

Appeal No. VA94/2/023

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

John Kilcommins

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Ref: 3/2 Society Street, Townland: Townparks (Kilclooney), Ward: U.D.
Ballinasloe, U.D.: Ballinasloe, Co. Galway
Quantum - Passing rent, comparisons

B E F O R E
Henry Abbott

S.C. Chairman

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF FEBRUARY, 1995

By Notice of Appeal dated the 20th July 1994 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £35 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that the valuation is excessive, inequitable and bad in law.

The Property:

The property comprises a shop of around 800 square feet. The shop varies in width from 13.3 feet at front to 10.5 feet at rear. A new shop front was installed as part of overall refurbishment of premises.

Valuation History:

Prior to the 1993 revision the property was valued as a licensed house with £26 rateable valuation which was fixed in 1942. It was purchased for £83,000 by Mr. Kilcommins in April 1991 and he subsequently converted the first and second floors into three apartments and the ground floor into two shops. As a result of the 1993 revision of valuations there were three valuations determined for the property:

- Lot 3/1 - smaller shop - rateable valuation £21
- Lot 3/2 - larger shop - rateable valuation £35
- Lot 3/3 - apartments on block - rateable valuation £22

Mr. Kilcommins appealed to the Commissioner of Valuation and at first appeal Lot 3/1 was reduced to rateable valuation £20. No change was made to Lot 3/2 and he determined a valuation for each of the three self-contained apartments as follows:

- Lot 3/3 - rateable valuation £7
- Lot 3/4 - rateable valuation £7
- Lot 3/5 - rateable valuation £5 (a reduction of £3 overall on apartments).

It is against the valuation of £20 on Lot 3/1 that the present appeal lies with the Tribunal.

Written Submissions:

A written submission was received on the 8th February, 1995 from Mr. Patrick Nerney, Valuation Consultant on behalf of the appellant. In his written submission Mr. Nerney gave details of the subject premises and said it was located on the north side of Society Street, Ballinasloe, near to the junction with Main Street.

Unit comprises a shop of 682 square feet plus a rere hallway cum store of 118 square feet. There are two toilets at rere of hallway.

He said the shop was of irregular shape with the larger rear portion at an angle of about 60 degrees to the relatively small front section. He said the shop was let at £500 per month on a 2 year 9 month lease which expired in August 1994. Lessor bore liability for external maintenance and fire insurance. He said the lease was renewed for a 2 year 9 month period from September last on the same terms that is rent £500 per month, £6,000 per annum, inclusive of external maintenance and fire insurance. Mr. Nerney gave his opinion of the rateable valuation on the subject premises as follows:

Nett Annual Value

Shop	270 square feet	@	£12	=	£3,240
	270 square feet	@	£ 5	=	£1,300
Bal & hall, store	260 square feet	@	£ 2.50	=	<u>£ 650</u>
					£5,290

RV

NAV	£5,200	@	£0.5%	=	£ 26
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Mr. Nerney offered three comparisons of shop premises in Ballinasloe and these are summarised out below:

1) Shop 14c Main Street RV £26

Nett Annual Value

Shop	299 square feet @ £17.50	=	£5,233
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RV

Nett Annual Value	£5,200 @ 0.5%	=	£26
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Shop unit leased for 2 year 9 month from December 1990 at £130 per week.

2) Shop 14b Main Street RV £36

Nett Annual Value

Shop	555 square feet @ £12.50	=	£6,938
Store (Lr G Fl)	141 square feet @ £ 2.00	=	<u>£ 282</u>
			£7,220

R.V.

Nett Annual Value	£7,200 @	£0.5%	=	£36
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Shop unit adjoining the above leased for 2 year 9 month from December 1990. Rent £165 per week [£8,580 p.a.].

3) Shop 20.21 Society Street RV £45

Nett Annual Value (Estd).

Shop	500 square feet @	£12	=	£6,000
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Shop balance + store	500 square feet @	£6	=	<u>£3,000</u>
				£9,000

R.V.

Nett Annual Value	£9,000	@	0.5%	=	£45
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Shop unit had been let on short-term lease at £200 per week [£10,400 p.a.] to the operators of a chain of shops. Premises were vacated last September/October and remain vacant to date.

A written submission was received on the 2nd February 1995 from Mr. Bernard Stewart, District Valuer on behalf of the respondent. In his written submission Mr. Stewart described the premises and its location and valuation history as set out above. Mr. Stewart said that the property was situated near the town centre and is the second property outwards on the north side of Society Street. He said the outlets nearby consisted of a mixture of retail, office and licensed premises. He said the Irish Permanent Building Society had recently purchased property almost opposite the subject property for use of their Ballinasloe banking outlet. This emphasises the central aspect of this section of the street, he said. Mr. Stewart said that the shop was leased to B.S. Sangha, on a 2 year 9 month lease from 1st October 1991 at £6,000 per annum plus rates. Mr. Stewart assessed the valuation on the subject premises as follows:

Valuation Basis

Overall area: 800 square feet @ £9.00	=	£7,200
		£7,000 (low passing rent)

R.V. 0.5% of estimated Nett Annual Value 11/88 £7,000 = £35.00

He said that the valuation determination of £35 at revision was influenced by passing rent of £6,000. He said that this passing rent was low when viewed against rents quoted and Nett Annual Values agreed on this street and Main street as set out in his comparisons. Mr. Stewart said the subject shop is in close proximity to the town centre and St. Michael's Square which is the dominant car parking location for the town centre. Mr. Stewart said that having regard to the valuation determined for similar and smaller shops in less central locations on Society Street and in comparison to the comparable and smaller shops quoted from Main Street the valuation of £35 was lowish. Mr. Stewart gave four comparisons in Society Street and Main Street Ballinasloe. These are set out in Table 1 below:

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C o m p N o.	VO Lot No.	Sh op Siz e (sq. ft.)	Stora ge Space (sq.ft.)	To tal Siz e (sq .ft.)	Ren t Pass ing	Lea se Par tics	NAV 11/8 8	NAV Devaluat ion	R V	Observatio ns
1	16a	527	Mid 304 Rear 460	1,2 91		In Fee	£9,0 00	831/ft ² @ £9 Rear - 460ft ² @ £3.30	£ 4 5	Over half way out street. Front sections c.16ft av width. Mid sections c.9 ft av width. Determined 91 First Appeal
2	20.2 1/1	696	285	98 1	£10, 400 p.a.	2 yr 11 mth fro m 11/9 1	£9,0 00	696ft ² @ £11.60 285ft ² @ £3.25 = 98ft ² overall @ £9.17	£ 4 5	Outer end of street. Determined '93 Revision.
3	49a	620	545 kitche ns, storag e & toilets	1,1 65		In Fee	£11, 000	Overall area incl. kits, storage & toilets 1,165ft ² @ £9.44 av	£ 5 5	Restaurant 1/3 way out street. Determined 91 First Appeal
	Subj ect Sho p	682	118	80 0	£6,0 00	2 yr 9 mth fro m 1/10 /91	£7,0 00	800ft ² @ £9 = 7,200 to 7,000 (low rent)	£ 3 5	Closeness to town centre compensate s for any disadvantag es. Commissio ner witness considers £35 lowish (see Section 6).

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4	14b	555	141	55	£8,5	2 yr	£7,2	555ft ²	£	A smaller	
			basem	5	80	9	00	@ £12.50	3	shop on	
			ent	gr.		mth		= £6,937.	6	Main Street.	
				fl.		fro		141ft ²		Front	
				14		m		@ £2.00		section	
				1		1/91		= £282		c.13ft wide	
			bas					Overall		Rear section	
			em					£7,219		c.10.8ft	
			ent							wide	
										Determined	
										91 First	
										Appeal	

Oral Hearing:

The oral hearing took place in the Council Chamber in Galway on the 15th February 1995. Mr. Patrick Nerney appeared for the appellant and Mr. Bernard Stewart appeared for the respondent. The debate in this case centred around the validity of the comparisons on each side and also (and perhaps more fundamentally) the requirement that the Tribunal would consider the passing rent as the appropriate N.A.V. upon which to base the valuation. Mr. Stewart argued strongly that he was bound to take into account the recent valuations of premises along Society Street which reflected a higher N.A.V. than that suggested by the passing rent for the subject property. Mr. Stewart gave the opinion that if the subject were located on the Main Street that the front zone passing rent of £18 per square foot would be readily expected. He stated that he had made allowances in his rent calculation for the deterioration in location by going from the Main Street to Society Street where the subject is situated. Mr. Stewart suggested a zoning as follows:

282 square feet at £14.52 per square foot
 282 square feet at £7.26 per square foot
 236 square feet at £3.63 per square foot giving a total N.A.V. of £7,000.

The Tribunal considered that the valuation of £12.40 for the front zone space of neighbouring premises dealt with in VA94/2/022 did not entirely match up with Mr. Stewart's zone A space estimated N.A.V. of £14.52. The Tribunal has considered Section 5 (2) of the Valuation Act 1986 in connection with Mr. Stewart's submission that a valuation should bear a fair

relationship with other recently revised premises in Society Street. The subsection provides as follows:

"(2) without prejudice to the foregoing, for the purpose of ensuring such a relationship regard will be had, in so far as is reasonably practicable, to the valuations of tenements and rateable hereditaments which are comparable and of similar function and whose valuations have been made or revised within a recent period".

Mr. Stewart also mentioned the decision of the Tribunal in the Michael Guiney case - VA93/3/010 as supporting his view.

Determination:

The Tribunal has considered Mr. Stewart's arguments carefully and has considered and taken into account all the comparisons offered by both parties. The Tribunal accepts the correctness of Mr. Stewart's submissions but nevertheless considers that the evidence presented in relation to other valuations in Society Street is not so coercive as to direct the Tribunal away from having regard to the passing rent in establishing N.A.V.. The Tribunal has always regarded passing rents, where they are established as arms length rents in the commercial sector, as having a certain amount of primacy in relation to its valuation method. Having regard to the lower valuation of the smaller premises let by the same landlord next door (notwithstanding the lack of toilet) the Tribunal does not find itself constrained to adopt the approach of Mr. Stewart to depart entirely from the passing rent in this case.

Accordingly, the Tribunal considers that both approaches should be taken into consideration and in that event a fair division of the influence should be allowed. The Tribunal therefore finds and determines the valuation of the subject to be £33.

