

Appeal No. VA91/2/041

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

Mervyn Robinson Seebeck Limited t/a Strawbridge

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. 11/8a Lemon Street, Mansion House B2 Ward, County Borough of Dublin

B E F O R E

Paul Butler

S.C. (Acting Chairman)

Brian O'Farrell

Valuer

Joe Carey

P.C. M.I.A.V.I.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF OCTOBER, 1991

By notice of appeal dated 18th day of July, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing the rateable valuation of £230.00 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that the valuation is inequitable and excessive and may result in rendering the company unable to continue trading.

THE PROPERTY

The property consists of a two storey retail unit comprising ground and first floor retail space. The premises is of traditional brick, timber and slate construction. Prior to the commencement of the existing lease the property was fully refurbished. The building was formerly a derelict and disused mews forming part of No.8, South Anne Street. The property is located in Lemon Street which links Grafton Street to Duke Lane Upper and leads directly into the Royal Hibernian Way. The property is held on a 35 year lease with 5 yearly reviews and an annual rent of £36,500.00. The lessee is responsible for the payment of rates.

VALUATION HISTORY

Prior to 1990 this property was valued in conjunction with Lot No.8 South Anne Street. In 1990 the property was listed for separate valuation by Dublin Corporation. A valuation of £230.00 was placed on the property at revision and upheld by the Commissioner of Valuation at 1st appeal stage. It is against this amount that the appeal now lies with the Tribunal.

WRITTEN SUBMISSIONS

A written submission was received on the 24th September, 1991 from Mr. Sean D. Mc Cormack BSc (Surv), Dip, Prop. Econ, MIAVI, of The Phelan Partnership, 31 Westland Square, Dublin 2 on behalf of the appellants. In this Mr. Mc Cormack set out the agreed accommodation of the premises as follows:

	Approximate Net Floor Area	
	sq.ft.	sq.m.
Ground Floor		
Shop	784	72.8
Kitchenette	52	48
Store/Office	89	8.27
First Floor		
Shop	<u>752</u>	<u>69.9</u>
TOTAL	1677	155.77

He said that the subject property occupies a position on a busy pedestrian route. However, he said, that many of these pedestrians are passers-by on route to the Royal Hibernian Way. He said that the subject property has a very limited frontage, being only 10 feet 10 inches wide. He said that this does not give the shop a great presence on Lemon Street. Mr. Mc Cormack said that while Lemon Street is very close to popular retail streets it is in his opinion "off pitch". With regard to his calculation of the Net Annual Value Mr. Mc Cormack said that when the reserved rent is considered in the light of local prevailing rents it emerges as exceptional. He said that it is

therefore not appropriate to take the existing rent in calculating the Net Annual Value and Rateable Valuation in this case, despite the timing of the letting relative to November 1988.

Mr. Mc Cormack included the following comparisons;-

- (1) Unit 20 - Royal Hibernian Way
- (2) Unit 4/5 _ Royal Hibernian Way
- (3) Unit 19 - Royal Hibernian Way
- (4) 8, South Anne Street, Dublin 2

Mr. Mc Cormack's detailed analysis of these comparison buildings are attached at Appendix A to this judgment. He said that he had included comparison No.4 above not as evidence of Net Annual Value but to provide an example of a nearby premises where the Rateable Valuation agreed at 1st appeal reflected a Net Annual Value less than the reserved rent. He said that the first three comparisons above illustrate rental levels reflecting a price per square foot of £30 to £40. He said that it was widely accepted that the market was improving during the period 1987 to 1989, more so in 1989.

On the basis of the above Mr. Mc Cormack set out his calculation of the Net Annual Value of the subject premises as at November 1988 as follows;-

Ground Floor			<u>£ p.a</u>
Shop	Zone A	304 sq.ft @ £40 per sq.ft	12160
	Zone B	353 sq.ft @ £20 per sq.ft	7060
	Zone C	127 sq.ft @ £10 per sq.ft	1270
Kitchen		89 sq.ft @ £5 per sq.ft	445
Store/Office		52 sq.ft @ £5 per sq.ft	260
First Floor			
Shop		752 sq.ft @ £12 per sq.ft	<u>9024</u>
			<u>30219</u>
Say <u>£30,250 p.a.</u>			

Mr. Mc Cormack then set out his calculation of the Rateable Valuation based on Net Annual Value of £30,250 and by applying 0.63% as a ratio between Net Annual Value and Rateable Valuation he arrived at a Rateable Valuation of £191.00.

A written submission was received on the 25th September, 1991 from Mr. Kevin Allman B.Comm D.P.A., a Staff Valuer in the Valuation Office on behalf of the Respondent. In this precis Mr. Allman set out the details of the property and the valuation history, much of which has been outlined above. Mr. Allman said that the method of valuation used to calculate the Rateable Valuation of this property is the Net Annual Value as set down by Section 11 Valuation (Ireland) Act, 1852 and amended by Section 5(1) Valuation Act, 1986. He said that the base date was November 1988 and that the relationship between Rateable Valuation and Net Annual Value which he applied is 0.63%. He said that the rent passing is on a FRI basis and dates from the 1st October 1988 which, as it equates very closely with the base date, is taken to be the Net Annual Value. He then calculated that the Rateable Valuation on a Net Annual Value of £36,500 by application of 0.63% would be £229.95, say £230.00. Mr. Allman supplied one comparison, Independent Pizza Company Limited 8, South Anne Street, R.V. £375.00, which he said was agreed with Mr. Mc Cormack of the Phelan Partnership on the following basis:-

Actual Rent September 1989 -	£63,500
Allow for inflation 6%	- <u>£ 3,810</u>
	£59,690
	x .63% = £376.40
	<u>R.V. £375.00</u>

ORAL HEARING

The oral hearing took place on the 30th September 1991 when Mr. Sean Mc Cormack represented the Appellant and Mr. Kevin Allman represented the Respondent. Mr. Mc Cormack gave evidence as outlined in his precis of evidence which is summarised above and contended that the proper Rateable Valuation for the subject property should be £191.00. With regard to the rent passing of £36,500 he said that, in his view, the assessment of Net Annual Value as described in the relevant Acts provides that regard be had to local evidence. He said that where evidence indicated that the rent passing appeared to be ahead of other local rents that it would be more equitable to adopt an NAV that would be consistent with these. He said that in his view his clients paid too much for the unit in the light of the comparable evidence and that he would regard it as a premium rent. He admitted that the subject premises is closer to Grafton Street, than the comparisons offered, but said that the Royal Hibernian Way is what attracts people down Lemon Street. He said that while the subject premises maybe closer to Grafton Street than the comparisons which he offered it does not necessarily mean that it is "a better pitch" than the Royal Hibernian Way because of the concentration of shop units there. Mr. Mc Cormack said that prior to the upgrading of the subject premises it was derelict which indicated the lack of a

market there. Mr. Allman said that his case differs very little from that presented by Mr. Mc Cormack. He said that the function of the Commissioner of Valuation is to observe the market and to follow that market. He said that in this particular case the date of the lease is the 1st October 1988 and the base date for valuation purposes is the 1st November 1988. He said that there is no evidence to suggest that the tenant had not been prudent in his business affairs, and that the Net Annual Value on the 1st November 1988 has to be the passing rent. He said that the Pizza Company in South Anne Street is a shared comparison and that this would indicate that the subject property is not over priced. Mr. Allman said that there is very little property transferring hands on Lemon Street and that to the east of the subject one would get lower rents whereas to the west the rents would be far higher. Mr. Allman said that he could not accept Mr. Mc Cormack's contention that the rent paid on the subject property is ahead of its market. He said that in his opinion, the rent passing in this case represents the market and that he could have picked comparisons just up along the west side of the subject property showing very much higher rents. He accepted that west of the subject property was Grafton Street. Mr. Allman said that he must accept the market as it comes to him and in this particular case it is the rent passing.

DETERMINATION

The Tribunal has considered all the evidence adduced in the case both written and oral and the comparisons offered and has concluded that the rent agreed for the subject property on 1st October 1988 was in line with the market at that time, given its location. It further concluded that given the proximity of the date of this agreement to the relevant date for valuation purposes that this rent of £36,500 should be regarded as the Net Annual Value. It is noted that both parties in their respective calculations have made use of 0.63% as the relevant factor for converting Net Annual Value to Rateable Valuation and accordingly the Tribunal determines that the decision of the Commissioner of Valuation at 1st appeal, in setting a Rateable Valuation of £230, be upheld.