

Appeal No. VA88/0/192

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

Kildare Properties Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Car Park located behind Ilac Shopping Centre, County Borough of Dublin

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Paul Butler

Barrister

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF DECEMBER, 1988

By notice of appeal dated 22nd day of August, 1988, the appellant Kildare Properties Ltd appealed against the terms of the respondent fixing the rateable valuation at £3,470.

Mr Stewart Harrington BCL, LLB, FRICS of Harrington Bannon forwarded a written submission and gave evidence at the oral hearing which was held on the 5th December 1988.

The main grounds upon which he based his appeal was that the revised assessment was excessive having regard to recently revised purpose built car parks in the city.

The subject premises comprises a purpose built car park constructed on five different levels and was erected in 1981. The car park immediately adjoins a well known shopping centre known as the Ilac Centre to which the main access is from Henry Street and Mary Street.

The property is open to the public and is currently operated directly by Kildare Properties Limited which is an associate company of Irish Estates (Management) Limited.

The car park was originally valued at the 1981 first appeal stage when it was described as car park (part of) with an original assessment of R.V. £2,400. The property was subsequently valued at the 1982 annual revision stage and was increased to R.V. £5,000.

An appeal was subsequently lodged against this assessment and the matter was referred to the Circuit Court and was heard before Judge Buchanan on the 25th March 1983. His Lordship fixed the valuation at R.V. £3,470 on the following basis.

First and second floors, 400 spaces at £4.00 per space	=	£1,600
Third, fourth and fifth floors, 600 spaces at £3.00	=	£1,800
Add for administrative offices, kiosks etc.	=	<u>£ 70</u>
		£3,470

Mr Harrington lodged an application for revision on the 29th January 1985 and following the Commissioner's decision not to alter the revised assessment an appeal was lodged on the 22nd November 1985. Since the Commissioner did not agree to reduce the valuation, a further appeal was lodged to the Circuit Court in September 1986. This case has not yet been heard by the Circuit Court.

The hereditament was subsequently included in the 1987 annual revision lists and a further appeal was lodged on the 18th November, 1987. This appeal was stated at that time to be a protective appeal pending the outcome of the 1985 Circuit Court appeal. This present appeal therefore is a 1987 first appeal.

Mr Harrington submitted that in his opinion, the revised assessment is excessive having regard to the valuation of comparable entities. In this connection, he submitted details of three purpose built car parks in the city centre. He also furnished evidence of percentage utilisation rates based on anticipated revenue on a 9 nine hour day. These figures have been furnished by management of Irish Car Parks who currently manage the car parks at Marlborough Street and Setanta and who formerly managed the car parks at Irish Life Centre and the subject property.

1. **Marlborough Street**

This property comprises a purpose built multi level car park containing six levels, the top floor being open. It provides 508 car spaces and its valuation was determined by the Circuit Court in January 1988 in the sum of £1,270. This devalues at £2.50 per space overall.

The maximum charges are as follows:

1985

Hourly Rate 60p

Maximum daily charge £5.00

Percentage utilisation 31%

1986

Hourly Rate 65p

Maximum daily charge £6.50

Percentage utilisation 33%

1987

Hourly Rate 65p

Maximum daily charge £3.50

Percentage utilisation 39%

2. **Irish Life Centre, Lower Abbey Street**

This car park is situated at basement level directly under the development known as the Irish Life Centre.

There is no specific valuation attributable to that portion which is available for public car parking. However, he confirmed that each space is valued at £3.00 per space. The number of car spaces available is 326.

He set out the parking rates as follows.

1985

Hourly Rate 65p

Maximum daily charge £10.40

Percentage utilisation 101%

1986

Hourly Rate 65p

Maximum daily charge £10.40

Percentage utilisation 106%

1987
 Hourly Rate 65p
 Maximum daily charge £10.40
 Percentage utilisation 117%

3. **Setanta Car Park**

This property provides 231 spaces and is situated at basement level under the offices scheme known as Setanta. It is situated within 100m of Dawson Street and close to Dail Eireann.

Again there is no specific rateable valuation attributable to the car park since some of the valuation relates to long term space users. however, the spaces are valued at £3.00 per space and the relevant rates and percentage utilisation are as follows.

1985
 Hourly Rate 75p
 Maximum daily charge £5.00
 Percentage utilisation 68%

1986
 Hourly Rate 80p
 Maximum daily charge £5.50
 Percentage utilisation 87%

1987
 Hourly Rate 80p
 Maximum daily charge £7.00
 Percentage utilisation 95%

Concerning the subject property Mr Harrington set out the exact number of car spaces available.

Level 1	198
Level 2	197
Level 3	193
Level 4	<u>187</u>
	775

After some discussion with Mr Des Feehan for the Commissioner it was agreed between Mr Harrington and Mr Feehan that the following number of car spaces were available.

Level 1	198
Level 2	197

Level 3	200
Level 4	195
Level 5	<u>217</u>
	1,007

There are 217 spaces available on level 5, but this section has been closed to the public since 1985. The reason for this is that there is simply not sufficient demand to warrant opening this section of the car park.

Mr Harrington sets out hereunder the charge rates together with percentage utilisation noting that the percentage utilisation is based on 800 spaces although there are only 775 spaces presently available.

1985

Hourly Rate 65p

Maximum daily charge £8.00

Percentage utilisation 55%

1986

Hourly Rate 65p

Maximum daily charge £8.00

Percentage utilisation 56%

1987

Hourly Rate 65p

Maximum daily charge £8.00

Percentage utilisation 54%

Mr Harrington concluded that the hourly rates for the subject property for 1986 and 1987 are identical to Marlborough and the Irish Life Centres. However, he claimed that the percentage utilisation is considerably below the Irish Life Centre and Setanta and is approximately 25% above Marlborough Street. On the other hand the number of car spaces available in the subject property is considerably in excess of Setanta and Irish Life Centre.

In his opinion there is no necessity whatsoever to distinguish between rates per space in respect of different floors. In all the circumstances therefore, a fair valuation for the entity would be as follows:

$$775 \text{ spaces at } \pounds 2.50 \text{ per space} = \pounds 1,937.50$$

There is no justification, according to Mr Harrington, for valuing the administrative space since none of this space is valued in the other comparisons. In relation to level 5, in his opinion, this portion of the building warrants a nil valuation. In the event of the owners wishing to utilise this space then it would be reasonable for the rating authority to list the property for revision and to revise the entity having regard to the overall percentage utilisation taking into account level 5.

Mr Harrington also includes his suggested rateable valuation on the Ilac Centre Car Park. (See Appendix A attached.)

Mr Des Feehan a District Valuer with the Valuation Office for 27 years forwarded a written submission and gave evidence at the oral hearing.

Mr Feehan described the property as comprising of a car park on five levels, with capacity for 1,000 cars. There are some offices etc. at ground floor level. The car park is located behind the Ilac Shopping Centre i.e. between Henry Street, Moore Street and Parnell Street. Access and egress are by way of Parnell Street.

Valuation History

Valued 1981-1982, on the basis of £5.00 per car space, with £70.00 on ground floor buildings. Occupiers appealed this valuation to the Circuit Court. The main grounds for appeal were:-

1. Car park was far too large for requirement. Planning permission was sought for a car park for approx. 600 cars. However, Dublin corporation made it a condition of planning permission for the Ilac Centre that a car park for 1,000 cars would be provided, to cater for peak shopping periods.
2. At time of court hearing, an occupancy rate of 35% approx. had been achieved on average.
3. Staffing levels were high relative to other car parks.
4. At peak shopping periods, there was difficulty in getting cars out of the car park, into Parnell Street.

Allowing that there might be a certain amount of exaggeration in making these points, the Commissioner did not dispute the validity of them. The Commissioner maintained that:

- (a) Occupancy was bound to improve as the shopping centre developed and became established.
- (b) There was no car park valued in Dublin, which enjoyed such a prime location. Car park was located beside the biggest and best shopping centre in the country. It was the car park nearest Henry Street and Mary Street. The two other covered car parks, valued in the city i.e. at Irish Life Centre, Molesworth Street were valued on the basis of £3.00 per car space. The Commissioner felt that a considerable premium was warranted in the case of the Ilac car park.

Having considered the evidence for some days Judge Buchanan, in a written judgment fixed the valuation on the basis of £4.00 per car space on the two lower floors and £3.00 per car space on the upper floors.

The Commissioner contended that in fixing the valuation on this basis, the Judge acknowledged that while the occupancy of the lower floors was assured, the occupancy of the upper floors was less assured and apart from peak shopping periods e.g. during sales and at Christmas, occupancy could be low.

On 1985 revision the valuation fixed by the courts was listed by the occupiers who sought a reduction because the occupancy of the upper floors was low and because the top floor had been closed, and was not in use. No reduction was made. Appellants lodged a circuit court appeal, but this was not proceeded with.

The premises was listed for 1987 revision and first appeal. No change was made and appellants have now appealed to the Tribunal.

In his written submission Mr Feehan made the following points.

- (a) There is evidence that occupancy rate is now higher than at time of previous Circuit Court appeal.
- (b) The planning permission is unchanged. Occupiers must provide 1,000 car spaces, if these are required. It may well be the case, that

upper floor is closed for most of the time. This is a matter for appellants and Dublin Corporation. Closing off the least used floor, for short or even long periods, increases usage of lower floors with consequent reductions in lighting, and manning levels. Brought to its logical conclusion, closure of the two upper floors for certain periods might be an even more attractive proposition, provided that tacit agreement could be secured from Dublin Corporation.

- (c) In seeking a reduction in valuation, because of under utilization, appellants appear to be following a similar line to that taken by Polaroid (Irl) Ltd. in 1981.

In that year a valuation of £2,200 was placed on a completed factory and warehouse occupied by Polaroid, near Newbridge, Co. Kildare. Appellants told the Circuit Court that;-

- (1) The factory was for the production of photographic film. It was designed, purpose-built and equipped for the installation of eight units for production of photographic film. Only two such units had been installed. Due to the worldwide recession, no further units would be installed.
- (2) The factory was designed for a staff of 600, at time of appeal, total staff was only 160.

A summary of their evidence was that "only a partial beneficial utilization of the rated accommodation is possible".

In cross examination appellants accepted that the two machines which had been installed (see 1 above) could have been positioned in any of the eight spaces allocated for the machines. Counsel for the Commissioner told the Court that completed but vacant factories were regularly rated to their developers, e.g. Industrial Development Authority. Similarly, completed office blocks in Dublin were rated, even if partially let, or even totally unlet. Counsel also told the

Court that the fact that the factory was under-utilized was due to a marketing policy decision of the company, and not due to any intrinsic defect in the buildings.

Summing up, Counsel for Polaroid said that the level of production achieved by Polaroid could have been carried out in a building a quarter the size of Polaroid. The remainder of the space was of no benefit to them. Counsel for the Commissioner said that the appellants had made no case, and that by their own evidence they had demonstrated that the entire Polaroid plant was capable of beneficial occupation.

Judge Roe reserved his decision. A week later he dismissed the appeal.

Mr Feehan stressed that the valuation fixed by the Court on the Ilac Centre car park was fixed, after due consideration of its advantages and disadvantages, and that nothing has changed since the valuation was fixed, to warrant upsetting the valuation.

Closure of the top floor, for short or extended periods, is, as in the case of Polaroid, a marketing policy decision, for the convenience of the appellants.

Mr Feehan suggested in his evidence that should the first, second or third levels be closed off to the public at any time cars would automatically continue on to the fourth and fifth levels.

The Tribunal believes that it is a management decision to open or close any level of the car park at any time and is of the opinion that there is no case for treating the fifth floor of the Ilac Centre car park any different from any of the other levels.

In reaching its decision the Tribunal finds that a rate of £3.00 per car parking space should be the rate used on each level regardless of its distance from the entrance or exit. Taking the total car parking spaces of 1,007 and multiplying by £3 we come to a total of £3,021 say £3,000.

The Tribunal feels that the correct rateable valuation for the Ilac Centre car park is £3,000.

