

Appeal No. VA94/3/097

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

**Irish Pensions Trust Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Offices, car park at Map Ref: 23-25, Townland: Cork, South Terrace, Ward: City Hall,  
South Gate, County Borough of Cork  
Quantum - Previous agreement, passing rent

**B E F O R E**

**Paul Butler**

**S.C. (Acting Chairman)**

**Joe Carey**

**P.C. M.I.A.V.I.**

**Brid Mimmagh**

**Solicitor**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 19TH DAY OF JUNE, 1995**

By Notice of Appeal dated the 3rd day of November 1994 the appellant appealed the determination of the Commissioner of Valuation in fixing a rateable valuation of £425 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that the valuation is excessive.

**The Property:**

The property is located at South Terrace convenient to the city centre. Several new developments of offices and apartments have taken place in this street. The property comprises offices at ground floor and first floor levels with car parking in basement.

**Services:**

Mains services, gas central heating, double glazing.

**Tenure:**

35 year lease from 11/11/88 with five year reviews, F.R.I. rent (including 9 car spaces) £66,280 per annum.

**Valuation History:**

The property was first valued at 1989 revision having being newly erected. The RV was fixed at £650. Agents Lisney appealed the valuation which was reduced at first appeal to £425. The property was listed by Cork Corporation at 93/4 revision to "Value Apartment". No change was made to RV £425. No change was made at first appeal and it is against this determination of £425 that an appeal lies to the Tribunal.

**Written Submissions:**

A written submission was received on the 15th day of June 1995 from Mr. Aidan Boland of Lisney, on behalf of the appellant.

In his written submission Mr. Boland described the premises. He set out the accommodation as follows:

Hall floor	3,733 square feet
First floor	4,073 square feet
<b>Total</b>	<b>7,806 square feet</b>

He described the services and the tenancy and said that the building was developed by Sign Developments (Cork) Limited and let to Irish Pensions Trust Limited. Mr. Boland said that the initial rent on the lease was substantially higher than the nett annual value of the premises as defined in the Act. He said that although the rateable valuation had been agreed at a previous revision, it was because they had chosen not to pursue it as there was a long period remaining to the expiration of the rates free period. Mr. Boland that it was his contention that

the urban renewal acts created a false market with tenants prepared to pay rent at a falsely inflated rate for the first ten years.

Mr. Boland attached a schedule of comparative evidence relating to general office rents passing in similar adjoining premises in November 1988. The level was at £6.30 to £6.75 per square foot compared to the £8.49 per square foot on the subject. Mr. Boland said that in his opinion the nett annual value of the premises as at November 1988 is £50,740 per annum. This represented a rent of £6.50 per square foot and took into account the secondary location.

£7,806 square feet @ £6.50 per square foot = £50,739      **Say £50,740.**

Applying the agreed fraction of 0.63% the rateable valuation rounded up amounted to £320.

Mr. Boland gave details of nine comparisons which are summarised below:

- (1)    **Abbeycourt House, George's Quay**  
Description: Ground floor offices 6,027 square feet  
Rent per square foot = £6.80
- (2)    **Abbeycourt House, George's Quay**  
Description: First floor offices 6,533 square feet  
Rent per square foot = £6.35
- (3)    **Abbeycourt House, George's Quay**  
Description: Second, third and fourth floor offices 19,500 square feet  
Rent per square foot = £6.30
- (4)    **Ballycurreen Cross, Kinsale Road, Cork**  
Description: First floor offices 1,732 square feet  
Rent per square foot = £6.50
- (5)    **Springville House, Blackrock Road, Cork**  
Description: Ground, first and second floor offices 12,430 square feet  
Rent per square foot = £5.63
- (6)    **Centre Park House, Centre Park Road**  
Description: Ground floor office 2,871 square feet  
Rent per square foot = £6.74
- (7)    **Centre Park House, Centre Park Road**  
Description: First and second floor offices 6,646 square feet  
Rent per square foot = £6.74

**(8) Centre Park House, Centre Park Road**

Description: Third, fourth and fifth floor offices  
 Rent per square foot = £6.74

**(9) Norwich Union House**

Description: Third floor offices 5,320 square feet  
 Rent per square foot = £6.62

A written submission was received on the 12th day of June 1995 from Mr. Tom Costello, a District Valuer with over 30 years experience in the Valuation Office, on behalf of the respondent.

In his written submission, Mr. Costello described the property and its valuation history as set out above. Mr. Costello said that the property is located within the designated area and qualifies for tax relief, including:

- (a) Double Rent Allowance - each £100 in rent will be tax relieved as if it were £200.
- (b) Rates Relief - full remission for 10 years of rates leviable in respect of new buildings.

Mr. Costello set out his assessment of valuation as follows:

NAV £66,280  
 RV £66,280 x 0.63%  
 Say £425

The NAV of £66,280 devalues as follows:

Ground floor	3,733 square feet @ £9.50	= £35,463
First floor	4,073 square feet @ £6.50	= £26,474
9 car spaces	@ £400 each	= £ 3,600
		<u>£65,537</u>

In support of his valuation Mr. Costello gave one comparison which he analysed as follows:

26-28 South Terrace

Ground floor offices RV £190

Occupier: **Buckley Hiely & Co**

93/4 Appeal

Lease: 12 years from May 1993

4 year reviews

Rent £30,000 per annum

NAV devalues as follows:

Offices	3,070 square feet @ £9.40 = £28,858
3 car spaces @ £400 each	<u>£ 1,200</u>
	£30,058

RV £30,000 x 0.63% = £189.00  
RV £180

### **Oral Hearing:**

The oral hearing took place in Cork on the 19th day of June 1995. Mr. Aidan Boland appeared on behalf of the appellant and Mr. Tom Costello appeared on behalf of the respondent. The evidence of both sides was in accordance with their written submissions.

It quickly emerged, in the view of the Tribunal, that the appellant was faced with two serious hurdles. First, the current valuation of the premises was based on an agreement between the Commissioner and the representative of the appellant. It was open to the appellant at the time of the making of that agreement not to make it. The Tribunal would require very compelling evidence to suggest that the sum agreed was excessive.

The second hurdle which the appellant faces is the fact that there is a passing rent. The Tribunal has dealt with the question in a large number of cases and it has held that a passing rent will be used in determining a nett annual value unless there is compelling evidence to suggest that the rent is too high.

Mr. Boland argued strongly and persuasively that the rent in this case was higher than the nett annual value in that the rent was only being paid by the tenant by reason of rates and tax relief which the tenant will continue to achieve until the year 1999. He said that the agreement with the Commissioner on rateable valuation was based on this fact.

### **Determination:**

The Tribunal has considered the oral and written submissions. While Mr. Boland's arguments are persuasive, the fact remains that he agreed nett annual value in 1988 or 1989 and that the circumstances under which that agreement was made have not changed to date. The Tribunal

notes that the Commissioner accepts that the position may be reviewed after the period of rates relief and tax breaks passes. The Tribunal therefore affirms the valuation of £425 but it should be clear to both parties that this is not to be taken as a "recent determination" when circumstances have changed in 1999 or the year 2000. The Tribunal further notes that the premises were relisted through some error; it is open to either party to relist the premises if and when circumstances change.