

Appeal No. VA94/2/038

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

**Niall Fortune t/a Rocket Restaurants Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Restaurant, Map Ref: 7, South Anne Street, Ward: Mansion House, County Borough of Dublin

Quantum - Passing Rent, location

**B E F O R E**

**Henry Abbott**

**S.C. Chairman**

**Brid Mimmagh**

**Solicitor**

**Brian O'Farrell**

**Valuer**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 3RD DAY OF MARCH, 1995**

By Notice of Appeal dated the 29th day of July 1994 the appellant appealed against the determination of the Commissioner of Valuation of £245 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the Net Annual Value adopted by the Appeal Valuer is excessive and inequitable having regard to the Valuation Acts of 1986 and 1988 and to similar type properties."

**The Property:**

The subject of this appeal comprises a lock-up restaurant with basement store situated in South Anne Street close to the Grafton Street end. The ground floor restaurant and kitchen has an area of 1,092 square feet. The basement store area comprises 1,058 square feet. Frontage to South Anne Street is 16 feet.

**Tenure:**

The property is held under 35 year lease, dated 19th September, 1988 with 5 year reviews with effect from 25th January, 1988 at a rent of £36,000. This lease is for the entire property including the first, second and third floors which are separately rated and not the subject of this Appeal.

The rent on 1993 review was fixed at £45,000 for the entire premises.

**Valuation History:**

The entire building comprising ground floor, first, second and third floor and basement was valued at £340.00. On 1993/3 Revision following renovations and alterations the ground floor and basement were separately valued at £245.00 and the first, second and third floor separately valued at £65.00.

It is the £245.00 R.V. that is the subject of this Tribunal Appeal.

**Written Submissions:**

A written submission was received in the Tribunal on the 13th January 1995 on behalf of the appellant from Mr. Peter O'Flynn, M.I.A.V.I. of Messrs Druker Fanning & Partners. The respondent submitted a precis of evidence to the Tribunal on the 5th January 1995 which was prepared by Mr. Malachy Oakes who is a District Valuer with over 20 years experience in the Valuation Office.

In his written submission, Mr. O'Flynn dealt with Net Annual Value as follows:-

**"Net Annual Value of the Subject Premises:**

It is my belief that the Appeal Valuer has had absolutely no regard to the net annual value of the subject property in dealing with this Appeal. The net annual value as described in the Valuation Acts is the rental value of the property at the valuation date, **i.e.** the 1st November 1988. The subject premises are currently held under a lease for a term of 35 years

incorporating five yearly rent reviews from the 25th June 1988 (four months prior to the valuation date) at an initial annual exclusive rent of IR£36,000.

Subsequently the upper floors of the premises were let to Benetton under a short term lease at an annual exclusive rent of IR£13,000, the Lessee being responsible for payment of rent, rates, insurance and keeping the interior of the premises in good repair, order and condition.

When the property was revised in 1993 the original rateable valuation of IR£340 was separated into two valuations, the ground floor and basement having a valuation of R.V. IR£245 and the upper floors having a separate valuation of R.V. IR£65. The rateable valuation of IR£65 for the upper floors equates to a net annual value of IR£10,317 which would appear to be reasonable. However, the rateable valuation of IR£245 for the ground floor and basement equates to a net annual value, at the valuation date, of IR£38,888.88, which is clearly excessive.

In taking the original rent of IR£36,000 per annum, which dates from 1988, less the net annual value attributed to the upper floors **i.e.** £10,317, this would produce a rental on the ground floor and basement of c. IR£28,500.

In adopting the generally accepted .63% formula used by the Valuation Office for premises of this nature, this net annual value would equate to a rateable valuation for the ground floor and basement of R.V. IR£180.

In the above premises a rent review took place on the 25th June 1993. ....Taking this revised rent from June 1993 and subtracting the rent of £13,000 previously being paid for the upper floor offices by Benetton, this would equate to a rental value on the ground floor and basement as at June 1993 equates to IR£33,500.

The Appeal Valuer has adopted a new annual value at November 1988 of IR£38,880 per annum which is clearly excessive. When the rent review was being agreed between the respective parties all relevant information on the street was available and used. It was generally agreed between the Valuers that the rent being paid in **No. 8 South Anne Street** was excessive and that it did not represent the general rental levels on the street."

In his written submission, Mr. Oakes set out his calculation of the rateable valuation on the subject premises as follows:

**Valuation:**

<u>Ground Floor:</u>	Zone A:	320 square feet @ £60.00	=	£19,200
	Zone B:	320 square feet @ £30.00	=	£ 9,600
	Zone C:	320 square feet @ £15.00	=	£ 4,800
	Balance:	132 square feet @ £ 7.50	=	£ 990
<u>Basement:</u>	Stores:	1058 square feet @ £4.00	=	<u>£ 4,232</u>
				£38,822
		R.V. @ 0.63%	=	£244.00
		Say	=	£245.00

The comparisons used by the Valuers are annexed hereto.

**Oral Hearing:**

The oral hearing took place on Monday the 16th day of January 1995 in Dublin. Mr. O'Flynn represented the appellant and Mr. Oakes represented the respondent. The valuation of the appellant was argued along the lines of that part of the precis quoted and Mr. Oakes asserted that his valuation was based on the comparisons which appeared to be close by on the same side of the street and produced a value of £60 per square foot for Zone A space. Mr. O'Flynn asserted that other properties on the street had valuations fixed at review at much lower levels. Mr. O'Flynn sought to extract from a cross examination of Mr. Oakes that his treatment of non first floor space was inconsistent. However, Mr. Oakes explained in reasonably satisfactory terms why he had taken this approach. Both Valuers agreed that the location of out-door trading stalls at the Grafton Street end of Anne Street was a considerable disadvantage to the properties in the street in terms of capacity to generate trade. Both Valuers agreed that rents were considerably less on the street than in Grafton Street.

Mr. Oakes depended in large measure on the tone of the list to justify his valuation.

The Tribunal is satisfied that passing rent is the best evidence of Net Annual Value. Where such evidence is available there is a heavy onus on any party wishing to argue that Net

Annual Value should differ from the passing rent. However, in this case, there are other factors which prompt the Tribunal to depart from passing rent considerations as follows:

- a)** There was a considerable expenditure on renovation and alteration, and while these should not in themselves entirely contribute to a higher N.A.V., they do render the premises more suitable to a business which seems generally to command premier rents - as evidenced by the rent actually paid for 8 South Anne Street.
  
- b)** The actual occurrence of the rent for 8 South Anne Street, which is a valid comparison.
  
- c)** An overview of the street shows that this is a premier location at the better end of South Anne Street, benefiting from its proximity to the more buoyant Grafton Street. This is in spite of some difficulties arising from street traders generally on the far side of the street.

Having regard to the foregoing and all the comparisons offered, the Tribunal affirms the valuation of the premises at £245.