Appeal No. VA11/5/268

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Regine Ltd **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2185248, Retail (Shops) at Unit 34, Gallery, Dundrum Town Centre, County Dublin.

B E F O R E

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

Brian Larkin - Barrister **Member**

Michael F Lyng - Valuer **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 31st August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €220,000 on the above described relevant property.

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

"The valuation is incorrect, excessive and bad in law."
"The passing rent on the subject proerty and rents paid by the adjoining occupiers."

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 13th day of January, 2012. At the oral hearing the appellant was represented by Mr. Eoin P.Conway, Bsc (Hons), Dip Prop Econ, MRICS, MSCS, ACI Arb of Weir and Company. Ms. Fancis Nolan, the proprietor of Fran & Jane, gave evidence in relation to trading in the subject property. Ms. Triona McPartlan, BSc (Hons) Estate Management a Valuer in 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 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 Subject Property

The subject property is located in the section of the shopping centre known as “The Gallery”, which is at an intermediate level between mall level 2 and mall level 3. The units in The Gallery, which are of various sizes and configurations, are arranged in an elliptical manner around a central core which provides lifts, escalators and stairways to all mall levels.

The property concerned trades as ‘Fran & Jane’ and is used for the sale of ladies wear. Other units in The Gallery are in similar fashion use.

Accommodation

The accommodation, measured on a NIA basis in accordance with the code of measuring practice, is agreed as follows.

Overall Area 174.57 sq. metres

Retail Zone A 74.78 sq. metres

Retail Zone B 75.94 sq. metres

Retail Zone C 23.85 sq. metres

ITZA 118.71 sq. metres

Frontage 12.3 metres

Tenure

The premises are occupied under the terms and conditions of a lease and supplemental agreement for a term of 20 years commencing on the 18th October, 2008 at a headline rent of €220,000 per annum. The supplemental agreement which ranks equal to the lease provides for the payment of a rent of €165,000 per annum or 11% of the turnover, whichever is the higher for the first five year period of the term.

Inter alia the tenant is responsible for the payment of rent, 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 tenant was granted a four month rent free period from the 18th January, 2009 to the 18th May, 2009.

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 the 30th September, 2005

Summary of Evidence

(MS. FRANCIS NOLAN)

Ms. Nolan in her evidence said she was in the fashion business for 38 years and had nine other stores in addition to the subject property. In her experience she said trading in The Gallery was less than anticipated. She also said that the configuration of the shop and the intrusion caused by the structural columns interfered with the proper display of garments at the front of the shop.

(MR. EOIN P.CONWAY)

Mr. Conway in his evidence said that the property concerned had originally been let as three separate units, namely Unit 33A, 35 and 36. As a result of the amalgamation there were now two quite large structural columns at the front of the shop. The presence of these columns, Mr. Conway said, inhibited the way in which merchandise could be displayed to maximum effect. This is a factor Mr. Conway said that a retailer would take into account when arriving at an opinion of rental value.

Mr. Conway expressed the opinion that The Gallery was an inferior trading location and that this was borne out by the high turnover of tenants at this level. This, he said, was not the case at the three principal mall levels where there was a remarkably low turnover of tenants.

Mr. Conway said that in arriving at his opinion of NAV he had analysed the rents of two other units in The Gallery, namely Unit 29 (G Star) and Unit 7 (Genius). Details of Mr. Conway's analysis in respect of these two units are contained in Appendix 1 attached to this judgment.

Mr. Conway said that he had also had regard to the base rent of €165,000 per annum which had been agreed some three years after the specified valuation date of the 30th September, 2005. In order to adjust this rent to September 2005 levels Mr. Conway said he had examined the SCS/IPD quarterly property indices for the period September 2005 to September 2008 which produced the following percentage movements:

September 2005 – September 2006 +5%
September 2006 – September 2007 +10%
September 2007 – September 2008 – 4%

Having carried out this exercise Mr. Conway said he considered that the 2005 rent of the subject property would be in the order of €138,666 which devalued at €795 per sq. metre on an overall basis. Mr. Conway said he had consulted with the joint letting agents of the centre (Bannon Commercial) and had been advised by them that negotiations for letting purposes held in respect of units on the Gallery level had been concluded on an overall rate per sq. metre basis and not on the zoning method. In this regard Mr. Conway indicated that he did not dispute Ms. McPartlan's breakdown of the area of the subject property on a zoning basis.

Having regard to the above Mr. Conway submitted his opinion of the NAV of the subject property in accordance with statutory provisions as at the relevant valuation date of the 30th September, 2005 was €137,500 calculated as set out below:

Floor area 174.5 sq. metres @ €875 per sq. metre = €152,687
Less 10% deduction to reflect that this was three units combined with the resulting two significant obstructing columns at the front of the shop
= €137,419
Say €137,500

Under cross-examination by Ms. McPartlan Mr Conway agreed that the front to depth ratio was just in excess of 1:1.1. Mr. Conway also agreed that in most instances (other than particularly large shops and department stores) the shops at all three mall levels had been valued using the zoning method. Mr. Conway said that his decision to value to property concerned on an overall basis was influenced by the information obtained from the letting agent to the effect that all rents in The Gallery had been negotiated on an overall rate per sq. metre. Accordingly, he followed market practice and made the decision not to use the zoning method.

(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.

At the outset Ms. McPartlan sought leave to amend the valuation contained in her written précis and, in the alternative, she put forward her opinion of NAV as set out below:

Retail Zone A	74.78 sq. metres @ €1,800 per sq. metre	=	€134,595.00
Retail Zone B	75.94 sq. metres @ €900 per sq. metre	=	€ 68,350.50
Retail Zone C	23.85 sq. meters @ €450 per sq. metre	=	€ 10,732.50
Total		=	€213,678.00

NAV say 213,000

Note the above valuation is less than the €220,000 which currently appears on the valuation list.

In respect of her opinion of NAV Ms. McPartlan introduced three comparisons, details of which are contained in Appendix 2 to this judgment.

Under cross-examination Ms. McPartlan said that at the outset of the revaluation of the Dundrum Shopping Centre all available rental evidence in respect of standard size shop units had been analysed using the zoning method, which she considered to be good valuation practice. Having carried out this exercise it was only proper that the NAV of units in The Gallery should also be valued on this basis. When asked if she had asked the letting agent (Bannon Commercial) if the Gallery units had been let on an overall rate per sq. metre basis or on a zoning basis, Ms. McPartlan said she had not, nor indeed did she consider it to be necessary.

Ms. McPartlan said that in arriving at her opinion of NAV she had had regard to the passing rent but not to the exclusion of all other rental evidence, so as to obtain an overall picture of rental evidence in The Gallery and in the shopping centre as a whole.

When asked about that part of her evidence headed "General Zone A levels applied throughout the centre", Ms. McPartlan said this was an overview of levels of assessment throughout the centre which she considered to be important in order to indicate that the valuation level attributed to The Gallery reflected its inferior location from a trading point of view. In her opinion the Zone A €1,800 per sq. metre was a fair reflection of the relative values between units in The Gallery and those other units occupying a prime pitch on the principal malls.

When asked if she considered that the size and location of the structural columns had the effect of imposing restrictions on the use of the shop front for display purposes Ms. McPartlan said that any such restrictions would have a minimal effect on its rental value. When asked if she was aware that her comparison No. 1 (B Cool 2), was let in March 2005 at a rent of €158,000 per annum, Ms. McPartlan replied that she was not so aware. If this was the case, she said, then it more than supported her estimate of NAV of €131,200, calculated on the basis of a Zone A €1,800 per sq. metre. Ms. McPartlan agreed that her comparison No.3 (Pilgrim), was a property one third the size of the property concerned but said that this was not particularly relevant inasmuch as all units in The Gallery level varied in size and configuration but were valued at a uniform Zone A rate of €1,800 per sq. metre. When asked if it were not better to follow the market practice of valuing the unit on an overall rate per sq. metre basis rather than using the zoning method for the sake of consistency, Ms. McPartlan said that that was a matter of opinion and in her opinion the zoning method was much more appropriate in the rating context.

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 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 is 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. The valuers in this appeal arrived at their respective opinions of NAV using different methods. Mr. Conway valued the property concerned on an overall rate per sq. metre basis, which he said was in line with market practice. Ms. McPartlan, on the other hand, valued the property using the zoning method, which she said was the uniform approach adopted by the respondent when valuing retail units in the centre at all mall levels. In the final analysis it is a matter of opinion which method is more appropriate.

8. The zoning method of valuation was devised by valuers in order to apply the evidence of rents of shops of various depths in order to achieve a scheme of valuation that can be uniformly applied when valuing other shops where no rental evidence is available. Since shops come in various sizes and configuration difficulties can arise when applying the zoning method in a manner which is fair and reasonable. In this regard the Zoning Guidance Note published by the Society of Chartered Surveyors in May 2009 has identified some of the difficulties which can arise and has given some limited guidance as to how they might be dealt with. The zoning method is more a tool of analysis than a marketing aid. The problem with the overall basis in a purely valuation situation is that the rate per sq. metre can vary significantly with the size of

the property and it is not as sensitive in making appropriate allowances to reflect irregular configuration, masked/shadowed areas and other factors that may have a bearing on the determination on the NAV of the property concerned. Accordingly, in the context of this appeal the Tribunal prefers the zoning method of valuation.

9. The Tribunal accepts Mr. Conway's contention that the scale and location of the structural columns within the subject property inhibits optimum use of the property, particularly for window display purposes. Accordingly an end allowance is justified for this but not quite the 10% as contended for by Mr. Conway.

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

Retail Zone A	74.78 sq. metres @ €1,680 per sq. metre	=	€125,630
Retail Zone B	75.94 sq. metres @ €840 per sq. metre	=	€ 63,790
Retail Zone C	23.85 sq. metres @ €420 per sq. metre	=	€ 10,017
Total		=	€199,437
Less 7.5% for structural columns		=	€184,479

NAV say €184,000

And the Tribunal so determines.