

Appeal No. VA00/1/012

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

Bank of Ireland (Castlebar)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Bank at Map Reference 13a, 14a Ellison Street, Townland: Knockacroghery, Castlebar Urban, UD: Castlebar, Co. Mayo.

B E F O R E

Barry Smyth - FSCS.FRICS

Deputy Chairman

Tim Cotter - Valuer

Member

Michael Coghlan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF DECEMBER, 2000

By Notice of Appeal dated the 18th day of April 2000, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £315 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; "the assessment is excessive and inequitable and bad in law having regard to the provisions of the Valuation Acts and on other grounds also".

The appeal proceeded by way of an oral hearing, which took place on the 15th November 2000 at the Offices of the Valuation Tribunal in Dublin. The appellant was represented by Mr. Owen Hickey BL with Mr. Thomas Davenport, ARICS, ASCS, Chartered Surveyor of Lisney and the Respondent was represented by Mr. Brendan Conway BL instructed by the Chief State Solicitor with Mr. Pascal Conboy, ARICS, ASCS Chartered Surveyor, a District Valuer with 20 years experience in the Valuation Office.

Mr. Hickey drew attention to an amendment in Mr. Davenport's précis by the addition on page 11, paragraph 12 of first floor canteen and store to the accommodation as set out therein. This alteration resulted in a revised net annual value of £44,190 say £44,000 and a resulting rateable valuation of £220 rather than £200 as in the original précis.

Having taken the oath each valuer adopted as his evidence in chief his written submission which had previously been exchanged with the other valuer and submitted to the Tribunal.

Material facts agreed or found by the Tribunal

1. Recent Valuation History

1994 Revision RV £280 reduced on appeal to £230

1998/4 Revision RV £300 increased on appeal to RV£315

It is against this latter figure of RV£315 that the current appeal lies to the Tribunal.

2. Location

The property is situated in the town centre on the West Side of Ellison Street, close to the intersection with Market Street. This is the town's principal retail and business area. The property also has rear access onto a new road linking to the bypass and directly facing this rear access is a large Dunnes Stores development and a car park.

3. The Property

The property comprises a typical traditional readily identifiable county town bank premises. It is detached, two story over basement with a two storey return and single and two storey with attic rear extension. The original building is of traditional construction with a pointed elevation of front brick over a stone faced ground floor incorporating sliding sash windows, entrance doors and an ATM machine. The rear extensions are of concrete block construction and pitched, asbestos slated and flat roofs and aluminium framed windows. To the rear of the property there is a large car park with access to the side of the main building from Ellison Street and an exit onto the new road to the rear. The buildings are all located on the Ellison Street frontage and there are no buildings on the new road frontage although the Business and Agri-centre is visible but well set back behind landscaped areas and the car park.

4. Accommodation	Sq. m.	Sq. ft.
Ground floor		
Banking Hall	206	2,222
Front Offices	40	427
Store/Corridor/ATM	24	258
Total	270	2,907
Mezzanine		
Offices	37	376
Basement		
Secure Cash Area	20	213
Strongroom/bookroom	37	400
First floor		
Canteen/store	72	780

Agri-business centre

Lower ground floor	54	586
Upper ground floor	60	650
Attic Level	52	558
Overall Total	602	6,490

5. Title

Freehold

The Appellant's Case

Mr. Davenport in his evidence stated:

Ellison Street is not as valuable as Market Street.

The data rooms and adjacent corridor should be distinguished in valuation terms from the banking hall albeit that they are at the same level because they are separated from it by a corridor which also gives access to other areas.

The Agri-Business centre is at different levels to the original building and its first floor/attic has limited head room.

The subject has all the characteristics of an office building and it should properly be valued by reference to local office levels taking into account that the building has a certain prominence on the street and is located within a mixed retail and office area.

He drew the Tribunal's attention to a number of Tribunal Judgements including Bank of Ireland Tullamore v Commissioner of Valuation VA95/6/013, Bank of Ireland v Commissioner of Valuation, 87/89 Pembroke Road VA96/2/055, Bank of Ireland v Commissioner of Valuation, 111 Main Street Bray, VA96/2/054.

Mr. Davenport provided seven comparisons the details of which are appended to this determination.

In Summary the relevant information from these comparisons is as follows:

- I. TSB, 16a Ellison Street, 1990 Revision
NAV Banking Hall 1335 sq. ft. at £11 per sq. ft.
- II. Irish Permanent Building Society, 16 Market Street
1998/1 Appeal NAV £13 per sq. ft. on ground floor 1,010 sq. ft.
- III. AIB, 11 Market Street, Castlebar.
1997/2 Appeal NAV £11 per sq. ft. on 4,515 sq. ft. Banking hall/offices
- IV. Stauntons Chemist/gift shop, 3/4 Market Street, Castlebar.
1991/4 Appeal NAV £7.70 per sq. ft. on 3,271 sq. ft. Ground floor.
- V. First Active Building Society, 13b/14a Bridge Street, Castlebar
1998/1 Appeal. NAV £16 per sq. ft. on 595 sq. ft. and 714 sq. ft.
A portion of this accommodation was let from the 1/1/94 at £22,100 per annum
equivalent of £31 per sq. ft.
- VI. National Irish Bank, 23b Market Street
1994 Revision. NAV £15 per sq. ft. on ground floor banking hall of 1,213 sq. ft.
- VII. Moran Auctioneers 1a Ellison Street Castlebar
1997/1 Appeal NAV £12 per sq. ft. on 581 sq. ft. ground floor

Mr. Davenport stated that he had adopted a different level of valuation than in the 1994 appeal because since 1995 a number of Valuation Tribunal decisions were given where the Tribunal said that banks must not be compared solely with other banks but with other commercial premises including banks and therefore in his opinion the previous agreement was no longer valid. He said the previous valuation was now too high because it was done on the basis of comparison with banks only including banks in other locations. He noted that the upper floors in the AIB were at £5 per sq. ft. NAV and therefore felt that the Commissioner's figure of £10 per

sq. ft. on the Mezzanine level in the subject case was inappropriate. He noted that there was return frontage and a rear entrance but it was not equivalent to the Bank of Ireland in Portlaoise where the building actually had frontage. In the subject case the building was set back a good distance from the street and separated from it by the car parking. In his opinion the rate of £11 per sq. ft. on AIB banking hall should be reduced for the subject case because although the AIB was a bigger floor area, it was in a better location and the rate should be reduced to reflect this location.

Mr. Davenport proposed a rateable valuation of £220 calculated as follows:

	Sq. ft.	Rate psf	Total
Ground floor			
Banking Hall	2,384	£10	£23,840
Front (Data) offices	427	£8	£3,416
Store/corridor	96	£4	£384
Mezzanine Office	396	£5	£1,980
Basement			
Secure cash area			
Strong rooms and book rooms	613	£4	£2,452
First floor canteen and stores	780	£4	£3,120
Agri Business Centre			
Lower ground floor	586	£6	£3,516
Upper ground floor	650	£5	£6,250
Attic level	558	£4	£2,232

Total estimate of NAV	£44,190
Say	£44,000

Reducing factor to translate NAV to RV 0.5% gives rateable valuation of £220.

Under cross examination Mr. Davenport explained how the rateable valuation of £230 was arrived at for the 1994/3 appeal and said that since 1995 when the Tribunal had set down a number of judgements in relation to banks the method of valuing banks had changed and that it was now appropriate to look at other commercial premises as well as banks.

He acknowledged Section 5 of the 1986 Act and its reference to properties recently revised, comparable and of similar function and he acknowledged that it was appropriate to look at other traditional bank buildings but also to look at other office buildings. He would not prioritise his order of comparisons in relation to banks, retail or office premises and he did not accept in doing that, that he was departing from similar function, as in his opinion a bank is an office use with a retail content. In response to a question that the subject premises had all the characteristics of a bank he stated that it was used as a bank, but that it was an office building first and foremost and that its identification as a bank was due to the bank signage.

In relation to his comparisons he did not accept that the AIB is the one building that was a really appropriate comparison in that it was recently revised, comparable and of similar function. He stated that the Irish Permanent premises could be a bank and that the TSB premises is a bank. In re-examination by Mr. Hickey, he stated that the partition separating the banking hall from the data office could be taken away and that this space had previously been used as a manager's office.

The Respondent's Case

Mr. Conboy in his evidence stated:

This is a very prominent building in a town centre location with two street frontages. There are mixed uses on the Ellison Street frontage and significant activity at the back of the property at its

rear frontage including Dunnes Stores and a variety of smaller shops. The bank has not fully exploited the rear frontage but the potential is there. He stated that the ring road has caused development to occur behind the traditional main street shopping areas. He stated that the AIB premises was in a better retail pitch than the subject but that the rear of the Bank of Ireland premises is infinitely better than the rear of the AIB premises. He emphasised that he had agreed the 1994/3 Revision with Mr. Davenport and in his opinion it should be binding or carry enormous weight. He stated that the increase on appeal from £300 to £315 was not malicious but that the property was in fact bigger than the revising valuer had found. He stated that he had used exactly the same rate per sq. ft. as in the 1994/3 appeal which he had agreed. Mr. Conboy provided two comparisons, namely the existing premises as in the 1994 first appeal agreement and the AIB premises as already provided by Mr. Davenport as one of his comparisons.

Comparison No 1

Bank of Ireland RV £230

Ground floor 236.9 sq. m at £139.93 per sq. m. or 2,550 sq. ft. at £13 per sq. ft.
 Mezzanine 58.53 sq. m at £107.64 per sq. m or 630 sq. ft at £10 per sq. ft.
 Basement 37.16 sq. m. at £75.35 per sq. m or 400 sq. ft. at £7 per sq. ft.
 First Floor 72.46 sq. m. at £53.82 per sq. m or 780 sq. ft. at £5 per sq. ft.
 25 Car spaces included

Allied Irish Bank RV £275

Agreed in 1997 Appeal with Donal O’Buachalla

Ground floor 419.45 sq. m at £118.40 per sq. m. or 4,515 sq. ft. at £11 per sq. ft.
 Miscellaneous 13.01 sq. m. at £53.82 per sq. m. or 140 sq. ft. at £5 per sq. ft.
 First Floor 38.28 sq. m. at £53.82 per sq. m. or 412 sq. ft. at £5 per sq. ft.
 Second floor 72.46 sq. m. at £32.29 or 780 sq. ft. at £3 per sq. ft.

18 Car parking spaces are included

Mr. Conboy calculated the rateable valuation as follows

Ground floor	270.07 sq. m. at £139.93 per sq. m. (£13.00 per sq. ft.)	£37,791
Mezzanine and		
Upper ground floor	97.18 sq. m. at £107.64 per sq. m. (£10 per sq. ft.)	£10,460
Lower ground floor		
(including basement)	111.39 sq. m. at £75.35 per sq. m. (£7 per sq. ft.)	£8,393
First floor		
(including attic area)	124.3 sq. m. at £53.82 per sq. m. (£5 per sq. ft.)	£6,690
 Total	 602.94 sq. m. (6,490 sq. ft.)	
 NAV	 £63,334 applying a fraction of 0.5% = £316.67 say £315	

In support of his use of an overall rate per sq. m. on the ground floor rather than distinguishing the various areas he stated that the data office had previously been the manager's offices and that in all the comparisons areas within the overall ground floor would be demarcated as managers offices etc but were not distinguished in valuation terms. He stated that £13 per sq. ft. was agreed previously for this accommodation and therefore it was appropriate that it should be the same now. He expressed the view that £5 per sq. ft. was too low on the upper ground floor and mezzanine areas and that the mezzanine area is effectively part of the banking hall.

While acknowledging that some change had occurred in the basis of valuation in the mid 1990's following Tribunal decisions, he said that nothing had occurred that would make him change his approach to this valuation. He stated that his main comparison was the AIB premises. He stated that banks were not his only comparison but would be his first comparison and stated that if a bank is in a shop it should be valued as a shop. He stated that there were no instructions within the Valuation Office to value banks only in comparison with other banks but it was something of a tradition because of the unique nature of traditional banks. He made the following comments on the appellant's comparisons:

- 1) **TSB** - The first and second floors over this accommodation are not occupied by the TSB, which occupy the ground floor only. This accommodation has no car park.
- 2) **The Irish Permanent** also has no car parking. There is a low ceiling on the ground floor and the accommodation is cramped.
- 3) **The AIB** is also one of his comparisons.
- 4) **Staunton's** is a very good shop but it is not a bank. The subject is not a shop and does not have the characteristics of a shop. Staunton's has car parking.
- 5) **The First Active** comparison is of two separate hereditaments now combined in one floor area. It has no ATM.
- 6) **National Irish Bank** - The Valuation Office analysis of the National Irish Bank comparison is £15.24 per sq. ft. This has no ATM but the ground floor includes the Manager's Office and Strongroom.
- 7) **Moran Auctioneers** is not comparable with the subject premises.

Under cross-examination Mr. Conboy acknowledged that the appeal valuer in the AIB case would have been aware of the Bank of Ireland agreement from 1994 and therefore it probably had a bearing on the AIB figure. He did not accept however that his Bank of Ireland valuation was wrong and that he has no case as he is familiar with Castlebar and values in the area and it does not leave him without a case because of his experience as a valuer in the area. He acknowledged that traditionally banks had been compared only with banks in the Valuation Office and that therefore could have been valued too highly in the past. He accepted that the premises were capable of being used as offices. He did not accept that the only alternative use of the building was as offices and felt that other banks would have an interest.

He outlined how he would go about valuing the premises if there was no bank in possession and the types of comparisons he would seek. He said he was strongly influenced by his previous agreement in relation to the subject premises. He stated that the data areas were not too different from the banking hall and that all the comparisons are on an all-inclusive basis. He stated that the mezzanine was ancillary to the banking hall and was valued at a lower rate per sq. ft. than the banking hall. In re examination he outlined his experience as a valuer and confirmed that he had agreed the previous valuation with Mr. Davenport in the 1994/3 appeal. He was satisfied that he

had carried out his function correctly and that while he was influenced by what he had previously agreed, he did not have a closed mind on the subject.

Submissions

Mr. Conway referred to Section 5 of the 1986 Act particularly subsection 1 and stated that it was his legal submission that Mr. Conboy had adhered to the requirements of the section. He paraphrased sub section one as “to provide for parity i.e. tone of the list”. The purpose is to ensure a relationship between tenements of similar function etc. The two subsections are inter-related and they are not separate tests or functions. Comparisons are mandatory. The words used in the section are “regard shall be had.” He stated that comparison with the subject premises and AIB were not expressly excluded by subsection 2, which does not make reference to the word “other”. He also spoke in relation to each of the Tribunal decisions referred to in the various submissions.

For the appellant Mr. Hickey said that the words “rebus sic stantibus” do not mean that the premises must be treated as a bank. He referred to Section 11 of the 1852 Act and commented that the mode or character means, the ordinary disposition of the premises. In his opinion the respondent had no case as one comparison was AIB and that valuation was based on the subject premises, which was a circular argument. Valuation must be based on other properties. The first step is to get the NAV. The respondent offered no evidence as to NAV pursuant to section 11 of the 1852 Act and section 5(1) of the 1986 Act. He has dealt with section 5(2) which in Mr. Hickey’s view was not sufficient. He spoke about the historic treatment of banks and referred to Staunton’s shop at £7.70 per sq. ft. and that the respondent’s valuer had said that its valuation would not change if it were a bank and therefore there was no justification for £13 per sq. ft on the subject premises. He noted the Bank of Ireland Kilkenny case where the Tribunal’s determination was at less than the figure that had previously been agreed. He noted that banks can become vacant and become used for other purposes.

Determination

The Tribunal has noted the arguments made by both parties and the written submissions. There is considerable evidence of NAV’s for banks and buildings societies in Castlebar with a variety

of ground floor areas in the range of £11 to £16 per sq. ft. The previous rateable valuation of the subject premises agreed on appeal pre-dates the Tribunal decisions that state that banks should not be compared only with banks. The AIB agreement post-dates such determinations. It must be noted that while the Tribunal has stated that banks must not be compared only with banks, it has never stated that banks may not be compared with other banks. In this instance in view of the range of agreed NAV's for similar uses ranging from £11 to £16 per sq. ft. and the AIB agreement for a very similar building and accommodation at £11 per sq. ft., the Tribunal is of the view that the AIB is the best comparison to follow in this instance. While we note that the ground floor area of the AIB is larger than the ground floor of the subject, the overall floor area of the entire building is actually larger in the Bank of Ireland. Market Street may be marginally a better retail location than Ellison Street but the Bank of Ireland premises does have the advantage of return frontage to the link road and the proximity there of major supermarkets and a public car park. We accept however that the bank building does not have any frontage to this new road.

The actual use of area, particularly in relation to the ground floor is not overly relevant to this valuation particularly as the comparisons are all provided on an overall basis with no indication as to varying rates to be applied to different areas. We are therefore dealing with the subject premises on an overall basis.

We determine the Rateable Valuation as follows:

Ground floor

Including bank hall, data rooms and ATM space

270.07 sq. m. @ £118.4 per sq. m. (2,907 sq. ft. @ £11 per sq. ft.) = £31,977

Mezzanine

37 sq. m. @ £64.58 per sq. m. (396 sq. ft. @ £6 per sq. ft.) = £2,389

Basement

57 sq. m. @ £53.83 per sq. m. (613 sq. ft. @ £5 per sq. ft.) = £3,068

First floor

Canteen/stores

72 sq. m. @ £53.82 per sq. m. (780 sq. ft. @ £5 per sq. ft.) =£3,875

Agri Business Centre***Lower ground floor***

54 sq. m. @ £75.35 per sq. m. (586 sq. ft. @ £7 per sq. ft.) = £4,069

Upper ground floor

60 sq. m. @ £53.82 per sq. m. (650 sq. ft. @ £5 per sq. ft.) = £3,229

Attic/First Floor Level

52 sq. m. @ £53.82 per sq. m. (558 sq. ft. @ £5 per sq. ft.) =£2,799

Total

£51,406

Say NAV £52,000 @ 0.5%**= RV £260 and the Tribunal so determines**