

Appeal No. VA90/1/017

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**Helen Drum t/a Sound Quality**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Lot No. 12b Townland of Rooskey (Dublin Street), Urban District of Monaghan, Co. Monaghan  
Quantum - Passing rent, location adjacent to S.C.

**B E F O R E**

**Henry Abbott**

**Barrister Chairman**

**Brian O'Farrell**

**Valuer**

**Veronica Gates**

**Barrister**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 22ND DAY OF JANUARY, 1991**

By notice of appeal dated the 30th of April, 1990, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £26.00 on the above described hereditament.

The grounds of appeal as set out in the Notice of appeal are "I have the wholly confined use of a small on-street shop premises. I operate a record/tape retail outlet and am two years in business. This is my first venture into business life having been three years unemployed. There is stiff competition here and I am finding it altogether very difficult to manage. This is penal in the

extreme and may leave me no choice but to join the many other young people who have already found themselves unable to succeed in today's high cost business world."

### **DESCRIPTION OF PROPERTY:**

The premises consist of a lock-up 'record shop' with frontage to Dublin Street, Monaghan. It is situated approximately 200 ft from The Diamond. It is held on a three year lease from March 1988. There is a shop floor area of 237 sq.ft.

### **VALUATION HISTORY:**

Prior to the 1989 revision Lot 12 Dublin St., consisted of "house, shop and out offices" with buildings having a rateable valuation of £30.00 as set in 1956. The property was listed for revision in 1989 by the Local Authority and the instruction was to "value and separate Record Shop". Two separate valuations were entered in the valuation lists as follows:- Lot 12a, house and out office buildings, R.V. £8.00, occupier Sheila Drumm. Lot 12b, shop - buildings R.V. £26.00, occupier Helen Drumm. This was appealed by the occupier to the Commissioner of Valuation who, having considered the report of the valuer made no change. It is against this rateable valuation that the appeal now lies to the Tribunal.

### **WRITTEN SUBMISSIONS:**

A written submission was received from Mr Patrick McMorrow B.Agr.Sc. a valuer in the Valuation Office on behalf of the Respondent on the 25th of July 1990. In this Mr McMorrow says that the property is held on a three year lease from March 1988 at an open market rent of £4,160 p.a. He said that the analysis of the rent is as follows:- Front Zone A = 237 sq.ft. @ £17.55 p.s.f. = £4,160 p.a. Mr McMorrow said that in arriving at the rateable valuation the Commissioner of Valuation has had regard to Section 11 of the 1852 Valuation (Irl) Act and Section 5 of the 1986 Valuation Act and therefore attempted to ensure a uniform relationship between the Net Annual Value of hereditaments and the rateable valuations. He said that in this

case the Net Annual Value is clearly established by the market and is therefore objectively fixed.

He said that the relationship of rateable valuation to Net Annual Value is established by

reference to comparisons which he attached as follows:-

<b>Premises</b>	<b>R.V.</b>	<b>(Actual Rents) N.A.V.</b>	<b>Fraction R.V. to N.A.V.</b>
Subject Premises Shop	£26	£4,160	0.63%
A. Finley & McGee - Shop	£20	£3,120	0.63%
B.C.T. Financial Service- Office	£21	£3,380	0.63%
C. Brennan's-Shop and apartment	£45	£6,760	0.66% Slight variation from 0.63% due to 'rounding'

He said that from these comparisons it can be seen that a fraction of 0.63% is taken by the Commissioner of Valuation as representing the "tone" of the list in this district. He said that by applying the fraction of 0.63% to the N.A.V. of £4,160 he arrived at a rateable valuation of £26.00. Mr McMorrow gave details of the breakdown of the square footage and rent of the three comparisons already mentioned and these are attached as Appendix A.

In a written precis received on 18th January 1991 from the appellant she said that she commenced business in March 1988 and operated on her own full time, up to the recent birth of her baby daughter, when she was obliged to take on an employee.

She said that her line of business - tapes, records, etc. - is very competitive here in Monaghan, and an existing business had opened up a further premises.

She said that the premises are small, only one door to act as entrance and exit. There are no storage facilities, toilet, etc., and the cramped shop floor space is over valued for rates purposes.

### **ORAL HEARING:**

The oral hearing took place at the Courthouse, Cavan in the county of Cavan on Tuesday 22nd day of January, 1991. The appellant was represented by Coimhghin O'Caolain and Mr McMorrow appeared for the respondent. The appellant was present and affirmed the various statements of fact made by Mr O'Caolain. From the outset Mr O'Caolain emphasised that the lease taken by the appellant of the subject premises was one of arms length and that she was not related to the lessor in any way notwithstanding their identical surnames. Mr McMorrow confirmed that the lease of the premises for a short term of less than three years at a rent of £4,160 was in fact an arms length transaction. The appellants case was elaborated upon to show that another record shop has opened in the new shopping complex in The Diamond and that retail shopping generally has moved more into The Diamond, away from the subject premises as a result of the opening of the complex in 1990. While the relevant year is 1989 in this case nevertheless the tribunal considers that the imminent opening of The Diamond shopping complex would have been a factor in assessing the value of the subject premises. It is agreed that on the side of the street of the subject premises car-parking is non-existent by reason of the existence of continuous double yellow line system. Car-parking tends to be further away from the subject premises than the shops in The Diamond.

Notwithstanding the operation of recent dynamic factors which on balance have been unfavourable to the letting value of the subject premises, the Tribunal considers that the appellant will have severe difficulty in negotiating any lower rent than that which she now pays. The appellant is now in a position where she must retain the goodwill which she built up in relation to the subject premises and like all tenants in a sub three year commercial letting without any rights to renew is not in a good bargaining position. The analysis of Mr McMorrow in page eight of his summary is, notwithstanding the various difficulties of the appellant, outlined at the hearing, of strong persuasive influence on the tribunal and it is the prime determinant of the decision of the tribunal in this case. Nevertheless having regard to the justice of the case and the commercial storm clouds gathering against the appellant at the time relevant to the assessment of

the subject premises the tribunal finds that the rateable valuation ought to be reduced marginally to £24.00 and accordingly fixes the valuation of the subject premises at that sum.