

Appeal No. VA96/4/027

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

Allied Irish Bank, Ballincollig

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Bank at Map Ref: 17/10.11, Townland: Ballincollig, ED: Ballincollig, RD: Cork Lower, Co. Cork

Agreement at first appeal, valuation of an ATM

B E F O R E

Liam McKechnie - S.C.

Chairman

Con Guiney - Barrister at Law

Deputy Chairman

Finian Brannigan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF NOVEMBER, 1997

- 1.** The hereditament under appeal comprises a two storey premises located in Main Street, Ballincollig in the County of Cork and is used by Allied Irish Banks for the purposes of carrying on a branch office business. Attached to and forming part of this premises is a machine known as an "ATM" machine.
- 2.** On the 1st June, 1994 the Rating Authority, Cork County Council listed the property for revision. No change to the then valuation was made by the Commissioner. The Rating Authority did not appeal that decision but Agents on behalf of the bank did.

There was no change as a result of the First Appeal and accordingly the bank, through Frank O'Donnell and Company, has now appealed to this Tribunal.

3. The appeal is of course referable to the listing by Cork County Council. That listing was in relation to the entire building. However in reality the sole issue under appeal is whether or not a value should be placed on the ATM machine above mentioned. In considering this, the valuation history of both the premises and the ATM machine is relevant. It is as follows:-
- (a) As a result of a revision in 1990 the then valuation of £185 was increased to £230.
 - (b) As a result of first appeal it was reduced to £200. An appeal was then made to this Tribunal under reference VA92/3/007. The Tribunal gave its decision on 20th September, 1993 and reduced the valuation from £200 to £148. This was essentially if not exclusively on the basis that in its opinion the correct fraction to be used was 0.5% and not 0.63%.
 - (c) In 1992 and prior to the Tribunal giving the decision just mentioned, the property was again listed for revision by Cork County Council. A first appeal was lodged on behalf of the bank by Donal O'Buachalla & Company Limited on 19th November, 1992. It was however agreed expressly between the Commissioner and Donal O'Buachalla & Company Limited that the 1992 revision would not be dealt with until such time as the Tribunal had given its decision under the reference formerly identified as VA92/3/007.

Subsequent therefore to 20th September, 1993 Mr. Conroy on behalf of the Commissioner and Mr. Killen on behalf of Donal O'Buachalla & Company Limited met to discuss and consider the 1992 revision. This revision was solely initiated for the purposes of obtaining a decision as to whether, an increase in valuation, or a separate valuation, should be made in respect of the ATM machine.

Consequently when the discussions just mentioned took place between Mr.

Conroy and Mr. Killen it was to deal with this matter only. As a result of these discussions Mr. Conroy has given in evidence before us, his recollection, that by way of agreement reached between himself and Mr. Killen a sum of £12 was added to the then valuation of £148 making a total of £160 - this, to reflect the ATM machine. Therefore a figure of £12 was agreed specific to this machine.

4. At the hearing of this appeal Mr. O'Donnell alleged and submitted that, if in fact the ATM machine was in situ at the time when the 1990 revision was being dealt with by the Tribunal, then in his opinion the rateable valuation of £148 would not have been increased or added to by virtue of the presence of the ATM machine. He also made the point that this machine takes up space from the banking hall and that accordingly in this case and indeed in all other cases where an ATM machine takes up such a space, then, neither value or valuation should be placed on or attached to the machine itself.

5. In response, Mr. Conroy urges upon us that there was in fact an agreement made between himself and Mr. Killen, that the agreement was made by Agents on behalf of their respective principles, namely in the case of Mr. Killen, AIB bank and in the case of Mr. Conroy, the Commissioner of Valuation and that there is no reason to change, vary or alter that agreement. Furthermore, he alleges that in any event if one is to look afresh at the issue, the presence of this machine increases the efficiency of the banking hall itself. Accordingly if one takes the premises and machine together and places a valuation thereon then one must take into account the presence of the machine and one must whether expressly or inferentially have a value placed on it.

6. There is no doubt but that the valuation of property is a periodic valuation and that at any time since the 1988 Act a Ratepayer, an Officer of the Commissioner or the Rating Authority has the right to list property for revision. However, as has been pointed out on several occasions, if there has been no material change or alteration in circumstances which could affect valuation principles and thus the valuation itself, this Tribunal can see no merit or benefit in properties being listed for revision at a period in time closer than five years from the valuation last fixed. Whilst acknowledging and respecting the right above identified nevertheless it would be to encourage a proliferation of almost meaningless appeals if in fact, in the absence of such material change, any comfort was afforded to those who might list in such circumstances.

7. In our view what has occurred in this case was that the 1992 revision was left in abeyance, as we have previously said, until post September 1993 when the Valuation Tribunal gave its decision on the matters above mentioned. The question of the ATM machine was specifically dealt with and arising out of that, an agreement was reached between the parties. That agreement binds not simply Mr. Killen on the one hand or Mr. Conroy on the other but also their respective

principles. Accordingly both the bank and the Commissioner were bound by that agreement. The question now is whether there is any reason to go behind that agreement or to change or alter the outcome as so agreed. In our view the answer is no. In our opinion the agreement so reached was arrived at after consideration by both parties and in the full knowledge of all the pertinent circumstances. In our view the agreement stands.

8. In arriving at this decision:-

- (a) We cannot overlook the exceptional experience which Mr. Killen has in these matters and the exceptional number of appeals in which he appears before us,
- (b) We have direct evidence from Mr. Conroy which we accept, that such an agreement was made,
- (c) It is clear that no discussion has taken place with Mr. Killen about this matter and accordingly we could not, in any way reject the evidence of Mr. Conroy on the basis of some unidentified source within the bank who apparently feels that no such agreement was reached,
- (d) In any event there was no appeal either to this Tribunal from that £12 increase in valuation nor was the property at any time thereafter listed for revision by the bank. There was therefore, up to now, no expression of dissatisfaction by the bank with that increase from £148 to £160,
- (e) Accordingly, we are perfectly satisfied that there was an agreement made post September 1993. We are equally satisfied that there is no reason to change or alter or vary that agreement in any way and so consequently on that ground alone we would reject this appeal.

9. However if we were to consider the alternative submissions made we would be of the view in this case that a valuation should be placed on the ATM machine. We believe that its presence enhances the operational flow and the efficiency of the banking hall and that either expressly - with a specific valuation - or else in the general overall valuation that unit should be taken into account and should be reflected in the ultimate rateable valuation. Because of the manner in which we have decided this case, being that on the first point argued before us, we do not consider it necessary to identify precisely what might be a correct value for the machine or whether, if we considered the issue *de novo*

a specific or a general valuation should be placed thereon. We are therefore content to say that the unit has resulted in an enhancement in the value of the hereditament.

- 10.** For the reasons above stated this appeal will be dismissed and there will be no change in the existing valuation of £160.