Appeal No. VA11/5/231

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Lifestyle Sports Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2178477, Retail (Shops) at Unit 122.123, Dundrum Town Centre, County Dublin.

B E F O R E

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

Michael F Lyng - Valuer **Member**

Brian Larkin - Barrister **Member**

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

By Notice of Appeal received on the 30th August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €584,000 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 and not in line with relevant comparable market rental evidence within centre."

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 1st day of February, 2012. At the oral hearing the appellant was represented by Ms. Siobhan Murphy, BSc Surveying, MSCSI, MRICS, a Senior Surveyor with GVA Donal O'Buachalla. Ms. Triona McPartlan, BSc (Hons) Estate Management, a valuer at 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 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 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 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.

Subject Property

The subject property is a larger than normal standard mall unit located on mall level 1 almost directly opposite to the Marks and Spencer store convenient to entrance from the red car park. At this point in the mall there is a bank of lifts, escalators and stairways giving vertical access to all mall levels. The shop is irregular in configuration so that the back section (Zone D area) is 2.5 times wider than the frontage on to the mall.

Accommodation

The accommodation measured on an NIA basis in accordance with the Code of Measuring Practice is agreed to be as follows.

Retail Zone A	54.0 sq. metres
Retail Zone B	64.0 sq. metres
Retail Zone C	98.0 sq. metres
Retail Zone D	209.0 sq. metres
Total ground floor area	425 sq. metres

ITZA	136.6 sq. metres
Mall Frontage	8.86 metres
Mezzaine	207.6 sq. metres

Tenure

The property is held under the terms and conditions of a 25 year lease from the 3rd March, 2005 at an initial yearly rent of €375,250.

In addition to rent the tenant is responsible for rates and other outgoings including a service charge whereby the tenant is responsible for the payment of a proper proportion of the costs incurred by a landlord in providing a range a common services. *Inter alia* the lease provides for upward only rent reviews at five yearly intervals. The agreement for lease was entered into on the 22nd September, 2002 and provided that the tenant would be granted a three month rent free period.

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 30th September, 2005.

Summary of Evidence

(Ms. Siobhan Murphy)

Ms. Murphy in her evidence contended that the respondent's opinion of the net annual value was excessive and in turn gave her opinion as follows:

Retail Space ITZA 136.6 sq. metres	@ €2,450 per sq. metre	=	€334,670
Mezzanine Area 207.6sq. metres	@ €210 per sq. metre	=	€ 43,596
			€378,266

Allow for rental growth		x 1.235
	=	€467,158
Less 10% for configuration	=	€ 46,716
		€420,442

NAV say €420,500

Ms. Murphy said that her opinion of the net annual value was based on the following:

- Firstly the initial yearly rent of €375,250 adjusted to reflect the three month rent free period gave a net effective rent of €365,868 which figure she had further adjusted by reference to the SCS/IPD rental value growth index for the period June 2003 to September 2005 i.e an uplift of 23.5%
- Secondly she had regard to an analysis of rents in respect of lettings of other units in the Centre as set out in the following schedule:

Passing Rents

"The subject rent analyses at Zone A €2,360 per sq. metre. I have also considered the passing rents of the adjacent units as per table below:

PN	Property	Agreement to Lease	Net Effective Rent	Analysis of Passing Rent
2178477	Subject	Sept 2002	€365,900	ITZA 136.6 sq. metres @ €2,360 psm Mezz 207.6 sq. m @ 210 psm
2178474	Unit 19 - Bests	June 2003	€350,000	ITZA 138 sq. m @ €2,408 psm Stores 88 sq. m @ €200 psm
2178475	Unit 20 - Office	June 2004	€245,745	ITZA 83.78 sq. m. @ €2,978 psm
2178476	Unit 21 – La Senza	June 2003	€181,733	ITZA 78.46 sq. m @ €2,165 psm Mezz 56.62 sq. m @ €210 psm

2178478	Unit 24 – Card Company	June 2003	€287,750	ITZA 108.46 sq. m. @ €2,325 psm Mezz 131.4 sq. m @ €270 psm

The rents detailed above do not accord with the general presumptions regarding quantum, configuration etc and are in my opinion influenced by the negotiating powers of the parties involved.

Setting aside specific issues relating to the units an average rent of circa €2,450 Zone A emerges."

Ms. Murphy said she also had regard to the zoning Guidance Note published by the Society of Chartered Surveyors in May 2009 and in respect of the property concerned she made the following comments.

- The frontage to depth ratio is 1:3.5 somewhat below the ratio of 1:4 which the Guidance Note states may give rise to a loading of up to 10%.
- The configuration of the shop is unusual and gives rise to a situation where a substantial area at the rear is masked/shadowed which in her opinion should be reflected by a downward adjustment.
- The frontage to the mall is 8.86 metres whilst the width of the shop at the rear is 23 metres.
- The existing policy of the Valuation Office to add on 10% for a "large Zone D Area" is an innovation of their own and is not provided for in the Guidance Note.

Under cross-examination Ms. Murphy agreed that the SCS/IPD indices were of a general nature and not specific to the Dundrum Shopping Centre. Ms. Murphy also agreed that the Zone A €3,600 per sq. metre used by the Valuation Office in valuing the property concerned represented a discount of about 5% to the Zone A €3,800 per sq. metre applied to units in the prime section of the mall. Ms. Murphy said that the 5% reduction was a fair reflection of the location of the property concerned within in the mall but the central point of her argument was that the Zone A €3,800 per sq. metre was excessive in the first instance.

(Ms. McPartlan)

1. 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.
2. 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."

3. 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.
4. 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.
5. 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. m	NAV €
	0	Shop	ITZA 136.6 @ 3600	NIA	0.00	0.00	0.00	491760.00
1	Mezz	Store		NIA	0.00	207.30	210.00	43533.00
	0	NA	Add 10% Large Zone D Zoned Portion	NIA	0.00	0.00	0.00	49176.00

Total	€584,469.00
NAV (rounded)	€584,000.00

In support of her opinion of NAV, Ms. McPartlan introduced seven comparisons, details of which are set out in Appendix 1 to this judgment.

Under cross-examination Ms. McPartlan agreed that from the outset the Dundrum Shopping Centre was subject to strong demand from potential tenants. Indeed she understood the demand for units was three times in excess of the supply and that this was reflected in the rents agree in 2002/2003 and those agreed after the centre opened. When asked when the policy of adding on 10% for large Zone D areas was introduced Ms. McPartlan said that to the best of her knowledge it was introduced at the start of Revaluation programme some three years ago. When asked by the Tribunal if there was a Valuation Office Practice Note to this effect Ms. McPartlan thought there was and agreed that if this was the case she would let the Tribunal have a copy.

Ms. McPartlan when asked by Ms. Murphy if the property concerned was irregular in configuration and why she had made no end allowance in her valuation to reflect this Ms. McPartlan in response said that arriving at her opinion of net annual value she had come to the conclusion that the large area at the rear was not masked or shadowed space in the accepted sense due to the fact that it widened out in three stages. In the circumstances she took the decision that no allowance was warranted in this instance.

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. 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.

7. The facts in relation to the subject property are agreed. It is also common case that it is located just outside that stretch of the mall that is considered to be prime. The parties also agreed that the shop is regular in configuration .

8. In relation to end allowances the Tribunal acknowledges that there are times when valuation reasons for them exist as referred to in the Zoning Guidance Note. The quantum of the allowance is a judgment call made by the valuer in each particular case which in most instances is not formed by hard market evidence.

9. In regard to the policy of the Valuation Office to add on 10% for large Zone D areas it would be helpful to all concerned in rating practice to know how this policy emerged since it is not specifically referred to in the Zoning Guidance Note. In this regard perhaps it is inferred in section 2 which refers to a loading for premises that have a frontage to depth ratio in excess of 1:4. The Tribunal notes that to date a copy of the

Valuation Office internal Practice Note in relation to the 10% uplift for large Zone D areas has not yet been received.

10. In the context of this appeal the Tribunal determines that no end allowance is warranted as any upward adjustment in respect of the large Zone D area is offset by the fact that a large proportion of this area is masked/shadowed space.

11. The tribunal acknowledges the quality of the evidence and submissions made by Ms. Murphy and Ms. McPartlan which were of great assistance to the Tribunal in arriving at its determination as set out hereby.

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 30th September, 2005 to be as follows

Retail Space – ITZA –	136.6 sq. metres @ €3,000 per sq. metre =	€409,800
Mezzanine	207.3 sq. metres @ €210 per sq. metre =	€ 43,533
		€453,333

NAV say €453,500

And the Tribunal so determines.