Appeal No. VA11/5/187

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

A-Wear Limited t/a A-Wear **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2178509, Retail (Shops) at Unit 222, Dundrum Town Centre, Dundrum, County Dublin.

B E F O R E

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

Brian Larkin - Barrister **Member**

Patrick Riney - FSCSI, FRICS, ACI Arb **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 26th day of August, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €610,000 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:
" We are not in agreement with the base rent applied. We are not in agreement with the 10% loading which has been applied to the property to reflect the deep nature of the unit."

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 of January, 2012. At the oral hearing the appellant was represented by Ms. George Saurin, BSc Surv, MRICS, MRCSI, Associate Director of Colliers International.

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.

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 Green 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 Wyckham 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 is a mall unit at levels 2 & 2M immediately adjoining the Penneys store and adjacent to the entrance from the red car park in that section of the mall which both valuers have agreed as being the prime section of the mall at this level. The unit is regular in configuration but with a split/angled shop front and is used for the sale of ladies fashion. The front section of the unit (10.2 metres in dept) has a double ceiling height of 4.93 metres and the remainder of the unit which includes the fitting rooms has a reduced ceiling height of 2.7

metres being immediately under the mezzanine area. The mezzanine space is accessed from the retailing area by means of a metal staircase and is used as a stock room, staff accommodation and offices. The overall dept of the unit is circa 50.2 metres which represents a frontage dept ratio of slightly over 1:5.

Accommodation

The accommodation measured on an NIA basis in accordance with the code of measuring practice has been agreed as follows.

Retail Zone A 54.02 sq. metres

Retail Zone B 61.98 sq. metres

Retail Zone C 51.98 sq. metres

Retail Zone D 330.17 sq. metres

Total Ground Floor area 508.15 sq. metres

Mezzanine Space 233.92 sq. metres

Fromtage circa 10.15 sq. metres

ITZA 141.78 sq. metres

Tenure

The property is occupied under the terms and conditions of a lease dated the 23rd of March, 2005 for a term of 25 years on the 3rd of March, 2005 at an initial yearly rent of €394,255. Inter alia the lease provides for upward only rent reviews at 5 yearly intervals and in addition to rent the tenant is responsible for rates and all usual outgoings including a service charge whereby the tenant is responsible for the payment of the proper proportion of cost incurred by the landlord in providing a range of common services.

At the commencement of the lease the tenant was granted a rent free period of 5 months and 2 weeks. In accordance with the rent review provisions of the lease the rent was reviewed with effect from the 1st January, 2010 and was determined following a reference to arbitration at €520,250 per annum representing an uplift of approximately 35% over the initial rent of €394,255. According to Mr. Saurin the arbitrator made his award on the basis of zone A €3,650 per sq. metre and €275 per sq. metre on the mezzanine space.

The Issue

The parties are agreed that the only issue in dispute is the quantum of 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 the 30th of September, 2005.

Rating History

The Net Annual Value of the property concerned was initially determined at €614,000 and following the representations stage the Net Annual Value was amended to €610,000 at which stage the area of the mezzanine space was agreed to be 233.92 sq. metres. No change was made following an appeal lodged under Section 30 of the Valuation Act, 2001 and it is against this decision made by the Commissioner of Valuation that the appeal to this Tribunal lies.

Summary of Evidence

(Mr. George Saurin)

Mr. George Saurin in his evidence put forward his opinion of Net Annual Value in accordance with the statutory provisions as set out below:

Description	**Sq. metre**	**€ per sq. metre**	**Annual Rent**
Zone A	54.02	2,800	€151,256.00
Zone B	61.98	1,400	€86,772.00
Zone C	61.98	700.00	€43,386.00
Remainder	330.17	350.00	€115,559.50
Mezzanine	233.92	210.00	€49,123.20
Total			€446,096.70
Say			**€446,000**

Mr. Saurin said that in arriving at his opinion of Net Annual Value he had regard to all of the available rental evidence contained in the schedule forming part of his précis. A copy of the schedule can be found in Appendix 1 attached to this judgment. Mr. Saurin went on to say that the information contained in this schedule was in respect of a number of units of different sizes and configurations at all three mall levels. In the circumstances he had selected a number of units at mall levels 1 & 2 which he considered to be of particular relevance in the terms of location size and other physical attributes to the property concerned. Details of these units are contained in Appendix 2 attached to this judgment.

Mr. Saurin said that the arbitrator, in arriving at his award in respect of the 2010 rent review, valued the property at a zone rate of €3,650 per sq. metre. From the Zone A rates so determined the arbitrator, he made a downward allowance of 15% - 10% for the location of the subject property on the mall and a further 5% for the split angle shop front, structural columns within the units and the adverse effect on profile due to the proximity of kiosks immediately outside the property concernd and other factors.

Mr. Saurin said that having examined all the rental evidence available he could not understand how the respondent had arrived at an opinion that Zone A €3,600 per sq. metre be appropriate for the property concerned having regard to its location on mall level 2. Furthermore he contended some allowance must be given for the adverse effect of the split /angled frontage on three counts: firstly, the frontage restricts the size and nature of the occupiers signage; secondly, it restricts the methods by which the occupier can display the merchandise; and thirdly, the profile of the shop on this section of the mall is lessened and obscured.

Mr. Saurin said that he fundamentally disagreed with the 10% end allowance made by the respondent in respect of the large Zone D area as no such allowance he said was provided for in the zoning guidelines.

Under examination Mr. Saurin agreed that all the units in the prime area on mall level 2 had been valued at Zone A €3,600 per sq. metre, but said that obviously he considered this to be excessive. In relation to the zoning guidance note Ms. McPartlan asked Mr. Saurin if it provided that when valuing "particularly deep unit with frontage to dept ratio in excess of 1 to 4 could be loaded by up to +/- 10%". Mr. Saurin replied that the 10% figure was a maximum and was there for guideline purposes only and it was up the valuers concerned to use their own judgment in all instances where the 1 to 4 ratio was exceeded.

Ms. McPartlan asked Mr. Saurin if the SCS/IPD index referred to in his submission was specific to the Dundrum Town Centre to which Mr. Saurin said it was not. Nonetheless he said it was a useful tool in that it gave an over arching view of capital and rental growth patterns in relation to all sectors of the property market including the retail sector over a period of years. He agreed that the index was based upon a basket of prime properties but said that the Dundrum Town Centre fell into the category. In any event given that rents of most units within the centre had been agreed between 2002 and 2004 it was, in his opinion useful to look at the SCS/IPD Index in order to establish what was happening in the market place at that time.

When asked if he had not overstated the drawbacks (if any) caused by the split angled frontage Mr. Saurin said he had not and said that his opinion in this regard had been borne out by the references to it contained in the arbitrators award. Mr. Saurin said that the location of the kiosks in the centre of the mall immediately opposite to the entrance to the subject property reduced its profile when looking down the mall from the House of Fraser entrance. The profile and poor signage issue was he said exacerbated by the fact that the mall width between the kiosk and the subject property was particularly narrow.

(Ms. Triona 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 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.

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.

Valuation

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:

Block	**Level**	**Use**	**Comments**	**Sq. metres**	**€ per sq. metre**	**NAV €**
	0	Retail Zone A		54.02	3,600	194,472.00
1	0	Retail Zone B		61.98	1,800	111,564.00
1	0	Retail Zone C		61.98	900	55,782.00
1	0	Retail Zone Remainder		330.17	450	148,576.50

1	0	Shop	Total zoned area 508.15	0.00	0.00	0.00
1	Mezz	Store		233.92	210	49,123.20
	0	Shop	Plus 10% Large Zone D	0.00	0.00	51,039.40
Total						610,557.10
Say €610,000						

In support of her opinion of Net Annual Value Ms. McPartlan introduced seven comparisons details of which are contain in Appendix 3 to this judgment.

Cross-examination

When asked by Mr. Saurin if any allowance had been made by the respondent in valuing Unit 14 (Fatface) located immediately opposite to the property concerned Ms McPartlan said that a downward allowance of 5% had been made for its angled frontage. However Ms. McPartlan said that regard had to be had to the fact the unit 14 had a much narrower frontage than the property concerned and this was a factor taken into account when making the allowance.

When asked if any of her comparisons were of similar size to the subject property Ms. McPartlan agreed that they were not, but said that the purpose of the comparisons she had introduced was to show that the scheme of valuation devised for valuing all the units in the centre on individual basis was well supported by rental evidence drawn from all three mall levels. Ms. McPartlan, when asked about the Optical Express unit (comparison no. 3), agreed that the frontage to dept ratio was in excess of 1:4 and that no allowance had been made in the instance for this fact, nor for the larger than normal Zone D area.

When asked about the zoning guidance note Ms. McPartlan acknowledged that it was useful to some degree in rating practice, but suggested that it might be more appropriate in an agency situation. Ms. McPartlan confirmed that it was the policy of the respondents to use the guidelines and to make an allowance of 10% in those circumstances where the Zone D area was greater than the accepted norm. The purpose of this allowance she said was that retail units with a large Zone D area when valued strictly on a zoning basis (i.e. by applying ⅛ of the Zone A rate) tended to give rise to anomalies. When asked if there was a Valuation Office guidance note to this effect Ms. McPartlan was unable to say that there was, but nonetheless confirmed that it was the policy of the respondent to make such an allowance.

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 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 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.

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 regard to the property concerned provide that the initial headline rent be €394,255 with effect from 3rd of March, 2005. At the first rent review the rent was determined at €520,250 per annum from the 1st of January, 2010 by way of an arbitrator's award.

9. As a general rule, most agreements for lease in respect of mall units provided for rent free periods for between 3 and 4 months' duration. In relation to the subject property the rent free period was 5 months and 2 weeks and in analysing the initial rent Mr. Saurin discounted the value of the rent free period over the first 10-year period of the lease. From evidence tendered by the respondent in **VA11/5/179 Aurora Fashion Services Ltd t/a Coast** (i.e. the test case appeal), it would appear that it is the policy of the Valuation Office to disregard rent free periods of less than 6 months when analysing rents for comparison purposes. In regard to rent free period generally, the Tribunal has come to no conclusive decision in as much as each individual transaction is to some extent or other a singular arrangement agreed between the parties concerned, the true facts of which may not be divulged as they are are usually subject to confidentiality agreements. However it seems to the Tribunal that there is considerable merit in the respondent's approach to rent free periods in general and indeed if they are sizable then perhaps the value of inducements should be spread over the period of the lease or the anticipated life of the fit-out period.

10. Both valuers in their evidence made reference to the zoning guidance note which is undoubtedly a useful tool but it has to be borne in mind that it is a guidance note. Zoning is a method of valuation devised by valuers in order to apply the evidence of rents of shops of varying depths to arrive at a pattern of values to be attributed to other broadly similar shops where low rental evidence is available. To that extent it is particularly useful for valuation and analysis purpose and in the agency sector for setting target rents in a new development scheme.

11. The zoning guidelines, prepared by a working group which included a senior staff member of the Valuation Office, set down specific guidelines in relation to the depth of each zone (a 6.1 metres) and that the maximum number of zones be four. Other matters are referred to such as size for use of the zoning method, frontage to depth ratio, dual-return frontage, masked or shadow areas, and other factors. In all such matters no specific guidance is given and any allowance therein referred to *"are not intended to be taken as rigid cut off points and valuers would be expected to use their own judgment accordingly*". It would appear that the respondent has the policy to make an allowance of 10% once the frontage to depth ratio exceeds 1:4, or when the Zone D area is greater than the norm a concept which is not referred to in the zoning guidelines. In the Tribunal's view any allowances for excessive depth, larger than normal Zone D area or masked/shadowed areas must be exercised having due regard to all the facts in relation to the unit concerned. In our opinion it is inappropriate to apply the guidance note in a rigidly formatted basis – for example there surely can be no good reason to value a shop with a 1:4.1 frontage to depth ratio at 10% higher than the shop next door which has a frontage to depth ratio of 1:3.9. Common sense and equity would dictate otherwise.

12. In relation to the assessment of Net Annual Value of the property concerned two issues arose in relation to end allowance. Mr. Suarin contended that any allowance to reflect a frontage to depth ratio of 1:5 should be offset by a downward adjustment to reflect the "poor frontage and restricted visibility of the unit caused by the split/ angled frontage. Ms McPartlan on the other hand considered a 10% upward allowance should be made for the large Zone D area" whilst no allowance in her opinion was justified for the split/angled frontage.

13. As a general rule the Tribunal attaches little or any weight to the arbitrator's award which was referred to in Mr. Saurin's evidence for two reasons: firstly, the award is based on evidence and submission made at a private hearing; and secondly, the rent so determined was made in accordance with the rent review provisions contained in the lease between the parties concerned and not upon the statutory provisions as set out in Section 48 of the Valuation Act, 2001. In fact it is doubtful if evidence of this nature should be introduced.
14. In relation to the Zoning Guidance Note the Tribunal is at one with both witnesses in that they provide useful guidance when valuing retail properties. They are by their very nature prepared for guidance purposes only, but since they have been prepared by a representative working party of the valuation profession they cannot easily be set aside or disregarded. When it comes to valuing a specific property all of the matters referred to in the Guidance Note which may have a bearing on its valuation must be examined and any allowances made upon the valuer's own judgment in light of the circumstances that exist. Accordingly it would be wrong to apply the frontage to depth ratio allowances for units with a ratio in excess of 1:4 in a rigid manner. Each property must be valued individually and the appropriate allowance, if any, must be based upon a critical examination of all the factors. In relation to the guidance notes attention is drawn to the fact that a ratio of 1:3 is considered to be standard.

Conclusions

Having regard to the above findings the Tribunal in arriving at its determination had particular regard to the following matters:

1. It is common case that the property is located in that sector of mall level 2 which is considered to be prime.
2. The property has a frontage to dept ratio of approximately 1:5.2.
3. The Tribunal accepts that this gives rise to a greater that normal Zone D area representing approximately 65% of the total retail space.
4. In the circumstances of this case the Tribunal is of the opinion that an end allowance is justified by virtue of the fact that the frontage to dept ratio exceeds 1:4.
5. In regard to the difficulties associated with the split/angled frontage and the restricted mall width the Tribunal is of the view that Mr. Saurin has over-emphasized the case and that the 5% discount for this factor is not justified.

6. Any problem associated with the mall width at the property concerned is in our opinion off set by the location of the property in the prime section of the mall and more importantly the fact that it is adjoining an important anchor store convenient to the entrance from the red car park.

Determination

Having regard to the above the Tribunal determines the Net Annual Value of the property concerned in accordance with the statutory provisions at the specified valuation date of the 30th of September, 2005 as follows:

Retail Zone A	54.02 sq. metres @ €3,000 per sq. metre	= €162,060
Retail Zone B	61.98 sq. metres @ €1,500 per sq. metre	= € 92,970
Retail Zone C	61.98 sq. metres @ €750 per sq. metre	= €46,485
Retail Zone D	330.17 sq. metres @ €375 per sq. metre	= €123,813
Total		€425, 328
Add allowance for frontage to depth ratio and other matters @ 5%		= € 21,266
Mezzanine Store 233.92 sq. metres @ €210 per sq. metre		= €49,123
Total		€495,717

Net Annual Value say €495,000

And the Tribunal so determines.