

Appeal No. VA98/3/053

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

Bank of Ireland (Clondalkin)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Bank and Yard at Map Reference 21-34A Monastery Road, Clondalkin Village, Clondalkin, County Dublin

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 11TH DAY OF JULY, 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 £420 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 relevant valuation history is that the property was included in the November 1996 revision and a RV of £420 was fixed on it. The rateable valuation was not changed subsequent to the first appeal.

A written submission prepared by Mr. Thomas Davenport ARICS ASCS, Chartered Surveyor, Lisney, Estate Agents, Auctioneers and Surveyors on behalf of the appellant was received by the Tribunal on 15th March, 1999.

In Mr. Davenport's written submission a fair rateable valuation was set out as follows:

Ground floor/banking hall /offices	3088 sq. ft.	@	£10psf	=	£30,880
First floor/offices/staff facilities	1131 sq. ft.	@	£5psf	=	£5,655
Three car spaces		@	£200 per car	=	£600
	NAV				£37,135
	Say				£37,000
		@	0.63%		
	RV				£230

The written submission contained a schedule of eight comparisons. A copy of this schedule is annexed to this judgement as appendix A.

A written submission prepared by Mr. Noel Norris B. Comm, Graduate Diploma in Planning and Development Economics, M.I.A.V.I., on behalf of the respondent was received by the Tribunal on the 12th March, 1999. Mr. Norris is a District Valuer with twenty three years experience in the Valuation Office.

The written submission set out the basis of the rateable valuation as follows:

Ground floor	3,088 sq. ft.	@	£20psf	=	£61,760
	1,131 sq. ft.	@	£6psf	=	<u>£6,786</u>
					68,546
			RV @ .63%	=	£432
			Say		£420

The written submission contained a schedule of two comparisons. A copy of this schedule is annexed to this judgement as Appendix B.

During the course of the hearing, the respondent put in evidence a document setting out an analysis of the rateable valuation of the First Active property in Clondalkin. This document had been prepared by Mr. Norris from inspection of the relevant file in the Valuation Office. This property is also immediately adjacent to the appellant's fifth comparison (Supersaver). A copy of this document is annexed to this judgement as Appendix C.

The oral hearing took place at the Tribunal Offices in Dublin on 26th March 1999. Mr. Donal O'Donnell S.C. and Mr. Owen Hickey B.L., instructed by the law agent of the Bank of Ireland represented the appellant. Mr. Mark Sanfey B.L., instructed by the Chief State Solicitor represented the respondent.

In his sworn testimony, Mr. Davenport adopted his written submission as his evidence to the Tribunal.

Mr. Davenport described the ground floor of the subject. It was a modern banking hall with interview rooms and a customer services area. £50,000 had been spent on the internal refurbishment of the premises in 1992, 1993 and 1994. Most of this money had been spent on the ground floor.

Mr. Davenport pointed out to the Tribunal an error with respect to his first comparison. The value of £7.50psf referred to the overall area and not to the ground floor area.

Mr. Davenport put eight comparisons before the Tribunal. Two comparisons were offices. He said there were no significant difference in the values per square foot for his office and his shop comparisons.

Mr. Davenport then described his approach to the valuation of the subject. He considered the property to be an office building. It did not have a retail façade with display windows. The

subject was located in a retail area. If the property became vacant there could be an uplift for retail use.

In fixing £10psf on the ground floor of the subject he had looked at his first comparison. This was an office building directly opposite to the subject. It had a value of £10psf on the ground floor.

In further testimony Mr. Davenport said he had wide experience with property matters in connection with the Bank of Ireland. In the last ten to fifteen years because of competition with building societies, banks are seeking modern retail space for their operations. Banks now see themselves as retailers. In seeking out this retail space banks generally pay the same rate as that paid for adjoining shops.

Under cross-examination by Mr. Sanfey, Mr. Davenport said the subject was in the centre of Clondalkin on a corner site facing a crossroads. Again, Mr. Davenport said that the subject had security screens, a strong room and two ATM's .

In reply to Mr. Sanfey as to his justification for a quantum allowance in the subject, Mr. Davenport said that most retail properties ranged from 600 sq. ft. to 1,200 sq. ft. in Clondalkin. The hypothetical tenant of the subject would be taking an area of 4,000 sq. ft. There would be lesser demand for this type of property and the market would make a quantum allowance for that.

Mr. Sanfey asked Mr. Davenport why he had not used the First Active premises as a comparison. This property was immediately adjacent to Mr. Davenport's fifth comparison. Mr. Sanfey further put it to Mr. Davenport that according to the analysis of this property by Mr. Norris, 335 sq. ft. of Zone A had a value of £29.00.

In his replies Mr. Davenport said he had not dealt with this property. He considered the Zone A value to be excessive and it should be corrected.

Mr. O'Donnell then said he was proposing to call Mr. Colm McDowell of McCombe, Pierce and Partners consultant surveyors and valuers, Belfast, to give evidence of rating valuation practice within Northern Ireland.

Mr. Sanfey objected to the calling of this witness on the basis that valuers in Northern Ireland operated under a different statutory framework with respect to rating than that which existed in this jurisdiction. Mr. Sanfey cited section 5 of the Valuation Act 1986 as an index of the difference.

Again the witness would be giving evidence about documents called "Valuation Scheme and revising addendum". These documents seem to indicate an agreement between valuers and the Northern Ireland equivalent of the Valuation Office. There was no such agreement in this jurisdiction.

Mr. Sanfey submitted there had been a total revaluation of commercial premises in Northern Ireland in 1997. On the other hand there had been no general revaluation in the Republic since 1852.

Mr. Sanfey said the task of the Tribunal is to apply the law to the evidence given of valuation practise in this jurisdiction. The proposed witness was not in a position to give this evidence.

In his submission Mr. O'Donnell said an affidavit from a Northern Ireland Valuer was used in the case of *Dunnes Stores v Commissioner of Valuation, VA95/1/108*. This affidavit described an appropriate method for valuing a supermarket.

Mr. O'Donnell said that valuation law in Northern Ireland is almost identical to valuation law in the Republic. In particular section 11 of the Valuation (Ireland) Act 1852 was identical to the Rates (Northern Ireland) Order 1977. Section 11 provides the mechanism for ascertaining NAV.

Mr. McDowell's evidence would show how a similar market operating within a similar legal framework dealt with the problems which the Tribunal has to determine in this case. The evidence sought to be adduced was potentially relevant. The Tribunal can then assess the weight to be given to the evidence.

In a reply Mr. Sanfey said he noted that the Valuation Scheme document at point 3 stated "the valuation methods outlined in this practise note accord with those currently adopted throughout Great Britain". Mr. Sanfey said this constituted another reason for not hearing Mr. McDowell's evidence given that Mr. O'Donnell had stated that rating law in Great Britain was different from rating law in Northern Ireland.

The Tribunal retired to consider this matter. The Tribunal decided not to hear the evidence of Mr. McDowell as it had to apply the law and practise of valuation in this jurisdiction.

In making this decision the Tribunal took into account the following factors:

Mr. O'Donnell did not inform the Tribunal as to whether the affidavit of Valuation practise in Northern Ireland admitted in the Dunnes Stores case was done with the consent of the Valuation Office or whether the Tribunal had admitted the document despite the opposition of the Valuation Office. The Tribunal's judgement is silent on this matter.

As to the law governing valuation in this jurisdiction the following annotations on the Valuation Act 1986 by Aindrias O'Caoimh B.L. as he then was, are indicative of the grounds for the Tribunal's decision. These annotations are taken from the booklet of authorities presented to the Tribunal by the appellant. In particular the annotations deal with Section 5 of the 1986 Act.

Mr. O'Caoimh states "it can be safely said that no property in the State has a valuation made upon an estimate of net annual value, as defined". He continues that "this situation has resulted from failure to carry out periodic general revision to take account of inflation".

Accordingly given that there had been a total revaluation of commercial premises in Northern Ireland in 1997 and given the difference in rating law between the two jurisdictions; these constitute the reason for the Tribunal's decision not to hear Mr. McDowell's evidence.

In his sworn testimony Mr. Norris adopted his written submission as his evidence to the Tribunal. He said he had used comparative evidence to ground his valuation. His first comparison, AIB was directly opposite the subject. It had been agreed at first appeal with a consultant valuer. Mr. Norris said he had used this comparison as it had a similar function to the subject.

Mr. Norris said his second comparison was a ground floor bank. This is a leasehold property running for thirty five years with five year reviews. The lease commenced on the 9th May 1994.

Mr. Norris said that the Valuation Office and a consultant Valuer had reduced this rent back to November 1988. The reduction amounted in percentage terms to 13%. The figure produced by the reduction to 1988 was comparable to £20psf overall.

In further testimony Mr. Norris said that his first comparison had the same floor area as the subject.

As to Mr. Davenport's comparisons, Mr. Norris said he did not disagree with the values per sq. ft. for these offices and shops. His disagreement with Mr. Davenport was that offices and shops could be compared to banks.

Under cross-examination by Mr. O'Donnell, Mr. Norris agreed that it was the practise of the Valuation Office to value banks by comparison to other banks. This practise has been in existence in the Valuation Office since he joined it in 1975.

Mr. O'Donnell asked Mr. Norris about the basis for the valuation of his first comparison (AIB). In reply Mr. Norris said that negotiations had taken place between the Valuation Office and consultants. Two comparisons were used, AIB, Clonkeen Road, Deansgrange and AIB, Tallaght East. These comparisons had been agreed with consultants. As a consequence a tone of the list had been established for banks.

Under further cross examination Mr. Norris agreed that currently banks were tending to use shop-like premises when they were establishing new outlets.

Mr. O'Donnell asked Mr. Norris whether the market placed a higher value on these outlets, higher, that is than shops. Mr. Norris said he had found a few cases of higher values in these circumstances but he was unable to quantify the difference. Mr. Norris said premium payments apply to all business ventures. It was a rule of the market.

In his submissions, Mr. O'Donnell said the Valuation Office's practise of valuing banks by comparison with other banks was ignoring the market. The rent for banks is determined by the maximum rent payable by banks locating at the present time in desirable shop-like premises.

Mr. O'Donnell said that section 5 of the Valuation Act 1986 does not sanction the Valuation Offices practise of valuing banks by comparison with other banks. Mr. Norris's evidence that the practise predated 1986 and was related to the Valuation (Ireland) Act 1852, invalidated any defence under Section 5 of the Valuation Act 1986 of this practise.

Mr. O'Donnell's interpretation of "similar function" in Section 5(2) of the Valuation Act 1986 was in an extensive sense. In that sense comparability was to other hereditaments which included shops and offices. This comparability was based on the evidence that banks were competing with shops and offices for premises.

Again Mr. O'Donnell submitted that there was no independent market evidence for the rate of £20 psf placed on the subject. Mr. O'Donnell referred to three judgements of the Valuation Tribunal:

VA95/6/006 - AIB, Tullamore,

VA95/6/013 - Bank of Ireland, Tullamore,

VA96/2/055 - Bank of Ireland (Pembroke Road).

These decisions represented an evolution in the Tribunal's judgements whereby the practise of valuing banks as some distinct valuation grouping was rejected culminating in the third of these decisions, when office premises were used to fix a rateable valuation on a bank.

Mr. O'Donnell said that the *Ulster Bank judgement - VA96/5/003*, did not defeat his submissions as to the appropriate way to value banks. In that case there was some evidence that all banks would pay a rental premium of 20% over other retail use in order to locate in O'Connell Street. The Tribunal accepted that there are occasions where a property if available to let, could be reasonably expected to generate offers from a special category of tenant, desirous of obtaining the premises for the purpose of carrying on a business. This was just an illustration of the workings of the market.

Mr. O'Donnell referred to the *Bank of Ireland (Bray) case - VA96/2/054*. The Tribunal there rejected the Valuation Office's use of four bank comparisons drawn from other towns.

Finally Mr. O'Donnell referred to the case of *Ulster Bank Limited v The Ministry of Finance for Northern Ireland, 1923, 2IR, 173*.

In that case the appellant had sought to introduce comparisons from Stewartstown and Cookstown. The respondent objected and the County Court judge upheld the objection.

The Court of Appeal, Northern Ireland ultimately reversed this decision. Mr. O'Donnell said this case was an authority for the proposition that the task of valuers is to assess similarity and difference. Additionally in the case of difference the task of valuers is to assess the discount to be applied.

The principle enunciated in this case acts against the contention that only banks can be compared to banks.

In conclusion, Mr. O'Donnell said the approach of the Valuation Office did not connect with the reality which is the market.

In his submissions Mr. Sanfey said the central issue is what are valid comparisons for establishing NAV's.

In the I.M.I. case, Judge Barron said what must be considered are valuations which are (a) comparable and (b) relate to tenements or hereditaments of similar function and (c) have been made or revised within a recent period. Mr. Sanfey said the Tribunal must use the I.M.I. criteria and valuers must use them also.

Mr. Sanfey referred to the Ulster Bank case - VA96/5/003 and the determination which stated that the hereditament is to be valued in its actual physical state for its actual use or some other use of similar nature.

Mr. Sanfey said the respondent's first comparison (AIB) was directly opposite the subject. The respondent's second comparison, also a bank was a short distance away. It had a passing rent which supported the rate of £20psf on the subject.

Determination

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

Both sides in this case have used the comparative method of valuation. The task for the Tribunal is to ascertain the most appropriate comparison for arriving at a valuation of the subject.

The Tribunal finds that the first comparison of the respondent is the most appropriate based on the following uncontested evidence. It has the same location as the subject. It has approximately the same floor area as the subject. Again the rent for the respondent's second comparison devalues at £20psf, which gives a market check to the AIB comparison of the respondent and the subject. Also the space for the ATM on the ground floor of the first comparison enhances its efficiency comparable to the way the space for the ATM in the subject enhances its efficiency.

The Tribunal therefore affirms the decision of the Commissioner of Valuation and fixes the rateable valuation of the subject hereditament at £420.