

Appeal No. VA01/2/015

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

Pavilion Partnership

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Car Park at Map Reference 12 The Pavilion, Dunleary, Dun Laoghaire East
 Central, Dun Laoghaire, Co. Dublin

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairman

Frank O'Donnell - B.Agr.Sc. FIAVI.

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF APRIL, 2002

By Notice of Appeal dated the 30th day of July 2001, the appellant appealed against the determination of the Commissioner of Valuation in fixing a Rateable Valuation of £528.00 on the above described hereditament. The grounds of appeal were set out in the Notice of Appeal as follows:

- "1. That the valuation is excessive and inequitable.
2. The valuation is bad in law.

1. The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 19th November 2001.
2. At the hearing the appellant was represented by Mr. Desmond Killen FSCS FRICS IRRV a director of GVA Donal O Buachalla & Company and the respondent by Mr. Raymond Sweeney MA a District Valuer in the Valuation Office. Evidence was also given by Mr. Aidan Murphy of Messrs. Horwath Bastow Charlton Chartered Accountants, Financial Advisors to the appellant company.
3. In accordance with the rules of the Tribunal the valuers exchanged and forwarded to the Tribunal a written submission and valuation, which were subsequently received into evidence by the Tribunal at the oral hearing.
4. The subject hereditament comprises a multi-storey car park, which forms part of a mixed-use development at the junction of Royal Marine Road and Queen's Road, Dun Laoghaire. A total of 305 spaces are provided; 54 at street level, 125 at lower level and 126 spaces at upper level. The remainder of the development comprises 5 retail outlets, a leisure centre, the Pavilion Theatre and a number of apartments. The Ferry Terminal and Dart Stations are on the opposite side of Queen's Road.
5. It is common case that the car park is held under a lease dated the 1st April 1999, for a term of 20 years and three months from the 29th January 1998, subject to an initial yearly rent of £450,000 per annum for the period 26th March 1999 to the 25th March 2009. At the end of this ten-year period the rent for the next three years is to be the greater of £350,000 per annum or the then full open market yearly rent, and thereafter there is to be a further review to the then full open market yearly rent.

6. The car park is operated by Park Rite Ltd. and the opening hours are as follows:

Monday to Friday	7:00am	-	12:30am
Saturday	9:00am	-	12:30am
Sunday	10:00am	-	12:30am

The charges are as follows:

Hours	£ per Hour
0-1	£1.20
1-2	£2.40
2-3	£3.45
3-4	£4.80
4-5	£6.00

Maximum daily charge £6.00, Weekly Rate £10.00 and Monthly Rate £30.00.

7. The property was first valued at the 2000/4 revision when the rateable valuation was determined at £928. No change was made at first appeal stage and it is against this decision that the appeal to this Tribunal now lies.
8. Mr. Murphy a director of the Corporate Finance Department of Horwath Bastow Charlton gave evidence that the rent payable under the lease qualified for double rent allowances. The accounts referred to in Mr. Killen's evidence were prepared by BDO Simpson Xavier, and an examination of these financial statements showed substantial losses on the operation.

Under cross examination Mr. Murphy agreed that the rent was a "tax driven" rent and confirmed that the lease was not one between connected parties.

Appellant's Evidence

Mr. Killen in his evidence adopted his written précis as being his evidence in chief given under oath. In his evidence Mr. Killen stressed the fact that the subject operated under severe competition from other car parking facilities in Dun Laoghaire such as:

Free On Street Car Parking

Pay and Display in Harbour Area

Royal Marine Car Park

Shopping Centre Car Parks at Bloomfield & Dun Laoghaire Shopping Centres

The Cinema Car park

Dublin Rathdown Office Car Park

Mr. Killen opinioned that the strongest competition came from the nearby Dun Laoghaire Shopping Centre and the Bloomfield Shopping Centre and he gave details of the charges in these car parks as set out below:

	<u>Dun Laoghaire Shopping Centre</u>	<u>Bloomfield Shopping Centre</u>
<u>Hourly rates</u>		
0-1	0.80p	£1.20
1-2	£1.60	£2.40
2-3	£2.40	£3.60
3-4	£5.60	£4.80
4-5	£7.20	£6.00max
5-6	£8.80	
6-7	£12.00	
7-8	£13.60	
8+	£16.00	

In relation to the Dun Laoghaire Shopping Centre, Mr. Killen said that Tesco operates a refund scheme whereby customers who spend £5 get one hour parking free and those who spend £25 get three hours free.

In the Bloomfield Shopping Centre he said Tesco subsidises the operation of this car park to the extent of £100,000.00 per annum. Mr Killen said the subject operates at a distinct disadvantage to both these car parks as it is not attached to a shopping centre and hence relies solely on the car parking customer for its income stream. The car park attached to the cinema Mr. Killen said, was unmanned but the charge here was £1 per hour subject to a maximum of £4 during the day with a lower charge operating in the evening.

Car parks in Dublin City Mr Killen said, charged higher hourly rates than in Dun Laoghaire and operated to a higher level of efficiency. Monthly charges in Dublin were in the order of £200.00 per space compared to £30 per month in the subject.

Mr Killen in his evidence contended for a rateable valuation of £186.00 calculated as set out below.

305 Car Spaces	@ £97.00 per space	=	£29,589.00 Net Annual Value
Rateable Valuation	@ 0.63%	=	£186.00

In support of his opinion of value, Mr. Killen introduced seven comparisons as set out in the schedule attached to this judgement. Under cross-examination Mr. Killen agreed that the car park at the Dun Laoghaire Shopping Centre operates on a different basis now than it did when the rateable valuation was determined by this Tribunal, a number of years ago. He also agreed that in arriving at its opinion of net annual value, the Tribunal had taken into account the fact that approx 73% of the users of the car park did so free of charge.

When questioned about his second comparison i.e. the car park at Bloomfield Shopping Centre, Mr. Killen agreed that the rateable valuation of this had been agreed at first

appeal stage, at a net annual value equivalent to approx £300.00 per space. He further agreed that this valuation was agreed by an experienced rating consultant who would have been aware of the valuation of the car park at the Dun Laoghaire Shopping Centre and the circumstances under which its valuation had been determined. Mr. Killen however pointed out that the car park at the Dun Laoghaire Shopping Centre was part of a large development which included a shopping centre and a large office block, the users and customers of which, would as a matter of convenience and fact use the car park.

Mr. Killen agreed that the charges for the car park at the Bloomfield Shopping Centre and the subject were the same and that they were operated by the same company i.e. Park Rite Ltd.. He agreed that the charges at the subject were fixed by the owners and that the level determined by them was very much a judgment call based on the advice given to them by the car park operator.

Mr. Sweeney asked Mr. Killen if the Tesco arrangement alleged by him to be operating at Bloomfield was known at first appeal stage. Mr. Killen said he did not know, nor did he know if it was a short-term promotional scheme.

In answer to further questions from Mr. Sweeney, Mr. Killen agreed that part of the car park at the Marine Hotel was valued with the hotel and the remainder was subject to a separate assessment on a pre-1986 Act basis. Mr. Killen further agreed that the valuation of the car park beside the cinema was agreed at first appeal stage. He concurred with Mr. Sweeney's opinion that this was a poorly located car park and that there was now no charge for its use. Mr Killen's fifth comparison is part of the Superquinn Shopping Complex at Blackrock and he agreed that the valuation of this car park was agreed prior to a hearing of this Tribunal having regard to the findings in the Dun Laoghaire Shopping Centre case and on the basis that the car park was there as a convenience to the customers of the centre.

Respondent's Evidence

Mr. Raymond Sweeney, having taken the oath, adopted his written précis and valuation as being his evidence in chief given under oath. In his evidence Mr. Sweeney contended for a rateable valuation of £528 calculated as set out below.

305 Car Spaces	@		£275.00 each
Net Annual Value		=	£83,875.00
Rateable Valuation	@ 0.63%	=	£528.00

In support of his valuation Mr. Sweeney relied solely on the valuation determined at first appeal stage on the car park at Bloomfield Shopping Centre. Mr. Sweeney said this comparison was particularly relevant, in that it and the subject shared many common features and were both operated by Park Rite Ltd., who were experienced car park operators and capable of judging tariffs in line with market demand. Both car parks he said were of modern design and layout and benefited from a good access and were located a short distance from the retail heart of Dun Laoghaire.

Under cross-examination Mr. Sweeney agreed that the subject hereditament was a commercially operated car park and not part of a shopping centre complex. He did not however agree with Mr. Killen that the Bloomfield Shopping Centre car park was better located. In his opinion the subject benefited from being close to the Dart Station, the Ferry Port Terminus, the Pavilion Theatre and was convenient to Dun Laoghaire Shopping Centre and the main shopping centre of Dun Laoghaire. All of these gave rise to parking needs and upon inspection he estimated the car park to be 80% occupied, a level similar to that found in the car park at Bloomfield Shopping Centre. When asked about the Tesco subsidy, Mr. Sweeney said he was unaware of it but was prepared to take Mr. Killen's word for it but only on the basis that it was a promotional venture.

Mr. Killen asked Mr. Sweeney about car parks in Dublin and he agreed with him that they operated at a much higher scale of charges during the working day than was found in Dun Laoghaire and that they also benefited from evening activities.

Findings

1. In the circumstances of this appeal, the rent being paid for the subject property, under the terms and conditions of the lease dated, the 1st of April 1999 is in the nature of a financing arrangement and not representative of an arms length market rent agreed between the parties. Accordingly therefore it is of little assistance to the Tribunal and hence the only evidence available is the comparative evidence introduced by the valuers.
2. As a general statement, the Tribunal attaches lesser weight to comparisons drawn from a different rating area. Accordingly therefore, the evidence in relation to car parks in Dublin, are of limited assistance as different circumstances prevail in the city as compared to Dun Laoghaire.
3. Of all the comparisons introduced, the Tribunal attaches most weight to the car park at the Bloomfield Shopping Centre. Like the subject it is part of a larger development and operates as a separate commercial entity. In this regard it is distinctly different from the car parks at the Dun Laoghaire Shopping Centre and the Superquinn complex at Blackrock, which operate as part of the overall shopping centre complex. In any event the Dun Laoghaire Shopping Centre valuation reflected the fact that, at the date of valuation, 73% of the parking was not subject to any charge, and since the decision of the Tribunal in this case was a factor in the valuation agreed for the car park at Blackrock at first appeal stage, these comparisons are of little assistance.
4. The Tribunal accepts that car parking in Dun Laoghaire is a problem and this is borne out by the testimony of Mr. Sweeney who said that on inspection he found the subject car park to be 80% occupied. This figure was not rebutted by Mr. Killen.

5. As part of his submission, Mr. Killen provided financial statements prepared by Messrs. BDO Simpson Xavier, but since these were not relied upon by him in arriving at his valuation they do not appear to be relevant to this appeal. Mr. Killen in his evidence relied solely upon comparative evidence.

6. As stated earlier the Tribunal attaches most weight to the valuation of the car park at the Bloomfield Shopping Centre. This facility has 544 spaces as against 305 spaces in the subject and is valued at £300 per space as against £275 per space put forward by Mr. Sweeny and £97 as contended for by Mr. Killen. The Tribunal accepts Mr. Killen's contention that the proximity of the Shopping Centre is an advantage which the subject car park does not enjoy. However the subject is close to other attractions in Dun Laoghaire including the dart and ferry port and both he and Mr. Sweeny agreed that from a locational point of view there was little to choose between the two properties. Nonetheless the Tribunal has come to the conclusion that from an operational point of view Bloomfield is the better of the two and that there must be a differential in value to reflect this. The difference in the actual number of car parking spaces is a factor, which also must be borne in mind.

Determination

Having regard to all the evidence and arguments adduced by the parties including the comparisons, the Tribunal determines the rateable valuation of the subject property to be €640. This valuation is calculated as set out below.

305 spaces	@	£270.00 (€342.83) per space	=	£82,350.00
Net Annual Value		say		£80,000.00 (€101,579.04)
Rateable Valuation	@	.63%	=	£504.00 (€640.00)

