

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

IN THE MATTER OF AN APPEAL

VR/5/2011

BETWEEN

MENARYS RETAIL LIMITED – APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Part 1

Re: 110 Main Street, Bangor

Lands Tribunal - Mr M R Curry FRICS Hon.Dip.Rating

Background

1. This appeal concerns the valuation for rating purposes, in accordance with the Rates (NI) Order 1977 (“the 1977 Order”), of a retail hereditament, occupied by Menarys Retail Limited (“Menarys”) as a small to medium sized department store at No. 110 Main Street, Bangor. Main Street runs from the railway station down to the harbour and the hereditament was near the station, on the edge of Bangor Town Centre’s retail core. Menarys comprised ground and first floor sales areas with ancillary office, staff accommodation on the second floor and a small store on the third floor. Although convenient to public transport, it had no dedicated customer parking. Among other things, Gross Internal Areas were agreed, including Ground Floor sales of 1,595.86 square metres; First Floor sales of 2,203.17 square metres; and an overall total area of 4,817.34 square metres over 4 floors.

2. The hereditament was first entered into the previous, 4th revaluation list, by a certificate in September 1999, at a Net Annual Value (NAV) of about £200,000. Because of extensions to the ground floor, in March 2003, a district valuer’s certificate then was issued increasing the NAV from £200,000 to £300,000. The current revaluation list was published on 1st April 2003 (“the 2003 List”) and the hereditament was entered into the 2003 list at £204,500. However, that valuation did not reflect these extensions and, in January 2004, the district valuer listed the hereditament for revision to reflect the extensions. Six years later the district valuer issued his decision, in March 2010, increasing the NAV to £300,000 with an effective date of 1st April 2003. Menarys appealed to the Commissioner of Valuation (“the Commissioner”). In the

course of dealing with that appeal it emerged that extensions on the second and third floors, which had been part of the hereditament since before April 2003, had not been included in these valuations. In a decision that reflected these additional areas but reduced the valuation the Commissioner assessed the NAV at £292,000. Menarys appealed to this Tribunal in February 2011.

Procedural Matters

3. The Tribunal received expert evidence from Mr Thomas MacLynn, Ms Angela McGrath and Mr Henry Spence, all experienced chartered surveyors.
4. The Tribunal also received a minute of a meeting of experts.
5. At an oral hearing the experts were examined by Mr Mark Orr QC and Mr Stephen Shaw QC.
6. The Tribunal viewed the retail areas of nearby comparables.

Positions

7. Both parties treated the valuation date as the effective date of the district valuer's decision i.e. March 2010.
8. Both parties agreed that this appeal related to a revision of the valuation list and so had regard to comparable hereditaments in the list (Schedule 12(2)(1) of the 1977 Order). Both experts relied only on the net annual values in the list of potentially helpful comparable hereditaments rather than open market transactions.
9. By the time of the hearing, there was agreement on a number of matters including, in particular, that the ground floor of the hereditament should be valued on an overall basis rather than a zoned basis and also on the proportion of value to apply on the upper floors in relation to the value of the ground floor. The remaining issues between the parties were:
 - the price per square metre to be applied to the ground floor;
 - whether, in arriving at that price, the hereditament should be treated as being in a mode or category of use of that of a small or medium department store; and
 - end allowances, if any, to reflect the size of the ground floor in comparison with that of the first floor and/or the comparables.
10. At the time the expert reports were prepared, there were issues as to whether the subject should be zoned and as to the upper floor pricings. In light of the matters later helpfully

agreed between the experts much of their content was therefore irrelevant and some of the commentary probably was relevant only to a zoning approach.

11. In Ms McGrath's opinion the ground floor should be priced at £97.50 per square metre; in Mr MacLynn's opinion it should be £75.00 per square metre.

Discussion

12. The Tribunal was referred to:

- The Rates (Northern Ireland) Order 1977;
- Crazy Prices (NI) Ltd v Commissioner of Valuation [1979] VR/81/1978;
- Marks & Spencer PLC v Commissioner of Valuation [1990] VR/30/1986;
- Marks & Spencer PLC v Broadway (VO) [1998] RA 17;
- A-Wear Ltd v Commissioner of Valuation [2003] VR/3/2001;
- Northern Ireland Transport Holding Co v Commissioner of Valuation [1996] VR/9/1993;
- Trustees of Glenkeen Orange Hall v Commissioner of Valuation [1994] VR/31/1993; and
- H J Banks & Co Ltd v Speight (VO) [2005] RA 61.

13. The Tribunal also referred the parties to:

- Bond and Brown *Rating Valuation Principles & Practice* 3rd Ed.

14. At the Hearing, Mr MacLynn accepted that, although he was not giving his evidence under any form of conditional fee arrangement, he had formed a view that the assessment was too high at a time when he was to be paid for that stage of his work under such an arrangement and he had not disclosed that in his declaration. The Tribunal does not regard that as significant in the circumstances.

15. Mr MacLynn suggested the following department stores were helpful comparisons.

- Dunnes Stores at The Flagship Centre, Bangor.
 - This was in a shopping centre at the harbour end of Main Street. It was about 60% of the size of the subject, enjoyed access to a large multi-storey car park attached to the Flagship Centre. It had been assessed at £87.50 per square metre overall on the ground floor. (Ms McGrath also regarded this comparable as helpful.)
- Menarys, BHS and Dunnes at Bow Street Mall, Lisburn.
 - These were at what he said was the prime retail pitch within Lisburn town centre, enjoyed access to a multi-storey car park attached to the Mall and was a far superior retailing location to the subject. All had been assessed at £95.00 per square metre overall on the ground floor.

- Debenhams, Rushmere Centre, Craigavon.
 - This was at what he said was one of Northern Ireland's most successful retail locations, and enjoyed access to a multi-storey car park attached to the Centre. It had been assessed at £78.00 per square metre overall on the ground floor.
- Debenhams, The Quays, Newry.
 - This was at what he said was a far superior location to the subject, and enjoyed access to a large surface car park attached to the centre. It had been assessed at £85.00 per square metre overall on the ground floor.
- Marks & Spencer and Dunnes Stores, Foyleside, Londonderry.
 - These were at what he said was one of the strongest retail locations in Northern Ireland, and enjoyed access to a multi-storey car park attached to the centre. Marks & Spencer had been assessed at £100.00 per square metre overall on the ground floor and Dunnes Stores had been assessed at £90.00 per square metre overall on two floors, reflecting mall access at both levels.

16. In Ms McGrath's opinion most of Mr MacLynn's comparables were too remote because they were located in cities elsewhere in Northern Ireland. She said there were only two helpful comparisons (another store was included for completeness only).

- Dunnes Stores at the Flagship Centre, Bangor (see above).
 - In Ms McGrath's view the large multi-storey car park at the Centre was just one of the car parks available to shoppers in Bangor town centre and added no value to Dunnes in particular. She regarded the subject as being in a better location and as higher quality premises.
- Asda at 89 Main Street, Bangor.
 - This was a supermarket nearly opposite the subject and was of a similar total size. The frontage to Main Street was very similar to that of the subject but the ground floor was more than twice the size of the subject (3,793 square metres as opposed to 1,662 square metres). The valuation also included a petrol filling station but an apportionment to extract its value was accepted. It had a large surface car park to the rear. Car parking charges were refunded to shoppers who spent over £5 in store. The store was assessed at £97.50 overall on the ground floor, with the car parking reflected in that figure. In Ms McGrath's view in relating that pricing to the subject, it should be reduced by 10% to extract the value of the car parking (i.e. £87.75) but 10% should also be added to reflect the smaller ground floor in comparison with Asda.

17. Mr MacLynn said that a distinction must be made between department stores and supermarkets. He said they were in two different markets and, if vacant and to let, a supermarket operator would not be in the market for a department store and vice-versa.

18. The Tribunal is not persuaded that, for purposes of the ultimate issues in this case, it should distinguish the hereditament from large stores and supermarkets by treating it as being in a mode or category of use of that of a small or medium department store because:
- In his report Mr MacLynn rejected the nearby Asda supermarket as unhelpful, because it was not a department store but at the Hearing he conceded that, although Asda would not be expected to be in the market for a unit like Menarys, the converse was true only to a lesser extent;
 - The Tribunal accepts that department stores could be a separate category but also accepts Mr Spence's evidence that such stores were recognised as a category in the 2003 List only in the case of hereditaments of 10,000 square metres or more. The subject was less than 5,000 square metres;
 - In regard to the ultimate issue of the value of the ground floor, there was no evidence adduced to suggest that, for a hereditament of this size, there was a department store category that had a different ground floor value from similarly sized shops or stores in either the real world or the 2003 List;
 - The experts had agreed that the ground floor of the hereditament should be valued on an overall basis, as would a department store, rather than a zoned basis;
 - Treatment as a department store might be of some significance when approaching the valuation of upper floors but in this case their relative value was agreed; and
 - Mr MacLynn did not explain in any detail how his department store comparables, mostly in cities elsewhere in Northern Ireland, could be adjusted to arrive at a valuation for the subject.
19. It follows that, all things being equal, the local, Bangor comparables properly adjusted are potentially much more helpful than those at cities elsewhere in Northern Ireland.
20. In Ms McGrath's opinion £97.50 adequately reflected the location, lack of parking provision, quality, size, and configuration of the subject.
21. Mr MacLynn did not accept that Ms McGrath had had proper regard to the location of the subject hereditament.
22. At the Hearing Mr MacLynn accepted Ms McGrath's adjustment of 10% to extract the value of the car parking at Adsa.
23. Circumstances probably have changed since April 2003 but there was no evidence to support Ms McGrath's view that, for purposes of this appeal, the subject was in a better location than

that of Dunnes. The reverse is suggested by comparing the zone A pricing at the Flagship Centre where it was £480.00 per square metre with that at the subject, where it was £400.00 per square metre. That also suggests that the difference is significant. Dunnes was assessed at £87.50 per square metre overall and the Tribunal accepts Mr MacLynn's view that its valuation must be taken to reflect some value added by the large multi-storey car park at the Flagship Centre. There may be other reasons perhaps connected with its location within the Flagship Centre but, on the evidence before the Tribunal it is difficult to reconcile this pricing with that of the Asda store, assessed at the same figure (when the car parking element was excluded) when it was located at what would appear to have been the less valuable end of Main Street. In any event, Asda was almost opposite the subject and in terms of location was the much more directly comparable hereditament.

24. Ms McGrath did not elaborate on why she regarded the subject as higher quality premises than Asda and the Tribunal is not persuaded that any adjustment for that is appropriate.
25. In considering end allowances, if any, to reflect the size of the ground floor in comparison with that of the first floor and/or the comparables the Tribunal is conscious that the parties have reached an agreement on the proportionate pricing for the upper floors. Any end allowance applied to the ground floor would therefore appear to affect the entirety of the valuation. The Tribunal is not privy to the terms of that agreement and would not wish to intervene accidentally in matters already agreed. However the possibility of an end allowance appears to have been left open as neither party opposed an end allowance as such.
26. Ms McGrath said that 10% should be added to the ground floor pricing to reflect the smaller size of the ground floor of Menarys in comparison with Asda; Mr MacLynn said that any end allowance for size (or quantum) should reflect the relative overall total areas of the hereditaments and these total areas were much the same. The Tribunal agrees with Mr MacLynn and concludes there should not be any such adjustment.
27. Mr MacLynn said that there should be a deduction to reflect Menarys as having an 'upside down' configuration with a much larger first floor (2,334 square metres) than ground floor (1,596 square metres). Ms McGrath considered that there was no need for any special adjustment to reflect this disparity. There was no primary factual evidence in support of either position but because of the very significant disparity in sizes, and the wider breadth of experience of Mr MacLynn in valuing large stores, the Tribunal concludes that there should be some such adjustment and adopts Mr MacLynn's suggested 5%.

28. Taking this into account along with an adjustment of 10% for the lack of car parking would produce a total adjustment to the Asda pricing of 15% resulting in a pricing for Menarys of £82.87 say £83.00 per square metre overall on the ground floor.
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.

ORDERS ACCORDINGLY

17th April 2012

**Michael R Curry FRICS Hon.Dip.Rating
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances

Appellant: Mr Mark Orr QC instructed by Mr Thomas MacLynn Chartered Surveyor.

Respondent: Mr Stephen Shaw QC instructed by the Departmental Solicitor's Office.