

Appeal No. VA08/4/012 & 013

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

CT Partnership Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2193359, Basement Car Park (VA08/4/012) and Property No. 2193689, Surface Car Park (VA08/4/013) at Charlestown Shopping Centre, Charlestown, Dubber, Airport, County Dublin

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Niall O’Hanlon - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 28TH DAY OF MAY, 2009

By Notices of Appeal dated the 4th day of December, 2008 the appellants appealed against the determination of the Commissioner of Valuation in fixing valuations of €208 (VA08/4/012) and €233 (VA08/4/013) respectively on the above described relevant properties.

The Grounds of Appeal as set out in the Notices of Appeal are at Page 2 of this Judgment.

The Grounds of Appeals

The Notices of Appeal state as follows:

“The appellant repeats the grounds of appeal set out in the appeal to the commissioner of valuation and asserts that the RV as assessed for the carpark is excessive, inequitable and unwarranted as this patron carpark is provided free for the first 2 hours and subject to a charge thereafter solely to deter long term use by non patrons. This use is minimal. The availability of parking should be reflected in the valuation of the units and not separately assessed. For these reasons the carpark has no net annual value and accordingly its rateable valuation should be nil and/or the property should be excluded from the valuation list.”

The Grounds of Appeal set out in the Appeal to the Commissioner of Valuation, in respect of the Basement Car Park (VA08/4/012) state as follows:

“We consider the property should be excluded from the valuation list as the basement car park is a loss making operation. The landlords only charge for parking after 2 hours to discourage people from parking in the centre and using public transport to commute to town. From the week ending 28.04.08 the basement car park had an income of €827.90 per week while the expenditure for the car park on electricity alone is estimated at 50% of the overall electricity bill for the whole scheme including the common areas but excluding the retail units.”

The said Grounds go on to state:

“The car park cannot afford to pay rates for the area in question as the expenditure is already greater than the income. Further accounts and figures can be supplied to confirm this.”

The Grounds of Appeal set out in the Appeal to the Commissioner of Valuation, in respect of the Surface Car Park (VA08/4/013) are in similar terms except that they state that from the week ending 28.04.08 the Surface Car Park makes €154 per week.

The Properties

The subject properties comprise a basement car park under the Charlestown Shopping Centre and a surface car park directly across from the Charlestown Shopping Centre.

There is a mixture of private and public car spaces in each of the car parks. The basement car park consists of 330 public car parking spaces and the surface car park consists of 370 public car parking spaces.

Both car parks have an automated barrier at the entrance and exit. A motorist entering either of the car parks is given a ticket by an automated machine and in each of the car parks there is an automated machine for payment of fee before exit at barrier.

The Charlestown Shopping Centre is located off the N2 close to Junction 5 of the M50. It is situated on the east side of St. Margaret's Road. It is approximately four miles from Dublin City Centre and a two minute drive from Junction 5 of the M50 motorway. The immediate surrounding area is a mix of residential, industrial and retail uses. The Shopping Centre is served by a number of bus routes. The local authority for the area is Fingal County Council.

The Valuation History of the Properties

Rateable valuations of €208 on the basement car park and €233 on the surface car park were assessed on the properties and Proposed Valuation Certificates were issued to CT Partnership Ltd. on the 3rd of March, 2008. No representations were received on the properties and Valuation Certificates of €208 and €233 were issued on the 2nd of April, 2008.

Mason Owen & Lyons, Commercial Property Consultants, on behalf of CT Partnership Ltd., made appeals to the Commissioner of Valuation on the 9th of May, 2008. After consideration of the appeals Valuation Certificates of €208 in respect of the basement car park and €233 in respect of the surface car park were issued on the 7th of November, 2008. These valuations are the subject of the current appeals to the Tribunal.

Written Submissions

The following written submissions were received by the Tribunal:

1. A submission from Mr. Patrick Murphy, B.Sc. (Valuation Surveying), MIAVI, a District Valuer in the Valuation Office, on behalf of the Respondent.
2. A submission from Mr. Paul Kelly, ASCS, MRICS, MCI Arb, of Mason Owen & Lyons, on behalf of the Appellant.

Mr. Murphy set out, in section 3 of his written submissions, the methodology used in arriving at the rateable valuation of the properties the subject of the present appeals.

3.3 Valuation Methodology

The rateable valuation was assessed at 0.63% of the November 1988 Net Annual Value, which is in line with the basis adopted for the determination of other revised properties in the same rating authority.

The valuation is made by reference to the values of comparable properties appearing on the valuation list for the Fingal County Council area.

3.4 Valuation Assessments

VA 08/4/012 Basement Car Park

330 Car Parking Spaces @ €100per/space = NAV €33000

Total NAV €33,000

NAV €33,000 x 0.63% = €207.8 RV

Total RV Say €208.00

VA 08/4/013 Surface Car Park

370 Car Parking Spaces @ €100per/space = NAV €37,000

Total NAV €37,000

NAV €37,000 x 0.63% = €233.1 RV

Total RV Say €233.00

Mr. Murphy listed three comparisons as follows:

1. Swords Plaza Partnership.
2. Mall Developments Ltd.
3. Lymore Property Company.

In respect of the comparisons, Mr. Murphy states as follows:

Comparison 1 – This property, which has an RV of €512, is located in the Plaza Shopping Centre, Swords. The car park, which is located under the Plaza Shopping Centre, has two floors -1 and -2. Access to the car park is from Main Street, Swords. Charges for the car park, when revised in 2002, were €1.39 per hour or €10 per day. The car park consists of 310 spaces and the valuation is assessed on 310 spaces @ €262 per space.

Comparison 2 – This property, which has an RV of €505, is located in Swords Central Shopping Centre, Swords. The property consists of an underground car park on two levels, -1 and -2. Access to the car park is from Dublin Street, Swords. The first two hours are free to park and charges apply thereafter. The valuation is assessed on 311 spaces @ €260 per space.

Comparison 3 – This property, which has an RV of €125, is located at Castle Shopping Centre, at the rear of Main Street, Swords, across from Bridge Street. The property comprises a surface car park. The capacity of the car park is 77 cars. The first hour is free to park, the second hour €2.00 and any hour after that €5.00. The valuation is assessed on 77 spaces @ €262 per space.

In his written submissions Mr. Kelly set out the factors which, he asserted, affected the value of the car parks. He stated that the accounts of the car parks showed an operating loss from December 2007 to November 2008 of €95,485.96. Whilst the car park was vital for the operation and running of the centre, it would not be viable as a stand-alone car park. The net operating loss was taken on by the landlord of the centre and was offset

against the income from the rest of the centre. Therefore, in the assessment of the NAV of the retail units the car park should be taken into account, as it was necessary for the retail units in the centre to trade.

In his written submissions Mr. Kelly stated that under all the retail leases the landlord had an obligation to keep the car park in good repair and to procure all appropriate insurances, which increased the deficit in the running of the car park. In addition, the landlord had covenanted to provide not less than two hours free parking in the retail centre car park per visit to the centre provided they had a validated ticket. The landlord also had an obligation not to permit non-shopping centre customers from parking in the shopping centre car park and in order to fulfil this obligation charged a fee of €1.50 per hour for stays in excess of two hours. Mr. Kelly in his written submission asserted that the charge for stays in excess of two hours was not commercially motivated and generated little income in comparison to the running costs.

In his written submissions Mr. Kelly also stated that the Valuation Office valuer had stated that he had ignored the existence of the car park and that the contribution to the value to the retail units arising out of its existence was not taken into account. Mr. Kelly stated that he disagreed with this assessment as the retail units would only have a nominal value if customer car parking were not available.

Mr. Kelly stated in his written submissions that in all the retail leases of the centre the rents were agreed with all the tenants on the basis that a car park was provided for their customers with the first two hours free and payment thereafter to deter non-customer use. Therefore, when valuing the rates of the retail units, the net annual value included the provision of a car park, which in turn meant the net annual value of the car park was €0.00 as its value was included in the retail valuations.

Mr. Kelly listed two comparisons as follows:

1. Skycourt Shopping Centre, Shannon, Co, Clare
2. The Glasshouse Hotel, Swan Point, Sligo, Co. Sligo.

However, in the course of the oral hearing it was pointed out by the respondent and accepted by the Appellant that the comparisons which Mr. Kelly sought to rely upon were not properties appearing on the valuation list relating to the same rating authority area as the properties the subject matter of the present appeals are situated in.

Oral Hearing

The oral hearings in respect of these appeals took place on the 23rd of February, 2009 and the 20th of March, 2009. Mr. Owen Hickey SC, instructed by Smith Foy & Partners, Solicitors, appeared on behalf of the appellant and Mr Colm MacEochaidh BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent.

Mr Hickey indicated at the outset that the appellant was contending:

1. That the car parks should not have a rateable valuation because their rateable valuations were of necessity included in the rateable valuations of the retail units in the Charlestown Shopping Centre.
2. Even if that was not the case, the car parks had no net annual value in any event therefore they should have a nil rateable valuation.

Mr. Hickey helpfully indicated that if the appellant's case were defeated on both these points there was no quantum dispute between the valuers for the appellant and the respondent in relation to the traditional method of valuation.

Mr. Kelly in his oral evidence adopted his written précis of evidence. Mr. Kelly indicated that the car parks were in a suburban shopping centre. Mr. Kelly referred to extracts from leases entered into between the landlord of the shopping centre and the tenants of the retail units. The appellant indicated that the full leases were not being adduced in evidence for reasons of confidentiality. Mr. Kelly referred in his evidence, in particular, to an extract from the lease which Dunnes Stores had entered into with the appellant which referred to the appellants' obligations regarding the provision of parking facilities

to customers of the shopping centre and which obligations have already been referred to by the Tribunal in its summary of Mr. Kelly's written précis of evidence.

Mr. Kelly also referred to an extract from a standard lease which was representative of the type of lease entered into by tenants of the smaller retail units in the shopping centre and which contained similar terms relating to the obligations of the appellant with regard to the car parks.

Mr. Kelly indicated that in his view if there were no car park there would be no shopping centre. That was the reason there was a car parking charge. The only reason there was a car parking charge after two hours was to stop people who were not customers of the centre from using the car park. Mr. Kelly was of the view that the valuation of the car parks had been included in the valuation of the retail units.

Mr. Kelly indicated that this led on to his second point which was that the car parks were losing money, they were not financially viable and were there for the benefit of the shopping units. The income of the car parks did not match their running costs and therefore they did not have a net annual value.

Mr. Kelly said if charges were introduced customers would go elsewhere as they are price conscious and in any event the appellants would be in breach of their covenants with the shopping centre tenants if they were to adopt such a course of action. In no circumstances did the car parks have the possibility of having a positive net annual value.

Mr. Kelly referred to the Skycourt Shopping Centre. In this case charges were introduced but in the face of customer and tenant opposition a new system was put in place of free car parking with charges after two hours. Mr. Kelly contended that the Valuation Office applied a nil valuation. Mr. Kelly also indicated that in his experience surface car parks, where there was no barrier, were not rated whereas car parks which had barriers and charges may be rated. Most charge situations were town centre locations.

Mr. Kelly also referred to the Glasshouse Hotel in Sligo. It was accepted that the availability of car parking should be reflected in the valuation of the hotel and not be separately assessed. Mr. Kelly contended that the appellant in the present case was in a similar position and that the valuation of the car parks should be included in the retail units.

In relation to the comparisons advanced by Mr. Murphy in his written précis of evidence, Mr. Kelly stated that the three comparisons were based in Swords, which was the capital of the Fingal County Council area. The Swords Plaza car park operated as a public car park for the town of Swords, it was not confined to customers of the Plaza. The Swords Plaza was off the main street in Swords. The car park was accessed by the road to the rear of the centre. There was no free car parking. The Swords Central Shopping Centre was situated within Swords town centre and there was no free parking. The Castle Shopping Centre was a small shopping centre situated off the north end of the main street. There was no free car parking there either.

The essential difference between the three comparisons and the Charlestown Shopping Centre was that the former were town centre shopping centres with no free car parking. The suburban car park was to be distinguished from these types of car parks – the Charlestown Shopping Centre relied upon its car parks to attract customers – without car parks the retail tenants would not get customers, would not be able to pay their rent and therefore the existence of the car park must be included in the net annual value of the retail units.

Mr. Kelly, when asked, indicated that he did not know whether the sort of covenants entered into by the appellant were also present in the leases pertaining to the three comparisons relied upon by the respondent.

Mr. Kelly, when asked by Mr. Hickey, indicated that in his view, a key difference between the present appeal and the decision of the Tribunal in **VA91/2/059 - Erin Executor and Trustee Co. Ltd.** wherein the Tribunal rejected the double taxation

argument and held that the car park was not taken into account in valuing the individual units in Dun Laoghaire Shopping Centre was that the said shopping centre was, unlike the Charlestown Shopping Centre, located in the town centre.

Mr. Kelly also indicated that he was comprehensively involved in the negotiation of lease terms with the anchor tenant, Dunnes Stores, and that he had a similar involvement in negotiations of the occupation leases with the other tenants of the shopping centre. Mr. Kelly stated that he was happy that the extract of the lease terms provided to the Tribunal covered the covenants in relation to car parking. Mr. Kelly indicated that he was happy that it was safe to offer the Tribunal the truncated lease terms and that there was nothing else in either of the full leases that would bear on the car parking issue.

In cross examination Mr. Kelly accepted that he did not put in his précis comparable evidence from the same rating area. It was put to Mr. Kelly that there was a significant difference between the car parks in Swords and the car parks in the present appeals and that such difference had been reflected in the approach of Mr. Murphy. The difference was that in Swords the level per car parking space was in the region of €260 to €262 whereas in Charlestown it was at the rate of €100 per car parking space.

It was also put to Mr. Kelly that Mr. Murphy did not make any mistake by looking at comparables in the same rating authority area. In particular Mr. Kelly accepted that in relation to the second comparison used by Mr. Murphy, the Swords Central Shopping Centre, there was exactly the same rule as in Charlestown in relation to two hours free car parking and that accordingly it was a good comparison. It was also put to Mr. Kelly that there was one hour free car parking at the Castle Shopping Centre. Mr. Kelly accepted that he left out the comparisons relied upon by Mr. Murphy because he did not have the full facts.

It was also put to Mr. Kelly that he was wrong in asserting that the car parks in Swords were public car parks whereas the car parks in Charlestown were only for the use of customers of the shopping centre. In particular Mr. Kelly accepted that any member of

the public could drive into the car parks at Charlestown and leave after one hour and fifty minutes without paying a penny. Mr. Kelly accepted that there was no sign saying “private car park for shoppers only.” Mr. Kelly accepted that it would be possible to put in place a system to ensure that the car parks were used by shoppers only but that there was no such system.

Mr. Kelly accepted that it might be possible to avoid making a loss on the car parks if, for example, all day parking was introduced for commuters using the adjacent quality bus corridor. Mr. Kelly did not accept that if a retail unit were making a loss it should have a nil valuation as, if it engaged in a different type of trading, it might make a profit.

Mr. MacEochaidh referred to the Standard Valuation Report in relation to the Skycourt Shopping Centre and put it to Mr. Kelly that two points of difference between the Skycourt Shopping Centre and the Charlestown Shopping Centre were, firstly, that in reality the former reverted to a free car park and that there had been no enforcement of charges following an attempt to introduce charges for car parking and secondly, that barriers were removed in Skycourt whereas they remained in place in Charlestown.

Mr. Kelly accepted that barriers had been removed from the surface car park in Skycourt and that no barriers had been removed in Charlestown. Mr. Kelly also accepted that exit was controlled in Charlestown unlike in Skycourt. Mr. Kelly also accepted that, although the multi-storey car park in Skycourt continued to have barriers, no figures were available for income generated by the multi-storey car park.

Mr. Kelly was asked about the statement that he had included in quotation marks in *Section 6 – Comparative Evidence* of his written précis of evidence: “it does not have a rental value as it operates at such enormous losses and charging is simply a management regime to exclude any long term parkers as required by the planning permission grant”. Mr. Kelly accepted that he did not know whether or not the statement was true.

On re-examination Mr. Kelly was asked why a voucher or receipt system had not been put in place to ensure only customers of the shopping centre used the car parks. Mr. Kelly said it would be complicated; that it had been considered but that it had been decided not to do it.

On re-examination Mr. Kelly stated that it was not his position that if something were making a loss it would have no net annual value, merely that given the losses incurred by the car parks they had no net annual value. It was his view that no party would lease the car parks and pay a rent to operate them. Mr. Hickey submitted that this constituted a valuation under section 48 of the Valuation Act 2001. Mr. Kelly also stated on re-examination his position that in the absence of the car parks the retail units would have a nil rateable value.

Mr. Murphy adopted his own written précis of evidence. Mr. Murphy referred in his evidence to the valuation assessments carried out in respect of the car parks the subject of the present appeals and to the comparisons which he had included in his précis.

Mr. Murphy stated in relation to the Swords Central Shopping Centre that the first two hours were free to park and that charges applied thereafter. The car park consisted of an underground facility on two levels. The valuation was set at €260 per space with 311 spaces. Mr. Murphy confirmed that this car park could be used by anybody in the same way as the car parks at Charlestown.

In relation to the Castle Shopping Centre Mr. Murphy stated that it had 77 surface car parking spaces. The first hour was free to park here with charges applying thereafter. The valuation was set at €262 per space with 77 spaces.

Mr. Murphy took issue with the statement in *Section 5 – Factors Affecting Value*, Part (c) Net Annual Value of Car Parks, of Mr. Kelly's précis of evidence that "In the assessment of the rates of the retail units in the shopping centre, the V.O. valuer stated he ignored the

existence of the car park and the contribution to the value to the retail units arising out of its existence was not taken into account.”

Mr. Murphy stated that he did not ignore the existence of the car park. He stated that what he said was that the car park spaces were not separately included in the valuation of each of the retail units, so double taxation did not arise. The shop units were valued having regard to the tone of the list for the area. Mr. Murphy indicated that if the car parks had charges and had barriers they were valued whereas if the car parks were free and had no barrier system they were not valued.

The valuation of each of the retail units was assessed on a tone of the list basis as per the Valuation Act 2001. The valuation of the retail units was assessed having regard to comparable retail units in other shopping centres in the Fingal County Council area but the car parks would have a separate valuation if they were fee paying as in the case of this shopping centre.

Mr. Murphy indicated, in dealing with Mr. Kelly’s second comparison, the Glasshouse Hotel, that it was general practice to include the car park in the valuation of the hotel but that it was not general practice to include the valuation of a fee paying car park in the valuation of the retail units of a shopping centre.

In cross examination Mr. Murphy accepted that in relation to the Skycourt case the Revision Officer had decided that no valuation should apply to the car parks. Mr. Hickey asked Mr. Murphy that when the Revision Officer stated that in reality it reverted to a free car park did he know whether the Revision Officer meant that it was free for the first two hours and most people would have finished shopping within two hours. In reply Mr. Murphy stated that it was apparent from the report that there were two car parks. In relation to the surface car park barriers had been removed and entry and exit was uncontrolled. In relation to the multi-storey car park entry and exit was by ticket and details of income were requested from the manager. Mr. Murphy stated that it appeared

the surface car park was free, there was no controlled entry or exit and that the situation was somewhat different in relation to the multi-storey car park.

Mr. Hickey put it to Mr. Murphy that Skycourt was one relevant property with 615 car parking spaces (220 spaces in the surface car park and 395 in the multi-storey car park) and that there was barrier charging to the multi-storey car park. Mr. Murphy conceded that from the report it would appear that there was some kind of ticketing system for the multi-storey car park. Mr. Hickey further put it to Mr. Murphy that for the majority of parking spaces there were charges. Mr. Murphy accepted that it appeared to be the case that there were charges for the use of the multi-storey car park in Skycourt.

Mr. Hickey put it to Mr. Murphy that in principle the position was the same in Skycourt and Charlestown – in both cases there was a shopping centre with a charging car park with a free period of two hours. Mr. Murphy in reply stated that there were two hours free parking in the subject properties with a ticketing system and a barrier system for charging after that. This would be much the same system as would operate in the Swords Central Shopping Centre where there was two hours free parking with charges after that. Mr. Murphy stated that he put a value on the subject properties, as already outlined, having regard to the tone of the list, the comparable properties in the area where there are periods of time where the car parking is free.

Mr. Hickey put it to Mr. Murphy that there was no difference in principle between Skycourt and Charlestown. Mr. Murphy in reply stated that in the surface car park in Skycourt there appeared to be no barriers or ticketing system.

Mr. Hickey then narrowed the terms of his question and asked what was the difference in principle between the multi-storey car park in Skycourt and Charlestown. Mr. Murphy replied that in his opinion if a system for charging existed the car park should be valued.

Mr. Hickey put it to Mr. Murphy that if he had valued the Skycourt car park he might have come to a different conclusion to the Revision Officer and that the Revision Officer

might have come to a different conclusion in relation to the car parks at the Charlestown Shopping Centre. In reply Mr. Murphy stated that there was a ticketing system and a barrier system in both the surface car park and the basement car park in Charlestown whilst in Skycourt there was no collection of monies in the surface car park, although it did appear to be different in the multi-storey car park.

Mr. MacEochaidh submitted that the line of questioning followed by Mr. Hickey proceeded upon a particular interpretation of the meaning of the Revision Officer's comments but that several interpretations of those comments were open and that there was simply not enough evidence before the Tribunal for it to safely conclude that it knew what the facts of the Skycourt case were. The hearing was then adjourned to allow the parties to adduce further evidence in relation to the position at Skycourt.

On the second day of the hearing Mr. David Cullen, Chief Executive of Euro Car Parks, was called by Mr. Hickey. Mr. Cullen confirmed that he had written a letter dated the 22nd of September, 2008, to Mr. Malachy Oakes, the Revision Officer, and that this letter had been written in the context of the revision of the valuation of the car park at the Skycourt Shopping Centre.

Mr. Cullen also confirmed that he had written a letter dated the 6th of February, 2009 to a Mr. David Lyons stating that the Charlestown car park was of no interest to Euro Car Parks as the operational costs exceeded any potential incomes for the car park.

Mr. Cullen indicated that in respect of both car parks in Skycourt the first two hours were free and thereafter there was a €1 charge per hour up to a maximum of €10 per day. He stated that there was a pay and display system in operation in the surface car park. Mr. Cullen indicated that the income from the car park was about €200 a week and the cost of operating it in the region of €200,000 per year. Mr. Cullen said charges were imposed to prevent people who were not customers of the Skycourt Shopping Centre from using the car park. He stated that in his opinion the position in the Skycourt was remarkably similar to the position in Charlestown.

In cross examination Mr. Cullen stated that customers would buy a pay and display ticket if they were staying for more than two hours. The system was monitored by having a person go around with a hand held computer to scan all the registrations.

Mr. MacEochaidh put it to Mr. Cullen that the basis of the Revision Officer's decision in relation to Skycourt was that this was a free car park with no income because these were the facts put to the Revision Officer. Mr MacEochaidh put it to Mr. Cullen that he was now telling the Tribunal that there was another fact – that it was an income car park and not a free car park.

Mr. MacEochaidh submitted to the Tribunal that far from being a free car park the Skycourt Shopping Centre was an income car park and there was a clear difference in the treatment of free car parks and income car parks. The former were dealt with on a nil valuation basis whilst there was a valuation placed on car parks producing income, even if it was a very small income. He went on to observe that on the basis of the evidence adduced by the appellant it now appeared that it was not a free car park – it was an income generating car park. It appeared now not that not only was the Skycourt Shopping Centre outside the rating area but that the Revision Officer did not have all the facts.

On re-examination Mr. Cullen said he believed that the Revision Officer had all the relevant facts.

Mr. Murphy was re-called. Mr Hickey put it to Mr. Murphy that Mr. Kelly's position was that the car parks had no rateable valuation in their own right and that the car parks were included in the valuation of the shops. Mr. Murphy indicated that he did not agree with that assessment. The shops were valued on a tone of the list basis as were the car parks.

Mr. Hickey asked Mr. Murphy if he were valuing the shops and there was no car parking whatsoever what effect that would have on his view of the net annual value of the shops. Mr. Murphy indicated that there was a car park in Charlestown Shopping Centre and that Charlestown Shopping Centre did not differ from other shopping centres in the Fingal

County Council area where there was a charge and the car park was valued separately and the retail units were also valued separately. Mr. Murphy indicated that he compared the retail units with similar retail units in the Fingal County Council area. Mr. Murphy went on to state that if a car park in a shopping centre were free (no barrier system or ticket system) it was included in the valuation of the retail units.

Mr. Hickey asked Mr. Murphy did he take into account the existence of the car parking facility when he was valuing the shops. Mr. Murphy stated that he did all the valuations of the shop units in Charlestown and that he was always of the intention of valuing the car parks separately, which he did and so he did not include a premium in the rate per square metre of the retail units.

Mr. Hickey asked Mr. Murphy if he were valuing a shopping centre with a free car park would he have two valuations for the shop and the second one was a premium because of the free car park. Mr. Murphy stated that if there was a free car park he would take that into account in the valuation of the retail units.

Mr. Murphy, when asked, could not recall what valuations had been put on the retail units in Charlestown. Mr Hickey asked Mr. Murphy to assume a valuation of €50 per square foot. He then asked if that were the rate and if Mr. Murphy were asked to value the units on the basis that the parking facility were not there, how would that affect the €50 per square foot. Mr. Murphy said he would value taking into account the tone of the list and that he would look at other shopping centres where car parks had a charge and that he would apply a rate per square metre on that basis.

Mr. Hickey asked Mr. Murphy by what amount would the €50 per square foot go down if there was no car parking facilities. Mr. Murphy stated that in any shopping centre there would be a car park – if the car park was free the car park was not valued.

Mr. Hickey put it to Mr. Murphy that if the proposition (and Mr. Kelly's evidence) that the shops had no value without a car park was correct, then it must follow that if Mr.

Murphy valued the shops at a positive net annual value of say €50 the car park valuation was in the valuation of the shops.

Mr. Hickey submitted that if the situation in fact was that the rateable valuation of a car park in any particular circumstances was included in the rateable valuation of a shop then there would be double counting and it was not fair or correct to value that car park whether or not there were charges for it.

Mr. Murphy said that double taxation did not exist in this case. Mr. Murphy stated that he did the valuations in Charlestown Shopping Centre and that he valued the car park separately to the retail units, in accordance with the tone of the list as was the case with the comparisons that he had outlined previously. His view was that he had to value a property having regard to the tone of the list in the local authority area as per the Valuation Act 2001 and that was what he had done in this case.

Mr. Hickey put it to Mr. Murphy that the rates for parking had been varied in the three comparisons referred to by the respondent but that the appellant was not in a position to remove free car parking because of the covenants it has entered into.

Mr. Hickey put it to Mr. Murphy that if the facts in Skycourt were as adduced by Mr. Cullen in his evidence before the Tribunal, that there was a charge on the surface car park after two hours by way of pay and display and that there was a charge on the multi-storey car park – what difference was there between that and the present case. Mr. Murphy said that the Skycourt was outside the rating area and that if there were charges in the car parks such car parks were separately valued. In Skycourt it was a condition of the planning permission that a system be put in place to deter long term car parking – that was not the case in Charlestown. It was clear that the Revision Officer was of the opinion that the surface car park was free and that there was a charge in the multi-storey car park. In Charlestown both car parks were fee paying car parks.

Mr. MacEochaidh objected to the question. He submitted that the answer to the question was irrelevant and irrelevant evidence was inadmissible. The evidence was irrelevant for two reasons. Firstly, the Skycourt was outside the subject rating authority area and secondly it had now emerged that the basis upon which the Revision Officer had valued Skycourt was wrong – he didn't know that a charge applied, he believed that Skycourt was free, he valued it as a free car park.

In reply Mr. Hickey said it was perfectly open to the Tribunal to decide that the facts on Skycourt were as adduced by Mr. Cullen and if the Tribunal should so decide the relevance of the question was established. Secondly, the Tribunal could decide that the facts in the present case were similar in principle and thirdly that the valuation of the subject property should be nil.

Mr. MacEochaidh asked that Mr. Hickey indicate whether it was his submission that the Revision Officer knew about the pay and display and was wrong when he called it a free car park.

In reply Mr. Hickey said it was apparent from the Standard Valuation Report of the Revision Officer that he was aware that there was a charge for the use of the multi-storey car park and that he had requested details of income from the manager.

Mr MacEochaidh indicated that he was relying on the decision in **VA91/2/059 - Erin Executor and Trustee Co. Ltd.**

Determination

The Tribunal has come to the conclusion, on the basis of the evidence, that the car parks the subject matter of the present appeals, were not taken into consideration in valuing the individual retail units in the Charlestown Shopping Centre and that, therefore, the problem of “double taxation” does not arise in this case. The Tribunal, therefore, determines that the properties are rateable.

The Tribunal is further satisfied, on the basis of the evidence, that it is not the case that the car parks have no net annual value and that they should therefore have a nil rateable valuation.

The Tribunal is satisfied with the method adopted by Mr. Murphy in assessing the rateable valuations and is further satisfied that the rateable valuations should be fixed at €208 in respect of the basement car park and €233 in respect of the surface car park.

And the Tribunal so determines.