Appeal No. VA98/2/037

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Mothercare (Ireland) Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Shop at Map Reference Unit 15, Jervis Centre, Ward: North City 2A County Borough of Dublin
Quantum - Affect of designation

B E F O R E

Con Guiney - Barrister at Law	**Deputy Chairman**
Michael Coghlan - Solicitor	**Member**
Rita Tynan - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF JUNE, 1999

By Notice of Appeal dated the 29th day of April 1998 the appellant appealed against the determination of the Commisisoner of Valuation in fixing a rateable valuation of £770 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; "the rateable valuation of £770 is excessive, inequitable, unwarranted and bad in law."

The appeal proceeded by way of an oral hearing that took place on the 29th day of January 1999 and resumed on the 24th day of February 1999 in the Tribunal offices in Dublin. The appellant was represented by Mr Andriais O Caoimh S.C. Evidence on behalf of the appellant was given by Mr Joe Bardon FSCS., FRICS, Dip. Environmental Economics of Bardon & Co., Rating Consultants. The respondent was represented by Mr Eamon Marray BL.. Mr. John Smiley,District Valuer in the Valuation Office gave evidence on behalf of the respondent.

The Property

The premises comprises a unit located within the Jervis Centre a newly developed mutli-storey shopping centre, located off Mary Street and close to Henry Street and the ILAC Centre.

The centre has 75 new units of varying sizes on three main levels and is accessed from street level via entrances from Mary Street and Upper Abbey Street. There is also an internal link from the Marks and Spencers store in Mary Street. There are four high speed lifts accessed from level 3 only of the car park and all shopping levels in the centre are linked by escalators and stairways.

The areas of the unit, as agreed between the parties are as follows:

1st Floor retail	551.1 sq.metres	(5932 sq.ft.)
This excludes fire exit	4.9 sq. metres	(52.5 sq.ft.)
Stairs	9.7 sq.metres	(104.5 sq.ft.)
Total Area	565.7 sq.metres	(6090 sq.ft)
Demised Area	567 sq.metres	(6103 sq.ft.)

1st Floor Upper Office / store Area	132.7 sq.metres	(1428 sq.ft.)
This excludes WC	3.7 sq.metres	(40 sq.ft.)
Lobby	4.2 sq.metres	(45 sq.ft.)
Landing /Fire lobby/Stairs	20.1 sq.metre	(216 sq.ft.)
Total	160.7 sq.metre	(1729 sq.ft.)
Demised Area	163 sq.metres	(1754sq.ft)

Title

The unit is held under a 25 year lease with five year rent reviews from 1 November 1996 at an initail rent of £160,000 per annum in years 1 and 2 and £165,000 in years 3,4 and 5. There is a break clause incorporated into the lease after two years and six months and a four month rent free period was granted upon the signing of the lease.

The Centre was developed under the amended provisions of the Urban Renewal Act 1986, rates relief is on a sliding scale basis only, with one-tenth liability arising in year 1, two tenths liability arising in year 2 etc.

Valuation History

The unit was revised during the 1996/4 Revision and a valuation of £595 was assessed. The Rateable valuation was increased to £770 at first appeal. This determination of the Commissioner of Valuation is the subject of the present appeal to the Valuation Tribunal

Evidence of the appellant:

Mr Bardon on behalf of the appellant adopted his written submission, as amended, as his evidence in chief, given under oath. He argued that the best approach to assessing the NAV on the subject premises was by reference to the comparative method based on established levels applying to shops in both Henry Street and Mary Street. He said that the approach used by the Commissioner in using only rental evidence, gave rise to inequity within the centre as there was no coherent rental strategy on the part of letting agents and virtually any reasonable rental offer was accepted. Equally it gave rise to inequity between these units and units in other designated areas where allowances on the rents had been made.

In assessing the RV of the premises, Mr Bardon took the following factors into account:

1. The location

The centre is located in a secondary trading location. The unit is on the first floor and well set back from Mary Street. None of the units within the centre have street frontage. Access from the carpark is not direct to all shopping levels

2. Position within the Centre

Location on the first floor is a disadvantage.

3. Shop layout

Frontage of the unit is very small, 37ft compared to the overall area of the unit. The profile is thus very poor with 66% of the unit located in Zone D, thus distorting the valuation. Furthermore the mezzanine accommodation, which incorporates stores and staff areas only, is accessed from the rear of the shop. Mr Bardon proposed a reduction of 2.5% to reflect these factors.

Appellant's Opinion of Value

Ground Floor

Zone A	740 sq. feet @ £40.00 per sq. foot	=	£29,600
Zone B	740 sq. feet @ £20.00 per sq. foot	=	£14,800
Zone C	740 sq. feet @ £10.00 per sq. foot	=	£ 7,400
Balance	3,712 sq. feet @ £ 5.00 per sq. foot	=	£18,560
Mezzanine	1,428 sq. feet @ £4.00 per sq. foot	=	£5,712
	Total	=	£76,072
less 2.5% on the ground floor		=	£1,759
		=	£74313 x 0.63%
			£468.17 say £470

Evidence of the Respondent

Mr Smiley on behalf of the Commissioner, adopted his written submissions as his evidence in chief, given under oath. He said that he dealt with 23 rating appeals in the Jervis Centre involving 11 different rating consultants representing a cross section of the most experienced and professional valuers in the country. Only one first appeal case remains to be issued and only one consultant, involved in the three current appeals, has appealed to the Tribunal.

All appeals were agreed /issued on the same basis as the subject premises i.e.

1996 Rent	**X**	**1/1.3375**	**=**	**NAV (1988)**
NAV (1988)	**X**	**0.63%**	**=**	**RV**

The basis of backdating was a combination of :

(a) The percentage increases in ILAC rents 1986-1996, deducting for the increase 1986-1988

(b) The JLW Retail Index.

(c) The IPD Retail Index.

Details of the 1986 ILAC rents were available in the Valuation Office, while the consultant valuer had details of the rents established in the 1996 rent reviews.

(Mr Smiley supplied details of rental comparisons used in the 96/4 appeals on a confidential basis to the Tribunal).

The respondent's valuation on the subject premises was calculated as follows:

Rent reserved from 1/11/96 Year 1 & 2 £160,000pa
Year 3,4, 5 £165,000pa

Average annual rent for Years 1-5	=	£163,000
(Ignoring the four month rent free period)		
Backdate to Nov 1988 (1/1.3375)	=	£121,869
NAV £122,000 x 0.63%	=	£770.00

Findings and Determination

The Tribunal has carefully considered all the evidence and arguments adduced in submission and at the oral hearing and makes the following preliminary observations:-

1. The Tribunal notes that the hearing was first adjourned to allow measurement of the subject by the Valuation Office. It is further noted that their measurements were subsequently accepted by Mr. Bardon at hearing.

2. It has been contended by Mr. Smiley and his Counsel Mr. Marray B.L., that when arriving at a fair rateable valuation for premises such as the subject, consideration of passing rent is of paramount importance.

3. Mr. Joseph Bardon and his Counsel Mr. O'Caoimh S.C. on the other hand contend that the rents in designated premises such as these are artificial and should specifically not be used for consideration, save in conjunction with comparative rental values elsewhere.

4. It is common case that the subject forms part of a designated area at Jervis Street which is not easily comparable save perhaps for the Tallaght Shopping Centre (also designated) which was designed as a regional retail facility. It is noted in this regard that Mr. Bardon considers the St. Stephen's Green Shopping Centre is perhaps the best basis for comparison.

5. The valuers in this case have taken up a diametrically opposed positions as to the best basis for valuing the subject premises. Mr. Bardon suggests that comparative factors are best and Mr. Smiley suggests that rents are best. Both within their précis of evidence (as adopted) and within their oral evidence it was noted that these witnesses have given little credence to the opposing views as submitted.

6. The Tribunal has been asked to consider the subject premises as either forming part of a designated development area with all the anomalies thrown up by such designation or alternatively as a Zone A commercial retail outlet of the highest earning potential. In truth the subject premises is neither. It does not come within the first category as there is clearly little to compare the subject premises, located adjacent and abutting a thriving and mature city centre commercial district, with developments in deprived or disadvantaged areas which have been given designation for the purposes of enhancing their development potential. Nor does the subject property come within the ambit of the second category, as it does not form part of a mature commercial area with proven yields and rentals established over a substantial period of time.

7. It is the view of the Tribunal that the subject property is comprised within a third category, which is effectively a hybrid of the first two. The premises are new and the enterprise intended for the premises is thus somewhat uncertain. Designation has had perhaps some affect upon the rental values attributable to such premises. Though it is noted that no definite evidence has been placed before us from which a relevant comparison can be extracted to assist the Tribunal or indeed assist the valuers involved in this case.

8. The Tribunal has thus been asked to decide which method adopted is the best and fairest method of determining a rateable valuation.

In the present case the Tribunal is of the view that the best (but not the only) method of determining the rateable value is by having regard to such passing rent as the prudent tenant has contracted for. In arriving at this view the Tribunal is cognisant of the reducing benefit of designation to the occupiers. The Tribunal also notes that the current passing rent will be liable for further review in the future. Should the parties remain aggrieved, either may at that juncture seek a fresh revision of the property.

In determining the R.V. based upon rental, the Tribunal has noted that the present tenant enjoyed a four month rent free period and has thus made appropriate adjustment.

VALUATION

Rent reserved from 1/11/96:

Year 1	£106,666
(adjusted to take account of the 4 month rent free period)	
Year 2	£160,000
Year 3, 4, 5	£165,000
Average annual rent for years 1-5	£152,333
Backdate to November 1988 (1/1.3375)	£113,893 say £114,000
N.A.V. = 114,000 x 0.63%	£718.20
R.V.	£718.

The Tribunal therefore determines the rateable valuation of the subject property to be £718.