Appeal No. VA11/5/246

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Ranove Investments Ltd. t/a G-Star **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2178528, Retail (Shops), at The Gallery, Unit 29, Dundrum Town Centre, Dundrum, County Dublin.

B E F O R E

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

Brian Larkin - Barrister **Member**

Patrick Riney - FSCSI, FRICS, ACI Arb **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 31st August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €186,300 on the above described relevant property.

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

"We are not in agreement with the rates per sq. metres applied in the valuation and we are not in agreement with the floor areas applied"

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 25th day of January, 2012. At the oral hearing the appellant was represented by Mr. George Saurin, BSc Surv, MRICS, MSCSI Associate Director, Colliers International. Ms. Triona McPartlan, BSc (Hons) Estate Management a Valuer in 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 twelve 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 located in that section of the shopping centre known as “The Gallery”, which is at an intermediate level between mall level 2 and mall level 3. The units in The Gallery, which are of various sizes and configurations, are arranged in an elliptical manner around the central core which provides lifts, escalators and stairways to all mall levels. The property trades as ‘G Star’ and is used for the sale of menswear. Other units in The Gallery are in similar fashion use.

Accommodation

The accommodation, measured on an NIA basis in accordance with the code of measuring practice, is agreed as follows:

Retail Zone A	59.66 sq. metres
Retail Zone B	59.92 sq. metres
Retail Zone C	36.98 sq. metres
Total Area	156.56 sq. metres
ITZA	98.87 sq. metres
Frontage	9.78 metres

Tenure

The property is occupied under the terms and conditions of a lease for a term of 25 years from the 3rd march, 2005 at an initial yearly rent of €155,000. In addition to rent the tenant is responsible for rates and other usual outgoings including 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 agreement for lease was entered into in September 2004.

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. GEORGE SAURIN)

In his evidence Mr. Saurin said that the location of The Gallery was significantly inferior to any of the malls and was not regularly accessible from either mall level 2 or 3. Furthermore he described the Gallery walkway as being narrow and not user-friendly. There had been, Mr. Saurin said, a relatively high turnover of tenants in The Gallery which was contrary to the situation that pertained on the main malls where there was a very low level of tenant turnover. This, he said, was a clear indication that trading at the Gallery level was difficult and this was further emphasised by the tenant mix.

Mr. Saurin said that whilst the subject unit was regular in configuration the presence of a large structural column in the centre of the unit's frontage inhibited to a degree the optimum use of the retail space. Mr. Saurin said that before arriving at his opinion of NAV he had analysed all the rental evidence in relation to units in the gallery and details of these comparisons are contained in Appendix 1 attached to this judgment.

Mr. Saurin pointed out that the rental evidence included lettings before and after the relevant valuation date of the 30th September, 2005. In this regard Mr. Saurin made the following comments.

- *"The most appropriate comparison is the letting of the subject unit, as the agreement to lease was signed only 12 months prior to the valuation date. In addition to the above, I have had particular regard to a number of similar size and configured units and to a lesser extent comparisons of different sizes and configurations.*
- *In assessing the subject units letting, I have had regard to the underlying rent as at the agreement to lease date. The underlying rent for the subject unit as at September 2004 was €926.10 p.s.m. In arriving at my opinion of rent as at the valuation date, I have increased this figure to €1,010 p.s.m., a 9% increase. In arriving at my opinion of the percentage increase to apply, I have had particular regard to the retail rental growth index as published by IPD in conjunction with the SCSI. The IPD index is the most comprehensive property index in Ireland. The Retail Growth Index as at September 2004 was 223.1 and as at September 2005 was 248.3 a 10.14% increase.*
- *Rather than looking at the unit in pure isolation, I have had regard to the units on the Gallery Level that are closest in terms of size and configuration, namely Unit 7 and Unit 35, the former Genius unit and Fran and Jane*
- *Unit 7 is closest in terms of size and was also part of the original tenant line up on this level. The underlying rent of €137,750 per annum having allowed for the 3 month rent free period equated to €923.26 p.s.m. This level is very similar to the subject units €926.10 p.s.m.*
- *The next closest unit in terms of size is Unit 35. Originally let on a turnover based rent, the unit was subsequently let to Fran & Jane in October 2008 at an underlying rent of €882.52 p.s.m. Considering the market in general had improved significantly between the original letting and October 2008, this rental level together with the number of lease surrenders on the floor highlights that the pre-lets on this level were done at levels exceeding a reasonable rate having regard to its trading ability. At the valuation date, 30th September 2005, the centre had opened and the trading ability of this level would have been more apparent."*

Mr. Saurin said that it was his understanding that the negotiations regarding the letting of units in The Gallery were based on an overall rate per sq. metre. Due to lack of accurate information in this regard he was unable to analyse the rental information on a zoning basis. In the circumstances he had prepared his opinion of NAV as set out below using the zoning method and the overall basis.

Zone A 59.66 sq. metres @ €1,600 per sq. metre = €95,456
Zone B 59.92 sq. metres @ €800 per sq. metre = €47,936
Zone C 36.98 sq. metres @ €400 per sq. metre = €14,792
Total = €158,184
NAV say €158,000

Retail Overall 156.66 sq. metres @ €1,010 per sq. metre = €158,125.60.

Under examination by Ms. McPartlan, Mr. Saurin agreed that the subject property had a frontage of 9.78 metres and a depth of 15.47 sq. metres which gave a frontage to depth ratio of 1:1.58. Mr. Saurin agreed that most of the units were somewhat irregular in configuration and had frontage to depth ratios ranging from 1:1.5 to 1:3.5. Mr. Saurin also agreed that the zoning method of valuation was able to cope with these differences in regard to the shapes and sizes of the units for comparison purposes

(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 to 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."

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.

Valuation

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:

Zone A 59.66 sq. metres @ €1,800 per sq. metre = €107,388
Zone B 59.92 sq. metres @ €900 per sq. metre = €53,928
Zone C 36.98 sq. metres @ €450 per sq. metre = €16,641
NAV €177,957

(Note: the above valuation is less than the €186,300 which currently appears on the valuation list. This, Ms. McPartlan stated, was due to re-measurement of the subject unit in the course of a joint inspection which took place following the lodgement of appeal to the Tribunal.)

In support of her opinion of NAV, Ms. McPartlan put forward three comparison properties, details of which are included in Appendix 2 to this judgment.

Under cross-examination by Mr. Saurin Mr. McPartlan said that she considered her Zone A rate of €1,800 per sq. metre fairly represented the locational differences between the property concerned and those units which occupied prime locations at the various mall levels. Ms. McPartlan further agreed that her opinion of NAV was some 15% in excess of the passing rent. Ms. McPartlan pointed out that the initial rent was agreed approximately one year before the relevant valuation, at a the time when rents within the centre were rising in line with general market trends.

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 is 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. Ms. McPartlan valued the property using the zoning method whilst Mr. Saurin prepared the valuation using both methods.

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. The difference in valuation between the valuers is very modest and this is testament to the detailed analysis they carried out in order to arrive at their respective opinions of NAV.

9. It is common case that the rent of the subject property was agreed about a year before the specified valuation date of the 30th September, 2005 at a time when rents were rising. As a general statement, the actual rent is *prima facie* evidence of the NAV of a property if it can be shown that it is consistent with rents of similar properties let at or about the same valuation date. In this regard the existing rent devalues at Zone A €1,567 per sq. metre. In the Tribunal's opinion a modest increase is warranted to

reflect the uplift in rental values between September 2004 and the specified valuation date of 30th September, 2005.

10. In this instance the Tribunal prefers the valuation prepared on a zoning basis.

Determination

Having regard to the foregoing, the actual rent being paid, the configuration of the unit and the available rent levels in The Gallery, the Tribunal determines the NAV of the property concerned in accordance with statutory provisions at the relevant valuation date of the 30th September, 2005 to be as follows:

Retail Zone A	59.66 sq. metres @ €1,680 per sq. metre	=	€100,229
Retail Zone B	59.92 sq. metres @ €840 per sq. metre	=	€ 50,333
Retail Zone C	36.98 sq. metres @ €420 per sq. metre	=	€ 15,532
Total			€166,094

NAV say €166,000

And the Tribunal so determines.