

Appeal No. VA11/5/172

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

Douglas & Kaldi

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2203161, Retail (Shops), at Unit 232, Level 2, Dundrum Town Centre, Sandyford Road, Dundrum, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Michael F Lyng - Valuer

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF FEBRUARY, 2012

By Notice of Appeal dated the 24th day of August, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €169,900 on the above described relevant property.

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

"Valuation excessive in view of open market rental value and in comparison with similar premises valued by Commissioner of Valuation. Premises located in inferior position in centre with no other units beside premises."

This 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 27th day of January, 2012. At the oral hearing the appellant was represented by Mr. Terry Devlin, BSc MSCSI, MRICS, of O'Donnell Property Consultants.

Ms. Triona McPartlan, BSc (Hons) Estate Management a Valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation.

In accordance with the rules of the Tribunal, each witness forwarded to the Tribunal and exchanged a written précis of the evidence and submission they proposed to adduce at the oral hearing by way of sworn testimony.

Material Facts

From the evidence contained in the written précis and additional information received at the oral hearing, the following facts material and relevant to the property, the subject matter of this appeal, were agreed or are so found.

The Dundrum Town Centre

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.

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.

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 Fraser, 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.

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 Subject Property

The subject property which is in café/restaurant use is located on mall level 2 at a focal point almost midway between the House of Fraser department store and the entrance from the 'Red' car park. At this point on the mall the main bank of lifts, escalators and stairways is located providing vertical access to all levels within the centre. Also at this location is to be found a customer service and information kiosk and access to customer toilets and other services including an ATM facility.

The property is located beside and behind the 'Monsoon' outlet. The somewhat narrow access opens out into an attractive curve shaped area with floor to ceiling glazing overlooking the Dundrum by-pass.

Accommodation

The accommodation measured on a NIA basis in accordance with the code of measuring practice is agreed to as follows:

Café/Restaurant 212.40 sq. metres.

Tenure

The subject property is occupied under the terms and conditions of a lease for a term of 25 years from April 2009 at an initial yearly rent of €120,000. In addition to rent the tenant is responsible for rates and other outgoings including a service charge whereby the tenant pays a proper proportion of the costs incurred by the landlord in providing a range of common services.

The Issue

It was agreed that the only issue in dispute is the quantum of the net annual value of the property concerned, to be determined in accordance with Section 48 of the Valuation Act, 2001, at the specified valuation date of 30th September, 2005

Summary of Evidence

(Mr. Terry Devlin)

Mr. Devlin said that in arriving at his opinion of NAV he had regard to a number of factors including the location of the property concerned on mall level 3 and to valuations of other premises in similar use within the centre and those overlooking the Town Square which were not located within the main shopping centre building.

Mr. Devlin said that the property concerned had been on the market since the centre first opened in March 2005 before being let at €120,000 per annum in April 2009. The fact that it took so long to let was a clear indication, Mr. Devlin said, that it was not a particularly suitable unit for a number of reasons such as narrow entrance, lack of profile onto the mall, irregular configuration, the excessive solar gain arising from its floor to ceiling windows and its proximity to the corridor leading to customer toilets and other facilities. Having regard to the above Mr. Devlin put forward his estimate of NAV as follows.

Café/ Restaurant 212.40 sq. metres @ €450 per sq. metre = €95,580

NAV say €95,500

In support of his opinion of NAV Mr. Devlin introduced six comparisons details of which are contained in Appendix 1 attached to this judgment.

Of all the comparisons he introduced Mr. Devlin said Comparison No. 1 (Butlers Chocolates) was the most relevant as the valuation of this unit had been agreed by a colleague of his at Section 30 appeal stage. This property, he said, was on mall level 1 which by common consent is considered a superior location to mall level 2 from a trading point of view. Furthermore, he said, the Butlers unit had a good profile onto the mall (which the subject property did not have) and was situated convenient to the lifts, escalators and stairways.

Mr. Devlin said the valuation of the 'Brambles' unit at mall level 2 was also relevant but since this valuation was the subject of an appeal to the Tribunal little weight could be attached to this assessment. Comparisons 3, 4 and 5 were, Mr. Devlin said, outside units overlooking the Town Square close to the main pedestrian entrance to the shopping centre at mall level 1. These three properties he said were in restaurant use and were relevant comparisons. Mr. Devlin said the Town Square units benefited greatly from footfall at the main entrance to the shopping centre and the nearby cinema block and the ability to trade at hours when the shopping centre was closed.

Under examination, Mr. Devlin agreed that the location of the property concerned beside the lifts, escalators and stairways was of benefit and gave rise to increased footfall at this section of the mall. He also agreed that upon reflection the presence of the customer service and information kiosk was also beneficial to the location as was the proximity of the customer toilets and other facilities. However any benefit of these was more than offset by the restricted entrance to the property concerned and its lack of profile onto the mall.

When questioned about his comparisons Mr. Devlin did not agree that his comparisons 3, 4 and 5 were of limited assistance. On the contrary Mr. Devlin said they were in the same use category as the property concerned and hence were relevant comparisons.

(Ms. McPartlan)

Ms. McPartlan in her evidence said that she was the nominated officer in the Valuation Office tasked to carry out the valuation of all the units in Dundrum Town Centre. In carrying out this exercise, Ms. McPartlan said she had examined and analysed all the available rental evidence within the centre. In this regard it was of some significance that the majority of rents were agreed between 2002 and 2004 when the main marketing campaign was under way, following the signing up of House of Fraser as the main anchor tenant in late 2001. Ms. McPartlan said that in her opinion, the rents agreed in the period 2002 and 2004 were representative of prevailing rental levels at that time and not an estimate of what they might be in September 2005, the specified valuation date for the purposes of the revaluation.

As a result of the analysis of all available rental evidence it was decided to value each unit in the centre individually in accordance with the following scheme:

“General Zone A levels applied throughout the centre

Level 1 – This level is classed as the most valuable level in the centre, good footfall and various entrances to The Town Square and cinema and main pedestrian entrance.

Main Zone A level on this floor - €3,800 ITZA (NAV)

Level 2 – This level is slightly inferior to level 1, does not have benefit of passing trade for the cinema, town square etc. Levels have been adjusted to reflect this fact. Zone A level applied to this floor - €3,600 ITZA (NAV)

Level 3 – This level is not as valuable as the other levels in the centre, however it benefits from Tesco also located here which ensures good footfall. The levels have been adjusted to reflect the location. Zone A level applied to this floor - €3,400 ITZA (NAV)

Please note: The levels quoted above are for standard mall zoned units, the zone A level has been adjusted downward in some cases to take into account the nature of the unit and its location. [...]”

Ms. McPartlan said the analysis of rental evidence indicated that there was a stretch on each mall which was the “prime area” and, in recognition of this, lower Zone A rates per sq. metre

were used when valuing units outside this prime area. This policy, Ms. McPartlan said, had been accepted by rating consultants acting for the majority of tenants within the centre.

When it came to valuing each retail unit, regard was had to the “Zoning Guidance Note – 2009” issued by the Society of Chartered Surveyors, a copy of which was made available to the Tribunal. In accordance with the Guidance Note, allowance had been made in valuing those units which were non-typical in configuration and other respects, as referred to in the Guidance Note.

Having regard to the overall analysis of available rental evidence, Ms. McPartlan determined the net annual value of the subject property as set out below:

Shop 212.40 sq. metres @ €800 per sq. metre = €169,920
NAV say €169,900

In support of her opinion of NAV Ms. McPartlan introduced three comparisons details of which are set out in Appendix 2 attached to this judgment.

Ms. McPartlan said she considered the valuations of other properties within the shopping centre proper which were in café/restaurant use to be the most relevant comparisons. In this regard it was her opinion that the most relevant comparison was the ‘Butlers’ unit (comparison No. 2) inasmuch as its valuation had been agreed at Section 30 appeal stage with a colleague of Mr. Devlin. This property, she said, was situated in a similar location to that occupied by the property concerned. Ms McPartlan said the valuation of other restaurants in the Town Square area were of limited assistance because of their location which meant that they were, to a degree, catering for a different segment of the market.

Under examination by Mr. Devlin, Ms. McPartlan agreed that the profile of the property concerned onto the mall was poor. However, she said the property was strategically located beside the lifts, escalators and stairways, the customer information kiosk, customer toilets and other facilities and that this more than compensated for its lack of profile. Ms. McPartlan agreed that the property concerned operated as a restaurant where as her comparisons were more in the nature of kiosks which provided a mainly ‘take-away’ service.

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 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 is 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, 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 is 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 also agreed that the property concerned had poor frontage onto the mall and was located behind the 'Monsoon' unit overlooking the Dundrum by-pass.
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. The Tribunal agrees with Ms. McPartlan that the best comparisons are other units within the centre in similar café/restaurant use. Little or any weight can be attached to evidence in relation to outside units overlooking the Town Square, such as Mr. Devlin's comparisons 3, 4 and 5.
9. Of all the comparisons introduced, the Tribunal attaches most weight to the 'Butlers' unit (a common comparison), the valuation of which was agreed at Section 30 appeal stage by a colleague of Mr. Devlin. This unit is located on mall level 1 convenient to the lifts, escalators and stairways which give access to all mall levels within the centre. Ms. McPartlan's comparison No. 3 is also of assistance inasmuch as it is located on the same concourse area as the property concerned at mall level 2. The value of this unit was valued at Section 30 appeal stage at €900 per sq. metre for an area of 136.22 sq. metres. This valuation is the subject of a Section 34 appeal to this Tribunal.
10. It is common case that the property concerned has a poor profile and limited frontage onto the mall. In the Tribunal's opinion any disadvantages occasioned by these factors are more than offset by its location on the mall where the main banks of lifts, escalators and stairways are situated. An added beneficial feature is the location of the Customer Service and Information Kiosk at this point together with the access to the customer toilets, ATM and other services.

Determination

Having regard to the foregoing the Tribunal determines the NAV of the property concerned as follows:

Café/restaurant 212.40 sq. metres @ €675 per sq. metre = €143,370

NAV say €143,000

And the Tribunal so determines.