

Appeal No. VA11/5/154

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

Brambles Deli Café Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2178496, Retail (Shops) at Unit 206, 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 17TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 19th day of August, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €133,600 on the aboce described relevant property.

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

"The valuation is excessive and inequitable."

The 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 2nd day of February, 2012. At the hearing the appellant was represented by Mr. Donal O'Donoghue, BSc (Hons) Estate Management, Dip Vals, Assoc SCSI, MIAVI of OMK Property Advisors and Rating Consultants. The respondent was represented by Ms. Triona McPartlan, BSc (Hons) Estate Management, a valuer in the Valuation Office. 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.

The 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 Red 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 Frazer, 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 Wickham 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 located at mall level 2, almost midway along that section of the mall which by common consent is considered to be prime. At this point on the mall is located a bank of lifts, stairways and travelators which serve all levels within the centre. The property concerned is somewhat irregular in configuration and provides seating accommodation overlooking the mall.

Accommodation

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

Restaurant/ Café 136.22 sq. metres

Remote Store 27.6 sq. metres

Tenure

The subject property is let under the terms and conditions of a 25 year lease from the 3rd March, 2005 at an initial yearly rent of €10,000, subject to periodic reviews at 5 yearly intervals. The remote store is let under a similar lease arrangement subject to an initial yearly rent of €5,000. At the commencement of the lease, the tenant was granted a 12 month rent free period and in addition, the landlord made a capital contribution of €50,000 towards the tenants fit out costs.

The Issue

The only issue in dispute is the quantum of the valuation 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 of September, 2005.

Summary of Evidence

(Mr. O'Donoghue)

Mr. O'Donoghue said that in arriving at his opinion of NAV, he had regard to the following matters:

- Location of the property in the centre of mall level 2
- Property is in restaurant use and ought therefore to be valued by comparison with other units in the Dundrum Town Centre in similar use
- The passing rent should be disregarded and ought to be adjusted to reflect the benefit of the rent free period and the landlord's contribution to the tenants fit out costs.

Having regard to the above factors, Mr. O'Donoghue analysed the passing rent as follows:

Agreement for lease: February 2005

Lease commencement: March 2005

25 year lease with 5 year upward only rent reviews.

Restaurant/Café

Headline Rent €10,000

Rent Free Period 12 months

Landlord Contribution to fit out €50,000

Rent Payable to 1 st Rent Review	€10,000 x 4 years	€440,000
Effective Annual Rent	€440,000 / 5 years	€88,000
Less Capital Contribution discounted over 5 years to first review		<u>€30,000</u>
Net Effective Annual Rent		€8,000 €8,000

Store

Headline Rent	€5,000	
Rent Free Period	12 months	
Rent Payable to 1 st Rent Review	€5,000 x 4 years	€20,000
Net Effective Annual Rent	€4,000 / 5 years	<u>€4,000</u> €4,000

Total Net Effective Rent €62,000

Estimate of Net annual value

Mr. O'Donoghue said, in light of his analysis of the passing rent and other matters referred to above, his opinion of NAV of the property concerned, in accordance with the statutory provisions was €65,300 calculated as set out below.

Restaurant/ Café	136.22 sq. metres	@	€450 per sq. metre	=	€61,299
Store	27.6 sq. metres	@	€45 per sq. metre	=	€4,000
				Total =	€65,299

Net annual Value, Say €65,300

In support of his opinion of NAV, Mr. O'Donoghue included three comparisons, details of which are set out in Appendix 1 attached to this judgment.

In his evidence Mr. O'Donoghue said that, the trading location of the restaurant was disadvantaged by its situation, at the point where shoppers exited the travelators, lift and stairways. In his opinion, the location of the property concerned was weaker than that of the "Butlers" unit (Comparison No.3) and this should be reflected in its valuation. In the circumstances, he said, that it was hard to understand why the Valuation Office had valued the property concerned at €900 per sq. metre as against the €50 per sq. metre used when

valuing the Butlers unit, having regard to the fact that mall level 1 was considered to be a better trading location than mall level 2.

Under cross examination Mr. O'Donoghue agreed that, the property concerned was conveniently located to the lifts, stairs and escalators which provided access to the malls and car parks. When asked if it was appropriate to compare the property concerned to units overlooking the town square, Mr. O'Donoghue said that it was as his comparisons 1 and 2 were in similar restaurant use and had the benefit of trading at times when the main shopping centre building was closed. As far as he was concerned, the benefit of the mall location was offset by the advantages of being able to trade outside normal shopping centre hours.

(Ms. McPartlans Evidence)

Ms. McPartlan said that in arriving at her opinion of NAV, she had regard to the fact that the property concerned occupied a prime location on mall level 2. The fact that it was located convenient to the lifts, travelators and stairways was an advantage that Mr. O'Donoghue did not seem to appreciate. The fact of its proximity to these services meant that it was easily accessible to all customers within the shopping centre and was also highly visible to shoppers on mall level 2.

Having regard to the above, Ms. McPartlan estimated the net annual value of the property concerned to be as follows:

Restaurant –	136.22 sq. metres @ €900 per sq. metre =	€122,598
Remote Store -	27.60 sq. metres @ €400 per sq. metre =	<u>€11,040</u>
Total		133,638
Net annual value, Say €133,600		

In support of her opinion of net annual value, she provided three comparisons details of which are set out in Appendix 2 attached to this judgment.

Under examination Ms. McPartlan acknowledged that her Comparison No. 3 (the 3G store) was not in restaurant use. Nonetheless, Ms. McPartlan said it was a letting of a kiosk unit on mall level 1, under the terms and agreement for lease entered into in 2004 with a lease start

date of 3rd March, 2005. She agreed that it was a strong rent but pointed out that the valuation of €132,300, placed on this unit, had not been subject to representation or Section 30 appeal. In the circumstances it could not be disregarded as not being a highly relevant comparison.

When asked if she had regard to the fact that rent payable in respect of the BB's unit (Comparison No. 1) contained a turnover top up provision, Ms. McPartlan said that she was, but had not considered it to be of any relevance in arriving at her opinion of NAV in accordance with Section 48.

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. The parties are also agreed that, the unit is located within what has been identified as being, the prime retail area on the mall at level 2. Similar prime retail areas have been identified at mall levels 1 and 3.

Conclusions

Of all of the comparisons introduced, the Tribunal attaches most weight to the Butlers unit which was a common comparison. This unit is located directly underneath the property concerned on mall level 1, which the parties are agreed is a superior trading mall to mall level 2, where the property concerned is located. Both units are of a somewhat similar size, albeit the Butlers unit has the added benefit of terraced seating. Additional weight is placed on the valuation of this unit, by virtue of the fact that its valuation was agreed at first appeal stage, following negotiations with the respondent and a consultant acting for and on behalf of the occupier.

Lesser weight is attached to Mr. O'Donoghues comparisons 1 and 2, by virtue of the fact that they are outside units overlooking the town square and hence different in many material respects to the property concerned. Similarly little weight is attached to Ms. McPartlans comparison No. 1 (BB's) as it is the subject of an appeal to this Tribunal and her comparison No. 3, by virtue of its relatively small size and its prime location on mall 1.

In relation to the remote store, the Tribunal is aware that all such units in the centre have been valued at a uniform rate of €400 per sq. metre. The Tribunal can see no good reason to depart from this tone which has been already determined by agreement between the respondent and several other rate payers.

Valuation

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 the 30th September, 2005 as follows.

Restaurant	136.22 sq. metres	@	€800 per sq. metre	=	€108,976
Remote Store	27.6 sq. metres	@	€400 per sq. metre	=	<u>€11,040</u>
Total					€120,016

NAV Say, €120,000.

And the Tribunal so determines.