

Appeal No. VA03/2/031

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Allied Irish Bank PLC

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Bank at Lot No.61A, College Road, County Borough of Cork

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Maurice Ahern - Valuer

Member

John Kerr - BBS. ASCS. ARICS. FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF JUNE, 2004

By Notice of Appeal dated the 5th of August 2003, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €320 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"Valuation excessive, Revision is invalid as certificate unsigned & unnamed & procedures not carried out in accordance with Valuation Act, 2001 under s29 & s60 & other provisions of the statute."

1. This appeal proceeded by way of an oral hearing held on Friday the 23rd January 2004 at the offices of the Central Statistics Office, Skehard Road, Mahon, Cork. At this hearing the appellant was represented by Mr. Desmond Killen FRICS, FSCS, IRRV a director of GVA Donal O Buachalla and the respondent was represented by Mr. Terence Dineen B.Agr. Sc., a District Valuer in the Valuation Office. Mr. Michael Sheehan of Cork City Council was in attendance.
2. At the outset of the oral hearing Mr. Dineen said he wished to raise a preliminary legal issue which had not previously been referred to by the Valuation Office. Mr. Dineen said that in his opinion the appeal lodged by the appellant to this Tribunal was fundamentally flawed and as a consequence the appeal should be dismissed. Mr. Dineen said he had not sought any legal advice in relation to the legal issue but was acting on his own initiative in raising the matter.
3. Mr. Killen objected to such an issue being raised at this stage in the proceedings and said it was one which he could not deal with in the absence of legal advices. In the circumstances it was mutually agreed by the parties that the oral hearing be adjourned and be resumed on a date to be arranged.
4. The resumed hearing in this appeal was held on the 28th January 2004 in the Offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. At this hearing the appellant was represented by Mr. Owen Hickey, BL, instructed by Ms. Maeve McQuaid, Solicitor, AIB and the respondent by Mr. James Devlin, BL, instructed by the Chief State Solicitor.

A The Legal Issue

Mr. Devlin on behalf of the Commissioner of Valuation said the Notice of Appeal submitted to this Tribunal by the appellant on the 5th August 2003 was fundamentally flawed in that the Grounds of Appeal stated at paragraph 6 did not conform with the requirements of section 35(a)(ii) of the Valuation Act 2001.

Mr. Devlin said section 35 of the Valuation Act 2001 deals with appeals to this Tribunal and states as follows;

“35.—An appeal made under *section 34* shall, as appropriate—

- (a) specify—
 - (i) the grounds on which the appellant considers that the value of the property, the subject of the appeal (in this section referred to as “the property concerned”), being the value as determined or confirmed by the Commissioner under *section 33*, is incorrect, and
 - (ii) the value the appellant considers the Commissioner ought to have determined under *section 33* as being the value of the property concerned,”

Mr. Devlin said that paragraph 6 of the Notice of Appeal form issued by this Tribunal also deals with the grounds of appeal and is as follows;

6. “**Grounds of Appeal** – Section 35 and 40(5) of the Act. (Additional sheet may be attached if necessary).

(a) **The Valuation is incorrect**

(i) **Set out the grounds on which the appellant considers that the rateable value of the property is incorrect**

.....

...and

(ii) **State the rateable value which the appellant considers ought to have been determined as being the rateable value of the property concerned**”

Mr. Devlin said that in relation to this appeal the appellant had submitted the form of appeal dated the 5th August 2003 and stated at paragraph 6(a) (i)

“Valuation excessive, revision is invalid as a certificate unsigned & unnamed & procedures not carried out in accordance with the Valuation Act 2001 under s29 & s60 & other provisions of the statute”

At paragraph 6(a) (ii)

“Nil – revision invalid.”

Mr. Devlin said that strict compliance with section 35(a) (i) & (ii) was mandatory and the Tribunal had no discretionary powers to vary or waive the requirements contained therein. The

appellant in completing the form of appeal issued to the Tribunal did not comply with section 35(a) and when asked to state

“(ii) the value the appellant considers the Commissioner ought to have determined under *section 33* as being the value of the property concerned,”

had answered “Nil”. Such a response, Mr. Devlin said, did not represent compliance and hence the appeal should be struck out.

In support of his contention Mr. Devlin drew the Tribunal’s attention to the remarks of Mr. Justice Henchy in the case of *Monaghan UDC v Alf-a-bet Promotions Ltd.* 1980 ILRM 70

“Such powers as have been given to planning authorities, tribunals or the courts to operate or review the operation of the planning law should be exercised in such a way that the statutory intent in its essence will not be defeated, intentionally or unintentionally, by omissions, ambiguities, misstatements or other defaults in the purported compliance with the prescribed procedures”

Mr. Devlin said the principles enunciated by Mr. Justice Henchy were particularly apposite insofar as this appeal is concerned. Section 35 clearly places an onus on the appellant to state at the outset the grounds of appeal and the valuation contended for. The intentions of the statute are clear and unambiguous and, whatever the circumstances, this Tribunal does not have the power to either vary the content of the section or to waive strict compliance therewith.

The Appellant’s Submission

Mr. Owen Hickey, BL, on behalf of the appellant, said that there was no non-compliance on the part of the appellant. At the first appeal stage under section 30 of the Act of 2001 and in the appeal to this Tribunal, the appellant’s primary Ground of Appeal was that the revision was invalid due to non-compliance by the Commissioner of Valuation with other provisions of the 2001 Act. This ground of appeal was subsequently withdrawn by the appellant after the Notice of Appeal was submitted to the Tribunal, but nonetheless, the appeal was continued on the basis of quantum only without any objection on the part of the Commissioner until the legal issue was raised by Mr. Dineen at the oral hearing on the 23rd of January.

Mr. Hickey said that in rating law and practice it was possible to have a rateable valuation of nil and hence there was full compliance with section 35 (a) (ii). In any event there was no evidence to show that the Commissioner of Valuation or any other party had suffered prejudice and indeed the Commissioner of Valuation had not raised the issue of non-compliance in several other appeals where the circumstances were similar to those in this appeal.

Mr. Hickey said that the Tribunal had the power to interpret the various sections of the 2001 Act relevant to this appeal on the basis of the facts before it. Should the Tribunal decide that there was non-compliance with 35(a)(ii) then the Tribunal should recognise that any such non-compliance was so trivial as to be covered by the “*de minimis*” principle.

Determination

The Tribunal has carefully considered the submissions, legal authorities and documents presented to it as set out in the Appendix 1 to this judgment and finds as follows:

1. In the first instance the appellant sought to have the Valuation struck out due to non-compliance by the Commissioner of Valuation with those sections of the Valuation Act 2001 dealing with the revisions of Valuations. This was one of several such appeals all of which were settled by agreement and in some instances at valuations below that determined by the Commissioner of Valuation at first appeal stage.
2. The Tribunal accepts as a matter of fact that it is possible in rating law to have a rateable valuation of Nil. To that extent therefore the appellant did comply with section 35(a)(ii) no matter how remote or improbable this being the outcome of the appeal on grounds of quantum.
3. In the circumstances of this appeal (and others made on such similar grounds) it would perhaps have been more correct for the appellant to state a specific valuation at paragraph 6(a)(ii) of the Notice of Appeal form qualified by a statement to the effect that it was without prejudice to the primary grounds of appeal as set down at paragraph 6(a)(i).
4. The Tribunal accepts the appellant’s submission that neither the Commissioner of Valuation nor any other party was prejudiced by the alleged non-compliance by the appellant.
5. On balance the Tribunal is of the view that there was compliance with section 35(a)(ii) on the part of the appellant and furthermore is of the opinion that any alleged non-compliance

by the appellant was of a minor technical nature and as such would be covered by the “*de minimis*” principle.

Accordingly the Tribunal dismisses the application by the Commissioner of Valuation that the appeal is fundamentally flawed.

B Quantum

The Tribunal, having dealt with the preliminary legal issue, proceeded to deal with the matter of quantum and in this regard the appellant was again represented by Mr. Desmond Killen and the respondent by Mr. Dineen.

The Property

The relevant property is a newly constructed two-storey bank premises located on College Road Cork, opposite the campus of University College Cork. The agreed accommodation comprises:
Ground Floor - Public Banking Area, 3 Offices, 2 open consultation areas, an internal ATM area, files, storage and work area, off counter cash room and strong room, toilet for disabled.

First Floor- 3 Offices, storage area, staff dining area, boiler and cleaner’s storeroom, ladies and gents toilets and communications room.

At the rear there is an enclosed yard which provides off-street car parking for seven cars.

The agreed areas are as follows:

Ground Floor – 209.5m²

First Floor – 124.5m²

The bank premises are built on the site of two former dwelling houses purchased in April 2001 for a total consideration of €1,390,363. The cost of the building was €1,033,627 giving a total outlay in excess of €2.4 million. The bank opened for business in June 2002.

Valuation History

At revision the rateable valuation of the subject property was assessed at €380 which figure was reduced to €20 at first appeal stage. The appellant lodged an appeal to this Tribunal on the grounds that the revision process was not carried out in accordance with the relevant statutory provisions. Prior to the commencement of the oral hearing the appellant withdrew this primary ground of appeal but pursued the appeal on grounds of quantum only.

The Appellant's case

Mr. Desmond Killen, a Director of GVA Donal O Buachalla gave sworn testimony on behalf of the appellant. In his evidence Mr. Killen said that up until April 2001 the appellant and the Bank of Ireland occupied premises within the College campus under licence agreements granted by the College authorities. In 2001 the College authorities decided to change the then existing arrangements and sought tenders for an exclusive right to provide full banking facilities within the College Campus. As a result of this tender process the Bank of Ireland became the sole licensee providing banking services within the campus. The appellant, recognizing the importance of student-related banking business, took a decision to open a new bank premises as close as possible to the College in order to protect their situation. Until such time as the new premises were ready AIB operated student-based services out of their existing premises at Western Row.

Mr. Killen in his evidence said that the new bank premises afforded good accommodation to a high standard. Nonetheless the premises suffered from two major disadvantages – firstly, the absence of an external ATM facility service on a 24/7 basis and, secondly, inadequate off-street car parking facilities. Both of these, Mr. Killen said, were important, particularly the lack of the external ATM which service he said was now the norm in most bank outlets.

Mr. Killen in his evidence contended for a rateable valuation of €232 calculated as set out below.

Ground Floor:	209.5 @ €143.51	=	€30,065
1 st Floor:	124.5 @ €54.67	=	€ 6,806
	Total NAV	=	€36,871
	RV @ 0.63%	=	€ 232

In support of his valuation Mr. Killen introduced 5 comparisons as set out in the schedule appearing in Appendix 2 attached to this judgment.

Under cross-examination Mr. Killen said that, in arriving at his opinion of value, he had taken the view that Bishopstown was a better location than College Road and that a reduction of 25% in the levels applied in Bishopstown would be appropriate. Mr. Killen also said that he considered the College Road location to be significantly inferior to that within the College campus and considers a 40% reduction in this case to be appropriate. Mr. Killen reiterated his opinion that the lack of an external ATM facility must be taken into account when arriving at the Net Annual Value of the subject property.

The Respondent's Case

Mr. Terence Dineen, having taken the oath, adopted his précis which had previously been received by the Tribunal, as being his evidence-in-chief. Mr. Dineen in evidence said that College Road was a premier location for a bank by virtue of its proximity to the University. In arriving at his opinion of Net Annual Value he had regard to what he considered to be relevant comparisons taking into account location and other factors. In his opinion the College Road location from a business point of view was on a par with Bishopstown.

In his evidence Mr. Dineen contended for a rateable valuation of €320 calculated as set out below.

Ground Floor:	209.5 @ €205.05	=	€42,958
1 st Floor:	124.4 @ €68.35	=	€ 8,503
	Total NAV	=	€1,461
	RV @ 0.63%	=say	€ 320

In support of his valuation Mr. Dineen introduced three comparisons as set out in Appendix 3 attached to this judgment. Mr. Dineen's comparisons no.s 1 and 2 also appear in Mr. Killen's list of comparisons.

Under cross-examination Mr. Dineen said he had regard to section 49(1) of the Valuation Act 2001 in arriving at his opinion of Net Annual Value. He confirmed that in his opinion the most relevant comparisons in this regard were those relied upon by him. Mr. Dineen agreed that all his comparisons had the benefit of external ATMs and further agreed that this was beneficial to the premises from a rental point of view. Mr. Dineen agreed with Mr. Killen that Wilton was a busy commercial area. However from a business point of view, Mr. Dineen said, College Road was of equal importance due to the proximity of the University.

Findings and Determination

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and makes the following findings:

1. The Tribunal accepts Mr. Dineen's general contention that Bishopstown/Wilton and College Road, whilst different in character, are of somewhat equal value from a business point of view.
2. Having regard to the above finding it follows that the most relevant comparisons are those premises located in the Bishopstown/Wilton area and which have been recently valued i.e. those comparisons introduced by Mr. Dineen and Mr. Killen.
3. The Tribunal has expressed on a number of occasions that the availability of an external ATM facility is beneficial from a rental point of view. The subject premises does not have such facilities whereas the comparisons relied upon have. In the circumstances some adjustment must be made to the square metre rates applied to the ground floor accommodation to reflect this shortcoming.
4. The Tribunal notes Mr. Killen's argument that the restricted off-street car parking arrangements are inadequate. However without the benefit of evidence to say what is or is not adequate the Tribunal cannot come to any conclusion on this matter or as to what effect (if any) it could have on rental value. Accordingly, therefore, the Tribunal has made no specific adjustment one way or another on the car parking issue.
5. This is the first appeal to come before the Tribunal in relation to Section 35 of the Valuation Act 2001. The intention of the section is clear and it behoves all who are involved in the appeal process that they familiarise themselves with the section and that they adhere strictly to the procedure as outlined therein.

Determination

Having regard to the foregoing the Tribunal determines that the appropriate rateable valuation of the subject property is €300 calculated as set out below.

Ground Floor: 209.5 @ €190 = €39,805

1st Floor: 124.5 @ €62.75 = € 7,812

Total NAV = €47,617

RV @ 0.63% =say € 300

APPENDIX 1

Legal Authorities and Documents Referred To

1. Armour – Rating Valuation : Principles - Practise
Pages 108 to 111
2. Administrative Law in Ireland
Third Edition – 1998
Pages 440 to 453
3. Statutory Interpretation – A Code
Fourth Edition – 2002
Pages 32 to 47
4. Black v Oliver (c.p.) 1978
5. British Transport Commission v Hingley (Valuation Officer) and Another
CA - 1961