

Appeal No. VA11/5/223

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

Paddy Power PLC t/a Paddy Power

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2203002, Retail (Shops) at Level 1, Unit 1, Pembroke District, Dundrum Town Centre, Sandyford Road, 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 €8,100 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are set out 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 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 property concerned in this appeal is bookmakers premises located on Pembroke Avenue in that section of the Dundrum development known as the Pembroke District.

The Pembroke District is at two levels, part of it known as Pembroke Walk over looks the Town Square. Pembroke Avenue which is at the rear provides pedestrian access from Sandyford Road to the Town Square by way of a stairway (24 steps). Other occupiers in the immediate vicinity are in restaurant use. The lower ground floor entrance to the Harvey Nichols department store is also on Pembroke Avenue. Also at this level are the Pembroke Cottages.

Accommodation

The subject unit is irregular in configuration and its NIA measured in accordance with the Code of measuring Practice is agreed to be as follows:

Shop 49.91 sq. metres.

Tenure

The property is occupied under the terms and conditions of a lease for a period of 10 years from the 25th November, 2010 at an initial yearly rent of €46,394. *Inter alia* the lease provides that the rent be subject to review at the end of the fifth year of the term. The tenant also had the option of breaking the lease and the end of year four and year eight without the payment of any penalty. The agreement for lease was signed on the 21st November, 2010.

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)

Mr. Algar in his evidence said that the lower end of the Pembroke District was the worst location in the entire Dundrum Town Centre development. The Pembroke District and Pembroke Avenue in particular is remote from the centre proper and has no profile whatsoever from the Town Centre Square and little if any pedestrian flow. The only other properties at this level are three restaurants which in his opinion occupy a very poor location with a low profile and another small retail unit close by.

Having regard to the poor location of the property and its lack of profile, Mr. Algar estimated its NAV to be as follows.

Shop 49.91 sq. meters @ €650 per sq. metre = €29,715

NAV say €29,700

Mr. Algar said that he appreciated that his opinion of NAV was substantially below the passing rent but intimated that the rent so agreed may reflect its use as a bookmakers and that

there was no other premises in such a use in the entire development. These two factors he said may have had a bearing on the rent that was agreed.

In support of his opinion of NAV Mr. Algar introduced four comparisons, details of which are contained in Appendix 1 attached to this judgment.

In relation to his comparisons Mr. Algar said that his comparisons No.'s 2 and 4 were situated close to the subject property and shared a common inferior location with a corresponding lack of profile. His comparison No. 1 (Brambles) occupied a vastly superior location to the property concerned at the main pedestrian entrance to the centre, and yet was valued at €1,000 per sq. metre overall. He also pointed out that the valuation of this property was the subject of an appeal to this Tribunal.

Having regard to the fact the Pembroke District and Pembroke Avenue in particular was distinctly different from any other part of the Dundrum Town Centre, Mr. Algar said he considered it proper to look at the assessments of shop units on Dundrum Main Street which was in close proximity to Pembroke Avenue. In this regard Mr. Algar said that his comparison No.3 (the ESB premises) occupied a much better location than the subject property, enjoyed a much better profile and greater pedestrian flow. Under the circumstances he could not understand why the value of the property concerned should be determined at a sq. metre rate of €1,350 per sq. metre.

Under cross-examination by Ms. McPartlan, Mr. Algar agreed that his estimate of NAV was considerably lower than the passing rent. He also agreed that the occupier was a PLC with many similar outlets in Dublin and throughout the country and hence were well aware of prevailing rental values. In such circumstances it would be unlikely that the company would pay anything other than the current market rent for the subject property. When questioned about his comparisons Mr. Algar reiterated his opinion that, other than with the exception of the Big Bang Comic shop (comparison No.2), they all occupied better locations than the subject property. Mr. Algar agreed with Ms. McPartlan that his comparison No.4 (Pembroke Cottages) was different from the property concerned in that it was a converted Victorian cottage without signage, shop front and limited profile. Nonetheless Mr. Algar said that taking all these factors into account it was difficult to understand why the property concerned should be valued at €1,350 per sq. metre when the cottages were only valued at €450 per sq.

metre. In his opinion the differences in location and type did not warrant such a vast difference in the rate per sq. metre to be applied.

(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.

Ms. McPartlan said that in arriving at her opinion of NAV of the property concerned she had regard to the passing rent and also the general level of values in the Pembroke District. Accordingly therefore she valued the subject property as follows:

Shop	49.91 sq. meters	@	€1,350 per sq. metre	=	€67,378.50
NAV say €67,300					

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

Under cross-examination by Mr. Algar, Ms. McPartlan agreed that her comparison No.3 (Teddy's) was a recent assessment and was only at Section 28 representation stage. When asked to comment on the rents of the subject property (€46,394) per annum and the rent of the Big Bang Comics shop (€22,500) per annum which are located close to one another and are of similar size Ms. McPartlan said that it was her opinion that the rent of the latter was much too low. Ms. McPartlan agreed that there was no evidence of rental values in the Pembroke District in 2005 but said that in arriving at her opinion of NAV she had regard to the fact that in general retail rents had grown quite sharply between 2005 and 2008 and had then declined. Ms. McPartlan said that in her judgment €1,350 per sq. metre was appropriate when valuing small units in the Pembroke District. Furthermore she was of the opinion that

this figure was amply supported by the general level of rents and assessments in the Dundrum Centre development.

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. It is also agreed that the unit is somewhat irregular in configuration.
7. The lease commencement date for the property concerned is the 25th November, 2010, some five years after the specified valuation date of the 30th September, 2005.
8. It is common case that the lower level of the Pembroke District where the subject property is located is remote from the shopping centre proper. Pembroke Avenue provides a pedestrian link from the Sandyford Road/Dundrum Main Street via an open stairway leading to the Town Square/ Millpond area. The property concerned is located adjacent to the bottom of the stairway.
9. In support of his opinion of NAV, Mr. Algar introduced four comparisons- one of which, comparison no.3 (the ESB premises), is located on Main Street, Dundrum. Mr. Algar comparisons no.'s 1 and 2 are currently under appeal to this Tribunal and as such are of limited assistance. Mr. Algar's other comparison is of some assistance in so far as it is one of four cottages which has been converted into restaurant and commercial use. These cottages are located adjacent to the property concerned. Ms. McPartlan introduced two comparisons- one of which is the subject of an appeal to this Tribunal. Her other comparison, The Counter, is located on Pembroke Avenue, but in the Tribunal's opinion occupies a somewhat better location.
10. The rental evidence in Pembroke Avenue lacks consistency- firstly there is the subject unit let in November 2010, at headline rent of €46,394 per annum equivalent to €1,076 per sq. metre, whilst the Big Bang Comic shop (Mr. Algar's comparison no.2) was let in August, 2011 at a rent of €2,500 per annum equivalent to €22 per sq. metre. In the circumstances it is not easy to arrive at a NAV having regard to the rental evidence and this situation is rendered even more difficult by the fact that the rents agreed took place in 2010 and 2011 some considerable time after the specified valuation date of the 30th September, 2005.

11. Having regard to the evidence introduced by the valuers the Tribunal had come to the conclusion that the NAV determined by the respondent is much too high, having regard to fact that the Pembroke Cottages have been valued at €450 per sq. metre. In the circumstances it is difficult to understand why the property concerned should be valued at €1,350 per sq. metre- i.e. three times as much. The Tribunal has also come to the conclusion that the actual rental evidence is of little assistance as there is such a wide variation in terms of rates per sq. metre for the two properties which are of somewhat similar size and location.

Determination

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

Shop 49.91 sq. meters @ €700 per sq. metre = €34,937

NAV say €35,000.

And the Tribunal so determines.