

Appeal No. VA92/6/063

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

**Aer Lingus**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Offices & Catering Terminal at Lot No. 6A, 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 of October, 1992, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,800 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 consists of offices and a catering terminal situated in the Airport complex. The main office section is constructed of pre-cast concrete panels supported on concrete pillars with a flat concrete roof. It was built between 1968 to 1970 and consists of three storeys with a passenger lift to all floors. There is an adjoining office area of fabricast construction to the side of the main building and a pre-fab office to the rear. The catering terminal is a two storey building of pre-cast concrete panels on concrete supports with a flat roof built between 1968 and 1970. The ground floor contains the storage and freezer areas and the first floor contains the kitchens and food preparation areas. There is air conditioning and central heating through out the catering terminal and two lifts are provided. There is a dispatch area to the rear of the catering terminal from which the precooked food is taken to the awaiting planes. A first floor bridge joins the main office section and the catering terminal. There is a car park of 230 car spaces to the front of the office section.

### **Tenure**

The property is held on a 35 year lease with 5 year rent reviews from the 1/4/84 on an F.R.I. basis.

### **Valuation History**

Prior to the 1990 revision the R.V. on this complex was £1,500 and £105, total £1,605. The £1,500 R.V. referred to the main complex of offices and a catering terminal, the £105 referred to the fabricast building mentioned in the description and situated to the left and adjoining the main office section. On 1990 revision both hereditaments were amalgamated and the R.V. assessed at £2,750. On 1990 First Appeal the R.V. was reduced to £1,800.

### **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 described the property and said that it was a three storey office block in an old building which was now obsolescent. He said that the construction was of mass concrete with a flat roof and low ceiling heights incapable of accommodating modern office technology. He said that the windows were glazed and ventilation, insulation and sound proofing were all inadequate. He said that the adjoining pre-fabricated offices were even less suitable with most having no water or sewage laid on. He said that the catering building at the rear was in better condition. In the written submission Mr. O'Donnell set out a schedule of agreed areas as follows:-

<u>Description</u>	<u>Area (Sq.Ft.)</u>
Administrative Building	
Ground Floor	5,430
First Floor	5,871
Second Floor	5,618
Prefabricated Offices	5,978
Catering Building	
Ground Floor	23,348
First Floor	23,513
230 Car Spaces	

Mr. O'Donnell said that there was no formal letting agreements between Aer Lingus and Aer Rianta prior to 1986. However, in 1986, Aer Rianta appointed Lisney & Company and Aer Lingus appointed Jones Lang Wootton to negotiate and agree commercial rents for the various properties. This agreement was documented in a Memorandum of Understanding which he attached to his written submission. He said that the schedule of agreed rents fixed in 1986 applied retrospectively to 1984 with 5-yearly rent reviews. He said that the Memorandum of Understanding provided for rent reviews on multi-user accommodation at rents based on the average increase of the Consumer Price Index and the Building and Construction Wholesale Price Index. He said it provided, also, that the agreed quantum allowance of 20% should continue to apply to review rents on multi-user accommodation. He said that both the personnel offices and the catering building were exclusively occupied by Aer Lingus and the rent was agreed on the basis of 100% of the full open market rental value. The rent on the office and catering terminal was reviewed in 1989 at £257,871 effective from the 1st April, 1989. This figure was agreed between Lisney & Company and Jones Lang Wootton and was compiled as follows:-

	<u>Rent @ 01/04/89</u>
Personnel & Catering Building	£209,789.00 (100%)
Extension to Catering Building	£ 38,500.00 (100%)
P.C.B. Car Park	<u>£ 9,582.00</u> (100%)
	£257,871.00

Mr. O'Donnell submitted to the Tribunal that the review provision 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. He set out his calculation of the N.A.V. based on the rent adjusted to November, 1988 as follows:-

**Agreed Rent:**

Personnel & Catering Building (including extension)	£248,289.00
Car Park	<u>£ 9,582.00</u>
	£257,871.00

Add for Temporary Prefabricated Block owned and occupied by Aer Lingus 5,978 sq. ft. @ £2.00/sq.ft.	<u>£ 11,956.00</u>
	£269,827.00
Allow 7.5% to revert to Nov. '88	<u>£ 20,237.03</u>
	£249,589.97

Rateable Valuation @ 0.63%	£1,572.42
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**Say £1,570.00**

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 described the property and the valuation history as set out above. Commenting on the grounds of appeal, Mr. O'Connor stated, that the R.V. here was in line with other recently revised R.V.'s in County Dublin and that it had been assessed at .63% of the estimated N.A.V. as of November, 1988. Mr. O'Connor stated that the property was held on a 35 year lease with 5-year rent reviews as from the 1/4/84. He said that the rent payable as at 1/4/89 was £267,522 comprised as follows:-

A. Rent for Personnel and Catering Building	£209,789 p.a.
B. Rent for extension to catering building	38,500
C. Rent for car park	<u>9,582</u>
	£257,871

Mr. O'Connor stated that this figure was the agreed rent after a 20% reduction had been granted by Aer Rianta as a quantum allowance on account of the large amount of space which Aer Lingus rented in Dublin Airport. Therefore, the rent to any other tenant would be:-

$$\text{" } \frac{\pounds 257,871 \times 100}{80} = \pounds 322,339$$

To this has to be added the site rents of £ 651]  
 £9000]      £9651

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

Rent after 20% quantum allowance:	£257,871
Site Rents (£9000 + 651)	<u>9,651</u>
	£267,522

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

Rent before 20% quantum allowance:	£322,339
Site Rents	<u>£ 9,651</u>
	£331,990

For valuation purposes £331,990 was deemed a fair rent at 1/4/89, and at November, 1988.

A quantum allowance of circa 14% was allowed reducing the rent at 1/4/89 from £331,990 to an N.A.V. of £285,500 at November, 1988."

### **Oral Hearing**

The oral hearing took place in the Tribunal Offices, 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 £1,800 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. McKechnie, 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'Caomh 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.

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 14% 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 valuation of the subject premises ought to be established at the rounded up figure of £1,650.

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 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.

