

Appeal No. VA97/6/021

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

Governor & Company of the Bank of Ireland

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Bank at Map Reference 1.2.3 (bsmt., gr., 3rd floors), Ormond Quay Upper, Ward:
North City 3, County Borough of Dublin

Quantum - Banks to be valued as retail or in comparison with other financial institutions

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Michael Coghlan - Solicitor

Member

Marie Connellan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF JULY, 1999

By Notice of Appeal dated the 14th day of October 1997, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £275 on the above described hereditament.

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

The relevant valuation history is that following revision in May 1994 the subject hereditament was valued as follows;

1/3 Ormond Quay, Bank Of Ireland, grd.flr, basement and third flr. : R.V. £420

1/3 Ormond Quay, Bank Of Ireland, Lehane & Hogan Solicitors, 2nd flr. R.V £40

An appeal against R.V. £420 was lodged in May 1994. The Commissioner of Valuation reduced the R.V. £420 to R.V £275.

A written submission prepared by Mr. Thomas Davenport, ARICS, ASCS, Chartered Surveyor, Lisney, Estate Agents, Auctioneers and Surveyors of 24 St. Stephen's Green, Dublin 2 on behalf of the appellant was received by the Tribunal on 11th February 1998.

The written submission set out a fair rateable valuation for the subject hereditament as follows;

		<i>Sq.ft.</i>	<i>£ per</i>	
			<i>Sq.ft.</i>	
Ground Flr.	Banking Hall/Offices	1,107	£13	£14,391
Basement	Strong room/Book room	222	£ 5	£ 1,110
	Stores/Staff Areas	675	£ 3	£ 2,025
Third Floor	Vacant room (occasionally used by Bank Of Ireland Drama Department)	1,320	£ 2	£ 2,640
	Total Net Annual Value			£20,000
	Reducing factor to translate N.A.V. into R.V. =			£0.63%
	Estimate of Rateable Valuation = £20,000 @ 0.63% = R.V. £126			

Mr. Davenport's written submission contained a schedule of seven comparisons.

Mr. Davenport's written submission contained details of his preferred comparison, 3 a/a Ormond Quay, Upper. This property is adjoining the subject property.

The details of this comparison are;

Lease : Let for a term of 10 years from 1 June 1994 at an initial rent of £40,000 p.a.

Five yearly rent reviews are provided in the lease.

The rent analyses as follows:

		<i>Sq.ft.</i>	<i>£ p.s.f.</i>
Ground Floor	Offices	1,431	£10.00
Mezzanine	Offices	1,086	£ 8.50
First Floor	Offices	1,733	£ 8.50
3 car spaces			£500 per space

A written submission prepared by Mr. Bernard Stewart on behalf of the respondent was received by the Tribunal on 16th February 1998. Mr. Stewart is a District Valuer in the Valuation Office with 27 years experience in that office in the practice of valuation.

Mr. Stewart's written submission set out the basis of the rateable valuation as follows:

	<i>Sq.ft.</i>		
Ground Floor banking hall etc.	1,107	@ £30	£33,210
Basement, strong room & book room	222	@ £ 8	£ 1,776
Basement, office & storage	505	@ £ 5	£ 2,525
Basement rear store	170	@ £ 3	£ 510
3 rd floor drama room	1,320	@ £ 4	<u>£ 5,280</u>
			£43,301

@ 0.63% = £273

R.V. £275.00

Mr. Stewart's written submission contained a schedule of five comparisons.

Mr. Stewart's preferred comparison contained in his written submission was Allied Irish Bank, 126-128 Capel Street (incl. 2-5 Little Mary Street). The details of this comparison are contained in the written submission as follows;

	<i>Sq.ft.</i>		
Overall ground floor	5,041	@ £22.50	£113,422
6 car spaces		@ £500	£ 3,000
First Floor	1,395	@ £8.00	£ 11,160
Second Floor	1,746	@ £6.00	<u>£ 10,476</u>
			£138,058
N.A.V. £138,000 @ 0.63%	=	£869.40	
R.V agreed	=	£875.00	

The oral hearing took place in the Tribunal's Offices in Dublin on 23rd day of February 1998.

Mr. Eoin Hickey B.L. instructed by the Law Department of the Bank of Ireland appeared for the appellant. Mr. Mark Sanfey B.L. instructed by the Chief State Solicitor appeared for the respondent.

In his sworn testimony Mr. Davenport adopted his written submission as his evidence to the Tribunal. Mr. Davenport said the floor areas for the property had been agreed with the respondent as had the reducing percentage of 0.63%. He described the building as having four stories over a basement. There was a separate rateable valuation for the first floor and the second floor which were not in issue in this appeal.

Mr. Davenport said the areas of relevance to this appeal were the ground floor, banking hall, the basement (which was used as a strong room for storage) and the third floor. The third floor was not used for banking purposes being used on a part time basis as a rehearsal space for the Bank of Ireland dramatic society.

In further evidence Mr. Davenport dealt with the location of the subject premises. The majority of buildings on Upper Ormond Quay were in office use. The area had been given tax-designated status in 1986 and the majority of the new developments were office related.

Mr. Davenport said that there had been no expenditure on the building for some considerable time and he used the photographs in his written submission to illustrate this point.

Again Mr. Davenport said that the front façade of the subject property is a listed building in the Dublin City Development Plan 1991 (List 2 of Protected Buildings). This meant that changes in the façade required planning permission and this could affect the rent payable.

Mr. Davenport said that the core of his argument was based on three decisions of the Valuation Tribunal, *Bank of Ireland (Tullamore) -v- Commissioner of Valuation VA95/6/013*, *Bank of Ireland (Pembroke Road) -v- Commissioner of Valuation VA96/2/055*, and *Irish Permanent (Upper Baggot Street) -v- Commissioner of Valuation – VA96/2/010*.

Mr. Davenport quoted the Tullamore case to the effect that “it seems inequitable to value banks in any other way than in which rateable occupiers of similar commercial property are considered”. In the Pembroke Road case a bank had been valued using offices as comparisons while in the Upper Baggot Street case adjoining retail space had been used as a comparison.

Mr. Davenport said that the subject should be valued in line with his preferred comparison. It had been developed in 1990 retaining its historic façade. It was in office use. There was headroom of 8½ feet on each floor.

In further evidence Mr. Davenport said the N.A.V. of this comparison seems to have been based on a rent of £60,000 indexed back to 1988. He said its present rent was £40,000 and he considered the R.V. excessive. There was a rate of £10 p.s.f. on the ground floor in this comparison and the Valuation Office had put a rate of £30 p.s.f. on a ground floor banking hall in the subject.

Mr. Davenport said this property was his preferred comparison and there was no need to go to Capel Street to find comparisons as the Valuation Office had done.

In further evidence Mr. Davenport said his other comparisons were for reference only. They were being used to show the level of rent on Ormond Quay Upper. That level ranged from £6 p.s.f. for a 1987 rent to £20 p.s.f.. for new developments.

Mr. Davenport said that his preferred comparison was zoned in planning terms for financial institutions and it could be converted to a banking usage without the expenditure of substantial sums of money.

Finally Mr. Davenport said his net point was that the subject should be valued in line with his adjoining office comparison. He had put a higher rate on the ground floor banking area due to it corner site and its smaller area than the ground floor area in his comparison. Additionally he had taken into account that there had been very little expenditure on the subject.

Under cross-examination by Mr. Sanfey, Mr. Davenport corrected his written submission as to the headroom in the basement of the subject. There is a section with height of 6 feet 3 inches in the lobby adjoining the toilets but the main basement area had headroom of 8 feet 3 inches.

Mr. Sanfey questioned Mr. Davenport about the Valuation Office's preferred comparison, A.I.B. Capel Street. Mr. Davenport said it was larger than the subject and comparable as a bank but not as a building. Under further cross-examination Mr. Davenport agreed that A.I.B., Capel Street had a solid frontage and was located on a corner site. In further replies Mr. Davenport said that the ground floor of the A.I.B. Bank was 4½ time the size of the subjects ground floor. Again Mr. Davenport said the A.I.B. Bank was located 250 metres from the subject and was situated in the retail area of Capel Street.

Mr. Sanfey put it to Mr. Davenport that the A.I.B. comparison and the subject had frontage to Capel Street.

Under further cross-examination Mr. Davenport said that there was no market rent for the A.I.B. comparison. Again Mr. Davenport stated that the function of the subject and the A.I.B. comparison was the same but because the reducing percentage of 0.63% had been

agreed between the parties that this identity of function was irrelevant. He re-iterated his opinion that the two properties were not comparable in terms of location and structure.

In his sworn testimony Mr. Stewart adopted his written submission as his evidence to the Tribunal. He made an amendment to page three of his written submission. Excluding the front hall door, which served the entire building the amended frontage to Upper Ormond Quay, was 44 feet and the amended return frontage to Capel Street was $28\frac{3}{4}$ feet making a total of $72\frac{3}{4}$ feet.

Mr. Stewart said the subject was a traditional bank and had the best frontage and location on Ormond Quay Upper and Lower. He said that if the building was vacant and available for letting then the most likely tenant would be another financial institution seeking to capitalise on the building and its site. Mr. Stewart said that an office tenant would be outbid by a financial institution because the latter tenant would find the site more valuable.

In further evidence Mr. Stewart said banks are involved in retail activities and they need ground floor space at the right location.

He said that Mr. Davenport's adjoining comparison had five floors which all could be used as offices.

Mr. Stewart referred to the security features of the subject. There were counter to ceiling screens in the banking hall. In the basement there was a strong room to store money overnight.

Mr. Stewart said there were stud partitions in Mr. Davenport's comparison and there was no strong room. To convert the comparison to bank use would require substantial expenditure.

Again Mr. Stewart said that the occupier of Mr. Davenport's comparison would have to apply to the planning authorities to use the premises as a bank and he referred to S.I. 86 of 1994 (1994 planning regulations). There was no guarantee that the occupier would get planning permission as his neighbour the Bank of Ireland could object to the grant.

Mr. Stewart said that A.I.B., Capel Street was an appropriate comparison. It had a similar solid frontage as the subject. It had planning permission for use as a bank and was used as a bank. The subject and A.I.B., Capel Street had the security features of a bank including strong rooms.

Mr. Stewart gave evidence of a zoning exercise he had carried out with respect to the subject and A.I.B., Capel Street. Zone A in A.I.B., Capel Street produced £52.93 for 1,100 sq.ft. while Zone A in the subject produced £30 p.s.f. for 1,107 sq.ft.

Finally in his evidence Mr. Stewart said that the A.I.B. comparison was near enough to the subject and in his valuation he had made an allowance for this distance and the age of the subject.

Under cross-examination by Mr. Hickey, Mr. Stewart admitted that he had no evidence, which would corroborate his opinion that a bank would outbid other tenants for the subject property. He agreed with Mr. Hickey that there was no rental evidence for banks in this area.

Under further cross-examination Mr. Stewart said that Mr. Davenport could not use his preferred comparison as a direct comparison to the subject.

Mr. Hickey referred to the Irish Management Institute –v- Commissioner of Valuation 1990 2.I.R. 409 and the interpretation of Section 5(2) of the Valuation Act 1986. Mr. Hickey also referred to the Bank of Ireland –v- Commissioner of Valuation VA96/2/055.

Mr. Hickey suggested to Mr. Stewart that the Tribunal's decision was authority for the proposition that where the reducing percentage was agreed then it was unnecessary to invoke the provisions of Section 5(2) of the Valuation Act 1986. Mr. Hickey further put it to Mr. Stewart that given the 0.63% reducing percentage was agreed and there was a rent for the comparison adjoining the subject then the provisions of Section 5(1) of the Valuation Act 1986 apply in arriving at a rateable valuation.

In reply Mr. Stewart said the comparison adjoining the subject was not a direct comparison. Furthermore there were other unknowns in the valuation process other than the agreed 0.63%

and logic required that he should consider a similar property to the subject with an agreed N.A.V.

In his closing submissions Mr. Hickey said the Valuation Office had produced no evidence of rent paid for comparable or similar properties to the subject. The only evidence of rent paid for a comparable property was produced by the appellant. This rental evidence was the best evidence available to the Tribunal in its determination and it must accept this evidence. Mr. Hickey said the task of the Tribunal was to establish the N.A.V. at November 1988 in accordance with Section 5(1) of the Valuation Act 1986. Section 5(2) of the Valuation Act 1986 did not apply because the reducing percentage had been agreed.

In his closing submissions Mr. Sanfey said it was implicit in Section 5 of the Valuation Act 1986 that the establishment of the N.A.V. was a necessary prior exercise in the application of the said Section. The use of comparisons was crucial in arriving at the appropriate N.A.V.

In evaluating comparisons the *rebus sic stantibus* rule is useful. That rule had two limbs one relating to the physical state of the property and the other to its use. The comparison provided by the Valuation Office was the most obvious one to be used in arriving at a N.A.V.

The Tribunal has considered the written submissions and the evidence offered by the appellant and the respondent. The Tribunal has also considered the submissions made on behalf of the appellant and the respondent.

The Tribunal finds that the comparison offered by the Valuation Office (A.I.B., Capel Street) is the most appropriate comparison to be used in arriving at an N.A.V.

This finding is based on the evidence as to a number of characteristics which A.I.B., Capel Street has in common with the subject and which characteristics are absent in the comparison offered by the appellant.

These characteristics of A.I.B., Capel Street are:

- (a) frontage to Capel Street
- (b) occupation of a corner site

- (c) planning permission for use as a bank
- (d) a solid frontage and
- (e) security features including a strong room.

The Tribunal considers that the appropriate rate p.s.f. to apply to the ground floor banking hall of the subject is £22.50 p.s.f. which is the rate p.s.f. for the ground floor banking hall at A.I.B., Capel Street. In fixing the value p.s.f. the Tribunal has taken into account the level of office rentals in the area and the subjects use as a bank.

	<i>Sq.ft.</i>		
Ground Floor banking hall etc.	1,107 @ £22.50	=	£24,907.50
Basement strong room & book room	222 @ £ 8.00	=	£ 1,776.00
Basement office & storage	505 @ £ 5.00	=	£ 2,525.00
Basement rear store	170 @ £ 3.00	=	£ 510.00
3 rd floor drama room	1,320 @ £ 4.00	=	<u>£ 5,280.00</u>
	N.A.V.	=	£34,998.50
	@ 0.63%	=	£ 220.49
	Say	=	£ 220.00

The Tribunal therefore determines the rateable valuation of the subject hereditament to be £220.