Appeal No. VA11/5/179

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Aurora Fashion Services Ltd. t/a Coast **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2178462, Retail (Shops) at Unit 107, Dundrum Town Centre, Dundrum, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS **Deputy Chairperson**

Brian Larkin - Barrister **Member**

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

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

By Notice of Appeal dated 25th August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €329,000 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:
"The valuation is excessive."

1. 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 5th day of December, 2011 and on the 9th day of December, 2011. At the oral hearing the appellant was represented by Mr. John Algar, BSc Property Valuation and Management, of Bardon & Co. Rating Consultants and Valuers. Mr. Declan Bagnall, MRICS, MSCSI, of Bagnall + Associates was in attendance but was not called upon to give evidence.

2. Ms. Triona McPartlan, BSc (Hons) Estate Management a Valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation. Mr. Pat Kyne, MSc (Planning & Development), BE, MRICS, MSCSI, a Team Leader in the Valuation Office, with specific responsibility in the national revaluation project for the valuation of large department stores/supermarkets and other retail properties, gave evidence in relation to the Dundrum Town Centre development in the context of other large regional, district and neighbourhood shopping centres in the greater Dublin area.

3. 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

4. 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 Issue

5. 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. At the commencement of the hearing, Mr. Algar and Ms. McPartlan advised the Tribunal that this appeal was in the nature of being a test case and that the determination of the Tribunal would form the basis for the agreement in relation to some fifty other appeals currently referred to the Tribunal for determination. In this regard, the

Tribunal was advised that the parties involved in these appeals had in place a scheme of valuation for which the determination of the Tribunal in this appeal would form the template.

The Dundrum Town Centre

6. 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.

7. 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.

8. 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.

9. 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

10. The subject property is a typical mall unit on level 1, in that stretch which the parties have identified as being the prime area at this level. The subject property which is known as Unit 107, is regular in configuration and is located opposite to the House of Frazer and convenient to the main pedestrian entrance to the Square. Other traders close-by include Gerry Weber and Hugo Boss.

Accommodation

11. The agreed accommodation measured on a net internal area basis in accordance with the code of measuring practice and zoned for rating valuation purposes is as set out below:

    Zone A – 44.96 sq. metres
    Zone B – 44.96 sq. metres
    Zone C – 44.96 sq. metres
    Zone D – 63.21 sq. metres
    Mall frontage – 7.4 metres
    ITZA – 94.48 sq. metres
    Overall area 198.09 sq. metres

Tenure

12. The property is occupied under a Full Repairing and Insuring lease, for a term of 25 years from 3rd March, 2005 at an initial yearly rent of €210,000. *Inter alia* the lease provides for rent reviews at the end of each five year period and the first such review was due in March 2010. The lease was entered into by way of an agreement for a lease dated 25th August, 2003. The 2010 rent review was concluded by way of a reference to arbitration, as a result of which the initial yearly rent was increased to €324,850 – equivalent to a Zone A rate of €3,650 per sq. metre and an uplift of 54.70%.

Summary of Evidence

(Mr. Patrick Kyne)

13. Mr. Kyne in his evidence gave a comprehensive overview of the growth of regional shopping centres and other large shopping centres which had taken place in the greater Dublin area over the past twenty years or so. These centres – including four which could be classified as being regional shopping centres are located in necklace fashion around the M50 motorway.

14. Dundrum Town Centre, Mr Kyne said, is the largest regional shopping centre in the Dublin area and first opened for business in March 2005. In total, he said, the centre provides some 88,500 sq. metres of retail space making it by far the largest, the next biggest being Blanchardstown with a retail space of circa 59,300 sq. metres. By comparison with the other three regional shopping centres in the greater Dublin area, Dundrum had the strongest retail mix, covenant strength and anchor tenants including, House of Fraser, Marks and Spencer, Tesco. Penneys and Harvey Nichols.

Rental Evidence

15. Mr. Kyne said that as part of the revaluation, the Valuation Office had examined and analysed all the available rental evidence within the centre in order to arrive at the proper net annual value of each unit in accordance with Section 48 of the Act. However in the light of the fact that practically all the units were occupied when the centre opened in March, 2005 there was little evidence of actual 2005 lettings. The fact was that, virtually all the lettings had been agreed between 2002 and 2004 at a

time when retail rental levels generally speaking were rising. In the absence of 2005 letting evidence, Mr. Kyne said it was reasonable in such circumstances to have regard to rental levels in other regional shopping centres in the Dublin area. Such an approach, Mr. Kyne said, was in accord with the findings of this Tribunal in the appeal **VA08/5/125 - Marks and Spencer (Ireland) Ltd.** wherein the Tribunal said as follows:

"we are of the opinion that it is appropriate for the appellant to introduce market rental evidence of properties situated in an adjoining rating authority area, having regard to the size and mode of use of the property concerned."

16. Mr. Kyne included the following summary of rental levels in his written précis.

Shopping Centre	Retail Category	No. of units	Retail Area sqm	Prime Zone A Revaluation Rate	Year Opened	Car Spaces	Comments
Dundrum TC	Regional SC	140	85,300	€3,800 (VT Appeal)	2005	3400	Subject Property
Liffey Valley TC	Regional SC	97	46,100	€4,000	1998	3500	Small no of units
Blanchardstown TC	Regional SC	150	59,300	€3,000	1996	3250 (7000)	
The Square TC	Regional SC	190	46,200	€2,200	1990	2395	Dated Centre
The Pavilion SC	District SC	80	43,500	€2,100	2001	1676	District Centre

17. Mr. Kyne said that, in general, retail rental values increased up to 2008 and since then have fallen sharply due to continuing adverse economic circumstances. However, Mr. Kyne said that in his opinion, rental levels in the Dundrum Town Centre had "bucked" this trend and this, he said, was borne out by the fact that rents subject to review in 2010 were increased on average by 40% since the rents were originally agreed some 7/8 years before 2010. In his opinion rents in the Centre missed the unsustainable increases that had taken place between 2005 and 2008 but had shown a steady year on year increase. From his analysis of the reviewed rents, it

would appear that they had been determined at arbitration at indicative Zone A €3,650 to Zone A €3,850 per sq. metre.

Mr. John Algar

18. Mr. Algar in his evidence said that in arriving at his opinion of net annual value of the property concerned, he had particular regard to the actual rent being paid and to the rents being paid for units nearby. In this regard, Mr. Algar emphasised that the majority of rents in relation to standard mall units had been agreed between 2002 and 2004. Furthermore, he said, most tenants were granted rent free periods which varied in length from two to four months and up to nine months plus for the larger units and anchor stores. In any event, he had found it difficult to obtain precise details of rent free periods and other inducements due to confidentiality agreements so that, for the sake of uniformity, he had carried out his analysis of rental evidence on the basis of what is known as the "headline rents." Having carried out this analysis, Mr. Algar provided in his written précis the schedules of rents in respect of all three malls as set out below:

Schedule of Zone A Rental Analysis – Level 1

Level 1	**2002**	**2003**	**2004**	**2005**	**2006**
BT2	€2,099				
Lifestyle Sports	€2,428				
Clarks	€2,288				
Pamela Scott	€2,618				
Fitzpatricks	€2,378				
Weir & Sons	€2,263				
River Island		€2,233			
Best Menswear		€2,735			
Card Company		€2,326			
Ernst Jones		€2,237			
Coast		€2,426			
East		€2,506			
La Senza		€2,245			
Massimo Dutti			€2,714		
Furla			€1,768		
Molton Brown			€2,136		
Office Shoes			€2,958		
Average	**€2,345.67**	**€2,386.86**	**€2,393.89**		

Schedule of Zone A Rental Analysis – Level 2 (See overleaf)

Level 2	**2002**	**2003**	**2004**	**2005**	**2006**
Schuh	€2,412				
Awear	€2,564				
French Connection	€2,332				
Pull & Bear	€2,485				
Fields	€2,689				
Cassidy Travel	€1,863				
Dune		€2,271			
Jane Norman (former)		€3,652			
Tommy Hilfiger		€2,223			
Oasis		€2,319			
Club Denim		€2,398			
Warehouse (former)		€2,559			
Karen Millen		€2,532			
Jack & Jones		€2,214			
Champion Sports			€2,645		
Starbucks				€2,416	
Faith Shoes				€3,415	
Paul Sheeran				€2,755	
Sisley					€3,854
Average	**€2,390.63**	**€2,520.90**	**€2,645**	**€2,862**	**€3,854**

Schedule of Zone A Rental Analysis – Level 3

Level 3	**2002**	**2003**	**2004**	**2005**	**2006**
Easons	€2,226				
McCabes	€2,336				
Mamas & Papas	€1,826				
Vodafone			€2,653		
3G (former)			€2,658		
Art & Hobby			€2,249		
Claires Accessories			€2,416		
Build a Bear				€3,615	
Du Pareil au Meme					€2,677
Average	**€2,129.33**		**€2,494**	**€3,615**	**€2,677**

19. In regard to the foregoing schedules, Mr. Algar made the following comments:

Level 1

- No rental evidence for years 2005 and 2006.
- No adjustments made for rent free periods.
- No "Turnover" rents included.
- Average Zone A rate for 2004 distorted by "Furla" letting.
- If "Furla" letting is omitted, average Zone A rate per sq. metre is increased from €2,394 to €2,602.
- Level 1 is superior to levels 2 and 3.

Level 2

- Analysis shows strong uplift from 2002 to 2006.
- No adjustments made for rent free periods.
- No "Turnover" rents included.
- 2004 average distorted by "Faith Shoes" letting.
- If "Faith Shoes" letting is excluded, average Zone A rate per sq. metre falls from €2,862 to €2,582.
- Level 2 inferior to level 1 but superior to level 3.

Level 3

- No evidence for 2003.
- No adjustments made for rent free periods.
- No "Turnover" rents included.
- "Build a Bear" unit is a non typical unit and hence lesser weight should be attached to it.
- "Du Pareil au Meme" letting in 2006 shows that the "Build a Bear" letting is not a reliable comparison.
- Level 3 inferior to Levels 1 and 2.

Valuation

20. Mr. Algar said that, having regard to his analysis of available rental evidence, his opinion of the net annual value of the subject property in accordance with Section

48 of the Act, at the specified valuation date of 30th September 2005, was as set out below:

Zone A – 44.96 sq. metres @ €2,800 per sq. metre =	€125,888
Zone B – 44.96 sq. metres @ €1,400 per sq. metre =	€62,944
Zone C – 44.96 sq. metres @ €700 per sq. metre =	€31,472
Remainder – 63.21 sq. metres @ €350 per sq. metre =	€22,124
Total	€242,428

Net annual value, Say €242,000

Note- (Actual rent - €210,000 – Agreed 2003)

In support of his opinion of net annual value, Mr. Algar introduced eight comparisons, details of which are contained in Appendix 1 attached to this judgment.

In his précis Mr. Algar included a comprehensive analysis of 57 lettings in the Centre, at all three mall levels, a copy of which is contained in Appendix 2 attached to this judgment.

Cross-Examination

21. Under rigorous examination by Ms. McPartlan, Mr. Algar agreed that he was aware of the details of the lettings in relation to the seven comparisons put forward by her in her written précis. In this regard Mr. Algar said, he was of the opinion that Ms. McPartlan's comparisons did not give the full picture but to a degree reflected rents at the upper level of the range of rents at each level. In his opinion, all rental evidence was of equal relevance and in any event, all of Ms. McPartlan's comparisons were included in his schedule which referred to 57 lettings in the Centre. (See Appendix 2)

22. In response to a question from Ms. McPartlan, Mr. Algar agreed that each mall level had to some extent its own tone and agreed with the Valuation Office analysis in this regard. Whilst he agreed with the differentials in values in terms of Zone A, he didn't accept that the appropriate Zone A levels be €3,800 per sq. metre, €3,600 per sq. metre and €3,400 per sq. metre, as proposed by the Valuation Office in regard to those units in the prime stretch on levels 1, 2 and 3 respectively.

Ms. McPartlan

23. 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 the 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 the 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.

24. 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."*

25. 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.

26. 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.

Valuation

27. 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:

Zone A – 44.96 sq. metres @ €3,800 per sq. metre	= €170,848
Zone B – 44.96 sq. metres @ €1,900 per sq. metre	= € 85,424
Zone C – 44.96 sq. metres @ €950 per sq. metre	= € 42,712
Remainder – 63.21 sq. metres @ €475 per sq. metre	= €30,024
Total	€329,008
Net annual value, Say	€329,000

Note: The initial yearly rent was agreed at a Zone A equivalent of €2,425 per sq. metre. At the first rent review in 2010, the rent was determined at arbitration at a Zone A equivalent of €3,650 – i.e. an uplift of 54.7% based upon an ITZA of 89 sq. metres.

In support of her opinion of net annual value, Ms. McPartlan introduced seven comparisons, details of which are contained in Appendix 3 attached to this judgment.

Cross-Examination

28. Under examination Ms. McPartlan agreed that, it was not unreasonable to say that most lettings were below her proposed Zone A levels of €3,800, €3,600 and €3,400 per sq. metre which she said were based on an overall analysis of all available rental

evidence. In this regard, she considered her Comparison No. 1 (Gerry Weber) and Comparison No. 7 (Build a Bear) to be strong and highly relevant comparisons. In her opinion, Ms. McPartlan said, nobody – including the landlord and its advisors – could forecast in 2002 and 2003 with any degree of certainty what rental levels might be in September, 2005.

29. When questioned about rental growth in general in relation to retail property, Ms. McPartlan said that, in her opinion, rental levels had peaked in late 2007. In regard to Dundrum Town Centre, she said rents had increased by about 15% between 2005 and 2006 and since then had levelled out, but nonetheless had continued to rise in sharp contrast to what was happening in the market generally.

30. Ms. McPartlan, in her précis, included a copy of a letter from Bannon Commercial to the Chairman of the Valuation Office dated 18th July 2006 in relation to Dundrum Town Centre and when asked about its relevance in this appeal, Ms. McPartlan said that it showed that Zone A rents of €3,300, being then attained on the Red Mall (Blanchardstown), were *"relatively similar to that being achieved in Dundrum Town Centre."* This opinion expressed by the letting agents for Dundrum Town Centre was a clear indication of what was happening in the Centre and supported her opinion of net annual value.

31. When questioned about the "Build a Bear" letting, Ms. McPartlan agreed that it was non typical in configuration. Nonetheless, it was she said, a 2005 letting of a unit on level 3 which by common consent attracted a lower Zone A rate per sq. metre than units on levels 1 and 2.

32. Ms. McPartlan, in her précis, included a large number of extracts from the national press in relation to the progress of the Dundrum Town Centre development and when asked about its relevance, Ms. McPartlan said the extracts give an overall view of its standing in the greater Dublin retail sector and confirmed its position as a prime location for major stores and retailers. In similar vein, Ms. McPartlan said it was important to include in her précis the 2009 Retail Excellence Ireland Annual Shopping Centre Review and to list the numerous awards gained by the developers of the Dundrum Town Centre. All of this documentation, Ms. McPartlan said,

showed clearly the quality of the Centre and how it was perceived by retailers and customers.

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 1. Similar prime retail areas have been identified at mall levels 2 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. The agreement for lease in relation to the subject property was signed on the 25th August, 2003. *Inter alia* the agreement provided that the lease term would be for a period of 25 years at an initial yearly rent of €210,000, equivalent to a Zone A rate per sq. metre of €2,425. In accordance with the rent review provisions of the lease, the rent for the second 5 year period commencing on the 5th March, 2010 was determined at arbitration at €324,850 per annum. The arbitrator’s award was determined on the basis of a Zone A rate per sq. metre of €3,650 and represents an uplift of 54.7% on the initial yearly rent based upon an ITZA of 89 sq. metres.

9. It would appear from the above that, the area of the subject property expressed in terms of ITZA for the purposes of the arbitration was 89 sq. metres, compared to 86.58 sq. metres, as put forward by the parties at the oral hearing. In any event, nothing turns on this minor discrepancy in the area.

10. As a general rule it would appear that, most agreements for lease in respect of mall units provided for a rent free period of some 3/4 months. Mr. Algar, in his evidence said that, in analysing rental information for comparison purposes, that *“for the sake of uniformity*…(he) *had not taken the rent free periods into account when analysing*

the rents." Ms. McPartlan, in her evidence said, it was not the policy of the Valuation Office to have regard to rent free periods of less than six months duration when analysing rents for comparison purposes. That said however, her analysis of rents in relation to her comparisons did contain an adjustment for the rent free amount spread over ten years.

11. 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. Mr. Bardon, in his evidence said that, he had analysed the rents on a Zone A rate per sq. metre basis in respect of level 1 in the years 2002, 2003 and 2004 and extrapolated the analysed figures thus calculated, in order to arrive at his estimate of the appropriate Zone A rate per sq. metre of €2,800 as at 30th September, 2005 compared to Ms. McPartlan's estimate of Zone A rate per sq. metre of €3,800.

12. 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 respondent's 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.

13. No evidence of agreements in relation to units on level 1 was introduced by either party at or about the relevant valuation date. However, the respondent's comparisons, 5, 6 & 7 refer to lettings at level 2 and 3, which by common consent are less valuable in terms of rental value than those at level 1.

14. The respondent, following an analysis of all the available rental evidence, arrived at the conclusion that units located on the prime area of each mall should be valued as follows:

Level 1: Zone A: Rate per sq. metre - €3,800

Level 2: Zone A: Rate per sq. metre - €3,600

Level 3: Zone A: Rate per sq. metre - €3,400

The appellant did not make any comment on the differentials as set out above, but indicated that this matter had been dealt with amongst others matters in the discussions which culminated in the agreement that, this appeal be in the nature of a test case for a number of other identified units on levels 1, 2 & three.

15. The procurement of a development of the scale and nature of Dundrum Town Centre takes several years from initiation to completion. Crucial to the development process at all stages is the availability of finance, the nature of which will change as the development nears completion. At this stage the developer will wish to have in place long term funding. The level of funding will depend upon a number of factors, but in relation to a development of the nature and scale of the Dundrum Town Centre, the location, covenant strength of the anchor and other major tenants will be of significant importance. Most of all, it will be the rent roll – either agreed or potential with particular emphasis on the former. Since the level of long term funding is a function of the rent roll, it is in the developer’s interest that this be reliably quantified as early as possible. This will be achieved by the identification of the anchor tenants and other major occupiers, thus ensuring their participation and support to the scheme by way of entering into agreements for lease. In times (such as those as prevailed during the time when the Dundrum Town Centre was being developed) of strong demand, rising rents and capital values, the developer will attempt during the course of negotiations to agree rents that reflect not merely prevailing rental values, but include to some extent a “best guess” as to what might be achievable on the market at the planned for date of the centre opening.

Conclusion

16. The valuation of all retail units in a major shopping centre is a daunting task when the valuer has a reliable body of rental evidence within the centre concerned. In a situation, such as faced by both valuers in this appeal, where the main body of evidence is based upon transactions entered into some years before the centre first

opened for business in March 2005 and the specified valuation date of 30th September 2005, the task is rendered even more difficult. Given the fact that both valuers in this appeal were using a common source of letting evidence, it is on the face of it surprising that they arrived at markedly different Zone A rates to be applied to those units occupying a prime pitch on the mall at level 1. However, it has to be borne in mind that prevailing retail rental levels during the period 2002 to 2009 were increasing, so that each valuer had to form an opinion as to how much rental levels in the Dundrum Centre had moved since they were agreed in 2002, 2003 and 2004 up to the specified valuation date of 30th September, 2005. In the circumstances, it is not altogether surprising that the valuers arrived at different conclusions, particularly since there is a difference of opinion as to whether or not the rents agreed between 2002 and 2004 were at prevailing levels or were “target rents” determined by the landlord.

17. Finally, it has to be said that the three witnesses at this hearing provided to the Tribunal comprehensive and well prepared précis of evidence and presented their respective opinions in a manner consistent with the tenets of good professional practice.

18. In the context of this appeal, the Tribunal has come to the conclusion that the rents agreed in 2002/2003 do not necessarily represent the then prevailing current rental values. By the same token they are not 2005 rents, as no-one in 2002/2003 could predict with any degree of accuracy the unusually high rental growth in retail rents that occurred in the period 2002 to the valuation date or end of the year 2005. Having regard to all the evidence introduced, the Tribunal has come to the conclusion that Mr. Algar’s estimate of net annual value in regard to the property concerned, based on a Zone A rate per sq. metre of €2,800 and on the basis of his analysis of rents agreed in negotiations in 2002, 2003 and 2004 is low. Equally so, the Tribunal has come to the view that the respondent has had an over-reliance upon transactions which took place after the relevant valuation date (including rent review evidence). Accordingly, therefore, the Tribunal determines the net annual value of the property concerned to be as set out below:

Valuation

Zone A – 44.96 sq. metres @ €3,200 per sq. metre =	€143,872
Zone B – 44.96 sq. metres @ €1,600 per sq. metre =	€71,936
Zone C – 44.96 sq. metres @ €800 per sq. metre =	€35,968
Zone D – 63.21 sq. metres @ €400 per sq. metre =	€25,284
Total	€277,060

Net annual value, Say €277,000

And the Tribunal so determines.