

Appeal No. VA11/5/241

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

Crossridge Investments Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2203003, Retail (Shops) at Unit 2, Level 1, Pembroke District, Dundrum Town Centre, Dundrum, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Frank O'Donnell - FRICS, B Agr Sc, MIREF

Member

Fiona Gallagher - BL

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 €67,300 on the above described relevant property.

The grounds of appeal are set out on a sheet attached to the Notice of Appeal, copies of which are attached at Appendix 1 to this judgment.

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 27th of January, 2012. At the oral hearing the appellant was represented by Ms. Desmond A Byrne, FRICS, FSCSI, DIP Arb Law, a director of Bannon Property Consultants and Chartered Valuation Surveyors. 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 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 small retail unit with a most irregular configuration located on Pembroke Avenue in that section of the Dundrum Town Centre development known as the Pembroke District.

The Pembroke District is at two levels and part of it known as Pembroke Walk overlooks the Town Square. Pembroke Avenue, which is at the rear, provides pedestrian access for Sandyford Road to the Town Square by way of a stairway (24 steps). Other occupiers in the immediate vicinity are Paddy Power Ltd and the lower ground floor entrance to the Harvey Nichols department store.

Accommodation

The accommodation is measured on a NIA basis in accordance with the Code of Measuring Practice is agreed as follows:

Shop 43.1 sq. metres

Tenure

The property is occupied under the terms and conditions of a 10 year lease from the 15th July, 2011 at an initial yearly rent of €22,500. In addition to rents 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 lease provided that no tenant may break the lease at the end of the first year. At the commencement of the lease the tenant was granted a six 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

(Mr. Desmond A Byrne)

Mr. Byrne in his evidence stressed the inferior location of the subject property compared to those properties at the upper level over the Town Square and Millpond area. In addition he drew attention to the following factors which he said would have bearing on the rental value of the property concerned:

- The property occupies an isolated external position
- The property cannot be seen from the main concourse
- The property are awkwardly shaped
- The property has remained vacant on the market for a considerable amount of time following the failure of the previous tenants to make the location work

Mr. Byrne said that having regard to the foregoing it was his opinion that the Net Annual Value of the property concerned in accordance with section 48 of the Valuation Act, 2001 was as follows:

Ground Floor Retail 43.1sq. metres @ €600 per sq. metre	=	€25,866
NAV say		€26,000

Mr. Byrne said that when arriving at his opinion of Net Annual Value as set out above he had regard to the actual rent. He also had regard to the assessments of the refurbished Pembroke Cottages nearby which were valued at €450 per sq. metre.

In relation to the actual rent of €22,500 per annum the Tenant was granted a six month rent free period and a break option at the end of the fifth year. If the value of the rent free period was discounted over the first five year period of the lease the net effected rent of the property concerned was €20,250.

Mr. Byrne went on to say that he found it difficult to understand how the respondent had valued the property concerned at €67,300 (subsequently amended to €58,100). In her analysis the rate per sq. metre of €1,350 was arrived at by reference to the use of inappropriate comparisons Mr. Byrne said.

Under cross examination Mr. Byrne agreed that the premises could be seen from other positions on Pembroke Avenue but said that this was not particularly relevant nor did it have any beneficial effect on its rental value. The fact of the matter was he said that the subject property occupies possibly the worst location in the entire Dundrum Town Centre development. Mr. Byrne when asked if had considered Ms. McPartlan comparisons said he had but found them to be of little assistance particularly the Paddy Power letting but was in his opinion hard to understand.

(Ms. McPartlan)

At the outset Ms. McPartlan sought leave to amend her valuation of €67,300 which figure appears on the Valuation List. Ms. McPartlan said that during the course of the negotiations with Mr. Byrne it came to light that the area of the property stated by her was incorrect and

accordingly therefore she wished to amend her valuation in the light of what now was the agreed area. According therefore her revised valuation was as follows:

Retail Shop Area 43.1sq. metres @ €1,350 per sq. metre = €58,185
 NAV say €58,100

Under cross examination by Mr. Byrne Ms. McPartlan agreed that that the property concerned was irregular in configuration and said that she had regard to this in arriving at her opinion of Net Annual Value. She agreed that her estimate of Net Annual Value bore little relationship to the actual headline rent of €22,500 per annum. Ms. McPartlan also said that the rental evidence in this section of the Pembroke District was inconsistent so that it was difficult to establish what she described as a tone. In this regard she drew Ms. Byrne attention to the Paddy Power premises which she said was approximately the same size as the property concerned and let at about the same time at twice the rent i.e. €44,394 as compared to €22,500 in respect of the property concerned. Ms. McPartlan said she also had regard to other rents being paid in the Pembroke District such as Nando's, The Counter and Teddys.

When asked if the subject property was the worst for a trading point of view in the entire centre Ms. McPartlan said that she would not go that far but agreed that it was one of the worst. That said Ms. McPartlan said it was in the Dundrum Town Centre development which was recognised as the most prestigious development of its type in Dublin.

In relation to her 3 comparisons Ms. McPartlan agreed that they were all transactions that had taken place post the relevant revaluation date. Ms. McPartlan said that that the fact of the matter was that that there was no evidence of any rental transactions in the Pembroke District at or about the valuation date of the 30th of September, 2005. In the circumstances she had to use her judgement in order to arrive at an opinion of the Net Annual Value of the property concerned at the specified valuation date.

Findings

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.

1. 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.
2. 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.
3. 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.
4. 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.
5. The facts in relation to the subject unit are agreed.
6. It is common case that the lower level of the Pembroke District where the subject property is located is removed from the shopping centre proper. Pembroke Avenue provides a pedestrian link from the Sandyford Rd/Dundrum Main St. via an open

stairway leading to the Town Square/Millpond area. The property concerned is located to adjacent to the bottom of the stairway.

7. The rental evidence of this section of Pembroke Avenue lacks consistency. Firstly there is the subject unit let in July 2011 at a headline rent of €22,500 per annum and the Paddy Power Unit which was let in November 2010 at a headline rent of €46,394 per annum. Both of these units are not dissimilar in size and in the circumstance therefore it is not easy to arrive at a Net Annual Value having regard to the rental evidence.
8. It is common case that the subject property occupies if not the worst then at least one of the worst trading locations in the centre. It is also common case that it has a low profile and limited pedestrian flow.
9. The passing rent of €22,500 per annum was agreed in July 2011 almost 6 years after the relevant valuation date. No evidence was adduced to show that's its rental value 2005 would have been any different to its actual rent. In the circumstances despite the absence of rental evidence at or about 2005 in this location the Tribunal can not find no good reason to uphold the Net Annual Value of the property put forward by Ms. McPartlan. Nonetheless the Tribunal has come to the conclusion that the location of the Paddy Power unit is somewhat better than the location of the property concerned.

Determination

Having regard to the foregoing the Tribunal determines that the NAV of the property concerned in accordance with Section 48 of the Valuation Act, 2001 as of the specified valuation date of 30th September, 2005 is as set out below:

Shop 43.10 sq. metres @ €600 per sq. metre = €25,860

NAV say €26,000.

And the Tribunal so determines.