

Appeal No. VA10/5/043

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

Irish Aviation Authority

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 911790, Airport Control Tower at Huntstown, Dublin Airport, County Dublin

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

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

Member

Patricia O'Connor - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 24th day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €1,143,000 on the above described relevant property.

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

"The Valuation is excessive and inequitable. It is not based on open market rental values for similar properties in Fingal around the valuation date, nor is it even remotely in line with rateable valuations applied to other office properties in Fingal under the recent Revaluation."

"The proposed valuation includes a premium for "air-side" location, yet the subject property is not located within Dublin Airport and therefore should be valued having regard to valuations of other office properties in the Fingal area - significantly less than the €psm applied."

The appeal proceeded by way of an oral hearing, which took place in the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 2nd November, 2010. The appellant was represented by Mr. Fergal Burke, BSc (Surv), MSCS, MRICS, an Associate Director of GVA Donal O Buachalla, Property & Rating Consultants, and the respondent by Mr. Dean Robinson, BSc (Property Economics), Valuer, Valuation Office.

In addition, Mr. Eugene McLernon, Advisor Civil Infrastructure, Irish Aviation Authority (IAA) was introduced to the Tribunal as an observer and a party who would offer clarification, if requested, on matters relating to the operation of the IAA. Mr. Pat Kyne of the Valuation Office was also introduced and was present as an observer on behalf of the Commissioner of Valuation.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted 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 given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

The Property

The property comprises of a number of elements, including the Air Traffic Control Centre and Tower serving Dublin Airport, together with various ancillary buildings and stores, a perimeter fence, surface car park, radar facilities and a small office area within the former Dublin Airport Control Centre, at Terminal 1.

The Air Traffic Control Centre (ATC) and Tower was built in 1987. The Tower, which extends to a height of 35 metres, provides VCT accommodation for four accredited ground-based controllers and one assistant whose functions are to control airfield operations. The Control Tower cab is glazed and is constructed upon steel column support platforms. The Control Centre itself provides accommodation for administration, engineering, training departments and other support functions required in providing air traffic control services. The Centre and the Tower are operated 24 hours a day, 7 days a week, every day of the year. Both the ATC and Tower are integrated and the main structure consists of reinforced concrete walls and columns with corrugated steel curtain walls. Internal partitions are mainly of concrete construction and the Control Tower is served by a lift.

The car park comprises 114 car spaces laid out on a tarmacadamed surface. A steel radar facility is located in the grounds of the car park, as are two additional radar stations located nearby off the Forest Little Road. These latter two comprise radar and unmanned concrete stations and housing for a stand-by generator. There are also two other sub-stations located in Fingal, namely at Rush and Rolestown. These are described as basic store units with mast/antennae on top. The subject property also includes stores located nearby the ATC.

Location

With the exception of the above noted office within the old Dublin Airport Control Building and the two sub-stations at Rush and Rolestown, all of the other elements of the subject property are understood to be situate within an area enclosed by a palisade fence, at the land side of Dublin Airport within a site abutting the R108 Road at Huntstown, Cloghran, north of St. Margaret's and west of Dublin Airport, all in north County Dublin.

Services

All required mains service connections are available to the subject property.

Tenure

During the course of the hearing the parties informed the Tribunal that some communication difficulties arose with respect to information requested by the respondent from the agent regarding details on tenure supporting the occupier's possession of the subject property, and the response of the latter. The Tribunal was provided with a copy of correspondence from the respondent addressed to Mr. Burke dated 10th June, 2010, requesting copy lease or licence details on the ATC and Control Tower. The Tribunal was also then provided with a copy of a response provided by GVA Donal O'Buachalla to the Valuation Office dated 21st June, 2010, advising that no formal lease existed on the ATC or Tower, but that rent (amount disclosed) was being paid by the Irish Aviation Authority (IAA) to the title holder, namely the Dublin Airport Authority (DAA). Redacted copies of both letters are attached herewith as Appendix 1 and 2.

Valuation History

July 2009: A Revaluation Draft Valuation Certificate was issued with a valuation of €1,143,000.

August 2009: Representations were lodged by appellant's agents. A Final Valuation Certificate issued with the valuation unchanged.

February 2010: An Appeal was lodged by the appellant to the Commissioner of Valuation. The Valuation re-issued unchanged.

August 2010: An Appeal was lodged to the Valuation Tribunal.

Floor Areas

As indicated in the respective written submissions, together with confirmation e-mails from the Valuation Office to the Valuation Tribunal of 27th October, 2010 (Appendix 3), and GVA Donal O Buachalla correspondence of 19th October, 2010 (Appendix 4), also to the Valuation Tribunal, the parties confirmed agreement on floor areas, as follows:-

Ground Floor Office:	1,281.40 sq. metres
First Floor Office:	1,266.45 sq. metres
Air Traffic Control Tower office:	30.00 sq. metres
Air Traffic Control Tower (Sub-cab level):	25.72 sq. metres
Store (Radar 1, Store 3 radar):	169.41 sq. metres
Store (Radar 2):	42.04 sq. metres
3 No. Radar elements (deemed rateable)	
Store (Rush 2 x 2, Rolestown 2 x 3):	10.00 sq. metres
Office (Old Terminal Building):	20.90 sq. metres
Car Spaces:	114

Appellant's Case

Mr. Fergal Burke took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. Confirming that the appeal to the Tribunal was based on quantum issues only, Mr. Burke provided details of the valuation history on the property and its location. He specified that, with the exception of the small office area in the Terminal Building, the ATC, Tower, Car Park etc., could not be considered as being located airside to Dublin Airport, and proceeded to outline the physical characteristics, construction specifications and finishes, externally and internally, of the two-storey office building and control tower. He argued that the Commissioner of Valuation had erred by considering the ATC and Tower as properties within the Airport complex (airside) and stated that, in his view, they should properly be assessed as office-type facilities located near the R108, in a predominantly agricultural area, located approximately 4.5 kms road travel distance from the main Dublin Airport roundabout and entrance, in the Fingal county area. He noted that the

Airport perimeter fence denied IAA employees any passage to or through the runways to the Airport Terminal Building. Mr. Burke explained that the main office area, though reasonably well presented, was designed in a more traditional cellular layout and, at best, might be viewed as second generation, taking account of such items as concrete rather than raised floors and perimeter trunking. He indicated his view that the hypothetical tenant would factor in the external and internal ageing, deteriorating appearance of the condition of the ATC and possible repair and refurbishment works needed in the short to medium term when considering what he might afford to pay for rent, if offered the subject property on a “full repairing and insuring” (FRI) lease on same. Mr. Burke stated that a prospective tenant might have difficulties with the internal layout of the building complex, as designed. He stated that market demand on the Valuation Date on September 2005 did not prevail for such large office facilities bearing design characteristics of the subject. Referring to his comparison properties noted below, Mr. Burke explained that Section 48 of the 2001 Valuation Act sets out the basis of valuation for this exercise and that there were sufficient properties on the List in the Fingal Rating Authority area considered as suitable comparables, six of which he provided within his précis which are attached herewith as Appendix 5.

In addition, Mr. Burke provided a summary schedule of the rental details of those 6 comparison properties, which is attached herewith as Appendix 6 and which indicates passing rents on various offices in the same Rating Authority area at or about the Valuation Date, ranging from a low of €12.45 per sq. metre (including parking) to a high of €78.43 per sq. metre. That schedule also suggests a range of parking charges from €450 to €635 per space per annum. Mr. Burke reiterated his client’s view that the Commissioner had erred by considering the values on the subject property in the same context as the criteria applicable to the Dublin Airport complex.

Appellant’s Comparisons

As noted above and as set out in greater detail in the attached appendices, Mr. Burke cited details on 6 office properties in the Fingal Rating Authority area, all of which he considered as useful guides to market rents at or about the Valuation Date, which, in his view, satisfied the requirements of the Valuation Act, 2001. The details of the comparison properties in his précis were offered as evidence of passing rents to support Mr. Burke’s calculation of net annual value (NAV) on the subject ground floor and first floor offices of the ATC, the glazed

top section of the Control Tower, the “Sub-cab” area below, the small office area located within the old Central Terminal Building and the parking area.

The appellant’s calculation of NAV of the subject property was set out in his précis is as follows:

Ground Floor Office	1,281.40 sq. metres @ €145 per sq. metre =	€185,803
First Floor Office	1,266.45 sq. metres @ €145 per sq. metre =	€183,635
Air Traffic Control	30 sq. metres @ €145 per sq. metre =	€ 4,350
Car Spaces	114 @ €465 p.a. =	€53,010
Store (Radar 1, Store 3 radar)	169.41 sq. metres @ €70 per sq. metre =	€11,858.70
3 no. radar - rateable elements:		= €5,000
Store (Radar 2)	42.04 sq. metres @ €70 per sq. metre =	€2,942.80
Store (Rush 2x2, Rolestown 2x3)	10 sq. metres @ €70 per sq. metre =	€700
Office (Old Central Terminal Building)	20.90 sq. metres @ €130 per sq. metre =	<u>€2,717</u>
		€450,016.50
Total NAV:		€450,000

Cross-examination

In response to questions from the Tribunal and the respondent, Mr. Burke stated that, in his opinion, the level of rates per sq. metre applied by him, in particular with respect to the office areas and parking area, as outlined in his précis and set out above, were fair and reasonable, bearing in mind he contended, that the hypothetical tenant, would inform himself of the same market rents as those comparison properties, and that the same party would also be aware of the common practice during 2005 of Landlords offering rent-free or partial rent-free period inducements, and/or funding or part-funding of tenant fit-outs, allowances and other encouragements which might effectively further reduce the headline rents scheduled in his précis. He also advised the Tribunal that the hypothetical tenant would bear in mind the layout, condition, age, location and neighbourhood characteristics of the subject property, and would conclude accordingly that the accommodation rental rates per sq. metre and proposed parking rents outlined in his précis were affordable as at September 2005.

Mr. Burke argued that there was considerable evidence of rents passing in the market place within the Fingal rating authority area in September 2005. He stated that rating valuation practice and the Valuation Act, 2001, required use of the Comparison Method of valuation as the appropriate means to calculate and determine an assessment of NAV, in this circumstance.

Mr. Burke again confirmed the payment amount made by the IAA to the DAA and advised that, notwithstanding any references made by Mr. Robinson to possible indexation to CPI on the annual sum paid or to be paid, it was his understanding that the rental figure had remained unchanged and had been paid for the past 16 years and remains so, at the same level.

Mr. Burke also advised that the IAA and the DAA have no formal lease, licence or contract document in place or executed by them on the property, and therefore, he could not indicate on behalf of his client, what terms or conditions pertain to or what covenants applied by either party to the continued use and occupation by his client of the subject relevant property. He did, however, inform the Tribunal that the IAA is fully responsible for the payment of all rates, insurances, maintenance, upkeep, repairs and decorations to the subject property.

Mr. Burke also advised that the IAA and DAA are statutory bodies reporting to the Minister for Transport. Mr. Burke stated that the matter of the actual passing rent from the IAA to the DAA on the subject property was not of primary concern to him as he was compelled to follow the provisions of Section 48 of the Valuation Act, 2001 to establish the NAV, in the first instance.

Mr. Burke declared that the activities being conducted in the ATC and Tower, though considered a particular function, conversely could not be perceived as specialised and accordingly, in his opinion, the accommodations would be considered by the hypothetical tenant by reference to other properties comparable in the rating authority area, such as those cited in his written submission.

Mr. Burke also added that, though his comparisons did not include office accommodation akin in some respects to the Control Centre facilities or Tower *per se*, all provide examples of office space accommodation and should clearly be considered as suitable comparable properties.

Replying to further queries raised by Mr. Robinson on his comparison properties Nos. 4 and 5, Mr. Burke would not accept that the NAVs assessed by the Commissioner of Valuation on his comparisons were relevant to the valuation of the subject, repeating his understanding that Section 48 guided him to consider otherwise, as the current exercise was a revaluation task. Mr. Burke also dismissed the respondent's references to the NAV applicable to his Comparison Property No. 1 and stated that those NAV levels were not known on his comparison properties at the time the subject property was assessed for valuation in September 2009.

Mr. Burke also contended that the level of commercial office activity occurring at Dublin Airport at the valuation date was irrelevant to rating valuation of office space in the greater Fingal area at that time.

Mr. Burke noted that the Tower structure, which might be considered unusual, was of itself irrelevant as the office areas atop and the integrated two-storey offices in the ATC were those relevant properties to be compared with others in the market at the time of valuation. Reiterating that the subject property is not considered air-side, he explained that IAA employees do not have security clearance to pass over the runways, or within, or through the security areas of Dublin Airport.

Mr. Burke accepted that while the Control Tower is positioned to provide sight by the air traffic controllers of all runways at Dublin Airport, there was no particular benefit arising in favour of the IAA from the co-location of the ATC in value terms, though he acknowledged the benefit of social interaction resulting from same among the IAA management and staff working at the centre.

Respondent's Case

Mr. Robinson took the oath and reviewed his submission, which comprised two bound documents; one received by the Valuation Tribunal on the 19th October, 2010, and the subsequent Addendum Précis or Appendix 6 to his original, received by the Valuation Tribunal on 28th October, 2010, all of which had been exchanged with the appellant prior to submission.

In his introduction, Mr. Robinson outlined the reasons for the existence of the ATC service at Dublin Airport and the requirement to have unimpeded visual contact available to the

controllers with the airport runways. He explained that the Tower is a component of the ATC services and that the ATC Centre provides essential weather, navigation and procedural information to pilots. He offered a description of the subject property and the characteristics of the immediate area, known as Huntstown. He described the Tower and ATC and informed the Tribunal that they were built at a cost of IR£4 million, 23 years ago, to a shell and core specification. The parties described the property in similar terms.

Mr. Robinson also provided details on the accommodation of the subject, noting that the office areas had been measured on a Net Internal Area basis, and the ancillary stores on a Gross External Area basis.

As stated above, the areas were agreed between the parties prior to hearing, but a difference in views on the rateability of radar equipment prevailed between the parties, which will be addressed later.

Mr. Robinson confirmed the valuation history as above, and then proceeded to explain the basis of valuation adopted by the Commissioner in this case, noting that the property was the subject of a Revaluation as one of all rateable properties under a Valuation Order for Fingal County Council with a Valuation Date of 30th September, 2005.

Mr. Robinson's précis noted that the valuation levels were derived from the analysis of available market rental information of comparison properties and applied to the subject property, and the valuation of this property, on appeal to the Commissioner of Valuation, was determined by reference to the values of comparable properties as stated in the Valuation List in which the properties appear.

Mr. Robinson then outlined two methods of valuation, namely the Comparative and Contractor's methods, which are outlined on pages 9 and 10 of his précis, copies attached as Appendix 7 and 8.

The Comparative method (method 1) resulted in an assessed NAV of €1,143,000, and the Contractor's (method 2), which he declared as his preferred method, produced an NAV of €1,376,000. For Method 1, Mr. Robinson relied upon 5 comparison properties, the first three of which were office properties, all located within Dublin Airport, with rates per sq. metre of €400 and €325 for office accommodations comprising between c.2,700 sq. metres to c.2,800

sq. metres, primarily single tenanted, third and second generation buildings respectively, to a much smaller office area of circa 28 sq. metres at a rate of €450 per sq. metre for a second generation space within a multi-tenanted building complex. These rates were relied upon by the respondent to determine a level of €380 per sq. metre on the subject for the ground and first floor offices of the ATC, and a level of €350 per sq. metre for the small office area within the old Central Terminal Building.

Mr. Robinson also proffered comparative rates applied to car rental spaces, notably Long Term Green Car Park No. 6 operated by the DAA at Harristown, near the Airport, which has 9,500 spaces, and the Quick Park facility which operates under the management of Dockstop Ltd., at the Old Airport Road, which has 6,240 spaces. He noted that the NAV on the Quick Park spaces was calculated at €1,000 each, whereas the NAV on the larger Harristown facility was determined at €800 each. Mr. Robinson contended for the latter rate per space to apply to the 114 spaces being part of the subject, and sought a correction to the typographical error which indicated €1,000 per space on page 9 of his précis, instead of the intended amount of €800 per space.

Mr. Robinson proceeded then to explain that the Contractor's method outlined in his précis should be considered by the Tribunal as the more appropriate valuation method in this particular case, having regard to his views on the location, specialised uses, design and construction of the subject relevant property and, in particular, the ATC, Tower and radar equipment. He explained that he was guided by the 2001 Valuation Act and was now relying exclusively upon the Contractor's method and submitted build costs for the ATC, and the Comparative Method for the ancillary buildings and stores. He set out the foregoing on the attached schedule (Appendix 8).

Mr. Robinson also contended that the subject IAA facility was constructed and built for a specific purpose, and in effect, there were no market comparables for the facility other than the aforementioned ancillary stores. He noted the high level of security at the subject property and disclosed that he was not even permitted to take internal photographs there when he visited the site.

Cross-examination

In response to various questions, the respondent first acknowledged there existed a substantial difference in the floor areas as contained in his Comparative Method 1 and Contractor's Method 2, as evident on Appendix 7 and 8 attached to this judgment.

He advised that he did not know the details of the costs of the IR£4 million build figure upon which he was relying. He informed the Tribunal that the assessed NAV was determined by reference to and based on the Comparative Method as outlined in his précis from the outset in the subject case, but repeated his request that the Tribunal now consider the Contractor's Method as the appropriate means to calculate the NAV. When asked by Mr. Burke if his approach was now considering moving away from Section 48 to Section 49 of the Valuation Act, 2001, Mr. Robinson acknowledged that his précis did not contain market rental evidence with the comparison details summarised therein. He explained that, in any event, he was now relying upon, and making his argument based on, the provisions set out in Section 50 of the said Valuation Act.

With respect to the €800 per sq. metre rate applied to the Sub-cab and ATC hub areas atop the Tower, as provided for on page 9 of his précis, he explained that he was relying upon evidence drawn from similar accommodation facilities located at both Gatwick and Manchester Airports, UK.

Finally, Mr. Robinson informed the Tribunal that his Comparison Property No. 3, at the Link Building at the Airport, occupied by Servisair, comprising 28.34 sq. metres, was similar in terms of both quality and location to the Sub-cab area noted in his précis.

Paucity of Evidence

As the Tribunal was not provided with evidence supporting the respective NAV assessments by the respondent or the appellant on the areas identified as Store (Radar 1, Store 3) and Store (Radar 2) and Store (Rush and Rolestown), and as there remained a difference of opinion between the parties on the rateability of the Store Radar 3 and the Sub-cab under the hub of the ATC Control Tower, the parties were invited to adjourn for a short period to consider their respective positions on these areas, with a request that they endeavour to reach agreement on the NAV applicable to these areas.

Partial agreement reached at Hearing on elements of the Relevant Property

Following the short adjournment, the parties confirmed agreement reached between them, as follows:-

Store (Radar 1, Store 3 radar):	169.41 sq. metres @ €100 per sq. metre=	€16,941.00
3 No. Radar elements (deemed rateable):		€5,000.00
Store (Radar 2):	42.04 sq. metres @ €120 per sq. metre	=€5,044.80
Store (Rush 2 x 2, Rolestown 2 x 3):	10.00 sq. metres @ €100 per sq. metre	=€1,000.00

The parties then summed up their positions, with the respondent indicating again that the Comparative Method in his précis should be set aside in favour of the now preferred Contractor's Method. Mr. Burke repeated that the Commissioner of Valuation had failed in his duty in this case to employ the correct valuation methodology and/or had misinterpreted the provisions of the Valuation Act, 2001, and had, accordingly, erred in his determination of the net annual value. He urged the Tribunal to dismiss the respondent's case entirely and to affirm the NAV figure set out in his précis, as the respondent did not provide reliable evidence to challenge or refute same, and as he had supported his by the appropriate method in his précis.

Findings & Conclusions

The Tribunal:

1. Thanks both parties for their efforts, arguments and contributions at hearing and the written submissions that preceded same.
2. Thanks them for reaching agreement on the elements of the valuation, as noted above, on the subject property.
3. Considers the subject property, with the exception of the small office in the old Airport Terminal Complex, not to be airside, and accordingly finds it inappropriate to compare the subject office accommodation areas with the comparable offices within the Dublin Airport complex without a suitable adjustment to reflect the specific circumstances which might prevail within the Airport.
4. Views the parking facility at the subject property in a very different manner to those of the parking facilities outlined in the respondent's précis, which are evidently organized, operated and managed primarily to maximise revenue opportunities, and are of a scale, scope and location to warrant their use as cost and profit generating centres.

5. Accepts that the comparison property details provided by the appellant in his précis of evidence were helpful inasmuch as they provided evidence of market rents for similar office accommodation at or about the Valuation Date in 2005.
6. Considers that the aforementioned market rental evidence was neither refuted nor challenged by the respondent.
7. Does not consider rental evidence drawn from ex-jurisdiction properties relevant.
8. Believes that some of the subject office accommodation areas, particularly in the ATC and Tower, may well be considered unusual, but as no argument was made to suggest that there may be no alternative market users for the facilities, the Tribunal accordingly considers that such accommodations may well have iconic, novelty or other potential value to the hypothetical tenant who may be considering what he or she may afford to pay in rent for the subject relevant property.
9. Does not consider the figures in the Contractor's Method (Appendix 8) submitted by the respondent to be satisfactory insofar as no explanation was provided as to the significant difference in accommodation areas set out in the same précis sections headed Comparative Method No. 1 and Contractor's Method No. 2.
10. Considers any reference to build costs, as submitted, to be insufficient and not capable of being relied upon, as no details underlying same were available from the respondent to clarify the scope of services and construction inputs provided and included for in either of the two sums submitted, namely the IR£4 million on the subject and the €24 million alleged to have been spent on the building at Shannon Airport, as reported in the Irish Times of 3rd July, 2004, and included as Appendix 5 of the respondent's précis.
11. Was not provided with a satisfactory explanation as to how the land value in the Contractor's Method No. 2 in the foregoing précis apportioned at the equivalent of €2 million per acre was computed, as such sum exceeded all the per acre sales prices cited by the respondent in his Addendum Précis containing copy of land sales records, received by the Tribunal on 28th October, 2010.
12. Considers the Sub-cab area to be rateable and to be properly included with and in addition to the ATC hub area.

Determination

All of the foregoing considered, the Tribunal determines that the Net Annual Value of the subject relevant property should be calculated as follows:-

	<u>Area sq. metre</u>		<u>Rate per sq. metre</u>	<u>NAV</u>
Ground Floor Office:	1,281.40	@	€200.00 =	€256,280.00
First Floor Office:	1,266.45	@	€200.00 =	€253,290.00
Air Traffic Control Tower office:	30.00	@	€400.00 =	€ 12,000.00
Air Traffic Control Tower (Sub-cab level):	25.72	@	€400.00 =	€ 10,288.00
Store (Radar 1, Store 3 radar):	169.41	@	€100.00 =	€ 16,941.00
Store (Radar 2):	42.04	@	€120.00 =	€ 5,044.80
3 No. Radar elements (deemed rateable):				€ 5,000.00
Store (Rush 2 x 2, Rolestown 2 x 3):	10.00	@	€100.00 =	€ 1,000.00
Office (Old Terminal Building):	20.90	@	€180.00 =	€ 3,762.00
Car Spaces:	114	@	€500.00 =	<u>€57,000.00</u>
Total NAV:				<u>€620,605.80</u>
Say €620,600				

And the Tribunal so determines.