

Appeal No. VA95/5/016

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

McCabe's Wine Warehouse Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed shop at Map Reference 80a.80b1, Vernon Avenue, Ward: Clontarf East C,
County Borough of Dublin
Quantum - Passing rent

B E F O R E

Liam McKechnie

S.C. Chairman

Patrick Riney

FSCS.FRICS.MIAVI

Rita Tynan

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF OCTOBER, 1996

By Notice of Appeal dated the 17th day of October 1995 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:-

- "1. That the valuation is excessive, inequitable and bad in law.
2. That proper regard should be had to Section 5 of the Valuation Act 1986.
3. The rateable valuation is excessive by reference to any realistic estimate of net annual value.
4. The rateable valuation should be £45 based on 0.63% of the late 1988 rental value of £7,200 per annum."

This appeal was heard by way of oral hearing on the 22nd day of May 1996. Mr. Eoin O'Buachalla of Eoin O'Buachalla & Company, Chartered Valuation Surveyors represented the appellant and Mr. Tom O'Flynn, Valuer appeared on behalf of the Commissioner. Having taken the oath, both Valuers adopted as their evidence in chief their respective written submissions which previously had been exchanged by them and received by this Tribunal.

The following facts about the property are not in dispute.

The Property:

(a) Location

The property is located in Clontarf at the junction of Seafield Road West and Vernon Avenue within 2½ miles of Dublin city centre. In the same development there are two other retail units at ground floor level with an accountant's office at first floor level.

(b) Description

The property is a ground floor retail outlet known as McCabe's Wine shop and off-licence. The shop has a retail area of 682 sq.ft. with a rear store of approximately 106 sq.ft..

(c) Tenure

The property is held under a 35 year lease with 5 year rent reviews from 1/4/89 on an FRI basis. The rent is £8,000 per annum, payable quarterly in advance.

(d) Valuation History

In October 1993 the property was revised and rateable valuation assessed at £78. In December 1993 an appeal was lodged against the assessment and at first appeal the valuation was reduced to £70. It is against this determination of the Commissioner of Valuation that an appeal lies to the Tribunal.

Submissions of Both Parties:

Mr. Eoin O'Buachalla gave details in regard to the location, description and accommodation of the subject property. He referred in particular to the importance of referring to a passing rent under a lease in order to access a reasonable net annual value, to arrive at the correct rateable valuation. He quoted a number of Valuation Tribunal judgments, in particular **VA94/2/036 - Diarmuid Brereton t/a Lorcan Brereton Limited v. Commissioner of Valuation**, where the Tribunal stated *inter alia* that "the Tribunal is satisfied that passing rent is the best evidence of net annual value". He also referred to the importance of passing rents in other decisions such as **VA95/1/038 - David Allen Limited v. Commissioner of Valuation**, **VA95/1/039**, **VA95/1/040** and **VA95/1/041 - David Allen v. Commissioner of Valuation**.

Mr. O'Buachalla stated that the subject property only had a frontage of approximately 19 feet whilst one of the main comparisons referred to in detail by the Commissioner, i.e. the Xtra-Vision unit on the corner, had an overall frontage of approximately 48 feet. This gave the corner unit an obvious major advantage over the subject property and could not be referred to as a relevant comparison. He also referred to comparison no. 2 in the respondent's submission, i.e. Belgrove Newsagents. He stated that this property had a much higher profile than the subject and was about half the size. In regard to comparisons 3 and 4, he also did not consider them to be relevant.

Mr. Tom O'Flynn, on behalf of the Commissioner of Valuation stated that there were about 20 car spaces on this site, most of which were outside the subject property. He referred in some detail to his submission and stated that when arriving at a fair net annual value, account should not be taken of restrictive covenants. He stated that the rent had increased by 37% in 5 years and did not accept the figure of 10% reduction on the passing rent. However, he did accept that the passing rent was very relevant, but considered that the net annual value should in this instance exceed the passing rent of £8,000. He stated that there was marginally more road frontage for this development to Seafield Road West than to Vernon Avenue. He also pointed out that the rent was out of line with adjoining properties.

Mr. O'Buachalla stated that there were two other off-licences in the area which created a lot of competition for the subject property's business. He also stated there was no evidence of a connection between landlord and tenant. He stated that in his opinion the correct breakdown of the net annual value allowing for a reduction in the passing rent was as follows:-

Shop	680 sq.ft. @ £9.81 psf	= £6,670
Store	106 sq.ft. @ £5.00 psf	= £ 530
Estimated 1988 NAV		= £7,200
£7,200 @ 0.63% RV		= £45.

Findings & Determination:

The Tribunal have considered all the evidence submitted and have given due consideration to the submissions of both the appellant and respondent. The Tribunal considers that a very reasonable case has been made by the appellant's Valuer for a substantial reduction from the rateable valuation of £70 assessed by the Valuation Office. The main reasons for the Tribunal's decision would be the following:-

1. The passing rent of £8,000 per annum exclusive from 1st April 1989.
2. The persuasive value of a considerable number of Valuation Tribunal judgments adduced by the appellant.
3. The comparisons submitted by the respondent did not support the net annual value which was assessed.

In view of the foregoing and having given due consideration to the evidence given at the oral hearing, we determine the correct rateable valuation of the subject to be £45.

