

Appeal No. VA98/3/050

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

Bank of Ireland (Listowel)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Bank at Map Reference 38,39, The Square, Listowel, Listowel UDC, Co. Kerry

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Barry Smyth - FRICS.FSCS

Deputy Chairman

Michael Coghlan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF APRIL, 2000

By Notice of Appeal dated the 4th day of August, 1998, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £230 on the above described hereditament.

The grounds of Appeal as set out in the Notice of Appeal are that "the assessment is excessive and inequitable and bad in law having regard to the provisions of the Valuation Acts, and on other grounds also."

The appeal proceeded by way of an oral hearing which took place on the 24th of September, 1999, at the offices of the Valuation Tribunal in Dublin. The appellant was represented by Mr. Owen Hickey BL. with Mr. Tom Davenport, ARICS, ASCS, Chartered Surveyor of Lisney. The respondent was represented by Mr. Shay Aylward, B.Comm., A.C.C.A, a District Valuer with over twenty years experience in the Valuation Office. Mr. Clarke and Mr. Dodd of the Bank of Ireland were in attendance.

Having taken the oath each valuer adopted as his evidence in chief his written submission which had been exchanged with the other valuer and submitted to the Tribunal in advance of the hearing.

Material facts agreed or found by the Tribunal:

1. Valuation History

1927 Annual Revision,	RV - £80
1976 Annual Revision, First Appeal,	RV - £160
1989 Annual Revision, First Appeal ,	RV - £230
1996 February quarterly revision	RV - £255.
This was appealed and reduced to	RV - £230 without the agreement of the appellant.

The rateable valuation of £230 is the subject of this appeal to the Tribunal.

2. Situation

The property is located on the east side of the square in the centre of Listowel. Neighbouring properties comprise period buildings in a variety of uses but predominantly offices with some guesthouses, doctors' surgeries, licensed premises and retail accommodation. The main retail activity is centred on Church Street, William Street and Market Street which are linked in to the north eastern corner of the square via Main street. The only retail activity in the square is located adjacent to this intersection. There is car parking available on the square.

3. The Property

The property comprises a two storey over ground floor, mid terrace building with a single story extension to the rear, with a rear yard and single storey garage. The main building is of traditional construction. The elevation to the square is of cut stone at ground floor level and cement plaster rendering above. Traditional sliding sash timber-framed windows are installed throughout the elevation including the ground floor but one has been adapted to accommodate an ATM. The sole entrance to the premises is off set to one side of the main elevation.

4. Accommodation

Ground floor entrance lobby	18.2	sq.m.
Banking Hall	113.7	sq.m.
Interconnecting offices	93.8	sq.m.
Strongroom/bookroom	33.7	sq.m.
Stores and corridor	18	sq.m.
Total	277.4	sq.m.
First floor offices and stores	77.2	sq.m.
Second floor canteen and stores	65.9	sq.m.
Outside garage	25.2	sq.m.

5. Title

Freehold

6. Townplanning

The premises is listed for preservation in the local development plan.

The Appellant's Case

Mr. Davenport in his evidence stated:

- (i) The square is predominantly an office location and retail activity is quite limited and market evidence suggests that the level of rent achieved in office locations is significantly less than in prime retail areas.
- (ii) Listowel has a population of 3,656 (1996 census) and is located on a secondary/link road and not directly served by the N21 national primary route which links Limerick to Tralee and Killarney - Tralee being the main commercial retail town in the county and Killarney, one of the foremost tourist centres in the country.
- (iii) The subject building has all the characteristics of an office building and should be valued accordingly. It has no retail display area. Vacant and to let it has more in common with the local office market and should properly be valued by reference to the local office levels albeit taking into account that the building has a certain prominence on the Square. The ground floor accommodation is somewhat irregular in shape and the area to the rear suffers from a lack of natural daylight. The building must be considered in its entirety of 420m² and there is no separate street access to the upper floors.
- (iv) He drew the Tribunal's attention to its decisions in the *Bank of Ireland, Tullamore VA95/6/013* and *Bank of Ireland, 87-89A Pembroke Road, Dublin 4 VA96/2/055*.

Mr. Davenport proposed a rateable valuation on the premises of £150 calculated as follows:

Entrance lobby, banking hall and offices	2,430 sq.ft.	@ £9 per sq.ft.= £21,870
Strong room/Store	363 sq.ft.	@ £4 per sq.ft.= £1,452
Store/Corridor	194 sq.ft.	@ £2 per sq.ft.= £388
First floor offices	831 sq.ft.	@ £5 per sq.ft.= £4,155
Second floor canteen/stores	709 sq.ft.	@ £3 per sq.ft.= £2,127
Garage	272 sq.ft.	@ £1 per sq.ft. = £272

Total = £30,264 say £30,000 NAV

Agreed factor to translate NAV to RV = 0.5%

Therefore rateable valuation £150

Mr. Davenport provided five comparisons to the Tribunal.

The following is a summary of the relevant points arising from these comparisons:

1. *Premises of the Department of Social Welfare, The Square, Listowel*

This is a former Bank of Ireland premises now occupied by the Department of Social Welfare and used as a public office facility on the ground floor and administrative offices on the upper floors. It is located three doors from the subject premises. It was held on a lease term for 10 years and 3 months from July, 1984, with five year reviews on a full repairing and insuring basis. The rent was reviewed in July, 1989 to £22,500 per annum and the analysis is as follows:

Ground Floor:

Entrance hall - public office	1,169 sq.ft. @ £8.50 p.s.f.
Rear office	203 sq.ft. @ £5.00 p.s.f.
Mezzanine and offices	262 sq.ft. @ £5.00 p.s.f.
First floor offices	1,302 sq.ft. @ £5.00 p.s.f.
Second floor offices	859 sq.ft. @ £4.00 p.s.f.

2. *New offices* currently being constructed immediately adjacent to comparison number one above on the square. The Department of Social Welfare have agreed to take a lease for 25 years with 5 year reviews at a rent of £11.50 per sq.ft. for a floor area of approximately 4,300 sq.ft. (400 sq.m.).

3. *First floor offices - ACC building, 11/12 Church Street, Listowel* held on a 20 year lease from March 1981 with three year reviews. Rent review March 1990, 503 sq.ft. @ £6.25 per sq.ft.

4. *Agri-Auto Parts (Kerry) Ltd., Main street, Tralee.*

RV £70 therefore NAV £14,000

Analysis:

Ground floor shop:

Zone A: £16 per sq.ft. or overall 680 sq.ft. @ £11 per sq.ft.

5. *Hartnett's Chemist, The Square, Listowel, Co. Kerry.*

35 year lease from June 1999 at £12,000 per annum

Analysis:

Lock-Up Shop 800 sq.ft. @ £15.00 per sq.ft.

Note that this floor area was disputed by the respondent who had measured it at 499sq.ft. and therefore the rent was equivalent to £24 per sq.ft.

Mr Davenport made the following comments on the respondent's comparisons:

a) *No 4 The Square, Listowel AIB*

This is valued on the square metre basis and the respondent's figures are an analysis of an RV which was not agreed on an NAV basis.

b) *18a/1 Main Street, Killarney - National Irish Bank.*

Killarney is a very busy tourist town and the Zone A rent of £35 per sq.ft. in this case is similar to shops in Killarney. The Zone A in Listowel is approximately £16 per sq.ft.

c) *32C Arran Quay, Dublin - Bank of Ireland* and *32a Arran Quay - The Fine Food Shop.*

This is a designated development interconnecting with the bank's premises in Smithfield. No. 32A is at Cooke Lane facing into Smithfield. The buildings are therefore in quite different locations although adjoining. 4,000 sq.ft. of accommodation above the bank is let at £12.50 per sq.ft.

d) *Lot 10V Newcastle, Limerick - Ulster Bank, Castletroy.*

This is not a relevant comparison on grounds of location.

Mr. Davenport further indicated a number of locations particularly shopping centres where the bank rents are close to retail rents e.g. Rathfarnham Shopping Centre where Bank of Ireland pay 10% less than neighbours on the grounds of quantum for a double unit.

In Crumlin shopping centre, the bank was valued on review at the same rate as the shops.

In the Parkway centre in Limerick, the Bank pays 25% less than the adjoining units both from the start of the lease and on review.

In cross examination Mr. Davenport acknowledged:

- that all the premises on the square between the subject and the corner with Main Street are in retail use;
- that there is no car parking in front of the shops but there is car parking in front of the Bank of Ireland premises;
- that there is some mixture of occupiers in Main Street but it is more dominantly retail;
- that the main supermarkets which are a Spar and L& N are located respectively off Market Street and off Charles Street which is further from the town centre;
- that although the Bank has car parking in the yard to the rear, it is not within the curtilage of the Lot under appeal;
- that the entrance to the Bank is to the Bank's own specification and it could be more forward if desired;
- that the entrance is as good as the entrance to the AIB premises *albeit* that the AIB premises is closer to the Main Street;
- that the AIB does not have as convenient car parking as the subject.

In relation to Mr. Davenport's comparisons the following points arose:

- Comparison No 1- the Department of Social Welfare is not currently a bank premises but was so up to 1976, that the building dates from the 1840's and is a listed building. Only a small area is used for the public office but Mr. Davenport contended that this is not relevant. It is not as well maintained as the Bank of Ireland's premises but this is reflected in the valuation.
- He accepted that his comparison No 2 does not exist as yet but that there is an agreement to lease. He also accepted that there was considerable difficulty with access to this property as the entrance is via a narrow gate in the corner of the square between existing buildings.
- In relation to his comparison No 5 - Hartnett's Chemist, Mr. Aylward suggested to Mr. Davenport that the floor area was 499 sq.ft. and not 800 sq.ft. and that the rent was £10,000 per annum. This matter was not resolved.

In relation to Mr. Aylward's comparisons, Mr. Davenport acknowledged that the AIB premises was on the square with retail use between it and Main Street and with no car park in front. Mr. Davenport did not accept that it was not as convenient for customers because the car parking in the square is available to all and the location of the AIB is better because the shops adjoining are premier shops and part of a continuation of the Main Street into the Square. Mr Davenport stated that the original valuation had been reinstated in the AIB case because no works had been carried out and that the AIB valuer, GVA Donal O'Buachalla & Company, had not approached the matter on an NAV basis because the intention was that there would be a revaluation of the premises when the works are completed and this is why a reinstatement of the old figure was accepted. Mr. Davenport accepted that Mr. Aylward's comparison and his analysis of the National Irish Bank premises in Main Street, Killarney was correct. Mr. Davenport did not accept that the information on the two Lots in Aran Quay indicated that the bank paid a higher rent than adjoining shops when the location frontage of the shop unit was considered. He accepted that the Banks paid the equivalent of retail rents where the Bank occupies a retail unit.

In response to a question from the Tribunal, Mr. Davenport said that the Bank moved from the premises occupies by the Department of Social Welfare to the subject premises because the subject offered more accommodation and not because it was considered a better pitch.

In re-examination by Mr. Hickey, Mr. Davenport said that the access to the subject premises was set back to accommodate a disabled access ramp.

The Respondent's Case

Mr. Aylward in his evidence stated:

1. The premises occupies a prime location in the square in the centre of the town, with substantial car parking available adjacent to the building.
2. The premises has recently being refurbished and is in very good repair. Recent improvements include the fitting of a new internal stairs and other internal alterations and

improvements to meet security and safety requirements. The premises was not extended except for the stairwell. Internal alterations gave additional space at ground floor and second floor levels together with reduction in the first floor.

3. There are three separate sections of car parking on the square and neighbouring occupiers are as follows:
 - (a) Opposite the Bank of Ireland are 107 spaces and neighbouring properties comprise of 11 commercial premises, three offices/surgeries and two private houses. Therefore this section is mainly retail.
 - (b) In front of the church, are 20 spaces and neighbouring properties comprise of three private houses, one bed and breakfast/bar and the interpretive centre under construction.
 - (c) The third section in front of the Listowel Arms hotel, has 34 spaces and the occupiers include AIB, two retail premises, five offices/surgeries, five private houses and the hotel.

4. He relied upon the AIB premises as his main comparison as it is also on the Square. However, in his opinion it is an inferior location with difficult car parking. It has not been upgraded since 1988 and it is comparable on the grounds of being recently revised and of similar function. The suggestion that it was valued on the old square metre basis had only been raised with him on the day prior to the hearing but he could not raise the file in time to respond to it in detail. A rateable valuation has been agreed in 1998 as the premises had been listed for revision in 1996 because a planning application had been made for extensions. The valuation had been revised on an NAV basis to £210. This was appealed and Mr. Aylward was the appeal valuer and agreed the restoration of the rateable valuation of £190 pending repairs to the premises following a fire in a neighbouring property and the works referred to in the planning application which had not as yet been carried out.

Mr. Aylward proposed a rateable valuation of £230 calculated as follows:

Ground Floor:

Bank	2,987 sq.ft.	@ £13 per sq.ft.	£38,831
First floor bank offices	830 sq.ft.	@ £8 per sq.ft.	£6,640

Second floor, bank offices etc.	709 sq.ft.	@ £5 per sq.ft.	£3,545
Motor house	272 sq.ft.	@ £2 per sq.ft.	£544
Total	£49,560 @ .5% = £247.80 say RV £230		

He provided four comparisons the details of which are summarised below:

(a) *AIB, 4 The Square, Listowel.*

The valuation of £190 was agreed prior to the Valuation Tribunal hearing of VA90/3/022. In 1996 it was revised to £210 but as no improvements had been carried out to the property since 1990, the valuation of £190 was restored by agreement at first appeal stage. This he analysed as follows:

Ground floor bank	2,283 sq.ft.	@ £13 per sq.ft.
First floor bank	623 sq.ft.	@ £8 per sq.ft.
Second floor bank	723 sq.ft.	@ £5 per sq.ft.
Total	£38,278 @ .5% =£191.39 say £190	

(b) *18a/1 Main Street, Killarney National Irish Bank*

RV £180 -1991 Revision-Analysed as follows:

Ground floor banking hall - Zone A	590 sq.ft.	@ £35.00 p.s.f.
(or Average of	1,251 sq.ft.	@ £25.25 p.s.f.)
First floor offices	269 sq.ft.	@ £10.00 p.s.f.
Second floor offices	343 sq.ft.	@ £ 4.00 p.s.f.

These premises are held on lease from the 18th of June, 1990, @ £40,914 per annum (£21.26 per sq.ft.) overall.

(c) *32C and 32a Arran Quay, Dublin 1.*

The former comprises part of the ground floor of this building occupied as offices by the Bank of Ireland comprising a floor area of 1,068 sq.ft. held on lease from 1992 at £22,000 per annum (£20.60 per sq.ft.) RV £105.

The second premises comprises part of the ground floor where there is a shop unit. The area is 1,038 sq.ft. and is held on a lease at a rent of £12,000 per annum (£11.56 per sq.ft.) RV £57.

(d) *Ulster Bank, Newcastle, Castletroy, Limerick.* – VA97/2/008 – Judgement delivered on the 18th of November, 1997.

35 year lease from December 1994, at £19,425 per annum. Analysed at 1,112 sq.ft. @ £17.46 per sq.ft.

In elaborating on his comparisons, Mr. Aylward stated that Zone A shop rents in Killarney are £30-£32 per sq.ft. whereas The National Irish Bank comparison analyses at £35 per sq.ft. In Listowel Zone A is about £16 per sq.ft. on portions of Church Street and the Square. Correlating these figures would give an NAV of £19.32 per sq.ft. overall but the Bank in Listowel is calculated at £10.86 overall and if the higher figure was used the RV would be £260 or thereabouts. His comparisons seemed to show that the rents paid by Banks are higher than those paid by retail occupiers.

In relation to Mr. Davenport's first comparison, Mr. Aylward said that the Department of Social Welfare premises on the square has an RV of £95 which equates to an NAV of £19,000. The 1989 rent was £22,500 and if this was adjusted back to 1988 it would be approximately £21,000 per annum which would give an RV of £105. This shows that there is a reasonable comparison between rateable valuations done on the old square metre basis and on an NAV basis and shows the validity of his approach in relation to his AIB comparison.

In cross examination, Mr. Aylward accepted that the pre 1988 system had come into disrepute and is no longer applicable; he did not accept that Mr. Davenport's comparison of the Department of Social Welfare premises is the most appropriate in Listowel, leaving aside the AIB because it is an office building not in banking use and no comparison can be drawn between the condition of this building and that of the subject premises. The ACC Bank, which was not put forward as a comparison, would be the next best comparison.

Leaving aside the AIB, premises in his view there was no comparison in Listowel that had comparable use and had been recently revised; he stated that the Killarney valuation was relevant in that it showed the relationship between bank figures and retail figures. He had disregarded the Department of Social Welfare premises because it was basically in office use and not a bank and he was looking at banks in the same way as retail and he had not been able to find any retail comparison in Listowel of a similar size to the Bank premises.

Closing Submissions:

Mr. Hickey stated that the pre 1988 square metre basis cannot be relied upon and therefore the respondent's comparison No 1, AIB cannot be relied upon.

The subject premises was not capable of being altered to retail use.

The most appropriate comparison is the Department of Social Welfare premises. He formally asked the Tribunal for a finding that Mr. Davenport's comparison is the most appropriate.

Finally he stated that to go outside the town was of no assistance in assessing the rateable valuation of the subject premises.

Mr. Aylward said that the AIB is the closest comparison in all respects to the subject. It had been revised since 1988. The appellant had at that time an opportunity to seek further reductions but chose not to do so and therefore accepted the valuation as reasonable on an NAV basis.

Determination

Firstly, the Tribunal would like to make two points clear:

1. It was suggested that the subject premises was not capable of being altered to retail use. The relevance of this in assessing a rateable valuation is not clear to the Tribunal. The Tribunal stated in *VA96/2/010 - Irish Permanent Building Society*, that where the Bank premises had all the physical characteristics of a shop and was located in a predominantly retail area that it was appropriate that such bank premises should be valued on the same basis as a retail shop. The Tribunal, however, has not said that banks must be valued on the basis of the nearest retail premises. In the case of *Bank of Ireland, Kilkenny -*

VA98/3/054, the Tribunal stated that there are locations where a bank use is of greater value than its neighbouring users because of the commercial reality of the location.

2. The second point relates to disputes on the facts put before the Tribunal. The purpose of the exchange of précis of evidence as noted in the Registrar's notification of hearing date in all cases is to provide an opportunity to parties to raise and deal with any factual disagreements arising from the summaries in advance of the Tribunal hearing. In this instance there was a clear conflict on the facts in relation to the appellant's comparison No 5 and this was a matter that should have been dealt with by the parties prior to the hearing and the correct information provided to the Tribunal.

In the view of the Tribunal the respondent's comparison No 1, AIB, The Square, should be the most appropriate comparison in that it is a similar premises in terms of location, comparable use and recently revised. However, the question remains in doubt as to whether in fact it has been revised. Undoubtedly it was listed for revision and a higher rateable valuation assessed but the original rateable valuation of £190 was in Mr. Aylward's words "restored" on appeal and he offered the information that this was done pending repairs to the premises following a fire in a neighbouring property and pending the carrying out of the works referred to in the planning application which had not been carried out at the date of revision. Mr. Aylward also stated in cross examination that it was the intention to have a revaluation of the premises when the works are completed. No evidence was adduced that the figure of RV £190 was arrived at on an NAV basis. The respondent's other comparisons in Killarney, Arran Quay, Dublin and Castletroy, Limerick are not of direct relevance in the subject case but useful only in so far as they show a relativity between bank rents and the rents for other users.

Mr. Davenport's comparison No.1, the Department of Social Welfare premises is undoubtedly somewhat similar to the subject premises in that it is a former Bank premises and it is located quite close by. Its rateable valuation was assessed on the old square metre basis but it has a passing rent which was reviewed in July 1989, reasonably close to the relevant valuation date of November 1988. However, it can be reasonably assumed that the premises is inferior to the subject premises otherwise why would Bank of Ireland have moved from one to the other, or

abandoned one in favour of consolidating in the other. Evidence was also provided that it is in a much inferior condition to the subject premises and the public area is not to the same scale as that in the subject premises. Mr. Davenport's other comparisons are of little assistance in that they relate to premises not yet constructed, a very small first floor office and two relatively small standard shops, the floor area and rent of the second of which is disputed by the respondent. In reality the parties had difficulty providing the Tribunal with appropriate comparisons other than the AIB premises and the Department of Social Welfare premises each of which is flawed in one way or another.

The subject premises is an imposing one on the Square, purpose built at the time of construction as a bank and adapted and modified in very recent years for the same purpose. This confirms to the Tribunal that it is a premises for which there would be a demand from hypothetical tenant's in the financial services business including the present occupant and in the opinion of the Tribunal, this demand would reflect rents that are unrelated to small retail premises in nearby streets. The Tribunal assesses the rateable valuation as follows:

Entrance lobbies banking hall and offices	225.75 m ² @	£140 per m ²	(£13 p.s.ft.) =	£31,605
Strong room/Bookroom	33.7m ² @	£54 per m ²	(£5 p.s.ft.) =	£1,820
Stores/Corridor	18m ² @	£54 per m ²	(5 p.s.ft.) =	£972
First floor offices	77.2m ² @	£65 per m ²	(£6 p.s.ft.) =	£5,018
Second floor offices	65.9m ² @	£54 per m ²	(£5 p.s.ft.) =	£3,559
Garage	25.2m ² @	£21.50 per m ²	(£2 p.s.ft.) =	£542
		Total	=	£43,516
		Say NAV	=	£44,000
		@ .5%	=	RV £220

And the Tribunal so determines.