

Appeal No. VA11/5/153

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

Brambles Deli Café Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2178457, Retail (Shops) at Unit 2A, Town Square, Dundrum Town Centre, 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 17TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 19th day of August, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €100,100 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 and inequitable

The appeal proceeded by way of an oral hearing in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 1 on the 2nd day of February, 2012. At the hearing the appellant was represented by Mr. Donal O'Donoghue, BSC (Hons) Estate Mgmt, Dip Vals, Assoc SCSI, MIAVI of OMK Property Advisors and Rating Consultants. 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 externally located on the town square at the main pedestrian access to mall level 1. The property is in restaurant use at two levels and occupiers close by include McDonalds, Urban Outfitters and the 12 screen cinema complex.

Accommodation

The accommodation measured on a NIA basis in accordance with the measuring code of practice had been agreed as follows.

Ground Floor Restaurant - 59.79 sq. metres

Mezzanine Restaurant - 40.32 sq. metres

Total Area 100.00 sq. metres

Tenure

The property concerned is occupied under the terms and conditions of a 25 year lease from the 3rd March, 2005 at an initial yearly rent of €10,000 per annum. The initial rent is subject to five yearly reviews. At the commencement of the lease, the tenant was granted a 12 month rent free period and the landlord also made a contribution of €150,000 towards the cost of the fit out.

The Issue

The only issue in dispute is the quantum of the valuation to be determined in accordance with Section 48 of the Valuation Act, 2001 at the specified valuation date of the 30th September, 2005.

Summary of Evidence

(Mr. Donal O'Donoghue)

Mr. O'Donoghue in his evidence said that in arriving at this opinion of NAV, he had regard to the following matters

- Location of property on the town square
- Lack of access from any of the principal mall levels
- The property is in restaurant use and should be not classified as a shop.
- Valuation should be determined by a reference to the valuation of other restaurants which occupy similar external location without the main shopping centre complex.
- Passing rent should be disregarded and ought to be adjusted to reflect the benefit to the tenant of the rent free period and the landlord's contribution towards fit out costs.

Having regard to the above, Mr. O'Donoghue analysed the rent payable on the lease as follows:

Heads of Terms Signed: February 2005

Lease Start Date: March 2005

25 year lease with 5 year upward only rent reviews.

Headline Rent €10,000

Rent Free Period 12 months

Landlord Contribution to Fit Out €150,000

Rent Payable to 1st Rent Review €10,000 x 4 years €40,000

Effective Annual Rent €40,000 / 5 years €8,000

Less Capital Contribution discounted over 5 years to first review €30,000

Net Effective Annual Rent €8,000

Mr. O' Donoghue said that, having regard to all of the above matters referred to, including the adjusted rent, the NAV of the property concerned in this appeal in accordance with Section 48 of the Valuation Act, 2001 at the specified valuation date of the 30th September, 2005 was as follows:

Restaurant Ground Floor	59.79 sq. metres	@	€600 per sq. metre	=	€35,874
Restaurant Mezzanine	40.32 sq. metres	@	€600 per sq. metre	=	€24,192
Total =					€60,066
NAV=					€60,000

In support of his opinion of NAV, Mr. O'Donoghue introduced two comparisons, details of which are set out in Appendix 1. In relation to his comparisons Mr. O'Donoghue said that, he was of the opinion that, the location of the property concerned and the two comparisons were largely similar in that they were both external units overlooking the town square and consequently should be valued at somewhat similar rates per sq. metre. In this regard he had come to the conclusion that the location of the property concerned, was superior to some extent to the two properties cited as being comparable and accordingly, he had valued the property concerned at a slightly higher level.

Under examination Mr. O'Donoghue agreed that the occupier of the property concerned was also the occupier of another restaurant within the main shopping centre complex and agreed that this may have been a factor in negotiating the terms and conditions of both leases and the level of the contributions made by the landlord towards the fit out costs. When asked if the McDonalds property (the respondent's comparison No. 1) was a relative comparison, Mr. O'Donoghue said that it was, but only to a limited extent in as much as it was a much larger property and benefited substantially from its proximity to the cinema complex and that it could be accessed from the cinema concourse area.

(Ms. McPartlan)

Ms. McPartlan in her evidence said that, in arriving at her opinion of NAV she had regard to the fact that the property concerned was an external unit overlooking the town square. In this regard she considered the location of the subject property, right at the main pedestrian entrance to the shopping centre at mall level 1, to be an important factor. The units on the other side of the square, which were included in Mr. O'Donoghues comparisons, occupied an inferior trading location which was reflected in the rate per sq. metre applied to these units. Accordingly, Ms. McPartlan said that in her opinion the appropriate NAV of the property concerned was as follows.

Shop Ground Floor	59.79 sq. metres	@	€1,000 per sq. metre	=	€59,790
Shop Mezzanine	40.32 sq. metres	@	€1,000 per sq. metre	=	€40,320
Total =					€100,110
NAV say					€100,100

In support of her opinion of NAV, Ms. MCPartlan included one comparison, details of which are set out in Appendix 2 attached to this judgment. This comparison, Ms. McPartlan said, was highly relevant in that it was located close to the property concerned and was in similar restaurant use. Furthermore, Ms. McPartlan said the valuation of the McDonalds unit had been the subject of a Section 30 appeal to the Commissioner of Valuation when the valuation was left unaltered. Since this decision was not the subject of further appeal to the Tribunal, it was a clear indication that the rate payer, in this instance was of the opinion, that the valuation so determined, was fair and reasonable.

Under examination Ms. McPartlan said she did not agree with Mr. O'Donoghue that the McDonald unit benefited from its proximity to the cinema complex. Ms. McPartlan said that any benefit in this regard was offset by the location of the subject property some distance away from the main entrance to the shopping centre at mall level. In her opinion, both units occupied similarly good locations and hence should be valued at the same rate per sq. metre.

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.

Conclusion

Having regard to the evidence adduced at the oral hearing, the Tribunal has come to its conclusion that the property concerned occupies a superior location to Mr. O'Donoghues comparisons by virtue of the fact that it is located at the main entrance to the shopping centre at mall level 1. It is also located convenient to the cinema complex and the Harvey Nichols department store. Nonetheless it is not as well located as the McDonalds unit which is situated adjoining the main cinema complex from which it undoubtedly benefits. Accordingly therefore the Tribunal has come to the conclusion that the property concerned should be valued at a somewhat lesser rate per sq. metre than that applied to the McDonalds unit.

Valuation

Restaurant Ground Floor Level	59.79 sq. metres	@	€800 per sq. metre	=	€47,832
Restaurant Mezzanine Level	40.32 sq. metres	@	€800 per sq. metre	=	€32,256
Total =					€80,088

NAV, Say €80,000

And the Tribunal so determines.