

Appeal No. VA92/6/065

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

Aer Lingus

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Store at Lot No. 8D, Townland of Collinstown (Dublin Airport), D.E.D. Airport, Co. Dublin

Quantum - Passing rent

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Veronica Gates

Barrister

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF AUGUST, 1993

By Notice of Appeal dated the 30th October, 1992, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £135.00 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:-

"The rateable valuation is excessive, inequitable and bad in law".

The Property:

This consists of an equipment store located adjacent to the taxiways with a fenced compound to the side of the store and porta-cabin stores included also. The building is constructed of concrete block walls with flat asphalt roof and is in good condition for its type and age. It is held on a 35-year lease with 5-yearly reviews from 1st April, 1984 on a F.R.I. basis. The rent as at 1st April, 1989 was £7,444 p.a..

Valuation History:

Prior to 1990 Revision the rateable valuation was £64.00, assessed on 1973 First Appeal. At 1990 Revision the R.V. increased to £180.00 and was reduced to £135.00 at First Appeal.

Written Submissions:

A written submission was received on the 5th May, 1993 from Mr. Frank O'Donnell of Frank O'Donnell & Company, Valuation, Rating & Property Consultants, acting on behalf of the appellant. Mr. O'Donnell set out the background to the appeal in his submission and also scheduled the areas as follows:-

<u>Description:</u>	<u>Area (Sq.Ft.)</u>
Stores	3,982
Portacabins	431
Compound (circulation area only)	2,743

Mr. O'Donnell gave details of the letting agreement between Aer Lingus and Aer Rianta. He said that prior to 1986 there was no formal agreement, but in 1986 Aer Rianta appointed Lisney & Company and Aer Lingus appointed Jones Lang Wootton to negotiate and agree commercial rents for the various properties. The schedule of agreed rents, while fixed in 1986, applied retrospectively to 1984 with 5-yearly rent reviews incorporated into the agreement. A copy of the Memorandum of Understanding was attached to the written submission. The memorandum provided for rent reviews on the multi-user accommodation at rents based on the average increase of the C.P.I. and the Building and Construction Wholesale Price Index. It also provided that the agreed quantum allowance of 20% should apply to rent reviews on multi-user accommodation. It also provided for rent reviews on exclusive-use accommodation at rents related to the average increase of indices in the appropriate sector of the Irish Property Market as published by the two agreed Real Estate Consultants.

Mr. O'Donnell also submitted that the property under appeal is exclusively occupied by Aer Lingus and the rent was agreed on the basis of 100% of the full Open Market Rental Value. The

rent on the store was reviewed in 1989 at £7,444 (100%). This figure was agreed between Lisney & Company and Jones Lang Wootton.

It was submitted to the Tribunal that the review provisions of the Memorandum of Understanding had the practical effect of fixing the reviewed rent at the level of Open Market Rent for the review date. Rental levels as at the valuation date of November 1988 are lower than in 1989 and Mr. O'Donnell submitted that a deduction of 7.5% to take account of this had been agreed with the Commissioner of Valuation. In his opinion the N.A.V. as at November 1988 is £7,683.05 which he calculated as follows:-

Calculation of N.A.V.

Agreed Rent at 1st April, 1989:

Store	£7,444.00
Add for Portacabin owned and occupied by Aer Lingus	
431 sq.ft. @ £2.00 p.s.f.	<u>£ 862.00</u>
	£8,306.00
Allow 7.5% to revert to Nov. 1988	<u>£ 622.95</u>
N.A.V. as at November 1988	£7,683.05
Rateable Valuation @ 0.63%	£ 48.40
Say,	£ 48.00

A written submission was also received on the 4th May, 1993 from Mr. Frank O'Connor, a Valuer with 13 years experience in the Valuation Office, on behalf of the respondent. In his submission Mr. O'Connor set out details of the property and its valuation history as set out above. He also submitted that the rent passing here was not deemed to be a market rent and the basis for his valuation was by comparison with other properties in the Airport. His calculation of the rateable valuation on the property is as follows:-

Main Store:	3,982 sq.ft. @ £3.75 p.s.f. =	£14,933
Portacabin Stores:	231 sq.ft. @ £2.50 p.s.f. =	£ 578
Tarmac Compounds	20,718 sq.ft. @ £0.30 p.s.f. =	<u>£ 6,215</u>
	N.A.V.	£21,726
	@ .63%	£136.80
	Say R.V.	£135.00

As comparative evidence, Mr. O'Connor submitted evidence of eleven properties within the Airport complex, which are directly comparable in function and condition and whose R.V.'s were agreed on 1990 First Appeal with Donal O'Buachalla & Company Limited. Details of these comparisons are annexed to this judgment as Appendix 'A'.

Oral Hearing:

At the oral hearing which took place in Dublin on the 17th May, 1993 and was resumed, after an inspection of the subject premises, on the 1st July, 1993. Mr. Liam McKechnie, S.C., instructed by Miss Sheila Geaney, Solicitor, appeared for the appellant and Mr. Aindrias O'Caomh, B.L., instructed by the Chief State Solicitor, appeared for the respondent.

The parties agreed that the case made in relation to the question of market rent and adjustment in Appeal No: VA/92/6/064 would be taken as having been made in the instant appeal.

The Tribunal is satisfied particularly after inspection of the subject premises, that the rent of the property as set out in the Memorandum of Understanding was the result of "arms-length" negotiation.

Accordingly, the issue remaining to be decided by the Tribunal is by what percentage, if any, the passing rent should be adjusted from April 1989 back to November 1988.

The Tribunal notes that the parties have agreed that the correct area of the former compound in the exclusive use of the appellant, is 2,500 square feet.

In the circumstances and having regard to all of the evidence, the Tribunal decides that the correct R. V. of the subject hereditament is £50.

The parties had agreed that the Tribunal would take the arguments advanced in the case of Rainbow Bookshops - VA/92/4/29 as having been advanced by both sides in relation to the rateability issue arising from the description of the premises as being in Dublin Airport and the Tribunal accepts these arguments as having been raised and responded to and finds for the respondent in relation to same in the same manner as was decided by the Tribunal in the Rainbow Bookshops case.

