

Appeal No. VA11/5/247

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

Ballinteer Hair Company Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2172482 , Retail (Shops), at 127a/127a Mezz, 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 29TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 31st day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €182,100 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 valuation applied. The rates applied to the various areas have no regard to the specific location and configuration of the unit. The value bares no relationship to the actual market rent for the property as at the valuation date which was agreed 6 months prior to the valuation date at €64,000 per annum. The value applied is 285% of the contracted rent which commenced 6 months prior to the valuation date with the corresponding rates liability reflecting 48.4% of the actual rent." "While the areas outlined in the certificate are correct, the levels are stated incorrectly. The first two areas relate to Level 1m and the second two areas relate to level 1."

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 an Associate Director at 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 Wickham 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.

The Subject Property

The property concerned is a non typical unit on mall level 1 and mall level 1M located at the main entrance from the Red Car Park immediately beside the premises occupied by Ernest Jones jewellers. The mall, at this point, is narrow and enclosed by glazed sliding doors before opening out into a wide concourse area where there is a bank of lifts, escalators and stairways serving all main mall levels. The mall level section of the property concerned is used as a barbers shop while accommodation at level 1M is used as a ladies hairdressers. Although occupied as a single unit of occupation, there is no internal connection between the two sections and each is individually accessed from the respective malls.

Accommodation

The accommodation measured on a net internal area basis in accordance with the code of measuring practice has been agreed as follows:

Unit 127 – Barber’s Shop:

Zone A – 16.45 sq. metres

Zone B – 0.8 sq. metres

Unit 127M – Hairdressing Salon

Zone A – 64.72 sq. metres

Zone B – 16.76 sq. metres

Tenure

The entire property is occupied under the terms and conditions of a lease for a period of 25 years from the 16th March, 2005 at an initial yearly rent of €64,000. In addition to rent, the tenant is responsible for rates and all other 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. It appeared that the terms of the lease were agreed by way of an agreement for lease signed in March, 2004. At the commencement of the lease, the tenant was granted a three 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. George Saurin)

In his evidence Mr. Saurin contended that the net annual value of the property concerned, calculated in accordance with the statutory provisions, be as set out below:

127a – 17.25 sq. metres @ €1,100 per sq. metre = €18,975

127a Mezzanine – 81.48 sq. metres @ €600 per sq. metre = €48,888

Total €67,863

Say €68,000

Mr. Saurin's provided a zoned analysis of this figure as follows:

127a: Zone A – 16.45 sq. metres @ €1,126.20 per sq. metre =	€18,476.64
127a: Zone B – 0.8 sq. metres @ €563.10 per sq. metre =	€ 450.48
127aM: Zone A – 64.72 sq. metres @ €68.80 per sq. metre =	€43,284.74
127aM: Zone A – 16.76 sq. metres @ €334.40 per sq. metre =	<u>€ 5,604.54</u>
Total	€67,816.40
Say, €68,000	

Mr. Saurin said that in arriving at his opinion of net annual value, he had regard to the rent free period of three months granted to the tenant at the commencement of the lease. Discounting the value of this on a straight line over the first five year period of the lease, give a net effective rent of €60,800. Mr. Saurin said that the SCS/IPD index indicated that retail rents between September, 2004 and September, 2005 had increased by approximately 11.28% which he then applied to the net effective rent of €60,800, thus giving an adjusted rent of €67,658.

In support of his opinion of net annual value, Mr. Saurin introduced five comparisons all of which are located in that part of the centre known as the Gallery. Details of Mr. Saurin's comparisons are contained in Appendix 1, attached to this judgment.

Mr. Saurin said that, in his opinion, the subject property, by virtue of its location and configuration was the most unattractive unit in the entire shopping centre complex. That there is no physical connection between the two levels, presented operational difficulties and additional costs. Mr. Saurin said that while his comparisons were located on the Gallery, this was not to be interpreted as meaning that he considered the subject property should be valued at a similar Zone A €1,800 per sq. metre. Indeed, it was his opinion that there should be a substantial discount from the Zone A rate of €1,800 per sq. metre.

(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 1M: Retail Zone A – 64.72 sq. metres @ €1,800 per sq. metre =	€16,496
Level 1M: Retail Zone B – 16.76 sq. metres @ € 900 per sq. metre =	€ 15,084
Level 1: Retail Zone A – 16.45 sq. metres @ €3,000 per sq. metre =	€ 49,350
Level 1: Retail Zone B – 0.8 sq. metres @ €1,500 per sq. metre =	<u>€ 1,200</u>
Total	€182,130
Total (rounded)	€182,100

Ms. McPartlan, in her evidence acknowledged that, the property concerned was non typical in configuration but that her valuation, as set out above, reflected the location of the property concerned and its configuration. In this regard, she was of the opinion that level 1M was similar in many respects to the Gallery and that was the reason why she had valued the accommodation at level 1M at the same Zone A €1,800 per sq. metre.

Under cross-examination, Ms. McPartlan agreed that there was no internal means of going from level 1 to level 1M within the property and that the only connection between the two sections was the common services such as water and electricity. When asked if he had any regard to the passing rent when arriving at her opinion of net annual value, Ms. McPartlan said that she had not, because she had considered the rent to be extremely low by comparison with other rents being paid throughout the centre.

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. 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.
7. The facts in relation to the subject property are agreed. It is also agreed that the property is non typical and that there is no internal communication between the accommodation at level 1 and level 1M.

8. The effect that a property is non typical means that there is little if any similar properties within the centre whose values can be relied upon for comparison purposes.
9. All of Ms. McPartlan's comparisons are typical mall units at various levels within the centre. The Tribunal attaches no weight to this evidence whatsoever.
10. Mr. Saurin's comparisons which are all located on the Gallery are also of little assistance, notwithstanding the fact that they share some characteristics with that section of the property concerned at level 1M.
11. The rent being paid in this instance is highly relevant in that it was agreed some eighteen months before the relevant valuation date. The Tribunal notes that the SCS/IPD index shows an increase in rental levels between the period September, 2004 and September, 2005. Having regard to the fact that the rent was agreed by way of an agreement for lease in March, 2004, the Tribunal would expect that the increase would be more than 11.28% and probably in the order of between 15% and 20%.

Determination

Having regard to the foregoing, the Tribunal determines the net annual value 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:

Unit 127:	Zone A - 16.45 sq. metres @ €1,200 per sq. metre = €19,740
	Zone B - 0.8 sq. metres @ €600 per sq. metre = € 480
Unit 127M:	Zone A - 64.72 sq. metres @ €750 per sq. metre = €48,540
	Zone B - 16.76 sq. metres @ €375 per sq. metre = <u>€ 6,285</u>
Total	€75,045

Net annual value, Say €75,000

And the Tribunal so determines.