

Appeal No. VA01/3/076

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

TSB

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Automatic Bank at Map Reference Unit 3A Morgan Street - Hyper Centre,
Ballybricken Waterford.

B E F O R E

Frank Malone - Solicitor

Deputy Chairman

Patrick Riney - FSCS. MIAVI

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF APRIL, 2002

By Notice of Appeal dated the 18th October 2001, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €25.39 (£20) on the above described hereditament.

The Grounds of Appeal as set out in the 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 in the Circuit Court, Catherine Street, Waterford on the 1st Day of March 2002. Mr Alan McMillan ASCS., MIAVI a Director of GVA Donal O Buachalla appeared on behalf of the Appellant whilst Mr John P. Smiley of the Valuation Office was the Appeal Valuer. In accordance with the Rules of the Tribunal the parties had prior to the commencement of the hearing exchanged their précis of evidence and submitted the same to this Tribunal. At the oral hearing both Valuers having taken the oath adopted their said précis as being and as constituting their evidence in chief. This evidence was supplemented by additional evidence obtained either directly or via the cross-examination process. From the evidence so tendered the following relevant facts either agreed or so found emerged as being material to this appeal.

2. **LOCATION AND DESCRIPTION OF PROPERTY**

The subject ATM kiosk is situated at ground floor level beside the main entrance to Caulfield Supermarket and fronts on to Morgan Street close to Waterford City Centre. The kiosk comprises an agreed area of 8.6 sq. metres which contains a standard ATM. There is a TSB Branch at first floor level which has street level access at Military Road and which is separately valued. There is no physical interlinking between the subject ATM kiosk and the TSB Branch.

3. **TENURE.**

The TSB Branch was originally held under lease for 11 years from January 1994 and by agreement this lease was extended for five years. In 2000 the terms of a new lease were agreed and this was a lease of the TSB Branch at first floor level and the subject ATM kiosk at ground floor level. The new lease has not yet been signed but its terms have been agreed and it is for 20 years from October 2000 at a yearly rent of €6,822.40 with 5 year rent reviews.

5. **VALUATION HISTORY**

The subject property was first valued in November 2000 at €25.39 (£20). An appeal was then lodged against this valuation to the Commissioner of Valuation and the issues raised by the Appellant at First Appeal were;-

- A. Quantum.
- B. ATM valuation should be struck out, as it is included in the lease of the bank premises.

The Commissioner made no change at First Appeal and it is against this decision that this appeal lies to the Tribunal.

6. JLW RETAIL INDEX

The parties agreed that the correct fraction to backdate from November 2000 to November 1988 on the JLW Retail Index was as stated by Mr Smiley in his précis namely 387/799.

7. APPELLANT'S CASE

Mr McMillan referred to the case of *Switzer Co. v. Commissioner of Valuation (1902) 2 I.R. 275, 294* and said he was not arguing that the RV of the subject property should be struck out pending a revision of the entire namely the ATM plus the net branch premises. Mr McMillan submitted that the subject property should be valued as part of the branch premises and that there should be applied to the subject property the established level of valuation applied to the net branch premises. Mr Mc Millan's Valuation is set out below:

Per rate on 1st Floor bank hall etc (1993 FA)

$$\begin{aligned}
 6.78 \text{ sq.m at } \text{€}18 \text{ (£}93) &= \text{NAV } \text{€}800 \\
 &= \text{NAV @ } .63\% = \text{RV } \text{€}
 \end{aligned}$$

Mr McMillan stated the rate of €18 per sq. metre used in his Valuation was a devaluation of the RV on the first floor TSB premises (1993 First Appeal).

Mr McMillan referred to the letter dated 9th November 2001 from Mr Desmond E. O'Toole of O'Shea O'Toole and Partners to Mr Brian McAteer of the Premises Department, TSB Corporate Centre. A copy of this is contained in Mr McMillan's précis. He stated that O'Shea O'Toole acted for the Lessor. Mr McMillan said he did not know what negotiations had taken place in relation to the new Lease agreed

in 2000. Mr McMillan said the evidence he gave in relation to the said negotiations and the apportionment of rent between the TSB Branch and the subject ATM kiosk was based on what he had been advised by Wendy Martin and Brian McAteer both of TSB. He said the negotiations took place over a number of years in relation to the branch and his belief and understanding is that £27,500 was more or less agreed as the rent for the branch and an additional £1,500 rent was agreed for the ATM kiosk to be provided by the Landlord. Mr McMillan stated the Bank provided the ATM machine in 2000. He said that he did not know what the machine cost but it was quite expensive and that he did not think the installation thereof was expensive. Mr McMillan stated he had not seen the Lease because it had not been finalised but that there was nothing in the Lease which said there was a Rent A and Rent B. He said there was a rent of £29,000. Mr McMillan stated the apportionment was not ultimately material to the case he was making and was just background information as he expected to view the kiosk as part of the existing bank hereditament. It is clear from Mr Smiley's cross-examination of Mr McMillan that Mr Smiley objected to the letter of 9th November 2001 and Mr McMillan's evidence in relation to the negotiations for the Lease and the apportionment of rent, as hearsay.

In cross-examination by Mr Smiley Mr McMillan stated that it certainly used to happen in earlier days that a landlord requested a bank to place an ATM in a shopping centre rent-free and he further said that still happens within department stores. Mr McMillan further stated that that he accepted it was of value to a shopping centre to have an ATM on site and that for that very reason landlords were attracted to ATMs on site and that could be reflected in the rent.

Mr McMillan confirmed in reply to a question from the Tribunal, that the ATM valuation was not included in the RV of the bank branch at first floor level. In answer to a further question from the Tribunal Mr McMillan said if he were the Branch Manager he would prefer to have the ATM in the branch premises where the bank staff could service it. He stated that an isolated ATM was much more expensive to service and that you had to have Securicor to fill it up as the bank staff would not do it.

Asked by the Tribunal to comment on Mr Smiley's comparisons, Mr McMillan said as stand alone comparisons he did not have any difficulty with comparisons 1 and 2 which were both out of town in the Waterford Regional Technical College.

8. RESPONDENT'S CASE

Mr Smiley stated he had two amendments to his précis. The rent had been stated in pounds at £29,000 and he should have stated it in Euro as €36,822.40. He further stated that in the Valuation Certificate the RV was stated in error as £25.39 and that that should be €25.39. He undertook to forward to the Tribunal a correct Valuation Certificate.

Mr Smiley stated his opinion that when the Shopping Centre was extended and refurbished the bank could have asked for the ATM to be on the front wall of their premises but instead of that it was decided between Landlord and Tenant that the best location was at the entrance to the supermarket. In his opinion Mr Smiley said the ATM served most people being at the entrance to the supermarket. He stated the ATM was available 24 hours a day. Mr Smiley further stated that the location of the ATM kiosk was of advantage to the Landlord and the Occupier. The ATM was, he said, available for shoppers and residents. Mr Smiley stated that from the point of view of the Bank, they would have the most transactions at the entrance to the supermarket and that it was of great benefit to the Landlord to have an ATM on site.

Mr Smiley's Comparisons are set out at Appendix 1 to this Judgment and his Valuation is set out below:

Estimate NAV at November 2000	=	€8,000
Backdate to November 1988 by JLW Retail Index 387/799	=	€3,875
Estimate NAV November 1988	=	€4,000
NAV €4,000 @.63%	=	€25.20
RV	=	€35.39

Mr Smiley referred to the comparisons in his précis. He said the reason he did not use any comparisons closer to town was that he was unable to find any stand alone

ATMs and that there were many ATMs valued as part of banks or credit unions. His said that his first two comparisons (Numbers 1 and 2 in his précis) were situated in Waterford Regional Technical College which was some distance out from the centre of Waterford and he said the College was closed from about June to the beginning of September. Mr Smiley said he would think that the subject ATM site would have a greater letting value than Comparisons 1 and 2. Mr Smiley stated that in relation to Comparison 1 it was revised in 96/3 and that in the same revision the AIB Branch in Waterford Regional Technical College was also revised, the Bank Branch being subject to appeal by GVA Donal O Buachalla. Mr Smiley said there was no appeal in relation to the RV of the ATM in comparison 1 and that this comparison and the subject property were in a similar situation in so far as in both cases the bank branch and the ATM were separated physically and held under the one lease.

Mr Smiley produced an email dated 2nd July 2001 from Ms Wendy Martin, Premises Department, TSB Corporate Centre to Ms Sheelagh O Buachalla of GVA Donal O Buachalla and this was handed in to the Tribunal. Mr McMillan had no objection to this.

Mr Smiley submitted that any agreement between Landlord and Tenant relating to the apportionment of rent to be considered properly should be an actual rent as distinct from some verbal agreement relating to apportionment and that the rent did not reflect the true value of the subject property given the advantages for the Landlord. Mr Smiley said that if the real rental value of the subject property was to be arrived at, reflecting the benefit to the Landlord in having the ATM, the rent would be very much higher. Mr Smiley further submitted that his Valuation for a city centre shopping centre automatic bank was very conservative. In reply to a question from Mr McMillan, Mr Smiley stated that it was his firm belief that it was of great benefit to the Landlord and of benefit to the Occupier to have an ATM in the Shopping Centre.

9. FINDINGS

- (a) The Tribunal finds that Mr McMillans's evidence in relation to the apportionment of rent between the bank branch premises and the subject property and the negotiations for the new Lease agreed in 2000, the letter dated 9th November 2001 from Messrs O'Shea O'Toole and Partners to Mr Brian McAteer and the email dated 2nd July 2001 from Ms Wendy Martin to Ms Sheelagh O Buachalla are all hearsay and in the circumstances of this appeal, are considered to be inadmissible.
- (b) The Tribunal is of the view that Comparison Numbers 1 and 2 set out in Mr Smiley's précis are the most relevant.
- (c) The figures advanced by Mr McMillan for Net Annual Value in the Valuation contained in his précis do not represent the true NAV of the subject property and the NAV of the subject property is much higher than Mr McMillan's figures.
- (d) The Valuation contained in Mr Smiley's précis is fair and reasonable.

10. DETERMINATION

The Tribunal considers that the Rateable Valuation of €25.39 (£20) as determined by the Commissioner of Valuation is fair and reasonable and should be affirmed.

Rateable Valuation €25.39 affirmed.

