

Appeal No. VA95/1/039

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

David Allen

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Advertising station at Map Ref: In 25, Townland: Harcourt Road, Ward: St. Kevin's,
County Borough of Dublin

Quantum - Method of Valuation for advertising signs

B E F O R E

Paul Butler

S.C. (Acting Chairman)

Fred Devlin

F.R.I.C.S. A.C.I. Arb.

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF SEPTEMBER, 1995

By Notice of Appeal dated the 21st day of April 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £18 in respect of the above described hereditament.

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

- (1) That the valuation is excessive, inequitable and bad in law.
- (2) That proper regard should be had to Section 5 of the Valuation Act 1986.
- (3) The RV is excessive by reference to any realistic estimate of net annual value.
- (4) The RV should be based on 0.63% of the late 1988 rental value of £550 pa.
- (5) The correct basis of adopting a fraction of the 1988 rent paid/rental value has been accepted in a number of cases including:-
 - (a) 1993/4 Appeal in relation to signs at Albert Quay, in Cork. RV of £45 reduced to £20 on the basis of 0.63% of rental value of £3,175.

- (b) Signs in Shannon Airport - RV £50. The RV of £50 is based on 0.5% of a November 1988 estimated rental value of £10,000 pa.
 - (c) "Tennents" (formerly Sony) Sign, O'Connell Bridge House
1993/4 Annual Revision
RV £300 reduced to £125
1990 rent paid - £22,000
RV £125 = 0.63% of £19,850
- (6) In most cases it is possible to arrive at the rental value of a station for advertising purposes by having regard to the evidence of passing rents and in this case there is primary evidence of a passing 1990 rent of £700 for the sign in question. Evidence of market rents paid for other signs in the general area can be supplied, if necessary.
- (7) Rents paid for advertising stations are primarily for the advertising rights and relate to a licence which gives the Advertiser (David Allen) the exclusive right to displaying advertisements on or erecting panels or structures for the display of advertisements on premises in the position described together with the right of access for the purpose of erecting, maintaining, replacing and renewing the panels, structures and advertisements.
- (8) Most rateable valuations in Dublin city are based on 0.63% of late 1988 rental values and the rateable valuation on this and other advertising stations in the city should be on a similar basis and not on the basis of the old mid 1980's temporary artificial arrangement.

Prior to hearing of this appeal it was agreed that this appeal and three other appeals involving the same parties, namely **VA95/1/038**, **VA95/1/040** and **VA95/1/041** to be heard together. It is proposed to give separate judgments in each appeal but common reference shall be made to all four appeals in the course of the greater part of each judgment.

Written Submissions:

In the first three appeals above mentioned written submissions on behalf of the Commissioner of Valuation were prepared by Mr. Frank O'Connor, ARICS BSc. (Surveying), a Valuer with 15 years experience in the Valuation Office. In the case of the

fourth appeal (VA95/1/041) a written submission on behalf of the Commissioner of Valuation was prepared by Mr. Paschal Conboy, a Chartered Surveyor and Valuer with 14 years experience working in the Valuation Office.

In all four appeals written submissions on behalf of the appellant were prepared by Mr. Eoin O'Buachalla, FRICS ACI Arb of Messrs. Eoin O'Buachalla & Company.

In addition the following four documents were handed in at the hearing on behalf of the respondent, namely:-

- (1) an undated document entitled "Table 1"
- (2) an undated document entitled "Table 2"
- (3) an undated document entitled "Memorandum regarding ORAC"
- (4) a brochure entitled "Outdoor Advertising in Europe".

All of the foregoing documents have been considered by the Tribunal and were referred to in the course of the hearing and the same are available together under the heading "Appendix A" and shall be annexed to the office copy of this judgment.

Oral Hearing:

The oral hearing took place in Dublin on the 11th day of September 1995. Donal O'Donnell, Barrister at Law instructed by Messrs. PJ Walsh & Company, Solicitors appeared on behalf of the appellant and Margaret Nerney, Barrister at Law instructed by the Chief State Solicitor appeared on behalf of the respondent. Mr. O'Donnell opened by referring to the various hereditaments and outlined his client's case. He referred to an agreement which was entered into between the Valuation Office of the one part and the Outdoor Poster Advertising Association of the other in 1984. Under that agreement a formula was reached whereby net annual value of hereditaments such as the subject hereditament could be assessed. He pointed out that the said agreement provided an entirely artificial means of arriving at rateable valuation and disregarded passing rents. He further pointed out that the said agreement (in the form of an undated and unsigned letter from a staff valuer to Messrs. Eoin

O'Buachalla & Company) provided, *inter alia*, that "eventhough I have indicated that the prevailing practice of taking a fraction of the rent for rateable valuation is discontinued, Section 11 of the Valuation Act is still the basis and must continue to be seen to be the basis" (of arriving at a rateable valuation). Same further expressed the hope that the said agreement "will be to our mutual benefit and I would hope will determine valuation levels for a 3-5 year period at least".

Mr. O'Donnell argued that in all the cases (save one part of one hereditament) there was actual rental evidence and he suggested that the Tribunal should approach the matter on that basis, enquire whether there be any reason to discount the figure, to adjust the same or to add thereto for the structure etc. Then he said that the Tribunal should apply the 0.63% ratio.

Mr. Eoin O'Buachalla gave evidence on behalf of the appellant. In respect of each of the individual hereditaments his evidence was as follows:-

- (1) **VA95/1/038** - This lot consists of two signs of 48 sheets each. Rent fixed in October 1992 was £1,800. The appropriate rent brought back to 1988 would be £1,350. He thought that only a nominal addition of, say, 10% should be made in respect of the erection of this structure.
- (2) **VA95/1/039** - The rent of this hereditament was now £700 and would have been £550 in 1988.
- (3) **VA95/1/040** - The appropriate rent for 1988 would be £750.
- (4) **VA95/1/041** - In this case Mr. O'Buachalla said that the appropriate rent brought back to 1988 would be £1,600.

Under cross examination, Mr. O'Buachalla agreed that the 1984 agreement had operated until recently. He did however, give some examples of cases where the same did not apply.

Mr. Harry Lawler, Development Planning Manager of the appellant gave evidence on behalf of the appellant. He said that the appellant company was the largest in the country so far as large format advertising was concerned. The appellant currently has some 1,736 panels. Of those panels the appellant owned about 75 sites, the balance being leased or licensed. He said that 3-5 years was now the norm for a lease or licence agreement.

In relation to the structures he said that the average cost was about £750 per panel and he said that the same were not recyclable.

Under cross examination Mr. Lawler said that for planning appeals he now processes most if not all of them.

Mr. Frank O'Connor gave evidence on behalf of the respondent and said that valuations on the premises such as the subject had been fixed in accordance with the agreed scale and that the system had worked quite successfully for the past ten years and right up to date. He said that in the case of hereditaments such as the subject, landlords are not as well informed as in the shop and office market. Information here is scarce. It is available in respect of the licence or lease but there is no evidence of the net annual value of the total hereditament. If one were to approach the matter on the basis of passing rent, he suggested an addition of a figure of 50% in respect of other matters such as erection of the hoardings. That exercise would tie in with the results using the agreed scale.

Under cross examination Mr. O'Connor agreed that Section 11 must be the basis for valuation. He accepted that under the 1984 agreement the position could change.

Mr. Paschal Conboy gave evidence in accordance with his written submission and he laid emphasis on his comparisons in supporting his figure for net annual value.

In closing, Mr. O'Donnell said, *inter alia*, that the 1984 agreement was not designed to be binding forever and was made prior to the coming into operation of the 1986 Act. He said

that it would be perverse to disregard the rental evidence and referred to the *Irish Management Institute case [1990] 2 IR 409, Chapter 24 of the 12th edition of Ryde on Rating and Chapter 3 of Kay's Rating and Valuation in Northern Ireland.*

Ms. Nerney in closing on behalf of the respondent said that the agreement has been in place for a considerable amount of time and that it has worked adequately. She said that 96% of valuations have been determined by reference to this agreement. She emphasised the inequality in bargaining power of persons entering into agreements for the letting of such space as opposed to those in shop and office markets.

Ms. Nerney submitted that if the Tribunal disregards the agreement it should hold that the valuation is not confined to the letting value of the hoarding - the structure, planning applications, preparing the site, marketing the site and other matters must be taken into consideration. She too referred to *Ryde on Rating.*

Determination:

The subject premises, described as "Advertising stations" are unique. The agreement of 1984 was entered into between the Commissioner of Valuation and representatives of interested parties with a view to finding a uniform system of rating this type of hereditament. It is clear that the agreement worked well for some considerable time.

It is further clear that the said agreement was probably never binding on either party and was certainly not binding after a period of 5 years.

The situation now is that the appellant, who is rated occupier of about 34% of hereditaments such as this in Ireland, now seeks to go behind the agreement and to have hereditaments valued in accordance with provisions laid down in the Valuation Code. The Tribunal is satisfied that the appellant has every right to adopt this course.

The Tribunal is satisfied on the law and has so decided in many other cases that where there is evidence of a passing rent negotiated on an arms length basis the same should be treated as

prima facie evidence of net annual value putting a heavy onus on any party who wishes to upset the same whether upwards or downwards.

The Tribunal accepts Ms. Nerney's submission that it must have regard to matters other than the rental value because the same does not take into consideration matters such as cost of erection and preparation of site etc. Here the evidence is very sparse. In these circumstances the Tribunal proposes to add 20% to the rental value to take these matters into account. In so doing the Tribunal addresses that this is a figure arrived having regard to the very general nature of the evidence given. It is open in other cases to produce more detailed evidence if the same would achieve a different result.

The Tribunal therefore determines the rateable valuation of the subject premises as follows:-

Rental value = £550

+ £110

NAV = £660

RV = £660 x 0.63% = £4.15 Say £4.