

Appeal No. VA91/3/004

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

**Governor & Company of the Bank of Ireland**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Bank at Lot No. 3.4.5.6a/C 1.2 Rathfarnham Shopping Centre, Fairfield Estate, Butterfield, Rathfarnham, Co. Dublin  
Quantum - Ratio, Lisney index

**B E F O R E**  
**Henry Abbott**

**Barrister Chairman**

**Mary Devins**

**Solicitor**

**Brian O'Farrell**

**Valuer**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 6TH DAY OF JANUARY, 1992**

By Notice of Appeal dated 24th day of September, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing the rateable valuation of £400 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that the Valuation is excessive and inequitable having regard to the provisions of the Valuation Acts and on other grounds also.

### **The Property**

The property consists of a retail banking unit located on the ground floor of the Rathfarnham Shopping Centre. It comprises a double retail unit at the west end of a 2-storey Shopping Mall. It adjoins "Pennys" with the Quinnsworth Supermarket at the opposite end of the Shopping Mall. The premises comprise an agreed floor area of 2,520 sq.ft with a frontage of 43 foot and a depth of 58 foot 6 inches. It has concrete ground and upper floors, concrete walls and an aluminium and plate glass shop front with some infill stone cladding has been installed by the occupiers. Internally the unit has been divided mainly with concrete block partition walls to provide private offices, strong room, book room, staff rooms, kitchen, toilets etc.. An acoustic tiled ceiling has also been fitted. There is a public counter with a separate cash area fitted with a high security glass screen.

### **Valuation History**

The bank was first assessed for Rateable Valuation purposes in 1970 with a Rateable Valuation of £160. This stood until 1989 when at the request of the Local Authority the hereditament was revised to take account of an automatic teller machine. The Rateable Valuation was increased to £200. The property was again listed for revision in 1990 and the valuation was increased from £200 to £400. This valuation was appealed to the Commissioner of Valuation who made no change. It is against this determination that the appeal now lies with the Tribunal.

### **Written Submissions**

A written submission was received on the 29th November, 1991 from Mr. Raymond Ward, FRICS, ACI, Arb, of Lisney, on behalf of the Appellant. In this Mr. Ward said that no significant expenditure had been made in respect of fixtures and fittings since 1969. He said that the original lease was 21 years from 1969 with provision for 7 year reviews, the rent being £27,931 per annum fixed at June 1983. He said that on expiry in May 1990 a statutory 6 year lease was granted at a rent of £49,000 following an appeal to the High Court. He said that the rent of a single unit was fixed at £25,500 per annum and a 5% discount was allowed to the Bank to reflect the larger size. He said that a 12.25% discount had been previously allowed but this was not available in view of the short lease which the Bank had opted for. He said that the lease includes an element for limited services provided by the landlord including repairs, maintenance etc. of common areas and carparks as there is no provision for the payment of a service charge. Mr. Ward then set out the valuation of adjoining units in Rathfarnham Shopping Centre:

The adjoining standard shop units each comprise some 1,250 sq.ft..

Lease renewals from May 1991 of these units were the subject of High Court appeal and were settled on the following basis:

Shop 1,250 sq.ft. @ £21.25 psf.                      £25,500

The basis of agreement made with the Commissioner of Valuation on behalf of the tenants was:

Rent passing                                              £25,500 p.a  
(May 1990)

Estimated rent November 1988                      £23,180 p.a  
(10% reduction)

Adjusted for 'rates impact figure'                      £ 1,715

NAV                                                              £21,465

**Rateable Valuation 0.63%                      RV £135**

Significant aspects of the agreed settlements reached with the Commissioner of Valuation in relation to the various units are:

- (a) No account was taken of any fitting out by tenants
- (b) Adjustment for a rates impact factor was allowed
- (c) An arbitrary 10% reduction was used to reflect rent difference between November 1988 and May 1990.

He then set out details of other properties within the Rathfarnham Shopping Centre as follows:

	<b>Floor Area</b>	<b>Rateable Valuation</b>	<b>R.V. per sq.ft.</b>
<b><u>Penneys</u></b>	11,575 sq.ft.	£560 (1990 First	4.8p

Appeal)

<b><u>Quinnsworth</u></b>	31,663 sq.ft.	£1,250 (1990 First Appeal)	4.2p
<b><u>Bank of Ireland</u></b>	2,520 sq.ft.	£400	15.9p

Mr. Ward then supplied details of Dublin suburban bank premises the subject of decisions by the Valuation Tribunal as follows:

	<b>Floor Area sq.ft.</b>	<b>R.V.</b>	<b>R.V. per sq.ft.</b>
A.I.B. Clonkeen Road	3,152	£310	9.8p
Bank of Ireland, Blanchardstown	4,352	£300	6.9p
Bank of Ireland, Fairview	3,150	£220	7.0p
Bank of Ireland, Rathfarnham S.C.	2,520	£400	15.9p.

Mr. Ward supplied details of settlements on comparable bank premises reached directly with the Valuation Office at 1990 First Appeal Stage as follows:

A.I.B. North Side Shopping Centre - R.V. £390 - Agreed  
Bank of Ireland, Stillorgan Shopping Centre - R.V. £325.

Mr. Ward said that no account of fitting out had been taken by the Valuation Office in regard to any other premises in the Rathfarnham Shopping Centre. He said that the adjustments made by the Commissioner of Valuation between November 1988 and May 1990 rents is arbitrary and inadequate. He said that the 'rates impact factor' has been operated in relation to all other properties in the Centre.

Mr. Ward said that the Lisney UCD Retail Rent Index would indicate a rent for this unit, (working backwards from the May 1990 figure of £49,000) of £36,570 at the end of 1988. He provided comparative evidence from the Bray Shopping Centre, Roselawn Shopping Centre, Blanchardstown, Park Shopping Centre, Dublin 7 and the Phibsborough Shopping Centre, Dublin 7 which are attached as Appendix A to this judgment. Mr. Ward then set out his calculation of what the Rateable Valuation on the property should be as follows:

<b>Rathfarnham Shopping Centre, Bank of Ireland.</b>	Floor area	2,520 sq.ft.
	Rent p.s.f.	<u>£13.50</u>
		£34,020
	Less 5% discount	£32,320
	Less rates impact factor	£32,223
	N.A.V. say	£32,200
	R.V. @ 0.63%	£ 202
	Say	£ 200

A written submission was received from Mr. Brian O'Flynn, a valuer with 16 years experience in the Valuation Office on the 29th November 1991 on behalf of the Respondent. In this Mr. O'Flynn set out the grounds of appeal, valuation history and details of the property as already summarised above. Mr. O'Flynn said that because the Shopping Centre is an open rather than an enclosed Shopping Centre that the bank has 2 ATM's installed which are accessible to customers outside (A) banking hours, (B) shopping times. He said that the Centre was refurbished and improved in 1988 and that the first floor was enclosed. Mr. O'Flynn said that the rent of the unit without tenants improvements in this case was £27,930 and was held on a 21 year lease with 7 year reviews from February 1969. He said at the last review (June 1990) which was agreed prior to a High Court hearing in May 1991 the rent was fixed at £49,000 for a 6 year lease until 1996. Mr. O'Flynn said that this equates to A Zone rental of £33.33 per square foot or £19 per square foot overall on the rental of the unimproved shell from the landlord. He said that this compares to the agreed shell rental on a single unit at £25,500 per annum for June 1990. Mr. O'Flynn set out his calculation of the Rateable Valuation as follows:

<b><u>Valuation:</u></b>	(November 1988)	Bank Use.
Net Lettable Area	2520 sq.ft. @ £22 psf =	£ 55,440
*Tenants Improvements		<u>£ 8,600</u>
		£ 64,040

**N.A.V.: £64,040 @ 0.63% = £400 R.V.**

*Tenants improvements cost @ £40 psf or	£100,000
@ 8% yield (35 years)	<u>11.6546</u>
Annual Equivalent	£ 8,600

With regard to the Rates Impact Factor Mr. O'Flynn said that in the submission presented to the Court under the Landlord and Tenant Act by the Phelan Partnership on behalf of the Tenants in January 1991, there was no mention made of the increase in Rateable Valuation even though the Valuations had increased from £75 to £170 on most of the units in the Revision of 1990. He said that this would indicate that any Rates Impact formula was not warranted in assessing the Net Annual Value of the subject property. Mr. O'Flynn supplied comparisons as follows:

Bank of Ireland, St. Stephens Green Shopping Centre.

Lot C/10a, Fairfield Estate, Rathfarnham-Butterfield.

A.I.B., Deansgrange - the subject of Valuation Tribunal Appeal No. 90/2/30,

Bank of Ireland, Cornelscourt Shopping Centre.

The details of these comparisons are attached as Appendix B to this judgment.

### **Oral Hearing**

The oral hearing for this appeal was fixed for the 4th December, 1991 at which stage the Appellants submitted further comparative material as follows:

#### **Lettings**

Bank of Ireland letting to Ulster Bank at 133, Shelbourne Road, Ballsbridge, Dublin 4, and AIB to 7-Eleven at 6, Merrion Road.

Evidence of sale disposal of Bank of Ireland, Ballymun Shopping Centre and Bank of Ireland, Donaghmede Shopping Centre. The details of the above are attached as Appendix C to this judgment.

The Respondent then requested some time to study the new information and the hearing was adjourned until the 19th December, 1991.

The resumed oral hearing took place in Dublin on the 19th December, 1991. The Appellant was represented by Mr. Hugh O'Neill, Barrister at Law, instructed by the Appellants law agent and the Respondent was represented by Mr. Aindrias O'Caomh, Barrister at Law, instructed by the Chief State Solicitor. Mr. Raymond Ward, a valuer of Lisney's gave evidence on behalf of the Appellant in accordance with the precis of evidence summarised above.

Mr. Ward set out the following elements on which his estimate of the N.A.V. of the subject premises was based at the valuation date of May 1990:

- i) the units adjoining the subject premises were valued at £21,465 and the Rateable Valuation thereof was based on a ratio of R.V. to N.A.V. of 0.63% and a small adjustment for the so called Rates Adjustment Factor, apparently 7%, no allowance for fixtures and fittings.
- ii) "The Shell Rent" at least of the subject premises should have been regarded as N.A.V. to which the ratio of 0.63% should be applied to calculate Rateable Valuation.
- iii) The rent for the purpose of N.A.V. calculated should be £49,000 adjusted downwards by a factor of 34% based on the Lisney-UCD Retail Index.
- iv) He conceded that the Rates Impact Factor suggested in his precis would not really have a bearing on actual rents passing at the levels adjusted by the Lisney- UCD Index in any event.
- v) He also relied on the fact that the subject premises was a bank situated in a primarily residential area giving rise to predominantly personal accounts but lacking extensive corporate trade and he alleged that this type of business was not so profitable as other mixed banking.
- vi) The discount for the double unit would have been 12.5% if not for the fact that a 6

year lease was taken in the subject premises and hence the quantum factor should decrease N.A.V. accordingly.

- vii) Banks of themselves do not attract higher rents than other premises and he emphasised the aspects of the Bank of Ireland premises in Ballsbridge as an example.
- viii) The Fixtures and Fittings of a bank were as much of a burden as a benefit and he gave examples of the extreme length to which banks have to go to "off load" premises into the non banking sectors such as happened in Donaghmede and Ballymun.
- ix) In relation to comparisons offered by Mr. O'Flynn where the valuation had been decided by the Valuation Tribunal Mr. Ward said that the Ulster Bank, Dundrum premises were in a commercially stronger shopping complex and that the premises in Clonkeen Road, Deansgange had a total of 3,152 square feet including upstairs office space rather than the figure suggested by Mr. O'Flynn. He claimed that his estimate of the appropriate N.A.V. and Rateable Valuation of the subject premises was quite consistent with the valuations of the premises decided by the Tribunal.
- x) Mr. Ward conceded that there is an imperfect market for supermarket rents and that by reason of the small number of potential takers that the rent for the Supermarket in the Shopping Centre in Rathfarnham close to the subject premises bore all the hall marks of the developer conceding a low rent to secure an anchor tenant to lure more tenants into the units of the Shopping Centre. He did not therefore press on the large discrepancy between the Rateable Valuation per square foot of the supermarket premises in the Rathfarnham Centre and the subject premises and other units which were not supermarkets.
- xi) The Centre was at the time of negotiations of rents under threat of competition and the investment by the landlord in providing a conservator glass canopy over the first storey of the Centre was recognised as a "Tallaght Square" driven move to keep competitive.

Both Mr. O'Flynn in his evidence and Mr. O'Caomh in his cross-examinations and submissions took issue with the applicability of the Rates Impact Factor. The debate between the parties centred around whether banking in the Centre merited a special valuation in the same way as the Newsagents unit had been given a special valuation. Mr. O'Flynn was cross-examined on behalf of the Appellant in relation to the fact that although the Butcher's premises in one of the units was fitted at a cost of £70,000 no additional valuation was attached to such a high fitting out cost. Mr. O'Flynn countered by saying that sometimes fitting out of units was ignored by reason of the administrative requirements of the situation. Discussion emanated in relation to the applicability of the Lisney-UCD and other Indices as well as the 0.63% ratio. The parties in their discussion indicated and the Tribunal accepts that the 0.63% ratio could be used as a rule of thumb factor in converting N.A.V. to R.V. in this particular case. Also discussions indicated that neither party could press the applicability of the so called Rates Impact Factor -especially when rents have been settled in Court recently apparently without such factor having been taken into consideration by either landlord or tenant. The Tribunal notes the submissions made by the Appellant in relation to the non consideration of fitting out costs in reaching the 0.63% factor in the original research carried out in Dublin City Centre by the Commissioner of Valuation staff. The issues in this appeal which the Tribunal finds it necessary to make a decision are as follows:

- a) whether the discount arising out of the material such as the Lisney or Jones Lang Wootton Index should be applied to obtain the notational adjusted rent suggested by Mr. Ward rather than the 10% reduction applied by Mr. O'Flynn.
- b) to what extent fitting out costs should be considered.
- c) the extent to which the comparisons offered especially those arising from the decisions of the Valuation Tribunal should be considered and also the extent to which the adjoining units in the Shopping Centre should be considered.

The Tribunal therefore finds it unnecessary to give a definitive decision on the non applicability of the 0.63% to the fitting out costs in view of the foregoing and finds that it should take into account some element of fitting out costs but not to the extent claimed by the Respondent. While bearing in mind all the comparisons the Tribunal feels constrained to be influenced to the greatest extent by the comparison of the passing rent for the single units in the Rathfarnham Shopping Centre where the subject premises is situated.

While the Tribunal has never committed itself to the applicability of 0.63% ratio or any particular ratio it notes that the parties in many cases either consented or agreed to use the 0.63% ratio based on the 1988 survey to arrive at an R.V. from their various stand points. The wide spread use, (even if sometimes qualified and critical) of the 0.63% ratio or similar overall area ratios is an outcome which is quite consistent with the policy of the 1986 Act and even necessary to achieve its objectives. The Tribunal notes however, that to use the 0.63% ratio or any similar ratio as a crude model with the time factor as an assumed constant in later years requires further models incorporating the time dimension. This requires the refinement of variables introduced by indices arising from studies such as the Lisney-UCD or the Jones Lang Wootton work. The work of the compilers of such indices is of much value and the Tribunal hopes that in time more similar data may emerge in relation to values and rentals of properties in other centres and perhaps in other sectors of the market. However to assist valuers and indeed the Tribunal in assessing the applicability of such indices it is always necessary to ensure that all parties availing of such indices would be thoroughly informed of and familiar with the methodology and data description used in their compilation. The Tribunal would not wish that such indices would be used in an automatic fashion no more than it would wish that the 0.63% ratio would be used in such a way to the detriment of a due and fair consideration of any appeal in accordance with the requirements of the valuation legislation.

The questioning by the Appellant of the 0.63% ratio in relation to its applicability to the shell premises rents having regard to its genesis in the city centre is an illustration of the value of such an analysis, even if in this case nothing of significance may turn on same, and the Tribunal as a result has found it unnecessary to make a decision in relation to same.

In conclusion the Tribunal finds that it cannot opt for a mere mechanical application of the Lisney Index to the passing rent in calculating N.A.V. but nevertheless has taken same into consideration together with the estimation of costs of fixtures and fittings and the comparisons offered and finds that an appropriate valuation of the subject premises is £280.