Appeal No. VA11/5/189

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

French Connection Retail Ltd t/a French Connection **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2178524, Retail (Shops) at Unit 238, 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, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €424,000 on the above described relevant property.

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

"We are not in agreement with the base rent applied".

The appeal proceeded by way of an oral hearing in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Upper 1 on the 25th day of January, 2012. At the hearing the appellant was represented by Mr. George Saurin, BSc, Surv, MRICS, MSCSI of Colliers International. The respondent was represented by Mr. Triona McPartlan, BSc (Hons) Estate Management, a valuer in the Valuation Office. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered the following emerged as the facts relevant and material to the appeal.

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.

Dundrum Shopping 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.

The Subject Property

The subject property, which is rectangular in configuration, is located at the northern end of mall level 2 adjacent to the main entrance to the centre and adjacent to House of Fraser department store. The property at issue is used for the sale of ladies and menswear. Other retailers in the vicinity are Mango, Karen Millen, Tommy Hilfiger and HMV. The property concerned is located on the perimeter of that section of the mall at level 2 which is considered to be prime for rating valuation purposes.

The Accommodation

The accommodation measured on a NIA basis in accordance with the code of measuring practice and zoned in accordance with the zoning guidelines published by the Society of Chartered Surveyors in May 2009 is outlaid to be as follows.

Zone A 57.34 sq. metres
Zone B 50.8 sq. metres
Zone C 62.77 sq. metres
Remainder 177.39 sq. metres
Total 348.3 sq. metres
ITZA 120.60 sq. metres
Frontage to depth ratio circa 3.35
Frontage circa 11 metres

Tenure

The property is held under the terms and conditions of a 25 year lease at a headline yearly rent of €287,878. Inter alia the lease provides for upward only rent reviews at 5 yearly intervals and the first such review is effective from the 1st January, 2010. At the commencement of the lease the tenant was granted a four month rent free period. In addition the headline rent of €287,878 was abated to the effect that the rent for year one and two was €245,563, year three €262,477 and thereafter €287,878 thus giving an average yearly rent of €255,864. In addition to rent the tenant is responsible for rates and all outgoings including a service charge whereby the tenant is responsible for a proper proportion of the costs incurred by the landlord in providing a range of common services.

Rating History

The NAV of the property concerned was initially assessed at a net annual value (NAV) of €424,000 and no change was made at representation or Section 30 appeal stage.

The Issue

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

Summary of Evidence

(Mr. George Saurin)

Mr. Saurin in his sworn testimony contended that the NAV determined by the Commissioner of Valuation was excessive and in turn proposed that the NAV be €338,000 as set out below.

Zone A	57.34 sq. metres	@	€2,800 per sq. metre	=	€160,552.00
Zone B	50.80 sq. metres	@	€1,400 per sq. metre	=	€ 71,120.00
Zone C	62.77 sq. metres	@	€700 per sq. metre	=	€ 43,939.00
Remainder	177.39 sq. metres	@	€350 per sq. metre	=	€ 62,086.50
Total					€337,697.50

Say €338,000

Mr. Saurin said that in arrival at his opinion of NAV he had analysed the available rental levels at all three mall levels as set out in the schedule which formed part of his précis. A copy of this schedule is contained in Appendix 1 attached to this judgment. From this analysis Mr. Saurin said he had selected a number of lettings at mall levels 1 and 2 which he considered to be particularly relevant for comparison purposes in arriving at the appropriate NAV of the property concerned. Copies of these comparisons are contained in Appendix 2 attached to this judgment.

Mr. Saurin went on the say he had also regard to the headline rent of €287,878 which had been agreed at the time the agreement lease was entered into on the 27th October, 2002.

The configuration of the property, Mr. Saurin said, was non-typical in so far as the first 11.3 metres depth had a dual ceiling height whilst the remainder of the shop had a ceiling height of 2.6 metres. This drop in the ceiling height, he said, hindered the way in which merchandise could be displayed and stored to best advantage. Furthermore Mr. Saurin said that any allowance for a greater than normal Zone D area would be more than offset by the difficulties caused by the low ceiling height in just over two thirds of the available retailing space. The extent of the retailing space with reduced ceiling height would have the effect of making the property unattractive to most large retailers.

(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 NAV of the subject property as set out below.

Retail Zone A	57.34 sq. metres	@	€3,200 per sq. metre	=	€183,488
Retail Zone B	50.8 sq. metres	@	€1,600 per sq. metre	=	€81,280
Retail Zone C	62.77 sq. metres	@	€800 per sq. metre	=	€50,216
Retail Zone Remainder	177.39 sq. metres	@	€400 per sq. metre	=	€70,956
Add 10% large Zone D				=	€38,549

Total Zoned Area 348.30 sq. metres

NAV €424,000

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

Under cross examination Ms. McPartlan agreed that comparison no. 1 (Gerry Weber), and comparison 2, 3 and 6 were transactions which took place after the relevant valuation date. Ms. Mc. Partlan said that she had included these comparisons in order to show that Dundrum Town Centre continued to show rental growth at a time when retailing rents in general were declining.

When asked if the restrictive ceiling at the rear of the property would have an effect on its letting value Ms. McPartlan said she didn't think it mattered to any great extent.

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 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 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.

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.

Conclusions

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

The Tribunal notes that both parties are agreed that the location of the subject property is on the fringes of that stretch at mall level 2 which is considered to be prime. Under the valuation scheme devised by the respondent, units in the prime section of mall level 2 are valued at Zone A €3,600 per sq. metre. Ms McPartlan has valued the subject property at Zone A €3,200 i.e. a reduction of 12% to reflect the fact that it is outside of the prime area. This level of reduction, in the Tribunal's view, is marginally high.

In her valuation Ms. McPartlan added on 10% for the greater than normal Zone D area. In this instance the Zone D area represents approximately just over 50% of the total retail space. In the Tribunal's view an allowance is justified, but not 10%.

Determination

Having regard to the above the Tribunal determines the NAV of the property concerned to be as follows.

Retail Zone A	57.34 sq. metres	@	€3,000 per sq. metre	=	€172,020
Retail Zone B	50.80 sq. metres	@	€1,500 per sq. metre	=	€ 76,200
Retail Zone C	62.77 sq. metres	@	€750 per sq. metre	=	€ 47,078
Retail Zone remainder	177.39 sq. metres	@	€375 per sq. metre	=	€ 66,521
				Total =	€361,819
				Excess Zone D area add 5%	€ 18,091
				Total =	€379,910

NAV Say €379,900

And the Tribunal so determines.