

Appeal No. VA11/5/249 & 252

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

Sivota Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2202999, Retail (Shops) at Part First Floor, Level 3, Unit 33, Hughes Hughes Bookshop, Dundrum Town Centre, Sandyford Road, Dundrum, County Dublin AND Property No. 2202998, Retail (Shops) at Level 3, Unit, 33, Hughes Hughes Bookshop, Dundrum Town Centre, Sandyford Road, Dundrum, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Patrick Riney - FSCSI, FRICS, ACI Arb

Member

Fiona Gallagher - BL

Member

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

By Notices of Appeal received on the 31st day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing valuations of €74,100 (VA11/5/249) and €322,000 (VA11/5/252) respectively on the above described relevant properties.

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

Re VA11/5/249: *"The valuation is excessive by comparison to similar properties."*

Re VA11/5/252: *"The valuation is excessive and not in line with relevant comparable market rental evidence within the centre."*

These appeals first came before the Tribunal on the 7th December, 2011 and subsequently on the 21st December, 2011, at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. At the oral hearing the appellant in each instance was represented by Ms. Siobhan Murphy, Bsc (Surv) 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.

At the outset of the hearing the Tribunal sought clarification in relation to the coffee shop located at the first floor of the premises and which was separately valued and subject of the appeal reference VA11/5/249. Having considered the facts in relation there to, the Tribunal expressed the view that the nature of the occupation of the coffee shop area did not appear to meet the requirements of exclusive occupation and hence may not be a relevant property under Schedule 3 of the Valuation Act, 2001. In the circumstances the Tribunal invited the parties to seek an adjournment so each could seek further advice.

In due course the hearing resumed on the 21st December, 2011, and once again Ms. Murphy and Ms. McPartlan appeared in behalf of the appellant and the respondent respectively.

At the commencement of this hearing the parties advised that Tribunal that they had mutually agreed that the property be valued as a single unit of valuation occupied by Sivota Ltd. and that the valuation of property no. 2202999 (valued on the Valuation List at €74,100) be struck out. In the circumstances the Tribunal proceeded to receive evidence and submissions in respect of property no. 2202998 which is valued on the valuation list at €322,000.

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 property which is the subject of this appeal and is known as Unit 333 is a two story mid terraced unit in that section of the Dundrum Town Centre development known as Wyckham Way which is a parade of six external retail units facing onto the Tesco car park.. There is no access to these properties from the malls within the centre.

Accommodation

The area of the premises which is regular in configuration, measured on a NIA in accordance with the Code of Measuring Practice is agreed to be as follows:

Ground Floor Retail	473.93 sq. metres
First Floor Retail	431.16 sq. metres

Tenure

The premises was originally leased to Hughes and Hughes Ltd. under the terms and conditions of a 25 year lease from the 25th October, 2008 at an initially yearly rent of €300,000. 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. At the commencement of the lease the tenant was granted a rent free period of 9 months.

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 said that in arriving at her opinion of NAV she had regard to the initial rent of €300,000 payable with effect from the 25th October, 2008 which was some three years after the specified valuation date of the 30th September, 2005. Having regard to the fact that retail rents had risen over the period September 2005 to October 2008, Ms. Murphy said she considered it appropriate to adjust the initial rent payable by reference to the SCS/IPD rental value growth index which give the following outcome:

Initial Yearly Rent	€300,000
SAS/IPD Index-September 2008 100	
-September 2005 841	x .841
Adjusted Rent- 2005 levels =	€250,300

Having carried out this exercise Ms. Murphy said a further adjustment was necessary to reflect the benefit of the 9 month rent free period i.e. €225,000 discounted over the first 5 year period of the lease which gives a net effective rent of €207,500 which she then devalued as follows:

Shop/ Ground Floor	473.93 sq. metres	@ €300 per sq. metre	= €142,179
Shop/First Floor	431.16 sq. metres	@ €150 per sq. metre	= €64,674
NAV say €207,500			

In support of her opinion of NAV Ms. Murphy introduced two comparisons, details of which are found in Appendix 1 attached to this judgment.

(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:

Having regard to the overall analysis of available rental evidence on Wyckham Way, Ms. McPartlan determined the net annual value of the subject property to be as follows:

Shop/ Ground Floor	473.93 sq. metres	@ €475 per sq. metre	= €25,117
Shop/First Floor	431.16 sq. metres	@ €70 per sq. metre	= €16,413
			€41,530

NAV say €41,000.

Ms. McPartlan said that the above valuation was different to that appearing on the valuation list in respect of the property concerned (Property No. 2202999) and reflected the situation that the parties were agreed that there was now only one unit of occupation.

In support of her opinion of NAV Ms. McPartlan introduced two comparisons, details of which are set out in Appendix 2 attached to this judgment.

In relation to her comparisons Ms. Partlan made the following comments.

- Both properties are in the same parade as the property concerned.
- The valuation of these properties was each agreed with rating consultants at Section 30 appeal stage. To that extent they should be accorded considerable weight.
- They are common comparisons.

Under cross-examination Ms. McPartlan agreed that the units on Wyckham way were not available to let in 2005 so that there was no market evidence of the rental value at that time. Ms. McPartlan did not agreed that it was appropriate to adjust the rent agreed in October 2008 by reference to the SCS/IPD index by virtue of the fact that this index was based on the rental growth of a basket of prime properties and was not specific to rental growth in the Dundrum Town Centre. Ms. McPartlan emphasised that her opinion of NAV was well supported by her comparisons and the fact they had been agreed at Section 30 appeal stage was of added significant.

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. It is further agreed that the valuation to be determined by the Tribunal is in respect of the entire property (property no. 2202998) and that the valuation of property 2202999 be struck out.
7. The tribunal notes that the rent agreed in respect of the subject property in October 2008 was €300,000 per annum. The SCS/IPD index and other such indices are a

useful guide to general market trends. They are based on a basket of prime properties in terms of location, build quality and covenant strength and it is accepted that Dundrum Twon Centre would meet these criteria. Whilst the Tribunal accepts that rental levels between September 2005 and October 2008 generally increased as borne out by the SCS/IPD index, it does not necessarily agree that this growth applies to units on Wyckham Way, which by their very nature are not typical when compared to standard mall units. Indeed there is no market evidence to show that the 2008 rents are in excess of what might have been achieved in 2005.

8. The fact that the NAV of each of the two comparisons introduced by both valuers were agreed at Section 30 appeal stage gives them added weight. Both of them are considerably larger than the subject property and this is a fact that the Tribunal has to take into account when arriving at its estimate of NAV as set out below.

Determination

Having regard to the foregoing the Tribunal determines the NAV of the property concerned (property no. 2202998) to be as set out below:

Shop/ Ground Floor	473.93 sq. metres	@	€400 per sq. metre	=	€189,572
Shop/First Floor	431.16 sq. metres	@	€220 per sq. metre	=	€94,855
Total				=	€284,427

NAV say €284,400.

The tribunal also determines that the valuation in respect of property no. 2202999 be struck out.

And the Tribunal so determines.