

Appeal No. VA99/3/003

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

TSB (Blackrock)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Bank Office at Map Ref 22.24, Carysfort Avenue, Townland: Newtown Blackrock, ED: Blackrock-Templehill, Co. Dublin.

B E F O R E

Fred Devlin - FRICS. FSCS

Deputy Chairman

Finian Brannigan - Solicitor

Member

Rita Tynan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF DECEMBER, 2000

1. By Notice of Appeal dated the 19th day of July 1999 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £2,100 on the above described hereditament.
2. The Grounds of Appeal as set out in the said Notice of Appeal are that "the Valuation is excessive, inequitable and bad in law"

3. The appeal proceeded by way of an oral hearing, which took place on the 17th day of May 2000 at the Tribunal Office in Dublin. The appellant was represented by Mr. Owen Hickey B.L. and the respondent was represented by Mr. Brian Conway B.L.

4. The Property

The Subject property comprises a three-storey office building together with a basement car park occupying a prominent site on Blackrock at the corner of Carysfort Avenue and Temple Road (Blackrock By-Pass).

The building was constructed in or about 1997 and designed to be occupied as one separate unit or two separate buildings depending upon tenant demand. The agreed area of the hereditament is as follows:

	<i>Sq. ft.</i>	<i>m²</i>
Ground Floor		
(banking hall and office)	10,250	952.6
First Floor	9,837	914.2
Second Floor Offices	<u>9,333</u>	<u>867.4</u>
Total Area	29,420	2734.2
Basement (Car spaces)	51	

5. The entire building is occupied by the TSB under a twenty-five year FRI lease from the 1st November 1997 at a yearly rent of £509,342 per annum. The lease provides for rent reviews at five yearly intervals. It is agreed that the building was let with raised access floors, suspended ceilings incorporating florescent lightening and a VRV air conditioning system.

6. The subject hereditament was first valued at the 1998/4 revision and assessed at a rateable valuation of £2,100. No change was made at first appeal stage.
7. Mr. Brian McAteer, the premise's manager of the TSB gave sworn evidence of his involvement in negotiating the leasing of the property on behalf of the Bank. At the outset of the negotiations it was known that part of the ground floor would be used as a "branch bank" subject to first obtaining planning permission but this attracted no difference in rental level. As part of the negotiations the Landlord made a contribution of £250,000 towards the cost of the Bank's fit outs works in respect of which no improvement notices were served. The total cost of the fit out works was £835,500 (exclusive of vat and professional fees) and included additional M & E installations costing £403,000. In his opinion the modifications and fit-out works did not enhance the rental value.
8. Under cross-examination, Mr. McAteer was shown a letter from the letting agents Messers Hamilton Osborne King which stated that the initial rent payable under the lease was to be £509,342. Mr. McAteer agreed that this was in fact the rent being paid. In regard to the fit-out works costing over £835,500, he contended that these were not improvements as such but merely modifications specific to meet the banks requirements. He did however concede to the proposition put to him, that in the event of an assignment or sub-letting, the bank might anticipate a premium to reflect the benefit of the works. However, at the end of the day he said this would depend upon the nature of the incoming occupier's business. Mr. McAteer agreed that the layout as a single unit suited the bank and that the Landlord made slight adjustments to the internal layout to facilitate the bank who also availed of the opportunity of having a branch bank and ATM at the Carysfort corner.
9. Ms. O'Buachalla BA. ARICS gave expert valuation evidence and adopted her précis of evidence, which had previously been received by the Tribunal as being her evidence in chief given under oath. As a result of Mr. McAteer's evidence she amended her evidence as to the level of the passing rent from £480,000 to £509,342 per annum but said that this did not alter her opinion of rateable valuation.

10. In evidence she made the following observations;

- 1) Due to the original design to have two units of occupation the layout was somewhat unusual, with the service core being located at one end rather than in the middle which was the norm.
- 2) The entrance to the building was off Carysfort Avenue. It was a secondary street compared to Temple Road.
- 3) There is no on –street parking in the immediate vicinity.
- 4) With regard to the fit-out works and modifications carried out by the TSB, these were specific to the banks needs and would have minimal affect if any on rental value as a hypothetical incoming tenant would probably have different needs in relation to internal layout etc.
- 5) The office market in Blackrock in 1988 was in over supply which was reflected in prevailing rental levels at that time and hence the growth between 1988 and 1997 in Blackrock was in excess of the norm elsewhere in the greater Dublin area.
- 6) As a general statement it is unsafe to use the J.L.L. office index as Mr. Curran had done as the index was mainly based on Dublin office rents and not specific to the Blackrock area.
- 7) Quantum is an accepted feature of the office market and in her opinion the differential in rents between offices of say 29,000 sq. ft. and 13,000 sq. ft. would be in the order of 15% – 20% and certainly would never be less than 10%.
- 8) In her opinion the comparisons put forward by Mr. Curran would not be of much assistance to the Tribunal as the buildings were much smaller than the subject. However if they were to be considered, then an allowance of 20% in respect of his comparisons No. 1 & 2 and perhaps as high as 30% - 40% in respect of comparison No. 3 would be needed to reflect the differential in area compared to the area of the subject.
- 9) As far as the subject hereditament is concerned, no premium should be attached to the area used as the branch bank as the fit-out is no different to that to be found in the remainder of the building. As far as the ATM facility was concerned, this was a machine and hence, not rateable.

11. Under cross-examination Ms. O’Buachalla agreed that there was no on street car parking anywhere in Blackrock village but that there were a number of designated car parks. She agreed also that whilst the development was originally designed with a service core at each

end the core, in what had been block B, was omitted at the request of the TSB. Nonetheless the result did give rise to an unusual layout, which should be reflected in the rent a hypothetical tenant as provided for under Section 11 of the Valuation Act 1852 would be prepared to pay.

12. Ms. O’Buachalla in her evidence stated that in her opinion the appropriate ratable valuation of the subject property should be £1,500 calculated as set out below;

Floor Area:	2733.2 sq. m. @ £80.73	=	£220,651
	(£7.50psf)		
Car Spaces:	51 @ £350	=	<u>£ 17,850</u>
NAV:			£238,501
	@ .63%	= RV	£1,502.55 say RV£1,500

In support of this opinion, she gave details of five comparisons which she considered to be comparable as set out in the appendix attached to this determination.

13. Mr. Curran gave expert valuation evidence on behalf of the respondent and adopted his précis of evidence, which had previously been received by the Valuation Tribunal, as being his evidence in chief, given under oath. In his précis he attributed a Rateable Valuation of £2,200 to the subject property calculated as set out below:

Method No. 1

Ground Floor:

Office area: 7,915 sq. ft. @ £10.26/sq. ft. (£110.43/m²) = £81,207

1st and 2nd Floors:

Office area: 19,170 sq. ft. @ £10.26/sq. ft. (£110.43/m²) = £196,684

Ground Floor:

Retail Banking area 2,335 sq. ft. @ £13.00/sq. ft. (£139.93/m ²)	=£30,355
To include ATM	
Car spaces: 51 @ £400.00 each	= £ 20,400
	= £328,846
@ 0.63%	= £2,070.46
Say	= £ 2,100

Method No. 2

Rent reserved under lease @ £11/97	=	£480,000
To 11/88 by reference to J.L.W Index	=	£287,836 say £290,000
Add for tenant's improvements	=	say 15% £43,500
		Total £333,500
		@ .63% £2101.05
		Say £2,100.00

In support of his valuation he provided three comparisons of office buildings in the Blackrock area close to the subject as set out in the Appendix attached to this report.

14. In further evidence Mr. Curran commented as follows:

- (a) The subject property occupies a most prominent location and is the most modern building in Blackrock. It is a third generation building with raised access floors and the layout is very suitable for IT users.
- (b) Part of the ground floor at the Carysfort corner is fitted out as a branch bank to a standard higher than elsewhere in the building. In the circumstances he attributed a higher value to this area and in line with previous decisions of the Valuation Tribunal he considered it appropriate to make a further allowance to reflect the presence of the ATM facility.

(c) In relation to Ms. O’Buachalla’s comparisons, these were second generation buildings without profile and in introducing them she was not truly comparing like with like.

Accordingly therefore they are of little assistance to the Tribunal.

(d) Whilst he agreed with Ms. O’Buachalla that quantum was a feature in the office market, the differential in rents only became apparent when there was a significant difference in the areas. In his opinion no allowance should be made for quantum in any of the comparisons introduced by him or indeed by Ms. O’Buachalla in her evidence. In his opinion his comparisons were relevant in that they referred to third generation buildings and hence similar to the subject in terms of specification and fit out, whilst Ms. O’Buachalla’s were not.

15. Under cross–examination Mr. Curran said his knowledge of the office market was drawn from an analysis of transactions and not on first hand experience in the market place. On the basis of his analysis of the market, quantum would only be a factor when comparing rents where there was a significant difference in area. It would not be a factor in comparing buildings with an area of 13,000 sq. ft. and 29,000 sq. ft. When asked to explain the rationale of making a 15% allowance for improvements in his alternative valuation, Mr. Curran after some prevarication attributed 7.5% to general improvements and 7.5% to the presence of the ATM facility. The 15% allowance was a matter of judgement, he said and not based on a detailed knowledge or examination of the costs involved or as to which elements of the works would enhance rental value. Mr. Hickey objected to this valuation being introduced in evidence as it was too vague and imprecise as to be of any benefit. The Tribunal accepted Mr. Hickey’s reservations and indicated its intention to disregard this valuation.

16. In relation to the layout whilst he acknowledged that the layout was not typical he was not of the opinion that this would have a bearing on rental value as the office space provided was suitable for a wide range of users. Nonetheless, despite the unusual layout, the building occupied a prominent corner location and when offered to let on the market had attracted a premium tenant.

17. In his closing remarks, Mr. Conway argued that it was reasonable for Mr. Curran to make an allowance for tenant’s improvements, as they were an integral part of the hereditament to be

valued. Similarly it was proper for Mr. Curran to take into account the presence of the ATM facility and in so doing he was being consistent with previous decisions of this Tribunal – viz VA96/4/027, VA98/2/022 and VA98/3/054. In relation to Mr. Curran's second valuation he accepted that this was not relevant.

18. Mr. Hickey in his closing remarks contended that Mr. Curran had over emphasized the importance of profile, which in reality does not affect office rental values. Similarly the expenditure incurred by the appellant was in respect of works necessary to meet the banks own specific operational requirements and were not of a nature to enhance rental value as envisaged under Section 11. The letter issued by the letting agents to the bank set out in some detail the basis upon which the letting was negotiated and included details of the finish and fit-out which were to be provided by the Landlord. It is upon this basis that NAV should be determined.

Findings:

19. 1) The subject property is a modern air-conditioned office building originally designed to be let as a single unit of occupation or as two separate units A & B, each with its own entrance and service core. In its present configuration there is only one service core located at the Carysford Avenue end and it is a fact that this is almost 60 metres from the most distant office accommodation. Neither party suggested that the area and the range of services provided therein was inadequate for a building of its size.
- 2) The building is occupied under a FRI lease from the 1st November 1997 at an initial yearly rent of £509,342 on the basis of a high quality specification and fit-out. The tenants expended an additional £835,500 on upgrading the fit-out and it is noted that approximately 50% of this sum was in respect of enhanced mechanical and electrical modifications.
- 3) The subject property is by its very nature an office building save that approximately 30% of the ground floor area is used as a branch bank. Indeed from the contents of the letting agent's letter it would appear that the letting of the entire was conditional upon planning permission being obtained for this use and to include the installation of an ATM facility.

- 4) In accordance with Section 11 of the Valuation (Ireland) Act 1852, NAV must be determined on the basis of “*rebus sic stantibus*”. Hence the hereditament is to be valued with the added benefit of any works carried out by the rated occupier in so far as these would enhance rental value. The actual cost of the works is not necessarily the major criteria as the enhancement in rental value may be disproportionate to the actual costs incurred. In this instance the Tribunal accepts that by far the greater proportion of the costs were spent in enhancing an already high specification to meet the specific requirements of the occupier by virtue of the internal lay-out which provided for a mixture of open plan and cellular offices. Other monies were spent on structural wiring, internal partitioning and the security installations with the provision of a strong room costing £10,000. In the circumstances the Tribunal does not consider the works to be of a nature that would enhance the rental value to any significant degree.
- 5) A total of eight comparisons were introduced to the Tribunal by the valuers, comprising office buildings varying in size from 3,000 sq. ft. to 22,726 sq. ft. (the Eagle Star building). This latter building was built in or around 1980 and by definition would be classed as being a second-generation building. The rateable valuation of this property was fixed at the 1989/3 appeal and the NAV determined on the basis of £7.75 per sq. ft. for a building about 75% the size of the subject. The Tribunal considers this to be an important comparison and attaches considerable weight to it.

Of the remaining comparisons the AIB office’s in the Blackrock Shopping Centre, the Oracle building and the AIG building (both of which are detached) on Frascati road are all buildings of a somewhat similar size to one another but somewhat less than 50% of the size of the subject and assessed at £9.00 per sq. ft. in respect of the first and £10.26psf in respect of the other two. The Tribunal considers these comparisons also to be of assistance whilst the other four are of little help due to their size and other considerations.

- 6) In regard to the ATM, there is a difference of opinion between the two valuers. Ms. O’Buachalla considers the presence of an ATM facility to confer no added value to the hereditament whilst Mr. Curran is of a contrary view. The matter of ATM’s has been

considered by the Tribunal in a number of cases and once again it should be stated that the presence of an ATM facility, enhances the efficiency of bank premises and their ability to trade outside normal business hours and hence provide a better service to its customers. Thus it is reasonable to say that a hypothetical bank premises with the benefit of an ATM facility will fetch a higher rent than one without, all other circumstances being equal, and hence this should be reflected in the net annual value.

- 7) In the circumstances of this appeal the Tribunal has had regard to the findings in the appeal – VA99/3/004 - *Ulster Bank (Pearse Road Sligo) –v- Commissioner of Valuation* and in particular paragraphs 5 and 6 thereof which state;

(5) Where a Bank hereditament is being valued by comparison with other Bank premises all of which have ATM facilities no problem arises since like is truly being compared with like. However, in those instances as indeed with the subject appeal where Net Annual Value is being directly derived from Rental Value or by comparison with other similar but non Bank premises some adjustment must be made to reflect the presence and benefit of the ATM facility. This can be done either by attributing a separate valuation figure for the facility itself or by increasing the valuation attributable to the ground floor of the subject hereditament by an appropriate amount. Since ATM facilities are to be found in locations other than attached to bank premises such as Shopping Centres, Railway Stations etc, there is evidence of open market rental values to which regard can be had.

(6) Since this Tribunal is obliged to have regard to the evidence adduced to it by expert valuation witnesses it would be helpful if practitioners involved in rating practise and the Valuation Office for the sake of consistency were to agree upon a common valuation method having regard to the fact that the Tribunal considers the presence of an ATM facility to be an enhancement to rental value and hence Net Annual Value.”

- 8) All the comparisons introduced by the valuers in this appeal are office building which is proper given that the subject property is mainly an office building with only 30% of the ground floor being given over to branch bank use. Accordingly the Tribunal prefers Mr. Curran's valuation method and finds it reasonable that a higher value per sq. ft. should be attributed to the area occupied by the branch bank in order to reflect its different use, higher specification and the presence of the ATM facility.
- 9) An upward adjustment must be made in so far as the Eagle Star building is concerned to reflect the higher specification and better location of the subject. The other comparisons are much smaller than the subject and the AIB building particularly not of equal specification to the other two, which are of similar specification to the subject hereditament. Having regard to the differential in size and all other circumstances, the level of £10.26 per sq. ft. applied to the Oracle and A.I.G. buildings must be adjusted downwards.

Determination:

Having regard to all of the evidence introduced and the arguments adduced the Tribunal determines the Rateable Valuation of the subject hereditament to be £1,890 calculated as set out below;

Branch Bank	2,335 sq. ft. @ £10.50	=	£ 24,518
Ground Floor Offices	7,915 sq. ft. @ £ 9.50	=	£ 75,193
Offices 1 st & 2 nd Flrs.	19,170 sq. ft. @ £ 9.50	=	£182,115
Car spaces	51 spaces @ £375	=	<u>£ 19,125</u>
	N.A.V.	=	£300,951
	Say	=	£300,000
	R.V. @ 0.63%	=	£1,890