

Appeal No. VA91/2/062

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

S. Whelan & Associates

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Right to car parking at Lot No. 38.42,44.44C/2 at Clanwilliam Square, Lower Grand Canal Street, South Dock A, County Borough of Dublin
Beneficial Occupation

B E F O R E

Henry Abbott

Barrister Chairman

Mary Devins

Solicitor

Padraig Connellan

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF MARCH, 1992

By notice of appeal dated 24th day of July, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £12 on the above described hereditament.

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

- 1) The R.V. £12 is invalid in that:-
 - a) the car spaces are valued on the incorrect lot.
 - b) there was no sole beneficial occupation of the relevant car spaces on the valuation date.
- 2) The R.V. £12 is excessive given the initial capital prices paid for these spaces.

The Property

The property comprises two tarmacadam car spaces within the part open, part covered carpark located to the rear of the Clanwilliam Development. There are approximately 136 car spaces within the carpark of which 106 are attached to the Clanwilliam Development. The car spaces are held by way of an easement under the Fee Farm Grant in 1988.

Written Submissions

A written submission was received on the 5th November, 1991 from Mr. Joe Bardon A.R.I.C.S. of Spain Courtney Doyle, Valuation Commercial Property Consultants and Building Surveyors on behalf of the Appellants. With regard to the grounds of appeal Mr. Bardon said that at first appeal stage the Commissioner changed the description "Carpark (part of)" to "Right of Carparking". Mr. Bardon argued that the Commissioner erred by amending the description rather than by striking out the valuation as requested. With regard to the second point of the grounds of appeal that there was no sole beneficial occupation of the car spaces on the valuation date, Mr. Bardon said that although portions of the carpark had been in operation for a couple of years, it was not surfaced and the individual car spaces were not allocated until March 1991. He said that up to that time there was no particular car spaces allocated to any of the individual occupiers in the Clanwilliam Development due to the situation regarding the ongoing construction of the Bolands Building fronting Grand Canal Street. With regard to the quantum amount of the Rateable Valuation Mr. Bardon said that the Rateable Valuation of £4 per space equates with a rental value of approximately £600 per annum together with a capital value of £7,000 on the basis of an 8% return. He said that the car spaces were purchased at £2,000 in early 1991 and that it was his contention that the true rental value at an 8% return was approximately £160 per annum which equates to a Rateable Valuation of £1 per space.

A written precis was received from Mr. Terence Dineen, B.Agr.Sc., a District Valuer with 17 years experience in the Valuation Office on behalf of the Respondent. In his precis Mr. Dineen

commented on the grounds of appeal, on the description and location of the carparks, on the tenure and on the valuation history of the properties. With regard to the incorrect listing Mr. Dineen said that as long as the correct lot reference number was listed for revision the referencing of the new lot is a matter for the discretion of the valuer. He said that the obvious intention of the revising valuer was to clarify for both the rate payer and the local authority the hereditament being valued. With regard to the second ground of appeal that there was no sole beneficial occupation of the relevant car spaces on the valuation date Mr. Dineen said that the right of car parking was purchased at a price per space and that the prices varied and increased over time. He said that some spaces have been resold and spaces have been leased and that service charges are paid for the maintenance of the carpark. He said that the allocation of marked spaces was awaiting the completion of the development. With regard to the amount of Rateable Valuation placed on the spaces Mr. Dineen said that the valuers task is to do a 1990 valuation as at the November 1988 base. He said that the key problem is what proportionate relationship do the car spaces rentals in the development have to the overall prime car space rentals. He said that the current relationship of the hereditaments Net Annual Value to that of the Net Annual Value of the average comparable properties is the determinant - rather than a historical investigation and application of the specific rental levels in operation in 1988.

Oral Hearing

The oral hearing took place on the 22nd November, 1991. Mr. Robert Haughton, Barrister, instructed by Ms. Jane Fitzgerald, Solicitor of Beauchamps Solicitors appeared for the Appellant and Mr. Aindrias O'Caomh, Barrister, instructed by the Chief State Solicitor appeared for the Respondent. Mr. Joseph Bardon A.R.I.C.S., of the Valuation Department of Spain Courtney Doyle who has a diploma in Environmental Economics gave evidence on behalf of the Appellant. He outlined his technical objections to the course taken by the Commissioner in valuing the carpark. The Tribunal is satisfied that if amendments were necessary that it could in its judgment amend the list so as to record the proper valuation of the car parks in this instance.

The question of beneficial occupation is dealt with in Harper Stores Ltd. - V - The Commissioner of Valuation [1968 I.R.] P. 166. In this Henchy J. at P. 172 says that

"While the valuation is made on the particular premises, it is made for the purpose of affecting the occupier who will pay the rate, and occupier is defined in s. 124 of the Poor Relief (Ireland) Act, 1838, as including every person in the "immediate use or enjoyment" of the premises. Since the "actual state" of the premises cannot be determined unless someone is in its "immediate use or enjoyment," I accept that the valuation made in the present case cannot stand against the appellants unless they were in "immediate use or enjoyment" at the time it was made. It was held in the House of Lords in Byrne V City of Dublin Steam Packet Co. that the "immediate use or enjoyment which is rateable in Ireland" is similar, at least as far as its legal character is concerned, to the "occupation" which would be rateable in England. While the variety of circumstances prevents there being any universally accepted test of rateable occupation, both Wright, J., in London County Council V Hackney Borough Council and Lord Radcliffe in Arbuckle Smith & Co. Ltd. V Greenock Corporation approved of the following approach by Farwell, L.J. in Rex V Melladew:- "The test, in a case like the present, of business premises, appears to me to be: Has the person to be rated such use of the tenement as the nature of the tenement and of the business connected with it renders it reasonable to infer was fairly within his contemplation in taking or retaining it?"

The Tribunal finds that there was uncontradicted evidence of the fact that the area of the carpark was not surfaced and individual car spaces were not allocated until March 1991 and that the site of the carpark was considerably disorganised by ongoing construction of Bolands Building in fronting Grand Canal Street.

Clearly in this case it would not be reasonable to infer, given the conditions pertaining at the appropriate date that the "right of car parking" was what the appellant had fairly contemplated when purchasing it. Indeed this case is very akin the "new house" analogy referred to by Henchy J. in the above judgment.

In these circumstances, the Tribunal finds that the subject premises ought to be exempt from rates at the relevant date. The description of the subject premises may be amended when the subject is next listed for valuation.