Appeal No. VA11/5/245

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Argos Distributors Ireland Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property no. 2178479, Retail (Shops) at Unit 25, Level 1, 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 28TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 29th day of August, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €730,000 on the above described relevant property.

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

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 9th day of December, 2011. At the oral hearing the appellant was represented by Mr. Ian Given, MSCSI, MRICS of BNP Paribas Real Estate. 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 level 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 property concerned is located at the northern end of mall level 1 at the entrance from the red car park. The entrance from the car park at this point is quite narrow and this section is enclosed by automatic sliding doors before widening out into a wide concourse within which is a bank of lifts, escalators and stairways. The entrance to the subject property is located at the second sliding doorway and the frontage of the unit is onto the narrow enclosed entrance mall.

The property concerned, occupied by Argos, is at two levels with the ground floor space given over to standard Argos retailing purposes. The stores at basement level are accessed from the rear of the store by means of an enclosed staircase. The stores are at right angles to the retailing area and in configuration are long and narrow so that a section is quite a distance from the sales area. Within the main retail space are added storage accommodation and staff areas at mezzanine level.

Accommodation

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

Shop	545.2 sq. metres
Mezzanine Store	98.69 sq. metres
Lower Ground Floor Store	666.16 sq. metres

Tenure

The subject property is occupied under the terms and conditions of a 25-year lease from 3rd March, 2005 at an initially yearly rent of €545,000. In addition to rent the tenant is responsible for rates and other 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.

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. IAN GIVEN)

Mr. Given said that before arriving at his estimate of NAV he had carried out an analysis of rents at level 1. The outcome of this analysis is set down in schedule 4 of his written précis and is as follows:

Unit	Tenant	Rent	Heads of Terms date	Analysis Zone A	Avg. Zone A for Year
1/22	Lifestyle Sports	375,250	01/09/2002	2,367	
1/31	Pamela Scott	375,998	01/10/2002	2,681	
1/3	Fitzpatrick's Shoes	206,000	01/10/2002	2,378	
1/38	Weir & Sons	254,000	01/10/2002	2,263	
1/18	Clark's Shoes	300,000	25/11/2002	2,404	2,418
1/19	Best Menswear	395,000	01/01/2003	2,408	
1/27	Ernest Jones	290,000	01/01/2003	2,342	
1/7	Coast	207,965	01/01/2003	2,402	
1/35	River Island	406,556	01/01/2003	2,149	
1/21	La Senza	188,000	22/07/2003	2,165	2,293
1/39	Molton brown	85,000	01/01/2004	2,135	
1/20	Office Shoes	247,811	01/06/2004	2,957	
1/41	L'Occataine	200,000	01/07/2004	2,536	
1/13	Mssimo Dutti	550,000	23/12/2004	2,714	2,585
1/08	East	204,000	01/01/2005	2,236	

In regard to the information contained in the schedule, Mr. Given made the following comments.

- *"The agreed rents do not vary that significantly over the 2002-2005 period.*
- *The earliest rent to be agreed is that of Lifestyle Sports at €2,367 per sq m in September 2002 which is actually at a higher level than of East which was agreed at €2,236 per sq m.*

- *The sixth column of the table shows the average rent agreed in each particular year. The average Zone A rent agreed in 2002 was €2,418 per sq m as against €2,585 per sq m in 2004; an increase of 6.9%.*
- *The agreed rents clearly did not vary significantly over the period 2002 to 2005. One explanation for this might be that when the earlier 2002 rents were agreed the centre was in the early stages of construction. The rental market was rising and the developer would have been unwilling to agree market level rents because by the time the centre opened for trade the rents would have been eight years' old. It is more likely that the developer agreed inflated rents in the first instance to take account of rental growth so that at centre opening all rates agreed would be at or at least close to open market rental value.*
- *The Valuation Office in valuing the subject property at RV €730,000 has applied 33.9% of rental growth on the headline rent of €545,000 that was agreed on 30th October, 2002. This level of increase is not consistent with the pattern of rents agreed over this period."*

Having regard to the above comments, Mr. Given said he considered the Boots premises at level 2 and the Next premises at level 1 to be the most relevant comparisons. Details of these comparisons are contained in Appendix 2 attached to this judgment.

Mr. Given said that having regard to the above he wished to point out that the Argos unit was distinctly different from both properties in a number of important aspects:

i. The nature of the entrance from the car park meant that the property had only a mall frontage of 3.7 metres.

ii. At the shop entrance the ceiling height was particularly low and restricted the space available for signage purposes.

iii. The lack of adequate mall frontage and signage facilities gave the property a poor profile.

iv. The entrance from the car park to the mall enclosed by sliding doors at each end was more in the nature of a corridor and reduced the frontage and profile of the store even more.

In regard to the above Mr. Given put forward his estimate of NAV as follows:

Level 1 Retail and Stores	545.2 sq. metres	@	€748 per sq. metre =	€407,829
Mezzanine Staff Accommodation	98.69 sq. metres	@	€250 per sq. metre =	€ 24,673
Level 0 Stores	666.16 sq. metres	@	€180 per sq. metre =	€119,909
Total			=	€552,411

NAV say €552,000

- *"Firstly, my opinion of NAV is in line with the percentage increases demonstrated by the pattern of agreed rents on level 1 over the period 2002 to 2005.*
- *Secondly, my opinion of value is in line with the percentage increase as demonstrated by the agreed Boots assessment and its rent. The Valuation Office has also applied a similar level of increase in their valuation of the Next unit.*
- *Thirdly, my opinion of value for the ground floor compares favourably with the agreed rating assessment for Boots which is at €750 per sq m. It has been agreed between the Valuation Office and the agent dealing with the Coast test case (VA11/5/179) that the values of level 1 standard units should be 10% greater than those on level 2. Applying this logic would suggest that €750 per sq m for Boots on level 2 should be increased by 10% to reflect the Level 1 value, i.e. €825 per sq. m. Then add say 5% for quantum (€866 per sq. m). This assumes however that the two units are identical, which they are not. This value of the Argos unit should be discounted to reflect its poor location and negative attributes. My opinion at €748 per sq m can therefore be analysed to reflect an 13.68% discount for these factors. In other words €750 plus 10% for level 1; plus 5% for quantum and less 13.6% for negatives and location = €758 per sq m."*

Under-cross examination Mr. Given said he was experienced in the marketing and letting of shopping centres. In his experience it was common practice for developers to pitch asking levels in excess of prevailing rental levels and in his opinion the developers of the Dundrum Town Centre had pursued such a policy. To that extent the rents agreed in respect of the subject property in October 2002 was not a 2002 rent but at developers' best estimate of what rent might be achieved in late 2004 when the centre was originally scheduled to open. Mr. Given said that, in general, rental levels increased during the period 2002 and 2005 but said that this was not necessarily reflected in the rents agreed during the marketing period of 2003 and 2004 in respect of the shop units in the Dundrum Town Centre.

Mr. Given agreed with Ms. McPartlan that the entrance from the ‘red’ car park was the main entrance to the centre but said that the subject property did not benefit from the pedestrian flow because of the narrow corridor-type mall to which it had frontage. When questioned as to why he had concentrated his rental analysis contained in his schedule to units at mall level 1, Mr. Given responded by saying that he wanted to give an overview of rents at the same mall level on which the property concerned is located. However, Mr. Given said that his primary comparison was the Boots unit on level 2, almost directly above the subject property. Furthermore, he said the valuation of this property had been agreed at section 30 appeal stage which gave it added weight for comparison purposes. It was relevant in that there was a reasonably close relationship between the initial annual rent (€709,000) and the agreed valuation of €770,000. This he said was in contrast to the relationship between the rent of the property concerned (€545,000) and its valuation determined by the Commissioner (€730,000). Mr. Given said that he was aware that the Valuation Office was of the view that rental levels on mall 1 were some 5% higher than those on level 2. Mr. Given said he would not disagree with this differential.

In regards to his second comparison (Next), Mr. Given agreed that the analysis of its NAV was his and not that of the respondent. Nonetheless, Mr. Given said that there was again a close relationship between the actual rent of €1,269,000 and the NAV of €1,380,000 which included a 10% uplift for the store fit-out. Mr. Given agreed with Ms. McPartlan that the Next store occupied a better location than the subject property.

(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 to 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.

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:

Shop	545.20 sq. metres	@	€1,050 per sq. metre
Mezz Store	98.69 sq. metres	@	€250 per sq. metre
Store	666.16 sq. metres	@	€200 per sq. metre

Total = €730,364.50

NAV say €730,000

In support of her opinion of NAV Ms.McPartlan introduced three comparisons all of which are located on mall level 2, that is, the same level as the Boots unit. Details of Ms. McPartlan's comparisons are contained in Appendix 3 attached to this judgment.

Under cross-examination by Mr. Given, Ms.McPartlan said she had regard to the location of the property concerned at the entrance from the red car park and was fully aware that the mall was quite narrow at this point when compared to the standard mall widths throughout the centre. Ms. McPartlan said she was also aware that the property concerned was located close to the Marks and Spencer store, one of the principal anchor tenants in the centre. Ms. McPartlan went on to say also that she had considered the proximity of the bank of lifts, escalators and stairways close by to be an added benefit in that it created and gave rise to an enhanced pedestrian flow at this point. Ms. McPartlan agreed with Mr. Given that the design of the centre at the entrance from the red car park presented difficulties in relation to signage and acknowledged that this may be a deterrent to some traders who would wish to have a higher profile and visibility from all sectors of the mall.

When asked if she had regard to the actual rent when arriving at her opinion of NAV, Ms. McPartlan said that she had, but had also had regard to rental levels of all other stores in the Centre in order to obtain an overview of rental levels. In her opinion it would be an incorrect policy to rely solely on the actual rent which in any event was agreed in 2002, some three years before the relevant valuation date. When asked if she had any specific evidence to support her decision to value the property concerned at an overall rate of €1,050 per sq. metre, Ms. McPartlan said she had not. The decision to value the property at €1,050 per sq.

metre was based on analysis of all the rental levels within the centre having regard to rental growth between the years 2002 and 2005 in other centres, such as Liffey Valley and others.

In regard to her comparisons, Ms. McPartlan agreed the NAV of the Boots store was 11.8% over the initial rent agreed in 2002. She also agreed that the NAV of the subject property was 33% over the actual rent, i.e. €730,000 as compared to €545,000. Ms. McPartlan also acknowledged that her comparisons nos. 2 and 3 were the subjects of appeals to this Tribunal and in the circumstances could not be relied upon for comparison purposes.

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 12-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. 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 agreements for leases negotiated from 2002 onwards.

8. Of all the comparisons introduced by the valuers the Tribunal attaches most weight to the Boots unit for two reasons. Firstly, it is an agreed valuation following an appeal under Section 30, and secondly, it is a common comparison. All of the other comparisons are subject to appeals to the Tribunal (Next, HMV and Champion Sports) and were of limited assistance.

9. The Tribunal notes with interest Mr. Given's comments that developers when launching their marketing campaigns pitch their asking rents at levels in excess of prevailing rental levels. This comment is given added weight in the light of Mr. Given's experience in the letting and marketing of shopping centres.

10. In the light of the relatively close relationship between the agreed valuation of the Boots unit and its initial rent it is surprising that there is not a similar relationship in regard to the property concerned as they are similar in many respects.

11. The Tribunal recognises the locational problems associated with the property concerned but it is fair to say that they are more likely than not to have been reflected in the initial rent agreed between the parties. It should also be said that some of the problems emphasised by Mr. Given would not necessarily concern Argos or any other

similar type of trader. That said, however, Section 48 assumes a hypothetical landlord and a hypothetical tenant and not necessarily the actual tenant.

12. The Tribunal accepts the evidence of the expert witness that level 1 is considered to be a better trading location than level 2 and that this is reflected in the actual rent being paid at these levels.

Determination

Having regard to the foregoing the Tribunal determines 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 to be as follows.

Shop	545.2 sq. metres	@	€825 per sq. metre	=	€449,790
Mezzanine Store	98.69 sq. metres	@	€250 per sq. metre	=	€ 24,673
Lower Ground Floor Store	666.16 sq. metres	@	€200 per sq. metre	=	€133,232
Total				=	€607,695

NAV say €607,000

And the Tribunal so determines.