Appeal No. VA10/5/066

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

O'Keeffe Group Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2196449, Retail (Warehouse) at Unit C6, Gulliver's Retail Park, Northwood Santry, County Dublin.

B E F O R E

John Kerr - Chartered Surveyor	**Deputy Chairperson**
Michael Connellan Jr - Solicitor	**Member**
Patricia O'Connor - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL ISSUED ON THE 24TH DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 23rd day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €181,500 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are as follows:
"On the basis that the RV as assessed is excessive and inequitable given the relative value of this unit." "This development has almost completely failed in a commercial sense. The Commissioner has completely over estimated the unit's relative value when compared with superior developments in Fingal."

The appeal proceeded by way of an oral hearing which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 5th day of January 2010. Mr. Eamonn S. Halpin BSC (Surveying) ASCS, MRICS, MIAVI of Eamonn Halpin & Co. Limited represented the appellant. Mr. David Halpin of Eamonn Halpin & Co. Limited also attended. Mr. Paul Ogbebor, BEng (Hons) Civil Engineering, a District valuer with the Valuation Office, represented the respondent. Mr. Pat Kyne of the Valuation Office also attended.

Issue

The only issue between the parties was quantum with the appellant maintaining that the valuation of €181,500 on their property was excessive.

Valuation History

A draft Valuation Certificate was issued on 16th June, 2009 proposing a rateable valuation of €188,400. Representations were submitted seeking a lower assessment on behalf of the appellant in July 2009. On 11th December, 2009, the valuation was reduced to €181,500. An appeal was lodged and following consideration of this appeal the Commissioner made no change. On 25th August 2010, a Notice of Appeal to the Valuation Tribunal was lodged against the decision of the Commissioner.

The Property

The subject property is a unit located in Gullivers Retail Park, Northwood, Santry, Dublin 9. The retail park itself is located between the M50 and Ballymun and is approximately 7.89 kilometres north of Dublin city centre and approximately 4.3 kilometres south of Dublin airport. Access to the property is via the R132/Swords, the M1 and the M50.

The retail park comprises 10 terraced retail warehouse units, one of which is the anchor store Homebase. The retail park has communal car parking, ongoing security and is well maintained. To date three units have never been occupied.

Description

The subject property is a single-storey retail warehouse unit constructed with steel portal frame and double skin roof sections and concrete block walls. It has a glazed front elevation and concrete floors and eaves height of approximately 7 metres.

Accommodation

The floor area is agreed at 698.10 sq. metres, measured on a Gross Internal Area (GIA) basis.

Tenure

The property is held under lease for 25 years on a Full Repairing and Insuring basis with reviews every five years from November 2007. There is a break clause at year 8. An initial 9-month rent-free period was agreed. The rent reserved under the lease was €207,212 per annum but this amount was never paid and the actual rent paid since the conclusion of the rent-free period in September 2008 is €105,490 per annum. This amount has been agreed up to 2012.

Appellant's Evidence

Mr. Eamon Halpin, having taken the oath, adopted his written précis and valuation which had been received by the Tribunal as being his evidence-in-chief with exception of page 5 which he substituted, a copy of which is attached herewith as Appendix 1. He said that if you look objectively at Gullivers Retail Park as opposed to other retail parks in terms of activity, Gullivers Retail Park was a case apart. He said that the Commissioner had recognised that and had placed a lower value on it but despite that, the Commissioner still failed to reflect the true value of the park. Mr. Halpin also said that values in Gullivers Retail Park were substantially lower than in other retail parks in Fingal.

Mr. Halpin said that the crucial factor was that the park was not visible and that there was no significant advantage in the park being close to IKEA, as people coming and going to IKEA were not aware the Park's existence and/or location. He said that the original reserved rent under the lease was never paid and that the actual rent paid since the rent-free period terminated in September 2010 is as noted above.

Mr. Halpin drew the Tribunal's attention to three comparison properties being-

1. Currys, Units 2 and 3 Gulliver's Retail Park.
2. Hickey's Home Focus, Gulliver's Retail Park.
3. Premier Golf, Unit 4, Gulliver's Retail Park.

Mr. Halpin said that Currys was situated next to the anchor tenant, Homebase, who had also reduced their rent and then chose to re-locate to Airside Business Park. He said that the subject retail park could in fact be described as a “lemon” in that the development looks good but doesn’t work. Mr. Halpin pointed out that he was not aware of any vacancies in Airside, whereas there were a number of units in Gulliver Retail Park that had never been let or had been vacated.

In reply to questions from the Chairperson, Mr. Halpin stated that he didn’t believe there was an established “tone-of-the-list” in respect of this development. He said that a series of headline rents had been agreed by the tenants which proved to be unsustainable, even though the rents were lower than Blanchardstown or Airside levels. The development could not have been inspected on the Valuation Date of 30th September, 2005 as it was only constructed in 2006 and the appellant felt that the Commissioner hadn’t given sufficient allowance in respect of that fact.

Again Mr. Halpin pointed out that both the appellant and Currys sought and received a reduced rent and he felt that there wasn’t an established “tone-of-the-list”. Because the lettings followed the Valuation Date, Mr. Halpin was of the opinion that he had to put himself in the position of the hypothetical tenant who would be more advantaged than the appellant would have been initially, with a clearer picture and more evidence coming to the fore. Mr. Halpin said that the headline rents were aspirational and what he described as “this set up” was unique.

Cross-examination

On cross-examination Mr. Paul Ogbebor put it to Mr. Halpin that the initially quoted headline rents were close to the Valuation Date. Mr. Halpin said that the headline rents were agreed in 2006/2007 and 2008. Mr. Ogbebor put a further point to Mr. Halpin that three vacant units came onto the market after the property market collapsed and that in 2008 there were two units presenting as vacant that had not been constructed until that time. Mr. Halpin said that such matters were irrelevant as there was only one Planning Application for the retail park and that if somebody had wanted the units in 2005 then they would have been built.

Mr. Ogbebor asked whether Section 20 and Section 25 of the Valuation Act, 2001 didn’t cater for high and low periods during the market and Mr. Halpin said that they did not, but that Section 48(3) did. Mr. Halpin’s contention was that Section 48(3) was based on the idea of “fair rent” which allows the hypothetical tenant to ignore high and low rents and discounts and look to the best evidence to find fair rents. He felt that the market peaked at late 2007 or early 2008 for commercial property in Fingal

Mr. Ogbebor referred to the appellant’s comparison number 1 (Currys) and put it to Mr. Halpin that this rent was under challenge and was not settled. Mr. Halpin said they did not have the benefit of knowing what the rent was and that there were irreconcilable differences between the Commissioner’s rent and the passing rent. He said that the case had to be that rent at €147 per square metre is better evidence than the Commissioner’s estimated rent. Mr. Ogbebor put it to Mr. Halpin that the general level of valuation applied to this retail park is the lowest for a purpose-built retail park in Fingal, although there might be one small retail park in Balbriggan which might be lower. Mr. Halpin said that there were no valuations for Blanchardstown and Airside at this level but that the valuations there were very close to €260 per square metre, with the larger units at €275 per square metre. He also confirmed that the Currys lease was a straight-forward lease with the usual rent reviews.

Evidence of the Respondent

Mr. Paul Ogbebor, having taken the affirmation, adopted his précis as his evidence-in-chief which was taken as read by all concerned at the hearing. He noted that with regard to his comparison property 4, Airside was more established and that the rent there was €350 per square metre. In response to questions from the Chairperson he confirmed that the first three comparisons in his précis were all inspected on the same date in 2008 and that the subject property was the first in Gulliver’s Retail Park to come to the Tribunal. He confirmed that all five comparisons had been agreed. Again, in response to a question from the Tribunal, he said that the general level of valuation was done by consideration to all available rents in Gullivers Retail Park on properties of similar size.

Mr. Ogbebor contended a valuation of €181,500 calculated as follows:

698.1 sq. metres GIA valued @ €260 per sq. metres = €181,506

Valuation Office Estimate of NAV (Rounded to) €181,500

The Chairperson pointed out that the respondent's comparison properties in the subject retail park were all valued at €260 per metre square. In relation to his comparisons, Mr. Ogbebor agreed the following:

1. All NAVs were agreed by market analysis.
2. All valuations were carried out in 2008.
3. All properties were assessed a year or two following the Valuation Date of Sept 2005.

Mr. Ogbebor said that the valuation on the subject of €188,400 was reduced to €181,500 as an adjustment to bring the 2007 figure back to 2005 levels (per page 10 of précis). He agreed a similar exercise had been carried out in respect of his comparison number 2. With regard to his comparison number 3 he said that the floor area was increased and also that an increase was applied to the level for the mezzanine from its original value as a store at €54 per sq. metre to retail use at €75 per sq. metre. The rate for the ground floor in this property was adjusted from €270 to €260 per sq. metre.

Cross-examination of the Respondent

In cross-examination Mr. Ogbebor agreed with Mr. Halpin that the market for retail parks was fairly steady and buoyant from 2005 to 2008. He agreed that the subject retail park was considered a weaker proposition, but referred Mr. Halpin back to the market analysis. Mr. Halpin contended that – with the exception of the respondent's third comparison where the NAV exceeded the rent - it seemed to him that there was very little adjustment and that it looked to be less than 10%. Mr. Ogbebor said that the level of adjustment applied at draft certificate stage was a reduction on the final certificate from €270 per sq. metre to €260 per sq. metre. Mr. Halpin asked where the adjustment of circa 10% came from for the subject property when Airside was given a 20% adjustment. Mr. Ogbebor stated that the level of €260 was applied at the final certificate stage following full market analysis and agreement with the agents. Mr. Ogbebor also said that there was a basket of rents at Airside which was analysed, including rents from 2005.

Mr. Halpin pointed out that units 2 and 3 of Gulliver's Retail Park were also under appeal to the Tribunal. Mr. Ogbebor said that these were not used as a comparison as the occupier of the units knocked down the dividing party wall and merged the units into one, almost doubling the size of the property. Mr. Halpin put it to Mr. Ogbebor that there were concessions in the form of a rent-free period even after the lease on this property was signed and that if that were analysed it would give a rent of €147 per square metre. Mr. Ogbebor stated that he had not considered this in his analysis.

Closing statements

In his closing statement Mr. Halpin said that this was a small retail park which hasn't lived up to expectations. The discount given to units in Airside to adjust those rents to 2005 levels was greater than the discount given to the subject, whereas he felt the discount for the subject should be greater given that the headline rents agreed at the subject retail park were abated from day one of this development. He said that the Commissioner had not addressed Section 48 (3) of the Valuation Act, 2001 and had relied on Section 20.

Mr. Ogbebor made the points that general levels of rent for units of similar size were used, based on agreements with agents, and that he felt that the NAV was fair and equitable.

Findings

The Tribunal, having carefully considered all the evidence and arguments adduced by the parties, makes the following findings:

1. The subject property is of modern construction finished to a good standard.
2. Gulliver's Retail Park has never been fully let and has suffered failed lettings including one of the major tenants.
3. Airside Retail Park has a much better profile and is on a larger scale than the subject retail park, with a far greater tenant mix and no vacancies.
4. Gulliver's Retail Park is not an active centre and does not have much profile. It is difficult to locate and has little passing trade. In addition it does not have a major anchor tenant.
5. A notional discount of circa 16% was applied to Airside to backdate the rent for the period of 2006 and 2007 to the Valuation Date of 30th September, 2005. A reduction of the same amount at least should be applied to Gullivers Retail Park for the same period. All assessments were originally made at €270 per square metre, therefore using the same formula, a reduction of 16.2% on the subject property equals €226.26, rounded down to €225 (i.e. 16.2% of €270 = €226.26).

Having regarded to the foregoing findings the Tribunal determines the valuation of the property concerned to be as follows:

Retail Warehouse 698.10 sq. metres @ €225 per sq. metre =	€157,072.50
Total NAV =	€157,072.50
Say	€157,000

And the Tribunal so determines.