

Appeal No. VA98/1/009

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

River Island Clothing Company Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. 9 Cruises Street, Ward: Shannon B, County Borough of Limerick

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Finian Brannigan - Solicitor

Member

Barry Smyth - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF NOVEMBER, 1999

By Notice of Appeal dated the 9th day of January 1998 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £425 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 appeal proceeded by way of an oral hearing that took place on the 12th day of May 1999 in the Council Chamber, Limerick County Council. The appellant was represented by Mr. Owen Hickey B.L. with by Mr. Roger Keogh ARICS of Donal O’Buachalla & Company Limited. The respondent was represented by Mr. Eamonn Marray B.L. with Mr. David Molony ARICS, a Valuer with 14 years experience in the Valuation Office. In accordance with practice and as required by the rules of this Tribunal, the parties had prior to commencement of the hearing exchanged précis of evidence and submitted same to us. Having taken the oath each valuer adopted as his evidence in chief his précis.

1. Material facts agreed or found by the Tribunal

Valuation History

In the 1996/4 revision the subject property was first valued at R.V. £425 which was appealed by Notice dated 30th November 1996. Following the appeal the Commissioner of Valuation affirmed the R.V. at £425.

Situation

The property is situated on the north-east side of Cruises Street at its junction with Todds Row in Limerick city centre. Cruises Street is a new pedestrianised shopping street comprising approximately 42 retail units completed in 1992/3. It runs from O’Connell Street to Chapel Street and is linked through to William Street and Denmark Street.

Designation

Approximately half of the street, the section from Todds Row to Chapel Street is designated under the 1991 Finance Act. The sector from O’Connell Street to Todds Row is not so designated. The subject property is in the non-designated part of the street.

The Property

The property comprises a modern (1992/1993) three storey shop premises in a corner position, with frontage to Cruises Street and Todds Row, with retail trading at ground and first floor level and storage accommodation at first and second floor level.

Accommodation

Ground Floor shop	300.6 m ² / 3,237 sq.ft.
First Floor shop and store	232.07 m ² / 2,498 sq.ft.
Top Floor store	119 m ² / 1,281 sq.ft.

Lease

The property is held on a lease from Valbury Limited to Lewis Shop Holdings t/a River Island Clothing Company Limited for a term of 20 years and 3 months from the 1st October 1995 at a commencing rent of £80,000 p.a. The tenant is responsible for all repairs and insurance. There are rent reviews at five year intervals. At the commencement of the lease the tenant obtained a six month rent free period and a contribution of £100,000 from the landlord towards the fitting out costs.

The Appellant's case

Mr. Keogh in his evidence stated *inter alia*;

1. The Commissioner of Valuation had made no distinction or an inadequate distinction between designated and non-designated units.
2. The Commissioner of Valuation has denied or insufficiently recognised the primacy of the passing rent negotiated on the open market for the subject as evidence for deriving the N.A.V.
3. The rents reserved on designated units reflect the very substantial benefits accruing to qualifying occupiers including double rent allowances and that there is no liability for rates for the first ten years.
4. That the adjustment of net annual value to open market rent on seven units in Cruises Street is as follows;

Mr. Keogh proposed a rateable valuation of £353 for the property calculated as follows:-

Passing rent - £80,000 p.a. (1995)

Allowance to 1988 @ 40%/45%

This figure of reduction derived from his analysis as set out in Appendix 1 of his submission and noted above and the Lisney and Jones Lang La Salle retail rent indices thus giving an N.A.V. of £56,000 at the agreed 0.63% and an R.V. £353.

Mr. Keogh further analysed this N.A.V and provided the following information:-

	Sq.Ft.		N.A.V. p.s.f. (£)
Ground Floor (Retail)	3,237	@	11
First Floor (Retail)	2,498	@	7
Second Floor (Stores, Staff)	1,281	@	2

Equivalent to Zone A = £30.50 p.s.f. N.A.V.

Under cross examination Mr. Keogh provided the following information:-

- O'Connell Street, Limerick is a better retail area than Cruises Street with department stores, banks, bus services and taxis.
- The rents in the designated areas of Cruises Street are somewhat higher than in the non-designated area but this does not show that the non-designated rents are depressed, in fact they are freely agreed rents.
- He accepted that there was a reasonably consistent £36.00 p.s.f. Zone A on comparisons of N.A.V.'s in Cruises Street. While he accepted that zoning was a valid approach he did not think that in this case it was necessarily correct and the passing rent indicated that an N.A.V. of £36.00 p.s.f. Zone A is not correct.

The Respondent's Case

Mr. Molony in his evidence stated *inter alia*;

1. That he had based his estimate of N.A.V. of these premises on a Zone A, N.A.V. of £36.00 p.s.f. which was in line with his comparisons and the established tone of the list.
2. That the Bewley's premises is practically identically located to the subject premises.
3. That he focused on the zoning approach because of the tone of the list.
4. All other units were agreed on first appeal at £36.00 p.s.f. Zone A.
5. Passing rent is only one factor in considering N.A.V. and rateable valuation.
6. N.A.V.'s in designated shops are deflated and do not reflect the advantages of designation including a rates free period of ten years and double rent allowances.
7. That there is no justification for the appellants Zone A of £30.00 p.s.f. and that the tone of the list quoted as £36.00 p.s.f. in the Dorothy Perkins shop (appellant's comparison) actually devalues at £38.00 p.s.f.

Mr. Molony calculated his rateable valuation as follows;

Ground Floor

Shop	Zone A	:	457 sq.ft. @ £36.00 p.s.f.	=	£16,452
Shop	Zone B	:	712 sq.ft. @ £18.00 p.s.f.	=	£12,816
Shop	Zone C	:	771 sq.ft. @ £ 9.00 p.s.f.	=	£ 6,939
Shop	Balance	:	1,297 sq.ft. @ £ 4.50 p.s.f.	=	£ 5,836

First Floor

Shop/Store : 2,498 sq.ft. @ £ 9.00 p.s.f. = £22,482

Top Floor

Store : 1,281 sq.ft. @ £ 2.00 p.s.f. = £ 2,562

Total £67,087

Estimated N.A.V. £67,087 @ 0.63% = £422.64

Say = £425

In cross examination Mr. Molony provided the following:-

- That he had considered the passing rent as being unreliable.
- That one end of the street was designated to make the part of the street further from O'Connell Street, more attractive to tenants.

Determination

The Tribunal has stated that passing rent is a primary factor in calculating N.A.V. and thus R.V. In this instance there is a passing rent agreed at an arms length between the parties as at 1995 and there is absolutely no evidence to indicate that it might be unreliable as suggested by Mr. Molony.

There is a very clear locational and physical similarity between the subject premises and No. 10 Cruises Street, i.e. Bewleys. They are on facing corners of the street, have virtually identical ground and first floor areas and the top floor of the subject property has a floor area similar to the sum of the top floor and basement of Bewleys. Bewleys however is designated. The rent reserved in Bewleys dating from 1992 is £115,000 p.a. whereas the subject rent dating from 1995 is £80,000 p.a. Each is an arms length transaction. The premises are basically similar and they are as much in the same location as any two properties can be. The difference in the rent therefore presumably reflects the value to the tenant of designation and if the rental value of a property is higher because it is designated or conversely lower because it is not designated surely the N.A.V. should be similarly different. Having double rent

allowance and being rates free for ten years must be factors that affect the rent a tenant will pay for premises which are to all intents and purposes identical except for designation.

Applying a direct comparison between the rent reserved in Bewleys and its rateable valuation and the rent reserved on the subject premises would give a rateable valuation for the subject premises of £337 which is actually less than that proposed by the appellant.

The Tribunal has some reservation on the application of zoning in this instance particularly when comparing reasonably consistent ground floor shops having floor areas in the order of 1,800 sq.ft. with the subject premises which has a ground floor area of almost double that. In addition the subject is a corner premises and has considerable upper floor areas attached.

The appellant provides useful information on the ratio between reserved rent and N.A.V. for three non-designated premises and three designated premises and in view of the fact that the subject property is non-designated is guided by the former. The adjustment between N.A.V. and R.V. varies from 31% to 34% to 41% and in this instance we have decided to be guided by the lowest of these figures which related to a rent struck in 1995 the same year as that for the subject property.

The Tribunal therefore calculates the N.A.V. and R.V. as follows;-

Rent reserved	£80,000 p.a.
	Adjusted to 1988 x 31%
	N.A.V. £61,069
	x 0.63% = £384.73
	Say £385 R.V.

And the Tribunal so determines.

