

Appeal No. VA11/5/221

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

**HMV UK Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2181353, Retail (Shops), at Unit 203, Dundrum Town Centre, County Dublin.

**B E F O R E**

**Fred Devlin - FSCSI, FRICS**

**Deputy Chairperson**

**Patrick Riney - FSCSI, FRICS, ACI Arb**

**Member**

**Brian Larkin - Barrister**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 29TH DAY OF FEBRUARY, 2012**

By Notice of Appeal received the 30th August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €99,000 on the above described relevant property.

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

*"The valuation is excessive."*

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 30<sup>th</sup> day of January, 2012. At the oral hearing the appellant was represented by Mr. John Algar, BSc Property Valuation and Management of Bardon and Company Rating Consultants and Valuers.

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 12-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 Wyckham 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.

### **Subject Property**

The subject property is a large retail unit on mall level 2 close to the House of Fraser Department Store and adjacent to that section of the Mall which is considered prime. The unit is somewhat irregular in configuration with a mall frontage of just over 8 metres and the frontage to depth ratio in excess of 1:6. The rear section of the shop which has a width of circa.25 metres is at an angle to the mall frontage so that part of the shop is not visible from the mall. Part of the rear section in the Zone D area is raised up by about 1.6 metres (9 steps). This area also includes a second entrance from the cinema concourse area.

### **Accommodation**

The area measured on NIA basis in accordance with the Code of Measuring Practice is agreed to be as follows:

Shop - the overall area 1009.9 sq. metres

### **Tenure**

The property is held under a 25 year lease from the 3<sup>rd</sup> of March, 2005 at an initial yearly rent of €721,000. In addition to rent the tenant is responsible for rates and other usual outgoings including the payment of a service charge whereby the tenant pays a proper proportion of the costs incurred by the landlord in providing a range of common services. The agreement for which the lease was entered in March 2002, by Zavvi Entertainment predecessors in title to HMV.

### **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 30<sup>th</sup> September, 2005

### **Summary of Evidence**

(Mr. John Algar)

Mr. Algar said that the Net Annual Value of €90,000 determined by the Commissioner of Valuation at section 30 of the appeal stage was excessive and not supported by the actual rent of €721,000 per year. Mr. Algar said that in his opinion the Net Annual Value of the property concerned should be €62,000 calculated as set out below:

Overall	1009.9 sq. metres	x	€750.00	=	€57,425
Fit Out add 2.5%				=	€18,936
Configuration Allowance 15%				=	<u>€113,613</u>
					€62,748
Net Annual Value	say				€62,000

Mr. Algar said that in arriving at his opinion of Net Annual Value he had regard to two assessments which were agreed at section 30 appeal stage.

**The Boots Unit No. 218**

- Located on Mall Level 2
- No locational difference between this unit and the subject property

Valuation agreed on the following basis.

Shop 891 sq. metres	@	€750 per sq. metre	=	€668,250
Mezzanine 498 sq.	@	€210 per sq. metre	=	€104,580
Net Annual Value	SAY			€770,000

- The initial rent of Unit 218 was €709,000.

**The H & M Kids Unit No. 302**

- This unit is of similar configuration to the property concerned

The valuation agreed at section 30 appeal stage on the following basis.

Shop Area	1,088 sq. metres	@	€400 per sq. metre	=	€435,200
Fit Out 10%					€43,520
15% reduction for configuration					(€71,808)
					<u>€406,912</u>
Net Annual Value	SAY				€406,000

- Initial yearly rent of the unit was €365,000 agreed in August 2005.
- When the premises were re-let in March 2009, the rent was agreed on a turnover basis.

Mr. Algar said the relevance of his second comparison was to show the configuration reduction of 15% which was agreed in this instance.

Details of Mr. Algar's comparisons are included in Appendix 1 attached to this judgment. Mr. Algar said the guidance note on Fit Out allowances agreed by the Valuation Office and the Rating Consultants provided that any such allowance only came into effect when the area of the premises exceeded 1000 sq. metres. The definition of the fit out according to the agreed guidance note is as follows:

*A modern fit out encompasses some or all of the following ..*

- *New Ceilings*
- *New air conditioning or air handling systems*
- *New floors*
- *New internal walls, escalators/travelators and the like.*

Having regard to the size of the property concerned and its limited fit out Mr. Algar said that in his opinion an allowance of only 2.5% was applicable in this case.

Under cross examination by Ms. McPartlan Mr. Algar agreed that the property had a second entrance from the cinema concourse area but said that the occupier derived no benefit from it as it meant a duplication of cash points and additional security costs. In regard to the Boots Stores Unit Mr. Algar said he did not agree that the property concerned occupied a better trading position on the Mall. He did however agree that the area of the Boots Unit was less than 1000 metres and hence did not fall into the size where a fit out allowance was appropriate.

When Ms. McPartlan suggested that any allowance for the irregular configuration was offset by the second entrance, Mr. Algar said that he did not agree and went on to say that the second entrance was of little if any benefit to the occupier.

### **Summary of Evidence**

(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:

- i. “General Zone A levels applied throughout the centre*
- ii. 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.*
- iii. Main Zone A level on this floor - €3,800 ITZA (NAV)*
- iv. 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)*
- v. 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)*
- vi. 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:

Block	Lvl	Use	Comments	Comp	Eaves	Sq. M	€Per Sq. Metre	NAV €
1	2	Department Store		GIA	0.00	1,009.90	900.00	908910.00
	0	Department Store	Add 10% for Fit Out	GIA	0.00	0.00	0.00	90891.00

Total	€99,801
Total (Rounded)	€99,000

Valuation (rounded)	€99,000
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Ms. McPartlan in her evidence said that the Net Annual Value of the property concerned was fair and reasonable having regard to the location of the property which is adjacent to the House of Fraser Department Store.

Ms. McPartlan in support of her opinion of Net Annual Value introduced two comparisons details of which are contained in Appendix 2 attached to this judgment.

Under cross-examination by Mr. Algar, Ms. McPartlan acknowledged that the fit out did not include suspended ceilings but said that the nature of the fit out and its extent was the tenant's choice and presumably represented its corporate image and manner of stock presentation. In any event the occupier had fitted out the shop which has an area in excess of 1000 sq. metres. In such circumstances the 10% fit out allowance was justified having regard to the Guidance



Note in this regard which was jointly prepared by the Valuation Office and representatives of the rating consultants.

When asked about her comparisons Ms. McPartlan said the valuation of the Boots Unit was highly relevant – firstly it was a common comparison and secondly it was an assessment agreed at section 30 appeal stage which gave it added weight. In her opinion the location of the property concerned was much superior to the Boots Unit and it was for that reason that she had valued the property concerned at €900 per sq. metre. In relation to the Champion Sport Unit 223 located on the prime section of the Mall Ms. McPartlan agreed that it was subject of a current appeal to the Tribunal and that its valuation would be re-examined in the light of the outcome of the Test Case (**VA11/5/179 Aurora Fashion Services Ltd t/a Coast**). For that reason and the fact that it was valued using the Zoning Method she agreed with Mr. Algar that it was of little assistance to the Tribunal.

### **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.
7. Most of the units in the development have a common lease commencement date, i.e., 3<sup>rd</sup> March, 2005 – some seven months before the relevant Section 20 valuation date of 30<sup>th</sup> 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 Tribunal finds as a matter of fact that the Boots Unit is the most relevant comparison on two grounds. Firstly it is located on the same mall as the property concerned and secondly its valuation was agreed at section 30 appeal stage.
9. The Tribunal concurs with Ms. McPartlan that the property concerned occupies a better trading location on the mall than the Boots premises. However the difference in locational terms is not in the Tribunal's opinion sufficient to justify an uplift of 20% as proposed by Ms. McPartlan. Nor indeed is it justified by comparison of the rents being paid in respect of each unit.
10. The Tribunal concurs with Mr. Algar that a 15% adjustment to reflect unusual configuration of the property concerned is in line with the allowance made in respect of the H & M Kids Unit at mall level 3 which has a similar configuration. The fact that this adjustment was made at section 30 appeal stage gives it added weight.

11. The Tribunal concurs with Ms. McPartlan that the second entrance is an added benefit in that it increases the profile of the property. An upward adjustment to reflect this added benefit is warranted.

### **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 as at the specified valuation date of the 30<sup>th</sup> of September 2005 to be as follows:

Shop 1009.9 sq. metres @	€25 per sq. metre	=	€33,168
Allow 15% downward adjustment for configuration and an upward adjustment of 5% for the second entrance.			<u>(€3,316)</u>
			€74,852
Add 10% for fit out			<u>€7,985</u>
Total			€24,837
NAV SAY			€25,000

And the Tribunal so determines.