

Appeal No. VA11/5/219

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

Next PLC t/a Next

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2178489, Retail (Shops) at Level 1, Unit 36, Dundrum Town Centre, Dundrum, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Patrick Riney - FSCSI, FRICS, ACI Arb

Member

Brian Larkin - Barrister

Member

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

By Notice of Appeal received on the 30th August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €1,380,000 on the above described relevant property.

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

"The valuation is excessive".

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 30th day of January, 2012. At the oral hearing the appellant was represented by Mr. John Algar BSc in Property Valuation and Management of Bardon and Company, Rating Consultants and Valuers. 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.

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 subject property is a large store used for the sale of ladies and mens fashion located in that section of mall level 1 which is considered to be prime. The store trades at two levels, mall level and lower ground floor level with a stock room at basement level.

Accommodation

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

Mall Level Retail	1,250.2 sq. metres
Lower ground Floor	1,971 sq. metres
Basement Stockroom	408.4 sq. metres

Tenure

The property concerned is occupied under the terms and conditions of a 25 year lease from the 3rd March 2005 at an initial yearly rent of €1,269,738. In addition to rent the landlord is responsible for rates and other usual outgoings including the payment of a service charge whereby the tenant pays a proper proportion of the costs incurred by the landlord in providing a range of common services. The terms and conditions of the lease were entered into by way of an agreement for lease signed in 2002. At the commencement of the lease the tenant was granted an eleven month rent free period.

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. JOHN ALGAR)

In his evidence Mr. Algar contended for a NAV of €1,251,000 calculated as set out below.

Level 1	1,250.2 sq. metres	@	€15 per sq. metre	=	€18,833
Level 0	1,971.0 sq. metres	@	€78 per sq. metre	=	€47,938
Level -1	408.4 sq. metres	@	€90 per sq. metre	=	€77,596
10% Addition for Fit Out				=	<u>€106,677</u>
Total				=	€1,251,044
NAV say €1,251,000					

In arriving at his opinion of his NAV Mr. Algar said he also had regard to the passing rent which he analysed as follows:

Initial Rent	€1,269,738 per annum agreed in 2002
Rent Free Period	11 months taken over 5 years
Adjusted Rent	€1,036,952

Level 1	1,250.2 sq. metres x €75	=	€68,825
Level 0	1,971.0 sq. meters x €60	=	€512,460
Level -1	408.4 sq. metres x €70	=	<u>€ 69,428</u>

	€1,050,713
Say	€1,036,000

Taking the agreed average increases of Boots and H&M Kids of 10.75% between the agreement dates and the valuation date, the rent would be adjusted to €1,147,370.

In support of his valuation Mr. Algar introduced two comparisons, details of which are set out in Appendix 1 attached to this judgment. In relation to his comparison no. 1, the Boots unit, Mr. Algar made the following points:

- Close relation between the rent of €709,000 and the NAV of €770,000 agreed at Section 30 appeal stage.
- The Boots unit is located on mall level 2 which is considered to be an inferior location to mall level 2.

Under cross-examination Mr. Algar said that to the best of his knowledge the 2010 rent review was still outstanding as the landlord was awaiting the outcome of arbitrations in relation to a number of other units on mall level 1.

When questioned about his comparison no.1 (Boots) Mr. Algar agreed that this unit was much smaller than the property concerned, was located on mall level 2 and traded at one level only and to that extent it was not a relevant comparison for valuation purposes. Mr. Algar said his sole reason for introducing Boots as a comparison was to show the close relation between the initial rent and the valuation agreed at Section 30 appeal stage. Mr. Algar said that in his opinion a similar relationship should exist in regard to the property concerned.

(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:

Level 1	1,250.2 sq. metres	@	€450 per sq. metre	=	€62,590
Level 0	1,971.0 sq. metres	@	€310 per sq. metre	=	€611,010
Level -1	408.39 sq. metres	@	€200 per sq. metre	=	€81,678
10% Addition for Fit Out				=	<u>€125,527</u>
Total				=	€1,380,805

Valuation (rounded) €1,380,000.

In support of her opinion of NAV Ms. McPartlan introduced three comparisons, details of which are contained in Appendix 2 attached to this judgment.

Under cross examination by Mr. Algar, Ms. McPartlan said she had regard to the initial rent of the property concerned in arriving at her opinion of NAV. Ms. McPartlan also said that she had regard to all available rental levels in the shopping centre particularly the rents of the large stores such as Penneys and Marks and Spencer. Ms. McPartlan said it would not be best practice to look at the actual rent only to the exclusion of all others.

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. The parties are also agreed that a 10% fit out allowance is appropriate.
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. Mr. Algar in his evidence said the primary reason for including the Boots unit as a comparison was to show the relatively close relationship between the initial rent of €709,000 and its NAV agreed at Section 30 appeal stage. This indicated an uplift of approximately 8%. If a similar uplift were applied to the initial rent of the subject

property the outcome would be €1,371,317 before the 10% fit out allowance. If the rent free period which has a value of €1,630,957 is discounted over five years as suggested by Mr. Algar the net effective rent becomes €1,036,952 which when increased by 8% as per Boots would give a figure of €1,199,080 before the 10% fit out allowance in respect of the retail area. The Tribunal considers the Boots letting to be highly irrelevant on two grounds. Firstly the NAV was agreed at Section 30 appeal stage and secondly it shows a relatively close relationship between the initial rent of €709,000 and the NAV agreed at €770,000.

9. In the Tribunal's opinion it would be more appropriate to discount the value of the rent free period over the first 10 year period of the lease which would give a net effective rent of €1,153,345 which if adjusted in line with the Boots agreed assessment would give a NAV of €1,245,200 before the fit out allowance.

Determination

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

Ground Floor Retail	1,250.2 sq. metres	@	€440 per sq. metre	=	€50,088
Lower ground Floor Retail	1,971 sq. metres	@	€300 per sq. metre	=	€591,300
10% Fit Out Allowance				=	€14,138
Basement Stores	408.39 sq. metres	@	€200 per sq. metre	=	€ 81,678
Total				=	€1,337,204
NAV say	€1,337,000				

And the Tribunal so determines.