

Appeal No. VA11/5/188

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

**Westfield Investment**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 315078, Retail (Shops) at Store E, Nutgrove Shopping Centre,  
Rathfarnham, County Dublin

**B E F O R E**

**John F Kerr - BBS, FSCSI, FRICS, ACI Arb**

**Deputy Chairperson**

**Aidan McNulty - Solicitor**

**Member**

**Michael Connellan Jr - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 24TH DAY OF FEBRUARY, 2012**

By Notice of Appeal received on the 26th day of August, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €303,000 on the above described relevant property.

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

*"The property is grossly over valued. The rent agreed at the height of the market in 2007 is approx. 50% of the value applied."*

The appeal proceeded by way of an oral hearing in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 23<sup>rd</sup> day of January, 2012. Mr George Saurin, BSc Surv, MRICS, MSCSI, Associate Director of Colliers International, represented the appellant and Mr Neil Corkery ASCSI, valuer at the Valuation Office, represented the respondent. At the hearing both parties having taken the oath, adopted their respective précis as their evidence-in-chief.

### **At Issue**

Quantum

### **The Property**

The subject property, currently known as Mr. B's amusement arcade, is located on the first floor together with a ground floor store unit at Nutgrove Shopping Centre. This purpose-built shopping centre erected in 1984 has free surface car parking spaces for approximately 1,000 cars, with some 70 shops and 5 restaurants with tenants to include Tesco, Dunnes Stores, Penneys, Argos, McDonald's, Boots and Peter Mark. The subject property is accessed by an escalator/staircase from the internal ground floor and by a lift located at the back of the unit accessed via the bin store/delivery yard positioned to the rear of the shopping centre.

### **Location**

The subject relevant property, located at Unit E on the top floor of Nutgrove Shopping Centre, Rathfarnham, is situated on the south side of Nutgrove Avenue approximately 7km south of the centre of the City of Dublin. The centre is well serviced by private and public transport and links with Junction 13 of the M50 situated approximately 3.5 km to the south.

### **Accommodation**

The accommodation of the subject property, measured on a net internal area basis, is agreed between the parties as set out below:

Top Floor Retail	890.00 sq. metres
Top Floor Retail	159.90 sq. metres
Ground Floor Store	25.90 sq. metres
 Total Agreed Net Internal Area	 1,075.80 sq. metres

## **Services**

Main services of foul, storm, power, water and telecoms are connected to the unit which is fitted with air conditioning and CCTV.

## **Tenure**

The leasehold is for a term of 35years from October 1987 at a rent of €158,000 per annum. This rent was agreed at review in 2007 with Westfield Investments Ltd.

## **Valuation History**

A valuation certificate (proposed) was issued on 9th September, 2010. with a valuation of €303,000. Representations were subsequently lodged with the Commissioner of Valuation, following which the valuation certificate issued unchanged. An appeal was lodged with the Commissioner of Valuation on 21<sup>st</sup> January, 2011 and again the valuation remained unchanged. The appellant appealed this decision to the Valuation Tribunal by Notice of Appeal dated the 22<sup>nd</sup> August, 2011.

## **Appellant's Case**

Mr Saurin took the oath and adopted his précis as his evidence-in-chief. The consultant valuer then provided the Tribunal with a review of his submission and made the following points:-

1. He began by emphasising that the subject property is located on the top floor of the shopping centre at Nutgrove; that while classed as first floor, the unit is higher than just one floor above the ground floor and that a mezzanine level exists between the ground and the first floor.
2. Mr Saurin stated that the subject property has little or no passing trade and that there are 37 steps between the ground floor and the subject unit. He said that the escalators providing customer access take 56 seconds for a return trip from the ground floor. The alternative access to the unit is by a 12-person, 900 kg lift located at the bin store/delivery yard to the rear of the shopping centre. This, he said, would be the only means of access for disabled people or people with prams, buggies or trolleys. This lift is also used by the centre and department stores for delivery of goods.

3. The consultant maintained that the subject property has poor visibility. He pointed out that there is a number of kiosks located at the escalator entrance to the unit. The lift entrance has no visibility from within the centre and is seen only by those providing deliveries or emptying bins passing by.
4. He further maintained that while temporary signage to the front of the unit has been granted by the centre management, this provision is not comprised in the lease and is not in the control of the occupier; and that additional temporary signage is compromising the profile of the unit.
5. The subject unit does not benefit from adjoining occupiers. All other units in the centre have the benefit of adjoining units generating good footfall. The entrance is only the width of the stairs and the escalator, offering little display frontage, unlike the other units in the centre and, as a result, the subject unit relies on destination activity only and accordingly trades at a distinct disadvantage when compared with the rest of the units in the centre.
6. The unit has a low floor to ceiling height of circa 2.6 metres. This low ceiling height within the subject unit creates a cramped and claustrophobic effect. There is only one store of a similar size to the subject unit, namely Penneys, i.e. comparison no. 2 in Mr. Saurin's précis. This unit has a ceiling height of circa 3.56 metres, 1 metre higher than that of the subject unit. He contended that ceiling height in large units is important as it creates a more pleasant and user-friendly atmosphere. Mr Saurin felt that, in applying the same rates per sq. metre to both the subject unit and Penneys, the respondent had disregarded the differences between the units. He pointed out that Penneys is on the ground floor of the main mall and enjoys superior profile, with a large shop front and entrance, which provides ample access for customers with wheelchairs, prams and shopping trolleys.
7. Mr Saurin stated that he could find no reliable comparisons in the Dún Laoghaire Rathdown area for the subject. He was not able to identify a true "tone of the list" example property which would be deemed directly comparable with the subject property, and noted that the comparisons available were ground floor units in the centre adjacent to this unit, none of which he felt was compatible or remotely

appropriate. He argued that it was not acceptable directly to compare accommodation served with a lift and escalators with a ground floor unit. He contended that a prospective tenant would see disadvantages in the value of a first floor unit when compared with a ground floor unit and that in general terms the subject property should be compared with property more akin to industrial rather than retail accommodation.

Mr Saurin, having regard to the market rental evidence and limited “tone of the list” together with the characteristics of the subject property, assessed the valuation of the subject property as at 30<sup>th</sup> September 2005 as follows:-

First Floor Retail	890 sq. metres	@ €130 per sq. metre = €15,700.00
First Floor Retail	159.90 sq. metres	@ €130 per sq. metre = <u>€ 20,787.00</u>
Subtotal		= €136,487.00
Plus 5% Fit-out		= € 6,824.35
Ground Floor Store	25.90 sq. metres	@ €86 per sq. metre = <u>€ 2,227.40</u>
Total		= €145,538.75

NAV say €146,000

Details of Mr Saurin’s comparison properties were included with his précis and are attached at Appendix 1 to this judgment.

### **Cross-Examination**

In reply to Mr Corkery, Mr Saurin stated that there were no other retail units on the first floor of Nutgrove Shopping Centre and that window display, if available, would have been of great benefit. He also said that Roches Stores previously traded in the unit as part of a department store from 1987 to 2006. Mr Corkery put it to Mr. Saurin that as far as he was aware the valuation put forward by Mr Saurin of €130 per sq. metre related only to values of industrial units in the Dún Laoghaire Rathdown area, and he asked Mr Saurin if he could support his valuation with any comparables in the area. Mr. Saurin replied that he could not. He said he based his valuation calculations on both the “tone” and rental evidence from the comparisons set out in his submission.

### Respondent's Case

Mr Corkery having, taken the oath, adopted his précis as being his evidence-in-chief and assessed the valuation of the subject property as follows:

Store, Level 1, Block 1	890 sq. metres @ €260 per sq. metre = €231,400
Store, Level 1, Blocks 2-15	159.9 sq. metres @ €260 per sq. metre = €41,574
Store, Level 0, Blocks 16-19	25.9 sq. metres @ €120 per sq. metre = € 3,108
Fit-out @ 10%	<u>= €27,608</u>
Total	=€303,690

Valuation Office estimate of NAV (rounded to) €303,000

### Basis of Valuation

Mr Corkery stated, in relation to the valuation adopted by the Commissioner of Valuation of €303,690 rounded to €303,000, that: a) it was in line with his comparisons which included both rental and tone comparisons; b) full regard had been given to the location of the subject unit; and c) the level per sq. metre applied reflects the “tone” within the centre. He confirmed to the Tribunal that the unit cannot be seen by the public from outside the centre. He also said that all factors had been considered to ensure that this property be valued fairly reflecting its size, location and condition.

He noted that the valuation levels were derived from the analysis of available open market rental information as illustrated by his comparison 3, i.e. Marks & Spencer at the Frascati Shopping Centre, Blackrock, and applied to the subject property. He confirmed that all his comparisons are ground floor units. He stated that ground floor and first floor shops are treated the same for valuation purposes when the first floor is serviced with a stairs and escalator. He also stated that he had no comparisons similar to the subject unit in terms of access via 37 steps nor did he have any comparisons to the subject unit with access provided and shared within a lift as a goods lift from a rear service area. He said that he had no retail comparison property in the Dún Laoghaire Rathdown area which was on a first floor that was serviced with an escalator that does not accommodate buggies. He accepted that such disadvantages would influence the value of the unit in the eyes of a hypothetical tenant. He accepted that his comparisons, Dunnes Stores, Tesco and Penneys are in a superior location and have far better profile than the subject property.

Details of Mr Corkery's three comparisons were set out in his précis and are attached at Appendix 2 to this judgment

### **Cross-Examination**

Mr Corkery, in reply to Mr Saurin, confirmed he had carried out a cursory inspection only of the property. He added that there are no retail units located on either side of the subject unit; that the unit does not have windows, unlike his comparison properties which benefit from window display; and that access to his comparisons is not provided by use of stairs or escalators or a goods lift. He did not know who controls the signage serving the subject unit. He acknowledged that rents are reducing in the subject centre, as they are in Dundrum Town Centre and Carrickmines Centre, and that the anchor tenants of Dunnes, Penneys and Tesco are paying peppercorn rents.

### **Findings**

The Tribunal having carefully considered all the evidence and arguments adduced, finds as follows:

1. The parties were unable to provide comparable properties of a similar nature similarly located on a level above the ground floor within the subject centre or in any other centre in the same rating authority area.
2. The common comparator was Penneys on the ground floor of Nutgrove Shopping Centre and was the most useful as a guide in the circumstances.
3. The parties agreed during the course of the hearing that when comparing the subject property with Penneys, regard should be had for the following:
  - (a) The subject is accessed by 37 steps, an adjoining escalator and a 12-person lift at the rear service yard which doubles in use as a general service lift. There is no travelator to facilitate use of trolleys and buggies serving the subject property.
  - (b) The subject has minimal frontage equating to the combined narrow widths of the escalator and stairs.
  - (c) The subject property has no external profile, no windows, inadequate signage facilities and no public presentation options.

- (d) The subject is at a floor level equivalent to at least 1.5 floors above the mall.
- (e) The ceiling height of the subject is approximately 1 metre lower than that of Penneys.

### **Determination**

The foregoing considered, the Tribunal concludes that the levels per sq. metre assessed on the subject property should be adjusted and accordingly the valuation computed as follows:-

First Floor Retail	890 sq. metres	@ €182 per sq. metre	= €161,980.00
First Floor Retail	159.90 sq. metres	@ €182 per sq. metre	= <u>€ 29,101.80</u>
Subtotal			= €191,081.80
Plus 5% Fit-out on Retail			= <u>€ 9,554.09</u>
			= €200,635.89
Ground Floor Store	25.90 sq. metres	@ €120 per sq. metre	= <u>€ 3,108.00</u>
Total			= <u>€203,743.89</u>

NAV Say €203,700

And the Tribunal so determines.