Appeal No. VA11/5/213

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Inditex **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2178484, Retail (Shops) at Unit 29, Level 1, Dundrum Town Centre, Dundrum, County Dublin

B E F O R E

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

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

Fiona Gallagher - BL **Member**

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

By Notice of Appeal received the 30th August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €1,503,000 on the above described relevant property.

The grounds of appeal are set out on a separate sheet attached to the Notice of Appeal, copies of which are attached at Appendix 1 to this judgm

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 day of January, 2012. At the oral hearing the appellant was represented by Ms. Desmond A Byrne, FRICS, FSCSI, DIP Arb Law, a director of Bannon Property Consultants and Chartered Valuation Surveyors. 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 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 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 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.

Subject Property

The property concerned is a two level retail unit located on mall level 1 in that section of the mall that is considered to be prime close to the Marks and Spencer store and the entrance from the 'red' car park. The ground floor area is used for retail purposes as is the lower ground floor area where there is also some ancillary storage space.

Accommodation

The accommodation measured on an NIA basis in accordance with the Code of Measuring Practice is agreed as follows:

Ground Floor Retail ITZA	292.98 sq. metres
Lower ground floor retail	691 sq. metres

Lower Ground Floor Storage	107.55 sq. metres
Overall area of ground floor	953.17 sq. metres
Frontage	20.8 metres

Tenure

The property is occupied under the terms and conditions of a 25 year lease from the 3rd March 2005 subject to turnover rent which provides as follows:

Rent- 8% of turnover up to €7,500,000
Plus 10% of excess

In addition to rent the tenant is responsible for the payment of rates and all other usual outgoings including a service charge whereby the tenant is responsible for the payment of 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. Desmond Byrne)

Mr. Byrne in his evidence said that in arriving at his opinion of NAV of the property concerned he had considered the lettings of a number of similarly sized units on Mall level 1 in order to establish an appropriate Zone A rate per sq. metre. While several of the transactions were agreed in the years prior to opening the centre in March 2005 the underlying aim of the letting negotiations Mr. Byrne said were to agree initial rentals pitched at the opening date rather than based upon rents current at the time of the discussions. In this regard Mr. Byrne prepared the following schedule:

Unit	Tenant	AFL	Mall Sq. M ITZA	Mezz/Lg Sq. M.	Rent P.A.	Mezz/LG/Rent PSM	Mall Rent ZA PSM
1-18	Clarkes	2002	115.23	109.7	€313,000	€210	€2,516.38
1-20	Office	2004	79.37	129.21	€247,811	€210	€2,780.36
1-22	Lifestyle Sports	2002	136.3	207.6	€375,250	€210	€2,433.26
1-33	BT2	2002	212	703	€662,965	€310	€2,099.22
1-35	River Island	2003	159.37	208	€406,566	€210	€2,223.18

Mr. Byrne said that of all the units contained in the above schedule the BT2 Unit in his opinion was the most relevant in that it was of somewhat similar size to the property concerned. The rent of this unit was agreed by was of an agreement for lease entered into in 2002 and the rents so agreed devalues at a Zone A €2,099 per sq. metre. Mr. Byrne said that having carried out the analysis in relation to the larger units as contained in the above schedule he then decided to look at the rents of all other mall units and the result of this analysis is contained in schedule 2 as set out below:

Level 1	2002	2003	2004	2005
BT2	€2,099			
Lifestyle Sports	€2,433			
Clarks	€2,516			
Pamela Scott	€2,618			
Fitzpatricks	€2,378			
Weir & Sons	€2,263			
River Island		€2,223		
Best Menswear		€2,735		
Card Company		€2,366		
Ernest 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			€2,780	
Timberland				€2,402
Average	€2,385	€2,391	€2,350	€2,402

Mr. Byrne said that the rent payable in respect of the subject property was based on turnover and the actual rent calculated on the turnover basis as provided for in the lease gives rise to the following payment of rent.

Year 2006	€777,642
Year 2007	€844,960
Year 2008	€819,493
Average	€814,032

Mr. Byrne said that the Zara Unit was a large mall unit and not a Department Store. In the circumstances it was his opinion that the decision of the respondent to apply a10% uplift for Fit Out was inappropriate. The decision to do so he said was against the intention and spirit of the Guidance Note prepared jointly by the Valuation Office and Rating Consultants which was prepared solely for use in valuing Department Stores and Supermarkets.

In relation to the comparisons put forward by Ms. McPartlan, Mr. Byrne said that in his opinion they were of little assistance due to their relatively small size compared to the subject. In addition, four of the comparisons were in relation to transactions that occurred after the relevant valuation date of the 30th of September 2005.

Having regard to the above Mr. Byrne expressed his opinion of the Net Annual Value in accordance with the statutory provisions as set out below:

Ground Floor Retail ITZA 292.98sq. metres @ €1952.98	=	€572,182
Lower Ground Retail 691 sq. metres @ €310 per sq. metre	=	€214,210
Storage 107.55 sq. metres @ €250	=	€26,887
Total	=	€813,279

Note

The valuation as set out above is slightly different from the valuation contained in his written précis in which he had valued the lower ground floor space at €350 per sq. metre.

When asked by Ms. McPartlan under cross-examination if the transaction referred to in his schedule included all the lettings at Mall Level 1 Mr. Byrne replied that he had included a large comprehensive selection of the various lettings. In so doing he had been selective in choosing those transactions which should be included or excluded. Mr. Byrne agreed with Ms. McPartlan that it was difficult to analysis turnover rents on a zoning method. Nonetheless it did not mean that they could not be so analysed and one had to remember that turnover rents were an increasing feature of the retail rental market.

When asked was it possible in 2002 to forecast what rental levels might be two or three years hence, Mr. Byrne said that this is, nonetheless, what developers did with the help of their professional advisors. In his experience this was the way developers operated particularly so in regard to very large scale retail developments which could take several years to complete. When asked why he had not included rents agreed in 2006 Mr. Byrne said that he did not consider such rents to be relevant in the rating context.

(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 net annual value of the subject property as set out below:

Lvl		Use	Comments	Comp	Eaves	Sq. M	€/Sq. M	NAV €
1	**0**	**Shop**	**ITZA – Retail Area 953.17sq. m**	**GIA**	**0.00**	**292.98**	**3,800**	**1113324.00**
1	**-1**	**Shop**	**Retail**	**GIA**	**0.00**	**691.00**	**310.00**	**214210.00**
	0	**Store**	**Remote Storage**	**GIA**	**0.00**	**107.55**	**400.00**	**43020.00**
	0	**Shop**	**Add 10% for Fit Out**	**GIA**	**0.00**	**0.00**	**0.00**	**132753.00**

Total	€1,503,307.00
Total (rounded)	€1,503,000

Under examination by Mr. Byrne Ms. McPartlan agreed that her opinion of NAV represented almost double the rent paid in accordance with the turnover provisions of the lease. Ms. McPartlan however said that turnover rents in the rating context were of little assistance. This was particularly so when there was a body of comparable rental evidence available.

When asked by Mr. Byrne if she had regard to the size of the property concerned in arriving at her estimate of net annual value Ms. McPartlan said that the zoning method of valuation was devised so as to enable valuations of shops of various sizes and configurations to be valued on a uniform basis. Ms. McPartlan agreed that all of her comparisons were much smaller than the property concerned but said that when using the zoning method this does not raise any particular problems. When pointed out to her that four of her comparisons were in relation to transactions post the relevant valuation date. Ms. McPartlan said that they were still relevant as it showed that rents continued to increase over the period from 2002 -2008.

When asked why she had applied a fit-out allowance of 10%, Ms. McPartlan said that it was the policy of the Valuation Office to do so when the retail space exceeded 1000 sq. metres. When asked if it was appropriate to add a fit-out allowance when valuing retail shops at mall levels on a zoning basis and which were neither department stores or supermarket Ms. McPartlan said probably not.

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.

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. Turnover rents are difficult to analysis in the rating context unless (which is not the case in Dundrum) there are a number of such transactions when it may be possible to analyse them in a coherent manner. However in a situation where there is a substantial body of rental evidence of properties which are similarly circumstanced in all material respects to the property being valued it is only proper that the evidence of rental levels derived there from should form the basis of valuing the property concerned. In this instance there is sufficient rental evidence to examine in order to arrive at an appropriate Zone A rate per sq. metre which can have uniform application subject of course to adjustment to reflect different locations, configurations and any other consideration that may have effect on rental value.

9. It is common case that the subject property is located in that section of Mall Level 1 which is considered to be prime. In this regard the respondent and a number of ratepayers in the Centre agreed that the outcome in the appeal ref. no. **VA11/5/179 – (Aurora Fashion Services Ltd. t/a Coast -v- The Commissioner of Valuation)** would form the basis for valuing units in the prime section of Mall Level 1 and by extension prime sections of Mall Levels 2 and 3.

10. The Tribunal acknowledges that Ms. McPartlan and Mr. Byrne carried out extensive research and analysis in order to arrive at their respective opinions of the net annual value of the property concerned. It would be remiss of the Tribunal not to express its appreciation of the diligent manner in which they carried out their research and arrived at their opinions of net annual value.

11. The Tribunal has carefully examined all the evidence in relation to the comparisons introduced by both valuers. In this regard a number of the respondent's comparisons referred to transactions completed after the specified valuation date. The Tribunal

attaches little weight to this type of evidence other than it may support a trend of increasing/decreasing rental values.

12. The respondent in this appeal added on 10% in respect of the fit-out. In the Tribunal's opinion a fit-out allowance is not appropriate when valuing Mall units using the Zoning Method . It is also of note that the Guidance Note in this regard clearly states *this practice note set out the agreed approach towards the treatment of fitting out costs in connection with the valuation of large department stores and supermarkets.* The subject property falls into neither of these categories and consequently the Tribunal finds that 10% Fit Out allowance is not justified in this instance. In most instances storage areas have been valued €400 per sq. metre and in the context of this appeal the Tribunal proposed to adopt a similar figure.

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 30th September, 2005 to be as follows:

Ground floor retail – ITZA	292.98 sq. metres	@ €3,200 per sq. metre	=	€ 937,536
Lwr ground floor retail	691 sq. metres	@ €310 per sq. metre	=	€ 214,210
Stores	107.55 sq. metres	@ €400 per sq. metre	=	€ 43,020
Total				€1,194,766

NAV say €1,194,000.

And the Tribunal so determines.