

Appeal No. VA97/6/020

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

**Bank of Ireland (James's Street)**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Bank at Map Reference 85/87 James's Street, Ward: Ushers Quay B, County Borough of Dublin

**B E F O R E**

**Liam McKechnie - Senior Counsel**

**Chairman**

**George McDonnell - F.C.A.**

**Member**

**Rita Tynan - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 5TH DAY OF MAY, 2000**

By Notice of Appeal dated the 14th day of October 1997, the Appellant company appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £185 on the above described hereditament.

The Ground of Appeal as set out in the said Notice thereof is that; "the valuation is excessive and inequitable in accordance with the provisions of the Valuation Acts".

1. This case proceeded by way of an oral hearing at which the Bank of Ireland was represented by Mr. Owen Hickey B.L. instructed by Mr. Patrick Monaghan, Solicitor, Bank of Ireland, Legal Department, with the Commissioner of Valuation being represented by Mr. Mark Sanfey B.L., instructed by the Chief State Solicitor. Mr. Thomas Davenport, Chartered Surveyor, from Lisney was the rating consultant retained on behalf of the bank. The appeal valuer was Mr. Daniel Griffin, Bachelor of Commerce, Grad. Dip. (P. & D.) Econ, a District Valuer with eighteen years experience. Having exchanged their respective précis of evidence, and having submitted the same to this Tribunal, each valuer, having taken the oath, adopted his said précis as being and as constituting his evidence in chief. This evidence, as well as the evidence of Mr. Patrick Clarke, the Group Property Surveyor of the Bank of Ireland, was added to and elaborated upon by way of cross examination. Submissions were then made. From this the following essential facts emerged as being relevant to the only issue in this appeal, namely that of quantum.

2. **Valuation History**

- (a) The subject property, in its then actual state and condition, has a valuation history of several years with the 1981 revision being the last such revision prior to the enactment of the Valuation Act 1988. This revision placed a rateable valuation of £185 on the subject property,
- (b) Following the receipt of a request, seeking a downward revision for this property, and following an inspection thereof by the revising valuer, the valuation list issued on the 10<sup>th</sup> November 1995 showing no change to the R.V. of £185,
- (c) On 23<sup>rd</sup> November of that year, Mr. Davenport appealed against this revision. Mr. Griffin was appointed the appeal valuer and following inspection and recommendation the Commissioner, on the 19<sup>th</sup> September 1997, issued the results of this first appeal. The R.V. remained at £185,000,
- (d) Hence, the Notice of Appeal to this Tribunal dated the 14th day of October 1997.

### 3. Location

The hereditament above described, is located on the north side of James's Street at No's 85 to 87 thereof. It occupies a corner site at the junction with Watling Street. It is one mile west of the city centre and it is almost directly opposite the Jame's Gate entrance to Guinness Brewery.

### 4. Description

The property, the subject matter of this appeal, which is used as a bank comprises a part two-storey, part single-storey detached building with single and two-storey and side extensions. The entire is set back from the Main Road and is fronted by a paved garden area enclosed with wrought iron railings. The main building is constructed with brick and mixed masonry walls, cement rendered externally, part concrete/part suspended timber floors, timber-framed double hung sash windows and flat asphalt covered roof, incorporating circular roof light. The side extensions are essentially of similar construction. Internally the walls and ceilings are plastered and painted throughout. The entrance to the ground floor banking hall is via a number of concrete steps leading to a poached entrance lobby. Internally the premises are laid out as a banking hall, approximately square shaped with a ceiling height of 25 feet. The cash transaction area of the hall is protected by security screens from the top of a timber counter to ceiling height. There is a strong room and other ancillary offices on the ground floor as well as office/store/canteen facilities at first floor level. The property has been reasonably well maintained and is in good decorative order. Heating is by way of electric storage heaters and all main services are connected. Though there are no on-site parking spaces the adjacent public streets provide in this regard a reasonable facility. There is one ATM machine on the front elevation of the property.

### 5. Accommodation

The accommodation of the subject property, which is agreed, is as follows;

Entrance Lobby	49 sq.ft.
Banking Hall	1,156 sq.ft.

Manager's Office	117 sq.ft.
Staff room (Data room)	245 sq.ft.
Strong room	91 sq.ft.
Assistant manager's office	103 sq.ft.
Store	150 sq.ft.

### **First Floor**

Two offices, kitchen/store	585 sq.ft.
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Thus, on the ground floor there is an area of 1,911 sq.ft. including a store at the rear of 150 sq.ft. which together with the first floor makes a total area of 2,496 sq.ft.

## **6. Tenure**

- (a) By a combination of Leases dated the 12<sup>th</sup> March 1976 and the 8<sup>th</sup> November 1977 respectively this entire property was demised to the Bank of Ireland for a term of 20 years from 12<sup>th</sup> November 1975, with the first rent review occurring after eighteen months thereafter, the second five years from the commencement of the term and then at five yearly intervals. There was a "break clause" in either one or both of these Leases by which, either party could after eighteen months surrender the same. The said Leases rendered the tenant liable for internal repair and insurance and the landlord for external repair. The user clause was restricted to that of a bank.
- (b) The first review, in accordance with the evidence, took place in November 1980 when the initial rent was increased to £12,750. No increase took place in 1985 but in November 1990 the rent was reviewed upwards to £17,000 per annum.
- (c) On the expiration of the term created by the aforesaid Leases a new lease executed in 1987 was made between Guinness Ireland Group Ltd. as Lessor of the one part and the Bank of Ireland as Lessee of the other part. These said premises were demised to the bank for a period of 25 years from the 1<sup>st</sup> April 1997 as an initial rent of £20,000 per annum. This rent can be reviewed every five years with a similar break clause as previously inserted also contained but this time at five

yearly intervals. The responsibility for internal repairs, insurance and external repairs as with the user clause are the same as in the expired Leases.

## **7. Planning Permission**

The area in which these premises are located is zoned objective C1 in the 1991 Dublin City Development Plan, this plan being the relevant one for the purposes of this appeal. The resulting designation is “to provide for and improve business and service centre facilities (inner city)”. In October 1997 planning permission for two interview rooms at the side of the building was granted, but for an additional part of the proposed development, namely the construction of mezzanine stores over the banking hall. Permission was refused.

## **8. Expenditure**

In 1975 a new strong room at a cost of £2,000 was installed. Some two years later, £2,500 was spent on adapting the first floor to the requirements of the bank. In 1982 an ATM machine at the cost of £4,000 was constructed. In 1994 £22,000 was spent on the offices and storage area. In 1996 the ATM machine was relocated and enlarged at an approximate cost of £10,000.

## **9. The Appellant’s Case**

On behalf of the bank Mr. Davenport suggests that in accordance with Section 11 of the Valuation Ireland Act of 1852 it is necessary in this case to ascertain the N.A.V. of the property and to give effect to the agreed method of implementing Section 5 of the Valuation Act, 1986 to establish this N.A.V. as of November 1988 and then, to apply a factor of 0.63% in order to convert that value into an R.V. He suggests two methods by which this should be done. Firstly by using, in the manner following, the revised rent as agreed in November 1990;

Rent agreed November 1990	£17,000
Add for Tenants Improvements (disregarded at Rent Review)	<u>£ 1,500</u>
Sub-Total	£18,500

Reduce figure by 5% to allow for loading factor to reflect landlords repairing liability	£17,575
Reduce rent by 10% to allow for rental increase between November 1988 (relevant valuation date) and November 1990 (date of Rent Review)	£15,800

**Estimate of Net Annual Value = £15,800**

Reducing factor to translate NAV to RV = 0.63%

Estimate of Rateable Valuation:

**£15,800 @ 0.63% = R.V. £100**

As can be seen, the resulting N.A.V. is £15,800 which when converted gives a rateable valuation of £100.

10. Secondly as an alternative to this method he puts forward certain rates on a square footage basis. These are as follows;

		<i>Sq.Ft.</i>	<i>£ per sq.ft.</i>	<i>£</i>
<b><i>Ground Flr</i></b>	Entrance Lobby	49	7.00	343
	Banking Hall	1,156	8.00	9,243
	Manager's Office	117	7.00	819
	Date Room	245	5.00	1,225
	Strong Room	91	5.00	455
	Rear Office	103	4.00	412
	Rear Store	150	4.00	600
<b><i>First Floor</i></b>	Offices	245	4.00	980
	Kitchen	213	4.00	852
	Store	127	4.00	508
<b><i>Total</i></b>				15,442

By this method, an N.A.V. of £15,442 is arrived at which when Section 5 of the 1986 Act is applied, results in an R.V. of say £100.

In support of this method he relies on four comparisons which are reproduced as *Appendix One* to this judgment.

12. Finally, in support of the suggested R.V. of £100, Mr. Davenport makes the following points which in his opinion underpin his suggested valuation;
- (a) An analysis of agreements with the Valuation Office and of decisions of this Valuation Tribunal show that historical assessments on premises used at banks are excessive.
  - (b) That the majority of buildings fronting onto this section of James's Street are used for office purposes with virtually no retail activity taking place thereon. In the immediate area are the premises of IAWS, The Eastern Health Board, (Emmet House), and a post-office with a Local Authority complex at the rear of Watling Street.
  - (c) That the premises are not a purpose built bank.
  - (d) That apart from the main banking hall much of the area is restricted with headroom as low as 8 feet, some parts have no daylight and the presence of structural walls prevent some space at ground floor level being incorporated into the banking hall and finally,
  - (e) That access to the first floor is through a narrow timber staircase.

**13. The Commissioner's Case**

The appeal valuer, on behalf of the Commissioner, has suggested in evidence that the subject property should be valued by placing a rate of £14 p.s.f. on the ground floor accommodation save for an area of 150 sq.ft. representing the store on which he would place £5.00 p.s.f. On the entirety of the first floor namely 585 sq.ft., he would place £7.00. These figures give a N.A.V. of almost £29,500, which converts, to an R.V. of

£185. He supports this approach by way of comparisons which comparisons are set forth in Appendix Two to this judgment. In all there are seven in number.

14. Mr. Griffin takes serious issue with the rating consultant's approach in this case in utilising the rent as of November 1990 as a method of valuation. In his opinion the Leases so entered into between Messrs Guinness and the Bank of Ireland could not be described as incorporating terms which ordinarily would be negotiated on an arms length basis on the open market by a willing Lessor/Lessee. He believed that the rent was "soft", and reflected a desire on the part of Guinness to have immediately and conveniently available, a bank to facilitate its very large employee base. In support he pointed to the unusual terms of the lease, namely the uneven periods of rent review, the breakclause, the tenant's liability only for internal repairs etc. He referred to the banks expenditure on the property, to the existence of a strong room, to the presence of an ATM and concluded that if this suggested approach was to be adopted then major "add-backs", would have to take place before one could attempt to say that the rent could be used as a reliable base to ascertain the N.A.V. Overall it was his professional opinion that the comparative basis was the most appropriate and that his comparisons, in particular comparisons No's 1-4 supported and justified his suggested rates.
15. From a series of decisions of this Tribunal it is now we think clear beyond doubt that premises, used at banks, are not to be treated for valuation purposes as being *sui generis*. Whatever type premises it may be, whatever its use or whatever its location, it will be considered for comparable purposes if it is the best available, in all circumstances, to produce the most desirable and accurate result given this Tribunal's primary task of ascertaining the N.A.V. in accordance with Section 11 of the 1852 Act as applied by Section 5 of the 1986 Act. This means that in certain circumstances where premises, used as a bank, is but one of several similar premises, contained in a retail parade, then adjoining premises with the characteristics of a shop, may indeed be the most appropriate comparisons for use. That is not to say that the style, status or description of a premises, used as a financial institution may not have to be valued by reference to a similar financial institution elsewhere. Equally so this is not to say that location, because of the

commercial nature of the area, might not result in a premises having a higher value as a bank than the same premises would have for general retail purposes. Each case must be decided upon and must be determined in accordance with its own individual rating characteristics. Accordingly if ever there existed a view that bank premises must *per se* be valued by reference to other bank premises, in the same or different locations, then in our opinion in accordance with a long line of decisions from the Tribunal, that belief is no longer valid. Please see in **Appendix Three** wherein a list of judgments in support of this proposition are set forth.

- 16.** In this case we are not satisfied that the most appropriate method of valuing this property is to adopt the method as firstly suggested by Mr. Davenport. Though the passing rent is, and is frequently a starting basis from which an N.A.V. can be calculated nevertheless this Tribunal must be satisfied on the balance of probability that the terms and conditions of the lease, taken as a whole, which obviously include rent, have been negotiated at arms length and, more importantly, reflect solely market conditions. For the reservations above expressed we cannot be so satisfied in this case. In addition however even if this approach was adopted a number of significant adjustments would have to be made in order to reflect what a hypothetical tenant would be prepared to pay as rent for the subject property and this in accordance with the statutory provisions above mentioned. Therefore given these reservations we are of the opinion that the most appropriate N.A.V. in this case can be derived from the alternative basis.
- 17.** Of the four comparisons referred to on behalf of the ratepayer a question arises over No. 107 James's Street as to whether the R.V. of £130 was derived under the old or the new system of valuation. Secondly because of its size, it is not possible even with adjustments to derive any real benefit from No. 150/156 James's Street. This IAWS property has a ground floor of 16,635 sq.ft., a basement of more than half that size, a first floor of 14,768 sq.ft., a second floor of 10,000 sq.ft. and a third of over 9,500 sq.ft. In all there were over 60,000 sq.ft. It is not therefore of any benefit to us.

- 18.** In our opinion both individually and collectively the most helpful comparable evidence is that as contained in comparisons No. 1 to 4 of those advanced on behalf of the Commissioner. As it is, these coincidentally, are Bank of Ireland premises. No. 1 is in Stoneybatter and has a ground floor area of 2,385 sq.ft. with £11.00 p.s.f. placed thereon. No. 2 at Irishtown has a ground floor of 1,751 sq.ft. at £11.20 p.s.f. No. 3, at Dorset Street Upper, the ground floor area is 1,853 sq.ft. at £12.00 p.s.f. whilst the fourth, on the Swords Road, has an area of 2,323 sq.ft. at £11.50 p.s.f. Though each of these premises are different, in variable ways, including retail location, area, the absence of an ATM machine at Irishtown, the lower number of bank staff *et alia*, nonetheless we feel that these offer a better guide to the correct valuation in the subject property than any other comparison. Bearing in mind that the property must be valued *rebus sic stantibus*, in both its physical state and use, and noting the advantage which an ATM machine confers, namely the more efficient use of ground floor space and the ability to trade outside normal hours as well as the proximity of the subject property to Guinness Brewery, it seems to us that the most appropriate valuation is as follows;

Ground Floor;		£
Banking Hall, Offices	1,761 sq.ft. @ £12.00 =	21,132
	150 sq.ft. @ £ 4.00 =	600
	585 sq.ft. @ £ 6.00 =	<u>3,510</u>
		£25,242
	x 0.63%	= <b>Say £160</b>