Appeal No. VA11/5/193

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Signet t/a Ernest Jones **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2178481, Retail (Shops), at Unit 27, Level 1, 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 28TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 29th day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €369,000 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."

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 25th day of January, 2012. At the oral hearing the appellant was represented by Mr. George Saurin, BSc Surv, MRICS, MSCSI, Associate Director of Colliers International. Ms. Triona McPartlan, BSc (Hons) Estate Management, a valuer at 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 he or she 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 12-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 level 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 property which is the subject of this appeal, Unit 127, which trades as Ernest Jones Jewellers is located at the southern end of mall level 1, immediately adjoining Marks and Spencer and convenient to the entrance from the ‘Red’ car park. It is agreed that Unit 127 is located in a section of the mall that is not considered to be prime.

Accommodation

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

Retail Zone A 74.38 sq. metres

Retail Zone B 75.26 sq. metres

Retail Zone C 45.19 sq. metres

Total Area 194.83 sq. metres

ITZA 123.30 sq. metres

The unit has a frontage of 12.339 metres and a depth of 14.753 metres resulting in a frontage to depth ratio of 1:1.2.

The unit is rectangular in configuration with frontage to the mall at the entrance from the 'Red' car park and a return frontage where the mall widens out to a concourse-type area which includes two kiosks, lifts, travelators and staircases to the upper malls.

Tenure

The subject property is held under a 25-year lease from the 3rd March, 2005 subject to an initial yearly rent of €290,000. The rent was agreed by way of an agreement for lease signed in 2003 and provided for a rent free period of 4 months.

In addition to rent the tenant is responsible for rates and all other outgoings including a service charge to cover 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. GEORGE SAURIN)

Mr. Saurin in his evidence submitted that the NAV of the property concerned as determined by the Commissioner of Valuation following an appeal made under Section 30 of the Act was excessive and in turn put forward his opinion of NAV as set out below.

Zone A	74.38 sq. metres @ €2,380 per sq. metre	= €177,024.40
Zone B	75.26 sq. metres @ €1,190 per sq. metre	= € 89,559.40
Zone C	45.19 sq. metres @ €595 per sq. metre	= € 26,888.05
Total		= €293,468.85

NAV say €293,000

Mr. Saurin in his evidence made reference to the Zoning Guidance Note published by the Society of Chartered Surveyors in May 2009 which suggests that a downward allowance be made when valuing a shop unit with a frontage to depth ratio below 1:2. The subject property, he said, fell into this category and furthermore he contended that the size and configuration of the shop presented difficulties in regards to the placing of corporate signage to maximum effect.

Mr. Saurin said that in arriving at his opinion of NAV, he had analysed all available rental evidence within the centre as set out in the schedule contained in Appendix 1 attached to this judgment. Mr. Saurin said that having carried out this exercise he had extracted from the schedule an analysis of rents in respect of units at mall levels 1 and 2 which were of somewhat similar size to the subject property and hence were of particular relevance. A copy of this analysis is contained in Appendix 2 attached to this judgment.

Mr. Saurin said that in formulating his opinion of NAV he had regard to the rent initially agreed at the time the agreement for lease was entered into in June 2003. In this regard he had analysed the rent so agreed by reference to the SCS/IPD index and arrived at a Zone A €2,714 rate per sq. metre as at September 2005.

Under examination Mr. Saurin acknowledged that shop units in that sector of the mall level which is considered prime were assessed by the respondent at Zone A €3,800 per sq. metre. However, Mr. Saurin pointed out that this level of assessment was subject to an appeal by way of a test case (**VA11/5/179 – Aurora Fashion Services Ltd. t/a Coast**). Mr. Saurin agreed that the respondent's application of a Zone A rate of €3,000 per sq. metre in valuing the subject property fairly represented its location by comparison with units in the prime sector but said that he did not agree that the Zone A €3,000 per sq. metre in respect of the subject property was appropriate in the first instance.

When asked if the IPD index was specific to the Dundrum Town Centre Mr. Saurin said that it was not but that it represented rental and capital growth over a period of time and as such was useful when analysing rents agreed in the period 2002-2008 in order to arrive at a fair opinion of rental values at and about the specified valuation date of 30th September, 2005.He agreed that the IPD index was somewhat narrowly based on a basket of prime properties in each sector but contended that the Dundrum Town Centre fell into that category.

(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 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.

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	74.38 sq. metres	@ €3,000 per sq. metres	= €223,140.00
Retail Zone B	75.26 sq. metres	@ €1,500 per sq. metre	= €112,890.00
Retail Zone C	45.19 sq. metres	@ €750 per sq. metre	= € 33,892.50
Total			= €369,922.50

NAV say €369,000

Note: the initial yearly rent was agreed at a Zone A equivalent of €2,196 per sq. metre.

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 said that she considered that her Zone A €3,000 per sq. metre fairly represented the locational differences between the property concerned and those units in the prime area of mall 1 which are valued at Zone A €3,800 per sq. metre (i.e. a reduction of *circa* 21%). When asked if the subject property was particularly disadvantaged by the restrictive mall width at the entrance from the 'Red' car park Ms. McPartlan said that her Zone A €3,000 per sq. metre was an all-inclusive figure that took into account all the factors that would have a bearing on its rental value, such as its location on the mall, dual frontage, configuration and its proximity to a principal anchor store (Marks and Spencer).

When questioned about her comparisons Ms. McPartlan said that in her analysis of the rents payable she had discounted the value of the rent free period on a straight line basis over the first ten-year period of the lease, this despite the fact that it was the general policy of the Valuation Office to have no regard to the value of rent free periods of less than six months. Under further examination in relation to her comparisons Ms.McParlan agreed that comparisons nos. 1, 2 and 3 were re-lettings which had taken place post the relevant valuation date and that comparison no. 4 was now vacant.

Mr. Saurin asked Ms. McPartlan why she had made no allowance for the frontage to depth ratio. Ms. McPartan said that she had had regard to the configuration of the subject unit in arriving at her Zone A €3,000 per sq. metre. MsMcPartlan said that in some instances she had made specific allowance for frontage to depth ratio where appropriate, but that in this instance her Zone A €3,000 per sq. metre reflected the configuration of the unit and other factors.

Findings

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.

1. 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.

2. 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.

3. 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.

4. 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.

5. The facts in relation to the subject unit are agreed.

6. 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.

7. The Tribunal has carefully examined the details of all the comparisons introduced by both parties. The majority 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.

Conclusions

Having regard to the above findings the Tribunal has arrived at the following conclusions:

1. First is has to be said that the 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 terms of good professional practice.

2. The location of the property concerned is not in the prime sector of mall level 1.

3. The configuration of the property, its dual frontage, its proximity to the main entrance from the 'Red' car park and its location beside one of the principal anchor tenants are all factors to be borne in mind when arriving at an estimate of its NAV.

4. The mall from the red car park widens out onto a concourse-type area which contains kiosks, lifts, staircases and escalators which provide access to upper mall levels.

5. The tribunal does not accept Mr. Saurin's contention that the kiosks, lifts, staircases and travelators, which he thinks interferes with pedestrian flow, have a detrimental effect on the value of the subject unit. Indeed if anything the opposite might be the case.

6. The location of the property concerned adjoining one of the principal anchor tenants is beneficial to the property and its occupier.

7. As referred to in the Zoning Guidance Notes the Tribunal, in common with both valuers, proposes to adopt a Zone A figure which represents all intrinsic and extrinsic factors in relation to the subject property which would have a bearing on its NAV.

Determination

Having regard to the foregoing, the Tribunal determines the NAV of the property concerned in accordance with Section 48 of the Valuation Act, 2001 at the specified valuation date of the 30th September, 2005 to be as set out below:

Retail Zone A	74.38 sq .metres @ €2,600 per sq. metre	= €193,388.00
Retail Zone B	75.26 sq. metres @ €1,300 per sq. metre	= € 97,838.00
Retail Zone C	45.19 sq. metres @ €650 per sq. metre	= € 29,373.50
Total		= €320,599.50

NAV say €320,600

And the Tribunal so determines.