

Appeal No. VA02/1/036

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Charlotte Quay Carpark Partnership

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Carpark at Map Reference 1-9,14-18/ Unit D, Charlotte Quay, Ward: Custom House, UD: Custom House and Shannon, County Borough of Limerick

B E F O R E

Frank Malone - Solicitor

Deputy Chairperson

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

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF DECEMBER, 2002

By Notice of Appeal dated the 10th day of January, 2002, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €987.86 on the relevant property described above. The grounds of appeal were set out by the appellant in a letter attached to the Notice of Appeal and are inter alia "there has been no alteration in the RV of the above and on behalf of the tenants of Charlotte Quay Car Park Partnership, I wish to appeal this decision on the grounds that it is excessive and inequitable and in this regard I enclose appeal fee...".

The appeal proceeded by way of an oral hearing that took place in the Council Chamber, Limerick County Council, O'Connell Street, Limerick on the 17th June, 2002. The Appellant was represented by Mr. John McDonnell who is a partner in the Charlotte Quay Car Park Partnership and the respondent was represented by Mr. Patrick Conroy, MIAVI, MSc, Dip Environ. Econ., staff valuer in the Valuation Office.

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 parties, having taken the oath, adopted their précis as being 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.

Property Location

The property is located at Charlotte Quay, Limerick. The area is on the outer fringes of the prime retail locations and surrounding properties are predominantly newly erected office blocks. The location is secondary i.e. not high street.

Description

The premises comprises a purpose built multi-storey car park with 423 car parking spaces.

Valuation History

At the November 2000 Revision, the rateable valuation was determined at €987.86. No change was made at first appeal on the 12th December 2001 and it is against this decision that the appeal to this Tribunal lies.

Tenure

It is common case that the car park is held under a ten-year lease from February 2000. The rent payable each year is €507,895 with no review or variation during the term of the lease. A capital inducement of €1,015,790 was paid by the Landlord to the tenant. This capital payment was not taxable. The Appellant is entitled to double tax relief on the rent as the scheme qualifies under the double rent partnership rules for tax purposes.

Appellant's case:

Mr. John McDonnell, commented on the premises as follows:

1. The rent agreed for this car park was totally tax driven and artificial and should not be taken into account when determining the rateable valuation of the subject property.
2. The subject property has three entrances, Charlotte Quay, Broad Street and Michael Street but is completely obscured from sight by office blocks, apartment blocks and hostels and because of this, it only attracts business from the commercial businesses within the area.
3. The car park is located in an area with poor access and bad visibility.
4. The subject property was built on derelict/waste ground and suffers from security and safety concerns because of the poor reputation of Watergate Flats close by.
5. The car park consists of five floors over ground. The upper three floors were closed and not in use due to lack of demand in 2001 and this has continued in 2002.
6. Because all the roads leading to the car park are private roads people double park on the roads and footpaths and do not find it necessary to use the car park.

Mr McDonnell's comparisons are set out at Appendix 1 to this Judgement. Mr McDonnell agreed that there were errors in the figures in his comparisons and that the correct figures appeared in Mr Conroy's comparisons.

Mr McDonnell said that in his opinion the best comparison for the subject premises is Summer Street Car park and that there was no comparison between the subject car park

and the high throughput shopping centre car parks such as Arthur's Quay, Howleys Quay, Denmark Street and Roches Street car parks.

Respondent's case

Mr. Conroy made the following points:

1. That the tax incentives were the whole foundation on which this investment was created.
2. That the Tenants entered into the lease knowing all the facts.
3. That it was not correct to use the receipts and expenditure method of valuation to assess net annual value in this case.
4. That the tax advantages enjoyed by the occupier considerably enhanced the value of the car park over and above what it would be if the operational revenues only were considered.
5. That the tax advantages enjoyed by the tenant were conferred by law and were not a private arrangement between the parties and were designed to make a development more valuable and more viable. He said that you could not ignore the foundation on which the value of the premises was built in assessing the net annual value
6. That the best evidence of net annual value is the rent payable including the tax breaks. Mr Conroy referred to the Judgment of this Tribunal in the case of **River Island Clothing Company Ltd. Appellant, Commissioner of Valuation, Respondent, VA98/1/009**, where he said the Tribunal stated that a property with tax advantages is more valuable than one without.
7. That the list of comparisons supplied supported the level of assessment, although in his opinion the prima facie evidence on which to base the estimate of NAV was the rental agreement between the parties.

Mr Conroy's comparisons are set out at Appendix 2 to this Judgement. He objected to Mr McDonnell's Summer Street comparison being used as evidence as it was subject to a First Appeal, which had not been decided upon. He also said that the facts presented by the Appellant in relation to it did not seem to be correct, in particular he referred to the number of spaces assigned to social housing and therefore not rateable, which had been

included in the appellant's evidence. He said that in his opinion it was the worst car park in the City. Mr. Conroy said that both the Mount Kenneth and Steamboat Quay car parks were very comparable to the subject property.

In his précis Mr Conroy set out his Valuation as follows: -

Valuation 1: - by reference to the rental agreement between the parties

1. Rent reserved February 2000	€507 895
Less annual equivalent of capital grant	<u>€101 579</u>
	€406 316

Adjust to November 1988 by CPI (518/698) = €301 535 @ 0.63% = RV €1,899

Or

Adjust to November 1988 by JLW ERV (341/743) = €186,478 @ 0.63%
= RV €1,175

As the RV of €987.86 as currently assessed represents an NAV of €156,832pa that RV is considered to be the minimum that can be considered for the subject property.

Valuation 2:- by reference to the comparative evidence.

423 spaces @ €370.76 = €156,832pa @ 0.63% = RV €988.

(The long established reducing factor to make relative in the County Borough of Limerick is 0.63% of the net annual value as at November 1988.)

Mr Conroy stated that the Revision in November 2000 which was upheld on First Appeal was on the basis of the tone of the list. In his view this was too low as the valuation list was based on out of date information. In his Valuation 1 the calculation was referenced to

the rent paid less the capital payment. He stated that he made no allowance for the double tax relief on the rent in his calculation, as this was not provided for in the legislation.

Mr Conroy stated that on the Valuation Certificate of the subject property included in his précis, the Rateable Valuation was stated in error as £987.86 and that the valuation should be €987.86. He undertook to forward to the Tribunal a correct Valuation Certificate.

Findings and Determination

1. The Tribunal have considered the case of **Pavilion Partnership and Commissioner of Valuation – VA01/2/015** a decision of the Tribunal in a case where the rent payable under the lease qualified for double rent allowance and the Appellant's Accountant gave uncontradicted evidence that the rent was a tax driven rent. In that case the Tribunal in its findings stated: -

“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 a 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. ”

The facts in relation to the rent being paid in the appeal currently before the Tribunal are similar to the *Pavilion Partnership* case in that in the current appeal the appellant is entitled to double tax relief on the rent with the additional factor present of a capital payment by the landlord to the tenant.

The Tribunal find that the rent payable under the Lease in this Appeal is not representative of a market rent and is completely artificial and tax driven. Accordingly therefore as in the *Pavilion Partnership* case the rent payable under the lease in the current appeal is of little assistance to the Tribunal and the Tribunal in this case will look

to the only evidence available namely the comparative evidence introduced by Mr McDonnell and Mr Conroy.

2. The most relevant comparisons in the Tribunal's opinion in this appeal are the Mount Kenneth and Steamboat Quay car parks which were common comparisons. However a number of important factors affecting the subject property have also been taken into account by the Tribunal in arriving at the valuation of the subject property:

- 1) The car park is not attached to any shopping centre and is not in a prime city location,
- (2) It has poor access,
- (3) The car park depends on support from the office blocks close by for most of its business (evidenced by the early closing of 7.00 pm)
- (4) Is adjacent to the Watergate Flats with resultant security and safety problems
- (5) The subject car park suffers from very poor visibility.

In view of the foregoing and having taken all the evidence into consideration the Tribunal considers that there should be a considerable reduction in the RV concerned and determines the net annual value and the rateable valuation as follows:

Net Annual Value

423 spaces at €278 per space = €17,594

Rateable Valuation @ 0.63% = **€740.84**

say €740