

Appeal No. VA88/0/101

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

**Irish Management Institute**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Irish Management Institute Premises at Balally, Dundrum-Sandyford, Co. Dublin

**B E F O R E**

**Hugh J O'Flaherty**

**S.C. Chairman**

**Mary Devins**

**Solicitor**

**Brian O'Farrell**

**Valuer**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 20TH DAY OF FEBRUARY, 1989**

By notice of appeal dated 18th day of August 1988, the appellants appealed against the respondent's decision fixing the rateable valuation of the above described hereditaments at £2,400.

Donal O'Buachalla & Co Ltd of 86 Merrion Square, Dublin 2 presented a written submission on behalf of the appellants in October 1988. In the course of that submission a description of the

buildings, the objects and the operations of the appellants were described. A previous appeal heard by the President of the Circuit Court, Judge Neylon on the 26th May, 1978, was referred to. On that occasion the learned President upheld the Commissioner's decision fixing the rateable valuation at £2,400.

It was contended that the subject fulfils almost all of the criteria necessary to establish entitlement to exemption from rates on the grounds of exclusive use for public purposes, and is, in the main, precluded therefrom only because the activities carried on in it are directed towards a particular class of person.

It was contended that the best comparison was Wesley College which is nearby; that other near comparisons would be afforded by reference to analogous educational establishments which are given preferential treatment under section 69 of the second schedule of the Local Government (Dublin) Act, 1930. Having regard to the various classes set out therein, three are being relied on now in support of the contention that the rateable value of £2,400 is unconscionably harsh, inequitable and grossly excessive, and is capable of being supported only by the application of wrong principles by the Commissioner, inter alia, by his insistence on regarding the subject as a commercial enterprise to be valued and entered in the valuation lists in the ordinary way. References was made to the Colleges of N.U.I and the Royal College of Surgeons but it appears these are exempt on the basis that they are used exclusively for public purposes.

It was pointed out that Trinity College's entitlement to a reduction in valuation in the second schedule to the Local Government (Dublin) Act, 1980, is limited to the perimeter boundary of the campus as it existed in 1930. Therefore, the most recent buildings

- (a) The new library (1969) and
- (b) The arts and social sciences building (1979).

do have this entitlement.

The rateable valuations attributable to the new library are £1,050 and the new arts and social sciences building is £3,650. It appears these were agreed in negotiations with the district valuer.

It is contended that both the new library and arts building were meticulously designed, on five levels, and constructed and finished to a standard equal to the best in this country or, indeed, abroad.

Reference is also made to the rateable valuation on the Royal College of Physicians in Ireland at Kildare Street in the sum of £410 and the Honourable Society of the King's Inns at £530. The Incorporated Law Society's premises at Blackhall Place has a rateable valuation of £360.

In this latter connection, the subject is, vis-a-vis its peers, disadvantaged as follows:

(1) Vis-a-vis "Wesley" - when liable - up to 1978

Subject (unchanged): RV £2,400 viz. 6870 sq m @ 35p = £2,404

viz. R.V. £2,400

Pro-rata with "Wesley", it would be R.V. £412

(viz. 6870 sq m @ 6p plus £21.75 land).

(2) Vis-a-vis (i) New Library (1969) R.V. £1,050

T.C.D.

(ii) New "Arts" Building (1979) R.V. £3,650

As set out above:

(i) devalues at 7,174 sq m @ 14.636p = RV £1050

(ii) devalues at 17906 sq m @ 20.728p = RV £3650

viz. average 17.682/sq m (say) 17.7p/sq m.

While equity would demand higher levels of valuation in either (i) or (ii) vis-a-vis either the subject or "Wesley" because of more sophisticated and costly multi-storey design (each has 5 levels) and superior construction, finish and location, it will be noted that even on a straight comparison with the average of 17.7p/sq m above, the average level of valuation at which the subject devalues is approximately double that of the average of the New Library and the "Arts" building at T.C.D.

Moreover, having regard to the fact that (i) and (ii) above qualify under the 1930 Act, as being within the perimeter of the campus, each (as an integral part of the total) is liable to pay on 34% or on a net R.V. £357 (i) (viz. £1,050 @ 34%) and on a net R.V. £1,241 (ii) (viz. £3,650 @ 34%).

Thus on the basis of similarity of size and function, the effective assessment for rating purposes of £2,400 - subject -6,870 sq m., is contrasted with the figure of £357 for the New Library (7,174 sq m.).

Alternatively, the subject devalues for rating purposes @ 35p/sq m., while the New Library devalues @ 4.876p/sq m (viz. 14.636 @ 34%).

(i) and (ii) on the average devalue, for rating purposes, at 6.02p/sq m. vis-a-vis the 35p/sq m. on the subject, viz. almost one-sixth.

It was pointed out that the rate in County Dublin was on a three year average 26% higher than in the County Borough. Mr O'Buachalla said regarding the three other comparisons that since he was not involved in the determination of their rateable valuation and had not been furnished with the actual details including square metre area and prices he could not comment further.

In the course of his written submission dated 21st October, 1988, Mr Donal O'hUallachain BA, MPA, who is a district valuer with over 17 years experience in the Valuation Office gave the valuation history of the premises as follows:-

Prior to 1975 a building known as Clonard House stood on the land and bore a rateable valuation of £75.

Following the erection of new buildings and at the request of Dublin County Council the valuation was revised in the 1975 annual revision and increased to £2,800 to take account of the new buildings as used by the Irish Management Institute. The house, although included in the description, did not account for any of the rateable valuation because at that time it was not considered by the Commissioner to contribute to the net annual value of the hereditament.

The Irish Management Institute appealed against this revision of valuation and the Commissioner having investigated the subject matter of the appeal reduced the valuation to £2,400.

The Institute remained aggrieved and appealed to the Circuit Court on the grounds that the "Rateable Valuation of £2,400 on the premises is excessive and inequitable and should be reduced."

The Circuit Court heard the appeal on the 26th May, 1978, and having heard all the evidence (including that given by Mr Donal O'Buachalla) and legal argument put forward by both parties ruled that the rateable valuation of £2,400 was correct and should not be reduced.

In the 1987 annual revision the hereditament was again listed by Dublin County Council for revision of valuation. The nature of revision required was as follows "Please apportion valuation

between IMI premises and Clonard House - refer attached letter dated 8-4-86. Refer also letter dated 11-2-86 and distinguish valuation if appropriate."

The circumstances of occupation and condition of Clonard House were found to be such that this part of the premises was separately valued and following an appeal the rateable valuation was fixed by the Commissioner at £75 with the agreement of the Institute through its agent Donal O'Buachalla & Co Ltd.

No change was made in the valuation (RV £2,400) of the buildings occupied by the Institute in the 1987 annual revision

Mr O'hUallachain was deputed by the Commissioner to inspect the premises and to report.

He inspected the hereditament in May 1988 and found that it consisted of a large administrative and teaching complex situated in its own grounds of 13 acres at Sandyford Road, Dundrum. The complex which was constructed in or about 1974 consisted of three interconnected low level buildings housing an administrative area, a library, and training area. The buildings are partly air-conditioned. Extensive car parking facilities are available on purpose-developed tarmacadamed surfaces.

During his examination of the subject-matter of the appeal for the purposes of his report to the Commissioner he wrote to Mr O'Buachalla inviting him to make a written submission and indicating to him that he was willing to meet him to discuss the appeal. In reply Mr O'Buachalla wrote stating that his submissions, in essence, were unchanged since the 1978 Circuit Court Appeal when the valuation of £2,400 was affirmed. Mr O'Buachalla did not seek a meeting with Mr O'hUallachain to make an oral presentation of his client's case.

As no new evidence additional to that adduced in 1978 when the Circuit Court affirmed the rateable valuation of £2,400 was put forward by Mr O'Buachalla in support of his client's appeal he reported to the Commissioner that the case was the same as in 1978 and that in his opinion no change in the valuation as affirmed by the Circuit Court was warranted.

Having considered his report the Commissioner made no change in the valuation.

The initial hearing of the case was fixed for the 18th November, 1988, when it was suggested that there should be a further exchange of information between the parties.

On the 27th January, 1989, the case was before the Tribunal which had different personnel and the exchange of correspondence between the parties prior to the hearing on that date and the submissions made were reiterated in the course of the oral hearing on that date.

### **Oral hearing**

Mr Richard Cooke S.C. (instructed by Roger Greene & Son) appeared for the appellants and Mr Aindrias O Caoimh (instructed by the Chief State Solicitor) represented the respondent.

In the course of his opening address Mr Cooke said that the premises were an educational institution. It had to be viewed in contra-distinction to a place where trade would be carried on. He said that in fact it was on the border line of being entitled to exemption as being used for public purposes.

Mr O'Buachalla gave evidence and elaborated upon his written submissions. He referred to numerous educational establishments that are wholly occupied for private profit and that thus correctly fall to be valued as ordinary commercial properties. He said that it was common case

that occupation for commercial reasons equates with profit, viz. the hypothetical tenant will not offer an economic rent, or indeed, any rent if he cannot envisage his occupation being profitable.

Similarly, the hypothetical landlord will not risk his capital unless he has a reasonable assurance that the annual return on it is, or will be, adequate.

He said it should not be treated as a commercial development as, he said, was contended on behalf of the respondent. He pointed out that Mr O'hUallachain had given his opinion that the net annual value of the subject premises in its actual state is £250,000 namely five times the 1975 estimate of N.A.V. of £50,000 given by his colleague Mr Walsh who had given evidence in the Circuit Court.

He did not think that the comparisons with FAS (Anco) were appropriate.

Mr Con Cronin of the same office gave corroborative evidence. He said that he was unable to place any NAV on the subject premises. Mr Brendan Millar, Architect of the firm Arthur Gibney & Partners gave evidence about how impractical it would be to convert the premises for use as a commercial office development. There would be a better chance of doing something like that with Wesley College but it was technically impracticable to attempt such with the subject premises. The cost would be out of proportion to what would be achieved. In other words, the premises were purpose built for the I.M.I.

Mr Noel Kelly who is a quantity surveyor and a fellow of the Institute of Architects and Surveyors gave corroborative evidence in this regard.



Mr James J Byrne, Secretary to the appellants, gave evidence about the appellants activities. He said the management centre is occupied exclusively by the appellants which is Europe's largest full time training organisation. It is the Institute's National Management Centre.

Since the Institute was started by a group of Irish businessmen in 1952, its objective has been "to raise the standard of management in Ireland". It appears the Institute is not only unique to Ireland but unique in Europe.

It is a company limited by guarantee. It is a non-profit making organisation and is owned by its members. It is permitted to have a surplus from its operations only for the purpose of repaying capital loans.

It is a voluntary body whose officers, council and regional committees are elected from membership that carries no compulsion. It is controlled by a council elected annually by its members.

Membership is organised on a regional basis. There are 10 elected regional committees whose task is to devise programmes of local activity and provide advice on management needs.

The function of the Institute is to study and distil all that is best in the theory and practice of business management and bring it to Irish managers and, to that end, its staff is constantly working on the research and development approach used in industry.

The length of the training programme varies from a couple of days to as much as 4 years.

One of the longer programmes is a 2 year action learning management programme for senior executives. Successful candidates are awarded a Master's Degree by Dublin University. This particular programme is recognised internationally as being the most advanced of its kind.

Another of its long programmes is the Fordham/IMI MBA programme for international executives, which runs over two years. Successful candidates are awarded the Fordham University's MBA Degree.

The longest programme is a 4 year degree programme for managers. The successful candidates are awarded a Bachelor of Arts Degree BA(Mgmt) by the national council for education awards.

Since its inception, the Institute has been increasingly recognised by successive Government's as being of exceptional importance to the Irish economy, so much so that it has received substantial annual subventions from the State, via the Dept. of Labour, as well as from industry itself.

Also FAS (the Training and Employment Authority), which itself is engaged in technical training and re-training, does provide technical assistance grants towards the cost of participation in training programmes for managerial and supervisory personnel in manufacturing and distributing firms.

The Institute is unique insofar as it is the only service to management in Europe being subsidised annually by the European Social Fund, (a division of the E.E.C.), whose stated aims are "to eliminate poverty and unemployment" and the bulk of whose money is therefore earmarked for projects which create and preserve jobs.

The E.S.F. is represented by governments, trade unions and employers' organisations.

The State has supported all the Institute's applications for E.S.F. grants.

The physical progress of the Institute has been from 2 offices in Grafton Street to a house in Leeson Park, and thence to Orwell Road wherein it carried out considerable extensions to existing premises.

In each case the original capital required was provided by money borrowed from the Industrial Credit Corporation and paid back over a number of years, with the members providing the capital for the works carried out.

With increasing demands on its services, the Orwell Road premises proved inadequate, thus warranting removal to the present location where the subject premises were specifically designed for a dual purpose, viz. to provide the corporate headquarters of a large membership organisation involved in advisory and information services on the one hand and, on the other, a highly specialised training centre for managers. The division of both functions has been expressed simply and directly in the design.

The State's approval of this new concept was marked by a grant of up to 50% of the capital costs of the buildings up to a maximum of £400,000.

Exclusive of costly items of plant, equipment and furnishing etc., which are irrelevant for the purposes of this appeal, the total capital expenditure amounted to £1,220,000, as follows:

Original residence and land (13 acres)	
purchased in open market in March 1971:	£ 120,000
Buildings:	£1,100,000
This expenditure, and that on the plant, etc., was financed as follows:	
Sale of former premises (Orwell Road)	£ 550,000

Gifts from members - mostly from business firms and State-sponsored bodies:	£ 600,000
Government grant:	£ 400,000
	_____
	Total £1,550,000

The overall concept envisaged the construction of a separate residential block having its nucleus in the existing residence (Clonard House) which was to be refurbished. The capital cost thereof was estimated at £400,000 for which the State grant was expected to amount to £200,000 with the members' gifts supplying the balance.

In the event, the State did not pay its share and thus, this part of the project was dropped.

The Institute accommodates about 72 institute personnel and provides teaching courses for up to 480 participants per day.

Management education is mainly by group tuition backed up by seminar and discussion sessions, and teaching areas are equipped with projection booths linked to a computer suite and a closed television circuit.

On cross-examination it was established that part of the first floor of the administration block was occupied by tenants who paid rent of £7 per square foot in addition to a service charge of £3.50 per square foot. The area let amounts to about 4% of the total.

Mr O'hUallachain gave evidence and said that nothing had changed since the case was decided by the Circuit Court. If anything the area has improved because of the erection of office building and other developments which all had the advantage of a rural setting. He said that if he had

known that part of the premises were let he would, in fact, have recommended a higher rateable valuation to the respondent.

Mr O'hUallachain referred to the headquarters and main administrative offices belonging to FAS and to their training centres situate in the Dublin environs. He said these training centres are usually located in or in adjoining industrial estates. The IMI training centre and administrative offices on the other hand are located in the attractive setting of landscape parkland and would be considered superior to the FAS (Anco) training centres. His comparables are reproduced in Appendix A to this judgment.

He reiterated his opinion that the net annual value of the hereditament in its actual state is £250,000.

He said that on all of three different methods the valuation of £2,400 is shown to be correct, viz.

1. The best comparison available for the valuation which is the subject of this appeal is the valuation for the same hereditament fixed in 1975 by the Circuit Court Judge who was the final arbiter of quantum at that time. He was not aware of any change in the structure, use or occupation of the hereditament or any other change since 1975 which would warrant a departure from that valuation.
2. On a square metre basis the valuation of the hereditament as a training centre and administrative offices compares favourable with Anco (FAS) premises. The IMI devalues @ 31p per sq m. plus car spaces. The Anco training centres devalue @ 30p to 32p per sq m. plus carparks etc. while the administrative offices in Baggot Street devalue at up to £1 per sq m. plus car spaces.

3. On the basis of net annual value the valuation of £2,400 represents .96% of his estimate of net annual value and conforms with the comparisons put forward by him.

Mr O'hUallachain said that it was incorrect to state that the building is occupied exclusively by the IMI and he pointed out the fact that part of it had been let and that this was not just a temporary convenience letting. If he had been aware of the planning permission that had been granted to let as an office block he would have recommended a higher rateable valuation to the respondent. He said that if this rent of £7 per square foot was applied to the entire building then the total annual rent would be in the region of £500,000. However, he said that it had been agreed by both parties to regard the lettings as temporary convenience lettings and not to value them as separate rateable hereditaments. Fees charged amount to almost £7,000 per annum for some degree courses and that short courses of a few days duration are charged at more than £200 a day. Subventions from the State, industry and so forth are not relevant in determining the rateable valuation. Many industrial developments receive grants from the State. He made a contrast between the situation where firms might support members of their staff to take these courses with the situation of a student in, say, Trinity College where he and his parents had to do their best to meet the bills for fees and so forth.

Mr O'hUallachain made certain comments as regards the accounts and the valuation of the buildings but, as in other cases, the Tribunal finds it somewhat invidious to get involved in the internal accounting procedures of any organisation.

Mr O'hUallachain joined issue very strongly on the point that Wesley College provided an analogous hereditament and referred to the judgment of the Supreme Court in Governors of Wesley College v. Commissioner of Valuation (the judgment was delivered by Mr Justice Henchy on the 9th December, 1982). In the course of that judgment it was stated that Wesley College "is a essentially a private fee-paying school, with a leaning in favour of Methodists,

receiving from the Department of Education the grants and subventions available to recognised secondary schools."

Mr O'hUallachain accepted that if the subject premises were occupied as a secondary school then a valuation akin to what was attached to Wesley College would be appropriate. He agreed that the buildings were specially designed for the Institute but that others could use them if they were vacated.

While Mr O'Buachalla had made a point that at the Circuit Court hearing Mr William Walsh, the Valuation Office valuer, had given an estimate of net annual value of "not less than £50,000" he, Mr O'Buachalla, had given an estimate of £450 to the Circuit Court.

While he did not accept Trinity College as a valid comparison he noted that Mr O'Buachalla's calculations are incorrect when he states that the average valuation per square metre is 17.7p. He said the average valuation per sq m. is calculated by dividing the total valuation by the total area and not by adding the unweighed constituent valuations per sq m. and dividing by 2 as Mr O'Buachalla has done. He says the correct and appropriate calculation there is:

$$(1,050 + £3,650) \div (7,174 + 17,609) \\ £4,700 \div 24,783 = 18.965p \quad \text{Say 19p}$$

Mr O'hUallachain was cross-examined by Mr Cooke but just as Mr O'Buachalla kept to his essential position so did Mr O'hUallachain.

The members of the Tribunal visited the subject premises on the 6th February, 1989, and on that date the hearing resumed when final submissions were made by counsel. At the outset, the Tribunal had invited counsel to consider, in particular, how it should approach two matters, viz.

1. How should it deal with the Circuit Court decision of Judge Neylon of the 26th May, 1978?
2. What is the legal basis for having a difference in the rateable valuation based on the use that is made of the hereditament?

Mr O Caoimh submitted that the Tribunal should take the earlier decision into account but he accepted that it was not bound by it. He was not making the point that it was a decision in rem and reference was made to Limerick Corporation v. Commissioner of Valuation I.R. 6 C.L. 420. Mr O Caoimh said that there was no basis for saying that the decision of the Circuit Court was wrong.

With regard to the second question he said that it was the potential use that is the basis of valuations. The occupier himself may be treated as the hypothetical tenant. One is not concerned to assess the actual occupancy. He said that schools tend to be valued at a lower level and are not readily adaptable to other kinds of use. But the same remark applies as regards universities.

He referred not only to the use of the subject premises but their potential use in the fact that planning permission had been got to use the large administrative block for office purposes. He referred to section 5 of the Valuation Act, 1986 and he placed reliance on the Anco premises as, perhaps, providing the best comparables. Reference was made to the Roadstone case (1961) I.R. 239.



Mr Cooke S.C., said that as regards the previous Circuit Court decision it was now over ten years old and was not a binding precedent.

As regards the second question Mr Cooke made reference to Davey on Rating (1913-1924) at p. 5 and pp. 162-169. The rate is not a tax on land but a personal charge in respect of the land. That is how it came about that it was the occupier and not the owner who fell to be rated. He referred to the rebus sic stantibus Rule.

As was pointed out in the House of Lords decision: Clement v Addis Ltd that is (1988) 1 all E.R. 593 at p. 596 there is no readily perceptible reason for limiting the application of this rule and that the word "state" should be given a wide construction so as to include intangible as well as physical advantages and disadvantages.

### **Findings**

If the decision of the Circuit Court in 1978 were binding on it, then, obviously the Tribunal would have no problem except to follow that decision. However, it is common case that decision is not binding on the Tribunal and, therefore, the Tribunal must, as best it may, reach its own independent conclusion. The Tribunal is not certain about the evidence that was given before the Circuit Court and there is no note of a judgment. And time has brought about many changes.

The premises are to be valued rebus sic stantibus. It is common case that regard must be had to the use to which the premises are being put and to which they could reasonably be put. Again, it is common case that the premises are not to be valued as a commercial development but it is contended on behalf of the respondent that they should be rated higher than a school, for example, and even higher than a university premises. It is said that they are to be valued as what

they are, a management institute. But that still leaves the question to be solved: on what basis are the premises to be valued?

The Tribunal rejects the notion that they are to be treated as comparable to a school. And, therefore, the Wesley College comparison is not apt.

While the comparisons made with the FAS (Anco) training centres are superficially attractive, on closer examination it appears that these valuations are tied directly to the valuations applicable to industrial office development wherever they are situated. (In parenthesis, it may be noted that the Tribunal gather that these premise may be seeking some form of dispensation from rates in the future though the Tribunal attaches no importance to that).

In the result, the Tribunal has reached the conclusion that the Trinity College buildings come closest to the mark. On the one hand, it is said that these premises are more modern, better premises than the subject premises; that they are in the city centre and attached to the other buildings of Trinity College. Conversely, there are those who would point to the advantages of a semi-arcadian setting that the subject premises enjoy. Perhaps, it is said, it is better to be out in the country than in the city centre. The Tribunal has difficulty in resolving the question of quality of buildings and location, and in the result, thinks that there is much to be said for both points of view and would make no distinction between the two sets of buildings based on either the quality or the design of the buildings or their setting.

Reference was also made to the premises occupied by the Incorporated Law Society at Blackhall Place as well as the Kings Inns Dublin. The Tribunal was not given a breakdown on how these premises devalued per metre square but the members of the Tribunal have knowledge of the respective buildings and would think, without being capable of being dogmatic on the subject, that the rateable valuations appear, on any view, to be modest.

The Tribunal has come to the conclusion that the subject premises have to be valued based on the fact that the people who get the benefit of them are not "students" in the sense that one speaks of university students. Those taking courses in the subject premises are generally supported by their firms or some other sponsoring body. To that extent the clientele is more affluent. That has to be reflected in the rateable valuation that is attributed to the premises. The Tribunal accepts that there is no reality in saying that these premises could be adopted easily for commercial development; they could only be so adopted in circumstances that would make no economic sense. Neither does the Tribunal attach any importance to the fact that a small proportion of the total premises (4%) has been let; this, seemingly, came about as a result in a reduction in staff numbers which released some floor space. But it does attach importance that there is planning permission for offices as regards the administrative block.

The Tribunal would repeat what the Supreme Court said in the Roadstone Case (1961) I.R. 239 where at p. 260 Mr Justice Kingsmill Moore reiterated that in arriving at the estimate of the hypothetical rent one is not bound to use any particular method but may arrive at a determination in whatever way is most suitable to produce the required result.

The Tribunal has reached the conclusion that the just result in this case would involve that the subject premises should devalue in or around 28p per metre square and, therefore, arrives at the conclusion that the correct rateable valuation is £1,900.