

**Status of Judgment: Distributed**

Appeal No. VA01/2/022

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

**AIB (Stillorgan)**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Bank at Map Reference:1/1a Stillorgan Plaza, Kilmacud Lower, Stillorgan South,  
ED: Stillorgan Merville County Dublin

**B E F O R E**

**Frank Malone - Solicitor**

**Deputy Chairman**

**Michael Coghlan - Solicitor**

**Member**

**Michael F. Lyng - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 13TH DAY OF MARCH, 2002**

By notice of Appeal dated the 3rd October 2001, the Appellant Company appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £670 (€850.72) on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that:

The Valuation is excessive and inequitable

The Valuation is bad in law.

1. The appeal proceeded by way of an oral hearing which took place on the 12<sup>th</sup> November at the offices of the Valuation Tribunal, Dublin. The Appellant was represented by Ms. O Buachalla BA ARICS ASCS, a Director of Donal O’Buachalla & Company Ltd and the respondent was represented by Damien Curran, M.R.I.C.S., A.S.C.S., B.Sc (Surv) a District Valuer with 21 years experience in the Valuation Office.

2. Having taking the Oath, each Valuer adopted as their evidence in chief their respective précis of evidence, which previously, in accordance with practice, had been exchanged between them and submitted to this Tribunal. Both Valuers were cross-examined and Ms O Buachalla made a closing submission. Judgement was reserved. From the evidence so tendered the following relevant facts either agreed or so found emerged as being material to this appeal.

### 3. LOCATION OF PROPERTY

The subject property is situated on the south side of Lower Kilmacud Road at the junction with the Stillorgan Road and directly opposite Stillorgan Shopping Centre.

### 4. DESCRIPTION OF PROPERTY

The subject property comprises the ground floor and the basement of a two-storey building of rendered concrete block construction. It is a newly developed retail unit which forms part of a largely reconstructed and renovated mixed commercial complex known as “Stillorgan Plaza”. The subject is an AIB Bank Branch with good frontage to the main road. The ground floor level which is open plan comprises a Banking Hall and offices. The basement has no natural light and comprises stores, strong room, cash room, canteen and staff toilets. The areas are as follows: -

Ground Floor	477.42 sq.m.
Basement	224.54 sq.m.

The subject property consists of a semi-detached building with side frontage to the entrance to the car park for the Stillorgan Plaza development. It is a well finished modern unit in excellent condition. There is considerable public car parking available at lower ground level – 190 spaces approx.

#### 5. **TENURE**

The subject premises are held under a 99 year lease from 12<sup>th</sup> November 1980 at a nominal ground rent. This lease related to the original property which AIB occupied which had a larger frontage. As part of the redevelopment AIB lost part of their frontage but gained space at the rear of their existing premises. The original lease was varied by a Supplemental Agreement which included the additional area at an £1 consideration.

#### 6. **VALUATION HISTORY**

The subject premises was listed for Revision in March 1999 and the result of this Revision was published in November 2000 when the valuation of RV £670 was issued unchanged. (Valuation Date : 00/4.Revision). An appeal was then lodged against this valuation to the Commissioner of Valuation. At First Appeal stage submissions were made to the Commissioner following which the valuation of RV £670 issued unchanged in July 2001.

#### 7. **APPELLANT'S CASE**

The Appellant's basic case is set out in Ms O Buachalla's précis. This describes the subject property as having an irregular shaped frontage of approximately 14.1 metres to the Lower Kilmacud Road. The précis goes on to state that the subject premises had good frontage to Kilmacud Lower but that it was a long narrow Bank with poor natural light and that it did not have the benefit of a return frontage as it fronts on to the entrance to the car park. The précis stated that the basement had no natural light and was suited only to the purpose of storage. Ms O Buachalla in her précis argued for a quantum

allowance to take account of the large floor area of the subject premises. She stated in her précis that the ground floor area was approximately 3.5 to 4 times the size of the comparisons in the immediate vicinity. Her comparisons are set out at Appendix 1 to this Judgment and her calculations of NAV and RV are set out at Appendix 2 to this Judgment.

In oral evidence before the Tribunal Ms O Buachalla handed in a letter dated 2<sup>nd</sup> November 2001 from AIB Bank addressed to her. She stated that there were 15 car parking spaces held by the Bank under the Lease and that the Appellant was not in exclusive occupation of them. These were she stated marked on the ground with the AIB logo and were within the shopping centre development. She said that customers coming in to use other retail units and the cinema would use the Bank car parking spaces. She relied on the following authorities to support her case: -

- (a). Quotation from page 283 of **Keane on The Law of Local Government in the Republic of Ireland.**
- (b). Pages 7 and 8 of the Judgment of this Tribunal in the case of **Navan Shopping Centre Ltd. Appellants, Commissioner of Valuation Respondent and Navan Urban District Council Notice Party. VA/89/131.**

Ms O Buachalla said she had not consequently added in a value for car spaces in her Valuation.

Ms O Buachalla said that she was not relying on the AIB Dun Laoghaire as a comparison. She stated that in that particular case which was **A.I.B. Bank (Dun Laoghaire) v. Commissioner of Valuation VA93/2/008** the Tribunal decided that the correct method of valuation was zoning.

Ms O Buachalla stated that the National Irish Bank comparison would probably be the most relevant in terms of size.

Ms O Buachalla said that Mr Curran had written to her to advise that the National Irish Bank comparison was agreed on an overall basis. She handed in the figures supplied to her by the agent at the time Mr Eoin O Buachalla.

Mr Curran proceeded to make what the Tribunal regard as an opening statement before proceeding to cross-examination of Ms O' Buachalla. Mr Curran stated in relation to car parking spaces that a new development to the case was being introduced not present at First Appeal. He stated that he had inspected the car parking and that there were 16 car spaces clearly marked with AIB logos – 10 at basement level and 6 at ground floor level. In answer to a question from the Tribunal at this stage Ms O Buachalla stated that the number of car parking spaces was 15. She said she had inspected the car parking and that there were 10 spaces in the basement and 5 at ground floor level. She further stated that there were only 15 spaces demised by the Lease. In answer to a question from the Tribunal Ms O Buachalla stated that as far as she was aware the only way the Bank could enforce its rights was to put pole devices in place and she did not know if the Bank would be allowed do that because the Bank did not actually have control over the car park area.

In answer to a question from Mr Curran if she could tell him of any example or any textbook which showed a quantum reduction on top of a zoning approach Ms O Buachalla stated it was generally known as an end allowance and was not often used in the Republic but she did know in England and Northern Ireland that it was commonly used .

Mr Curran put it to Ms O Buachalla that agreements were reached at First Appeal in relation to her first and third comparisons (Irish Permanent and First National Building Society) on the basis of three zones with a Zone A rate of £30 a square foot. Ms O Buachalla said she could not say that she had seen any evidence to support that but that if she saw evidence to show that it was agreed on that basis she would accept it.

In answer to further questioning from Mr Curran Ms O Buachalla said that photograph Numbers 3,4 and 5 in her précis (Irish Permanent, Trustee Savings Bank and First

National Building Society) showed properties which were former converted residences and that the subject property was a purpose built modern retail unit. She accepted that these comparisons were fundamentally different to the subject property. She further stated in reply to Mr Curran that that she considered the National Irish Bank to be the most appropriate comparison.

In reply to Mr Curran who asked would she accept that zoning was not the basis on which the National Irish Bank comparison was valued Ms O Buachalla stated that she would find that difficult to accept in the light of the information that she received from the agent who dealt with it at the time.

Ms O Buachalla said she had no objection to the introduction of two photographs one of the subject property and the other of the National Irish Bank comparison by Mr Curran which were handed in. Ms O Buachalla stated that she accepted that the frontage on to the Lower Kilmacud Road of the subject property was far more substantial than that of the National Irish Bank comparison.

Ms O Buachalla stated that her submissions at First Appeal stage were *Without Prejudice* and that her letters in relation to the First Appeal were marked *Without Prejudice*.

## **8. RESPONDENT'S CASE**

In his précis Mr Curran described the subject property as being regular in shape with high profile frontage to the main road. His comparisons are set out at Appendix 3 to this Judgment and his Valuation is set out at Appendix 4 to this Judgment.

Mr Curran in his oral evidence stated that Ms O Buachalla adopted a zoning approach in her valuation whereas he was of opinion that an overall rate per square foot was more appropriate. He said he relied predominantly on the property which he considered to be the main comparison namely the National Irish Bank which was a modern purpose built retail/ bank unit in very close proximity to the subject premises. Mr Curran stated he was

the Appeal Valuer in the case of the National Irish Bank comparison and he was involved in the agreement of the Rateable Valuation thereof and the details were set out in Comparison No 1 of his précis. This states that a rate of £194.07 per sq.m. was agreed on an overall rate per sq.m. basis. He said that comparing the National Irish Bank to the subject premises he would contend that whilst the NIB was highly profiled it only has a high profile in one direction. He said the NIB was a ground floor premises and that the majority of the frontage was not on Kilmacud Road Lower but was on a laneway known as Glenalbyn Lane.

Mr Curran said his comparison Number 3 namely the Trustee Savings Bank which was Ms O Buachalla's comparison Number 2 was accepted by Ms O Buachalla in her direct evidence to be inferior to the subject property. This comparison was a two storey building.

Mr Curran referred to Ms O Buachalla's comparisons Numbers 1 and 3 namely the Irish Permanent and the First National Building Society and he stated he had a number of difficulties in factual terms with these comparisons both in regards to the actual areas involved and with regards to the zoning shown in the comparisons. He said these comparisons were agreed with Valuation Office with three zones. He said Zone A was agreed at £30 a square foot with a Zone B and a remainder. Mr Curran stated that the actual net area of the ground floor of the First National Building Society was 1252 sq. ft. and that Ms O Buachalla had stated that the ground floor area was 1642 sq. ft.

Mr Curran commented on the Tribunal decision in the case of *A.I.B. (Dun Laoghaire) v. Commissioner of Valuation VA93/2/008*. He said that in this case the Tribunal appear to have taken an overall rate per square foot approach even though he thought most of the argument in the case was on a zoning basis.

Mr Curran said in his opinion where the zoning approach is used it takes account of any quantum difficulties that might arise in a particular property. Mr Curran stated he had never experienced a quantum reduction on top of a zoning approach. He quoted from

page 4 of the Judgment of this Tribunal in the case of *A.I.B. Bank, Sutton v. Commissioner of Valuation VA95/6/025*. He contended that as admitted by Ms O Buachalla, the subject property was quite different from any of the comparisons submitted by Ms O Buachalla with the exception of the National Irish Bank. Mr Curran said he had not got the relationship between frontage and depth in the subject premises exactly but it was over 4 to 1.

In answer to a question from the Tribunal as to where he got the rate of £400 per car space Mr Curran stated that in Stillorgan Plaza a number of retail units with car spaces, the car spaces had been agreed on that basis and that the car spaces behind Ms O Buachalla's comparisons 1,2 and 3 were valued on the same basis.

## 9. FINDINGS

### **IRISH PERMANENT, TRUSTEE SAVINGS BANK AND FIRST NATIONAL BUILDING SOCIETY COMPARISONS.**

The Irish Permanent, Trustee Savings Bank and First National Building Society Comparisons are not suitable and can not be relied on for the following reasons: -

- (a). These comparisons consist of former converted residences whereas the subject property is a purpose built modern retail unit.
- (b). These comparisons are fundamentally different to the subject property.
- (c). We accept that the evidence given by Mr Curran hereinbefore referred to at Paragraph 8 hereof relating to the zoning and rate per square foot of the Irish Permanent and First National Building Society Comparisons is correct and further that his said evidence gives the correct net area of the ground floor of the First National Building Society Comparison.

## 10. NATIONAL IRISH BANK COMPARISON

The Tribunal is of the view that the best comparison in this appeal is the National Irish Bank at Kilmacud Road Lower which is near to the subject property.

The Tribunal is of the view that the frontage on to the Kilmacud Road Lower of the subject property is far more substantial than that of the National Irish Bank Comparison.

We accept the evidence given by Mr Curran that an overall rate of £194.07 per sq.m. was agreed in relation to the National Irish Bank comparison and the figures he gave at Comparison No 1 of his précis and that all this information is correct. He was the Appeal Valuer in this case and must be in possession of the correct information.

#### **11. APPELLANT'S VALUATION METHOD**

The Tribunal does not accept the valuation method advanced on behalf of the Appellant whereby a zoning method was used in valuing the ground floor and whereby in addition a quantum allowance was applied in valuing the ground floor.

#### **12. METHOD OF VALUATION**

The Tribunal considers that the Ground Floor of the subject property should be valued on an overall rate per square metre.

#### **13. CAR PARKING SPACES**

It is not clear to the Tribunal what Mr Curran alleges was not present at First Appeal in relation to car parking spaces. The Tribunal can not exclude grounds of appeal and/or evidence without a clear objection by a party to the appeal. In any event Ms O Buachalla's submissions at First Appeal stage were *Without Prejudice* and her letters at First Appeal stage were marked *Without Prejudice* so her case at First Appeal can not be put in evidence. The Tribunal will therefore deal with the points raised by Ms O Buachalla in relation to car parking spaces.

It is contended by the Appellant that it is not in exclusive occupation of the car parking spaces demised by the Lease on the grounds that customers coming in to use other retail units and the cinema use the Bank car parking spaces. The Tribunal find that the Appellant is in exclusive occupation of the car parking spaces demised by the Lease as the Bank could prevent non Bank customers from using the said spaces by taking legal action and/or other measures. The Bank have simply chosen not to enforce their rights.

There is a dispute between the parties as to whether the number of car parking spaces is 15 or 16 and the evidence is summarised at Paragraph 7 hereof. Any doubt in this matter should be resolved in favour of the Appellant as a matter of general principle. This conclusion is further assisted by Mr Curran's statement that he was not making a major point about the matter and Ms O Buachalla's sworn statement that there were only 15 spaces demised by the Lease. The Tribunal therefore find that the number of car parking spaces demised by the Lease and physically present on the ground is 15.

#### 14. DETERMINATION

The Tribunal find Mr Curran's Valuation of the Ground Floor and Basement of the subject property to be fair and reasonable. The Tribunal also find his valuation of the car spaces @ £400 each to be fair and reasonable.

The Tribunal therefore determines the Net Annual Value and the R.V. of the subject property as follows: -

Ground Floor	477.42 sq.m. @	£172.22 per sq.m.	=	£82,221.27
Basement	224.54 sq.m. @	£75.35 per sq.m.	=	£16,919.09
Car Spaces	15 @	£400 each	=	£6,000.00
NAV	=	£105,140.36		
£105,140.36 x .63%			= RV	£662.38
Convert £662.38 to Euro			=	€841.05

Say €841 R.V.