Appeal No. VA91/4/019

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Dermot M. Feeley t/a Handymans **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Shop at Lot No. 87/101 Unit 29b Merrion Centre, Merrion Road, E.D. Pembroke East, County Borough of Dublin
Quantum - Unit in Merrion S.C.

B E F O R E

Henry Abbott	**S.C. Chairman**
Mary Devins	**Solicitor**
Joe Carey	**P.C. M.I.A.V.I.**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF OCTOBER, 1992

By notice of appeal dated 16th day of December, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £18 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that

1) Sufficient account was not taken by the Commissioner of the exceptionally high level of service charge.
2) N.A.V. here is directly affected by the level of service charge.
3) Taking "one year with another" the Commissioner's estimate of N.A.V. is excessive.
4) By comparison with his estimate of N.A.V. on other hereditaments in the centre, the Commissioner's estimate of N.A.V. here is excessive.

The Property

The property, Unit 29b of the Merrion Shopping Centre consists of a 60 square foot unit used as a very small hardware shop. Merrion Shopping Centre is located at the junction of Nutley Lane and Merrion Road with frontage onto both. It is across the road from St. Vincents Hospital. Stage one of the development was built as a supermarket and seven units, in 1987, all of which were purchased. Stage two was developed in 1989/90, consisting of an extension to the shopping mall on the ground floor and two 4-storey office blocks over. The subject property is one of the units built in the second phase. The anchor tenant in the centre is Quinnsworth. The unit is held on 35/5 FRI lease at £2,400 per annum. The lease provides for the payment by lessee of a proportion of the service charge equal to that which the R.V. of the unit bears to the total R.V. of all the Merrion retail units.

Valuation History

The Rateable Valuation was initially assessed at £28 in November, 1990. On appeal to the Commissioner of Valuation the Rateable Valuation was reduced to £18. It is against this determination of the Commissioner of Valuation at first appeal stage that the appeal now lies with the Tribunal.

Written Submissions

A written submission was received on the 19th February, 1992 from Mr. Patrick Gannon of Mason Owen & Lyons, Property Consultants on behalf of the Appellants. In this submission Mr. Gannon outlined the description of the property and the valuation history. He said the only main services laid on are electricity and telephone. Mr. Gannon outlined the current rental levels at the Merrion Centre and said that the second phase retail units were first put on the market for letting towards the end of 1989. He said that demand for retail units was relatively keen and the asking rent was pitched at £40 per square foot. He said that 9 of the 23 units were taken up at the asking rent and that 3 of these units (units 7/8, 9 & 10) were in a special situation in that they were units which were back to back with units developed in phase 1. He said that these 3 units were taken up by the owners of the first phase units and that they had extended their existing premises into the new units. He said that of the remaining six lessees who took up leases at the asking rent, two have since surrendered their leases. Mr. Gannon said that one of these two units, Unit 24 has recently been re-let at a rental of £25 per square foot and that the other was still vacant. He said that at present there are a total of 5 of the 23 second phase units still vacant and unlet. Mr. Gannon said that it was clear from the pattern that taking one year with another, the initial asking rent was pitched at too high a level. He said that the Merrion Centre was located in an affluent part of the city but the area is not densely populated. He said that retail demand is already adequately catered for by shopping centres in the city, at Blackrock and at Stillorgan. Mr. Gannon said that there was relatively little pedestrian traffic in the vicinity of the Merrion Centre and that the centre is too small to attract peripheral suburban shoppers in the same way as larger complexes at Blackrock and Stillorgan do. Mr. Gannon said a factor that was causing deep concern to the appellant was the high level of service charge cost. He said that normally these costs are based on a square footage basis but that in the Merrion Centre the lease provides that the service charge be apportioned in proportion to the Rateable Valuation on the units at the centre. Mr. Gannon said that the leases were drawn up at a time when the Rateable Valuations were still based mainly on the square metre comparative method and that on this basis the differential per square foot between the Rateable Valuation on the anchor tenants unit and those of the smaller tenants was not significant and that an apportionment of service charges in proportion to the R.V.'s on the units was consequently relatively equitable. He said that more recently with greater emphasis on Net Annual Value as the basis for Rateable Valuation there has been a widening of the differential per square foot in the Rateable Valuation on the anchor tenant's unit as against the Rateable Valuation on the smaller units. He said that a consequence of this was a greatly increased service charge on the tenants of the smaller units and a corresponding relief in the proportion borne by the anchor tenant. Mr. Gannon said that on a square footage basis the service charge would have been about £4 per square foot on all tenants including the anchor tenant while under the Rateable Valuation as determined by the Net Annual Value the actual cost to the smaller tenants is closer to £8 per square foot while the actual cost for the anchor tenant is less then £2 per square foot. The service charges in other centres are, Rathfarnham -nil, Nutgrove and Stillorgan - £4 and Blackrock - less than £5. Mr. Gannon then commented on the Commissioner's estimate of Net Annual Value at the Merrion Centre and made a comparison with the Rateable Valuation's on standard units at other shopping centres. Mr. Gannon then set out his calculation of the Rateable Valuation of the subject premises as follows:

<u>Valuations:</u>

Actual Rent	£ 2,400	
Adjustment to November 1988 levels as allowed by the Commissioner at Rathfarnham (16%), Nutgrove (22%), Stillorgan (15%) Blackrock (24%)		
Average (19%)		£ 456
	£ 1,944	
Allow for higher rate of Service Charge at Merrion Centre		
60 sq.ft. @ £4.50	£ 270	
	£ 1,674	

R.V. at .63% Say £10.00

OR

80 sq.ft. @ 14p per sq.ft. £11.20

A written submission was received on the 19th February, 1992 from Mr. Terence Dineen B.Agr.Sc, a District Valuer with seventeen years experience in the Valuation Office on behalf of the Respondent. In this Mr. Dineen again outlined the property and commented on the valuation history. In relation to the first appeals Mr. Dineen said factors that had an impact on the first appeal were an allowance for the Rates Impact Factor and for the time adjustment. He said that, because the impact of the Rateable Valuation on the service charge was not appreciated at that time, only passing reference was made to it. With regard to the service charge Mr. Dineen said that from the tenant's point of view, if he had known the service charge was going to be at the level of, say £8 per square foot when negotiating his rent he would have negotiated a lower rent. He said that the tenant could have taken a view from the evidence of Rateable Valuations of stage one of the development before they were revised upwards of what his service charges might be and that these might have been considerably lower. Mr. Dineen said that it is not unfair to speculate that the tenants did service charges calculations based on the old valuations. However, he said the .63% fraction had been operative since October 1989 and this would have been well known amongst rating valuers in the private sector from then on. He said that a diligent consideration of the relevant term of the lease could have set off "alarm bells". Mr. Dineen said that the Rateable Valuations on the hereditaments in the Merrion Centre were fixed as fairly as possible by the Commissioner on the best evidence available at the time, primarily that of passing rents.

Oral Hearing

At the oral hearing which took place on the 26th February, 1992, Mr. Patrick Gannon of Mason Owen & Lyons represented the appellant and Mr. Terence Dineen represented the respondent. Both Mr. Gannon and Mr. Dineen relied on their written submissions which are summarised above. Mr. Gannon contended for a rateable valuation of £10 on this hereditament. Discussion on the appeal centred around two main issues, Mr. Gannon contending strongly that the rent agreed in April, 1990 was excessive and based on an expectation that the Shopping Centre was going to be very successful. He gave evidence to suggest that this was not the case and that the rent achieved more recently on vacant units was considerably lower. Mr. Gannon said that the service charge was linked to the rateable valuation of the individual units and that the complete revision of the Shopping Centre had upset this relationship and had put a bigger burden on the smaller units including the appellant's case. Mr. Dineen contended that the Net Annual Value of the subject property could best be arrived at by taking the existing rent and that this was entered into voluntarily by the appellant. With regard to the service charge, Mr. Dineen said that an astute valuer could, at the time that the rent was agreed, have predicted the problems which this would cause, given that it was known at that time that the Commissioner was revising properties on the relationship of Net Annual Value and Rateable Valuation.

Findings

The Tribunal has considered all the evidence both written and oral. The Tribunal is swayed by the rental evidence as presented by Mr. Gannon which would indicate that rents fixed in April, 1990 were in excess of what the subsequent performance of the Shopping Centre would have demanded. The Tribunal is conscious that the total revision of the Shopping Centre as a whole has had a huge impact on the service charge of the individual units, however, it is loath to take into account an impact that a change in the rateable valuation of a property may have on any other issues. Taking everything into consideration the Tribunal has come to the conclusion that an appropriate rateable valuation for the subject premises is £16.