

Appeal No. VA95/3/001

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

Quills Woollen Market

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Ref: 108.109 (part of) Unit 3, Mezz. 7.8.23, Patrick Street, Ward: Centre West, County Borough of Cork
Quantum - Unit in poorly trading S.C.

B E F O R E
Veronica Gates

Barrister (Acting Chairman)

Paddy Farry

Solicitor

Patrick Riney

FRICS.MIAVI

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF JANUARY, 1996

By Notice of Appeal dated the 15th day of August 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £200 on the above described hereditament.

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

- "1) the valuation is excessive and inequitable
- 2) the valuation is bad in law."

The Property:

The property is situated partially within the Savoy Shopping Centre on Patrick Street, Cork. Multiple stores occupy 67% of available retail units on this street, with 46% of those being Irish and 21% UK. The property is on a number of levels and is an adjunct to the main shop called "Quills Woollen Mills" which has substantial frontage on Patrick Street and is the subject of Tribunal Appeal VA95/1/045.

Tenure:

The subject premises is held on a 20/5 year lease from September 1992 at the following rents:-

Year 1	£22,500
Year 2	£26,500
Year 3 to 5	£29,000.

Of these rents £3,000 relates to units 7a, 7 and 8 of the Savoy Centre. In addition to the rent a service charge is paid by the appellants.

Valuation History:

The previous valuations, set at 1978 First Appeal, were £125 and £200, a total of £325.

Written Submissions:

A written submission was received on the 15th day of November 1995 from Mr. Desmond M. Killen, FRICS FSCS IRRV, a Fellow of the Society of Chartered Surveyors in the Republic of Ireland and a Director of Donal O'Buachalla & Company Limited, with 32 years experience as a valuer, on behalf of the appellant.

Mr. Killen said that both parties are agreed on the location and extent of the hereditament. He said that the hereditament is held under lease at a rent of £26,500 from October 1992, which was to be increased to £29,000 in October 1995. Mr. Killen said that his valuation was based on the open market rent of £26,500 from November 1992. He said in his opinion that a downward adjustment should be made to the 1992 rent for the following reasons:-

- (1) In keeping with adjustments made by the respondent on other rents and he referred to his comparisons set out below.

- (2) To provide equity and to value the premises *rebus sic stantibus* viz. rear shop to Patrick Street and unused access to Savoy Centre, which itself is not trading well.

He therefore submitted the valuation as follows:-

(a)	Shop First floor	2,411 sq.ft. @ £5.00 =	£12,055
	Shop Second floor	656 sq.ft. @ £4.00 = £	2,624
	Stores Second floor	247 sq.ft. @ £2.50 = £	618
			<u>£15,296</u>
(b)	*Ground floor	398 sq.ft. @ £5.00 = £	1,900
	Mezzanine	664 sq.ft. @ £5.00 = £	3,320
			<u>£ 4,310</u>
		NAV	£20,606
		RV	£130.

*The lease areas of (b) above, subject to confirmation are:

Ground floor 246 sq.ft.
First floor 594 sq.ft.

Mr. Killen gave details of four comparisons in Appendix A of his written submission which is appended to this judgment as Appendix 1.

A written submission was received on the 14th day of November 1995 from Mr. Terry Dineen, District Valuer with 20 years experience in the Valuation Office, on behalf of the respondent.

In his written submission, Mr. Dineen described the property, its location and valuation history as set out above. Mr. Dineen summarised the subject premises as comprising:-

- (1) 2,411 sq.ft. at first floor used as display of young casual wear and some footwear.
- (2) 656 sq.ft. at the next higher level displaying ladies fashions with 247 sq.ft. storage at rear.
- (3) Unit 7a, Savoy Centre, 398 sq.ft. unused.
- (4) Unit 7 and 8, Savoy Centre, 664 sq.ft. mezzanine unused.

He said that items 3 and 4 were returned to Powers, the landlords of the Savoy Centre, in January/February 1995 but remain in the hereditament for this appeal as the operative date is November 10th, 1994. Mr. Dineen gave details of the rent as set out above and said that a service charge is paid to the landlord, however the services provided for in the service charge

had never been specified. Mr. Dineen set out his calculation of rateable valuation as follows:-

Valuation

Portion retained by Quills

First floor sales:	2,411 sq.ft. @ £8.00 =	£19,288
Second floor sales:	656 sq.ft. @ £6.00 =	£ 3,936
Second floor store:	247 sq.ft. @ £3.00 =	<u>£ 741</u>
		<u>£23,965</u>
	Say £24,000 x 0.63% =	£151.20
	Say	<u>£150.00</u>

Portion returned to landlord

Savoy Centre	Ground floor: 398 sq.ft. @ £12.00 =	£4,776
	First floor: 664 sq.ft. @ £ 6.00 =	<u>£3,984</u>
		<u>£8,760</u>
	Say £8,000 x 0.63% =	£50.40
	Say	<u>£50.00</u>
	Total =	£200.

Mr. Dineen gave details of three comparisons which are summarised below:-

(1) Merchant's Quay Shopping Centre

Optician Superstore and H.C.R .chemists are first floor units of about 2,000 sq.ft. valued at £22 psf. This indicates first floor levels in Patrick Street but otherwise is not a close comparison as Merchant's Quay is a much finer centre with higher rental levels than the Savoy Centre.

(2) Restaurant No. 71 Patrick Street

Held on a 31/5 year lease from May 1991 at £17,500 per annum.

Devalues:

First floor: 1,627 sq.ft. @ £8.50
Second floor: 656 sq.ft. @ £6.00.

(3) Hickeys unit in Savoy Centre

A fabric shop at the rear of the first floor (mezzanine) area. The August 1992 rent for this unit, unchanged from the August 1987 rent, is £28,175 per annum.

Devalues:

71 sq.ft. @ £12.00 = £852
3,895 sq.ft. @ £7.00 = £27,265.

In summary Mr. Dineen said that the net annual value and rateable valuation of this unit were supported by the evidence of rent passing and of unchanged levels in the Savoy Centre

between 1987 and 1992. He said that if the service charge is accepted as a rent the hereditament should have a higher rateable valuation.

Oral Hearing:

The oral hearing took place in Cork on the 22nd day of November 1995. Mr. Desmond M. Killen, appeared for the appellant accompanied by Mr. Keogh, Mr. Anthony Grace (Accountant) and Padraig Quill, the owner of the subject property. Mr. Terry Dineen appeared on behalf of the respondent.

Mr. Killen stated that the subject property was held under a lease with a passing rent of £26,500 from October 1992 which was increased to £29,500 in October, 1995. He stated that the premises comprised part of Unit 7, the mezzanine floor over 7 & 8 and Unit 23 within the Savoy Centre and that the areas are agreed between the parties. Mr. Killen said that the ground floor and the mezzanine of the subject property was originally leased to provide the access to the upper floors of the Patrick Street shop from the Savoy Centre, but that this entrance was never built. He described the subject premises as comprising a ground floor of 398 square feet and a mezzanine floor of 664 square feet. He stated that the Savoy Centre was not trading well and there were quite a number of units unlet where business had folded. He said that originally the rent paid from 24th August, 1992 to 21st October, 1992 was £4,726.03 and that for an eighteen month period to April, 1994 the rent was £26,500 per year. He stated that there was also a service charge payable and insurance payable, and a schedule of the payments in respect of service charges, insurance and rent was handed into the Tribunal. Mr. Killen argued that the rent passing in 1992 should have been adjusted back to 1988. He said as the Savoy Centre was trading badly, and because the appellant has enhanced the value of the property through the connection with Patrick Street he had made adjustments to the November 1992 rent namely, the service charge should not be considered as part of the rent and secondly, as there is an increasing rent each year on the premises and therefore it is necessary to adjust back to November 1988. He stated that Unit 7 and 8, Savoy Centre, that is, the ground floor and the mezzanine had been handed back to Powers in January or February 1995. He argued that comparison No. 2 in the précis of evidence on behalf of the respondent, a restaurant at 71 Patrick Street had since closed because it could not pay the rent.

Mr. Dineen stated that in this case we have evidence of passing rent. He said that the average rent of the first term amounted to £27,100 and that £27,100 was the opening rent in September, 1992 because it was a stepped rent. Mr. Dineen also contended that the service

charge was in the nature of a further rent and argued that if the service charge was accepted as a rent the subject should have a higher rateable valuation.

Determination:

The Tribunal having considered the evidence adduced and the comparisons offered and the précis submitted is of the opinion that the subject premises were occupied by the appellant purely to provide additional floor space to the main premises trading at Patrick Street. The service charge paid is in the nature of a penalty as having no access from Savoy Centre, the appellant may be paying for some services that are not actually provided. In considering all the evidence the Tribunal is mindful of the poor trading of the Savoy Centre and the number of unoccupied premises located therein.

The Tribunal is of the opinion that the rateable valuation of the premises should be £130 and so determines.

