

Appeal No. VA00/2/014 &
VA01/1/081

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

Thomas Mullins Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Reference: 5/Unit 1, Victoria Quay, Ushers Quay A, Ushers Quay,
Co. Dublin

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairman

John Kerr - MIAVI

Member

Frank O'Donnell - B.Agr.Sc. FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 2ND DAY OF MAY, 2002

By Notices of Appeal dated the 28th day of July 2000 and 26th April 2001, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £145 (€184.11) on the above described hereditament.

The grounds of appeal as set out in the Notices of Appeal were:

Notice of Appeal dated 28th July 2000

"1) The valuation is excessive and inequitable in accordance with the provisions of the Valuation Acts.

2) The valuation is bad in law resulting from the failure of Dublin Corporation to comply with Section 3(4)(a) of the Valuation Act 1988 - No notice advising a revision having been served on our clients."

Notice of Appeal dated 26th April 2001

"Valuation excessive, 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 in the offices of the Tribunal in Dublin on the 25th day of March 2002. Mr. Mullins, Managing Director of Thomas Mullins Ltd. represented the appellant. The respondent was represented by Mr. Brian O'Flynn, a District Valuer in the Valuation Office.

The Notification Issue

1. At the commencement of the oral hearing Mr. Mullins on behalf of the appellant made a request that the grounds of appeal be amended to enable the appellant to re-enter the matter of lack of notification under Section 3(4)(a) of the Valuation Act 1988.
2. Mr. Mullins submitted that the appellant did not receive a notice in accordance with Section 3(4)(a) of the Valuation Act 1988 and hence the revision process was flawed at the outset. Dublin City Council he said were aware that a major redevelopment, which included a number of new retail outlets, was being undertaken by CIE at Heuston Station. In the circumstances the Council should have made enquiries of CIE as to the identity of the occupiers of these new units before preparing the revision list in November 1997. In addition any reasonable information or planning search carried out between February 1997 and May 1997 would have revealed that the appellant was operating at Heuston Station under a court order of the 11th of February 1997 and would continue to do so in any new development. The fact the Council carried out no such searches shows that it took no reasonable steps in order to ensure full compliance with the requirements of Section 3(4)(a).

Mr. John Devlin BL on behalf of the Commissioner of Valuation objected to the appellant's application and argued that the reference to the planning application lodged by CIE was not relevant to the matter at issue. Nothing contained in this document had any bearing on the notification issue. As far as the Commissioner of Valuation was concerned, Dublin City Council had complied fully with its requirements under the Act of 1988.

Miss Emily Farrell BL on behalf of Dublin City Council submitted that the notification issue could not be entered at this stage in the appeal process and that the Tribunal had no discretion in the matter. She said that at the time the revision list was prepared in November 1997, CIE were the sole rated occupiers of Heuston Station and were notified of the application for revision in accordance with Section 3(4)(a). Nothing contained in the planning application document referred to by Mr. Mullins indicated that there were other occupiers of space within Heuston Station nor were such occupiers known to the Council. In any event it was not the practice of the rating section of the Council to rely upon information contained in planning application documents when preparing the quarterly revision lists.

Following the submissions the Tribunal adjourned the hearing in order to consider the matter further and after due examination of the facts determined that the appellant could not re-enter the notification issue. The finding of the Tribunal in this regard was accepted by the appellant and the appeal proceeded on the basis of quantum only. In regard to the first issue the following are the material facts either agreed or found which in our opinion are relevant to the matter of notification.

- 1) In November 1997 the hereditament listed for revision by Dublin City Council was Heuston Station and CIE as owner/occupier were properly notified by the Council in accordance with Section 3(4)(a) of the Act of 1988.
- 2) On November 9th 1998 the revised Valuation List including the Heuston Station property was issued to Dublin City Council following which the appellant was advised of the outcome of the revision in accordance with Section 3(4)(b) of the Act.

- 3) In due course the appellant retained Lisney to act on their behalf and by letter dated the 24th November, Lisney lodged an appeal against the assessment of £145 saying that the appellant “aggrieved by the particulars contained in the revised Valuation List in respect of the following premises, hereby lodge their appeal on the grounds 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.”
- 4) No change was made at first appeal stage and in due course the matter was referred to this Tribunal and Lisney on behalf of the appellant stated that the grounds of appeal were:
 1. “The valuation is excessive and inequitable in accordance with the provision of the Valuation Acts.”
 2. “The valuation is bad in law resulting from the failure of Dublin Corporation to comply with Section 3(4)(a) of the Valuation Act 1988 – No notice advising a revision having been served on our clients.” This appeal was dated the 28th July 2000.
- 5) By notice dated the 29th August 2000, the Tribunal advised the parties that the appeal would be heard on the 9th of October 2000. By letter dated the 14th September 2000, Lisney advised the Tribunal that the notification issue was formally withdrawn and sought an adjournment of the hearing in order to allow the appellant and the landlord to resolve some matters of fact which may have a bearing on the rateable valuation. On receipt of this letter, the oral hearing was adjourned and Dublin City Council were advised that the notification issue was withdrawn.
- 6) In his submission to the Tribunal Mr. Mullins referred to a planning application lodged by CIE for “the renovation and upgrade of Heuston Station”. There is nothing contained in this document which identified the appellant or indeed any other party as an occupier of the station premises other than CIE. The Council submitted that the rates department did not rely

upon information contained in planning applications when preparing the revision list for onwards submission to the Commissioner of Valuation or in preparing Section 3 notices.

- 7) CIE at the time were, as far as the Council was concerned, the sole occupiers of Heuston Station and the Council did not know of any other parties who were occupiers of part of the station premises. Consequently the Tribunal finds that the Council complied fully with requirements of section 3(4)(a) of the Valuation Act of 1988.
- 8) Having regard to the above the Tribunal finds that it would not be appropriate to permit the appellant to re-enter the issue of notification at this stage in the appeal process. The Tribunal also finds that the appellant was not prejudiced in any way in not being notified under section 3(4)(a) in that it was able to and did avail of the first appeal procedure following notification under section 3(4)(b). In any event there is no provision in the rules and guidance notes issued by the Tribunal to permit grounds of appeal once withdrawn to be re-entered and the appellant has not adduced any sustainable argument that the rules of the Tribunal should be waived in this instance.
- 9) In relation to the planning document referred to by the appellant, this was available to the general public at the time when the revision list was prepared hence it cannot be successfully argued that it contained any new information that has just come to light and which would have a bearing on the outcome of this application.
- 10) Following the Tribunal's findings against the appellant, the Commissioner of Valuation and Dublin City Council sought costs but on due consideration costs were denied as the appellant had raised an issue not previously considered by the Tribunal.

The Quantum Issue

Property

The property comprises a sweet shop located within Heuston Railway Station, Victoria Quay, Dublin 8. The shop is positioned in a corner site within the station and in close proximity, with others, to the railway platforms, the general ticket sales area and the St. John's Road entrance to the station. The subject is identified as unit I / map reference 5 and lies opposite the concourse from Eason's Newsagency.

Valuation History

Premises revised November 1998 at RV-€184.11 (£145). No change was made at first appeal.

Appellant's Evidence

The Appellant was represented by Mr. Thomas Mullins, Company Secretary, Thomas Mullins Ltd. Mr. Mullins adopted his précis of evidence as his evidence in chief and took the oath and then proceeded to summarise the grounds of his appeal as follows:

Mr. Mullins advised that the original leasehold interest on the subject property commenced in July of 1975. He advised that in November 1988, the actual passing rent was £13,260 per annum and supported same with a copy letter dated 26th May, 1988, from the Property Manager of CIE. He advised that a Revision took place in 1997 on foot of an application by Dublin Corporation, of the entire Heuston Station and that his client filed an appeal to the Valuation Tribunal in July 2000, Reference No. VA/00/2/014, on grounds of Section 3 Notification as addressed heretofore and 26th April 2001, Reference No. VA/01/1/081.

He confirmed the location and description of the hereditament and asserted that the net lettable floor area was circa 38.37 sq. metres or circa 413 sq. ft. as calculated by Lisney and evidenced by a copy sketch map prepared by Lisney and provided to the Tribunal.

Mr Mullins in his written submission, Ref: Paragraph 8, stated that the unit is held under a 20 year Lease commencing the 1st February 1988, with Rental Reviews every five years. The Basic Rent was stated to be £30,000 per annum for the first five years or a sum greater to be calculated on the basis of Turnover Rent, should turnover exceed certain trading performance thresholds. Mr. Mullins contended that the £30,000 rental figure was negotiated and agreed at the commencement of the lease, with the Landlord, CIE, based on a rental figure of £63.00 per sq. foot, per annum applied to net lettable area of 477 sq. ft. He stated that when the redevelopment works within the concourse, including the subject premises, were completed, the area of the hereditament in fact measured just 413 sq. feet or a 15% reduction in the anticipated area. Accordingly, Mr. Mullins argued that the rental charge per square foot should have been similarly reduced by 15% to £53.55, which he contended if multiplied by 413 sq. feet would give a base rent of circa £22,000 per annum for the first five years.

He affirmed that no turnover rent was due or payable during the first five years to the Landlord as a consequence of a number of events and activities which in his view resulted in a diminished trading capacity for his client within the station, citing strikes, litigation, fall-off in rail passenger numbers and overall reduction of available customers at the location of the sweet shop. He adjusted the rent to take account of these factors by applying a CPI multiplier of 1.304 on the above reduced rental figure of £53.55 per square foot to calculate a 1988 rental amount at a level of £42.50 or £17,552.50 per annum. He stated that when the appropriate relevant index was applied to adjust forward to 1998, the difference between the passing rent of £63.00 per sq. foot on 413 sq. feet and the adjusted rent, would be in the region of £3,000 only.

He pointed out that there was considerable discrepancy on the Tone of the List between various hereditaments on the concourse and cited examples of same, and felt his client should not be unduly prejudiced by such variation and that the foregoing approach and calculations should be considered the proper criteria to estimate the proper RV of the subject.

Mr. Mullins contended that the Revising Valuer from the Valuation Office estimated a rental value of £23,000 (or £55.70 per sq. foot) as at November 1988, resulting in an RV of £145.00 which he considered to be incorrect as the actual rental amount of £13,260 would have produced an RV of £83.50. He felt that the estimate of rental value of £23,000 was derived from an incorrect current rental figure of £30,000 at the time by the Valuer and accordingly felt that his client was prejudiced by the use of an “estimate” when an “actual” RV existed and secondly, by the use of an incorrect current rent figure when the actual current rent figure could have been ascertained from Thomas Mullins Ltd., by the Revising Valuer at any time between February of 1997 and March of 2000. In conclusion, Mr. Mullins sought a reduction in the Rateable Valuation to an amount in the order of £83.50.

Respondent’s Evidence

Mr. Brian O’Flynn, District Valuer in the Valuation Office, took the oath and adopted his written submission as his evidence in chief to the Tribunal. Mr. O’Flynn, following discussion with Mr. Mullins, informed the Tribunal of two modifications to his précis of evidence, namely a reduction in the area of the subject hereditament from 41.9 m² (450 sq. feet) to 37.2 m² (410 sq. feet) and secondly, to acknowledge that the subject sweet shop tenant does not hold a sole trading right prohibiting other units from selling similar merchandise at Heuston Station.

Mr. O’Flynn, on behalf of the Commissioner of Valuation, provided the Tribunal with five comparisons of other premises or hereditaments which he considered relevant and suitable for the purpose of establishing a Tone of the List and calculating an appropriate RV. He also provided the Tribunal with various copy letters exchanged between Mr. Mullins and the Commissioner of Valuation, Valuation Office to Lisney (former agents of the Appellant) and Lisney to the Valuation Office and the Valuation Tribunal, the Valuation Office to Dublin Corporation, a copy floor plan of Heuston Station concourse based on a survey dated October, 1998, and finally, a copy drawing reference No. (SK)

205 Rev.H, providing dimensions to a unit identified as retail Unit 1B in the concourse, prepared by Brian O'Halloran & Associates, Architects and Project Managers.

Mr. O'Flynn provided the Tribunal with the basis on which the Commissioner of Valuation calculated the RV, which remained unchanged at Appeal, as follows:

Rent as agreed 01/11/1997	€38,092
Adjusted by the Consumer price index 134.8/166.5	€30,347
Reduced to make relative, x .63%	€91.18

Devalues at 41.8m² @ €699.13/m²

R.V. unchanged on appeal at; €184.11 (£145)

Mr. O'Flynn did not consider the agreed reduction in net lettable area of the premises to be material to the above calculation of Rateable Valuation.

Both parties availed of the opportunity to cross-examine each other. In response to a number of questions from Mr. O'Flynn, Mr. Mullins sought to establish a number of very adverse effects on his business at Heuston Station, which had occurred since the commencement of the lease. To support his assertions, Mr. Mullins provided the Tribunal with a series of photocopies of newspaper extracts and public notices from Iarnród Éireann, which indicated the severe adverse effects of various industrial disputes at CIE by members of SIPTU, NBRU and ILDA, closures resulting from such disputes and redevelopment works, all indicating a reduction in passenger numbers, services and turnover to CIE, and by extension, the subject sweet shop located at Heuston Station. A copy of the Sixth Schedule setting out turnover rent provisions of the lease on the subject premises was also made available and Mr. Mullins also submitted a copy of a Circuit Court Order dated 11th day of February, 1997, being Record No. 35/96, affirming that the Appellant was entitled to proceed with an application to renew its lease in the general

location of the subject sweet shop at Heuston Station. A copy of the subject lease was not provided to the Tribunal.

The Appellant offered his opinion that pedestrian flows passing the sweet shop had materially changed since the concourse was redeveloped and rail passengers are now provided with ingress and egress to the concourse at three separate points. He also made reference on a number of occasions to an apparent increase in criminal behaviour at Heuston Station, noting the concerns of the Gardaí and heightened awareness of illegal drug trading, loitering and other such either unlawful or unsociable activities at the station, which all taken together, have negatively impacted on trading activity at the subject premises.

Mr. O'Flynn, during the course of cross-examination by Mr. Mullins, invited Ms. Lisa Mackey, a Chartered Surveyor and Manager within the Property Division of Iarnród Éireann, to take the stand. Having taken the oath, Ms. Mackey provided the Tribunal with a verbal account of the numerous meetings and extensive discussions held between herself and fellow colleagues in the Property Division of Iarnród Éireann (formerly CIE), and Mr. Mullins, which concluded in agreement relating to the commercial terms of the current Lease on the subject premises. When questioned by Mr. Mullins, Ms. Mackey confirmed that the Lease on the subject premises does not hold any exclusive trading rights within the concourse at Heuston Station. Ms. Mackey also expressed her opinion to the Tribunal that the rent payable was not calculated on a square foot basis but on a gross annual sum, such amount being the primary determining factor leading to agreement by Iarnród Éireann during the course of leasehold negotiations in 1997 and 1998 with Mr. Mullins on behalf of the Appellant.

Findings

- The Tribunal notes the contents of the submissions by the Appellant and Respondent, the ancillary material submitted during the Hearing and the

agreement between the parties on the reduction of the net lettable area of the subject premises.

- The Tribunal is also mindful of the verbal evidence provided by Ms. Mackey.
- The Tribunal acknowledges the extensive contributions by both parties and the manner in which their submissions were prepared and addressed.
- The Tribunal considers the amount of annual rent to be paid under the lease commencing in 1998 to be of particular relevance to this appeal. For the sake of clarification it should be noted that the premises subject to calculation of the rent of £13,260 per annum in November 1988, as outlined by the appellant, are not the premises subject to this appeal.

Conclusions

Having regard to all of the foregoing, including the evidence adduced, the arguments proffered by both Appellant and Respondent, the agreement on the area of the subject hereditament, the verbal evidence provided by Ms. Mackey, the comparisons submitted by Mr. O’Flynn in his précis of evidence and notwithstanding the submissions of Mr. Mullins, the Tribunal has not been given sustainable evidence to support the contention that the rental amount negotiated and agreed between the Landlord and Appellant on the subject premises at Heuston Station was based and calculated on the premise of cost per square foot.

Accordingly, the Tribunal holds the view that the annual basic rent agreed between the parties of £30,000 per annum commencing in 1998, was understood as an appropriate rental amount based on the approximate area of the premises and having regard to its location and profile within the concourse of Heuston Station. By reaching such conclusion, the Tribunal is satisfied that the comparisons offered by the Respondent, together with the evidence adduced during the Hearing relative to rental levels within

Heuston Station and the Tone of the List, that the Commissioner of Valuation was correct in valuing the premises as he did and accordingly the Tribunal affirms the RV at €184.11.