

Appeal No. VA90/2/012

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

Sweater Shop Kilkenny

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. 59b High Street, Co. Kilkenny
Quantum - Ratio, comparisons

B E F O R E

Paul Butler

Barrister (Acting Chairman)

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
DELIVERED ON THE 5TH DAY OF OCTOBER, 1990

By notice of appeal dated the 9th day of July, 1990, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £97.00 on the above described hereditament.

The Property

The premises consists of a lock-up shop of 590 sq. ft. and is situated on the north side of High Street about 50 yards west of the Tholsel. The premises are held on a lease for a term of 35 years from the 18th March, 1989 on a full repairing and insuring basis and with provisions for five year rent reviews (upwards only) at a rent of £16,120 per annum.

Valuation History

Prior to 1989 revision the R.V. on total premises was £41. In 1989 revision a new lot was created with R.V. £97. The balance of the property has R.V. £120 (Ref: VA/90/2/74). The R.V. was appealed and Mr Edward Hickey was deputed by the Commissioner to investigate and report. The Commissioner, having considered his report, made no change in R.V. and this is the determination the subject of this appeal.

Written Submissions

In a written submission received on the 25th September, 1990 Mr Ray Ward FRICS ACI Arb., Chartered Surveyor and Director, Lisney, Surveyors and Estate Agents, on behalf of the appellants said that the Commissioner of Valuation has applied a percentage of .63% to the rent payable under the terms of the draft lease. He said that in his opinion this is inequitable and excessive for two reasons;

- (a) The rent paid relates to a date post to the 1st November, 1988, the valuation date, at a time when rental values were rising steeply and in his opinion that the rent at the valuation date is in the order of £14,000 per annum.
- (b) The application of the percentage of .63% of the rent is in direct conflict with the evidence produced by an analysis of the rateable valuation/rental value of retail premises in High Street, whose valuations have been recently revised. He attached six comparisons (Appendix "A") to support this contention.

He quoted section 5 of the Valuation Act, 1986 and said that in his opinion the net annual value of these premises at the 1st November, 1988 was £14,000 per annum and that a fair rateable valuation is as follows:

$$\text{Net Annual Value } £14,000 \times .3\% = £42.$$

Mr Edward Hickey a valuer with 19 years experience in the Valuation Office in a written submission received on the 19th September, 1990 on behalf of the respondent said that the property is located close to all the major shops, supermarkets and major financial institutions and is held on a lease for 35 years from March 1989 at a rent of £16,120 per annum. He said that negotiations commenced in late 1988 to lease this shop. As the rent was agreed at arms length, this witness would maintain that the rent passing is the N.A.V. for 1 November, 1988 which is the relevant date for this appeal. He made reference to Section 11 of the Valuation (Ireland) Act, 1852 and to Section 5 of the Valuation Act, 1986. He said that the Tribunal, was therefore, requested to decide on two important elements in this case:

- (1) What is the correct net annual value of these premises as per Section 11 of the 1852 Act, amended by Section 5(1) and (2) of the 1986 Act.
- (2) What is the correct rateable valuation to be fixed, having regard to the preamble of the 1852 Act, where uniformity is demanded and Section 5(1) and (2) of the 1986 Act.

Mr Hickey submitted that the N.A.V. is £16,120 and the appropriate fraction is .63% and thus, the rateable valuation is £102.

At the oral hearing which took place in Kilkenny on the 3rd October, 1990, the appellant was represented by Mr Ray Ward of Lisneys. Mr Edward Hickey, Valuer with the Valuation Office appeared on behalf of the respondent.

Mr Ward referred to his written submission received on the 25th September, 1990 and said that the parties disagreed on the N.A.V. While a rent of £16,120 was agreed as and from March 1989 there had been a substantial increase in rental values between November (the material date) and March 1989. He submitted that a correct N.A.V. should be £14,000.

He said that the Commissioner's attempt to apply the .63% fraction to the N.A.V. of all properties is contrary to the 1986 Valuation Act and to the judgment of Barron J. in the Irish Management Institute v. Commissioner of Valuation (Appeal No. 88/101).

He said that the subject property was paying approx. £1,300 more in rates than their competitors on the same street.

He referred in detail to the five comparisons offered and said that the subject premises was a lock up shop, smaller than the comparisons. Its clients had no objection to paying their equitable share of rates but a valuation of £92 was entirely inappropriate.

Mr Hickey in evidence did not accept what amounted to a 20% increase in rents over the four month period between November 1988 and March 1989. He said that the appropriate N.A.V. should be £16,120 based on the actual passing rent in March.

Mr Hickey, in evidence, referred to his written submission and said that the .63% ratio was based on a very detailed survey carried out in Dublin's Grafton St. and Henry St.

He stated that the .63% fraction had been accepted by many valuers in Waterford, Cork and now Kilkenny. He argued that a "global" figure must be sought as a fraction to apply to all types of properties e.g. retail, office and industrial. It emerged, he said, as a result of the application of the fraction that the valuations of retail and office properties increased while that of industrial properties decreased.

He produced the results of a summary of a group study report for the Kilkenny/Waterford region indicating the following:-

1.	Industrial Range	.44%	- 1.35%	Average .75%
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2.	Office Range	.38% - .65%	Average .51%
3.	Retail Range	.4% - .75%	Average .57%

The overall average is .61%

Mr Ward admitted that his firm had agreed a fraction of .63% in respect of some industrial premises in the Kilkenny area but only because the valuations produced were in line with other industrial premises.

The Law

Section 5 subsection 1 and 2 of the Valuation Act, 1986 states as follows:

"5. (1) Notwithstanding section 11 of the Act of 1852, in making or revising a valuation of a tenement or rateable hereditament, the amount of the valuation which, apart from this section, would be made may be reduced by such amount as is necessary to ensure, in so far as is reasonably practicable, that the amount of the valuation bears the same relationship to the valuations of other tenements and rateable hereditaments as the net annual value of the tenement or rateable hereditament bears to the net annual values of the other tenements and rateable hereditaments.

(2) Without prejudice to the foregoing, for the purpose of ensuring such a relationship regard shall be had, in so far as is reasonably practicable, to the valuations of tenements and rateable hereditaments which are comparable and of similar function and whose valuations have been made or revised within a recent period."

In the judgment of Barron J. above referred to, he said that in reference to subsection 2 of Section 5 of Valuation Act, 1986 that it "is not a provision on its own. What is being sought is an overall proportion between hypothetical rents and valuations. This must be borne in mind when applying its provisions. What must be considered are valuations which:

- (a) are comparable;
- (b) relate to tenements and hereditaments of similar function; and
- (c) have been made or revised within a recent period.

Where there is evidence under each of these headings sufficient to obtain the relevant proportions then the valuations can be determined by reference to the subsection alone.

Where the evidence is insufficient, then the overall proportions predicated by subsection (1) must be adopted. In each case, the sufficiency of the evidence is a matter for the Tribunal."

The respondent offered no evidence of hereditaments which are (a) comparable or (b) relate to tenements or hereditaments of similar function or (c) have been made or revised within a recent period.

Determination

The Tribunal accepts that there was an increase in rental values between November 1988 and March 1989 but feels that 20% must be regarded as excessive and finds that the N.A.V. at the relevant date was £16,000

In the absence of evidence to the contrary the comparative evidence adduced on behalf of the appellant must be accepted.

While the Tribunal is conscious of the desirability of achieving a uniformity in the ratio to be applied between N.A.V. and R.V. it does not accept the respondent's contention that this can be achieved by taking an average of properties which are not only widely diverse but each of whose range of ratios is extremely wide.

The Tribunal accepts the appellant's comparisons as valid and meeting the criteria of Barron J. quoted above.

Having regard to the foregoing the Tribunal determines that the rateable valuation of the premises should be £48.