

Appeal No. VA11/5/262

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

Educogym

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2202347, Gymnasium/Fitness Centre at Unit 6, Level 2, Dundrum Retail and Office Park, Sandyford Road, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Michael F Lyng - Valuer

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF SEPTEMBER, 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 €203,000 on the above described relevant property.

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

"On the basis that the estm NAV at €203,000 is unsustainable & grossly excessive & inequitable & not formulated in accordance with S48(3) of 2001 Act."

"This is a very poor location with very low footfall. It is considerably less valuable than Main Street, Dundrum, which is assessed at considerably lower levels."

***NOTE: THIS JUDGMENT WAS HANDED DOWN ORALLY IN ABBREVIATED FORM ON THE 15TH DAY OF FEBRUARY, 2012.**

The appeal proceeded by way of an oral hearing held at the offices of the Valuation Tribunal, 3rd Floor Holbrook House, Holles Street, Dublin 2 on the 15th day of February, 2012. At the hearing the appellant was represented by Mr. Eamonn Halpin BSc (Surveying), ASCS, MRICS, MIAVI and the respondent was represented by Ms. Triona McPartlan, BSC (Hons) Estate Management, a Valuer in the Valuation Office.

Location

The subject property is located in the Dundrum Retail and Office Park, off the Sandyford Road on the external periphery of the Dundrum Town Centre.

The Property Concerned

The property comprises a ground floor commercial unit, which is in use as a gymnasium and exercise centre. The agreed accommodation, measured on a Net Internal Area (NIA) basis is 183.31 sq. metres.

Tenure

The subject property is held under a 25-year lease from March 2009 with a rent of €100,000 per annum and a 6-month rent-free period. There is a break option in Year 7. The rent was abated from 1st September, 2011 to €60,000.

Rating History

The subject was listed for revaluation as part of the revaluation of all rateable properties in the Dun Laoghaire-Rathdown rating authority area. The relevant valuation date, as per the Valuation Order, is 30th September, 2005.

A Valuation Certificate was issued on 15th June, 2010 with a proposed valuation of €203,000. The appellant appealed against this valuation to the Commissioner of Valuation which appeal was rejected and the valuation affirmed. The appellant appealed against that decision to the Tribunal by Notice of Appeal dated 30th August, 2011.

The Issue

Quantum.

The Appellant's Evidence

Mr. Halpin, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the respondent, as his evidence-in-chief. He set out a number of factors, which he asked the Tribunal to take into consideration when assessing the Net Annual Value (NAV) of the subject property:

1. The extremely poor location of the subject property. Although it is located in close proximity to the Dundrum Town Centre, Mr. Halpin stated that it is removed from the internal footfall of the Centre. He further stated that as the majority of visitors to the Centre travelled by car, only a small number of those visitors actually passed the subject.
2. The fact that the subject and the adjacent units have proved almost impossible to let, despite the success of the Dundrum Town Centre, where the majority of units have been occupied since the Centre opened in 2005. Mr. Halpin stated that only the subject and one of the other nearby units are currently let. This unit is let to Smiles Dental under a 15-year lease from September 2011 at an annual rent of €47,500, with a rent free period of 12 months. In Year 2 the rent was abated to €40,000 per annum. In addition Mr. Halpin submitted that the abatement of the agreed rent on the subject proved that a rent of that level was totally unsustainable.
3. The split frontage on the property, which would make it unattractive to potential retail tenants in Mr. Halpin's view.
4. Mr. Halpin stated that there was a difference of approach between him and the respondent in this case. The respondent had valued the subject property by reference to the values of internal units within Dundrum Town Centre, whereas he had used comparisons from the Dundrum Village area. Mr. Halpin was adamant that the value of the subject could not be derived by reference to values within the Town Centre. He stated that the rental evidence of the subject and Smiles Dental, together with the fact that the other units in the vicinity remain vacant demonstrates that such units are not comparable in value to units within the Town Centre and one had to look outside the Centre for a tone. In Mr. Halpin's view the Dundrum Retail and Office Park was

suitable only for ancillary, service provider-type users who could not afford to locate in the higher value units within the Centre.

5. Mr. Halpin contended that it was grossly unfair of the respondent to value the subject at a Zone A level of €1,800 per sq. metre when the current passing rent equates to a Zone A rate of €530 per sq. metre or €327.63 per sq. metre overall. In further support of this contention, he pointed out that his Comparison 4, Mao Restaurant, which he said was situated in a prime location on the Plaza of the Dundrum Town Centre was valued at a rate of €500 per sq. metre overall and properties he believed to be superior on the Main Street were valued at a rate of €700 per sq. metre Zone A. Furthermore, he stated that the other gymnasiums in the immediate vicinity of the subject, Curves and Rock Fitness, his Comparisons 1 and 2, were valued at overall rates of €260 per sq. metre and €220 per sq. metre respectively.
6. He submitted that the respondent's approach in this case was unfair when all the evidence was taken into account, particularly the actual rent of the subject. He stated that the passing rent was not reduced due to the effects of the recession, but rather through the landlord's realisation that the rent agreed was unsustainable for this location. In contrast Mr. Halpin stated that at rent reviews in 2010 for prime internal units within the Dundrum Town Centre, the landlord had sought and was granted rent increases.
7. Mr. Halpin asked that the valuation of the subject be reduced to more fairly reflect the unit's relative value, taking into account its actual location, together with the level applied to other units in the area as evidenced by his comparisons.

Mr. Halpin argued that the subject could be assessed on either a zoned or an overall basis. If it was assessed on an overall basis, he contended for a Net Annual Value (NAV) of €5,000, calculated as follows:

Gymnasium Overall	183.31 sq. metres @ €300 per sq. metre	=	€54,993
NAV Say			€5,000

If assessed on a zoned basis, he contended for a NAV of €6,500, calculated as follows:

Gymnasium Zone A	64.97sq. metres @ €500 per sq. metre	=	€32,485
Gymnasium Zone B	74.42sq. metres @ €250 per sq. metre	=	€18,605
Gymnasium Zone C	43.92sq. metres @ €125 per sq. metre	=	<u>€ 5,490</u>
			€6,580

NAV Say €6,500

In support of his contention of NAV, Mr. Halpin submitted details of eight comparisons, all within the Dundrum Village area and all of which he contended were in superior locations to the subject.

1) Curves, The Rockfield Centre, Dundrum

This property is located adjacent to the Balally Luas Stop, in close proximity to the subject. It is valued at an overall rate of €260 per sq. metre, less a 10% allowance.

2) Rock Fitness, Ashgrove Terrace, Dundrum

This is another gym and is located almost opposite the entrance to Dundrum Town Centre from the Main Street. It is valued on an overall basis at €220 per sq. metre.

3) Siam Thai, Unit M, Dundrum Town Square, Dundrum Town Centre

4) Cafe Mao, Unit A, Dundrum Town Square, Dundrum Town Centre

Both of these comparisons are exterior restaurant units on the Main Plaza of Dundrum Town Centre, directly opposite the main entrance to the Centre from Dundrum Main Street. Both are valued on an overall basis, with Siam Thai at a rate of €250 per sq. metre and Cafe Mao at a rate of €500 per sq. metre

5) Roly Saul's Catering Ltd., Main Street, Dundrum

This is another restaurant with accommodation over two levels. It is located in a converted house on the Main Street, almost directly opposite the main entrance to Dundrum Town Centre from Dundrum Main Street. The ground floor accommodation is valued at a rate of €430 per sq. metre and the first floor accommodation at a rate of €230 per sq. metre. A 12% allowance was made to allow for a conversion from gross to net internal area.

6) Oxfam, Main Street, Dundrum

7) Irish Nationwide, Main Street, Dundrum

Both of these properties are located on Dundrum Main Street, directly opposite the old Dundrum Shopping Centre and are valued at a Zone A rate of €700 per sq. metre

8) FKD Juices Ltd. T/A Hardy's Cafe, Unit 6, Dundrum Shopping Centre

This unit is located in the old Dundrum Shopping Centre and is also valued at a Zone A rate of €700 per sq. metre, giving a NAV of €39,200. The unit was let under a 15-year lease from 23rd March 2010, at a rent of €40,000 per annum, with a 6-month rent-free period, giving an average rent over 5 years of €36,000 per annum.

Mr. Halpin indicated that his most relevant comparison was Comparison 1, Curves, which also operates as a gym. However, he felt that one could not ignore Comparisons 2-6 also. In Mr. Halpin's view, due to the lack of footfall, the subject was not as good as properties located on Dundrum Main Street.

Cross-Examination

Mr. Halpin was asked what weight he attached to the letting of Smiles Dental and he responded that it was useful as it showed that this type of unit was much less valuable than those in the Town Centre. With regard to the weight to attach to the subject letting, Mr. Halpin stated that it was only one letting, which was not repeated, but that it helped to perhaps establish that the rent agreed was overly optimistic and that this level was not sustainable.

It was put to Mr. Halpin that it was a distinct advantage for the subject to be associated with the Dundrum Town Centre and to have the benefit of the car parking available at the Centre. Mr. Halpin however contended that although from a marketing perspective it may be of some use to be close to the Centre, the subject unit was not comparable to those in the Centre.

Respondent's Evidence

Ms. Triona McPartlan having taken the oath, adopted her written précis and valuation, which had previously been received by the Tribunal and the appellant, as her evidence-in-chief. She made the following points with regard to the subject property and her valuation thereof:

1. Ms. McPartlan maintained that the subject property was part of Dundrum Town Centre, despite the entry on the Valuation List stating that the property was located in Dundrum

Retail and Office Park and despite acknowledging that the entrance to the property was from Sandyford Road, with no access from the Town Centre.

2. When valuing the subject property, Ms. McPartlan stated that she only had one piece of rental evidence in this area available to her, namely that of the subject itself and she felt that it was fairer to compare the subject property to units located on Level 2M within Dundrum Town Centre, which she had valued at a rate of €1,800 per sq. metre. In her opinion these units were the most comparable to the subject.
3. In Ms. McPartlan's view, little weight should be attached to the rental evidence for Smiles Dental, which was not let until 2011, some six years after the Valuation Date. She further felt that the 2009 rent from the subject was also not particularly helpful, as it was difficult to quantify what this rent would have been in 2005.
4. Dundrum Main Street was not akin to the subject's location and the comparisons cited by Mr. Halpin on the Main Street were not directly comparable.

Ms. McPartlan contended for a NAV of €203,000, calculated as follows:

Retail Zone A 64.97sq. metres @ €1,800 per sq. metre	=	€16,946
Retail Zone B 74.42 sq. metres @ €900 per sq. metre	=	€ 66,978
Retail Zone C 43.92 sq. metres @ €450 per sq. metre	=	<u>€ 19,764</u>
		€203,688

NAV Say €203,000

Ms. McPartland submitted details of three comparisons, B Cool 2, Bertoni and Pilgrim, all located on Level 2M of the Dundrum Town Centre and all valued at a Zone A rate of €1,800 per sq. metre. The rental evidence in respect of these three properties is as follows:

Comparison 1) B Cool 2: Agreement for lease 12th December 2006 at a rent of €179,000

Comparison 2) Bertoni: Agreement for lease 3rd March 2005 at a rent of €160,000

Comparison 3) Pilgrim: Agreement for lease 1st July 2005 at a rent of €75,000.

Cross-Examination

Under cross-examination, Ms. McPartlan admitted that most of the rents for the standard mall units in Dundrum Town Centre had gone up at the five-yearly rent reviews. It was put to Ms. McPartlan that breaking down the rent per sq. metre of her three comparisons on an overall basis, gave a figure of approximately €1,300 per sq. metre in respect of all of them, which contrasted starkly with the rental evidence from the subject and Smiles Dental, which figures were respectively €327 per sq. metre and €305 per sq. metre. Ms. McPartlan replied, however, that this figure for the subject was arrived at by using the abated rent, which she took issue with.

Ms. McPartlan contended that the subject was a superior unit to Mr. Halpin's comparisons on the Main Street and in the old Shopping Centre due to its proximity to the Dundrum Town Centre. She further stated that in her view it had better footfall than the units on the Main Street. Ms. McPartlan also denied that the restaurant units in Dundrum Town Square, Dundrum Town Centre were comparable to the subject, as these units were over two floors and the subject was over one floor only.

Findings

1. The statutory basis of valuation for properties on revaluation is set down in Section 48 of the Valuation Act 2001, wherein at subsection 3, the Net Annual Value of a property is defined as, *"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. There was a dispute between the parties as to whether the subject property was part of the Dundrum Town Centre. Ms. McPartlan maintained that the subject was an external unit within the Town Centre, whereas Mr. Halpin stated that it was located in the Dundrum Retail and Office Park, a separate development. In the Tribunal's view although the subject unit is situated relatively close to the Dundrum Town Centre development, it is distinct from it and cannot be considered to be part of the Centre. In

this regard the Final Valuation Certificate is of significance, wherein the property is stated to be located in the Dundrum Retail and Office Park and not the Dundrum Town Centre.

3. Having regard to the above finding that the subject property is not part of the Dundrum Town Centre, the Tribunal has come to the conclusion that no weight can be attached to the respondent's comparisons, all of which are internal units within the Dundrum Town Centre and none of which could be viewed as comparable to the subject unit.
4. The Tribunal acknowledges the difficult task undertaken by Ms. McPartlan as Valuer in valuing all of the units in the Dundrum Town Centre and its environs and in particular the difficulties presented by the lack of a body of reliable rental evidence in the Dundrum retail and office park development at or about the relevant valuation date of 30th September 2005.
5. Having considered Mr. Halpin's comparisons, the Tribunal attaches the most weight to Comparisons 6 and 7, Oxfam and Irish Nationwide, situated on Dundrum Main Street. Both of these comparisons are valued at a Zone A rate of €700 per sq. metre. In the Tribunal's view, these properties are situated in superior, more high profile locations to the subject and accordingly the subject should be valued at a lesser Zone A rate of €650 per sq. metre to take account of this.

Determination

Having regard to the foregoing the Tribunal determines that the Net Annual Value of the property is as follows:

Zone A	64.97 sq. metres @ €650 per sq. metre	=	€42,230.50
Zone B	74.42 sq. metres @ €325 per sq. metre	=	€24,186.50
Zone C	43.92 sq. metres @ €162.50 per sq. metre	=	<u>€ 7,137.00</u>
			€73,554.00

NAV Say €73,500

And the Tribunal so determines.