

Appeal No. VA98/3/006

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

Telecom Eireann

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Mast / Antenna at Map Reference 10P, Townland: Riverstown, ED: Cork Upper, Co. Cork

Valuation Method for Mast site

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairman

John Kerr - MIAVI

Member

Michael Coghlan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF NOVEMBER, 2001

By notice of appeal dated 20th August 1998 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £35 on the above described hereditament. The grounds of appeal as set out in the notice of appeal are.

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

This appeal came before the Tribunal by way of an oral hearing which took place on the 15th February 2001, 20th July 2001 and the 26th July 2001 at the offices of the Valuation Tribunal at Ormond House, Ormond Quay, Dublin 7. The appellant was represented by Mr. Desmond Killen FSCS, IRRV of GVA Donal O Buachalla & Company and the respondent by Mr. Terence Dineen a District Valuer in the Valuation Office.

The Property

The property comprises of a mobile telephone mast complex owned by Eircell located on a hillside just north of Riverstown which is part of the greater Cork city area.

The mast is of triangular lattice type construction attached to steel plates held in situ in a bed of reinforced concrete. The galvanised legs are 6.6 metres apart at the base and the overall height is in the order of 36 to 38 metres.

Beside the mast is a small steel sided portacabin which houses the control equipment whilst the aerials consist of two poles and three fluorescent type light fittings.

The site area is approximately 707sq metres in extent and is enclosed by a 3 metre high concrete post and wire fence with access through a steel gate. Access to this gateway is via a right of way over a short stone passage leading to another gateway set in a stonewall where it meets the public road of a housing estate. Adjoining the site is an ESB pole with transformer and underground supply to the control cabinet.

The site together with the necessary right of way was purchased in or about 1997 at a consideration of £22,000. The mast and foundations cost £25,000, the fence and site thththwork £15,000 and the portacabin £3,000.

Valuation History

The property was first valued at the 1997/4 revision and the rateable valuation determined at £35. No change was made at first appeal stage and it is against this decision that the appeal to this Tribunal now lies.

The Evidence Of The Appellant

Prior to the commencement of the hearing Mr. Killen forwarded a written submission and valuation which was received by the Tribunal on the 1st February 2001. On the 5th February the Tribunal received a second submission and valuation from Mr. Killen with the request that the first submission be withdrawn. At the oral hearing Mr. Killen adopted his second submission and valuation as being his evidence in chief given under oath.

In his evidence Mr. Killen contended for a rateable valuation of £25 of which £10 was attributed to the site and the remainder attributed to the other rateable elements of the hereditament in accordance with an internal document prepared by the Valuation Office dealing with the valuation of masts and antennae dated the 2nd February 2001. In support of his valuation of the site Mr. Killen introduced a number of comparisons contained in two schedules which are set out in the Appendix attached to this judgement.

Under cross examination Mr. Killen confirmed that during negotiations at first appeal stage he had taken a percentage of the purchase price as being equivalent to net annual value. However at this stage in the proceedings he had come to the conclusion that this perhaps was not the most appropriate method to adopt and was now relying solely upon rental evidence as set out in his list of comparisons. Nonetheless in arriving at his opinion of net annual value on this basis he had regard to the purchase price of the site in the sum of £22,000. Mr. Killen pointed out that there was no consistent approach in the Valuation Office regarding the valuation of the site element and some valuation teams were in fact prepared to agree the net annual value of the site element on the basis of a percentage of the purchase price.

Mr. Killen agreed with Mr. Dineen that the three principal requirements for a mobile mast was the signal strength at the location, population and elevation and suggested that availability and coverage were also important factors. He also agreed that the availability of alternative sites was greater in rural areas than within built up areas where it was likely that the greater number of phone users lived. Mr. Killen further agreed that most of his comparisons which were drawn from information sources within his own office records were located on hilltops in rural locations.

Mr. Killen contended in his evidence that in the absence of a reliable index for mobile telephone sites he had applied the J L W Property Index for Industrial Property in order to arrive at rental values as at November 1988. In his opinion the CPI was not a property index as such and the Valuation Tribunal have so stated in a number of judgements over the past several years.

The Evidence for the Respondent

Mr. Dineen prior to the commencement of the oral hearing forwarded a written submission and Valuation which was received by the Tribunal on the 21st June 1999 and submitted a supplementary précis to the Tribunal on the 31st January 2001. At the oral hearing Mr. Dineen adopted both submissions as being his evidence in chief given under oath.

In his evidence Mr. Dineen contended for a rateable valuation of £35 of which £20 was attributed to the site and £15 attributed to the other rateable elements of the hereditament in accordance with the internal document prepared by the Valuation Office and dated the 20th October 2000 previously referred to. In support of his valuation of the site element Mr. Dineen introduced six comparisons as set out in the Appendix attached to this judgement. At the hearing Mr. Dineen said he was not relying upon his comparisons, 1 and 7, as they were in respect of license arrangements for attaching antennas to existing mast structures.

Under cross examination Mr. Dineen said that this appeal was in the nature of a test case as to what was the appropriate method of adjusting passing rents to November 1988 levels. He contended that the CPI was the most appropriate index in the circumstances. He accepted Mr. Killen's evidence to the fact that some teams in the Valuation Office accepted a percentage of purchase price as being equivalent to net annual value but opined that such a method of valuation was not necessarily the correct one to adopt in determining the Net Annual Value of mobile telephone mast sites.

Mr. Dineen agreed with Mr. Killen that there was a wide variation in the rents being paid but this merely represented the vagaries of the market place. He further agreed that as a general

statement all sites were of equal importance from an operational point of view but this did not mean that all were of equal rental value.

Findings

- 1.** The past several years has seen the emergence and growth of the mobile telecommunication industry resulting in an increased demand for sites throughout the country. This increased demand has led to an awareness among property owners of land and buildings of the opportunity of creating an income flow from a right to erect a mast or attach antennae to existing structures.
- 2.** It is clear from the evidence adduced at this appeal that there is a significant variation in site values both in capital and rental terms due presumably in part to location and site characteristics. However where evidence of an actual rent is available and where rents of similar sites and similar locations is also available such evidence is the best evidence and considerable weight must be attached to it. In those circumstances where the site is owner occupied regard may be had to the purchase price but little weight attached to it. As a general statement rental values of rooftop sites for antennae will be of little assistance in the valuation of “greenfield” sites.
- 3.** Mobile telecommunications installations are a relatively new type of hereditament and it is only in recent years that they have appeared in valuation lists. Most of the evidence of site rentals therefore are post 1995 and this inevitably makes the valuers task difficult having regard to Section 5 of the Valuation Act 1986. In an effort to implement Section 5 in a fair and equitable manner the Valuers have adjusted the rents passing by reference to recognised indices. Mr. Killen considers the JLW index to be the most appropriate and selected the industrial element of the index to be the most helpful. Mr. Dineen on the other hand considered the CPI index to be the most appropriate.
- 4.** As a general statement the Tribunal considers adjustments made by reference to indices to be of limited assistance and should only be used in circumstances where no reliable rental evidence as of November 1988 exists. However in the circumstances of this appeal there appears to be no evidence of site values whether rental or capital at or about November 1988 so that valuers are faced with something of a dilemma in arriving at Net

5. In regard to the Jones Lang Wooden index relied upon by Mr. Killen it is the opinion of this Tribunal that this index is of limited value as it is based mainly on a small number of prime industrial investment properties which are located in Dublin and other major conurbations. On the other hand the CPI index is a widely based index based on a range of consumer goods and services including mortgage costs. However it is noted that a number of lease arrangements in respect of mast sites provide for rent reviews to be determined on the basis of CPI rather than on the conventional open market value basis. This presumably recognises the perceived difficulties that might be encountered in the market in determining open market value at periodic rent review dates.
6. In the circumstances of this appeal the Tribunal considers the CPI to be the more appropriate but must insist that this determination is based solely on the evidence adduced at this appeal and is not necessarily to be taken as a precedent to be used in future appeals. In this regard the Tribunal commends the Valuation Office for the document it has produced regarding the valuation of masts and antennae. Indeed given the difficulties experienced in the valuation of the site element and having regard to the wide disparity of rental values and capital values and the adjustments necessary to bring such evidence back to 1988 levels, it appears to the Tribunal that it may be possible to produce a similar document dealing with the site element. Such an innovation would also bring with it a uniform approach by the valuation teams where there currently appears to be a lack of uniformity in valuation methodology. However in view of the Tribunal's findings in the Appeal VA97/4/001 – Irish Shell Ltd. v Commissioner of Valuation it may be better if the recommended figures were expressed in terms of Net Annual Value in accordance with the Statutory Provisions rather than in terms of Rateable Valuation. This is something perhaps that the Rating Forum which has done some excellent work to date should address and hopefully arrive at some conclusion which will find widespread acceptance among all those involved in the rating process. Indeed given the fact that a general revaluation is upcoming in the foreseeable future it would be helpful if the Rating Forum would provide guidance statements for the valuation of a range of classes of

hereditaments which are not generally subject to lease arrangements thus leading to a paucity of rental evidence.

7. In regard to capital values it is the opinion of the Tribunal that these are of limited assistance in determining net annual value as a hypothetical purchaser and a hypothetical tenant as envisaged by Section 11 in the market will take different considerations into account in arriving at their respective opinions of value.
8. In his evidence Mr. Killen suggested that Mr. Dineen in using the CPI had applied a reduction factor of 22.8% whereas in his opinion the appropriate figure should be 25.7%. The Tribunal has no way of knowing which figure is correct but in the final analysis it would appear to have little bearing on the resultant rateable valuation.
9. An examination of the rental evidence indicates that there is a wide variation in rental levels from a low of £1,000 per annum to a high of £8,000 per annum. An analysis of the remainder would seem to indicate that a number of lettings have been completed in the £5,000/£3,000 per annum range. In this instance the Tribunal proposes to adopt a figure of £4,500 as being the N.A.V. at the valuation date.

Determination

Having regard to all the evidence adduced and argument proffered the Tribunal determines the rateable valuation of the hereditament to be £33, calculated as set out below.

Net Annual Value of Site as at 1997	Say	£4,500
To November '88 levels 1/1.25		<u> x .8</u>
Net Annual Value '88		£3,600
Rateable Valuation	@	0.5%
		£18
R.V. of agreed items		£15
Rateable Valuation of Entire Hereditament		£33