

Appeal No. VA96/2/010

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

**Irish Permanent Plc**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Offices & Yard at Map Ref: 22a, Upper Baggot Street, Ward: Pembroke West, County Borough of Dublin

Quantum - Whether premises to be valued at the prevailing tone of the list or at a higher Zone A rate to reflect bank user

**B E F O R E**

**Fred Devlin - FRICS.ACI Arb.**

**Deputy Chairman**

**Con Guiney - Barrister at Law**

**Deputy Chairman**

**Marie Connellan - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 6TH DAY OF OCTOBER, 1997**

By Notice of Appeal dated the 12th day of April 1996 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £220 on the above described hereditament.

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

"The RV of £220 is excessive, inequitable and bad in law having regard to the Valuation Acts and on other grounds also."

**The Property:**

The subject of this appeal comprises the ground and first floor of a mainly four storey terraced building located on the east side of Upper Baggot Street in that section between Haddington Road and Eastmoreland Place. The entire is occupied by Irish Permanent Plc and the ground floor is used as a public office whilst the first floor is given over to offices at the front and toilets and staff facilities at the rear. At the relevant date the offices at first floor level were surplus to requirement, vacant and to let.

The agreed accommodation is as set out below:-

Ground floor	1,900 sq.ft.
First floor front	431 sq.ft.
First floor rear	175 sq.ft.
Car Parking Spaces at rear	- 4.

**Valuation History:**

At the 1995/4 Revision the rateable valuation of this hereditament was assessed at £220 and at first appeal stage no change was made by the Commissioner of Valuation. It is against this determination that the appeal to the Tribunal lies.

**Oral Hearing:**

The oral hearing took place in Dublin on the 4th day of October 1996, at which the Appellant was represented by Aindrias O'Caomh, SC. Expert valuation evidence on behalf of the Appellant was given by Mr. Joe Bardon, FRICS of Hennigan & Company and on behalf of the Respondent by Mr. Patrick Deegan BA, BL, a Valuer in the Valuation Office.

Prior to the commencement of the hearing the Valuers submitted to the Tribunal and exchanged between them précis of evidence and valuations which were adopted by them at the hearing as being their evidence in chief given under oath.

**The Appellant's Evidence:**

According to Mr. Bardon the prevailing rental levels in this section of Upper Baggot Street at the relevant date was equivalent to a Zone A rate of £22 psf. This being the case, he could see no grounds whatsoever why the Valuation Office should use a Zone A rate of £30 psf in arriving at an NAV of the subject premises.

Under cross examination, Mr. Bardon told the Tribunal that Irish Permanent Plc had spent approximately £250,000 inclusive of VAT, in extending and upgrading the ground floor accommodation. However, no monies were spent on the offices at the front first floor level and these are still in their original state and surplus to requirements. Indeed, the Irish Permanent had no plans to use these offices in the foreseeable future and at the relevant date they were vacant and to let at an asking rent of £4,500 p.a.. Under the circumstances, Mr. Bardon requested that they be given a separate assessment so as to enable the Occupier to claim vacancy relief. Accordingly, therefore he valued the subject hereditament as follows:-

(a) **Utilised Area**

Ground floor	Zone A 410 sq.ft. @ £22.00 psf =	£ 9,020
	Zone B 410 sq.ft. @ £11.00 psf =	£ 4,510
Remainder	1,080 sq.ft. @ £ 5.50 psf =	£ 5,940
First floor (rear section)	175 sq.ft. @ £ 7.00 psf =	£ 1,225
Rear yard	4 car parking spaces @ £400 cps =	<u>£ 1,600</u>
	Total net annual value =	<u>£22,295</u>

Rateable valuation @ 0.63% = Say **£140.**

(b) First floor front (vacant offices) 431 sq.ft. @ £6.00 psf = £2,586

Rateable valuation @ 0.63% = Say **£16.**

In support of his valuation Mr. Bardon submitted a list of other properties adjoining the subject hereditament which has been subject to Revision in recent times and assessed at a Zone A rate of £22. A copy of this list is attached to this judgment and annotated Appendix A.

**The Respondent's Evidence:**

Mr. Deegan, in his evidence agreed with Mr. Bardon that shops in this section of Upper Baggot Street were generally valued at a Zone A rate of £22 psf. However, the subject hereditament was not a shop but akin to a bank and in these circumstances he considered it

appropriate to use a Zone A rate of £30 psf and hence he arrived at a rateable valuation of £220 calculated as follows:-

Ground floor	Zone A	410 sq.ft. @ £ 30.00 psf =£12,390
	Zone B	410 sq.ft. @ £ 15.00 psf = £ 6,150
Remainder		1,080 sq.ft. @ £ 7.50 psf =£ 8,750
First floor (offices)		616 sq.ft. @ £ 9.00 psf = £ 5,544
		4 car parking space @ £650 cps = <u>£ 2,600</u>
		Total net annual value = <u>£34,693</u>
		Rateable valuation @ 0.63% = Say <b>£220</b> .

Mr. Deegan said that it was the custom and practice of the Valuation Office to value banks at a higher level than shops in the immediate vicinity. He agreed that the subject did not occupy a better location in the street than the adjoining premises valued at a Zone A rate of £22 psf. He pointed out however, that £250,000 had been spent on the premises and that this must be taken into account when determining net annual value. Mr. Deegan said that the subject was the first bank type premises to be valued in this location for some time and that a number of other banks in the area would be subject to Revision in the near future and that it was the intention of the Valuation Office to value these banks at a Zone A rate of £30 psf. This appeal was he said in the nature of being a test case and the decision of the Tribunal will be a guide to the future.

Mr. Deegan, in support of his valuation submitted a schedule of a number of assessments in the Upper Baggot Street area and other bank premises elsewhere throughout the city. A copy of this schedule is attached to this judgment as Appendix B.

Mr. O'Caomh in his submission, said that both Valuers were agreed that the established Zone A rate for valuing premises in this section of Upper Baggot Street was a Zone A rate of £22 psf. Mr. Deegan has advanced no evidence to show why it should not be used in valuing the subject property. Mr. Deegan had provided no good reason why banks or similar types of user should be valued at a higher level than the established tone on the street. In effect the Respondent was attempting to value the Occupier rather than the property and in so doing was acting contrary to the Rating Law. It was he said common knowledge that banks in shopping centres paid exactly the same rents as other Occupiers and hence there was no reason to suppose that the situation would be different in any other location. It was the Commissioner who had established the tone on Upper Baggot Street and it was not open to

the Respondent to disregard this tone without showing good reason and this he had failed to do.

**Findings:**

1. It is common case that a Zone A rate of £22 psf is the established tone for premises in this section of Upper Baggot Street.
2. It is common case that the subject hereditament is substantially the same as adjoining properties and that it possesses no distinctive features nor does it occupy a better location on the street.
3. It is also common case that a sum of £250,000 was spent by the Appellant in extending and upgrading the ground floor accommodation which is fitted out to an unusually high standard to meet the Occupier's requirements.
4. The principal issue in this appeal is whether the appeal hereditament is to be valued by reference to the prevailing tone of the list as contended for by the Appellant or is to be valued at a higher Zone A rate to reflect its use as a bank as contended for by the Respondent. In accordance with Rating Law a hereditament must be valued in its existing state and circumstance at the relevant date. The rule *rebus sic stantibus* has two limbs - one relating to the physical state of the property and the other to its use. The appeal hereditament has all the physical characteristics of a shop and is located in a predominantly retail area. Having regard to the facts in relation to the appealed hereditament the persuasive burden of proof is on the Respondent to show that the higher Zone A rate is justified by virtue of its use as a bank and in the Tribunal's opinion this burden has not been discharged. Accordingly, therefore the Tribunal finds that the established Zone A rate should apply in principle. However, having regard to the fact that a sum of £250,000 was spent by the Appellant, the Tribunal considers that some upward adjustment is justified to reflect the quality of the accommodation and fit out provided at ground floor level.
5. The secondary issue in this appeal is whether or not the first floor office accommodation should be valued separately as requested by the Appellant. The Tribunal finds against the Appellant in this regard and finds that the unit of occupation in this instance is the ground and first floor accommodation.

**Valuation:**

Having regard to the above the Tribunal determines that the proper rateable valuation of the appeal hereditament is £176 based on a net annual value of £28,000 calculated as set out below.

Rateable valuation @ 0.63% = £176.00

**Ground floor**

Zone A            410 sq.ft. @ £25.00 psf = £10,250

Zone B            410 sq.ft. @ £12.50 psf = £ 5,125

Remainder      1,080 sq.ft. @ £ 6.25      = £ 6,750

**First floor**

Offices            616 sq.ft. @ £ 6.00 psf = £ 3,696

Cars              4 x £550                      = £ 2,200

£28,021

Net annual value £28,000

Rateable valuation @ 0.63% = £176.