

Appeal No. VA91/4/023

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

Wordsworth (Bookshop)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. 87/101 Merrion Centre, Merrion Road, Pembroke East Ward, County Borough of Dublin

Quantum - Unit in Merrion S.C.

B E F O R E

Henry Abbott

Barrister Chairman

Paul Butler

S.C.

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 3RD DAY OF APRIL, 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 £122 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 21 of the Merrion Shopping Centre consists of a 580 square foot unit used as a bookshop and has a 22.5 foot frontage to one of the malls known as Merrion Mall.

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 £20,300 per annum from April 1991. 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 compared to the total R.V. of all the Merrion retail units.

Valuation History

The Rateable Valuation of the subject property was reduced from £130 to £122 at first appeal stage under Section 20 of the Valuation (Ireland) Act, 1852 which gives the Commissioner power to alter the valuation of any other hereditament against which there was no appeal but, which may appear to him to be similarly circumstanced with those appeals which have been made, in order to render the valuation of every hereditament comprised in such list proportionate and uniform. 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 14th February, 1992 from Mr. Patrick Gannon of Mason Owen & Lyons, Property Consultants on behalf of the Appellants, Anthony Hayes and Kim Murray. 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. He said that there is no water, toilet accommodation or no kitchen facility. He said that heating is from one small electric storage heater. 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, of the 8 units in the area where the subject premises is situated, none of them has reached the target rent of £40 per square foot. The units concerned in this mall are units 15 - 22. He said that units 15 & 16 now let as one and form a shallow unit with a long frontage to the mall. He said that these were let at about £37.50 per square foot. He said that units 19 & 20 are also let as one at about £31.50 per square foot. He said the Appellants premises unit 21 is let at £35 per square foot and that the remaining 3 units, units 17, 18 and 22 have never been let although they now have been on the market for over 2 years. He said that the most recent letting, unit 24 was at a letting of £25 per square foot for a unit of 580 square feet, similar to the Appellants. 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 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 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 for 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 averaged 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 than £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:

Valuations:

Actual Rent	£20,300
Current fair Market Rent (assuming a normal level of Service Charge) 580 sq.ft. @ £33 per sq.ft.	£19,140

Adjustment to November 1988
levels as allowed by the
Commissioner at Rathfarnham (16%),
Nutgrove (22%), Stillorgan (15%)
Blackrock (24%)

Average (19%)	<u>£ 3,636</u>
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£15,504

Allow for higher rate of Service
Charge at Merrion Centre

580 sq.ft. @ £4.00	<u>£ 2,320</u>
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N.A.V. £13,184

R.V. at .63% £83.00

OR

580 sq.ft. @ 14.5p per sq.ft.
(allowing for high rate of
Service Charge)

Say £84.00

A written submission was received on the 18th 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. Mr. Dineen questioned whether, because the appeals arise out of a Section 20 decision to grant the "similarly circumstanced" reduction, the Appellants had the right to appeal on their own grounds as distinct from the grounds on which the initial appeal which triggered the listing of these Section 20 decisions. 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 charge 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

The oral hearing took place on the 21st February, 1992 at which Mr. Richard Cooke S.C., instructed by Noel Smyth & Partners, Solicitors, represented the Appellant and Mr. Robert Houghton, Barrister instructed by the Chief State Solicitor represented the Respondent. Mr. Patrick Gannon, Valuer of Mason Owen & Lyons Company was present on behalf of the Appellant and Mr. Terence Dineen, Valuer from the Valuation Office was present on behalf of the Respondent.

Both Mr. Gannon and Mr. Dineen gave evidence as set out in the precis of evidence and as summarised above. There were three main issues involved in this appeal as follows:-

- (1) That the evidence of rental value as it unfolded in the Shopping Centre over the years would indicate that at the appropriate date the rents paid were excessive and did not reflect the true Net Annual Value.
- (2) That the linkage of the service charge fee to the rateable valuation of the hereditaments led, on re-valuation of the entire premises, to a totally disproportionate level of service charge being paid on this unit.
- (3) That the subject unit is located in a less advantageous area of the Shopping Centre.

With regard to the first point there was uncontradicted evidence that the expectations initially had been very high in this Shopping Centre, that more recent unit lettings had been between £25 and £30 per square foot, that there was a number of units which have been vacant for up to two years. Mr. Haughton said that the base date for this valuation is the 10th November, 1990 and that the evidence given relating to the lower rents were all of recent origin. He said that these could not be taken into account by the Tribunal as they must look at it as at November, 1990. Mr. Cooke said that the job of the Valuer is to fix a valuation which would come into operation on the 1st January, 1991 and that he had to foresee and to forecast what circumstances would pertain at that date. He referred to a table which Mr. Gannon produced which he said indicated that the downward trend in rents had started long before 1992. Mr. Gannon said that he has no doubt that, when the first review stage of the £40 per square foot units arise, rents will be reviewed drastically downwards.

With regard to the service charge Mr. Haughton said that Net Annual Value is defined in Section 11 of the Valuation (Ireland) Act, 1852 as "the rent for which, one year with another, the same might in its actual state be reasonably expected to let from year to year, the probable average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the hereditament in its actual state, and all rates, taxes and public charges, if any, (except tithe rentcharge,) being paid by the tenant." He said that his contention was that, insofar as the service charge is excessive, the balance is not an expense necessary to maintain the hereditament. He said that it is in itself a surcharge and is in the nature of rent. He said that even if the tenant was unconscious of the fact that part of the service charge was excessive it

still is not an expense. He said that the excessive service charge is going towards maintaining the shop and the supermarket. Mr. Haughton referred to Belfast Street Tramways Company - V- Commissioner of Valuation 29 Irish Law Times Reports page 138.

Mr. Cooke said that in taking the tenancy the tenant would take into account all factors that the tenancy might impose on him. He said that any increase in the cost of the hereditament to him, as between the landlord and tenant, will have an impact on the business and that the increase in this case due to the revision of rateable valuation not just of the subject property but also the considerable reduction in rateable valuation of the supermarket had led to an increase in outgoings that the tenant could not have anticipated. With regard to the location of the premises Mr. Gannon would not agree with Mr. Haughton that the location, opposite the check-outs of the supermarket was a prime location. He referred to the vacant units in that area of the supermarket and said that that was an indication of the poor location.

The Tribunal has taken all of the above matters into consideration and has concluded that the initial expectations of this shopping centre's impact on the market were pitched too high. It agrees that the valuer at the time would not have had foresight of the poor performance of the Centre. However, it accepts the point that there is an obligation to take one year with another and that in a very short period of time the reality has become apparent. The Tribunal has the benefit of hindsight and feels it has an obligation under the valuation code to apply this hindsight. Things would be different if it were simply a question of a downturn in trade in the intervening period. With regard to the service charge the Tribunal is loath to make any allowances for impacts that an increase in rates may have on other aspects of the tenancy, it is particularly conscious of the fact that if this became a rule of thumb that it could be abused. It has particular sympathy with the tenants in this case because of the fact that they are doubly hit by having the service charge linked to the rateable valuation. There is an initial impact because of the increase in their own rateable valuation but this is doubled by the substantial decrease in the rateable valuation of the main anchor tenant. The Tribunal is slightly influenced by the fact that there appears to be an unwillingness to take up units in this area of the Shopping Centre. Taking all factors into consideration the Tribunal has come to the conclusion that an appropriate rateable valuation for the subject premises is £107.

