

Appeal No. VA91/1/002

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

Irish Rail

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: "Passenger Terminal" (pt of) and car park, railway platform at Lot No. 4Ca Ballygilliane, St. Helens, Co. Wexford

B E F O R E
Mary Devins

Solicitor (Acting Chairman)

Brian O'Farrell

Valuer

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19TH DAY OF JULY, 1991

By notice of appeal dated 28 February, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £635.00 on the above described hereditaments.

The grounds of appeal as set out in the Notice of Appeal are that:-

1. The valuation is excessive and inequitable
2. The valuation is bad in law.

3. That the hereditament is not in the exclusive occupation of Irish Rail.
4. Such other matters as will be advised by Council.

The Property

The property consists of a passenger terminal of reinforced concrete construction with brick finishes and asphalt roof situated beside the railway line and between the two piers of the harbour. Access to the piers is via elevated enclosed walkways from the terminal at 1st floor level whilst the ground floor has access to a large car park and the railway line (Rosslare Harbour Station). The property was first valued in the 1990/1 revision at £1,175 buildings and £90 absolute on a description "Passenger Terminal (pt of) and carpark". An appeal was lodged and having considered the report of the appeal valuer the Commissioner reduced the valuation to £615.000 on buildings and £20.00 absolute.

Written Submissions

A written submission was received on the 31st May, 1991 from Mr Desmond M Killen, F.R.I.C.S. I.R.R.V. a Director of Donal O'Buachalla & Co., on behalf of the appellant. In this submission Mr Killen said that the building and ancillary development is located on reclaimed land and forms part of Lease No 11226. The lease dated 21/1/1988 is between the Minister for Finance and C.I.E. for thirty five years from the 19th December, 1986 with five yearly rent reviews. The initial rent is £2,000 per annum. Mr Killen said that the map attached to the lease shows that the seven acres lies beyond the then existing high water mark and that the lessee (C.I.E.) undertook to reclaim the area. He said that it was accepted by both parties that the terminal building is constructed on reclaimed land. He said that it is also agreed that it now lies within the jurisdiction of the Wexford County Council as a boundary extension had been properly effected. Mr Killen then outlined the valuation history of the property and affirmed that the two main issues to be determined by the Tribunal are as set out above. He submitted that the ground floor concourse is common area as between the

appellants and the other rated occupiers of the building. With regard to the first issue to be determined by the Tribunal, Mr Killen submitted that the subject of the appeal is not to be rated for seven years from the date of reclamation i.e. from 1988 and in consequence the valuation and the entering in the valuation lists should be deleted. With regard to the second issue Mr Killen outlined the occupations in the terminal building as follows:-

4 Ca	Irish Rail	Passenger Terminal pt.of	R.V. £635
4 CB	The State (C & E)	Offices	£ Exempt
4 Ca BB	Irish Ferries	Offices	£56
4 Ca CC	Sealink	Offices	£56
4 Ca DD	B & I Line	Offices	£50
4 Ca E	South East Tourism	Information Bureau	£25
4 Ca F	Car Rentals	Offices	£25
4 Ca G	Martin Barrett	Shop	£22
4 Ca H	Fex Co	Bureau de Change	£47

He said that with the exception of the subject and the area occupied by the State, all of the other hereditaments are under lease from C.I.E. and that the only access to each of these units which are located on the ground floor, is the concourse/common area. Mr Killen attached a map of the area indicating the hereditaments referred to above and the area in dispute on the ground floor and the access ramp/escalators to the first floor. Mr Killen said that it is accepted that Irish Rail/C.I.E. are in beneficial occupation of all of the 1st floor area, except that occupied by the State (Customs & Excise). Mr Killen said that C.I.E./Irish Rail are not in actual occupation of the area in question, they do not have exclusive occupation of it and the areas in question are similar to the common areas/concourse in a shopping centre, which are of benefit and value to all the occupiers and do not carry a separate rateable valuation assessment. Mr Killen submitted that the entry in the valuation list be deleted for seven years

from 1978 and that the correct valuation for the hereditament when it is properly to be assessed is £286.00; £20.00 absolute.

A written submission was received on the 29th May, 1991 from Mr Malachy Oakes a valuer in the Valuation Office on behalf of the respondent. In this submission Mr Oakes described the property and outlined the valuation history. In commenting on the grounds of appeal Mr Oakes said that the valuation on the subject has been fixed by agreement with the agents for Irish Rail. He said that agreement was also reached on the valuation of parts of the overall. He said that the agents for Irish Rail have claimed that the terminal building being erected on reclaimed land should not be rated for seven years as set out in Section 14 of the Valuation (Ireland) Act 1852. He said that the Commissioner contends that this relief applies only to agricultural land or agricultural buildings thereon and not to the subject. He said that Irish Rail have developed this facility as an intrinsic part of the port development and expansion. He said that this development has attracted other interests who also wish to offer services in this busy port. He said such other interests are allowed with this private port on specific agreements and an annual rent in such a way as not to interfere with the paramount occupation of Irish Rail. Mr Oakes said that the terminal at Rosslare Harbour is a very busy port with daily services to Wales all year round and a Continental Service. He said it is the premier port in Ireland for Continental Europe and has undergone substantial expansion in recent years. Mr Oakes said that the terminal is built on land (foreshore) leased from the State (Minister for Finance) by Coras Iompair Eireann for thirty five years from the 19th December, 1986 paying £2,000 per annum with reviews every five years. He said that the accommodation comprises:-

Ground floor

Entrance foyer, gents wc, ladies wc, passenger concourse with escalator and ramps to 1st floor and access to railway platform, store under ramp, C.I.E. offices to include, reception,

general office, Chief Clerks Office, and Port Managers Office, Information Office, left luggage, Harbour Masters Office, C.I.E. Inspector Office, C.I.E. Customs Clearance Office, gents staff wc, ladies staff wc, and railway platform access.

Basement

Switch room.

First floor

Passenger ramp, buffet seating, buffet servary, bar, bar store, kitchen, kitchen store, departure lounge, nursing station with wc, ladies wc, and gents wc.

Roof Level

Tank room.

Mr Oakes said that the valuation has been agreed between the Commissioner and the agent for Irish Rail at £635.00 total. He said that the agents for Irish Rail have submitted to the Commissioner that the passenger area to the ground floor and the ramps to the first floor should not be valued as they are common areas. It has been agreed between the parties that the valuation of £305 total would apply to these areas (passenger area to ground floor and ramp to first floor). This would comprise £285 buildings and £20 absolute.

Mr Oakes said there is no dispute as to quantum and the issues to be decided are as follows:-

1. Should the terminal not be liable to be rated for seven years as it is built on reclaimed land as per Section 14 of the Valuation (Ireland) Act, 1852

2. If the terminal is rateable should allowances be made for "Public areas" i.e. ground floor passenger area and ramp to first floor as claimed by the agents for Irish Rail.

Oral Hearing

At the oral hearing which took place in Wexford on the 6th June, 1991 the appellants were represented by Mr Donal O'Donnell, B.L., instructed by Mr Michael Carroll, Solicitor for Irish Rail. The respondent was represented by Mr Aindrias O'Caomh, B.L., instructed by the Chief State Solicitor. Also present at the hearing were Captain Geoff Livingstone, Port Manager, Mr George Henry, Property Manager, Irish Rail, Mr Desmond Killen of Messrs Donal O'Buachalla & Co and Mr Malachy Oakes of the Valuation Office.

Mr O'Donnell, opening, said that the hereditament was part of a two-storey terminal building which had been built on reclaimed land and was therefore not rateable by virtue of the provisions of S. 14 of the Valuation (Ireland) Act, 1852.

Alternatively he argued that portion of the hereditament was not in the exclusive occupation of the appellants and that the appellants should therefore not be liable for rates on that portion. He said that if the Tribunal were to accept the appellants argument the parties had agreed a reduced valuation of £286 on buildings and £20 absolute.

Captain Livingstone said that the terminal building was completed in February, 1989 and opened in September, 1989. He explained that there was a common entrance to the main concourse area on the ground floor and that the concourse was open plan, giving access to several individual units, most of which were held under licenses from Irish Rail.

In reply to Mr O'Caomh, Captain Livingstone said that passengers from trains also had access to the main concourse and that there was seating in the concourse and out on the

railway platform. He said that the main front doors were locked at night and that the entire premises were locked by Irish Rail for two days in the year.

Mr Henry gave evidence in relation to the licence agreement under which the nine licensees held the units in the main concourse. He explained that the licensees had none of the rights under Landlord and Tenant legislation. The licences were open-ended agreements with provision for licence fee reviews and for payment of service charges, but Mr Henry said, these latter charges had not as yet been levied.

Under cross-examination by Mr O'Caoimh, Mr Henry agreed that the licensees had rights only of egress and access and that sightseers were not people authorised by the licensees to be on the premises.

In reply to re-examination by Mr O'Donnell, Mr Henry said that the common area was similar to that in a shopping centre.

Mr Killen, in evidence, said that there was agreement between the parties as to quantum, either taking the entire hereditament as rateable or in the event of the common areas being excluded. He stated that there was no material distinction between a shopping centre where rateable valuations were placed on each individual unit but not on the main concourse, and the subject hereditament.

In reply to questions from Mr O'Caoimh, Mr Killen said that the difference between the restaurant on the first floor of the terminal building and the downstairs concourse was that the restaurant was in the exclusive occupation of Irish Rail. He said that while Irish Rail had a monetary interest in rail and sea passengers using the terminal, any levies received by Irish Rail were accounted for in separate rateable valuations.

Replying to cross-examination by Mr O'Donnell in relation to his written submission, Mr Oakes said that the rateability of the concourse area of Dublin Airport was currently under appeal, and that he did not know what the situation was in regard to the main concourse of railway stations.

He agreed that the portion of the ground floor actually occupied by Irish Rail was proportionately small. He also agreed that in the treatment of shopping centres for rating purposes, common areas did not appear as items for rating, but that they were considered to enhance the values of the units and were reflected in the rateable valuations of the units.

Submissions

Mr O'Donnell argued that by virtue of S.14 of the Valuation (Ireland) Act, 1852 the hereditament, being build on reclaimed land was not rateable for seven years after the reclamation. He submitted that S.14 was not intended to be co-terminous with the terms of the Land Improvement Act, 1847. He said that the section could not be construed as referring to agricultural developments only, particularly in view of the reference therein to "office buildings" which term would not be used in the context of agricultural development.

Agricultural improvements, he argued, are only one of the types of improvement which might be carried out on reclaimed land. Mr O'Donnell said that the word 'hereditament' referred to in S.14 must be given its broadest meaning.

Mr O'Donnell then submitted that, only if his first contention failed, the Tribunal should take into account the fact that the appellants were not in exclusive occupation of the entire hereditament. He referred the Tribunal to P.282, Judge Keane on "Local Government" where he cites the three essential ingredients of rateable occupation under Irish law, viz;

- (1) The occupation must be exclusive
- (2) The occupation must be of value or benefit to the occupier
- (3) The occupation must not be for too transient a period.

Judge Keane's paragraph on exclusivity of occupation is reproduced hereunder in full.

"Occupation must be exclusive. Exclusive in this context means that the person using the hereditament can prevent any other person from using it in the same way. Questions have frequently arisen as to whether a person can be regarded as the rateable occupier where his occupation is subject to control and regulation by others. Thus, while a tenant of portion of a building is clearly the rateable occupier, because he is not subject to the landlord's control in his use of the demised portion licensees in various circumstances have been held not to be in rateable occupation. It is also quite clear, that a lodger, as distinct from a tenant, is not in rateable occupation. There is a presumption that the owner of lands is the person in beneficial occupation of them but it is a rebuttable presumption only.

If there is more than one person in the 'immediate use or enjoyment' of the hereditament, the question becomes one of fact as to who is in 'paramount occupation' and it is immaterial whether the right to occupy is attributable to a lease, a licence or an easement. This principle was clearly laid down by the House of Lords in Westminster City Council v. Southern Railway Co. and Others and was applied by the High Court in Ireland in Carroll v. Mayo County Council. In the latter case, the plaintiff entered into an agreement with the defendant under which the defendant worked a quarry on the plaintiff's land for some seventeen years prior to the proceedings to the virtual exclusion of the plaintiff. Rejecting an argument that the plaintiff remained in rateable occupation of the premises, since the defendants were not entitled to exclude him from the use of it, Henchy, J., said

'the right to exclude the owner in such cases is not the test. It is sufficient if it be shown that there was such a withdrawal of the owner from the occupation as enables a court to hold that the licensee (or lessee, or tenant, or even trespasser) was in 'the immediate use or enjoyment' as the statute puts it, or in paramount occupation as some of the cases say."

The appellants cannot exclude at least eight licensees together with all of the licensees' customers. The right of the appellants to use the common area is attended by the rights of others to so use it. Referring to the case of Carroll v. Mayo County Council Mr O'Donnell pointed out that, the licensee therein was the sole "de facto" occupier and the fact that the

licensor could come on to the land did not mean that the occupier did not have the right to exclude others.

Referring to P.53 of Ryde on Rating, Mr O'Donnell submitted that the use of the common areas by the appellants was not inconsistent with the simultaneous use of them by others for the same purpose.

He said that there was no legal distinction between the common areas of a shopping centre and that of the subject hereditament. He pointed out that there was no question of the common areas being exempt from rating but, as Mr Oakes had accepted, the individual units were valued on a N.A.V. basis and that the rights over the central concourse would have been taken into account in arriving at the valuation for each unit.

Mr O'Donnell further argued that the degree of control exercised by the appellants over the concourse did not render them liable to rating. If anything, that theory would suggest that they were liable for rates on all of the units. The appellants, he said, had the same relationship with their licensees as the managers of shopping centres had with their unit tenants.

Mr O'Caomh in his submission pointed out that S.14 of the 1852 Valuation (Ireland) Act had been amended by S.2 of the Local Government (Reduction of Valuation) Act, 1966, by the deletion of the words "within seven years next."

He said that S.14 relates to the recovery of rates but does not preclude the placing of a valuation on a hereditament. He said that the 1858 Poor Law Relief Act refers only to rating and that S.11 of the Valuation (Ireland) Act, 1852 refers to what falls to be valued rather than rated.

Mr O'Caoimh submitted that the aim of S.14 was to encourage land improvement and pointed out that the 1847 Land Improvement Act was referred to in the section. The section, he said, dealt only with agricultural entities and the subject hereditament was obviously not of this nature. The term "office buildings" was used in its historical sense. He argued that reclamation did not always give rise to a new hereditament but simply increased the value of an existing one e.g. enlarging fields by reclamation.

In relation to the question of exclusive occupation of the appellants, Mr O'Caoimh submitted that the only rights other than those of the appellants over the concourse were those of the licensees and that those were merely rights of ingress and egress. He referred to the passage in Keane on 'Local Government' which states that a person using land under an exclusive title to possession will normally be the rateable occupier of it because he can by virtue of his title exclude all others from using the land in the same way. Mr O'Caoimh said that the use of the appellants was not shared by anyone else in the same way. The only right shared was that of ingress and egress. Any right beyond that was vested in the appellants.

Mr O'Caoimh contended that shopping centres differed from the subject hereditament in that the common area in shopping centres was often under the control of all of the shop owners through a management company and that while the use of the central area was common to all shopowners often the landlord had no interest in the use of the common area or beneficial occupation of the shopping centre.

He said that the appellants were in rateable occupation of the subject hereditament since they were in paramount occupation and could exclude people from the common areas and could exclude licensees if they used them for any purposes other than those in the licence agreements. The use of the appellants was, he said, very different from the use of others. In

this instance the members of the public have no rights over the common areas other than those spelt out in the licence agreements.

Mr O'Caomh further submitted that when valuing the units the limited rights of ingress and egress would have been taken into account, but these limited rights were unlike those of the appellants.

THE LAW

S.14 Valuation (Ireland) Act 1852

" No Hereditament or Tenement shall be liable to be rated in respect of any Increase in the Value thereof arising from any Drainage, Reclamation, or Embankment from the Sea or any lake or River, or any Erection of Farm, Outhouse, or Office Buildings, or any permanent agricultural Improvement as specified under the Provisions of an Act passed in the Session of Parliament held in the Tenth and Eleventh Years of the Reign of Her present Majesty, Chapter Thirty-two, Section Four, made or executed thereon within Seven Years next before the making of such Valuation or Revision"

S. 2 Local Govt (Reduction of Valuation) Act 1966

2(a) "section 14 of the Valuation (Ireland) Act, 1852, falls to be applied consequent upon any such erection of farm, outhouse, or office buildings as is referred to in that section, and

2(b) the work of erection was completed on or after the 1st day of March, 1959, that section shall have effect subject to the deletion of "within seven years next", "

S.IV Landed Property (Ireland) Act 1847

" And be it enacted, That it shall be lawful for the said Commissioners of Public Works, upon Application made to them under the Provisions of this Act, and subject to such Rules and Regulations as may from Time to Time be made by the Commissioners of Her Majesty's Treasury, to make Loans under this Act for the following Purposes; (that is to say,) for the Drainage of any Lands by any such Means as the said Commissioners shall approve, for subsoiling, trenching, or otherwise

deepening and improving the Soil, for Irrigation or warping of Land, for embanking Lands from the Sea or Tidal Waters or Rivers, for enclosing or fencing any Land, or improving the Fences, Drains, Streams, or Watercourses of any Land, for the Reclamation of Waste or other Land, for making Farm Roads, or for clearing Lands of Rocks and Stones."

FINDINGS

The Tribunal will deal with the issues arising in this case in the order in which they have been presented by the appellants, firstly with the plea for exemption by virtue of S.14 Val (Ireland) Act 1852 and then with the argument for reduction in liability for rates by virtue of non-exclusivity of occupation of certain parts of the hereditaments.

Mr O'Caomh has contended that the provisions of S.14 relate only to agricultural developments. The Tribunal notes his submission that the term 'office building' referred to in the section, is used in the historical sense, meaning farm offices. Mr O'Donnell has submitted that the several phrases of the section should be read not conjunctively but disjunctively, and that the reference to the Landed Property (Ireland) Act 1847 does not limit the exemption to the type of land improvements specified therein. Section IV of the Landed Property (Ireland) Act 1847 sets out the purposes for which loans might be made by the Commissioners of Public Works in the following way:

"(that is to say,) for the Drainage of any lands by any such Means as the said Commissioners shall approve, for subsoiling, trenching or otherwise deepening and improving the Soil for Irrigation or warping of Land, for embanking Lands from the Sea or Tidal Waters or Rivers, for enclosing or fencing any Land, or improving the Fences, Drains, Streams, or Watercourses of any Land, for the Reclamation of Waste or other Land, for making Farm Roads, or for clearing Lands of Rocks and Stones". It seems to the Tribunal that the improvements specified in the 1847 Act are of an agricultural nature only, and that the provisions of S.14 of the Val (Irl) Act 1852 are governed by the words "any permanent

agricultural improvement as specified under the Provisions of an Act passed in the Session of Parliament held in the 10th & 11th year of the reign of her present Majesty, Chapter 32, S.4" The Tribunal is satisfied that the object of S.14 of the 1852 Act was to exempt permanent agricultural improvements including "inter alia" land drainage, reclamation and the erection of farm buildings.

The subject hereditament is clearly not an agricultural improvement and cannot therefore be judged exempt by virtue of S.14 of the Valuation (Ireland) Act 1852.

In light of the above, it is not necessary for the Tribunal to decide whether or not the exemption specified in S.14 of the 1852 Act relates to valuation or merely to payment of rates.

Mr O'Donnell has submitted that the appellants are not in exclusive occupation of certain areas of the hereditament, and therefore fail to meet one of the criteria of rateable occupation under Irish Law.

While the appellants are the owners of the ground floor concourse and the access ramps and escalators to the 1st floor, their use of these areas cannot and does not prevent any other person from using them in the same way. All the licensees together with all of the licensees' customers are entitled to use those areas. Mr O'Caomh has submitted that the only rights of the licensees and their customers are those of ingress and egress. It seems to the Tribunal, however, that these are the most important advantages of a central concourse and apply equally to the appellants and to the licensees and indeed on a 'de facto' basis to the members of the public.

The Tribunal accepts Mr Henry's point that although the licensees hold the units under licence agreements and not tenancies governed by landlord and Tenant Legislation,

nonetheless the relationship between the appellants and the licensees is very close to that between landlord and tenants. The degree of control reserved by the appellants over the common areas could not interfere with the licensees' use of them, viz: their rights of ingress and egress.

The Tribunal is of the opinion that the central areas of the subject hereditament are similar to the common areas of shopping centres. As in shopping centres where the central areas are not separately rated, so too in the instant case, the advantages and benefits of the common areas would have been taken into account when valuing each separate unit.

The Tribunal is satisfied that the concourse, ramps and escalators are facilities available to all those using the terminal building and should not have a separate valuation.

Accordingly, the Tribunal determines that the correct valuation of the subject hereditament is £286.00 buildings and £20.00 absolute, a total of £306.00