Appeal No. VA97/2/002

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Marine Terminals Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Office & Yard at Map Reference 81.82.87.89.90/b Pigeon House Road, Ward: Pembroke East A, County Borough of Dublin
Quantum - Rateable occupation

B E F O R E

Con Guiney - Barrister at Law	**Deputy Chairman**
Marie Connellan - Solicitor	**Member**
Ann Hargaden - FRICS.FSCS	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF DECEMBER, 1998

By Notice of Appeal dated the 7th day of April 1997 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £2,460 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that;

"1. The valuation is excessive and inequitable

2. The valuation is bad in law."

The relevant valuation history is that prior to the 1995 revision the subject hereditament was part of a number of hereditaments in the occupation of the Dublin Port and Docks Board. At November 1995 the Commissioner of Valuation created the subject hereditament with rateable valuation £270 (buildings) and £2,200 (miscellaneous) assessed thereon.

In November 1995 an appeal against the revised valuation was lodged by the appellant. On 25th March 1997 the Commissioner issued his decision reducing the valuation to £2,460 being £2,200 (miscellaneous) and £260 for buildings.

The issues before this Tribunal are;

(1) the quantum of the yard

(2) the rateability of a portion of the hereditament bearing an agreed R.V. of £80 and sought to be distinguished as being exempt by virtue of being in the occupation of the Customs and Excise.

A written submission prepared by Mr. Desmond Killen FRICS, FSCS, IRRV and a director of Donal O'Buachalla & Company Ltd. was received by the Tribunal on 18th November 1997.

Mr. Killen's written submission calculated the rateable valuation for the miscellaneous part of the hereditament on two basis as follows:

Yard 20.53 acres @ £9,000 = £18,770

N.A.V. @ 0.63% = £ 1,165

<u>Or</u>

If it is regarded that The Irish Continental Lines property and the subject are on a par then:

Yard 20.53 acres @ £9250 pa = £18,990 ***N.A.V.***

@ 0.63% = £1195 ***R.V.***

The written submission went on to deal with the claim for exemption with respect to the portion of the hereditament occupied by the Customs and Excise. It was stated that the Customs and Excise in their occupation of this property satisfied the four essential ingredients of rateable occupation as set out in Judge Keane's book "The Law of Local Government in the Republic of Ireland" at page 283.

The written submission contained an appendix marked D which contained a copy of extracts from the Valuation Lists showing that the Commissioner of Valuation had distinguished as exempt properties occupied by Customs and Excise at Dun Laoghaire, Rosslare and Drogheda.

The written submission contended that the occupation by the Customs and Excise in this hereditament was occupation by a Government department and should be distinguished as exempt.

Finally the written submission stated that the area of the yard in the subject hereditament was agreed between the appellant and the respondent at 20.5 acres.

The Tribunal also received with Mr. Killen's written submission another document described as appendices. This document contained photographs of the site of the subject hereditament and photographs of the building occupied by the Customs and Excise. Also contained in this document was a copy of the draft lease for the subject property between Dublin Port and Docks Board and Marine Terminals Limited and dated 1996.

A written submission prepared by Mr. Tom Stapleton on behalf of the Respondent was received by the Tribunal on 21st November 1997. Mr. Stapleton is an Appeal Valuer in the Valuation Office with over thirty years experience there.

The written submission described the yard as a container terminal of over 20 acres fronting South Bank Quay with 'road frontage' to Old Pigeon House Road, South Bank and new Whitebank Road.

The written submission described the yard as having four components as illustrated in the map attached to the draft lease which Mr. Stapleton had also included in his written submission. These components were;

Area 3 quayside (tar macadam)	13.71 acres
Area 5 Cobbledock (pt)	0.36 acres
Area 7	1.98 acres
Area 8	4.45 acres
	20.50 acres

The written submission calculated the rateable valuation as follows;

20.5 acres c £16,000 per acre = £328,000 ***N.A.V.***
R.V. @ 0.63% = £2,066

or
20.5 acres = £892,980 ft^2 @ £0.36 p.s.f. = £321,473
R.V. @ 0.63% = £2,025

The R.V. of the buildings were agreed at £260.

Mr. Stapleton's written submission contained two yard comparisons which were the subject of determinations made by this Tribunal namely VA96/2/028 and VA96/2/029. These properties were located on nearby quayside yards close to Dublin Corporation Sewage treatment works.

The written submission also contained two other comparisons which were determined by this Tribunal namely VA88/40 and VA88/41, 42, 43. Details of Mr. Stapleton's comparisons and his observations thereon are annexed to this judgment as Appendix One.

Finally Mr. Stapleton's written submission contained a copy letter dated 15th June 1995 from the Managing Director of Marine Terminals Limited to Mr. Killen which set out *interalia* details of the rent paid for the subject property and the amount of development expenditure on the site.

The oral hearing took place at the Tribunal's office in Dublin on 1st December 1997.

The appellant was represented by Mr. Eoin Hickey B.L. and the respondent by Mr. Eamonn Marry B.L.

Mr. Ted O'Neill, Chairman of Marine Terminals Limited gave sworn evidence on behalf of the appellant. He referred to the lease for the subject property between his company and Dublin Port and Docks Board. The lease had been entered into in December 1992 for the purpose of Lo/Lo stevedoring at the South Bank Quay of Dublin port. The lease had not yet been signed but the appellant company had been paying rent for the last four years.

In his evidence Mr. O'Neill referred to the buildings occupied by the Customs and Excise. The premises occupied by Customs and Excise had been located at the berthing facilities when the site had been controlled by the Dublin Port and Docks Board. The appellant company relocated Customs and Excise to the car park when it took control of the subject property. Mr. O'Neill stated he had never been inside the Customs premises. The building was used solely for the purposes of Customs and Excise.

On cross examination by Mr. Marry, Mr. O'Neill stated that the Customs Office was owned by the appellant company and it had spent £200,000 on it. Mr. O'Neill further stated that a customs facility was required for the appellant's business outside the European Union. Mr. O'Neill stated that the appellant had to make this facility available to Customs and Excise but he said there was no document available to show this requirement. Mr. O'Neill stated that in locating facilities for Customs and Excise on the appellant company's site it was doing what it considered as its obligation.

Questioned by Mr. Marry as to whether the appellant could ask Customs and Excise to vacate the site, Mr. O'Neill said he did not know.

Under further cross-examination Mr. O'Neill stated that the appellant company was responsible for the maintenance and repair of the Customs building. The company also bears the cost of heat and light for the building.

Mr. O'Neill stated that the Customs and Excise premises is totally separate from the offices of Marine Terminals Limited and the company has no access to the building. Marine Terminals Limited does however, have a key to the Custom's office as it is responsible for the overall security on the site. Mr. O'Neill stated the Customs and Excise did not make any payment to the appellant company for the offices which he confirmed is located within the area comprised in the lease.

Mr. O'Neill was cross-examined as to the storage area of the subject property which faces onto the dock. He stated that the appellant company handled between 60,000 to 70,000 units per annum. These units could be twenty feet or forty feet.

Mr. O'Neill stated that there were three gantry cranes on the quay side. He further stated that the depth of water at the berth was 8 metres while the depth of the north side berth was 10 metres. A consequence of this was that Marine Terminals cannot handle transatlantic ships.

Mr. O'Neill stated the length of the berth available to it was 567 metres but the actual usage was limited to 530 metres due to the RO/RO ramp intruding into the available area. Again Mr.O'Neill stated the cranes at the dockside were dated and this limited the through put on the site by the appellant company.

Under further cross-examination Mr. O'Neill confirmed that expenditure on areas 8,3 and 5 amounted to £640,000 and was gross of European Union subventions. Mr. O'Neill also confirmed that the passing rent for undeveloped land under the lease was £10,000 per acre, £12,500 per acre for developed land , and £10,600 for one area.

Mr. O'Neill stated that Marine Terminals Limited secured planning permission for the Customs and Excise facility. When questioned as to whether the appellant company would be entitled to compensation if Dublin Port and Docks Board re-occupied the subject property pursuant to Section 35 of the lease Mr. O'Neill stated this would be the subject of negotiations.

Under further cross-examination Mr. O'Neill stated that Marine Terminals Limited took the initiative in locating the Customs and Excise on the subject property. In 1992 the customs building was in a ruinous state and Dublin Cargo Handling had no funds to invest in the building. Therefore the appellant company had invested in proper portable offices for customs and excise and the company itself.

Mr. O'Neill re-examined by Mr. Hickey confirmed that Marine Terminals Limited have never occupied the offices used by Customs and Excise.

Mr. Killen gave sworn testimony on behalf of the appellant. He adopted his written submission as his evidence to the Tribunal.

Mr. Killen confirmed that the details of the tenure of the subject hereditament had been agreed with the respondent. The timing of the rent for areas 3 and 5 was December 1992, area 7 December 1992, and area 8 December 1994.

In his sworn testimony as to the quantum of the subject yard Mr. Killen referred to *VA96/4/005 – Irish Continental Group plc. –v- Commissioner of Valuation* and in particular page 7 of the judgment and the value of £9,250 per acre.

Mr. Killen stated that he had used this value per acre for his second method of valuation with respect to the subject property although he had in fact submitted a lower value per acre in the Irish Continental Group plc. Case. Mr. Killen also pointed out to the Tribunal that the respondent accepted in VA96/4/005 that the Marine Terminals Limited site was inferior to the site occupied by the Irish Continental Group plc.

Mr. Killen referred to page 6 of the Irish Continental Group plc case where the Tribunal indicated that there is a clear distinction between rent payed for undeveloped and developed land at the subject hereditament in 1992 namely £10,000 per acre and £12,500 per acre respectively.

Mr. Killen referred to one of Mr. Stapleton's comparisons VA96/2/028. He stated that the lease rent quoted was £7,650 per acre and Mr. Killen accepts this as being accurate. The development costs being suggested by the respondent in this comparison are £8,050 per acre. Mr. Killen considered this value for development costs was unrealistic and not supported by evidence.

In further evidence Mr. Killen stated that yards in Dublin Port are let per acre and not per sq.ft.

Again Mr. Killen stated the correct figure for improvements at the subject hereditament was £640,000 but there had been European Union grants totalling £295,000. This expenditure covered area 8.

As to the exemption claim Mr. Killen stated that the Customs and Excise have exclusive and beneficial occupation of the building concerned. He said it was not unusual to have a customs building in a port, there were five such examples listed in his written submission.

Under cross-examination by Mr. Marry, Mr. Killen stated it was the public which was benefiting from the location of the Customs and Excise building on the subject property when they used the facility in the course of their business.

Mr. Marry referred to VA88/118 and VA89/148, C.I.E. –v- Commissioner of Valuation. Mr. Killen stated the facts in that case were distinguishable from the present case. It was held that C.I.E. controlled a yard containing a bonded area operated by customs and excise for cars and it derived a benefit from this. It was held that C.I.E. were in rateable occupation of the yard. Mr. Killen stated that his written submission contained details of buildings at the same location occupied by Customs and Excise which were distinguished as exempt from the payment of rates.

Mr. Stapleton gave sworn testimony on behalf of the respondent. He adopted his written submission as his evidence to the Tribunal. Mr. Stapleton stated that the yearbook of the Dublin Port and Docks Board confirms the figure of £1,000,000 expenditure on improvements at the subject property as set in page 4 of his written submission.

Mr. Stapleton stated that his inspection of the subject property showed 7 metres as the depth of the berth and the length of the berth was 530 metres. He contrasted this with the facility in the Irish Continental plc. case where length of the berth was 220 metres and the Irish Ferries site had a berth depth of 6.1 metres. Again the crane capacity at the Marine Terminals Limited site was 105 tons while at the Irish Ferries site the crane capacity was 70 tons. Mr. Stapleton stated that length of berth and crane capacity are crucial factors in the operation of a container terminal.

Mr. Stapleton said he had recently inspected the surface of area 8 of the subject property after a rainfall. There was no sign of water indicating good drainage. Area 7 of the subject property has a slope but he saw no signs of water lodging.

When he had inspected the Irish Ferries yard he found a poor surface there. There were holes in the surface where the water lodged.

Again in the subject there are buildings which do not obstruct traffic. In the Irish Ferries site there are a large number of buildings in the centre of the site as well as buildings at the back of the site. All these buildings impede traffic on that site.

Mr. Stapleton said there is a marshalling yard immediately adjacent to the subject hereditament and it is four acres in area. It gives access by way of entry and exit to the subject property and is beneficial to it. In the case of Irish Ferries access is from the public road. Mr. Stapleton said that the subject property has a very good site.

Mr. Stapleton referred to item 5 in his valuation history at page 4 of his written submission. This hereditament had been occupied by Everton Haulage and with a R.V. of £150 that devalues at £1,600 per acre. He said that the Hammond Lane site and the Irish Cement site which were his

first two comparisons were valued at £15,000 per acre. Mr. Stapleton said the subject was superior to both of these sites. He said he was the appeal valuer in 1990 when the values for these sites were agreed. These properties, valuations had been appealed to the Tribunal in later proceedings. A decision was given in February 1997 which mostly affirmed the agreed values per acre in 1990.

Mr. Stapleton said that improvements at Lot 88a in his comparisons were taken at 225,960 sq.ft. at £1.85 p.s.f. He said that £1.85 p.s.f. had been annualised at 10%. Mr. Stapleton said that when he was valuing the improvements he had been told by the manager of the South of Ireland Ashphalt Company that the cost of surfacing was £1.85 p.s.f. He said that he was recently informed that the cost of surfacing a large greenfield site to accommodate heavy traffic was £2.85 p.s.f.

Mr. Stapleton said that the Irish Continental Group plc. relied on by the appellant is an inferior property to the subject. He also said that the review rent on the 1st February 1995 for Irish Ferries is £10,000 per acre.

On cross-examination by Mr. Hickey, Mr. Stapleton agreed that the marshalling yard immediately adjacent to the subject property was not part of the hereditament being appealed to the Tribunal. Mr. Hickey put it to Mr. Stapleton that the cost of improvements at the subject was £640,000 and not £1,000,00 and this was shown in the copy letter in his written submission from the managing director of Marine Terminals Limited to Mr. Killen dated 15th June 1995.

Mr. Hickey put it to Mr. Stapleton that there are actual rents for the subject property which are contained in his written submission. Mr. Hickey further enquired from Mr. Stapleton as what a rent of £10,000 per acre in 1992 would be in 1988. Mr. Hickey suggested that it would be £9,250 or less in 1988 as presented by Mr. Killen in his written submission.

In reply Mr. Stapleton offered a value of £8,000 for 1.9 acres. Mr. Stapleton said he would apply the same rate to 20 acres as it was the policy of the Dublin Port and Docks Board to value all land in the area at the same rate.

On further cross-examination Mr. Stapleton agreed that actual rents are the best guide to valuations. Mr. Stapleton further stated that his valuations were based on adjoining yards which were the subject of Tribunal decisions. These yards were inferior to the subject. Mr. Stapleton said he would be adding to the £12,500 per acre for the subject due to the fact that £360,000 had been spent on the site. Area 8 had £280,000 spent on it. This was an undeveloped site. He would be adding 10% on £280,000. This was a low figure and it worked out at £1.45 p.s.f. in 1994.

Under further cross examination Mr. Stapleton accepted that the rent for the Irish Continental Group Plc's site was £7,000 in November 1988 and £10,000 per acre on 1st January 1995.

In his submissions on the exemption claim Mr. Marry said the respondent was relying on VA88/118 and VA89/148 C.I.E. –v- Commissioner of Valuation. In that case the Tribunal found that the appellants were in exclusive occupation of the subject hereditament and the Customs and Excise authorities were on the premises purely for the purposes of carrying out a statutory role. Mr. Marry said that paragraph 11 of the lease for the subject was very relevant. This part of the lease prevented the appellant from subletting without the consent of the landlord. There had been no evidence of an application by the tenant to sublet. Customs and Excise are given a facility to locate on the subject property and it is to the benefit of the appellant's business.

The services provided by the Customs authorities can be provided elsewhere in the port. The arrangement with Customs and Excise is one which suits the appellant and in Mr. Marry's submission the appellant was in full rateable occupation of the premises used by the Customs authorities.

Finally Mr. Marry submitted that the appellants satisfied the four criteria for rateable occupation set out in Judge Keane's book on Local Government Law in the Republic of Ireland (page 283). The appellant was in paramount occupation of the offices on the subject hereditament and the Customs and Excise were there as permissive occupiers.

In his submission Mr. Hickey stated the offices were occupied for a public purpose by the Customs and Excise and the appellants were deriving no profit from the occupation. Mr. Hickey sought exemption pursuant to the proviso contained in Section 63 of the Poor Relief (Ireland) Act 1838.

Mr. Hickey said that Section 71 of the 1838 Act provides that rates will be paid by the person in "actual occupation" of the rateable property at the time it is made. Section 124 defines occupation as being the "immediate use or enjoyment" of the property. It was Mr. Hickey's submission that the facts in this case satisfied the four criteria in Judge Keane's book as showing the Customs and Excise to be in rateable occupation of the offices.

On the issue of paramount occupation Mr. Hickey stated this was dealt with on page 284 of Judge Keane's book. Mr. Hickey stated that it was a question of fact as to who is in paramount occupation. He said that there was only one party in occupation here and that was the Customs and Excise.

Mr. Hickey said Customs and Excise were licensees and permissive occupiers of the offices. Mr. Hickey referred to *Carroll –v- Mayo County Council* 1967 IR 364. He stated that this case was authority for the proposition that a permissive occupier can be held to be in rateable occupation of a hereditament.

Mr. Hickey stated that the facts in the Tribunal case advanced by Mr. Marry, C.I.E. –v- Commissioner of Valuation were distinguishable on the facts from the present appeal. The property in contention there was a compound and transit shed for imported cars.

Mr. Hickey said on the issue of quantum for the yard that actual rent is best evidence for valuation. In this case there is an actual rent. Mr. Killen had an actual rent in 1992 and he has taken it back to 1988 giving £9,250 per acre per annum and derived an N.A.V. from that.

Determination

The Tribunal has considered the written submissions, the evidence and the submissions of both the appellant and the respondent.

The Tribunal finds that the appellant is in rateable occupation of the offices used by the Customs and Excise at the subject hereditament by virtue of its paramount occupation of the said offices.

The Tribunal's finding in this respect is grounded on the following evidence which it found to be persuasive and uncontested.

The appellant company took the initiative in locating the Customs and Excise on the site. It applied for planning permission for the offices and invested £200,000 on their erection. The offices are owned by the appellant company. The company was responsible for the repair and maintenance of the offices. Again it was responsible for the heat and light in the offices. The appellant company was in charge of security on the site and it has a key to the offices used by the Customs and Excise. Again the Customs authorities did not make any payment to the appellant company for the use of the offices.

Furthermore the Tribunal finds that it is a reasonable inference that the presence of the Customs and Excise on the subject property is of benefit to the appellant company.

Accordingly the appellant shows all the indicia of an active and paramount occupation of the Customs and Excise offices. This is in marked contrast to the facts in the case of Carroll –v- Mayo County Council 1967 I.R. 368, where in the words of Henchy J. there was "a withdrawal of the owner from the occupation" so as to make a licensee or permissive occupier in rateable occupation.

In arriving at a rateable valuation on the yard in the subject hereditament the Tribunal finds that the *Irish Continental Group plc. - VA96/4/005* is the most relevant comparison because of its equivalence in area. The evidence before the Tribunal which it accepts is that the subject hereditament is physically a better site in terms of surface, circulation space, and access. The

Tribunal also finds that the marshalling yard immediately adjacent to the subject hereditament (though not part of it) is of benefit to the property. Again the subject property had a better berth length and depth of berth than the Irish Continental Group plc.

The Tribunal has also taken into account the passing rent for the subject property in 1992 and 1994.

The Tribunal, however, finds that the appropriate starting point in fixing a rate per acre for the subject hereditament is £9,250 per acre as determined in the Irish Continental Group case. The Tribunal considers that there should be an increase in the value per acre due to the better condition of the subject property in comparison to the Irish Continental site. The Tribunal considers this value should be £9,500 per acre.

£9,500 per acre per annum for 20.53 acres gives a ***N.A.V.*** £195,035
@ 0.63% = £1,228.72 ***R.V***
Say = £1,229 ***R.V.***
Buildings = £ 260 ***R.V.***

The Tribunal therefore determines the rateable valuation of the subject hereditament to be £1,489.