

Appeal No. VA92/6/051

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

Damien Collery t/a 'Wise Guy'

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. 57 - 65/2, Glasslough Street, Townland of Roosky, E.D. Monaghan Urban,
U.D. Monaghan, Co. Monaghan
New grounds of appeal at Tribunal stage

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 £32 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 premises consist of 541 square feet of retail space with a street frontage of 9.5 feet. It is part of a development of 3 ground floor retail units with offices and showrooms at first floor level and 6 apartments on the second floor. The tenant spent £6,500 on the subject premises on lights, carpets and partitions and a further £6,500 on shelving and railings.

Valuation History

The property was first valued at 1991 revision and a new valuation fixed of £38. At 1991 first appeal the Commissioner reduced the valuation from £38 to £32.

Tenure

The premises is leased by Mr. Damien Collery on a two year nine month term from September, 1990 at £140 per week or £7,280 per annum. The tenant is liable for rates, insurance and internal repairs.

Written Submissions

A written submission was received 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 set out details of the property. He said that the valuation on the premises was fixed at £32 which is arrived at by allowing a 13% reduction on the passing rent to bring it down to £6,400 per annum and then by using a fraction of .5% on the resultant rent. The rent was reduced again on the basis that the tenant had no liability for external repairs and the letting took place subsequent to the 1988 base.

Mr. Bagnall in his submission said that the rateable valuations for this new development of which the subject premises is part, 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 than 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. £32
 Rent £6,400 @ .35%
 Proposed R.V. £22

A written submission was received from Mr. Jim Gormley, A.R.I.C.S. a District Valuer on behalf of the respondent on the 1st March, 1993 and a further written submission was received from Mr. Gormley on the 4th March, 1993. In the written submission Mr. Gormley described the property and set out details of the valuation history. He set out his calculation of the rateable valuation on the subject premises as follows:-

Net Annual Value: 541ft² @ £12.00/ft² = £6,492
 X 0.5% = £32.46
Say £32.00

Note: Rent Passing £7,280

Mr. Gormley also set out a schedule of comparisons of similar properties in the Monaghan area and these are attached as Appendix B.

In his second submission Mr. Gormley made the following points:-

- (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 so 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/92/6/50 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 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 ratio was never an 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 at Tribunal stage.

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. Bagnalls 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.

Determination

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.