

Appeal No. VA11/5/232

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

Dubray Books

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 519620, Retail (Shops) at Unit 27-28, Blackrock Shopping Centre, Blackrock, County Dublin.

B E F O R E

Maurice Ahern - Valuer, IPAV

Deputy Chairperson

Patrick Riney - FSCSI, FRICS, ACI Arb

Member

Fiona Gallagher - BL

Member

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

By Notice of Appeal received on the 30th of August, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €138,500 on the above described relevant property.

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

"The RV as assessed is excessive and inequitable. The NAV is not sustainable on a one year with another basis. The Commissioner has also failed to take account of the effect on rent here due to the opening of the Dundrum Town Centre." "The Commissioner has failed to make sufficient allowance for size, configuration and location of the subject property."

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7 on the 2nd day of February, 2012. At the hearing the appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI. The respondent was represented by Mr. Paul Ogbemor, BEng (Hons) Civil Engineering, a valuer at the Valuation Office. Both parties, having taken the oath, adopted their respective précis, which had previously been received by the Tribunal, as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

At Issue

Quantum.

Location

The property is located at Unit 27/28B on the first floor of Blackrock Shopping Centre, Blackrock, Co. Dublin. Blackrock is a prominent south Dublin suburb, located approximately seven kilometres south of Dublin city centre. The area benefits from a number of public transport links, including bus routes on Frascati Road and the quality bus corridor on the N11. Blackrock DART station is situated in the Village and also provides access to both the north and south sides of Dublin City and to Greystones, Co. Wicklow.

The Property Concerned

The subject property is a first floor retail and office unit in Blackrock Shopping Centre. There are two levels of car parking, surface and underground for the customers and staff of the shopping centre. This is an unusually shaped unit in comparison to most of the other units at first floor level and has a main frontage of circa 7.5 metres, despite the unit's zoned size of circa 219.28 sq. metres. This in turn results in a strikingly large Zone B area of 107.22 sq. metres, much of which is claimed to be shadowed.

Basis of Valuation

The property was the subject of a revaluation as one of all rateable properties in the Dún Laoghaire Rathdown County Council area. The valuation order for Dún Laoghaire Rathdown County Council specifies the 30th September, 2005 as the valuation date. Valuation levels

were derived from the analysis of available open market rental information of comparable properties and applied to the subject property.

The valuation of this property on appeal to the Commissioner of Valuation was determined by reference to the values of comparable properties stated in the valuation list on which the property appears.

Valuation History

The valuation certificate (proposed) was issued on the 15th June 2010. The property had a valuation of €182,000. Representations were submitted on the 12th July, 2010. The valuation was reduced to €138,500 by reducing the Zone A level from €1,600 per sq. metre to €1,200 per sq. metre. An appeal was submitted to the Commissioner of Valuation on the 8th February, 2011. The valuation was issued unchanged on the 3rd August, 2011. An appeal was submitted to the Valuation Tribunal on the 30th August, 2011.

Tenure

It is understood the subject property is held under a 25 year lease, with provision for five-yearly rent reviews, by Dubray Books for a current rent of €42,650 per annum exclusive since the 1st October, 2003. It is also understood that this is an FRI lease which commenced on the 1st October, 1999. It is also understood there was a rent review on the 1st October, 2008 which resulted in the rent increasing to €67,000 per annum exclusive. In analysing the rent as of the 1st October, 2003, it is understood that this equates to a Zone A level of €1,175.85 per sq. metre for the retail area, with the office valued at a level of €250 per sq. metre. It is understood the landlords for the Blackrock Shopping Centre are Blackrock Select Retail Holdings.

Appellant's Evidence

Mr. Halpin took the oath and adopted his précis as his evidence-in-chief. He referred to it in some detail. He pointed out that the subject property was a corner unit, which was tucked away from the main footfall/retail area and argued that the allowance of 5% given by the Valuation Office was not at all adequate. In his opinion, the primary area, with greater footfall, was at the main entrance to Blackrock Shopping Centre, beside Superquinn and opposite the Frascati Shopping Centre.

In particular, he made the following points:

1. The location of the subject property is moderate, being away from the majority of the footfall in the centre. The subject is located furthest from the main entrance on the first floor, and is not passed by any of the through traffic from the main street to the Frascati Shopping Centre.
2. The property is of a very poor layout (see plan), with just circa 7.75 metres of frontage despite its zoned size of 219.28 sq. metres. He also pointed out the unit was in fact formed out of a single unit and at the rear of another adjoining unit. This resulted in shadowing caused by other units, in turn resulting in a very large Zone B area of circa 107.22 sq. metres. In his opinion, the Commissioner had failed to make adequate allowance for the shape and shadowing of the property, despite having made similar allowances during the course of the Dún Laoghaire Rathdown revaluation.
3. The Commissioner had failed to adequately reflect the issue of quantum, shape and layout of the subject. While he accepted that a 5% end allowance had been granted by the Commissioner, he argued this was not sufficient to balance out the issues arising from the size of the unit relative to other smaller, regular shaped and more attractive units in the centre, particularly when the issue of its poor layout was considered.
4. The appellant believes that the Commissioner should consider an overall basis for the unit. The Starbuck's Coffee Company unit (comparison no. 3) in the middle of the main street was deemed 'unsuitable for zoning' by the Commissioner and was valued at €400 per sq. metre overall. In view of the subject's highly irregular shape and poor location within the shopping centre, the appellant believes that the subject is not superior in any aspect and thus a maximum of €400 per sq. metre overall should be applied. In fact, the Starbucks unit is, in many respects, superior to the subject yet has an estimated NAV of just €19,900, compared with the subject's NAV of €38,500, in spite of the fact that the subject has a significantly smaller area.
5. When comparison 1, the Unicare unit, and the subject are taken on an overall basis, it is clear that the Commissioner's estimates of value are very different. The subject devalues at €32.05 per sq. metre overall for the zoned area (then less 5% end allowance) while Unicare, complete with sizeable roadside frontage and adjacent to the main street entrance devalues at €75.63 per sq. metre overall for the zoned areas. This is a 25% differential in favour of the property with frontage and adjacent to the

entrance and maximum footfalls. The appellant believes that this is grossly unfair on the subject.

6. The passing rent of the subject (at €167,000 from 2008) is significantly lower than the passing rent of comparison no.2, Next Retail Limited (at €240,000 from 2007). This is a difference of 30.5% in terms of rental capacity yet there is no difference in terms of the Commissioner's estimate of NAV. Equally suggested rental evidence from the Unicare unit also suggests a similar differential between passing rent of this unit and that of the subject, but there is again no difference in terms of the Commissioner's estimate of NAV.
7. It is accepted that with this type of property, as with all others, there is a range of values. However, this particular unit falls at the lowest end of the spectrum in Blackrock Shopping Centre and is lower than some of the prime units on Main Street, Blackrock.
8. In his opinion, the Commissioner's approach in this case was unfair when all the evidence was taken into account.
9. He emphasised that the appellant was seeking to have its assessment reduced to more fairly reflect its unit's relevant value taking into account its actual location, together with the level applied to other units in the area as shown by the comparisons.

Mr. Halpin also referred to the guidance notes of the Society of Chartered Surveyors Ireland which specifically refer to allowances that may be applied by an independent valuer. However, he accepted that the said guidance notes did not define any allowances that may be applied by overshadowing and that, in general, it was up to the opinion of the specific valuer in each case.

In referring to his comparisons he made the following comments:

Comparison no. 1, the Unicare unit at units 7-11, Blackrock Shopping Centre. This is located at the entrance from the main street to the Blackrock Shopping Centre, with maximum footfall and main street frontage. It is understood that the rent in this case is in the region of €250,000 per annum exclusive, suggesting a Zone A level of €1,625 per sq. metre. In analysing the rate applied by the Valuation Office, i.e. €38,400, Mr Halpin had derived a Zone A level of €900 per sq. metre, a Zone B level of €450 per sq. metre and a Zone C level of €235 per sq. metre.

Comparison no.2, the Next retail unit at units 41-42, Blackrock Shopping Centre. This unit is located at the main entrance to Blackrock Shopping Centre with maximum footfall. Despite a 30.5% higher rent in 2008, the Commissioner valued this unit at almost exactly the same NAV as the subject. In analysing the rateable valuation applied by the Commissioner, i.e. €39,900, this gives a Zone A level of €1,200 per sq. metre and a Zone B level of €600 per sq. metre. It is also understood that this property is held under a 35 year lease with provision for five-yearly rent reviews from the 1st October, 1984. The rent reviewed to €71,400 from 1st October, 2002 and to €240,000 from 1st October, 2007, which equated to a Zone A rate of €1,470 per sq. metre.

Comparison no.3 is the Starbucks Coffee Company Limited unit on the main street of Blackrock. This had been valued on an overall basis by the Commissioner (as it was deemed unfit for zoning due to configuration). It is in a very prominent location with frontage to the main street and rear advertising onto the DART station. He also made the point that this is a much superior location to the subject's. In analysing the valuation applied by the Commissioner of €19,500 on an overall basis, this equated to €400 per sq. metre.

In his opinion, the subject property should be valued as follows:

Retail Zone A	45.16 sq. metres	@	€900 per sq. metre	=	€ 40,644
Retail Zone B	107.22 sq. metres	@	€450 per sq. metre	=	€ 48,249
Retail Zone C	66.91 sq. metres	@	€225 per sq. metre	=	<u>€ 15,055</u>
				Total =	€103,948
Less 10% for shape and layout of the unit					(€ 10,395)
				Net Amount =	€ 93,553
Plus Ancillary Office	27.40 sq. metres	@	€100 per sq. metre	=	<u>€ 2,740</u>
				Total =	€ 96,293
Less 5% end allowance (allowed by the Commissioner)					<u>(€ 4,815)</u>
				Net Valuation =	€ 91,478
NAV say	€1,400				

Mr. Halpin also gave a second opinion, valuing the subject property on an overall basis, which gives a rateable valuation of €90,400.

Cross-examination

In answering questions from both the Tribunal and the respondent, Mr. Halpin pointed out that he was now seeking a lower figure than the original one sought of €108,000 because additional relevant information had only recently come to light in regard to a number of his comparisons. He confirmed there were three entrances to Blackrock Shopping Centre from the main street of Blackrock, from the surface car park/Frascati side and from the underground car park. He accepted that there were two escalators in the centre and that the subject unit was directly beside one of them. He understood Dundrum Town Centre had been opened in November or December 2005.

Respondent's Evidence

Mr. Ogbebor, having taken the oath, adopted his précis as his evidence-in-chief.

In his opinion, the valuation applied by him of €138,500 was fair and reasonable.

In his opinion, the subject property, measured on a net internal area basis, should be valued as follows:

45.16 sq. metres @ €1,200 per sq. metre Zone A	= €54,192
107.22 sq. metres @ €600 per sq. metre Zone B	= €64,332
66.91 sq. metres @ €300 per sq. metre Zone C	= €20,072,10
27.4 sq metres @ €250 per sq. metre	= €6,850
5% End Allowance	<u>(€6,929.80)</u>
NAV	€138,516.30

Valuation Office estimate of NAV (rounded to) €138,500.

In arriving at his valuation, he referred to five comparable properties each of which is located in Blackrock Shopping Centre.

Comparison 1 is Unit 50, Blackrock Shopping Centre, Blackrock, Co. Dublin. This unit is occupied by Bewleys-Coffee Man Ltd and has a retail Zone A area of 32.89 sq. metres which had been valued at €1,200 per sq. metre. The retail Zone B area had been valued at €600 per sq. metre. Representations had been submitted on this property and the valuation was reduced from €50,100 to €37,600. The rent in 2004 was €36,500 per annum exclusive under a 35 year FRI lease which had commenced in August 1985. This equated to a Zone A level of €1,105.70 per sq. metre.

Comparison no. 2 is Unit 30, Blackrock Shopping Centre, Blackrock, Co. Dublin and is occupied by Harriet's House Ireland Ltd. The retail Zone A area of 35.38 sq. metres was valued at €1,200 per sq. metre and the Zone B area of 27.78 sq. metres was valued at €600 per sq. metre. Representations had been submitted on this property on 9th July, 2010 and the valuation was reduced from €74,800 to €56,100 by reducing the Zone A level from €1,600 per sq. metre to €1,200 per sq. metre. The rent passing in 2005 was €60,000 per annum under a 29 year FRI lease which commenced in October 1990. This equated to a Zone A level €1,217.77 per sq. metre.

Comparison no. 3 is Unit 43, Blackrock Shopping Centre, Blackrock, Co. Dublin, which is occupied by Mercury Shoes Ltd. The retail Zone A area of 20.47 sq. metres had been valued at €1,200 per sq. metre and the retail Zone B area of 30.68 sq. metres had been valued at €600 per sq. metre. Representations had been submitted on this property on 9th July, 2010 and the valuation was reduced from €60,900 to €45,700 by reducing the Zone A level from €1,600 per sq. metre to €1,200 per sq. metre. The rent passing in this case in 2004 was €60,000 per annum exclusive under a 35 year FRI lease which commenced in October 1984. This equated to a Zone A level €1,574.38 per sq. metre.

Comparison no. 4 is Unit 49, Blackrock Shopping Centre, Blackrock, Co. Dublin and is occupied by Fugifilm. The retail Zone A area of 32.63 sq. metres had been valued at €1,200 per sq. metre and the retail Zone B area of 10.74 sq. metres had been valued at €600 per sq. metre. Representations had been submitted on this property on 12th July, 2010 and the valuation was reduced from €60,600 to €43,300 by reducing the Zone A level from €1,600 per sq. metre to €1,200 per sq. metre. The rent passing in this case in 2003 was €44,800 per

annum exclusive under a 35 year FRI lease which commenced in October 1984. This equated to a Zone A level of €1,181.05 per sq. metre.

Comparison no. 5 is Unit 51, Blackrock Shopping Centre, Blackrock, Co. Dublin, which is occupied by Mothercare. The retail Zone A area of 76.25 sq. metres was valued at €1,200 per sq. metre and the retail Zone B area of 107.36 sq. metres had been valued at €600 per sq. metre. Representations had been submitted on 12th July, 2010 and the valuation was reduced from €237,000 to €169,300 by reducing the Zone A level from €1,600 per sq. metre to €1,200 per sq. metre. The rent passing in 2006 was €165,000 per annum exclusive under a 20 year FRI lease which commenced in October 1996. This equated to a Zone A level of €1,110.59 per sq. metre.

Additional photographs and detailed valuation analysis were also submitted during the hearing, which were referred to in some detail by Mr. Ogbebor.

In his opinion, the assessment of valuation applied by him, using the Zone A level of €1,200 per sq. metre, the Zone B level €600 per sq. metre, and the Zone C level of €300 per sq. metre, were appropriate in this case, arriving at an NAV of €138,500, as stated in his précis.

Cross-examination

In answer to questions from both the Tribunal and the appellant, Mr. Ogbebor accepted that his comparisons 1-4 were smaller than the subject property, but stated that they were located within the Blackrock Shopping Centre. He also accepted that a number of his comparisons were office units, having a different user to the subject property. While accepting that the Unicare unit, i.e. Unit 7-11 at Blackrock Shopping Centre, had been valued at a lower rate per sq. metre for Zone A than the subject property, he pointed out that it was on the lower level of the shopping centre, had been valued at €1,000 per sq. metre for Zone A with allowances applied and that this had been agreed with the agents at that time.

Summing Up

Mr. Halpin, on behalf of the appellant, summed up his case as follows.

1. He pointed out that the Commissioner had tried to justify applying a level of €1,200 per sq. metre Zone A on the subject. However, in his opinion, there was a fair level of

inconsistency in the size, location and configuration of the units within the Blackrock Shopping Centre.

2. The subject unit had a number of negatives in comparison with the comparisons submitted by the respondent.
3. The subject property is in a completely inferior location in comparison to the respondent's principal comparable no.5, i.e. Unit 55, Blackrock Shopping Centre.
4. He argued that the subject property is situated in a location which is inferior to his comparable 1 which had been analysed by him at a Zone A level of €900 per sq. metre Zone A.
5. In his opinion the subject property was located in a far poorer location than the Starbucks unit, his comparison no. 3, which was located on the main street of Blackrock.
6. He was of the opinion that the levels applied in valuing the office units in Blackrock Shopping Centre were irrelevant to the subject.
7. He contended that the office was ancillary space and could not be valued at the same level as purpose-built office space.

Mr. Ogbebor, on behalf of the respondent, summed up his case as follows.

1. The levels applied in his valuation had been agreed with the agent's forum.
2. This was the only appeal arising from properties located in Blackrock Shopping Centre.
3. In his opinion the subject property was not unique in terms of size and shape within the centre.
4. The appellant had regard to comparable 2, i.e. the Next retail unit at Units 41-42, Blackrock Shopping Centre, which in his opinion supported the levels applied by him in arriving at his valuation.

Findings

The Tribunal has carefully considered all of the evidence and arguments submitted and adduced by the parties and finds as follows.

1. The statutory basis of valuation is set down in the Valuation Act, 2001, wherein at section 48(3) the NAV of a property is defined as being "*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.”

2. The Tribunal is of the opinion that the Zone A level of €1,200 per sq. metre, Zone B level of €600 per sq. metre and the Zone C level of €300 per sq. metre are well established for Blackrock Shopping Centre. However it is also of the opinion that a greater allowance of 10% should be deducted from the said levels applied, to take account of the inferior location, configuration and shadowing within the subject property.
3. The Tribunal is also of the opinion that there should be an allowance of 20% applied to the office area, to take account of the fact that the said office area is ancillary to the subject property.

Determination

Having regard to the foregoing, the Tribunal considers the following to be a fair and reasonable valuation of the subject property, measured on a net internal area basis:

45.16 sq. metres @ Zone A €1,200 per sq. metre	= € 54,192
107.22 sq. metres @ Zone B €600 per sq. metre	= € 64,332
66.91 sq. metres @ Zone C €300 per sq. metre	= <u>€ 20,073</u>
Total	= €138,597
Less 10%	<u>€ 13,859</u>
Net (zoned area)	= €124,738
27.4 sq. metres Office Area @ €250 per sq. metre	= € 6,850
Less 20%	<u>€ 1,370</u>
Net (office)	= € 5,480
Total NAV	= €130,218

NAV say €130,000

And the Tribunal so determines.