Appeal No. VA11/5/269

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Claires Accessories UK Ltd **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2178531, Retail (Shops) at Unit 305, Dundrum Town Centre, 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 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 €218,000 on the above described relevant property.

The grounds of appeal, are as set out in the Notice of Appeal and accompanying schedule, copies of which are contained in Appendix 1attached 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 7th day of December, 2011. At the oral hearing the appellant was represented by Mr. George Ross of Jones Lang LaSalle. 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 Subject Property

The subject property is located on mall level 3 in that section which is not considered to be prime. It is located quite close to the House of Fraser at this level, one of the principal anchor tenants in the centre and almost opposite to a bank of lifts, escalators and stairways which serve all mall levels in the centre.

Accommodation

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

Retail: Zone A - 48.00 sq. metres
Retail: Zone B - 39.56 sq. metres
Store: 37.75 sq. metres
Frontage to depth ratio – 1:1.57

Tenure

The property is occupied under the terms and conditions of a 25 year lease from the 3rd March, 2005, together with a licence in respect of the storage area, at a total annual rent of €190,501. In addition to rent, the tenant is responsible for the payment of rates and all other usual outgoings, including a service charge whereby the tenant is responsible for the payment of 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. George Ross)

Mr. Ross, in his evidence said that, in arriving at his opinion of net annual value he had regard to the following:

- The initial annual rent of €190,501 agreed in November, 2004 by way of an agreement for lease.
- The location of the property, adjacent to the food court at mall level 3.
- The configuration of the unit which has a frontage to depth ratio of 1:1.57.
- The Zoning Guidance Note published by the Society of Chartered Surveyors in 2009 indicating that the valuation of a shop with a frontage to depth ratio of less than 1:2 should be subject to a downward adjustment of not more than 10%.

Having regard to the above and the analysis of comparisons contained in his schedule, which formed part of his written submission, Mr. Ross said that in his opinion the net annual value f the property concerned should be as follows:

Ground floor retail: ITZA	67.20 sq. metres @ €2,258 per sq. metre	= €151,738
Remote storage	37.75 sq. metres @ €145.60 per sq. metre	= € 5,500
Net annual value		€157,238

Mr. Ross said that his valuation of the store reflected the rent paid for the space under the licence agreement. A copy of the schedule above referred to is included in Appendix 2 attached to this judgment.

As a general statement, Mr. Ross said that, he had reservations about the valuation scheme devised by the Valuation Office for valuing units at mall levels 1, 2 & 3. In his opinion, the Valuation Office had given insufficient regard to rents paid in the centre with a lease commencement date of 3rd March, 2005. In regard to the Zone A rate of €3,400 per sq. metre on this level used when valuing units in that section of mall level 3 which is considered prime, Mr. Ross said that this figure was not supported by the rental evidence which indicated that the appropriate Zone A rate per sq. metre should be somewhat less than €3,000. The only letting in excess of the Zone A €3,000 per sq. metre was the “Build a Bear” unit, which was an unusually high rent and should be recognised as such. Mr. Ross said no regard should be had to post September, 2005 lettings, notwithstanding the fact that they were also below a Zone A rate of €3,000 per sq. metre.

Under cross-examination by Ms. McPartlan, Mr. Ross said he had over eight years experience as a retail agent and his valuation approach and analysis of comparisons evidence was based on experience gained in the market.

When questioned about the Zoning Guidance Note, Mr. Ross agreed that it was for guidance purposes and that its use was not mandatory on all occasions. Nonetheless, Mr. Ross pointed out that the Guidance Note had been prepared by a working party which included a senior staff of the Valuation Office. While the Note may not be mandatory, it could not be set aside or ignored without good reason.

When questioned about the “Build a Bear” and “The Butchers Block” lettings (Ms. McPartlan’s Comparisons Nos. 2 & 3) Mr. Ross said that these should be treated with caution in as much as the Build a Bear letting was the subject of a competitive tender while the Butchers Block letting had taken place more than three years after the specified valuation date of the 30th September, 2005. The same could also be said, Mr. Ross commented, in relation to Ms. McPartlan’s Comparisons Nos. 4, 5 & 6.

When it was pointed out to him that his proposed Zone A rate of €2,258 per sq. metre was below the Zone A rates used when valuing Blanchardstown Shopping Centre, Mr. Ross said that the Zone A rates in Blanchardstown were of no relevance in this appeal. His opinion of net annual value and his Zone A rate of €2,258 per sq. metre, Mr. Ross said, was based on his analysis of rents for other units on mall level 3. Evidence of this nature was the best available.

(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.

Ms. McPartlan said that her opinion of net annual value was based upon the scheme of valuation devised by the Valuation Office, in order to value all of the units in the shopping centre. In this regard she had taken into account the location of the subject property on the mall and its configuration by applying a downward adjustment to the Zone A rate of €3,400 per sq. metre used when valuing mall units in the prime pitch of mall level 3. Accordingly, therefore, she said that her opinion of net annual value of the property concerned was €218,000, calculated as follows:

Retail: Zone A –	48.00 sq. metres @	€3,000 per sq. metre =	€144,000
Retail: Zone B –	39.56 sq. metres @	€1,500 per sq. metre =	€59,340
Store -	37.75 sq. metres @	€400 per sq. metre =	€15,100
Total			€218,440
Valuation (rounded) €218,000			

In support of her opinion of net annual value, Ms. McPartlan introduced six comparisons – three of which are located on mall level 3. Ms. McPartlan said her comparisons, particularly those on mall level 3, more than supported her opinion of net annual value.

Details of Ms. McPartlan's comparisons are contained in Appendix 3 attached to this judgment.

Under cross-examination by Mr. Ross, Ms. McPartlan was asked to indicate which of her comparisons was the most relevant. Ms. McPartlan said that they were all relevant to some extent or other, in that they give an overview of rents and valuations at all levels in the centre. She agreed that her Comparisons Nos. 3 & 4 were post the specified valuation date but pointed out that they both devalued at approximately the same Zone A rate as the Build a Bear unit (Comparison No. 2) which was a letting agreed in October, 2005.

When asked if the valuation of the subject property should not be valued by having regard to its passing rent, Ms. McPartlan said that in a revaluation situation it was better to take an overall approach to prevent undue reliance on individual rents, which may be substantially below or above the norm based on an analysis of all rental evidence. This, she said, was the approach used by the Valuation Office, when devising the scheme of valuation for the valuation of all units in the centre.

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

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 agreement for leases negotiated from 2002 onwards.

8. Ms. McParlan’s valuation of the property concerned was predicated on a Zone A rate of €3,400 per sq. metre for units on mall level 3 which are located on that section of the mall which is considered prime. Ms. McPartlan, in valuing the unit, made a downward adjustment of approximately 12% to reflect its off-prime location on the mall and its frontage to depth ratio of 1:1.57.

9. Mr. Ross’s opinion of net annual value at €157,238 is somewhat below the rent of €190,500 agreed by way of an agreement for lease entered into in November, 2004, almost a year before the specified valuation date of 30th September, 2005.

10. In general, remote stores are valued at €400 per sq. metre and this level of assessment has been agreed by rating consultants acting on behalf of several rate payers in the shopping centre.

11. The Tribunal notes that the frontage to depth ratio of the property concerned is 1:1.57 and in accordance with the Zoning Guidance Note justifies a downward adjustment of not more than 10%. In arriving at its determination, the Tribunal proposes to adopt a Zone A rate per sq. metre which fairly represents and takes into account all intrinsic and extrinsic factors which would have a bearing on its rental value. The Tribunal has also had regard to the passing rent.

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

Retail: Zone A – 48.00 sq. metres @ €2,600 per sq. metre =	€124,800
Retail: Zone B – 39.56 sq. metres @ €1,300 per sq. metre =	€ 51,428
Remote Storage – 37.75 sq. metres @ € 400 per sq. metre =	€ 15,100
Total	€191,328

NAV say €191,000.

And the Tribunal so determines