

Appeal No. VA96/4/005

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

Irish Continental Group Plc

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Freight Terminal at Map Ref: 17SaTUa, Alexandra Road, Ward: North Dock B, County Borough of Dublin

Quantum - Whether rent agreed with P&DB was an open market transaction

B E F O R E

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Brid Mimmagh - Solicitor

Member

Rita Tynan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF JULY, 1997

By Notice of Appeal dated the 6th day of August 1996 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £3,275 on the above described hereditament.

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

- "1. The valuation is excessive and inequitable.
2. The valuation is bad in law."

The appeal proceeded by way of an oral hearing which was held in Dublin on the 19th day of March and 9th day of May 1997. The Appellant was represented by Mr. Desmond Killen, FRICS, FSCS, IRRV, a Fellow of the Society of Chartered Surveyors in the Republic of Ireland and a Director of Donal O'Buachalla & Company Limited and the Respondent was represented by Mr. David Walsh, a District Valuer with 26 years experience in the Valuation Office. Mr. Robert Richardson of the Appellant Company also gave evidence.

The Property:

The subject of this appeal is a large freight terminal containing a total area of approximately 25 acres at Alexandra Road in the Dublin Docklands area. The valuation attributed to the buildings situate on the rateable hereditament has been agreed and it is only that portion of the rateable valuation in respect of the marshalling yard area that is in dispute and which has been assessed at a rateable valuation of £2,100.

Valuation History:

Arising out of a previous appeal to this Tribunal (VA88/036) the rateable valuation of lot no. 17ST was determined on an agreed basis at £3,600 as follows:-

Buildings	£1,500
Absolute	£2,100

At the 1995/3 revision, lot no. 17ST was listed for revision at which time lot no. 17Ua was amalgamated and the rateable valuation of new lot no. 17SaTUa was determined at £3,275:-

Buildings	£1,175
Absolute	£2,100

This assessment was appealed and on foot of the decision by the Commissioner of Valuation to make no change the matter was once again referred to this Tribunal, but only in respect of the rateable valuation of £2,100 attributed to the yard area.

The Appellant's Evidence:

Mr. Killen adopted his written submission and valuation which had previously been forwarded to this Tribunal and exchanged with the Respondent as his evidence in chief given under oath.

Mr. Killen gave evidence that the area of the yard which is the subject of this appeal has an agreed area of 10.38 hectares i.e. c. 25 acres and is held under a lease dated the 30th January 1975 from the Dublin Port & Docks Board. This lease is for a term of 150 years from 1st January 1972 at an initial rent of £25,700 pa subject to review with effect from 1st January 1981 and thereafter 7 yearly intervals. Mr. Killen then said that the rent payable from 1st January 1988 was equivalent to £7,000 per acre. The rent agreed with effect from 1st January 1995 was equivalent to rent of £10,000 per acre.

Mr. Killen provided the Tribunal with a copy of the lease which is in standard Dublin Port & Docks Board format and meets the requirements of the *Harbours Act 1946*.

Mr. Killen said that the actual rent paid under the terms of the lease in January 1988 should form the basis of determining net annual value and accordingly therefore he valued the yard area as follows:-

Lease Rent 1988	£ 7,000 pa
Agreed area	x <u>25</u> acres
NAV	<u>£175,000</u>
RV @ 0.63%	£ 1,103.

Mr. Killen introduced a second valuation based on two previous decisions of this Tribunal (**VA93/2/029 and VA93/2/030 - Bord Gais Eireann v. Commissioner of Valuation**) wherein two yards at Sir John Rogerson's Quay were valued at 20p psf equivalent to £8,700 per acre. However, Mr. Killen stressed that the yard areas dealt with at these appeals were 0.25 and 0.47 acres respectively, hence he suggested that there should be a quantum allowance in respect of the subject premises.

Mr. Killen submitted evidence of two other comparisons upon which he had relied in arriving at his opinion of rental value. These comparisons are attached to this decision as Appendix 1.

Mr. Killen at the resumed hearing on the 9th May introduced evidence of two other lettings in the Dublin Port & Docks Board and these are set out detail in Appendix 1A attached to this decision.

Mr. Killen said that he considered the letting in Marine Terminals Limited to be of assistance and gave evidence that this yard contained approximately 16.8 acres and was let for a term of 99 years from 7th December 1992 at an initial rent of £160,500 pa. Under the terms of the lease the lessee is required to pay an additional annual sum by way of rent of £35,175 giving a total payment of £195,675 pa. Mr. Killen introduced a letter from a representative of Marine Terminals Limited to the fact that the rent payable under the lease was equivalent to £10,000 per acre on that section of the yard which was undeveloped at £12,500 per acre on the developed section of the yard.

Mr. Killen in the light of the evidence in relation to the Marine Terminal letting sought consent to submit a revised valuation which was granted and is as set out below.

NAV 25 acres at £8,750 per acre = £218,750

RV 0.63% = £1,375.

Mr. Robert Richardson of the Appellant Company gave evidence in relation to the development of this portion of the Dublin Port which first opened in or around 1967. The

freight terminal he said is built on reclaimed land and the Appellant Company contributed three fifths of the cost of development and in recognition of this contribution the company is entitled to a 50% reduction on the rent determined at each rent review. Mr. Richardson said that at the commencement of the lease the site was handed over in a rough and unfinished state and the company at its own cost levelled the site and laid the hard standing and top surface.

Mr. Richardson was subjected to cross examination by Mr. Walsh and in response to a question he agreed that the North Wall was the primary section of Dublin Port. He described the Appellant's operation as being a common user facility and not a roll on/roll off facility. Whilst it was essential to have good quay frontage he could not agree with the proposition put to him by Mr. Walsh that the front section of the yard with quay frontage was more valuable than the rear section. He said that the entire yard was required for the operation and it was essential to have sufficient space for handling the containers as they came off the ship for onwards distribution by road. Whilst the front section of the yard and quay was used for loading and unloading the containers it was necessary to have an adequate area for storing the containers until they are transported elsewhere.

Mr. Walsh adopted his written submission and valuation which had previously been forwarded to the Tribunal and the Appellant's Valuer as being his evidence in chief given under oath.

Mr. Walsh said he considered the subject yard to occupy a prime location within the area under the control of the Port & Docks Board. He considered the best method to arrive at the net annual value of this hereditament was to examine the rateable valuation of other yards in the Port & Docks area. He also contended that the existing valuation of the yard was agreed at the previous reference to this Tribunal (VA88/036) as contained in the decision dated 2nd April 1990. In his opinion the evidence of this agreement was the best available to the Tribunal.

Mr. Walsh submitted details of eight comparisons as set out in Appendix 2 of this judgment.

At the resumed hearing, Mr. Walsh submitted details of a further comparison, 17R Alexandra Road and this is set out in Appendix 2A.

Under cross examination, Mr. Walsh agreed that several of his comparisons were determined prior to the introduction of the *Valuation Act 1986* and hence of limited assistance to the Tribunal. In response to further questions from Mr. Killen he said that the rents agreed in the Port & Docks area were not necessarily open market rents in the true sense of the word as the Board operated in a monopoly situation and took a broad business view in the best interest of the port.

Mr. Killen asked Mr. Walsh for his views on the Marine Terminal letting and he opined that this property occupied an inferior site to that of the subject and hence had a lesser rental value.

Determination:

The Tribunal has carefully considered all of the evidence and arguments adduced at the oral hearing and the written submissions presented by the parties and makes the following findings.

1. Passing rents are generally accepted as being *prima facie* evidence of rental value and no evidence was adduced at the hearing to indicate that the rent agreed at the 1988 rent review in respect of the subject property was not an arms length transaction.
2. The Tribunal has carefully studied the lease under which the property is held and has come to the conclusion which is supported by Mr. Richardson's evidence that the yard when first leased to the Appellant was in a rough and unfinished condition.

Further works of levelling the site and bringing it to its present state are in the nature of tenants improvements.

3. Section 11 states that the property is to be valued in its actual physical state and circumstance and hence it follows in this instance that the area to be valued in the yard in its improved state and not its original state at the commencement of the

lease. It is presumed that the rent agreed at the 1988 rent review was in accordance with the rent review provisions contained in the lease which states that:-

"The parties will enter into negotiations for the purpose of agreeing upon the current market rent of a clear and vacant site of 10.38 hectares adjoining a shipping quay at the port of Dublin."

4. The Tribunal considers the evidence in relation to the Marine Terminal site to be relevant in that it indicates a clear distinction between the rent paid for an undeveloped site and a developed site i.e. £10,000 per acre and as against £12,500 per acre.
5. The Tribunal does not consider Mr. Walsh's contention that the rent agreed by the Port & Docks Board are not open market transactions. Whilst the Port & Docks Authority has a monopoly of land in the port area it cannot abuse its position otherwise operators would go elsewhere. Hence it follows that neither party is in a position as to wield excessive pressure on the other as both parties have a common interest and wish to continue in business.
6. The Tribunal does not feel in any way bound by the decision at VA88/036 as this was a determination by mutual agreement of the parties at that time.
7. The Tribunal does not accept Mr. Walsh's valuation approach whereby he valued the lands with quay frontage at a higher level than the back section. Mr. Richardson's evidence made it clear that from an operational point of view all of the site is of equal value.
8. The Tribunal found Mr. Richardson's evidence in relation to the development of the site and the operation of the terminal to be of assistance to the Tribunal in its deliberations.
9. The Tribunal in arriving at its opinion of net annual value has had regard to the actual rent agreed under the terms of the lease in 1988. This Tribunal has also taken into account the fact that the yard is to be valued in its actual physical state and circumstance. On balance the Tribunal prefers the evidence introduced by Mr. Killen.

Having regard to the foregoing and all of the evidence and arguments adduced at the oral hearing the Tribunal determines the rateable valuation of this section of the hereditament to be £1,455 calculated as set out below.

25 acres at £9,250 per acre = £231,250

RV @ 0.63% Say = £1,455. Say £1,455.

Giving a total RV of the entire hereditament of £2,630.