

Appeal No. VA96/2/054

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

Governor & Company of the Bank of Ireland

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Bank at Map Ref: 111, Street: Main Street, Ward: Bray No. 3, UD: Bray, Co. Wicklow
Quantum - Comparison with banks in other towns not relevant

B E F O R E

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Marie Connellan - Solicitor

Member

Rita Tynan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF APRIL, 1997

By Notice of Appeal dated the 25th day of April 1996 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £210 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the valuation is excessive and inequitable in accordance with the provisions of the Valuation Acts, and on other grounds also."

This appeal came before the Tribunal by way of an oral hearing which took place in Dublin on the 20th day of September 1996. At the hearing the Appellant was represented by Mr. Owen Hickey, B.L. and Mr. Thomas Davenport, ARICS ASCS, Chartered Surveyor, Lisney. The Respondent was represented by Edmund Honohan, B.L. instructed by the Chief State Solicitor and Mr. Joseph McBride, B.Agr. Sc., MIAVI, a Valuer in the Valuation Office with 15 years experience.

The Property:

The property comprises a two storey over basement detached purpose built bank, constructed in 1972, located at the northern end of Main Street, Bray, Co. Wicklow on an island site between Church Terrace and Herbert Road.

The agreed accommodation is as follows:-

Ground Floor	Banking Hall/Offices	1,840 sq.ft.
First Floor	Stores	1,522 sq.ft.
Basement	Strongroom/Bookroom	280 sq.ft.
	Porter's Store	<u>14 sq.ft.</u>
Total net lettable floor area		<u>3,656 sq.ft.</u>

Outside there are two Pass machines and internally the building has a frontage of 22 feet and an overall depth of 105 feet.

Valuation History:

This property was first valued on the 1973 revision at £225 and was reduced at first appeal stage to £210. At the 1994/4 revision the premises were relisted and the existing valuation of £210, was left unaltered. No change was made by the Commissioner on foot of a first appeal and it is against this decision that the appeal to the Tribunal now lies.

The Evidence:

Prior to the hearing both Valuers submitted to the Tribunal and exchanged between them written submissions which were subsequently adopted by them at the hearing as their evidence in chief given under oath.

The Appellant's Evidence:

Mr. Davenport in his evidence briefly traced the history of the premises which was opened in 1973 and described how following the opening of a new bank at 45 Main Street, the subject was down graded to the status of a sub-office with a consequential reduction in staff of almost 75%. As a result the property is now too large for the scale of the banking activities carried on therein and the basement and first floor accommodation is now used solely for storage purposes.

Mr. Davenport stated that in his opinion the valuation of the subject should bear a close relationship to the valuation of retail premises close by which are valued on a zoning basis. He also opined that bank premises in retail locations should be valued upon the same manner and level as shops and in support of this contention he instanced Main Street, Swords and Rathfarnham Shopping Centre where the Valuation Office had not made any distinction between shops and banks. Accordingly, therefore he had valued the subject property on a zoning basis having regard to retail premises in the immediate vicinity and arrived at net annual value of £25,000 and a rateable valuation of £125 as set out below:-

Ground Floor	Zone A	440 sq.ft. @ £20 psf = £ 8,800
	Zone B	440 sq.ft. @ £10 psf = £ 4,400
	Zone C	440 sq.ft. @ £ 5 psf = £ 2,200
	Remainder	520 sq.ft. @ £ 4 psf = <u>£ 2,080</u>
	Total Ground floor	<u>£17,480</u>
	Add 10% for corner location	£ 1,748
First Floor	Stores	1,522 sq.ft. @ £3 psf = £ 4,566
Basement	Strongroom/Bookroom	280 sq.ft. @ £4 psf = £ 1,120
	Porter's Store	14 sq.ft. @ £3 psf = <u>£ 42</u>

Total	<u>£24,956</u>
	Say = £25,000

Reducing factor to translate NAV into RV = 0.5%.

Estimate of rateable valuation: £25,000 @ 0.5% = RV £125.

Mr. Davenport also made an alternative valuation on an overall basis as follows:-

Ground Floor

Banking Hall/Offices 1,840 sq.ft. @ £11 psf = £20,240

First Floor

Stores 1,522 sq.ft. @ £ 3 psf = £ 4,566

Basement

Strongroom/Bookroom 280 sq.ft. @ £ 4 psf = £ 1,120

Porter Store 14 sq.ft. @ £ 3 psf = £ 42

Total 3,656 sq.ft. = £25,968

Say = £26,000

Reducing factor to translate NAV into RV = 0.5%

Estimate of Rateable Valuation: £26,000 @ 0.5% = £130.

In arriving at his opinion of net annual value, Mr. Davenport said that he had reflected the fact that the building was badly proportioned, had no shop front and that the entrance was 2 or 3 steps above pavement level. All these factors he said would have an adverse effect on its suitability for retail use and hence on rental value. Whilst the property had return frontages to Herbert Street and Church Terrace, no commercial advantage was derived from these and consequently he had made no allowance in his valuation for this feature.

In support of his valuation Mr. Davenport introduced six comparisons including four shops in Main Street, Bray, the Bank of Ireland premises at 45, Main Street and 22a, Navan Road, Blanchardstown. Commenting on his comparisons Mr. Davenport said that his prime comparison was 11/12, Main Street which he devalued at a zone A rate of £22 psf based on the rent payable under the lease.

Under cross-examination, Mr. Davenport agreed that there was a second entrance to the subject premises off Herbert Street but said that no advantage was derived from this in terms of rental value.

Mr. Davenport also agreed that he had agreed the valuation of the other Bank of Ireland premises at 45, Main Street at the 1994/3 first appeal stage and that he had devalued the agreed figure in his submission at an overall rate per square foot basis. When asked why he had not used the zoning method for this property, Mr. Davenport replied that he did not do so because of the configuration of the building.

The Respondent's Evidence:

Mr. McBride's evidence in relation to the location and the building itself while being somewhat similar to Mr. Davenport's, differed in a number of respects. He considered the bank to occupy a focal position which afforded it a prominence on the street not enjoyed by other premises in the vicinity. He did not agree that the northern end of Main Street was substantially different from the remainder of the street and commented on the proximity of the Bray Shopping Centre and the main access route to the railway station. He opined that the subject occupied a better location than the other Bank of Ireland premises at 45, Main Street which had been valued at the 1994/3 appeal stage. In his opinion the proper net annual value of the subject property was £42,000 with a rateable valuation of £210, calculated as set out below.

Ground Floor	1,840 sq.ft. @ £16 psf =£29,440
First Floor	1,522 sq.ft. @ £ 7 psf = £10,654
Basement - Safes	280 sq.ft. @ £ 7 psf = £ 1,960
Store	14 sq.ft. @ £ 3 psf = <u>£ 42</u>
	Total <u>£42,096</u>

NAV Say £42,000. RV @ 0.5% of NAV = £210.

In response to a question from Mr. Honohan, Mr. McBride said that there was no hard and fast rule as to whether banks were valued on a zoning basis or on an overall rate per square foot basis. It all depended upon the circumstances in each case, but he was aware that in a number of instances banks had been valued on a zoning basis similar to adjoining retail premises. However, in this instance he had valued the subject on the same basis as the other Bank of Ireland premises at 45, Main Street which had been the subject of a recent revision and its valuation agreed with Mr. Davenport at the first appeal stage. This in his opinion was the best evidence available to the Tribunal.

Determination:

The Tribunal has carefully considered all the evidence and arguments adduced by each party to this appeal and makes the following observations and findings.

1. The question before this Tribunal on this appeal is no different from that which usually confronts it which is - what rent would a hypothetical tenant reasonably expect to pay for the subject hereditament in its actual state and circumstance at the valuation date. The rent so determined assumes that the premises are vacant and to let subject to the general rule of *rebus sic stantibus*.
2. The rule of *rebus sic stantibus* has been subject to extensive examination by this Tribunal and the courts but in the context of this appeal some of the comments contained in an English Lands Tribunal decision in *Midland Bank Limited v. Laham (Valuation Office)(1978) RAI* are particularly apposite "... in valuing for rating purposes it is necessary to take the hereditament as it stands ***rebus sic stantibus***; that the value thus restricted must relate to the hereditament in its existing physical state and that the use of the hereditament must be taken to be within the same mode or category as the existing use".
3. It is common case that the subject property was purpose built when constructed in 1972 and since then no alterations have taken place. Mr. Davenport in evidence under examination said that the property was not suitable for retail use due to its poor configuration, lack of shop front and the fact that the entrance was 2 or 3 steps over pavement level. Whilst the rule of *rebus sic stantibus* does not exclude the

possibility of any alterations to the hereditament it is the opinion of this Tribunal that such alterations must be minor and non-structural in nature.

4. From the evidence it would appear that in order to render this hereditament suitable for retailing purposes works other than those of a minor nature would be necessary. Hence the hereditament is to be valued in its actual physical state for its actual use or some other use of a similar nature.
5. The fact that the premises are not fully used by the occupier is not relevant to this appeal. In accordance with *Section 11 of the Valuation (Ireland) Act 1852* as amended by *Section 5 of the Valuation Act 1986*, the Tribunal has to determine as a question of fact the rent that a hypothetical tenant would pay for the hereditament taking one year with another.
6. It is noted that Mr. Davenport's alternative valuations prepared on an overall rate per square foot basis and on a zoning basis are virtually identical so that in effect nothing particularly turns on the valuation methodology. Indeed Mr. Davenport conceded this under re-examination by Mr. Hickey. Nonetheless it would appear that Mr. Davenport in agreeing the valuation of the other Bank of Ireland premises at 45, Main Street preferred the overall rate per square foot method and for the sake of consistency it would appear that this should be the method used in this instance.
7. Mr. Justice Barron in *IMI v. Commissioner of Valuation* made the following statement: "What must be considered are valuations which:
 - (a) are comparable,
 - (b) relate to tenements and hereditaments of similar function,
 - (c) have been made or revised within a recent period."
 Using the above criteria it is clear that the evidence of the Bank of Ireland premises at 45, Main Street is the most relevant to this appeal and since it is a common comparison it would appear that the respective valuers also consider it to be particularly relevant.
8. Having regard to the evidence the Tribunal finds that whilst there is little to choose between the location of the subject and 45, Main Street, such supremacy as there is lies with the former and that an allowance should be made in the valuation to reflect this and its prominent position on the street.

9. In terms of design and layout, it would appear from the evidence that such differences as there are are purely a matter of subjective opinion and on balance this Tribunal makes no adjustment one way or the other under this heading.
10. In terms of size, the Bank of Ireland premises at 45, Main Street is more than twice the size of the subject and all things being equal one would expect to see this fact reflected in the valuation.
11. Whilst the valuation of 45, Main Street was agreed the valuers have devalued the net annual value of £62,000 somewhat differently as set out below.

Bank of Ireland at 45 Main Street:

Valuation Office Devaluation		Appellant Devaluation	
Ground Floor	3,955 sq.ft. @ £12 psf	Ground Floor	3,955 sq.ft. @ £10.75 psf
First Floor	2,950 sq.ft. @ £ 5 psf	First Floor	2,950 sq.ft. @ £ 6 psf

12.

Having regard to the devaluation at (11) above the Tribunal prefers Mr. McBride's method and the relationship established between the ground floor and first floor accommodation as expressed in the square foot rates he applied.

13. Mr. McBride in addition to the evidence of 45, Main Street introduced evidence of four other bank premises located in other towns. The Tribunal finds this type of evidence to be of little assistance. Mr. McBride also introduced evidence of three lettings on Main Street, Bray, two of which were also included in Mr. Davenport's evidence. Mr. McBride analysed these comparisons on an overall rate per square foot basis whilst Mr. Davenport preferred the zoning method.
14. Mr. Davenport in arriving at his opinion of net annual value relied on his comparisons i.e. the two lettings as mentioned above, Dunnes Stores at 90, Main Street, Bray which was agreed at 1990 first appeal stage and 105, Main Street which was also agreed at 1990 first appeal stage. His last comparison the Bank of Ireland premises at Blanchardstown is not relevant to this appeal.

Valuation:

Having regard to the above the Tribunal determines the net annual value of the subject premises to be £36,400 giving a rateable valuation of £182 as set out below.

Ground Floor	Banking Hall	1,840 sq.ft. @ £14 psf = £25,760
First Floor	Offices	1,522 sq.ft. @ £ 6 psf = £ 9,132
Basement	Strongroom/Bookroom/Stores	294 sq.ft. @ £ 5 say = <u>£ 1,500</u>
	Total	<u>£36,392</u>

NAV Say £36,400 RV @ 0.5% = £182.