

Appeal No. VA91/2/059

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

Erin Executor & Trustee Co Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Car Park in Lot 106/117, Dun Laoghaire Shopping Centre, Georges Street Upper, Dun Laoghaire - East Central, Co. Dublin

B E F O R E

Paul Butler

S.C. (Acting Chairman)

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF SEPTEMBER, 1991

By notice of appeal dated the 24th day of July, 1991, the appellant appealed against the determination of the Commissioner of Valuation in fixing the rateable valuation of the above described hereditaments at £285.

The grounds of appeal as set out in the Notice of appeal submitted by Jones Lang Wootton as agents for Erin Executor & Trustee Company Limited are as follows;-

- (1) The Car park is provided for the convenience of the shopping centre as part of the facilities of the shopping centre, similar to toilets, protective canopies, malls etc.

Car parking facilities are an integral part of any shopping centre without which the shopping centre could not effectively operate.

The rental value of the individual units derives largely from the existence and availability of the car parking space and the Rateable Valuation attributed to the individual units reflects this. Accordingly any proposed rating of the car park would give rise to a double assessment.

While a nominal charge is levied for the use of the car park, for control purposes and to discourage long term parking, the car park is operated by the lessors at a loss and no net income or payment is received by them in respect thereof.

The car parks attached to various other shopping centres, eg. Navan, Dundrum, Stillorgan are de-rated and do not carry any separate rateably valuation assessments.

- (2) There is no exclusive occupation of the car park. Accordingly the car park does not comprise a rateable entity and should not therefore be valid.
- (3) The assessment is grossly excessive and inequitable relative to assessments on other commercial properties in the general Dun Laoghaire/South Dublin Area.
- (4) The said assessment is bad in law in that it does not comply with the provisions of Section 5 of the Valuation Act 1986.

The Property

The hereditament in question, which is situated in Dun Laoghaire Shopping Centre, is a purpose built multi-storey car park with parking in nine separate levels. There is entry to and exit from the car park via automatic ticket-controlled barriers. There are 400 car spaces in the building of which 73 are leased to Dun Laoghaire Corporation and Power Supermarket, the balance of 327 is available to the public. The leased spaces referred to above are separately valued and rated to the occupiers. The property adjoins Dun Laoghaire Shopping Centre and there are separate entry and exit lanes onto Marine Road. The property is held in "fee simple". There is pedestrian access to the car park from all levels of Dun Laoghaire Shopping Centre and parking is free for the first hour of occupation.

Valuation History

The valuation history of the premises is as follows:-

The car park was first valued on 1977 revision and the R.V. fixed at £350. This figure was reduced to £189 on first appeal. The car park had accommodation for 189 cars at this time. The valuation was increased to £400 on 1978 revision as the car park was then fully operational and could accommodate 400 cars. In 1990 the property was listed by the local authority to revise and up-date the valuation and the valuation was fixed at £720. The appellant was aggrieved at this valuation and appealed to the respondent who reduced the valuation to £285. It is against this determination that the appeal now lies with the Tribunal.

Written Submissions

The following written submissions were received by the Tribunal:-

1. A submission from Thomas A Cuddihy B.Agr.Sc., a District Valuer with 24 years experience in the Valuation Office, on behalf of the respondent dated the 20th August, 1991.
2. A submission from William A Tuite, Chartered Surveyor and a partner in the firm of Jones Lang Wootton dated the 26th August, 1991 on behalf of the appellant.
3. A submission from Pauline J Daly, Chartered Surveyor, associate partner in Jones Lang Wootton which was undated.
4. A submission by John Davey, a Chartered Accountant and Chairman of the Dun Laoghaire Centre Trader's Association Limited which was also undated.

Mr. Cuddihy in his written submission comments on appellants grounds of appeal.

Commenting on the first ground of appeal that "the car park is operated by the lessors at a loss and no net income or payment is received by them in respect thereof" Mr. Cuddihy referred the Tribunal to the following - Rosses Point Hotel Company Limited -V- Commissioner of Valuation I.R. 1987, "Rating and Valuation in Northern Ireland" by James Kay and A.L. Jacobson and "Law of Local Government" by Ronan Keane, Chapter 10 page 284. He also referred to the Valuation Tribunal Judgment in Appeal No.90/3/69 - Bord Telecom -V- Commissioner of Valuation where he said the right to install public telephones in the St. Stephen's Green Shopping Centre was deemed to be rateable, despite the submission by Bord Telecom that they are losing approximately £6m per annum on the provision of public payphones. He said that there is a clear distinction between Dun Laoghaire Shopping Centre Car park and that attached to Navan, Dundrum and Stillorgan Shopping Centres. He said that in the latter case there is no entry barrier and therefore no restrictions on entry to the car park, and consequently there is no income derived from these car parks. He said that in the case of Dun

Laoghaire Shopping Centre car park the Revising Valuer fixed a separate valuation on the car park, at the same time as he valued the individual units in the Shopping Centre and therefore, Mr. Cuddihy said, that it can be assumed that he did not include the rental value of the car park in the rental value of the individual units. He said that therefore the question of double assessment does not arise here.

Mr. Cuddihy then outlined the method by which he arrived at Rateable Valuation of £285.00 on the car park as follows:

327 Car Spaces @ £400 per space	=	£130,800
Allow for 65% usage in free period	say	<u>£ 85,000</u>
		£ 45,800
Est. N.A.V. = £45,800 x .63%	=	£288.54
		<u>Say £285.00 R.V.</u>

OR

Rental - £400 per space x 35%	=	£140 per space
£140 x .63%	=	£0.88 - Say 88p per space
327 spaces @ 88p	=	£287.76
		<u>Say £285.00 R.V.</u>

Mr. Cuddihy listed eight comparisons as follows:

- (1) Blackrock Shopping Centre Car Park - Superquinn Limited
- (2) Gresham House Dun Laoghaire Shopping Centre - Power Supermarket Limited
- (3) Gresham House Dun Laoghaire Shopping Centre - Dun Laoghaire Corporation

- (4) Oracle Europe Manufacturing Limited - Temple Road, Blackrock
- (5) St. Stephen's Green Shopping Centre Car Park
- (6) Ilac Shopping Centre Car Park
- (7) Irish Life Car Park - Middle Abbey Street
- (8) Setanta Buildings Car Park - Kildare Street

Details of the comparisons supplied by Mr. Cuddihy are attached as Appendix "A". In relation to these comparisons Mr. Cuddihy says that the information therein demonstrates that:-

- (1) Car spaces in the same car park, which are leased out to Power Supermarkets, and Dun Laoghaire Corporation, devalue @ £2.50 per space.
- (2) Car spaces in the nearby Blackrock Shopping Centre car park devalue @ £1.90 per space - this R.V. is presently under appeal.
- (3) The current rent for car spaces attached to office blocks in nearby Blackrock is £750 per space.
- (4) Comparisons No.5 to 8 indicate a level of £3 per space for City Centre car parks.
- (5) The comparative figure for Dun Laoghaire Shopping Centre car park is 88p per space.

Mr. William A. Tuite, in his written submission said that there are two main items at issue in the appeal as follows:-

- (1) The rateability or otherwise of the public car park spaces forming part of the Dun Laoghaire Shopping Centre.
- (2) The quantum of the Rateable Valuation if the hereditament is deemed to be separately rateable.

Mr. Tuite said that of the 400 spaces in the Shopping Centre car park there are 327 car park spaces available for public use. He said that the residue are lease held on licence and are separately rated. Mr. Tuite referred to a determination of the Tribunal in Appeal No.VA/89/131 - Navan Shopping Centre -V-Commissioner of Valuation and he said that the only areas of difference between that case and the subject are that Dun Laoghaire Shopping Centre car park is a multi-storey structure with the main area of parking being open at roof level and that in order to ensure that the car parking spaces are used by the people for whom it was intended, i.e. those shoppers using the Dun Laoghaire Shopping Centre, charges which are designed to discourage long term parking, are levied where usage of the car park is in excess of one hour. He said that while Erin Executor & Trustee Company Limited only assumed responsibility for the management of the car park in 1989 the car park has always been operated by the owners of the Centre. He said that it is operated on the same principles as apply in other suburban and regional Shopping Centres. He said that the car parking spaces are for the convenience and use of the patrons attending the Shopping Centre and are an integral part of that Shopping Centre by virtue of which the individual shop units therein substantially derive their rental value. Mr. Tuite said that the costs associated with running and managing the car park have always exceeded the revenue derived therefrom. He said that the deficit arising in each year is absorbed by Erin Executor & Trustee Company Limited and is not recovered through the service charge. He said that it was inappropriate for the Valuation Office to compare the car park with various car parks

in Dublin City Centre which are operated on a commercial basis with the level of entry charge being dictated by market forces. He said that a hypothetical tenant would not be prepared to pay any rent for the car park and would require a substantial subsidy to operate it. He said that the structured charge (as distinct from free uncontrolled parking) allows management to ensure that the car park is not used as free long term parking by non-shoppers. He said that the objective is to control the use of the car park for the benefit of the Centre and not to maximise the income from the car park which would be detrimental to the success of the Centre as a whole. Mr. Tuite concluded that no separate valuation should be made on the subject hereditament. He said that this has already been taken into account in fixing the valuation of the individual units in the Centre. He said that if the Tribunal determines that a separate valuation should be attached to the subject hereditament that this valuation should be nil.

Ms. Pauline J. Daly in her written submission said that the car park, which is physically linked at all levels with the shopping centre, was constructed in compliance with planning permission for the centre and planning regulations for the Dun Laoghaire area. She said that the standard lease for the shopping centre refers to the car park as a public area "for the common use and benefit of tenants of demised units there invitees and licensees within the centre and for persons using or visiting the centre". She said that Dun Laoghaire Shopping Centre carpark serves the same purpose as the surface carparks at e.g Stillorgan Shopping Centre, Navan Shopping Centre, etc. She said that it is purely to facilitate shoppers and while charges are levied the carpark does not and could not operate on a commercial basis. She said that Dun Laoghaire Shopping Centre carpark is operated on quite a different bases to commercial carparks in that it is operated directly by the Shopping Centre management and not separately operated by a commercial organisation by way of management agreement or lease. She said that the hours of opening of the carpark are related totally to the trading hours of the centre. She said that if the charges were increased there appears to be no doubt that the occupancy levels of the carpark would drop resulting in the trading level of the centre suffering which would translate into lower rent being

achieved at new lettings or reviews. She said that a new tenant leasing a unit or an existing tenant at rent review takes into account the availability of carparking and that rental agreed reflects the integral part which the availability of the carpark plays in the overall success of the centre.

Mr. John Davey in his written submission said that over the years the tenants have constantly voiced the opinion that the carpark is a vital element in the successful trading of the shopping centre. He said that while the charges are considerably lower than commercially operated schemes they could in the view of his Association be even lower. He said that, if there was any attempt to increase the charges, tenants would object strongly to the landlord. He said that the carpark is not and was never intended to be profit making - it is part of the common area of the centre designed to be part of and for the benefit of the centre. He said that the traders association is definite in its view that the trading success of the centre depends largely on the operation of the carpark and the charges levied therein.

Oral Hearing

The oral hearing took place on the 2nd September, 1991 and was resumed and concluded on the 9th September, 1991. Mr Donal O'Donnell, Barrister-at-Law, instructed by Ms Alison Farrell, Solicitor, A & L Goodbody, appeared on behalf of the appellant and Mr Aindrias O'Caoimh, Barrister-at-Law, instructed by the Chief State Solicitor appeared on behalf of the respondent. Each of the persons who made the foregoing submissions also gave evidence.

Mr. Tuite's evidence was broadly in line with his written submission. He produced a copy of the planning permission in respect of the hereditaments and explained that the object of car park was to encourage usage thereof by shoppers. For this reason long term usage thereof was discouraged by allowing the first hour's usage free and thereafter charging at a rapidly increasing

scale referred to at Appendix "C" of Mr Tuite's submission. He said that historically the car park was never valued with the units.

Ms. Daly above referred to said in evidence, inter alia, that the trading success of this centre is dependent on the successful running of the car park. She said that rents would go down without the car park.

It emerged from the evidence adduced on behalf of the appellants that the car park was a loss making activity and that the shops in the centre would not survive without it. Five broad submissions were made on behalf of the appellant, that is to say:-

1. The evidence was that the car park was not capable of independent commercial life.
2. Mr Cuddihy had not discounted the valuation because of the car park.
3. The decision of the Tribunal in the Navan Shopping Centre Appeal (Appeal VA89/131) was strongly relied upon.
4. The car park is taken into account in the rental value of the units.
5. It seems impossible to justify the valuation on the basis that Mr Cuddihy has done it.

Mr. Cuddihy, in evidence, referred in detail to his written submission and said that the car park was valued at the same time as the shopping units. He laid emphasis on the fact that his valuation worked out at 88p per space whereas valuations in Georges Street and the Ilac Centre in Dublin worked out at £3 per space. He said that the service charge was not taken into account in valuing the units.

Mr. Cuddihy further pointed out that he did not take the car park into consideration in valuing the units and he said that shops across the road from the car park which were without parking had a higher valuation.

In submissions both parties referred to the judgment of the Tribunal above mentioned and Mr O'Caomh, on behalf of the respondent, referred to the case of Ravenseft Properties Ltd v. Strathclyde Region Assessor.

Determination

The Tribunal has come to the conclusion on the basis of the evidence that the car park was not taken into consideration in valuing the individual units and that, therefore, the problem of "double taxation" does not arise in this case.

The Tribunal, therefore, determines that the premises are rateable.

The Tribunal is further satisfied with the basic method adopted by Mr Cuddihy in assessing the rateable valuation. Mr Cuddihy made an allowance of 65% for usage in the free period. In the course of the evidence it emerged that 73% of the usage was in that period and a further 21% of the usage was within the second hour where the charge was very low indeed (20p per hour). There was also evidence that the usage of the car park was only of the order of some 56%.

Taking all of the foregoing factors into consideration the Tribunal is satisfied that the rateable valuation should be fixed at £200 and so determines.

