

Appeal No. VA93/4/013

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

A.I.B. Bank, Howth

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Bank Map Reference: 4-9/b, Howth Road, E.D.: Howth, R.D.: Fingal Co. Dublin
Notification of Revision under Section 3, 1988 Valuation Act

B E F O R E

Henry Abbott

S.C. Chairman

Mary Devins

Solicitor

Paddy Farry

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF JULY, 1994

By Notice of Appeal dated the 27th day of October, 1993 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £530 on the above described hereditament.

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

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

The Property:

The property is located at Sutton Cross which is formed by the intersection of the Howth, Station, Dublin and Greenfield Roads.

Sutton Cross is a prominent, urban retail location, effectively and well "anchored" by the nearby Superquinn Supermarket.

The bank is one of a terrace of seven units lying between the supermarket and Howth Road. It is the unit furthest from the entrance to the carpark and supermarket.

Accommodation:

The accommodation is as follows:-

<u>Ground Floor</u>	<u>Area Sq.Ft.</u>	
Bank Hall	1,434	
Office/Interview Room	413	
Staff Room/Store	172	
Lobby	25	
OCC	89	
OCC Lobby	18	
Store	12	
Sump/Hoist	<u>59</u>	Total 2,222 square feet

(Toilets 186 square feet)

<u>Basement</u>		
Strong Room	163	
Stationery/Record Store	<u>466</u>	Total 629 square feet

Valuation History:

As extracted from the Valuation Lists, this property was included at Ref: 8, Howth Road, and was first assessed as a bank in 1952 when R.V. £120 was fixed.

At 1988 First Appeal, an increased R.V. of £150 was agreed.

This entry was included in the 1990/2 Revision, when

Map Ref. was changed from "8" to "4-9/b",

Occupier was unchanged,

Immediate lessor was changed for "In fee" to "Superquinn Limited",

Description was unchanged,

R.V. was increased from £150 to £530.

The revised valuation was appealed, negotiations were inconclusive, and the R.V. of £530 was issued unchanged by the Commissioner of Valuation.

Written Submissions:

Precis of evidence were received from the Commissioner of Valuation on the 4th March, 1994 and from Messrs. Donal O'Buachalla & Company Limited on the 8th March, 1994.

In their submission Messrs. O'Buachalla & Company Limited set out remarks in relation to the validity of revision as follows:

"It is submitted that no valid entry exists in the Valuation Lists for the Subject and accordingly the Valuation should be struck out and deleted.

Regarding notification under Section 3 of the Valuation Act, 1988, the position is as follows:

- * No record of notification under Section 3(4)(a) that application had been made for revision can be traced by the appellant;
- * Notification under Section 3(4)(b) advising of the outcome of the Revision was received and a copy is attached. This shows an increase in the Rateable Valuation, is not a new entry, and refers to Map Ref. 4-9b; and
- * Notification under Section 3(4)(b) was also received advising of the Commissioner's decision at First Appeal. This refers to Map Ref. 4-7/b.

It is submitted that the Rating Authority has not complied with the provisions of Section 3.

It is submitted that the Subject premises cannot be valued on the basis of a listing of Map Ref. 8 (the former branch premises).

It is also submitted that the Subject premises cannot be validly valued by way of a revision of the previous entry (Ref. 8).

The existing and former branches are completely separate buildings, occupying separate sites, and with separate titles (see *Switzer -v- Commissioner of Valuation* [1902] 2 I.R. 275).

Dublin County Council regarded the new valuation as merely a revision of the old assessment as can be seen from the attached correspondence. The old rate number (02/7615536/000) continues unchanged.

I would refer the Tribunal to Map No. 1 attached, which shows the respective locations of the existing and former branches."

The appellant's estimate of rateable valuation as set out in the precis is as follows:-

Ground Floor	2,222 sq.ft. at £19.00 =	£42,218
Basement	629 sq.ft. at £ 8.00 =	<u>£ 5,032</u>
N.A.V.		£47,250
	R.V. (@ 0.63%) =	£300

The respondent's submission deals with the technical grounds of appeal and sets out a valuation as follows:-

Ground Floor Area	2,472ft ²
Street Frontage	61feet

Basement	632ft ²	
Zone A	61ft x 20ft = 1,220ft ²	x £40/ft ² = £48,800
Balance	1,252ft ²	x £20/ft ² = £25,040
Basement	632ft ²	x £15/ft ² = <u>£ 9,480</u>
		£83,320
	x 0.63%	= £525.00

Oral Hearing:

The oral hearing took place herein on the 16th March, 1994. Marcus Daly S.C., instructed by Mr. Clancy, Law Agent for A.I.B., appeared for the appellant. Robert Haughton B.L. instructed by the Chief State Solicitor, appeared for the respondent. Mr. Jim Gormley and Mr. Alan McMillan gave evidence.

The history of the listing and determination of the revision and first appeal on the subject premises was opened in detail by Mr. Daly and the documentation and correspondence together with notices were examined and discussed.

It emerged that the sequence of events in relation to the subject property was as follows:-

- 1) List of tenements and hereditaments requiring revision dated 13th February, 1989 published containing two properties, the subject at No. 8 and Superquinn Limited listed at 4-7/9 and the subject at No. 8 referred to as Howth Road, Allied Irish Bank Limited "in fee", description "bank and yard", valuation £120.
- 2) The instructions in relation to revision were "please revise and update valuation to include automated teller machine". As a result of statutory instruments No. 191 of 1988 and No. 229 of 1988, Section 3 of the Valuation Act, 1988 became operative. Prior to the operation of this section it was not necessary for the local authority to notify the appellant of the inclusion of the subject in the list for revision. It appears that no such notice was served although no point was made by the appellant about this until late in the day.

- 3) The appellant received notification from Dublin County Council of the quarterly revision of valuation May 1990 with reference to the original rate number of the property revised, but referring to Map Ref: 4-9/b indicating description of bank and noting that valuation had been increased from £150 to £530.

The grounds of appeal at first appeal are set out as follows:

"Primarily our appeal here is that the valuation should be struck out as being bad in law. Notwithstanding that the subject premises is an entirely different premises on a different location from the previous branch (Ref.. 8) the previous entry has merely been amended rather than struck out and replaced."

Quantum was also appealed. After some correspondence from Dublin County Council dated the 18th May, 1990 and 11th September, 1990 and from Messrs O'Buachalla & Company Limited to the Valuation Office, the notice dated the 11th October, 1993 from Dublin County Council notifying the first appeals quarterly revision in respect of the property was issued. Again this notice is with reference to the original rate number of the property but refers to Map Ref: 4-7/b. Valuation is stated to be unchanged at £530 with result effective from 1st January, 1991.

From enquiries made by the appellant it emerged that the entry for 8 had been amended with the reference to the map superimposed in red writing of "4-9/b", and the description of immediate lessor as Superquinn Limited replacing the words "in fee". The red writing also noted the increase of valuation from £150 to £530. While a map in the valuation lot boundaries existed in respect of Lot No: 8, no map relating to Lot No: 4-9/b is in existence. Neither is there a map relating to reference 4-9/a which resulted from the concurrent revision of 4-7+9 occupied by Superquinn Limited.

Mr. Haughton argued that by the time the property came to be revised the appellant had moved from Lot 8 into their new premises provided by Superquinn Limited and that the revising Valuer obeyed the time honoured practice of the Valuation Office in "tidying up" the lot numbers so as to show the actual occupation.

Findings:

The Tribunal accepts that the revising Valuer proceeded to prepare the coloured list (a copy whereof is annexed to this Judgment). There is no doubt that when this list is scrutinised

carefully the category 4-7+9 when changed to 4-9/a theoretically incorporates Lot 8. Conversely there is a pattern approaching logicity when one traces the new map reference number of the subject property of 4-9/b from its "parent" of reference 4-7+9. However, this process (to say the least) lacks transparency, especially when compared to the alternative process which could have been engaged in on the very same coloured list relating to Lot No: 10 occupied by Dr. John Kelly where on the observations side the observer is directed to see 10b.

It was suggested by Mr. Daly that steps taken in the case of Lot 10 was the proper procedure to take with Lot No: 8, which was apparently incorporated into the 4-9/a valuation. Lot 8 should therefore have been struck out as in Lot 10 with a note indicating that it was to be consigned to the lot on top of the page. The result showing on the record suggests that Lot 4-9/b is somehow derived physically from 8.

The Tribunal has, following the jurisdiction of the Circuit Court in relation to valuation appeals, decided from time to time to amend the lists where appropriate, (see **VA92/4/029 Rainbow Bookshops** case and **Coal Distributors Limited -V- Commissioner of Valuation I.R. Page 472 and Section 3(6) of Valuation Act, 1988**). The Tribunal does not propose to attempt to amend the list in this case. Nor does the Tribunal consider that it has power to amend the list in these particular circumstances. The Tribunal is of this view by reason of the fact that the entries into the final list indicate matters which require to be notified upon inclusion for revision and after revision pursuant to Section 3 of the 1988 Act. The entries in the list are such as not to be capable of producing notices which would satisfy the requirements of Section 3 in each case.

While the appellant is precluded from arguing the sufficiency of notice of revision and of first appeal by reason of failure to put same expressly in issue (See **VA90/3/074 - Trustees of Cork and Limerick Savings Bank**), the Tribunal is not precluded, in considering the results of the determination of the Commissioner, from taking into account the requirements of Section 3 relating to notice, in deciding whether there has been a valid exercise of the Commissioner's power or not.

Accordingly, the Tribunal finds that the rate as revised ought to be struck out. The Tribunal makes no decision on quantum on the foregoing basis.

The Tribunal having considered the issue of costs in this appeal is persuaded by its findings to make no order as to costs in view of the fact that the fatality in the case was as much due to the uncertainties of transitions as anything else and also due to the fact that the appellant may have (through no particular merit of their own) the benefit of certain windfall gains as a result.

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