

Appeal No. VA97/6/010

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

Dr. Paul W. Murphy

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Showroom at Map Reference 10, William Street South, Royal Exchange B, County
Borough of Dublin

Quantum - Sought to raise an error in evidence at a previous hearing

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Michael Coghlan - Solicitor

Member

Anita Geraghty - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF NOVEMBER, 1998

By Notice of Appeal dated the 7th day of October 1997 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £185 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the valuation is excessive, inequitable, unwarranted and bad in law and that the Tribunal judgment on the 19th October 1995 VA93/3/078 - *Fashion Traders* may have been influenced by some inaccurate information.

The appeal proceeded by way of an oral hearing, which took place on 30th March 1998 in the Tribunal offices in Dublin. Mr. John C.Elliott, F.S.V.A., A.R.I.C.S., A.S.C.S., A.C.I.Arb., of Elliott & FitzGerald, Auctioneers, Estate Agents, Valuation Surveyors and Property Consultants represented the appellant. The respondent was represented by Mr. Philip Colgan, valuer with 29 years experience in the Valuation Office.

The appellant submitted, by way of preliminary issue, that the decision of the Valuation Tribunal namely Appeal No: VA94/3/078 - *Fashion Traders Limited –v- Commissioner of Valuation* delivered on the 19th October 1995 –was flawed for the following reasons, as set out in his written submission to the Tribunal.

1. The comparisons put forward by the Commissioner may have been defective and
2. In its judgment the Tribunal appears to have relied on the tone of the list to the exclusion of the primary evidence of rent on the subject, contrary to its own jurisprudence.

The Tribunal indicated that the only method available to an appellant to set aside a decision of the Tribunal was by way of a case stated to the High Court, which course of action the appellant had not taken. The Tribunal, having heard the arguments, and having considered the submissions, refused to set aside its previous decision and the appellant was so advised at the hearing. Notwithstanding this preliminary ruling of the Valuation Tribunal, the appellant was not in any way disadvantaged because the Commissioner of Valuation did not seek to rely upon or otherwise use the October 1995 decision as a supporting basis for his suggested N.A.V. The appellant then requested the Tribunal to proceed with the second ground for the Appeal, namely that of quantum.

The Property

The subject property comprises portion of the ground floor, basement, and first floor of a mid-terrace four-storey structure over basement, fronting directly onto the pavement together with a single storey return. There is a step up from the pavement to the ground floor entrance and access to the premises is through an entrance lobby, which incorporates an internal staircase. The premises are in showroom use on all floors.

Tenure

The property is held under a lease for thirty-five years from 24th August 1992, subject to the lessee paying the rates and being responsible for repairs and insurance. The annual rent so reserved is £28,000 with five-year rent reviews.

Valuation History.

The Property was revised in November 1993 at RV£185. The Commissioner of Valuation made no change at first appeal. The RV was further appealed to the Valuation Tribunal, following which appeal the RV was affirmed. (See the judgment above referred to). A further revision of the premises was requested in November 1995.

The property comprises the following agreed areas:

Ground Floor	1,980 sq.ft.
First Floor	1,674 sq.ft
Basement	1,035 sq.ft.

The shop portion of the premises has been renovated and has a glass frontage. There are stairs to the first floor and to the basement. The premises are used as a boutique trading under the name "EXACT". The premises are also situated near the junction of South William Street and Wicklow Street. There has been a general upgrading of all the buildings in South William Street, which has resulted in a general increase in its commercial activity. In addition, South William Street is generally regarded as a centre for both wholesale and retail fashion trade in Dublin. There is convenient off- street car parking.

Submissions of the parties

Mr. Elliott on behalf of the appellant stated that in his opinion the access through the internal lobby was restrictive and militated against the economic use of the front section of the showrooms at ground level. Bearing in mind the nature, condition and location of the subject premises and having regard to comparable properties the net annual value in his opinion is as follows;

Showrooms (Ground Floor)	1,980 sq.ft. @ £4.85 p.s.f.	= £9,603
Showroom/Stores (Basement)	1,035 sq.ft. @ £3.15 p.s.f.	= £3,260
Showrooms/Offices (First Floor)	1,674 sq.ft @ £2.70 p.s.f.	= <u>£4,519</u>
	Net annual Value	=£17,382
	Say	£18,000
	Rateable Valuation	
	£18,000 x .63%	= £113.40
	Say	£113

The comparisons produced by Mr. Elliott are reproduced at appendix 1.

Mr. Colgan said that the NAV on the subject was calculated by reference to the comparisons, which he adduced in his precis. He said that in recent years the street, in addition to the fashion clothing wholesalers, had attracted up-market restaurants. In addition many premises previously used as wholesalers were now used as retail outlets. These factors had led to a general increase in the level of rents attainable in the street.

His estimate of NAV and RV. was as follows:

Ground Floor Showrooms	1980 sq.ft. @ £9.00	=	£17,820
First Floor Showrooms	1674 sq.ft. @ £6.00	=	£10,044
Basement Showrooms	1035 sq.ft. @ £3.00	=	£ 3,105
	Net annual value	=	£30,969
	Say	=	£30,000
	Rateable Valuation		
	£30,000 x .63%	=	£189
	Say		£185.

Mr. Colgan's comparisons are reproduced at appendix 2.

Determination

The legislative provisions governing the ascertainment of the N.A.V. and hence the R.V. are those as set out in Section 11 of the 1852 Valuation (Ireland) Act as amended by Section 5 of the 1986 Act. Such provisions are supplemented by case law. Under the latter it is clear that there is no one definite method of ascertaining what the N.A.V. should be in any given case. There is no doubt but that a true passing rent is a factor of significant influence in determining the N.A.V. In this context two points ought to be noted with regard to the present case. Firstly, neither valuer relied as such or in any conclusive way on a passing rent as the sole basis for ascertaining what his suggested N.A.V. should be and secondly whilst there was evidence of the passing rent as of August 1992 there was not, to our satisfaction, sufficient evidence to enable us in any scientific or rational way to relate that passing rent as of August 1992 back to November 1988, which we are obliged to so do under a formula presently in use in order to convert the N.A.V. to the R.V. Accordingly in the particular circumstances of this case, whilst we have been conscious of the rent we are unable we feel to rely upon it as the fundamental basis for calculating or estimating what the N.A.V. should be.

The Tribunal however is persuaded and is satisfied that there is an amount of restricted access to the different floor levels. Consequently it has been necessary in our view to reflect that restrictive access in the resulting N.A.V. We therefore propose to put £8.00 on the ground floor, £3.50 on the first floor and £3.00 on the basement which gives a resulting N.A.V. of £24,834 which when converted gives an R.V. of £156, say £155. Accordingly the determination of the Tribunal is that the correct R.V. on the subject premises should be £155, calculated as set out below:

Ground floor showrooms	1,980 sq.ft. @ £8.00	£15,840
First floor showrooms	1,674 sq.ft. @ £3.50	£ 5,889
Basement showrooms	1,035 sq.ft. @ £3.00	<u>£ 3,105</u>
		£24,834

N.A.V. £24,834 x 0.63% = £156.45

Say £155

And the Tribunal so determines.

