

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

**Aer Lingus**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Cargo Terminal No. 1 (Part of) at Lot No. 5A/1 Townland of Corballis (Dublin Airport),  
E.D. Airport, District of Dublin, Co. Dublin  
Quantum - Passing rent

**B E F O R E**

**Henry Abbott**

**S.C. Chairman**

**Mary Devins**

**Solicitor**

**Brian O'Farrell**

**Valuer**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 24TH DAY OF MAY, 1993**

By Notice of Appeal dated the 30th October, 1992, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,560 on the above described hereditament.

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

"the rateable valuation is excessive, inequitable and bad in law".

### **The Property**

The property is the main cargo terminal in Dublin Airport. It consists of a large warehouse and ancillary offices, together with a large concrete cargo apron. It was built in the late 1960's. The warehouse is constructed of concrete block and steel deck walls with steel deck roofing and has an eaves height of 15 ft to 40 ft. The three storey offices to the front are constructed of concrete block walls with flat asphalt roof. There is a large canopy leading onto the concrete apron. The majority of the building is used exclusively by Aer Lingus for warehousing and as a maintenance workshop incorporating canteen, locker rooms, toilet, etc. The office accommodation is shared with other users such as Customs and Excise Officers. The square footage of the accommodation was not agreed.

### **Valuation History**

Prior to 1990 Revision the R.V. was £1,400. The R.V. was increased to £2,200 on 1990 Revision and reduced to £1,560 on 1990 First Appeal.

### **Written Submissions**

A written submission was received on the 30th April, 1993 from Mr. Frank O'Donnell of Frank O'Donnell & Company, Valuation, Rating & Property Consultants on behalf of the Appellants. In the written submission Mr. O'Donnell set out the background to the appeal, described the premises as set out above and the accommodation which is in dispute. Mr. O'Donnell set out the areas of the subject premises as follows:-

<b><u>Description</u></b>	<b><u>Area (Sq. ft.)</u></b>
Cargo Warehouse	58,500
Cargo Workshop	1,100
Cargo Canopy	21,500
Cargo Apron	62,000
Offices	7,826

Mr. O'Donnell gave details of the letting agreement between Aer Lingus and Aer Rianta. He said that prior to 1986 there was no formal agreement, but in 1986 Aer Rianta appointed Lisney & Company and Aer Lingus appointed Jones Lang Wootton to negotiate and agree commercial rents for the various properties. The schedule of agreed rents, while fixed in 1986, applied retrospectively to 1984 with five-yearly rent reviews incorporated into the agreement. A copy of the Memorandum of Understanding was attached to the written submission. The memorandum provided for rent reviews on the multi-user accommodation at rents based on the average increase of the Consumer Price Index and Building and Construction Wholesale Price Index. It

also provided that the agreed quantum allowance of 20% should apply to rent reviews on multi-user accommodation. Rent for the Cargo Terminal, he said, was agreed on the basis of 100% of the full open market rental value of the exclusively occupied areas and 80% of the full open market rental value of the shared multi-user areas. This 20% allowance, in respect of the multi-user areas was to take account of quantum and shared usage. Mr. O'Donnell said that the rent on Cargo Terminal No. 1 was reviewed in 1989 at £224,296 per annum effective from 1st April, 1989. He said, that this figure had been agreed between Lisney & Company and Jones Lang Wootton and was calculated as follows:-

	<b><u>Rent @ 01/04/89</u></b>
Cargo Warehouse	£119,557.00 (100%)
Cargo Workshop	£ 5,756.00 (100%)
Cargo Canopy	£ 14,686.00 (100%)
Cargo Apron	£ 29,473.00 (100%)
Offices	<u>£ 54,824.35</u> (80%)
	£224,296.35
	<u>+£ 1,416.43</u> Site Rent
	£225,712.78

Mr. O'Donnell submitted to the Tribunal that the review provisions of the Memorandum of Understanding had the practical effect of fixing the reviewed rent at the level of open market rent for the review date. Rental levels as at the valuation date of November, 1988 were lower than in 1989 and Mr. O'Donnell submitted that the deduction of 7.5% had been agreed with the Commissioner of Valuation to take account of this. In his opinion, he said, the Net Annual Value as at November, 1988 was therefore £238,000. He set out his calculation of the £238,000 in the written submission as follows:-

Agreed Rent @ 1989	£224,296.35
Allow 7.5% to revert to Nov'88	<u>£ 16,822.25</u>
	£207,474.10
	<u>£ 1,416.43</u> Site Rent
	£208,890.43
N.A.V. @ November 1988 - Say	£208,000
R.V. @ .63%	£1,316.00

**Say £1,300.00**

A written submission was received on the 29th April, 1993 from Mr. Frank O'Connor, a Valuer with 13 years experience in the Valuation Office on behalf of the Respondent. In the written submission, Mr. O'Connor set out details of the property and the valuation history as set out

above. In relation to the accommodation, Mr. O'Connor gave details of his calculation of the accommodation of the subject premises as follows:-

Offices:	(3 Storey)	14775ft <sup>2</sup> ]	
Warehouse:	15' High	- 15130ft <sup>2</sup> ]	
	40' High	- 39827ft <sup>2</sup> ]	72942ft Total enclosed area
Basement:		- 2113ft <sup>2</sup> ]	
Workshop		- 1097ft <sup>2</sup> ]	
Canopy		- 21528ft <sup>2</sup> ]	
Concrete Apron/ Storage Yard		- 61625ft <sup>2</sup> ]	

Mr. O'Connor commenting on the grounds of appeal, stated, that the R.V. here was in line with other recently revised R.V's in County Dublin and had been assessed at .63% on the estimated N.A.V. as of November, 1988. Mr. O'Connor set out his calculation of the Rateable Valuation on the property as follows:-

**"Valuation:** Rent payable at 1/4/89 was £225,712

A.	Rent on Cargo Warehouse	£119,557 P.A.
B.	Rent on Cargo Workshop	5,756
C.	Rent on Canopy	14,686
D.	Rent on Apron	29,473
E - G	Rent on Cargo Offices	
		£224,296

£224,296 is the "agreed rent" after a 20% reduction has been granted by Aer Rianta as a quantum allowance, on account of the large amount of space which Aer Lingus rents in Dublin Airport.

Therefore, the rent to any other tenant would be:-

$$\frac{\pounds 224,296 \times 100}{80} = \pounds 280,370$$

To this has to be added the site rents of £1,416.

Aer Lingus is actually paying as of 1/4/89:

Rent after 20% quantum allowance	£224,296
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Site Rent	<u>1,416</u>
	£225,712

Any other tenant would pay as of 1/4/89

Rent before 20% quantum allowance	£280,370
Site Rent	<u>1,416</u>
	£281,786

For Valuation purposes £281,786 was deemed a fair rent at 1/4/89 and also at November, 1988.

A quantum allowance of circa 12% was granted, reducing the rent at 1/4/89 from £281,786 to an N.A.V. of £248,000 at November, 1988."

### **Oral Hearing**

The oral hearing took place in the Tribunal Office, Ormond House, Ormond Quay Upper, Dublin 7 on Wednesday 12th May, 1993. Mr. Liam McKechnie S.C. instructed by Ms. Sheila Geaney, Solicitor appeared for the Appellant and Mr. Aindrias O'Caoimh B.L. instructed by the Chief State Solicitor appeared for the Respondent.

At the outset, the Tribunal dealt with the issue as to whether the letter from Frank O'Donnell and Company, Valuer for the appellants constituted evidence of a concluded written agreement between the parties in relation to the valuation of £1,560 in respect of the subject property. The Tribunal was referred to the letter of the 17th September, 1992 from Frank O'Donnell and Company to the Commissioner of Valuation which set out that the agreement was made in respect of this valuation and the several other valuations set out in the letter of the 15th September, 1992 on the basis that if the Commissioner of Valuation in his decision, on First Appeal, differed on any individual case, the right to re-open and pursue further or other cases should be available to the Appellants. Mr. O'Donnell indicated that the incentive to the appellant to enter into this type of arrangement was to ensure that certain cash flow advantages would be available at an early date to the appellant. The agreement envisaged that the Commissioner of Valuation would continue adjudication in relation to appealed cases.

Mr. Mc Kechnie, also indicated that the parties were not *ad idem* in relation to the basis of the valuation and in particular the appellants proceeded on the basis of an understanding that the

rents in respect of the subject apart from the office building were reduced by 20% in respect of a quantum factor and that they could be increased validly up to 100%. Mr. Frank O'Connor, Valuer for the Respondent indicated that a certain number of the valuations referred to in the letter of the 15th September, 1992 were agreed by him only subject to the approval of the Commissioner of Valuation. The Tribunal by the agreement of the parties adjourned to consider the matter as a preliminary issue and decided that the correspondence did not show a concluded agreement. While, the arrangement proposed might have had much to recommend it to the parties, the Tribunal is of the view that an arrangement of such complexity and of such a flexible nature should be set out in more detailed terms if it is to be held to be a binding agreement by the Tribunal. The Tribunal, has in many instances, held that agreements between valuers in such instances are binding where the expressed or ostensible authority of the valuers is to effect such settlement.

The hearing proceeded on the basis of the resolution of three issues which were set out by the Tribunal without protest from the parties as follows:-

- 1) Whether the rent passing ought to be adjusted by 7.5% from April, 1989 back to November, 1988.
- 2) Whether the passing rent for the office building which was described as a multi-use building ought to be increased to 100% having been pitched at 80% by agreement between Aer Lingus and Aer Rianta.
- 3) Whether the appellants ought to be bound by the position which they took up initially by accepting that even the premises with exclusive use had been discounted by 20% down to 80% and whether additional rent ought to be added to establish N.A.V. in respect thereof.

In relation to the first issue, Mr. Frank O'Donnell, Valuer for the Appellant opined that, rents had improved between 1988 and 1989, and that by April, 1989 they had improved on average by 7.5% from November, 1988. He added, very fairly, that indicating such increases was not an accurate science. He was cross examined vigorously by Mr. O'Caoimh in relation to this proposition who offered the Jones Lang Wootton index increase of 1% over the same period as being the more objective criterion. The Tribunal is prepared to accept that perhaps the real increase might well have been somewhere between the two figures.

The Appellant applied to have the calculations of N.A.V. amended by the addition of £1,416 site value, and this has been taken into account by the Tribunal in its determination.

In relation to the second issue of the quantum allowance of 20% for the offices, Mr. Frank O'Connor, Valuer giving evidence on behalf of the Respondent suggested that 20% was altogether too excessive in respect of a quantum allowance and suggested that experience in Manchester and Belfast Airports indicated that a 5% allowance was more appropriate. He was challenged on his own use of a quantum allowance of 12% in his precis of evidence. There followed a similar debate in relation to the third issue arising from the apparent mistake of the parties in treating the quantum allowance as being applicable to the exclusive use properties. The Tribunal concludes that the Memorandum of Understanding setting out the rents of the property is a document which fairly assesses market rents and while there was some difficulty in assessing the square footage of the premises involved, on any interpretation the rents per square foot were in the commercial area.

The Tribunal therefore decides having regard to the foregoing considerations and all the evidence offered that the rateable valuation of the subject premises ought to be established at the rounded up figure of £1,350.

The parties had agreed that the Tribunal would take the arguments advanced in the case **VA/92/4/29 Rainbow Bookshops -V- Commissioner of Valuation** as having been advanced by both sides in relation to the rateability issue arising from the description of the premises at Revision Stage as being in Dublin Airport and the Tribunal accepts these arguments as having been raised and responded to and finds for the Respondent in relation to same in the same manner as was decided by the Tribunal in the Rainbow Bookshops case.