

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPEAL

VR/13/2012

BETWEEN

SAINSBURYS SUPERMARKETS LIMITED - APPELLANT

AND

THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Re: 18 Rushmere Centre, Craigavon

Lands Tribunal - Henry M Spence MRICS Dip.Rating IRRV (Hons)

Background

1. This is an appeal against the decision of the Commissioner of Valuation refusing to reduce the rating valuation of the Sainsburys Supermarket at Rushmere Shopping Centre in Craigavon. The appeal arises from an application for revision dated 31st March 2011 whereby the District Valuer issued a “no change” decision on 1st June 2011. The property is currently entered in the Valuation List with a Net Annual Value (NAV) of £526,000.
2. The Rushmere Centre, where Sainsburys is located, was originally constructed in the 1970s and has been extended several times in the recent past. It is located halfway between Lurgan and Portadown and is some 30 miles from Belfast.
3. There are some 65 stores in the mall and there is an adjoining retail park containing several additional units. Some 1800 free car parking spaces are available with surface and undercroft parking servicing both the shopping centre and the retail park. Marlborough Retail Park is also located nearby.
4. The property which is the subject of the appeal comprises a food store on one level and extends to some 4789 m². It fronts the main surface car park with a display frontage of approximately 15 metres and also has a frontage on to the mall of some 19 metres. There is an additional access on to the surface car park which can be used when the centre is closed.
5. The construction and finish of the property are consistent with other modern supermarkets throughout Northern Ireland and it is finished to a corporate standard.

Procedural Matters

6. Mr Stewart Beattie QC appeared for the appellants instructed by Mr Nicholas Rose of RHM Commercial LLP, Chartered Surveyors and Property Consultants. Mr Nicholas Hanna QC appeared for the Commissioner instructed by the Departmental Solicitor's Office. The Tribunal also received written and oral expert opinion evidence from Mr Nicholas Rose and Miss Margo Rogan, both experienced Chartered Surveyors. Mr Rose in particular had extensive experience of the commercial property market in Northern Ireland and the Republic of Ireland.

7. The parties were agreed:
 - the date of valuation was the date of the District Valuers Certificate, 1st June 2011.
 - the state and circumstances of the subject property and the comparable were those pertaining at the date of the District Valuers certificate.
 - the most relevant comparables were the Debenhams store in the Rushmere Centre and the Tesco supermarket located nearby in Marlborough Retail Park.

Miss Rogan considered that the Tesco supermarket provided the best comparable evidence and in her opinion there should be no change to the existing rating assessment of £526,000. Mr Rose considered the Debenhams store to be the best comparable and in his opinion the valuation should be reduced to £431,000.

Statutory Framework

8. The provisions governing rating valuations are contained in the Rates (Northern Ireland) Order 1977 ("the Order"). Article 54 makes provision for appeals to the Lands Tribunal:

"54(1) Any person ... who is aggrieved by the decision of the Commissioner on appeal under Article 51 or by an alteration made by him in the valuation list in consequence of such a decision may appeal to the Lands Tribunal, and the Lands Tribunal may make any decision that the Commissioner might have made and, if any alteration in the valuation list is necessary to give effect to the decision, may direct that the valuation list be altered accordingly.

Article 54 also provides:

"54(2) On an appeal under this Article, the valuation shown in the valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown."

There is therefore a presumption of correctness of the existing valuation list entry.

The basis of valuation is set out in Schedule 12 of the Order and the general rules are in part 1 of that Schedule:

“Schedule 12 Part 1

1. Subject to the provisions of this Schedule, for the purposes of this Order the net annual value of a hereditament shall be the rent for which, one year with another, the hereditament might, in its actual state, be reasonably expected to let from year to year, the probable average annual cost of repairs, insurance and other expenses (if any) necessary to maintain the hereditament in its actual state, and all rates, taxes or public charges (if any), being paid by the tenant.

2-(1) Subject to sub-paragraph (2), in estimating the net annual value of a hereditament for the purposes of any revision of the valuation list, regard shall be had to the net annual values in the valuation list of comparable hereditaments which are in the same state and circumstances as the hereditament whose net annual value is being revised.”

For convenience the Tribunal refers to hereditaments by the name of the occupier.

Case Law

9. The Tribunal was referred to the following authorities:

- Trustees Glenkeen Orange Hall v Commissioner of Valuation VR/31/1993
- Brennan v Commissioner of Valuation VR/33/1993
- Marks and Spencer PLC v Broadway RA/225/96
- A-Wear Limited v Commissioner of Valuation VR/3/2001

“(41) ... However in the case of a revision the District Valuer is obliged by paragraph 2 of Schedule 12 to ‘have regard’ to the NAVs in the Valuation List of comparable hereditaments which are in the same state and circumstances as the subject ...”.

And

“(50) ... the comparison is clearly intended to be with the present, not with the past and the Schedule does not provide for any assumption that comparables are in a state and circumstances different from those at the relevant time ...”.

- Tesco Stores Limited v Assessor for Fife [2010] CSIH95
- Menary Retail Limited v Commissioner of Valuation VR/5/2011

“(19) It follows, all things being equal, the local Bangor comparables properly adjusted are potentially much more helpful than those at cities elsewhere in Northern Ireland.”

And

“(29) The evidence about the other comparables was not of sufficient helpfulness to confirm the accuracy or otherwise of that figure but the Tribunal notes that it is below the level of most of the comparables”.

The Comparable Evidence

10. Both parties were agreed the two best comparables were Debenhams Rushmere Centre and Tesco Marlborough Retail Park. The hearing therefore concentrated on these.

Debenhams, Rushmere Centre

11. The current valuation list entry for Debenhams is £417,000 and both parties were agreed that this was assessed by using a base figure of £90 per m², as per the other large units in the centre. The experts disagreed however as to the proper analysis of the NAV.

12. Miss Rogan analysed Debenhams:

		NAV (£)
Ground Floor	3479 m ² @ £90 per m ²	313,110
First Floor	3388 m ² @ £45 per m ²	152,460
Basement	50 m ² @ £45 per m ²	2,250
	Less 11% for “internal layout and configuration”	<u>-51,500</u>
	say	417,000

She made no allowance for quantum even though Debenhams is more than three times the size of the other large units within the centre. In her opinion there was no evidence of reductions for quantum elsewhere in the centre, although she did concede there was equally no adjustment for internal layout and configuration.

13. Mr Rose analysed Debenhams:

		NAV (£)
Ground Floor	3479 m ² @ £78 per m ²	271,362
First Floor	3388 m ² @ £42.90 per m ²	145,345
Basement	50 m ² @ £19.50 per m ²	<u>975</u>
	say	417,000

Mr Rose gave evidence that he had been directly involved in agreeing the Debenhams assessment with the former District Valuer in Craigavon and he confirmed that an allowance

for “internal layout and configuration” was never proposed or discussed. He further confirmed that the base figure of £90 per m² had been reduced to £78 per m² for Debenhams, solely to reflect its size in relation to the other large units in the centre TK Maxx, Dunnes and the former Tesco.

14. As Mr Rose was directly involved in agreeing the Debenhams assessment the Tribunal prefers his analysis and accepts the ground floor pricing to be £78 per m².
15. Mr Rose considered Debenhams to be the best comparable in terms of size and its location at the other end of the mall. In his opinion Debenhams would certainly be in the market for Sainsburys. He accepted that Sainsburys was in a better location within the centre as it fronted directly on to the surface car parking and was situated at the main entrance. Mr Rose started with the base figure of £78 per m² and added 10% for direct access to car parking giving a figure of £86.67 per m² for Sainsburys. He then rounded to £90 per m² to reflect the comparative total areas of the two stores, Sainsburys 4789 m² and Debenhams 6917 m² giving an assessment for Sainsburys of:

4789 m² @ £90 per m² £431,000 say

16. Miss Rogan considered Sainsburys to be much superior to Debenhams as it was in a better location within the centre, was adjacent to the surface car park, was on one level and had an additional access allowing customer use outside the centre opening hours. In her opinion these advantages justified the current list entry for Sainsburys as assessed:

4789 m² @ £110 per m² £526,000

Tesco, Marlborough Retail Park

17. In Miss Rogan’s opinion the best comparable in the locality was the other food outlet, Tesco Marlborough Retail Park. She considered it to be similar to Sainsburys in that it was a modern, well finished, atypical supermarket and was located nearby.
18. Miss Rogan gave evidence that the base pricing on the Tesco store was £110 per m², adjusted to £98 per m² to reflect the particular attributes of the store in that it was built on stilts and was over 10,000 m² in area. This gave an assessment for Tesco:

10,800 m² @ £98 per m² £1,060,000

Mr Rose did not dispute Miss Rogan’s analysis.

19. In her opinion the base pricing of £110 per m² on Tescos justified the pricing of £110 per m² on Sainsburys, a similar food store in the same locality. She considered this maintained the “tone of the list”.
20. Mr Rose considered the Tescos store to be superior to Sainsburys in that it was a “stand alone” store selling a significant amount of non food items, it was open 24 hours a day and it did not have to share a car park. In his experience food retailers preferred “stand alone” stores and all recent builds had been on free standing sites. He provided examples of where retailers had moved out of shopping centres to “stand alone” stores including Tescos Antrim and Bow Street Mall.
21. Mr Rose also referred the Tribunal to Dunnes Portadown, which was in a shopping centre and assessed at £90 per m², whereas Tescos Portadown, which was free standing, was assessed at £97.50 per m².
22. In conclusion he felt that Tescos was much superior and on that basis a pricing of £110 per m² on Tescos justified his reduced pricing of £90 per m² on Sainsburys.

Rental Evidence

23. Miss Rogan provided details of rental agreements for several large units, including Sainsburys and Debenhams in the Rushmere Centre in or around 2005. She conceded this was secondary evidence but in her opinion it demonstrated, on a pro rata basis, there was more rent being paid for Sainsburys than elsewhere in the centre and this should be reflected in the respective NAVs. In her opinion there was a premium for food stores but she could not confirm this was the case at the compilation of the list in 2003.
24. Mr Rose considered rents were for revaluations particularly as Schedule 12 directed that comparable assessments in the Valuation List were to be used for revision, not rents. In any event he considered the rents provided to be of little significance as they were some 4 years post the antecedent valuation date and, some 6 years prior to the District Valuers certificate. In his opinion economic circumstances had changed significantly in the intervening period. In particular he noted the rent for Sainsburys was a rent review and the Debenhams rent was concessionary, in order to entice an anchor store to the centre.
25. The Tribunal agrees with Mr Rose, without detailed and in depth analysis the 2005 rents provide no assistance in assessing the 2011 rating assessment for Sainsburys.

Previous Appeals

26. Mr Hanna referred to a previous appeal lodged with Mr Rose on behalf of Sainsburys Rushmere. A “no change” decision was issued in July 2009 and this was not appealed further. Mr Hanna suggested therefore that in 2009 Mr Rose accepted the respective NAVs of Debenhams and Sainsburys were correct.
27. Mr Rose did not agree. He considered the circumstances of this appeal to be those pertaining in June 2011 (“A-Wear”) and Tescos was now in the Valuation List, whereas it was not in 2009. Mr Rose also confirmed in 2009 his view was that “you did not compare food outlets with department stores”, but this view had now changed since the Menarys decision. Mr Rose also referred to a similar scenario regarding Sainsburys Ballymena whereby a “no change” decision was issued on appeal but the assessment was altered on a subsequent appeal.
28. The Tribunal draws no inference from an agent changing his opinion when circumstances change and additional clarification is available through case law. The Tribunal therefore considers Mr Rose’s apparent change of stance to be of no significance in this appeal.

Conclusion

29. In arriving at an assessment a District Valuer is compelled to have regard to comparable hereditaments in the Valuation List which are in the same state and circumstances as the property being assessed. The Tribunal considers that, subject to proper adjustment, both Debenhams and Tescos are valid comparisons for Sainsburys and indeed the Sainsburys assessment should be “in tone” with both.
30. Both experts agree that Sainsburys is better than Debenhams, the question is by how much. Mr Rose adds 10% for direct access to car parking and a further 4% for size to give a pricing of £90 per m².
31. Miss Rogan considers that a combination of location within the centre, visibility, access to car parking and configuration (one level) warrants a differential of 22% between Debenhams and Sainsburys. Miss Rogan does not adjust for size as she considers there is no adjustment for size elsewhere in the centre.
32. Mr Rose, however, gave evidence that a size adjustment of 13.5% had been applied to the base figure of £90 per m² as it was more than three times the size of the other large space users within the centre.
33. The Tribunal prefers:- taking the £78 per m² for Debenhams and adding Miss Rogan’s 22% differential and a further 5% for size gives a pricing of £100 per m² for Sainsburys.

34. How does this sit with the Tesco's assessment at £110 per m²? Miss Rogan considers Sainsburys to be on a par with Tesco's as it is a similar modern supermarket unit in the same locality.
35. Mr Rose considers Tesco's to be better. In his experience food retailers prefer free standing units and he gave examples of where food retailers had moved out of shopping centres to free standing locations. He also provided an example from Portadown whereby a free standing food store had been valued at more than a similar store in the shopping centre. He considers the attributes of Tesco's over Sainsburys justify a pricing of £90 per m² on Sainsburys.
36. The Tribunal largely agrees with Mr Rose but not to the same extent and considers a 10% differential is sufficient, thus confirming a pricing of £100 per m² for Sainsburys. Based on Debenhams and Tesco's the Tribunal assesses Sainsburys:-

$$4789 \text{ m}^2 @ £100 \text{ per m}^2 = \text{say } £479,000 \text{ NAV}$$

37. Mr Rose provided details of other large food retailers in the nearby localities of Portadown and Lurgan:

Dunnes, Portadown	6322 m ²	@ £90 per m ²	£495,000
Tesco, Lurgan	579 m ²	@ £95 per m ²	£515,000
Tesco, Portadown	7052 m ²	@ £97.50 per m ²	£600,000

and looking further afield

Sainsburys, Ballymena	5554 m ²	@ £100 per m ²	£570,000
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These properties are not directly comparable as they are in different locations and Mr Rose did not provide evidence or opinion as to what adjustments were necessary to take account of these differences. The Tribunal notes, however, that the revised Sainsburys assessment at £100 per m² is in and around the same general level.

Mr Hanna QC suggested that if the Tribunal found Tesco's to be better than Sainsburys, the correct approach would be to increase Tesco's, rather than reduce Sainsburys, in order to maintain relativity within the centre. He considered that if Sainsburys were reduced it would require an adjustment of the NAVs of the other large units within the centre:-

			Total NAV
TK Maxx	2029 m ² [1672 m ² ground floor]	@ £90 per m ²	£140,000
Dunnes	1913 m ² [1387 m ² ground floor]	@ £90 per m ²	£145,000
Former Tescos	3047 m ² [2060 m ² ground floor]	@ £90 per m ²	£230,000

38. The Tribunal does not agree and considers that the revised pricing of £100 per m² on Sainsburys sits better with the £90 per m² on the other large units. Also, as previously mentioned, the Commissioner's confirmation of £110 per m² for Sainsburys was based on an incorrect analysis of the Debenhams NAV. The Tribunal therefore considers that no adjustment to the NAVs of the other large units within the Rushmere Centre is required.

ORDERS ACCORDINGLY

1st October 2013

**Henry M Spence MRICS Dip.Rating IRRV (Hons)
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances

Appellant: Mr Stewart Beattie QC instructed by Mr Nicholas Rose, Chartered Surveyor

Respondent: Mr Nicholas Hanna QC instructed by the Departmental Solicitor's Office.