Appeal No. VA92/6/050

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Starlighting	**APPELLANT**
	and
Commissioner of Valuation	**RESPONDENT**

RE: Shop at Lot No. 57 - 65/1 Glasslough Street, Townland of Roosky, E.D. Monaghan Urban, Urban District of Monaghan Co. Monaghan
Quantum

B E F O R E

Henry Abbott	**S.C. Chairman**
Paul Butler	**S.C.**
Veronica Gates	**Barrister**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19TH DAY OF MARCH, 1993

By notice of appeal dated the 4th day of November, 1992, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £90 on the above described hereditament.

The grounds of appeal are as set out in the Notice of Appeal that "the valuation is excessive and inequitable when rental levels are taken into consideration".

The Premises

The subject premises is part of a scheme of development comprising three retail units, first floor offices and six second floor apartments. The appellant purchased the site and semi-derelict buildings in 1988/89 for £25,000 and re- developed at a cost of £240,000 approximately. The premises is located 170 yards from The Diamond on a busy retail pitch. The accommodation is as follows:-

Ground Floor Shop	864 ft²	
Ground Floor Office	714 ft²	
1st Floor Shop	648 ft²	
1st Floor Stores	445 ft²	
Total Area	2,671 ft²	Street Frontage 20ft

Valuation History

The property was first valued at 1991 revision and the valuation fixed at £100. At first appeal in 1991 the Commissioner reduced the valuation to £90.

Written Submissions

A written submission was received on the 3rd March, 1993 from Mr. Brian Bagnall A.R.I.C.S. M.I.A.V.I. of Messrs. Brian Bagnall & Associates, Surveyors and Valuers, Property and Rating Consultants on behalf of the appellant. In the written submission Mr. Bagnall described the property its accommodation and tenancy. Mr. Bagnall said that this unit was occupied by the developer of the block and as such did not have a rent on it. He said that he felt insufficient quantum had been allowed for the size of the premises and that a fair rent would be £16,000 per annum as apposed to £18,000 which had been attributed to it by the Commissioner. This he said was on the basis that it would be very difficult to get a tenant to pay a larger rent on this secondary street. Mr. Bagnall in his submission said that the rateable valuations for this new development had been arrived at by the Valuation Office using the fraction of .5% assessed on passing rents less around 13%. He said that while appearing to be a perfectly reasonable approach it did not take account of the low level of rateable valuations already existing in the street, many of which had been revised in recent years, he attached a schedule to his submission setting out a full list of every premises rated as a shop by the Valuation Office in Glasslough Street and these are attached as Appendix A. He stated that it was clear from this list that the level of rates fixed on these premises were out of line with the general tone in the street, in particular he said, that a number of the shops were larger then the ladies shop and the gents shop in the subject development and yet were carrying rateable valuations considerably lower. He said that under Section 5 (2) of the Valuation Act, 1986 these valuations were excessive in that they did not bear a relationship to the existing rateable valuations of similar type premises in the street many of which had been revised recently. He contented that to bring the valuations into line with those already on the street a more appropriate fraction to be used would be .35% of the rent. The application of this percentage, he said, would give the following valuation on the subject premises:-

Present R.V.	£42
Rent	£16,000 at .35%
Proposed R.V.	£56

A written submission was received on the 1st March, 1993 on behalf of the respondent from Mr. Jim Gormley, A.R.I.C.S. a District Valuer and a further written submission was received on the 4th March, 1993. In these written submissions Mr. Gormley set out the details of the premises and the valuation history and commented on the appellant's grounds of appeal. Mr. Gormley set out his calculation of the Rateable Valuation on the subject premises as follows:-

Net Annual Value:	864ft²	@	£11	=	£ 9,504
	714ft²	@	£5	=	£ 3,570
1st Floor Shop:	648ft²	@	£6	=	£ 3,888
Stores	445ft²	@	£3	=	<u>£ 1,335</u>

£18,295

Say £18,000

Rateable Valuation:

£18,000 X .5% = £90 (Agreed)

Mr. Gormley set out a number of comparisons on Glasslough Street and these are set out below:-

		Lease	Valuation
1.	8a, Glasslough St. Ladies Clothes Shop 1989 Revision R.V. £20	2yr 9mth Lease August 1988 at £3,120 p.annum	230ft x £13.50/ft = £3,105 x 0.63% = £20
2.	10a Glasslough St. Betting Office 1989 Revision R.V. £26	2yr 9mth Lease June 1988 at £4,160 p.annum	336ft @ £11.50 = 3864 71ft @ £ 5.00 = 335 4219 .63% = £26
3.	12b Dublin Street Record Shop 1989 Tribunal Appeal VA/90/1/17 R.V. £24	3 years from March 1988 at £4,160	236ft @ £17.50/ft = £4,130 x 0.63% = £26 Agreed £24
4.	15a Diamond Video Shop 1991 First Appeal R.V. £60	5 year lease June 1990 at £13,780 per annum	843ft @ £14.50/ft = £12,223 x 0.5% = £60

In his further submission Mr. Gormley drew two points to the attention of the Tribunal.

(1) That the subject premises had been the subject of agreement between Mr. Bagnall and himself at first appeal and that it was not open to Mr. Bagnall to appeal the issue of quantum before the Tribunal.

(2) He also made the point that in challenging the factor of .5% to be applied to the rental values, Mr. Bagnall was introducing new grounds of appeal which

he was not entitled to do as they had not been raised by him in his Notice of Appeal.

Oral Hearing

The oral hearing took place in Dublin on the 8th day of March, 1993. Mr. Brian Bagnall appeared on behalf of the appellant and Mr. Jim Gormley appeared on behalf of the respondent. Mr. Noel Mulligan also gave evidence. It was agreed that this appeal should be heard together with Appeal No.s: VA/92/6/51 and VA/92/6/52 as each of the premises were in the same development.

Mr. Gormley raised two preliminary issues. The first was that he said he had agreement in this appeal with Mr. Bagnall and in this connection he referred to a letter signed by Mr. Bagnall and dated 7th August, 1992 which appears in his first submission as follows: "I have recommended acceptance to my client as follows:-". He said that apart from that letter the figure was orally agreed between himself and Mr. Bagnall. The second preliminary issue raised by Mr. Gormley was that the question of the fraction was never at issue in the first appeal or, indeed, on the Notice of Appeal. There was no challenge to the .5% factor. He said that the raising of a .35% factor by the appellant was a totally new ground of appeal and that by virtue of a number of judgments of the Tribunal he was precluded from raising the matter.

Mr. Bagnall said that the fraction never arose at the appeal stage. All negotiations were on the basis of an existing fraction level of .5%. He said that his letter of agreement was subject to his clients instructions and that it took him some considerable time to get those instructions since lodging the Notice of Appeal.

Mr. Gormley denied any form of discussion concerning the fraction, he said that the matter was only raised before the Tribunal.

The Tribunal rose to consider the foregoing and on resuming indicated to the parties that, by reason of Mr. Gormley's said submissions on the fraction issue the Tribunal had determined that the issue of the fraction was a new ground of appeal and as such could not be considered at this stage. The Tribunal further adjourned for a short period to enable Mr. Bagnall to take instructions having regard to the foregoing determination.

When the Tribunal sat again Mr. Bagnall indicated that he wished to proceed with the appeal within the constraints indicated by the Tribunal. Mr. Bagnall read his said written submission. He ended by saying that the appellant was now relying totally upon Section 5 (2) of the Act and submitted that the levels of the three premises are substantially out of line with other rateable valuations on the street.

Mr. Noel Mulligan, in evidence, referred to various premises in Mr. Bagnall's schedule and, in particular, the recent revisions which were nos: 8a, 10a, 18, 40 and 105-107. He said that these valuations indicated that the valuations of the three subject premises were out of proportion and were very high. He said that there had been very little increase in rental levels. Mr. Gormley referred to his written submissions and argued that the schedule referred to above was first produced by Mr. Bagnall to support .35% as an appropriate fraction of the rent. He said that a study of valuations in the schedule showed a fraction of at least .5% and up to .63% in two cases.

<u>Determination</u>

The Tribunal has considered the oral and written submissions and it has much sympathy with the appellant having regard to the fact that other rateable valuations on the street in question do appear to be disproportionate to the subject premises. However, on closer scrutiny it is clear that not only was the .5% factor not initially in issue but that it is an appropriate factor having regard to all the comparisons offered. Within these constraints the Tribunal must determine that the rateable valuation fixed is reasonable and it confirms the same.