

Appeal No. VA11/5/201

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

**Coltard**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 526462, Retail (Shops) at Unit 114/10 117-119, Dun Laoghaire Shopping Centre, Dun Laoghaire, County Dublin.

**B E F O R E**

**John F Kerr - BBS, FSCSI, FRICS, ACI Arb**

**Deputy Chairperson**

**Mairead Hughes - Hotelier**

**Member**

**James Browne - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 29TH DAY OF FEBRUARY, 2012**

By Notice of Appeal received on the 30th day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €26,000 on the above described relevant property.

The grounds of appeal are set out in the Notice of Appeal, a copy of which is attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 3<sup>rd</sup> day of February 2012. The appellant was represented by Mr. Michael Purcell, MRICS, MSCSI, a Director in the firm of Jones Lang LaSalle. The respondent was represented by Ms. Triona McPartlan, BSc (Hons) Estate Management, a Valuer in the Valuation Office.

In accordance with the rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross examination. From the evidence so tendered, the following emerged as being the facts relevant and material to these appeals.

### **The Property**

The subject property concerns a retail unit accessed by way of an escalator at basement level in the Dún Laoghaire shopping centre. The area sizes are agreed between the parties.

### **At Issue**

Quantum

### **Location**

The subject property is located within the Dún Laoghaire Shopping Centre. The property has no frontage. The shopping centre is a seven-storey shopping and office complex located in the heart of Dún Laoghaire central retail area and is located between Marine Road and George's Street Lower. The subject property is the largest unit in the shopping centre.

### **Tenure**

At the date of valuation the property was held leasehold.

### **Valuation History**

The property was the subject of a revaluation as one of all rateable properties in the Dún Laoghaire Rathdown Rating Authority area. The Valuation Order specifies 30<sup>th</sup> September 2005 as the valuation date. A proposed Valuation Certificate issued on 15<sup>th</sup> June 2010, and the property was valued at €26,000. Representations were lodged with the Commissioner of

Valuation on 5<sup>th</sup> July 2010. There was no change to the valuation at this stage. An appeal was lodged with the Commissioner of Valuation on 8<sup>th</sup> February 2011. There was no change to the valuation at this stage. An appeal was lodged with the Valuation Tribunal on 30<sup>th</sup> August 2011.

### **Grounds of Appeal**

The appellant was of the view that the valuation was excessive due to the following reasons:

1. Tesco's rent review which occurred in December 2005 accounted for the Tesco basement storage area and this was not reflected in the valuation applied for rates purposes.
2. This rent review as of the 25<sup>th</sup> of December 2005 was agreed via arbitration by Mr. John Costello with the previous passing rent being €342,829.28. The rent on review increased by 53%.
3. The subject unit is located in a poor location at basement level with no profile to the main thoroughfare of Dún Laoghaire Town Centre.
4. The subject unit is of an irregular shape and is not conducive to being sub-divided to cater for individual units and is likely to suit only specific tenant requirements and it may be some time before an anchor tenant will be secured at the centre again.
5. Tesco have now vacated the subject unit and one would have to question whether the rent review of 2005 (resulting in an increase of 53%) led to Tesco vacating the unit due to excessive costs.

### **Proposed Valuations**

#### **Appellant's Proposed Valuation**

Retail Area	1,725 sq. metres @ €150 per sq. metre	=	€258,750.00
Retail Stores	596.8 sq. metres @ €75 per sq. metre	=	€ 44,760.00
Retail Stores	55.4 sq. metres @ €75 per sq. metre	=	<u>€ 4,155.00</u>
Total NAV		=	€307,665.00

### **Respondent's Proposed Valuation**

The respondent has proposed a valuation on the said premises as follows:

Shop	1,725 sq. metres @ €240 per sq. metre	= €114,000.00
Store	596.80 sq. metre @ €120 per sq. metre	= € 71,616.00
Store	55.40 sq. metre @ €120 per sq. metre	= € 6,648.00
Add 7% fit out		= <u>€ 34,458.48</u>
Total		= €26,722.48
NAV (rounded to) €26,000.		

### **Appellant's Case**

Mr. Purcell took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a view of submissions. The appellant made the following points in particular:

1. Mr. Purcell pointed out that since the revaluation took place, the anchor tenant, namely Tesco, had vacated the premises. He stated that the presence of an anchor tenant is the basis of a successful shopping centre environment. He further stated that smaller retail shops and sole traders would not locate to a centre without the presence of an anchor tenant which can attract a market share. He stated that the landlord was unable to attract interest from the national brands and that any offers made were subsequently withdrawn. He therefore had little option but to strike a deal with Supervalu. The landlord had to finance the fit-out which cost an estimated €1.8m. He agreed that this deal with Supervalu was not an arms' length agreement.
2. He pointed out that the centre was constructed in the early 1970s and that whilst the retail element of the shopping centre was refurbished and modernized internally in recent years, the centre still has the look of an old and dated centre.
3. He pointed out that the primary difference between Dún Laoghaire and all other anchor stores in that area is that Dún Laoghaire's store is located in the basement area and that this has the following effects:

- a. No visibility with passing trade;
  - b. No natural lighting to any areas of the store;
  - c. Access to the unit is via a travelator off the main entrance at George's Street.
4. He argued that the basement retail store is of an irregular shape and due to its location in the basement it has numerous structural columns throughout which, limits the flexibility, and therefore trading ability, of a tenant.
  5. The centre provides 350 paid parking spaces over six levels. It does not provide free parking and has no open surface car parking.
  6. Mr. Purcell provided four comparable properties. However, he agreed when it was put to him, that comparisons nos. 3 and 4 were outside of the Dún Laoghaire Rathdown Rating Authority area and that therefore these properties could not be considered. Therefore, Mr. Purcell had two relevant comparable properties, details of which are attached at Appendix 2 to this judgment.

In reply to the Tribunal Mr. Purcell agreed that the two properties for consideration before the Tribunal today, namely VA11/5/201 (the subject property), and VA11/5/202 (the subject of a separate determination) were under one lease but have always been rated separately. Mr. Purcell agreed that he was primarily putting forward rental evidence for the purpose of valuing the relevant property.

Mr. Purcell stated that he carried out an apportionment of a rent review that had been carried out on the subject property. The rent review was carried out on the 25<sup>th</sup> of December 2005. The rent agreed at review was €25,000 and the previous passing rent had been €342,829. This rent review did, however, include the basement stores, i.e. VA11/5/202. It was on these two properties under the rent review that Mr. Purcell carried out an apportionment of value to reach a valuation for the subject property. He agreed that the lease was held on a FRI basis. He agreed that services were allowed at 18% VAT (this figure was reached at by allowing some at 21% and some at 13%). He acknowledged that the rents were net of service or management charges. He considered that a discount of 20 – 25% should be granted as the property was on a basement level.

He acknowledged that Tesco, who acted on their own behalf at the rent review, were well informed and a very experienced retail company, and that they paid the reviewed rent agreed with the arbitrator for the final five year term of the lease.

Mr. Purcell agreed that he did not know what rate per metre was applied in the valuation on comparison 1. He acknowledged that he could not obtain rental evidence on comparison 2, but that the NAV was calculated by the application of €200 per sq. metre. He suggested that his primary comparator was comparison number 1.

He said that the fit-out of the premises was redundant and that he disputed the assessment applied by the Commissioner of Valuation of a levy of 7% to reflect the fit-out and contended that it should be nil.

#### **Cross-Examination of Mr. Purcell**

When put to him, Mr. Purcell stated that the most recent fit-out was carried out in 2011 and while there were some minor works undertaken by Tesco in relation to their trading area, there was very little in the way of fit-out works carried out in this premises in a long time. He stated that the premises were to be considered as a shell and core unit and the landlord had to pay €1.8m to retrofit them to induce and facilitate the new occupier now trading from the premises under the name and style of SuperValu. When it was put to him that a landlord normally makes a significant contribution to fit-out costs, Mr. Purcell replied that in the good times this was not the case, but now it may be that it happens more often.

Mr. Purcell **was asked if** he had a Schedule of Dilapidations, to which he replied that he did not.

The consultant valuer stated that a managing agent is responsible for all aspects of the management of the common areas of the centre and the usual elements of service charges. It was put to him that the landlord could reduce the service charge levied on the tenant of the subject relevant property. Mr. Purcell agreed that technically this could be done, but that there are significant legal requirements in terms of meeting service charges obligations and that any reductions in such service charges had to be met elsewhere, adding that the level of service charges was already kept to an absolute minimum and that there was significant

pressure to keep the services charges low without compromising essential services. He stated that all such management and service charge expenses were audited and vouched for.

### **Respondent's Case**

Ms. McPartlan, having taken the oath, adopted her written précis as her evidence-in-chief.

The location, description, accommodation, floor area and tenure details provided by the respondent were common case to those provided by the appellant.

The respondent provided three comparable properties details of which are attached at Appendix 3 to this judgment. The respondent stated that Tesco Bloomfield, Dún Laoghaire, her first comparison, was her primary comparator. Ms. McPartlan agreed that this is a destination centre, unlike the subject premises which might be perceived as a centre facilitating impulse-style retailing.

Ms. McPartlan set out that the Valuation Office guidelines to account for fit-out costs in rating valuations as follows:

1. For a fit-out which was undertaken within a recent period of 1-5 years, a 7% premium on the rental value of the property is applied.
2. If the fit-out was 5-10 years old, a 7% premium is also applied.
3. If the fit-out was 10-15 years old, a 3% fit out premium is applied.

She agreed that these guidelines are discretionary. She noted that there were columns set out at 6 metre gridlines of the subject property and that most new properties are typically clear span. However, she stated that the influence of the positions of the columns was taken into account in her valuation.

### **Cross-Examination of the Respondent**

The respondent agreed that Bloomfield has 550 car parking spaces situate over two levels. She also acknowledged that Bloomfield is a ground floor retailing centre with an adjacent cinema. She confirmed that she had valued the subject property based on the emerging tone-of-the-list and not on rental evidence.

It was put to Ms. McPartlan that consideration could be given to a quantum reversal whereby modern trends of supermarket retailing suggest a preference for units of significant size and of at least 3,000 sq. metres, whereas the present unit is *circa* 1,700 sq. metres.

Ms. McPartlan suggested that a Tesco Express or Centra might avail of the floor plan and area of the subject relevant property.

She stated that the property was valued in accordance with the emerging tone-of-the-list, and she believed that the valuation on the property was correct.

### **Findings**

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at hearing. The Tribunal makes the following findings:

1. The subject property is of a dated construction, is poorly laid out, is in a basement and shelving displays are restricted by the placement of columns on six metre gridlines in the property. In addition, the subject property has no public street frontage or profile.
2. The Tribunal notes the location of the property and the absence of dispute on the floor area.
3. The statutory basis for Revaluation of relevant properties such as the subject is set down in Section 48 of the Valuation Act 2001, wherein at subsection 3, the net annual value of a property is defined as:

*“the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant.”*



4. In this respect the Tribunal is of the view that the respondent's comparison number 1, namely Tesco at Bloomfield Shopping Centre, Dún Laoghaire, is of the greatest assistance in determining a fair and reasonable valuation.
5. In comparison to the subject property, Tesco at Bloomfield has the advantages of being a more modern, larger building with frontage, significant profile, located on the ground floor with more accessible parking. Clearly the hypothetical tenant would not pay the same for a dated premises without these advantages and as such the subject property should be valued lower than the Tesco Bloomfield comparison property. In the circumstances, there should be a differentiation to reflect the difference in the properties' actual states.
6. The Tribunal is of the view that the fit-out of the premises was dated at the relevant valuation date and that the maximum premium of 7% should be adjusted to reflect this.
7. The appellant made reference to the rate per square metre applied on only one other storage facility, namely his first comparison property, but did not proffer any evidence to challenge the rate per sq. metre applied by the Commissioner of Valuation on the two storage areas forming part of the subject relevant property. The Tribunal is guided in this regard by the Valuation Act, 2001, Section 63.

### **Determination**

In reaching its determination, the Tribunal has been required to consider only the evidence submitted and adduced. Having heard all the oral evidence and submissions and having considered the précis lodged herein, the Tribunal has made the foregoing findings and in light of those findings determines that the valuation by the respondent is too high and that a suitable allowance should be made for the fit-out, location and construction of the subject property.

In the circumstances, the Tribunal determines that the following valuation is fair and reasonable:

Retail Unit	1,725 sq. metres @ €10 per sq. metre	= €62,250.00
Fit-out addition of 5%		= <u>€ 18,112.50</u>
Total for Retail Unit		= €80,362.50
Store 1	596.80 sq. metres @ €120 per sq. metre	= € 71,616.00
Store 2	55.40 sq. metres @ €120 per sq. metre	= <u>€ 6,648.00</u>
Total		= €158,626.50

NAV say €159,000

And the Tribunal so determines.