Appeal No. VA11/5/143

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Mc Ord (Ireland) Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2178513, Retail (Shops), at Level 2, Unit 26, Dundrum Town Centre, Dundrum, County Dublin.

B E F O R E

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

Brian Larkin - Barrister **Member**

Michael F Lyng - Valuer **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 18th day of August, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €414,000 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are as follows:
"The valuation is excessive having regard to the passing rents in the centre."

The 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 31st day of January, 2012. At the hearing the appellant was represented by Mr. Declan Bagnall, MRICS, MSCSI, of Bagnall + Associates. The respondent was represented by Ms. Triona McPartlan, BSc (Hons) Estate Management, a valuer in the Valuation Office. 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.

The 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 Red 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 Frazer, 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 Property Concerned

The property concerned is a larger than normal retail outlet on Mall Level 2 in a section of the mall that is considered to be prime. The property, known as Unit 222, is used for the sale of ladies fashion and is somewhat irregular in configuration being L shaped so that a portion of the retail area at the rear is in what is described in the Zoning Guidance Notes issued by the Society of Chartered Surveyors in May 2009 as a *"masked or shadow area"*. The subject property is located almost opposite to the H&M unit at level 2.

The agreed accommodation measured on a NIA basis in accordance with the code of measuring practice and zoned in compliance with zoning guidelines above referred to is as set out below:

Retail: Zone A - 43.66 sq. metres

Retail: Zone B - 43.66 sq. metres

Retail: Zone C - 36.26 sq. metres

Remainder: Zone D - 138.24 sq. metres

Mezzanine Retail Space: - 170.12 sq. metres

Ground Floor Offices and Stores: -33.09 sq. metres

Total Ground Floor Area - 261.82 sq. metres

Mall frontage - 7.48 sq. metres

Tenure

The property concerned 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 €348,000. The agreement for the lease was entered into on the 10th February, 2005. The lease provides for rent reviews at five yearly intervals and in addition to rent, the occupier is responsible for the payment of 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. In his evidence Mr. Bagnall inferred that the lease may be an agreement between connected parties and hence may not fully represent an arms length transaction.

Rating History

As part of the revaluation of all property in the Dun Laoghaire Rathdown rating authority area, the valuation of the subject property was first assessed at €466,000, which was reduced at representation stage to €457,000, when the areas of the various elements of the property were agreed. Following an appeal to the Commissioner of Valuation under Section 30 of the Valuation Act, 2001 the NAV was determined at €414,000. It is against this decision by the Commissioner that the appeal to this Tribunal now lies.

The Issue

The primary issue in dispute is the estimated NAV of the property concerned, determined in accordance with Section 48 of the Act at the specified valuation date of the 30th September, 2005.

Summary of Evidence

(Mr. Declan Bagnall)

Mr. Bagnall, in his sworn testimony said that in his opinion, the NAV of the property concerned in accordance with Section 48 of the Valuation Act 2001 at the specified valuation date of 30th September, 2005 was €322,000, calculated as set out below:

Zone A	43.66 sq. metres	@	€2,800 per sq. metre	=	€122,248
Zone B	43.66 sq. metres	@	€1,400 per sq. metre	=	€61,124
Zone C	36.26 sq. metres	@	€700 per sq. metre	=	€25,382
Zone D	138.24 sq. metres	@	€450 per sq. metre	=	€62,208
Ground Store	33.09 sq. metres	@	€250 per sq. metre	=	€8,272.50
Mezzanine	170.12 sq. metres	@	€250 per sq. metre	=	€42,530
				Total =	€321,764.50

Net annual value, Say €322,000

In support of his opinion of NAV, Mr. Bagnall introduced 6 comparisons, details of which are set out in Appendix 1 attached to this judgment. All of Mr. Bagnall's comparisons are located on the same mall level 2 as the subject property and are also all to be found in that stretch of the mall which is considered to be prime. Mr. Bagnall said that, when carrying out an analysis of rents to be paid for the various units within a major shopping centre, it had to be borne in mind that the landlord had two fundamental aims - to achieve a tenant mix which caters for the broader spectrum of customer demand and to attract into the centre well established and financially strong national and international traders. In such a situation, it would not be surprising to find that preferred retailers were able to obtain lower than average rents and extended rent free periods. By the same token, tenants of lesser covenant strength might not receive the same level of concessions nor lower than market rents.

Mr. Bagnall said that, having regard to the above comments, he had analysed what he described as a 'basket of rents' being paid on mall level 2, which were made between August 2004 and December 2006, in order to arrive at his estimate of NAV of the subject property. In this regard, the average Zone A rent per sq. metre in relation to his six comparisons was €2,957. In analysing the rents, Mr. Bagnall said he had discounted the value of the various rent free periods granted (ranging from 3-9 months) on a straight line basis over ten years.

In his précis Mr. Bagnall referred to his analysis in the following terms.

- *"Following from the points outlined above I feel that the most accurate way to determine the NAV for the subject premises is to look at a basket of rents in the centre and most particularly a basket of evidence close to the Valuation Date of the 30th September and on the same level.*
- *Of the 6 comparisons I have provided all the lettings are dated between August 2004 and December 2006. This is a good range before and after the valuation date in which to assess the general tone.*
- *Of the 6 comparisons, according to my analysis the average Zone A rent psqm on the retail element is €2,957 sqm.*
- *On reviewing these comparisons however I was also cognisant of the 2 lettings to Sisley and Faith shoes. These two lettings are very high in relation to the other 4. If you exclude these lettings and look at them in isolation the Sisley deal is some 27% higher than the next highest letting (Pepe) and similarly the Faith shoes letting is 21% higher than the Pepe letting.*
- *Of the 4 other lettings the range is between €2,593 sqm Zone A and €2,839 sqm Zone A. These lettings are all within 10% of each other and show an average Zone A rate of €2,674 sqm.*
- *If you remove the earliest letting (august 04) to Champion Sports and the latest letting (Sisley) the average rent of the other 4 lettings is €2,870 Zone psqm.*
- *If you remove the lowest letting (Starbucks) and the highest letting level (Sisley) the average rent of the other 4 lettings is €2,883 psqm.*
- *Whereas I accept that both Sisley and Faith Shoes are open market transactions I do believe that they are out of kilter with the other lettings and I have accounted for that in my estimate of NAV.*
- *Therefore the Zone A that I have applied to the subject unit sits circa halfway between the 2 averages of €2,957 and €2,674. I have applied a Zone A of €2,800 psqm"*

Mr. Bagnall said, whilst the Valuation Office were using the zoning guidance notes it would appear that they were applying sections of it in a very rigid manner. For example in section 2 of the notes, which states, '*it is suggested that particularly deep units with frontage to depth ratios in excess of 1:4 could be loaded by up to +/- 10%."* In his experience the Valuation

Office had adopted a practice to apply an uplift of 10% once the 1:4 ratio was exceeded, without regard to by how much the ratio had been exceeded. This practice, he said, was contrary to the spirit of the guidance notes which in its introduction says "*in this paper where figures or percentages are given they are for guidance purposes only. They are not intended to be taken as rigid cut off points and valuers would be expected to use their judgment accordingly.*" Hence, Mr. Bagnall said, the valuer had to exercise his/her discretion, having regard to the particular circumstances that pertain in each individual valuation.

In relation to the subject property, there was a fire escape to the rear of the premises. A section at the rear of the shop had been separated off from the retail area, along the line of the inner wall of the fire escape staircase and was being used solely for storage and staff related purposes and had been so valued by the Valuation Office. As a result of this, the retail area had a frontage to depth ration of 1:3.92 which is under the 1:4 threshold. The overall frontage to depth ratio was in the order of 1:4.3. Mr. Bagnall also pointed out that the valuation office, in this instance, had disregarded that section in the guidance note which referred to *"masked or shadow areas"* which suggested that in valuing such areas *"valuers would be expected to use their own judgment."*

Under examination Mr. Bagnall agreed that he had limited his comparisons to units located on the mall level 2. Mr. Bagnall defended his position in this regard, by saying that he considered this to be the best evidence as it was accepted that each mall had its own level of rents. He further agreed that the rents in the centre in the period 2004–2006 were higher than those agreed in 2002/2003, when the majority of agreements for lease were entered into.

When asked if the Dundrum Town Centre was the premier regional shopping centre in the greater Dublin area, Mr. Bagnall said it was in terms of tenant mix and the range and quality of the anchor stores. In response to a question if it was helpful to look at rents being paid in other regional shopping centres, for example, Liffey Valley where rents in 2005 were equivalent to a Zone A rate of €3,000 per sq. metre, Mr. Bagnall said it was of limited assistance. The fact was that each centre has its own pattern of values; whilst in some respects they were similar to Dundrum Town Centre, each development was a product of its own time. In this regard he pointed out that Liffey Valley was considerably smaller than Dundrum and had retailing space at one level only. In the circumstances, Mr. Bagnall said that, he was of the opinion that it was more appropriate to look at rental levels within the Dundrum Centre itself, particularly those at level 2, where there was a substantial body of evidence of agreements entered into during the period 2004-2006.

In response to a question from the Tribunal, Mr. Bagnall said that, to the best of his knowledge the wall at the rear of the premises was erected by the tenant, but he could not confirm whether or not it was a fire wall built in accordance with relevant fire regulations. He further confirmed that the area so enclosed was used solely for storage and staff related 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 for the purposes of the revaluation programme. 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.

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:

Retail Zone A 43.66 sq. metres @ €3,600 per sq. metre =	€157,176
Retail Zone B 43.66 sq. metres @ €1,800 per sq. metre =	€78,588
Retail Zone C 36.26 sq. metres @ €900 per sq. metre =	€32,634
Retail Zone Remainder 138.24 sq. metres @ €450 per sq. metre =	€62,208
Large Zone D Add 10% =	€33,060.60
Mezzanine 170.12 sq. metres @ €250 per sq. metres =	€42,530
Stores 33.09 sq. metres @ €250 per sq. metres =	€8,272.50
Total	€414,469.10

Valuation (Rounded) €414,000

Note: The initial yearly rent was agreed at €348,000 per annum with effect from 3rd March, 2005.

In support of her opinion of NAV, Ms. McPartlan introduced seven comparisons, details of which are set out in Appendix 2 attached to this judgment.

Under examination, Ms. McPartlan said that, the decision to add a loading of 10% to the total valuation attributed to the retailing area within the unit, was in line with current valuation office policy, when valuing a mall unit which had a greater than normal Zone D area. In circumstances, such as those which exist in the property concerned, where the Zone D area represents approximately 50% of the total retail space, such an adjustment prevented anomalies arising, when comparing the valuation of units of a similar size but different configuration. In this regard, Ms. McPartlan said she had not made an upward adjustment to reflect the fact that the overall frontage to depth ratio exceeded 1.4 as provided for in the zoning guidelines. Similarly she had not made a downward adjustment for the *"masked or shadow areas"* as she had come to the conclusion that no such allowances were warranted in this instance.

When questioned about her comparative evidence, Ms. McPartlan said that it represented a typical cross section of available rental levels within the centre and supported the scheme of valuation devised by her for valuing units on all three principal mall levels. She agreed that, some of her comparisons were in relation to transactions completed after the centre was opened in March 2005, but said that this evidence was important in that it showed a trend of rising rents, which emphasised the primacy of the centre from a retailing point of view and the demand for units within 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. The facts in relation to the subject unit are agreed. The parties are also agreed that, the unit is located within what has been identified as being, the prime retail area on the mall at level 2. Similar prime retail areas have been identified at mall levels 1 and 3.

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 agreement for lease in relation to the subject property was signed on the 10th February, 2005. *Inter alia* the agreement provided that the lease term would be for a period of 25 years at an initial yearly rent of €348,000.

Conclusions

In regard to the subject property, the Tribunal accepts as a matter of fact that the overall frontage to depth ratio exceeds the 1:4 ratio as mentioned in the zoning guidance notes. The Tribunal also accepts that approximately 50% of the available retail space within the unit has been valued at a Zone D rate per sq. metre. The subject property is L shaped in configuration so that approximately 50% of the Zone D space is in the category of *"masked or shadow area"*.

The Zoning method of valuation was devised by valuers in order to apply the evidence of rents of shops of various depths in order to achieve a scheme of valuation that could be uniformly applied when valuing other similar shops where no rental evidence is available. Since shops come in various sizes and configuration difficulties can arise when applying the zoning method in a manner that is fair and equitable. In this regard the Zoning Guidance Notes has identified some of the difficulties that can arise and has given some limited guidance as to how they might be dealt with. In this regard two important elements have been identified and specific guidance given- firstly that the zoning depth be 6.1 metres (20ft) and secondly that the maximum number of zones be four.

It is obvious that in shops of regular configuration the percentage of retail space in Zone D area is a function of the frontage : depth ratio. For example in a shop of a frontage to depth ratio of 1:4 the Zone D area represents 25% of the total retail space. When the ratio is 1:5 the percentage rises to 40% and reaches 50% when the ratio is 1:6 and when 1:8 it is 62.5%. The effect of this of course is that the overall rate per sq. metre expressed as a percentage of the Zone A rate per sq. metre falls.

Whilst it is true to say that the Guidance Note recognises the difficulties that can arise where the 1:4 ratio is exceeded the guidance given is impercise and merely says that "In this paper where figures or percentages are given they are for guidance purposes only. They are not intended to be taken as rigid cut off points and valuers would be expected to use their judgment accordingly". Since valuers judgments can often differ quite significantly therein lies the problem from the Tribunals point of view.

Greater than normal Zone D areas (not an expression to the found anywhere in the Guidance Note) can also arise when part of the Zone D area falls within an area described as being "masked or shadowed". Once again the Guidance Note is of limited assistances. In the Tribunals opinion it might be helpful to those engaged in valuation and rating practice if the working group which prepared the Guidance Note were to look afresh at the difficulties that can arise and perhaps give more detailed or precise guidance (perhaps by way of worked examples) that would give rise to a uniform approach with less emphasis on valuers using their own judgment which may not always be as objective as one would hope.

Having regard to the general configuration of the subject property the Tribunal has come to the conclusion that there is no compelling reason for the upward adjustment of 10% applied by the respondent in this instance.

The Tribunal in arriving at its determination of net annual value has had regard to all the comparisons introduced by both parties and has had regard to the passing rent of €348,000. Accordingly, therefore, the Tribunal determines that the NAV of the property concerned in accordance with Section 48 of the Valuation Act, 2001 as at the specified valuation date of the 30th September, 2005 as set out below:

The Valuation

Zone A Retail	43.66 sq. metres	@	€3,000 per sq. metre	=	€130,980
Zone B Retail	43.66 sq. metres	@	€1,500 per sq. metre	=	€65,490
Zone C Retail	36.26 sq. metres	@	€750 per sq. metre	=	€27,195
Remainder	138.24 sq. metres	@	€375 per sq. metre	=	€51,840
Mezzanine Retail	170.12 sq. metres	@	€250 per sq. metre	=	€42,530
Ground Floor Storage	33.09 sq. metres	@	€250 per sq. metre	=	€8,272.50
Total					€326,307.50

NAV, Say €326,500

And the Tribunal so determines.