

Appeal No. VA93/3/010

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

Michael Guiney Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop and Stores at Map Ref: 93, Talbot Street, Ward: North City, County Borough of Dublin
Quantum

B E F O R E
Mary Devins

Solicitor (Acting Chairman)

Brian O'Farrell

Valuer

Paddy Farry

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF MAY, 1994

By Notice of Appeal dated the 29th day of July, 1993 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £180.00 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:-

- "(1) the rateable valuation is excessive, inequitable and bad in law.
- (2) based on the correct rent and consequent calculation of N.A.V., the current rateable valuation is excessive".

The Property:

The property comprises shops at ground floor and basement levels with stores at first, second and third floors. The shop is located in the street beside the entrance to Irish Life Centre. The ground floor comprises 1,059 square feet with basement shop of 650 square feet and storage space of 1,282 square feet in basement and upper floors.

Valuation History:

- At 1956 First Appeal:*** R.V. £200 was fixed on ground floor and basement shops, with a separate R.V. £95 on upper floors which at that time comprised menswear shop on first floor and carpet shop on second floor, with third floor as store.
- At 1988 First Appeal:*** R.V. £150 fixed on entire premises; at that time only ground floor and basement were in use as shops, with upper floors as stores.
- 1991 Revision:*** A comprehensive revision of retail properties in Talbot Street was carried out, with the object of establishing a uniform level of valuation in the street. As a result of this review R.V. was increased from £150 to £180.

Written Submissions:

A written submission was received on the 2nd February, 1994 from Mr. Frank O'Donnell, Principal of Frank O'Donnell & Company, Valuation, Rating & Property Consultants, on behalf of the appellant.

In the written submission Mr. O'Donnell gave details of the premises. He said that the agreed areas were as follows:-

		<u>Area (Sq. Ft.)</u>
Ground Floor	Shop	1,059
Basement	Shop	650
	Store	85
1st Floor (Mezzanine)	Store	217
2nd Floor	Store	490
3rd Floor	Store	490

Mr. O'Donnell said that the property was held under a 35 year lease incorporating 5 yearly rent reviews. He said the lease commenced on 1st June, 1989. The rent fixed at that time was £16,000 per annum.

He said that in arriving at a fair N.A.V. for the relevant date, he adopted the rent as agreed at 1st June, 1989 as a basis for calculating an N.A.V. as at November, 1988 as follows:-

Rent fixed at 1st June, 1989	£16,000.00
Adjust to November, 1988 - Say 7.5%	£14,800.00
R.V. @ 0.63%	£ 93.24

Mr. O'Donnell stated, that in his opinion, a fair and reasonable rateable valuation for the subject property would be £93.

A written submission was received on the 27th January, 1994 from Mr. Raymond Sweeney, a District Valuer with over 24 years experience in the Valuation Office, on behalf of the respondent.

Mr. Sweeney described the property and its valuation history. Commenting on the grounds of appeal to the Tribunal, Mr. Sweeney said that the rateable valuation on the subject premises had been determined on the basis of rent levels prevailing in the street. He said that Mr. O'Donnell had insisted that his client's rateable valuation should be determined on the basis of rent passing.

The Commissioner was satisfied on the basis of comparative evidence set out in his written submission that £180 was correctly assessed. He set out his calculation of the rateable valuation as follows:-

Shop (Ground Floor):	Zone A - 387 sq.ft. @ £30.00 = £11,610
	Zone B - 317 sq.ft. @ £15.00 = £ 4,755
	Zone C - 355 sq.ft. @ £ 7.50 = £ 2,662
Basement:	Shop - 650 sq.ft. @ £10.00 = £ 6,500
	Stores - 85 sq.ft. @ £ 3.00 = £ 255
First Floor Stores:	217 sq.ft. @ £ 5.00 = £ 1,085
Second Floor Stores:	490 sq.ft. @ £ 2.00 = £ 980
Third Floor Stores:	490 sq.ft. @ £ 1.50 = <u>£ 735</u>
	£28,582
	Say £28,500
	x 0.63% = R.V. = £180.00

Mr. Sweeney also gave details of comparisons within the street and these are attached as Appendix A.

Mr. Sweeney said that the subject property was assessed on the basis of the standard approach and he submitted that the rateable valuation was not excessive on the basis of the relationship between the net annual value of the subject property and that of comparable properties.

Mr. O'Donnell submitted to the Tribunal at hearing an additional comparison, namely; Mayfair Furniture, 9 Talbot Street.

Oral Hearing:

The oral hearing took place in the Tribunal Offices in Dublin on the 14th day of February, 1994. Mr. Frank O'Donnell appeared on behalf of the appellant, accompanied by Mr. Michael Guiney, Mr. Raymond Sweeney appeared on behalf of the respondent.

The précis of evidence submitted by the appellant and by the respondent were opened and considered by the Tribunal.

Mr. Frank O'Donnell submitted that in his view the passing rent in this particular case was evidence of the N.A.V.. He indicated that the rent of £16,000 in respect of the subject property was agreed in June, 1989 and referred to documents contained in Appendix B, of his written submission, being "Heads of agreement", and a letter contained in Appendix C being a letter from Reddy, Charlton & McKnight, Solicitors dated the 24th June, 1993. Mr. Sweeney indicated that he did not accept the rent of £16,000 per year as it was well below the prevailing level in the street. He indicated that this rent, which he considered to be low, could be unusually low because of a relationship between the parties, or unusual covenants and conditions in a lease. Mr. Guiney responded that there was no relationship between him and the landlord, that it was an arms length transaction and there was nothing unusual by way of covenant or condition in the lease. In fact, there was no formal lease as such executed. There was a formal lease from 1968 at a rent of £1,400 per year, and this was the only lease in existence.

Mr. Sweeney submitted that by virtue of Section 5 of the 1986 Act the N.A.V. of a premises should be arrived at by reference to comparisons of passing rents in the area. He submitted, that the actual rent could not be accepted as an N.A.V., and argued that Mr. O'Donnell had failed in his précis to give any comparisons of passing rents in Talbot Street whatsoever. Mr. Sweeney then proceeded to give comparisons as outlined on pages 6 and 7 of his précis. Mr. Sweeney added, in relation to No. 4, that this premises was slightly smaller than the subject property. He also indicated that the subject property had a retail basement whereas this property did not have a retail basement. In relation to No. 5, Mr. Sweeney added that this premises was slightly larger than the subject property but once again the basement was not used for retail purposes as is the case in the subject property. Mr. Sweeney commented in relation to No. 6 that this property was freehold, the basement was used for storage, and that this property in his view was very comparable to the subject property. In relation to No. 10, Mr. Sweeney commented that this premises was slightly larger than the subject property but that there was no upper floor space. In relation to No. 11, Mr. Sweeney stated that this property was smaller than the subject property and yet the rent was £21,000 per year. In relation to No. 15, Mr. Sweeney commented, that once again this property was smaller than the subject property, that the basement was not used for retail purposes and there was no upper floor space. In relation to No. 16, Mr Sweeney commented that this property was substantially larger than the subject property, but had no upper floors. In relation to No. 94,

Mr. Sweeney commented that this premises was immediately beside the subject property, was roughly half its size, and that the rent agreed in November, 1989 was £20,500. In relation to No. 100, Mr. Sweeney indicated that this premises did not have a basement and did not have any upper floors. Mr. Sweeney indicated that the leases referred to were all 35 year leases with 5-yearly reviews, and were not short-term leases. Mr. Sweeney then referred to his analysis of rents of medium sized properties in Talbot Street set out on page 8 of his précis.

Mr. Sweeney then indicated to the Tribunal that in his view the standard rent for a premises in Talbot Street was £24,000 and £25,000. Mr. Sweeney then referred to the fact that he had agreed with a number of valuers on a Zoning basis that frontage to a depth of 20 feet would be valued at £30.00 per square foot on average, that Zone B would be valued at £15.00 per square foot and Zone C at £7.50 per square foot. He indicated that he had valued the basement at £10.00 because it was in retail use whereas if the basement had been used for storage only it would have been somewhere between £5.00 and £6.00. He indicated that his value of the upper floors was very reasonable at £50.00 per week, as the upper floors were of very limited value they were of benefit in the terms of security and storage and providing space for facilities such as canteen and toilets.

Mr. Sweeney in conclusion indicated that there were three aspects for analysis in the subject property, namely:-

- (1) The Ground Floor Shop
- (2) The Basement which was used for retail purposes, and
- (3) The upper floors which were used for storage.

Mr. O'Donnell then submitted in evidence details relating to No. 9 Talbot Street, a premises immediately across the road from the subject property which had been offered to Mr. Guiney at a rent of £24,000 agreed in April, 1989. Mr. Sweeney indicated that he had no prior knowledge of this comparison. Having considered the information furnished to him, Mr. Sweeney indicated that nothing in the document caused him to change his mind about his original submission. Mr. O'Donnell indicated that No. 9 was a shop that was approximately 50% bigger than the subject property. He had analysed the average rent at £13.00 per square foot whereas the average rent of the subject was £12.00 per square foot. He also indicated that he had valued the basement at £4.00 per square foot and the storage at £3.00 per square foot. Mr. O'Donnell indicated that you could also value the premises on a zoning basis as indicated by Mr. Sweeney.

Mr. O'Donnell informed the Tribunal that the subject premises was an old premises which had old lighting and no heating, he indicated that the upper floors were in fact in a dangerous condition. He stated that the first floor was removed with the result that the shop was now 30 feet high and was practically impossible to heat. The premises was an old fashioned shop with old fashioned wooden shelving. The comparisons were all modern premises with suspended ceilings and with separate access to the upper floors. Mr. O'Donnell indicated that there was no separate access to the upper floors in the subject property.

In response, Mr. Sweeney said that the height of the shop provided a considerable space for stacking goods. He indicated that the business being carried on in the subject premises comprised the sale of bulky goods such as bed linen and other similar products. Mr. Sweeney stated that he considered the subject premises to be a good to average shop, very well located (beside the entrance to the Irish Life Centre). He suggested that the fact that the appellant had purchased the property two to three doors away from the subject property was an indication of the appellant's confidence in the area. He submitted that the comparisons were not superior to the subject property. While he accepted that the upper floors were in a bad condition he stated that approximately one year prior to the hearing of the appeal when he had inspected the premises there was a young lady working upstairs. He accepted Mr. Guiney's statement that the upper floors were not in use. Mr. Sweeney accepted that the upper floors were without separate access, and were of limited value but he considered £50.00 per week to be a very small amount of money, considering the security afforded by the upper floors, and the potential uses of the upper floors. Mr. Guiney in response stated that the upper floors were a disadvantage because of the cost of upkeep. He further indicated that the height of the shop at 30 feet was no advantage as you would need a fork-lift truck to store goods at that height. Mr. Guiney indicated that he believed the rent he was paying for the subject property was fair and reasonable and commented that if he was paying the rents that other people were paying, he would probably have decided not to take another property.

Determination:

The Tribunal having considered the evidence of the passing rent in the subject, and having considered the comparisons adduced in evidence, including the comparison submitted by Mr. O'Donnell in relation to No. 9 Talbot Street, is of the opinion that the passing rent in this particular case is less than passing rents of the properties in the immediate vicinity.

Having regard to all the circumstances of the case and the submissions made, the Tribunal is of the opinion that the N.A.V. should be £24,000 and so determines the rateable valuation at £150.00.