Appeal No. VA94/3/002

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Tom Dwyer t/a The Cobbler **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Shop at Map Ref: Unit 26, Townland: Douglas, ED: Douglas, RD: Cork Lower Co. Cork
Quantum - Units in SC, rental levels falling

B E F O R E

Paul Butler	**S.C. (Acting Chairman)**
Patrick Riney	**F.R.I.C.S. M.I.A.V.I.**
Brian O'Farrell	**Valuer**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF SEPTEMBER, 1995

By Notice of Appeal dated the 14th day of October 1994 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £70 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:
"the rateable value is excessive and inequitable at law".

The Property:

The property comprises Unit 26, Douglas Court Shopping Centre in Cork. In all there are 32 units in the centre with Dunnes Stores occupying the supermarket area. Douglas Court Shopping Centre is located on the south eastern side of Cork city. The shopping centre is immediately adjacent to the south ring road with convenient access to the western suburbs. Since the completion of the centre, a McDonalds restaurant and a multi-cinema complex have been constructed on adjoining sites.

Unit 26 is located immediately adjoining the lobby entrance to the south entrance and on the appellants submission has poor visibility from the main trading area of the development.

Valuation History:

Douglas Court Shopping Centre was first valued at 1990 Revision. The valuation attributed to the subject property was £70 and an appeal was lodged against this valuation and further investigations were made by the Commissioner of Valuation but no change was made to the rateable valuation. The property was again listed for Revision at the request of the occupier in 1993 but no change was made. This was subsequently appealed but was affirmed at First Appeal stage by the Commissioner of Valuation. It is against this re-affirmation of rateable valuation of £70 that this appeal lies to the Tribunal.

Title:

At present there is an agreement between the landlord and the tenant that the tenant remains in occupation of the property subject to a rent of £7,500 p.a. until such time as the landlord finds a new tenant. In the event of a new tenant coming forward the existing tenant can further remain in occupation if he can "better" the rent being offered by such new tenant. The tenant will be given one months notice of any such termination. The present tenant has no security of tenure having surrendered a 35 year lease in exchange for above concession.

Written Submissions:

A written submission was received on the 29th day of August 1995 from Mr. John Downing, FSCS FRICS of Cohalan Downing & Associates, acting on behalf of the appellant.
In his submission, Mr. Downing described the property and its location as set out above. Mr. Downing submitted that in order to assess the rateable valuation it is necessary to find the net annual value as of November 1988 and he said that in the Cork market in 1988 property values were still low. He said that these included both rental and capital values, and that this

was part of a trend which had commenced in the 1980's and was still pertaining at present. He said that the market did indeed start to rise at the beginning of 1989. Mr. Downing said that this puts valuers in a difficult position in trying to assess the correct net annual rental value as of 1988 in a market in which the centre was not available for trading purposes and leaves quite a hypothetical situation as to rental levels. He said that he understood that the Valuation Office had based their original valuation of £70 on a net annual value of £11,250 as opposed to a passing rent as indicated in the signed lease agreement for the unit in question of £15,000 p.a. and that the multiplier of 0.63% was used to give a rateable valuation of £70. Mr. Downing submitted that the premises is located in County Cork and the multiplier for the county was reduced to 0.5% and that this was not reflected by a corresponding reduction in the rateable valuation of the property.

Mr. Downing stated that this is a peripheral property which is located on the edge of the development and that the business carried out in the shop premises is not of a strictly retail nature, that it is of a service trade where individuals bring in their shoes for repairing and where keys can be cut. A small amount of retail trade by way of ancillary items such as belts, polishes and bags does take place however. Mr. Downing said that in his experience it is a standard procedure to use open market comparisons in order to determine net annual value and it has been established that the open market rental value of the property 1993 was accepted at £7,500. He said that this was agreed between a landlord and tenant in a very contentious situation with the landlord having the full weight of a legal agreement on his side and the tenant having economic reality. He suggested that the difference in rental values between 1988 and 1993 was approximately 20%. Mr. Downing gave an analysis of his estimated rateable valuation for the subject property at £30 i.e. the net annual value in 1993 of £7,500 reduced back to 1988 levels by 20% to £6,000 using a reducing factor of 0.5% of the net annual value to give rateable valuation.

A written submission was also received on the 23rd day of August 1995 from Mr. Peter Conroy, District Valuer from the Valuation Office, acting on behalf of the respondent.

Mr. Conroy also described the property and its location in his submission and he set out the valuation history as referred to above. He also said that the passing rent in the subject case is a concessionary rent and does not conform with the definition of N.A.V. as laid down in Section 11 of the 1852 Act and Section 5 of the 1986 Act. He said that the valuation is fair and equitable in that it had been assessed in accordance with these provisions and that it is comparable with the valuations of other tenements of a similar function which have been recently revised.

Mr. Conroy said that the valuation of £70 was agreed at 1990 First Appeal. By way of comparisons Mr. Conroy set out details of five units in the subject shopping centre in relation to rental levels. He said that he understands that with the exception of Unit 26, all units are paying full 100% rents and that any other units not doing so are in breach of their lease agreement. Mr. Conroy gave an analysis of the valuation of the subject property as follows:

Area: 417 sq.ft. @ £36.00 psf	=	£15,012
Allow adjustment for 1990 - 1988 Say	=	£14,000
NAV: £14,000 @ 0.5%	=	£70.00

Oral Hearing:

The oral hearing took place in City Hall, Cork on the 6th day of September 1995. Mr. James Riordan, Solicitor of Messrs. Horgan & Company appeared on behalf of the appellant and Mr. Conroy appeared on behalf of the respondent. Mr. Downing and the appellant also gave some evidence.

In the course of the hearing, it quickly emerged that it is very difficult to determine net annual value of the subject premises because there are current negotiations by many tenants in the shopping centre and the Tribunal understands from the evidence of Mr. Riordan that reductions in the order of 50% of the lease rents have been agreed in at least three cases. There was, however, evidence that unit No. 28 has recently been let on the open market to a tenant who has agreed to pay the sum of £9,000 p.a. for a term of two years.
In reaching its determination the Tribunal wishes to emphasise that it is not at all happy about what the level of rental values are and if the situation changes upwards or downwards it is open to either party to seek to have the valuation of the subject premises revised at an early date.

Taking the foregoing and all of the evidence into consideration the Tribunal determines a net annual value of the subject premises at £9,500. Applying a ratio of 0.5% rateable valuation is determined at £47.50, say £48.