Appeal No. VA95/1/104

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Champion Sports Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Shop (ground floor) and basement at Map Ref: 44, Grafton Street, Ward: Mansion House, County Borough of Dublin
Quantum - Passing rent, tone of the list

B E F O R E

Veronica Gates	**Barrister (Acting Chairman)**
Fred Devlin	**FRICS.ACI Arb.**
Con Guiney	**Barrister**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF JANUARY, 1996

By Notice of Appeal dated the 25th day of April 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £790 on the above described hereditament.

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

"the rateable valuation as determined by the Commissioner of Valuation is excessive and inequitable having regard to the provisions of the Valuation Acts and on other grounds also."

The Property:
The premises is part of the former Grafton Court shopping arcade converted to a single retail unit in 1990 and formerly occupied by Xtra-Vision Plc. It is located on the eastern side of Grafton Street in the section between South Anne Street and St. Stephen's Green and less than a mile south of Dublin city centre. The appeal concerns the ground floor and basement sections only. The accommodation comprises the following agreed floor areas:-

Ground floor	-	3,180 sq.ft.
Basement	-	820 sq.ft.

Title:
The property is held under a lease dated 14th March 1990 for 35 years from 20th March 1990 at an initial rent of £170,000 per annum, the lease incorporating five year rent reviews. The lessee is liable for rents, repairs and insurance.

Services:
All main services are connected to the property.

Valuation History:
Prior to 1993 Revision the property comprised a shopping arcade containing 21 shop units with a total rateable valuation of £860. These units were all amalgamated to form a single shop and the rateable valuation was fixed at £950. At first appeal the valuation was reduced to £790.

Written Submissions:
A written submission was received on the 13th day of December 1995 on behalf of the appellant from Mr. Patrick Hennigan, BSc. and Mr. Joseph Bardon, Dip. E. Econ. of Hennigan & Company, 23 Upper Mount Street, Dublin 2.

In the written submission, details of the subject premises were set out, including details on construction, accommodation and title, valuation history, situation and description of premises.
In relation to factors effecting rateable valuation it was stated that the tone of the list was the primary factor to be considered in valuing the subject premises. It was stated that following a complete revaluation of commercial premises in both Grafton Street and Henry Street, levels of £110 and £95 per square foot were strictly maintained with nominal reductions being

granted in a small number of cases. It was argued that it would be unfair to ignore the established tone of the list in the subject case and that if the rateable valuation in this case is established by reference to a notional rent based on the 1990 rent on the entire building and not on the tone of the list it would result in occupiers who had lower passing rents in 1988 than the established NAV's seeking to have their rateable valuations reviewed. It was also stated in the written submission that the subject had an irregular shape and a narrow street frontage. Taking into account these factors an estimate of net annual value and rateable valuation as set out below was proposed.

Estimate of NAV

Ground floor				
	Zone A	217 sq.ft. @ £110.00	=	£ 23,870
	Zone B	340 sq.ft. @ £ 55.00	=	£ 18,700
	Zone C	309 sq.ft. @ £ 27.50	=	£ 8,498
Balance				
	Retail	1,368 sq.ft. @ £13.75	=	£ 18,810
	Office	74 sq.ft. @ £ 6.00	=	£ 444
	Stores	872 sq.ft. @ £ 5.00	=	£ 4,360
Basement				
	Stores	820 sq.ft. @ £ 5.00	=	£ 4,100
		Total	=	£78,782
				x 0.63%
				£496.32
Allow for deficiencies outlined above - Say 5%				£ 24.82
				£471.50
		Say RV	**=**	**£470.**

A written submission was received on the 12th day of December 1995 from Mr. Tom Cuddihy, District Valuer with 28 years experience in the Valuation Office on behalf of the respondent.

In his written submission, Mr. Cuddihy described the subject premises and its valuation history, tenure and services. He set out his calculation of the rateable valuation based on the passing rent and the rate per square foot as set out below.

Valuation
Method 1

Passing rent for entire premises as at March 1990	=	£170,000
Less rent for upper floors as at March 1990	=	£ 32,000
		£138,000

Adjust to November 1988 Say £125,000
Est. NAV = £125,000 x 0.63% = £787.50
Say = £790.

Method 2

Ground floor	=	3,180 sq.ft. @ £38 psf =	£120,840
Basement	=	820 sq.ft. @ £ 5 psf =	£ 4,100
			£124,940

Est. NAV = £125,000 x 0.63% = £787.50
Say = £790.

Mr. Cuddihy supplied four comparisons as part of his original précis and these are summarised below. He also supplied additional comparisons of the four highest passing rents and the four lowest passing rents on Grafton Street in addition to details of the six premises nearest the subject on which £110 per square foot applied.

Summary of comparisons:-

1) No. 40 Grafton Street
89/3 First Appeal

Ground floor
Zone A - 330 sq.ft. @ £110.

Ground floor overall 912 sq.ft. @ £65 psf.
RV £410.

2) No. 42 Grafton Street
Ground floor
Zone A - 459 sq.ft. @ £110.

Ground floor overall 2,047 sq.ft. @ £47 psf.

RV £710.

3) No. 43 Grafton Street
Ground floor
Zone A - 424 sq.ft. @ £110.

Ground floor overall 2,410 sq.ft. @ £42 psf.
RV £755.

4) No. 45 Grafton Street
Ground floor
Zone A - 300 sq.ft. @ £110.

Ground floor overall 778 sq.ft. @ £69 psf.
RV £360.

<u>Oral Hearing:</u>
The oral hearing took place on 19th day of December, 1995 following an application for discovery of documents which was heard before the Chairman of the Tribunal on the 18th August, 1995 and continued on the 29th September, 1995.

Aindrias O'Caoimh, Senior Counsel instructed by Ivor Fitzpatrick & Company, Solicitors with Mr. Pat Hennigan and Mr. Joe Bardon of Hennigan & Company represented the appellant. Donal O'Donnell, Senior Counsel instructed by the Chief State Solicitor with Mr. Tom Cuddihy, Appeal Valuer and Mr. Jim McAndrew, Staff Valuer represented the respondent.

In his opening remarks Mr. O'Caoimh pointed out that the subject premises were valued out of line by reference to other retail premises on Grafton Street. He submitted that the Valuation Office had established the Zone A rent of £110 per square foot for Grafton Street and under the circumstances the appellant had a right to expect their premises to be valued in a similar manner. Once the Commissioner of Valuation had established a tone he was not free to depart from it as to do so would be improper and unfair.
Mr. O'Caoimh also referred to previous discovery proceedings in relation to this appeal and said that notwithstanding the fact that the Commissioner of Valuation had not complied fully with the Order for Discovery, the appellant was prepared to proceed with the appeal on the basis of the evidence provided by the Commissioner of Valuation.

Mr. Bardon giving evidence on behalf of the appellant outlined the valuation history of the hereditament and the evolution of the Zone A tone of £110 per square foot. Having regard to the fact that the subject property was a retail shop, there was no valid reason in his opinion to value it any differently from other shops in the immediate area. The only premises in Grafton Street not valued on a zoning basis were banks, shops in arcades and department stores as they were considered to be non typical. He further suggested that an allowance should be made for the somewhat irregular shape of the subject property in that it had a very narrow frontage and excessive depth.

Mr. Bardon outlined his valuation approach whereby he valued the shop in accordance with the Valuation Office measuring code. The areas he used were discussed with Mr. Cuddihy but under cross examination he conceded that the areas had not been specifically agreed.

Mr. Bardon under cross examination by Mr. O'Donnell said that in this instance the passing rent ought to be ignored in determining the net annual value. He had relied on a Zone A tone of £110 per square foot solely and had not analysed any of the evidence provided to him by the Valuation Office on an overall rate per square foot basis.

Mr. Cuddihy on behalf of the respondent in his direct evidence said that he had first looked at the rent passing and the configuration of the premises in order to arrive at this opinion of appropriate net annual value. Having done so he came to the conclusion that the zoning method in this instance was not appropriate and hence he had calculated the net annual value on an overall rate per square foot. He also made the point that zoning was merely a valuation tool and used so as to compare like with like. In his opinion the rent actually being paid was primary evidence and ought to be used as the basis for determining net annual value.

Mr. Cuddihy in response to questions from Mr. O'Caoimh outlined his valuation methodology in this instance. He had looked at the passing rent and considered it to be a true reflection of the open market. He then made adjustments to exclude the rent attributable to the first floor space which had a separate rateable valuation and then reduced the resultant figure by 10% to bring it back to November 1988 levels. Having carried out this exercise he had arrived at an net annual value of £125,000 which by mathematical calculation was equivalent to an overall rate of £38 per square foot on the ground floor retail space.

In response to a question from the Tribunal Mr. Cuddihy stated that he knew of no other premises on Grafton Street valued at an overall rate per square foot other than banks and department stores. He further said that he knew of no other premises valued on a Zone A rate in excess of £120 per square foot.

Mr. O'Donnell in his closing remarks drew the Tribunal's attention to previous cases decided by it and which supported the principle that passing rent is primary evidence of the net annual value as defined in Section 11 of the Valuation (Ireland) Act 1852. If there was a significant difference in an net annual value determined by reference to the zoning method and that determined by reference to the passing rent, it would be intrinsically wrong to adopt the net annual value arrived at by the zoning method. Rent, he pointed out, is determined by market forces and must be considered the primary evidence. In this case the appellant was asking the Tribunal to set aside the passing rent and to determine the net annual value at a level which by comparison with the rent would be at an absurdly low level.

Mr. O'Caoimh refuted Mr. O'Donnell's remarks by saying that the respondent had not addressed the central point of the appellant's case, namely that all the shops in the immediate vicinity of the subject had their rateable valuations assessed on a Zone A rate of £110 per square foot. He questioned why Mr. Cuddihy had valued the subject property on an overall rate per square foot while valuing other shops in the vicinity by the zoning method. The Commissioner of Valuation had an obligation to compare like with like and in this instance there was no good reason to depart from the norm, that is, to determine the net annual value by using the Zone A tone of £110 per square foot. Accordingly, therefore he asked the Tribunal to determine the rateable valuation on this basis and in accordance with Mr. Bardon's evidence.

Determination:

This appeal has raised issues which go to the root of the valuation process and the operation of the Valuation Act, 1986.

During the course of the appeal evidence was given as to how the Valuation Office after the 1986 Act was enacted carried out an exhaustive examination of rental values and rateable valuations on Grafton Street and Henry Street. As a result of this examination and analysis, a relationship was established between net annual value as defined in Section 11 of the 1852 Valuation (Ireland) Act and rateable valuation. In essence the conclusion was that rateable valuation was equivalent to 0.63% of the net annual value as at November 1988. Based on this finding a large number of hereditaments on Henry Street and Grafton Street were revised and a tone of the list established which generally speaking has found widespread acceptance by the rating authority, rate payers and their advisers.

It is axiomatic in any such analysis as carried out by the Valuation Office that in individual situations the relationship between the net annual value and rateable valuation will vary above and below the median figure which in this instance is 0.63%. However, the use of this figure has enabled a tone of the list to emerge that gives rise to the uniformity as envisaged under the provisions of the 1986 Act. It is accepted rating practice that the tone of the list when established prevails until such time as either a general revaluation or a fundamental change in underlying circumstances that prevailed at the time when the tone of the list was established occurs. Neither of the above happenings are relevant to this appeal nor indeed was any submission made to this effect at the oral hearing.

It is common valuation practice that when analysing rental values of retail premises in city centre locations the net lettable areas are zoned in depth of 20 ft so as to ensure that all assessments are made on a uniform basis. From time to time anomalies may arise and it is the skill of the valuer to identify the reasons for such anomalies as they occur and make whatever allowances are considered appropriate or necessary under the circumstances that prevail.

At the oral hearing much discussion and argument centred on the use and relevance of various property indices such as those published by Jones Lang Wootton and the Society of Chartered Surveyors which are issued on a regular basis. As a general rule the Tribunal considers such indices to be of limited assistance in individual cases as they are based on information relating to a basket of properties in various locations in Dublin and elsewhere. Nonetheless they do serve as an indicator of general trends and as such they do serve a purpose. However, their primary aim is to enable investors to compare the performance of other areas of investment such as equities and gilts.

The respective valuers in this appeal have relied to a large extent on the same body of evidence and yet have arrived at significantly different opinions of net annual value. The appellants submission is that the accepted tone of the list for this section of Grafton Street is represented by a Zone A rate of £110 per square foot and that there is no valid reason to depart from this figure which is supported by the evidence of several other shops close to the subject property.

The respondent on the other hand has taken the rent paid in accordance with the new 35 year lease granted in 1990 and has adjusted it to 1988 levels in order to arrive at the net annual value. Having done so the resultant figure was analysed to give an overall rate per square foot in the order of £38 per square foot. Analysis of the respondents net annual value on a zoning method would give a Zone A rate of £160 per square foot according to Mr. Bardon.

The rent upon which Mr. Cuddihy relies was agreed in 1990 some two years after the research carried out by the Valuation Office was completed. Whilst evidence coming to light after the relevant date is admissible the weight to be attached to it is less than that given to other evidence available at or about the time the research was carried out by the Valuation Office. An examination of the evidence submitted by both parties shows that the relationship between net annual value and rateable valuation varies quite significantly above and below the mean figure of 0.63%. Much of this evidence was available at or about the time the research was carried out by the Valuation Office.

Under examination Mr. Cuddihy said that the highest Zone A rate applied to Grafton Street was £120 per square foot and further that to the best of his knowledge no other property on Grafton Street was valued on an overall rate per square foot other than possibly banks or department stores. The evidence submitted by both parties shows that the shops on either side of the subject hereditament are valued at a Zone A rate of £110. Whilst both of these shops are somewhat smaller than the subject they are of a more regular shape with large frontages on to Grafton Street.

The dilemma in this appeal is real and indeed there is no easy solution to it. Mr. O'Donnell drew the Tribunals attention to two cases decided by the Tribunal, a further case in England and Ryde on Rating (see references in the appendix attached to this judgement) and forcefully made the point that passing rent was *prima facia* evidence of net annual value.

Whilst not departing from the principles contained in the judgements or in "Ryde on Rating", the Tribunal however must have regard to the provisions of the 1986 Act and if necessary uphold the tone of the list against the evidence of what may be either an unusually high or low rent as the case may be. In passing the Tribunal notes that the present occupier was in receipt of a reverse premium of £100,000 when taking an assignment of the lease some two years ago and notes also that the rent agreed under the lease in 1990 has risen from £170,000 per annum to £184,000 in 1995. Neither party let it be said drew any conclusions from this information nor indeed has the Tribunal.

In considering the evidence in this case the Tribunal has had regard to the following statement in *Poplar Metropolitan Borough Assessment Committee v. Roberts (1922) 2AC page 93; AER Rep. 191* "Equality of rating being the main objective, a valuation officer, when preparing or
revising his valuation list, should consider all such evidence as is available and then by the exercise of his skill and judgement ascertain an assessment for each hereditament on a uniform basis". In this instance there is ample evidence that virtually all the retail hereditaments in this section of Grafton Street are valued on the basis of a Zone A rate of £110. At no stage during the appeal did the respondent seek to argue that these other assessments were incorrect. By implication therefore these rateable valuations are considered to be fair and in conformity with the provisions of the various rating enactment's and in particular Section 5 of the 1986 Valuation Act.

Having considered all the evidence and submissions made by the parties the Tribunal has come to the conclusion that it would be inequitable to depart from the established tone of the list in this instance. It further decides that on the basis of the evidence adduced by the respondent to the effect that no other retail outlet of a similar size has been valued on an overall square foot basis that it is only fair that the subject property should also be valued by the zoning method.
The Tribunal accepts the respondent's evidence that there are few shops of this size on Grafton Street and finds no merit in the appellant's 5% downward adjustment for quantum. Much debate and discussion took place about the benefit derived from the display window along the arcade frontage. The Tribunal is not convinced that a hypothetical tenant would pay any additional rent for this feature.

The Tribunal having very carefully considered all the evidence submitted and the argument adduced determines that the appropriate net annual value of the subject property having regard to Section 11 of the 1852 Valuation (Ireland) Act and the provisions of Section 5 of the 1986 Valuation Act be as follows:

Net annual value	£87,000
Rateable valuation at 0.63%	£548

The above net annual value may be analysed as follows:

Ground floor retail space

Zone A	217 sq.ft. @ £110	=	£23,870
Zone B	340 sq.ft. @ £55	=	£18,700
Zone C	309 sq.ft. @ £27.50	=	£ 8,498
Remainder			
	2314 sq.ft. @ £13.75	=	£31,817
Basement			
Stores	820 sq.ft. @ £5	=	£ 4,100
	Total	=	£86,985
	Say	=	£87,000
Rateable valuation @ 0.63%		=	**£548.**

Appendix I

(1) Ryde on Rating (Current Edition) pages E403, E428 - E430

(2) VA94/2/036 - Diarmuid Brereton t/a Lorcan Brereton Limited v. Commissioner of Valuation.

(3) VA95/1/038 to VA95/1/041 - David Allen Limited v. Commissioner of Valuation.

(4) F.W. Woolworth & Company Limited v. Moore (Valuation Officer) [1978] R.A. 186