

Appeal No. VA93/2/027

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

**Michael J. Shannon**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Map Ref: 92a, Drumcondra Road Upper, Drumcondra South Ward County  
Borough of Dublin  
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 26TH DAY OF NOVEMBER, 1993**

By Notice of Appeal dated the 20th day of May, 1993 the appellant appealed against the determination of the Commissioner of Valuation in fixing a Rateable Valuation of £40.00 on the above described hereditament.

The grounds of appeal as set out on a letter attached to the Notice of Appeal are that "the Rateable Valuation is unfair and inequitable and that it has been calculated without having regard to the relevant facts in this case".

### **The Property**

The property is a lock-up shop retailing as a boutique in a prominent position on Drumcondra Road Upper. The tenant shares the use of the toilet on the first floor with other tenants. There is no rear exit or yard. The shop comprises part of a semi-detached building jutting out from the building line on the street thus giving it prominent visual position for traffic on the busy Airport Road. It comprises one room with 18 feet frontage to Drumcondra Road and 8 feet to Clonturk Avenue which gives it exposure to north bound traffic opposite the Skylon Hotel.

### **Valuation History**

The valuation was revised in 1991 revision and an old valuation on the entire premises of £29.00 was increased as follows and subdivided:-

1. Shop, Ground Floor; R.V. £54.00
2. Office and Yard in common to the rear R.V. £16.00
3. First Floor Offices R.V. £20.00

The rateable value of £54.00 was appealed by Frank O'Donnell & Company acting on behalf of the rated occupier and the result of this appeal was that the rateable valuation was reduced to £40.00.

### **Written Submissions**

A written submission was received on the 27th September, 1993 from Shannon & Company, Chartered Valuation Surveyors and Property Consultants instructed by the landlord of the above property. In the submission Shannon & Company state that both the tenant and the landlord appealed at First Appeal stage separately and that the appeal was determined by Mr. Frank Gregg with direct negotiation with Mr. Frank O'Donnell acting on behalf of the rated occupier and that they, Shannon & Company do not accept that this is a correct assessment of the Net Annual Value of the subject premises and accordingly are appealing to the Tribunal.

The assessment of £54.00 Rateable Valuation would indicate a rental value in November, 1988 of £8,571 they state (£23.00 per square foot) and also that this is illogical for the following reasons:-

1. That the current market rental value payable as and from the 5 year term commencing the 1st April, 1990 was just £7,500 per annum.
2. The rent payable under the terms of the lease as at November, 1988 was £5,500 per

annum and that assuming that this represents the Net Annual Value this would represent a Rateable Valuation of £34.65.

A detailed description of the subject property and its location were also set out in the submission. It is also stated that the premises has been let under a lease dated the 30th April, 1976 for a term of 20 years from the 30th April, 1976 and that the lease provides for rent reviews at 5-yearly intervals to the then current rack rental value. A history of the rent reviews between the 30th April, 1976 and the 30th April, 1990 is also set out in the submission. Shannon & Company also state that the lease provides that the landlord and tenant will share the cost of rates on a 50/50 basis, based on the rates liability for the entire property. The landlord has at all times contributed 50% of the cost of rates and continues to do so because there is insufficient income available to the tenant from the business to allow her to contribute more than heretofore towards the payment of rates. Details of two properties in Upper Drumcondra Road where used as comparisons and these included photographs in the submission. A further comparison relied upon was on Clontarf Road.

A written submission was also received on the 27th September, 1993 from Mr. Frank Gregg a District Valuer with 25 years experience in the Valuation Office representing the respondent. In his submission Mr. Gregg described the property and its location. He also set out the valuation history of the premises as detailed above. The submission also included the basis for the rateable valuation of £40.00 as follows:-

$$\begin{aligned} 370 \text{ sq.ft.} & @ \text{ £17.00 p.s.f.} = \text{£6,290.00} \\ \text{£6290} & @ 0.63\% = \text{£40.00 R.V.} \end{aligned}$$

**or**

$$\begin{aligned} \text{Rent per Lease} & = \text{£5,500.00 Nov. '88} \\ \text{Location Goodwill say} & = \underline{\text{£1,000.00}} \\ & \text{£6,500.00} \end{aligned}$$

$$\text{N.A.V. £6,500 @ 0.63\% = £40.00 R.V.}$$

Commenting on the basis of valuation Mr. Gregg submitted that it excluded consideration of local goodwill which is an integral part of the concept of Net Annual Value. He said that the lease also excludes consideration of tenants improvements which are also a component part of a Net Annual Value - £10,000 spent in 1988 by tenant. The lease term also excludes a downward

revision of rent he stated. Mr. Gregg also said that the concept of N.A.V. as defined by the case law over 100 years relates to the hypothetical tenant and is not confined to the actual tenant in consideration of N.A.V. and he said that Mr. Shannon agreed on the 25th March, 1993 in response to a telephone enquiry, to let Frank O'Donnell & Company pursue the processing of the appeal negotiations with him. In his submission Mr. Gregg also states that Mr. Shannon claimed to appeal at First Appeal on behalf of the occupier in his letter of appeal of the 29th November, 1991. The tenant he says refuted this on inspection in February, 1993. Mr. Gregg points out in his submission that certain details contained in the lease as he understands it are at odds with Mr. Shannon's submission at First Appeal stage. Details of five comparative properties were attached to Mr. Gregg's submission all of which are situated on Drumcondra Road Upper.

### **Oral Hearing**

At the oral hearing which took place on the 1st day of October, 1993 the parties gave evidence along the lines of their submissions and the relevance of the comparisons and passing rent and the concept of the local goodwill were discussed in the context of determining N.A.V.. The Tribunal heard details of the representations made by both landlord and tenant at First Appeal.

### **Findings**

The Tribunal considers that the concept of local goodwill is not appropriate in this case in relation to the determination of N.A.V.. Having regard to the comparisons and the actual rent passing the Tribunal considers that the Rateable Valuation ought to be reduced somewhat from that determined by the Respondent on First Appeal and accordingly finds the valuation of the subject premises to be £37.00.