Appeal No. VA91/4/024

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Atino & Company Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Shop at Lot No. 87/101 Unit 24, Merrion Centre, Merrion Road, Pembroke East Ward, County Borough of Dublin
Quantum - Unit in Merrion S.C.

B E F O R E

Padraig Connellan	**Solicitor (Acting Chairman)**
Veronica Gates	**Barrister**
Joe Carey	**P.C. M.I.A.V.I.**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF SEPTEMBER, 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
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 24 of the Merrion Shopping Centre consists of a 580 square foot unit used as a furniture shop and has a 22.5 foot frontage to one of the malls known as Nutley 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 £23,200 per annum from April 1990. Since February 1992 a new tenant has taken up occupation on a 2 year 11 month lease at £14,500 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 compares 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 2nd March, 1992 from Mr. Patrick Gannon of Mason Owen & Lyons, Property Consultants on behalf of the Appellants, Dunloe Group Plc. 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. 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 including the subject unit which has been re-let at a rental of £25 per square foot and that the other was still vacant. 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 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:

Valuations:

Actual Rent	£14,500	
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%)		£ 3,636
	£15,504	
Allow for higher rate of Service		

Charge at Merrion Centre

580 sq.ft. @ £4.00	£ 2,320

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 2nd March, 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 6th March, 1992 at which Mr. Patrick Gannon, Valuer of Mason Owen & Lyons represented the Appellant and Mr. Terence Dineen B.Agr.Sc., represented the Respondent. Both Mr. Gannon and Mr. Dineen gave evidence as set out in their written submissions which are summarised above. The main issues in this case boil down to two factors as follows:-

a) That the rent agreed and in operation at the appropriate date did not reflect the true Net Annual Value, given the subsequent performance of the shopping centre,

b) By virtue of the fact that the service charge fee was linked to Rateable Valuation the total revision of the centre had a disproportionment affect on the amount of service charge for this unit.

Mr. Gannon strongly relied on these points and stated that while a short term lease had been entered into for this premises of £14,400 per annum, that in his opinion an appropriate rent would be in the region of £33 per square foot yielding a Net Annual Value in excess of £19,000 per annum. Adjusting this figure to November 1988 and making an allowance for the higher rate of service charge at the Merrion Centre, Mr. Gannon contended that an appropriate Rateable Valuation for the premises would be £84. He said that the short term letting referred to above was an indication of the direction in which the centre was going.

Mr. Dineen contested the arguments put forward by Mr. Gannon and said that the rents initially entered into in the shopping centre were entered into on a voluntary basis by the tenants. He said that the possible future problems of linking the service charge with the Rateable Valuation of the unit have at the time, given that the .63% was being used by the Commissioner, have been foreseen by an astute Valuer. Mr. Dineen further questioned whether, because the appeals arose 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 of the initial appeal which triggered off the listing of these Section 20 decisions.

Findings:

With regard to the point made by Mr. Dineen concerning Section 20 and the Appellants right to submit their own grounds of appeal the Tribunal has concluded that the appeal as submitted is valid. The Tribunal is aware that the Valuer at the time would not have the foresight of the poor performance of the centre which became a reality in a very short period of time. Using the benefit of hindsight the Tribunal accepts the contentions that the centre did not perform as expected at the times the rents were agreed. It is very conscious of the fact that this is not merely a question of a downturn in trade in the intervening period. The Tribunal notes the lower rent per annum being paid for the shorter term lease in this instant case. However, it must have regard to the generality of the leases in the centre in reaching a determination. The Tribunal is loath to make any allowance for an impact that an increase in Rateable Valuation may have on any other aspects of a tenancy despite the fact that the revision in this instance of the total centre has had a severe impact on the individual tenancy. Taking the oral and written evidence into consideration the Tribunal has come to the conclusion that an appropriate Rateable Valuation for the subject premises is £108.