

Appeal No. VA89/0/131

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

**Navan Shopping Centre Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**and**

**Navan Urban District Council**

**NOTICE PARTY**

RE: Lot 5A, 6, 7 Abbeyland South, Navan Urban District Co. Meath

Rateability of carpark spaces

**B E F O R E**

**Hugh J O'Flaherty**

**S.C. Chairman**

**Brian O'Farrell**

**Valuer**

**Veronica Gates**

**Barrister**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 20TH DAY OF MARCH, 1990**

The issue for determination in this case is the rateability of the carpark spaces forming part of the Navan Shopping Centre. The quantum at £200 was not disputed before the Tribunal.

In his written submission dated 6th March, 1990, Raymond Ward, F.R.I.C.S., Chartered Surveyor, with Lisneys set forth that the carpark forms part of the Navan Shopping Centre

Complex which is situated in the townland of Abbeylands South on the north side of Trimgate Street close to the town centre. Navan is the county town, an administrative centre of County Meath, with a population of 11,929 persons in the 1986 Census of Population and is situated about 30 miles northwest of Dublin.

The premises comprises the carpark attached to the Navan Shopping Centre, which is a total of 731 marked spaces. And as was subsequently established at the oral hearing the freehold interest is held by Wanze Windows Ltd.

Mr. Ward went on to deal with the issue of rateability and, put shortly, he set out that there was a distinction to be made between a carpark which was attached to a shopping centre and was of commercial benefit to the individual units as opposed to carparking facilities in places such as the Ilac Centre, Henry Street and Dun Laoghaire Shopping Centre; in these cases carparks are let or licensed or managed by an operator and an income is derived.

The provision for carparking facilities in shopping centre leases generally speaking is that they are defined as public areas and the owner of the Centre undertakes to provide specified facilities for potential shoppers in a place and the maintaining, securing and lighting, common areas and carparking spaces, is paid for through the service charge levied on the various tenants and traders.

Mr. Gilbert Storrs, a Valuer with sixteen years experience in the Valuation Office, in his written submission dated the 15th February, 1990, set out a description of the property and said that there were 850 carparking spaces available. The Shopping Centre itself has three anchor tenants and in excess of thirty shop units and comprises about 100,000 square feet of fully enclosed shopping space.

Mr. Storrs set out the valuation history and said the carpark was listed by the local authority in the 1988 Revision of Rateable Valuation. The R.V. was fixed at £200.

The valuation was appealed to the Respondent and Mr. Storrs was appointed Appeal Valuer to report to the Respondent but having considered his report the Respondent made no change in the valuation of £200.

Mr. Storrs set out the history of the Navan Shopping Centre and said it was opened in 1981/82. It is a single storey centre which attracts trade from the adjoining towns as well as Navan. It is unusual in that Dunnes Stores, Quinnsworth and Penneys are trading in the one centre and there is no competing shopping centre in the town.

Mr. Storrs submitted that the carpark was caught by the description contained in the Schedule inserted by the Valuation Act 1986 to the Valuation (Ireland) Act, 1852.

### **ORAL HEARING**

The oral hearing took place on the 9th March, 1990.

Mr. John McDonagh Barrister (instructed by Gerard Keane & Co., Solicitors, St Andrew's House, 28-30 Exchequer Street, Dublin 2) appeared on behalf of the appellants. He outlined the facts of the matter again which are really not in dispute. He referred to Mr. Justice Keane's book on Local Government at page 383 and his essential submission was that the appellants did not have exclusive occupation of the carpark. In fact, they did not have any occupation at all since the carpark was used by the customers coming to the carpark and, indeed, was available for the public in general.

Mr. John O'Donoghue, Town Clerk with Navan U.D.C. attended and corroborated that this was so.

Mr. O'Caoimh Barrister, instructed by the Chief State Solicitor, appeared on behalf of the Respondent and referred to Westminster City Council - v - Southern Railway Company & Others [1936] AC 511 & Carroll - v - Mayo County Council [1967] IR 364.

Mr. Joseph Bardon, Surveyor with Lisneys gave evidence of the fixing of the valuations in 1982 and said that his recollection was that he had agreed with Mr. Cuddihy of the Valuation Office that the fact of the carpark spaces being available was taken into account in fixing the valuations of the individual units. He said the same approach had been taken in relation to the Navan Shopping Centre as had been taken in relation to similar centres in Galway, Kilkenny and Clonmel.

Mr. Storrs said the essential point was that the units in the Centre had comparable valuations to shopping units in the main town and, therefore, it seemed that the carpark had not been taken into account in assessing the rateable valuation of the individual units.

It was agreed between the parties that if the availability of carpark spaces had been taken into account in fixing the original valuation of the individual units it would be unjust to have a form of double taxation by affixing a rateable valuation to the carpark.

In any event, it was decided that the case should be adjourned so that what was agreed originally with Mr. Cuddihy might be elucidated further.

In the meantime, the Tribunal was of the opinion that the following questions be resolved:-

1. Does the carpark constitute a rateable hereditament?
2. Who is in rateable occupation?

3. Was the availability of carpark spaces taken into account in assessing the rateable valuation of the individual units in the Shopping Centre in 1982 and has it remained an element since?
4. Is the carpark as such entitled to exclusion on the grounds of its public utility?

The answer to No. 2 was immediately afforded as being Navan Shopping Centre Ltd.

### **Resumed Hearing**

The resumed Hearing took place on the 13th March, 1990.

On this occasion the actual planning permission was produced and it appears that there was no express condition requiring unrestricted access by the public to the carparking. Conditions 4 & 5 provided:-

CONDITION	REASON FOR CONDITION
4. Carparking area shall be properly constructed and maintained with tarmacadam or other approved surfacing and with parking spaces clearly marked with approved road paint all to the satisfaction of the Planning Authority. All car-parking areas shall be provided within six months of the date of the opening of the main shopping complex for business.	4. In the interest of road safety.
5. Carparking space shall be provided for at least 250 cars during the construction period and at least 100 of these spaces shall be provided in the south eastern part of the site.	5. In the interest of road safety.

Mr. Tom Cuddihy, B. Agr. Sc. with 21 years experience in the Valuation Office also attended and gave evidence of his negotiations with Mr. Bardon in 1982. It appears that the valuation of

the individual units were fixed by reference to similar shopping centres such as those at Dundalk, Clonmel, Galway and Athlone.

Mr. O'Caoimh, however, made the point that the uncontradicted evidence was that the valuation fixed on the units was low and that there was no question of double taxation and that, therefore, the justice of the case required that the carpark should be given a separate valuation.

### **DETERMINATION**

The Tribunal thinks that it can do justice to the case best by answering the questions that it posed at the original hearing. It reaches the conclusion that the availability of carpark spaces was taken into account in assessing the rateable valuation of the individual units and for it now to attribute a separate valuation to the carpark as such would involve a form of double taxation.

It may be - though, needless to say, the Tribunal is not deciding this - that the valuation placed on the individual units was on the low side but, if it was, the local authority and the Respondent have a remedy.

The Tribunal also finds as a fact that although the planning permission does not go so far as to require unrestricted public access to the carpark there is no doubt that the de facto situation is that the public have such access. It is the fact that there is a reference to it being a private carpark but the Tribunal holds that the intention behind that is to prevent people staying overnight or for a length of time in the carpark. That would clearly be undesirable and the Tribunal cannot fault the owners for wishing to restrict the use of the carpark in that way.

It would appear, therefore, that there is no question of the appellants having such occupation of the carpark as is described in the cases of Westminster City Council - v - Southern Railway Company & Others [1936] AC 511 and Carroll - v - Mayo County Council [1967] I.R. 364.

Since the Respondent is anxious for guidance on how carpark spaces (other than those where there is a separate charge or the like) should be approached the Tribunal is of the opinion that the method best calculated to do justice to the parties is that it should be taken into account as a facility which is available to the customers attending a particular shopping centre. Indeed, it has been the experience of members of the Tribunal that this consideration has always been taken into account in fixing the valuation of individual units in shopping centres in other cases in the past.

In the result, the Tribunal determines that no separate valuation should be made on the subject hereditament.