

Appeal No. VA91/4/004

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

Holland Developments Limited

and

APPELLANT

Commissioner of Valuation

RESPONDENT

RE: Car park at Lot No. pt 87 to 101 Merrion Road, Merrion Centre, County Borough of Dublin

Quantum - Carpark, no charge levied

B E F O R E

Henry Abbott - S.C.

Chairman

Paul Butler - S.C.

Deputy Chairman

Veronica Gates - Barrister

Deputy Chairman

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF APRIL, 1992

By Notice of Appeal dated 26th day of November, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £120 on the above described hereditament.

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

- "(1) the availability of parking spaces was taken into account in assessing the R.V.'s of the individual units in the Centre.
- (2) the car park is solely a facility which is available to customers at the Centre.
- (3) there is de facto unrestricted public access to the car park, free of charge. No parking fee has ever been collected although there is nominal provision for the collection of a fee for parking in excess of five hours. The intention behind this provision is to discourage over night or long term parking."

DESCRIPTION

The appeal concerns a portion of the basement car park under the Merrion Shopping Centre. The car park is purpose built at basement level. There are a total of 269 car spaces in the basement; 92 of these are allocated to the overhead offices in Aylesbury Hall and Nutley Hall. The remaining 177 spaces are rated to Merrion Shopping Centre Limited.

VALUATION HISTORY

In 1987 when the Centre opened a valuation of £125 was assessed on the property for 174 spaces. This was reduced to £120 on appeal. In 1990 the property was listed to "value enlargement of car park". The enlargement referred to was related to car parking spaces under the office blocks and no change was made to the £120 rateable valuation on the Shopping Centre car park.

WRITTEN SUBMISSIONS

A written submission was received on the 14th February, 1992 from Mr. Patrick Gannon, Valuer of Mason Owen & Lyons, Property Consultants on behalf of the appellant. In this Mr. Gannon outlined the description of the property and its valuation history and he said that the Shopping Centre was built by Holland Developments Limited in 1985/86 and that they were the owners when the car park was first valued in 1987. He said that Holland Developments Limited subsequently sold their interest in the Centre and the new owners formed a Management Company to provide and maintain the necessary services at the Centre. He said that the public areas in the Centre including the car park were vested in the Management Company and that they were now the "de facto" proprietors of all the public areas in the Centre including the car park. Mr. Gannon said that the public at large have unrestricted access to the 177 parking spaces which are allocated to the Shopping Centre, during opening hours. He said that the R.V. of £120 which is the subject of this appeal refers only to these 177 spaces. Mr. Gannon said that access to the car park is by way of a ramp leading down from street level at Nutley Lane and that this ramp also provides the exit. He said that it leads directly into the car park and there are no barriers or check-points. He said that users drive in directly and park their cars on whatever vacant spaces are available. Mr. Gannon said that a notice at the entrance advertises free parking for up to three hours but that there is no provision for monitoring the length of stay and no parking fee has ever been collected although the car park has now been in use for about five years.

Mr. Gannon made the following general points:-

- (1) The rateable valuations on the various standard units at the Merrion Centre are based on estimates of Net Annual Value which are high, partly because account was taken of the provision of free car parking.
- (2) The Management Company are required by the conditions attaching to the Planning Permission to provide on-site parking for customers to the Centre. He said that this condition precludes the Company from closing off the car park and from leasing the spaces privately. He said that the "de facto" situation since the Centre opened is that there is free and unrestricted access and that it is not proposed to change this.
- (3) The car park at the Merrion Centre is specifically included as part of the "public areas", defined in the standard lease. The cost of maintaining the public areas including the car park is recovered exclusively through the service charge paid by the occupiers of the various units. He said that the hours of opening at the car park are related to the trading hours at the Centre.
- (4) The use of the car park is a facility which is available solely to customers or visitors to the Centre. Appellants do not enjoy beneficial occupation of the car park and they have no exclusive rights of occupancy.

Mr. Gannon referred to a determination of the Tribunal in the Navan Shopping Centre Limited -V- Commissioner of Valuation (VA/89/131). He said that there was an analogous situation pertaining in the subject as:-

- (a) the availability of the car parking spaces was taken into account when assessing the R.V.'s of the individual units.
- (b) that the "de facto" situation is that there is unrestricted access and free uncontrolled parking,
- (c) that overnight parking or parking for an unduly long period would not be desirable and the Management Company cannot be faulted in trying to prevent it.

He distinguished the subject from the Dun Laoghaire Shopping Centre car park where the Tribunal held that the car park was rateable (VA/91/2/59). He said that in Dun Laoghaire there are automatic ticket controlled barriers and access is not unrestricted. He said that in Dun Laoghaire the costs of operating and maintaining the car park are met by the Company which operates the car park and not out of the service charge. He said that that company derives an income from the car park by way of a parking charge for periods in excess of one hour.

Mr. Gannon said that if the Tribunal holds that the entry in the valuation list should not be deleted then it was his submission that the rateable valuation should be nil.

A written submission dated the 11th February, 1992 was received from Mr. Terence Dineen, District Valuer in Valuation Office on behalf of the respondent. In this precis Mr. Dineen described the property and outlined the valuation history. Mr. Dineen said that the Commissioner maintains the rateable valuation should be £120 based on comparisons with:-

Dun Laoghaire	61p/spaces	R.V.	£200
Blackrock	56p/spaces	R.V.	£220
Merrion	47.7p/spaces	R.V.	£120

Mr. Dineen said that at the access point to the car park a notice reads:-

Up to	3 hours	Free
More than	3 hours	50p
More than	4 hours	£2.00
More than	5 hours	£4.00

He said that the charges are clearly structured to discourage all day parking by outsiders and that they have never been implemented. Mr. Dineen referred to the following Tribunal determinations:-

- (1) Navan Shopping Centre -V- Commissioner of Valuation (VA/89/131)
- (2) Dun Laoghaire Shopping Centre -V- Commissioner of Valuation (VA/91/2/59),
- (3) Blackrock Shopping Centre -V- Commissioner of Valuation (VA/91/3/3 - Settled before hearing in November, 1991)

He referred the Tribunal also to the Frascati Shopping Centre where he said the car park has free public access and a nil valuation. Mr. Dineen said that the Commissioner considers that the subject car park has the following parallels with Dun Laoghaire Shopping Centre car park;-

- (1) There is clear evidence of value from comparisons with adjoining spaces let to office occupants. Mr. Dineen said that there are 92 car spaces available to rent with the offices spaces in the two blocks. He said that Lisneys are at present quoting £600 per space for the Nutley Hall car spaces.
- (2) There is clear evidence of beneficial occupation in the right to restrict entry and make charges irrespective of whether such charges are made.

ORAL HEARING

The oral hearing took place on the 21st February, 1992 at which Mr. Richard Cooke, S.C. instructed by Noel Smith and Partners, Solicitors represented the appellants and Mr. Robert Haughton, Barrister, instructed by the Chief State Solicitor represented the respondent. Also present were Mr. Patrick Gannon (Valuer, Mason Owen & Lyons Company) on behalf of the appellant and Mr. Terence Dineen, Valuer, on behalf of the respondent. Evidence was given both by Mr. Gannon and by Mr. Dineen as set out in their written submissions which are summarised above. Mr. Gannon under examination said that if the free parking facility was not available most of the shopping units would be unlettable and the Commissioners estimate of Net Annual Value would be much lower. He again distinguished the subject from the Dun Laoghaire Shopping Centre where he said access is not unrestricted and the cost of operating it is not met out of the service charge but by the Company that operates it, an income he said is made by way of parking charges and there are automatic ticket controlled barriers. He also referred to the Blackrock Shopping Centre where the rateable valuation on the car park was settled by agreement with the Commissioner but he said the question of rateability was not argued before the Tribunal. Mr. Gannon said that Mason Owen & Lyons managed the car parks at Donaghmede and Firhouse Shopping Centres and that these are analogous to the subject and that the Commissioner had struck out both of these valuations. Mr. Dineen gave evidence that the car park was valued when the initial seven units in the Shopping Centre were valued.

Mr. Cooke argued that the car park should be treated in the same manner as the common pedestrian areas in the Shopping Centre and said that there was no occupier of the car park.

Mr. Haughton said that the subject case differs from the Navan case in that the Management Company keeps control of the car park and in that they have notices of charges which they don't enforce but which they could if they so wished.

FINDINGS

The Tribunal finds that;-

- (1) There is a notice at the entry to the car park indicating that there is free parking for a period time after which certain charges will be levied.
- (2) That these charges have never in fact been collected and that there is agreement between both sides that customers can park there freely.
- (3) That the car parking is restricted to the hours of business of the Shopping Centre.
- (4) That the rateable valuation of the car park was not taken into account when fixing a rateable valuation on the units in the Shopping Centre.

The Tribunal finds that this case differs from that in the Dun Laoghaire Shopping Centre where there was clear evidence of a profit being made from the car parking, and clear evidence relating to restriction on entry and exit. It also finds that this case differs somewhat from that of the Navan Shopping Centre case in which there was no indication that a price might be charged on any of the cars parked and where there was no restriction on parking after the business hours of the Shopping Centre. There is also a greater element of control by the management in the subject car park and indeed the notice relating to charges could also be seen as a form of restriction in itself although no action is taken on foot of it.

The Tribunal therefore, feels that the entry in the valuation list of the car park should not be struck out, nor, indeed should the rateable valuation be reduced to nil. It does not agree that the car park should be treated in a similar fashion to the common pedestrian areas in the Shopping Centre. The car park has a separate identifiable use. However, it is conscious that there is an element of a service to the public being provided by this car park and that no

charges are collected and consequently no profits are being made thereon. It therefore determines that a rateable valuation of £15 should apply to the car park.