Appeal No. VA11/5/248

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Primark Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2178553, Retail (Shops) at Unit 221, Dundrum Town Centre, Dundrum, 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 29TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 31st day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €1,921,000 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. The levels used are incorrect."

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 5th day of January, 2012. At the oral hearing the appellant was represented by Mr. Tadhg Donnelly, Head of Rating at CBRE. 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.

The Property Concerned

The property concerned is laid out at two levels, the retail element being situated on level two and the storage space is at basement level.

Accommodation

The floor areas measured on a gross internal area basis have been agreed as follows:

Level 2:	Shop –	3,645 sq. metres
Basement:	Storage –	1,311 sq. metres
Total (GIA) –		4,956 sq. metres

Tenure

The property concerned is held on a 25 year lease commencing 3rd March, 2005 at a rent of €1,800,000 with 5 yearly rent reviews.

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. Tadhg Donnelly)

Mr. Donnelly, in his evidence, contended for a net annual value of €1,266,000 calculated as set out below:

Level 2: Shop – 3,645 sq. metres @ €275 per sq. metre	= €1,002,375.00
Add 10% for fit-out	= € 100,237.50
Basement Storage – 1,311 sq. metres @ €125 per sq. metre	= € 163,875.00
Total	€1,266,487.50
Net annual value, Say €1,266,000	

Mr. Donnelly said that in arriving at his opinion of net annual value, he had regard to the valuation of the Marks & Spencer store and the House of Fraser department store, both of which had been agreed at Section 30 appeal stage. Details of these comparisons are set out in Appendix 1 attached to this judgment. Mr. Donnelly went on to say that the comparisons introduced by him and Ms. McPartlan were common. In the circumstances, it was surprising that there was such a difference in their respective opinions of net annual value.

Under cross-examination, Mr. Donnelly agreed that the major difference between the subject property and the two comparisons was that Penneys traded at one level only. Mr. Donnelly said that this was not necessarily an advantage and pointed out that different rates per sq. metre had been attributed to the retail levels at each store.

When asked if he had regard to the initial rent agreed in 2002, Mr. Donnelly said he had, but expressed the view that he felt it was more appropriate to look at the assessments of the two comparisons which had been agreed at Section 30 appeal stage. This approach, he said, was consistent with the findings in appeal **VA08/5/125 - Marks & Spencer** which, he said, made reference to the concept of an emerging tone of the list. In any event, it was his personal opinion that, the rent of €1,800,000 agreed at that time was high when compared to the rent agreed in respect of the Marks & Spencer store and the House of Fraser department store – particularly the Marks & Spencer store which had more than 2.3 times the retail space of the subject property, albeit at two levels.

Mr. Donnelly agreed that the net annual value of the two comparisons were very close to the initial rents in each instance but said that this did not detract from his contention that the initial rent of the subject property was excessive when compared to the rent of the Marks & Spencer store with a total retail space of 8,568 sq. metres and the House of Fraser department store with a retailing space of 13,202 sq. metres. Mr. Donnelly also pointed out that the retailing space at mall level 2 in the House of Fraser store was valued at €290 per sq. metre and that the ground floor space in the Marks & Spencer unit was valued at €320 per sq. metre. In the circumstances, therefore, it was hard to understand why the subject property should be valued at €400 per sq. metre.

(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:

> ***"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.

Ms. McPartlan pointed out that the valuation of €1,892,000 was below the valuation of €1,921,000 currently on the valuation list. This amendment in the valuation, she said, was rendered necessary due to the fact that the 10% fit-out allowance had been attributed to the basement store in error which was not in accordance with the Valuation Office practice note in this regard. Accordingly, Ms. McPartlan put forward her opinion of net annual value as set out below:

Level 3: Shop – 3,645 sq. metres @ €400 per sq. metre	= € 1,458,000
10% for fit-out on retail element only	= €145,800

Basement: Store – 1,311 sq. metres @ €220 per sq. metre = €288,420

Total €1,892,220

Valuation (rounded) €1,892,000

Ms. McPartlan said that the comparisons introduced by her and Mr. Donnelly, i.e. the House of Fraser department store and the Marks & Spencer store at mall level 1 were common comparisons. Ms. McPartlan pointed out that the Penneys unit was different in two major and material facts from the comparisons. Firstly, the Penneys unit traded at one level only and secondly, it was considerably smaller. These were factors that had to be taken into account when arriving at its net annual value. Furthermore, she said that there was a close relationship between the rents of Marks & Spencer and the House of Fraser stores and the assessments that had been agreed at Section 30 appeal stage. There was, Ms. McPartlan said, no good reason why such a close relationship should not exist between the rent of the subject property and its net annual value.

Under examination by Mr. Donnelly, Ms. McPartlan said that in arriving at her opinion of net annual value she had regard to the actual rent of the subject property agreed in 2002. Ms. McPartlan said she also had regard to the rents in relation to the Marks & Spencer store and the House of Fraser department store and the agreed assessments in relation to these properties which bore a close resemblance to the rents. Ms. McPartlan said that the rents in each instance fully reflected the size and nature of each property and as far as she was concerned, there should be a close relationship between the NAV of each property and the actual rent being paid in each instance. In this regard, Ms. McPartlan said that she did not agree with Mr. Donnelly's contention that, the Penneys rent was excessive nor did she agree that it reflected an over-estimate of its trading potential. Ms. McPartlan said that the analysis of the Marks & Spencer and House of Fraser assessments had been agreed with the surveyor acting for both appellants.

Ms. McPartlan agreed that the Penneys store was the only one of its size and configuration in the centre but did not agree with Mr. Donnelly's proposition that it was unsafe to rely on comparisons which were much larger and traded at different levels. Ms. McPartlan pointed out that Mr. Donnelly had relied on the same comparisons, but said that for some reason which she could not understand, Mr. Donnelly had ignored the relationship between the rent and the assessments of these comparisons in arriving at his opinion of the net annual value of the property concerned. When asked why the subject property had been valued at €400 per sq. metre while the first floor at the House of Fraser store had been valued at €290, Ms. McPartlan said that the €400 per sq. metre reflected the size of the unit, the fact that it traded on one level only and furthermore and most importantly, that it was well supported by the rent being paid.

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

6. The facts in relation to the subject property are agreed. It is also noted that both parties relied upon the same comparisons when arriving at their respective opinions of net annual value. Ms. McPartlan, however, had also had regard to the rent being paid while Mr. Donnelly chose to disregard it because he felt that the rent that was agreed was excessive.

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 agreement for leases negotiated from 2002 onwards.

8. It is common case that level 1 is considered to be a better trading location and that the standard mall units at level 2 were assessed at a Zone A rate per sq. metre of about 5% below that attributed to similar units at mall level 1.

9. It is also common case that the subject property is the only one of its size trading on a single level in the centre. To that extent it is different from the two comparisons introduced by both valuers.

10. The Tribunal notes that the assessments of the Marks & Spencer store and House of Fraser department store bear a close relationship to their initial rents. In this regard, it could be said that any developer of a shopping centre scheme, like the Dundrum Town Centre, would be most anxious to sign up as early as possible anchor tenants of the covenant quality of Marks & Spencer and House of Fraser. To that extent, therefore, it would be surprising if such tenants would not use this to their best advantage in agreeing the terms and conditions of their leases. Potential tenants of the next largest store in the centre (disregarding the Harvey Nichols store which is outside the main shopping centre building) might find themselves to be in a greater competitive situation which might therefore have the effect of the landlord achieving

a higher than expected rent. To that extent, therefore, there may be some merit in Mr. Donnelly's argument that the initial rent of €1,800,000 may have been agreed in such circumstances where the landlord was in an advantaged position.

11. The agreed analysis of the Marks & Spencer and House of Fraser stores show the ground floor in both have been valued at €320 per sq. metre and that the first floor space in the House of Fraser store has been valued at €290 per sq. metre, i.e., approximately 90% of the rate per sq. metre used in level 1. Making due allowances for the respective sizes of the properties concerned and the comparisons, the Tribunal is of the opinion that an overall rate of €400 per sq. metre put forward by Ms. McPartlan is somewhat on the full side. This opinion is reaffirmed by comparing the rent of the subject property of €1,800,000, with a retail area of 3,645 sq. metres with that of the Marks & Spencer store, where the rent is €2,500,000, for a store with a total retail space of 8,568 sq. metres at two levels.

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, at the specified valuation date of 30th September, 2005, to be as follows:

Store – 3,645 sq. metres @ €350 per sq. metre	= €1,275,750
Fit-out @ 10%	= € 127,575
Storage – 1,311 sq. metres@ €150 per sq. metre	= € 196,650
Total	€1,599,975

NAV say €1,600,000.

And the Tribunal so determines.