

Appeal No. VA92/6/064

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

Aer Lingus

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices and training centre at Lot No. 8B, Townland of Corballis (Dublin Airport), D.E.D.
Airport, Co. Dublin
Quantum - Passing rent

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Veronica Gates

Barrister

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF AUGUST, 1993

By Notice of Appeal dated the 30th October, 1992 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £260.00 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:

This consists of administrative offices known as Corballis House and a staff Training Centre adjoining. Corballis House is about one hundred years old and has been converted to office use, is a two-storey building of traditional masonry and slate construction, and is in good condition for its age. The Training Centre is of fabricast construction and is about 15 years old, is a single storey building with a flat asphalt roof and is in reasonable condition.

Both properties are held on a 35-year lease from 1986, with 5-yearly reviews on a F.R.I. basis. The rent for Corballis House at 1991 is £7,444 p.a. and for the Training Centre £6,767 p.a..

Valuation History:

Prior to 1990 Revision the rateable valuation on this lot was assessed on 1973 First Appeal at £83.00. The R.V. was increased to £330.00 on 1990 Revision and it was reduced to £260.00 at First Appeal.

Written Submissions:

A written submission was received on the 5th May, 1993 from Mr. Frank O'Donnell of Frank O'Donnell & Company, Valuation, Rating & Property Consultants, acting on behalf of the appellant. Mr. O'Donnell set out the background to the appeal in his submission and also scheduled the agreed areas as follows:-

<u>Description</u>	<u>Area (Sq.ft.)</u>
<u>Corballis House:</u>	
Ground Floor	1,615
First Floor	2,045
 Annexe (Prefab)	 3,143

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 5-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 C.P.I. and the 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. It also provided for rent reviews on exclusive-use accommodation at rents related to the average increase of indices in the appropriate sector of the Irish Property Market as published by the two agreed Real Estate Consultants.

Mr. O'Donnell also submitted that Corballis House and the Annexe are 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 premises under appeal was revised in 1989 at £14,211 p.a. effective from 1st April, 1989. This figure was agreed between Lisney & Company and Jones Lang Wootton and is compiled as follows:-

	<u>Rent at 1/4/1989</u>
Corballis House	£ 7,444.00 (100%)
Annexe (Prefab)	<u>£ 6,767.00</u> (100%)
	£14,211.00

It was submitted to the Tribunal that the review provisions of the Memorandum of Understanding had the practical effect of fixing the revised 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 a deduction of 7.5% had been agreed with the Commissioner of Valuation to take account of this. In his opinion, the N.A.V. as at November, 1988 is £13,145. He set out his calculation of the £13,145 in the written submission as follows:-

	<u>Agreed Rents at 1/4/1989</u>
Corballis House	£ 7,444.00
Annexe	<u>£ 6,767.00</u>
	£14,211.00
Allow 7.5% to revert to Nov. 1988	<u>£ 1,065.83</u>
	£13,145.17
Rateable Valuation @ .63%	£ 82.81
Say	£ 83.00

A written submission was also received on the 6th May, 1993 from Mr. Frank O'Connor, a Valuer with 13 years experience in the Valuation Office, on behalf of the respondent. Mr. O'Connor set out details of the property and the valuation history as set out above. He also

submitted that the rent passing here was considered to be below what a market rent should be and that the property was valued by comparison with other agreed R.V.'s in the Airport. His calculation of the rateable valuation on the property is as follows:-

<u>Corballis House:</u> Ground Floor Offices	1,615 } 3,660 sq.ft.	@ £8 p.s.f	
First Floor Offices	2,045 } Net	=	£29,280
<u>Training Centre:</u> Ground floor Offices	3,143 sq.ft.		
	Gross @ £4 p.s.f.	=	<u>£12,572</u>
	N.A.V.	=	£41,852
	@ 0.63%	=	£263.00
	Say,		£260.00

Mr. O'Connor confined his comparative evidence to seven other properties within the Airport complex which had been agreed with Donal O'Buachalla & Company Limited, who acted on behalf of Aer Rianta and others in the Dublin Airport appeals. Details of these comparisons are annexed to this judgment as Appendix 'A'.

Oral Hearing:

At the oral hearing which took place in Dublin on the 17th May, 1993 and was resumed, after inspection of the subject premises, on the 1st July, 1993. Mr. Liam McKechnie, S.C., instructed by Miss Sheila Geaney, Solicitor, appeared for the appellant and Mr. Aindrias O'Caoimh, B.L., instructed by the Chief State Solicitor, appeared for the respondent.

Mr. Frank O'Donnell, in evidence, stated that the property had been built as a residential farmhouse in the 15th century. He explained that it was used mainly as classrooms and was not suitable for modern office use. He pointed out the drawbacks of an old building of this nature, particularly the high cost of maintenance and ongoing repairs.

Mr. O'Donnell stressed that the rent passing in the instant case was an open-market rent, and gave as his opinion that Aer Rianta were in fact fortunate to have any tenant at all in the property.

Mr. O'Donnell suggested that in view of the figures of 18% - 26.8% shown in the Lisney Index relating to increase in rents over the period November 1988 to April 1989, his professional estimate of 7.5% was moderate.

Mr. Peter Reynolds, Head of Facilities Engineering, Aer Lingus, gave evidence that the building was used as a training area for trainee pilots and technicians. He said that the internal services and lighting were very poor and that the exterior of the building needed considerable refurbishment.

Mr. McKechnie submitted that the rent passing should be accepted as open-market rent; that it had been negotiated at arms-length, as evidenced by the Memorandum of Understanding and that the review clause had been invoked.

He further submitted that the comparisons put forward by Mr. O'Connor for the respondent, were not valid, as most of these units were either in or close-by the terminal building. In relation to Castlemoate House, also cited by Mr. O'Connor as a comparison, Mr. McKechnie pointed out that it was not comparable since it had been extensively refurbished and had a completely different use.

Mr. O'Caoimh, while accepting that the building was very old, submitted that the rating legislation looks to buildings being maintained in their actual state, i.e. 'Rebus Sic Stantibus'.

Mr. O'Caoimh referred to the adjoining prefab Annexe and pointed out that while it would require higher heating costs than the main building, nevertheless it commanded a higher rent. He referred also to Castlemoate House, which showed, he said, that an old building, if maintained, was obviously capable of indefinite use, unlike a prefab building.

Mr O'Caoimh further submitted that in view of the comparative evidence offered, it was obvious that the rent passing was not an open-market rent.

Determination:

The Tribunal is satisfied, particularly after its inspection of the subject premises, that the rent as set out in the Memorandum of Understanding, was the result of 'arms-length' negotiation.

Accordingly, the issue remaining to be decided by the Tribunal is by what percentage, if any, the passing rent should be adjusted from April 1989 back to November 1988.

Two indices have been referred to in evidence, viz; the Jones Lang Wootton Index showing an increase of 1% over the relevant period and the Lisney Index showing an increase of between 26.8% and 18% over the same period.

Mr. O'Donnell has opined that the average increase is somewhere in the region of 7.5%. Mr. O'Donnell has admitted, and it seems obvious from the evidence, that the assessment of any such increase is merely an estimate and far from exact.

In the circumstances and having referred to all of the evidence, the Tribunal decides that the correct R.V. of the subject hereditament is £85.

The parties had agreed that the Tribunal would take the argument advanced in the case of Rainbow Bookshops - VA/92/4/29 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.