, details of which are set out in Appendix 2 attached to this judgment.

18. Mr. Robinson said that there were several kiosk type units in the centre at all three levels. Each kiosk, he said, was unique in configuration and tended to be located convenient to travelators, escalators and lifts which greatly added to their trading potential due to the level of footfall generated by the internal customer services there provided.
19. Mr. Robinson said he had examined all the available rental evidence put forward and found it difficult to establish a consistent level of values. This, he said, was due to a number of factors including the size of the unit, its location and its proximity to the anchor stores and the travelators, escalators and lifts etc.
20. In the final analysis he had come to the conclusion that the BB's unit was particularly relevant in a number of respects – The valuation had been subject to a Section 30 appeal but had not been further referred to the Valuation Tribunal. This unit, he said, was similar in size to the property concerned and was in the same food category use. Furthermore, it was located on level 3 which by common consent was considered to be an inferior trading level to mall level 1 where the property concerned is located.
21. Under examination Mr. Robinson expressed the view that the “Butlers” unit, Mr. Bagnall's Comparison No. 6, was not a kiosk unit as such and to that extent was not a reliable comparison. He acknowledged however that there was a close relationship between the rent of this unit, i.e., €121,000 per annum and the net annual value of €129,000, agreed at Section 30 appeal stage. In response to further questions, Mr. Robinson said that all the comparisons introduced 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 had attached little weight to the 3G letting (Comparison No. 2) because of the fact that 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 kiosk is located within what they have identified as being, the prime retail area on the mall at level 1.

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 comment that each kiosk unit is to some extent unique and this is borne out by the rental evidence. In the final analysis, however, the Tribunal attaches most weight to these items of evidence.

- The BB's valuation determined at Section 30 appeal.
- The actual rents being paid in respect of the property concerned.
- The relationship between the rent and the NAV of the Butlers unit which was agreed at Section 30 appeal stage.

Having regard to the actual rent, the net annual value as determined by the Commissioner of Valuation is excessive. This opinion is confirmed by the fact that the valuation of the Butlers unit which is located in the middle of mall level 1 was agreed at €850 per sq.

metre. The Tribunal also notes that the BB's unit at level 3, which was subject to a Section 30 appeal was determined at €185,000, equivalent to a rate of €1,500 per sq. metre on the kiosk and €400 per sq. metre on the storage space. The rent payable in respect of this unit (BB's) being €160,000, which provides for a top-up turnover arrangement.

Having considered all the rental evidence, the Tribunal is of the opinion that the occupiers of kiosk units rely upon pedestrian flow to a much greater extent than shop tenants. To that extent, therefore, proximity to a principal anchor tenant and the lifts and escalators is of importance. In fact, all the lettings are one-off arrangements which are difficult to analyse in line with standard valuation practice techniques.

Determination

Having regard to the foregoing, the Tribunal determines the net annual value of the subject property as follows:

Kiosk –	98.40 sq. metres @ €1,500 per sq. metre =	€147,600
Remote Store –	99.20 sq. metres @ €400 per sq. metre =	<u>€39,680</u>
Total		€187,280

Net annual value, Say €187,000.

And the Tribunal so determines.