

Appeal No. VA04/3/002

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

**Mark Murphy**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Hostel at Lot No. 14Aab/1, Farrancoush, Cape Clear, Skibbereen, County Cork.

**B E F O R E**

**Frank Malone**

**Deputy Chairperson**

**Michael McWey - Valuer**

**Member**

**Mairéad Hughes - Hotelier**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 22ND DAY OF JULY, 2005**

By Notice of Appeal dated the 28th day of June, 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €147.00 on the above described relevant property.

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

"The Islanders Rest is a very seasonal business. July-Aug account for 75% of yearly turnover. This is the only building of this type on any island in the southwest of Ireland, if not in the whole of the country. Built for business."

The Appeal proceeded by way of an oral hearing which was held on the 9<sup>th</sup> of November 2004 in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. The appellant represented himself. The respondent was represented by Mr. Terry Fahey, B.Sc. (Hons) Prop. Ec., a Valuer in the Valuation Office.

### **The Property**

The property is described as a Hostel, registered with Failte Ireland and having a publican's licence. It has 21 new ensuite bedrooms all located on the first and second floors. On the ground floor there is a renovated 'Islander Bar' and a function room which caters for 100 people.

### **Location**

The property is located on Sherkin Island overlooking Baltimore Harbour and stands on a 2.2 acre site which includes a 140 berth Marina. Sherkin Island has a population of 125.

### **Tenure**

The property is understood to be Freehold.

### **Valuation History**

The original RV was €50.79. Following extensive refurbishment the subject property was revised in December 2003 and the RV was fixed at €209. At first appeal in June 2004 the RV was reduced to €147.

### **Appellant's Evidence**

Mr. Murphy, having taken the oath, adopted his submission as his evidence-in-chief. He stated that his main concern was the letter dated the 25<sup>th</sup> May 2004 from himself to Mr. Fahey in the Valuation Office agreeing to the proposed RV of €147, a copy of which letter was contained in the respondent's précis of evidence.

He had written the letter in response to a telephone conversation with Mr. Fahey on the morning of 25<sup>th</sup> May 2004 during which he was informed by Mr. Fahey that there was no more that he could do; that the valuation of €147 was as low as that on a barn or a dog-kennel; that he, Mr. Fahey, wished to move the case on and for that purpose needed a letter from Mr. Murphy accepting the proposed RV. Mr. Murphy saw it as a proposal only and not

as an agreement. He said in the letter that he appreciated the reduction but that he wished the RV were lower. There was no indication from Mr. Fahey that such a letter would affect his appeal to the Tribunal.

Mr. Murphy said that he had no reason to doubt this proposal and, consequently, signed the letter of agreement in good faith and he was now concerned that this letter could be used against him in the Tribunal Hearing.

Mr. Murphy stated that at first appeal stage comparisons were made by the respondent with properties on Inis Mór in the Aran Islands. He maintained that there was a substantial difference between the two islands - e.g. the number of tourists visiting Inis Mór is 250,000-300,000 p.a. as against 25,000-30,000 visiting Sherkin Island. There are two hotels on Inis Mór, one of 916 sq. metres valued @ €13.67 per sq. metre – RV €62.60 and a second of 686 sq. metres valued @ €7.08 per sq. metre – RV €8.58 and that as the subject property is in the region of 1500 sq. metres an allowance should be made. Mr. Murphy also said that properties on Inis Mór would let more easily and would achieve a higher rent than any on Sherkin Island.

He said that another Valuation Office comparison at first appeal was located in Skibbereen on the mainland and he maintained that one cannot compare a mainland business with an island business. He also remarked that now, at Tribunal stage, the Valuation Office was no longer citing the Inis Mór or Skibbereen comparisons. He had been told by Mr. Fahey that the valuation was based on the size of the premises. Yet he had been asked to supply two years' accounts but there was no reference to the accounts in Mr. Fahey's submission to the Tribunal.

Mr. Murphy said that, on his return from America, he decided to invest in his native Sherkin Island and purchased the subject property, then trading as a bar, in 1994. It was only when signing the deeds that his solicitor told him that none of the previous owners was there for more than three years. He had no experience of the bar trade and learnt as he went along. He realised he would either have to sell the property or expand it by adding accommodation. There was then another B&B on the island but it did not have Bord Failte recognition and had since closed. He built 21 bedrooms at a cost of €1.6m and found great difficulty in obtaining finance due to the bank's reluctance to finance an island business.

He and his wife were both from Sherkin and they had three children. His accounts were not very healthy as he had over-borrowed. He had great difficulty in securing a bank loan because of the island location and had made twenty-six unsuccessful applications before being accepted by the Bank of Scotland.

As an example of his trading situation Mr. Murphy said that the previous week the Baltimore Harbour Hotel were offering “supervalu breaks” and had 130 people whereas he had only two guests. Dingle was as cheap in the summer as he was in the winter. His was a summer trade with 70% of annual turnover generated in the months of July/August and no winter trade. He said that there was no passing trade. When wintertime comes in the last ferry of the day travels in darkness.

He had to make payments to service his various loans as he had incurred heavy borrowings at the start. He had placed the property on the market at €2.5m but had received no offers in 1½ years apart from one unacceptable offer of €1m. His main problem was over-borrowing. His present rates were €800 p.a. and with the proposed increase in the RV they would amount to approximately €4,000 p.a. He had no waste collection service which meant he had to bring his waste to Baltimore or Skibbereen.

He suggested the following rateable valuation:

$$1532.58 \text{ sq. metres @ } €6.83 \text{ per sq. metre} = \text{RV } €2.33$$

He said this was a small increase on the previous valuation of €50 but the rate in the € had now increased. The fact that the previous valuation was set at €50 proved that the business had a difficulty.

Mr. Fahey stated that he did not wish to question Mr. Murphy.

The Chairperson asked Mr. Murphy to explain the difference between a hotel and a hostel. Mr. Murphy said that in order to avail of Business Expansion Scheme (BES) finance he had registered the property as a hostel although it was built to hotel standard. This registration precludes him from marketing it as a hotel. This option had been suggested to him by Tourism Quality Services, the body which carries out inspections for Failte Ireland. A hotel would have mostly ensuite bedrooms compared to bunk beds in a hostel. But the actual

difference between a hostel and a hotel was mainly in the marketing of it. A hostel was seen as being accommodation for backpackers at €10 - €15 per night.

On being questioned by the Chairperson as to why he wrote the letter of 25<sup>th</sup> May 2004 he replied that Mr. Fahey had phoned him saying there was no more he could do and he wanted to move it off his desk and that the valuation (€147) was as low as he could go. He accepted Mr. Fahey could do no more. He was not happy with the figure of €147 but Mr. Fahey had said he could do no more. He confirmed that he had accepted the figure on the telephone. He could not recall whether Mr. Fahey had said that he had to get the permission of the Commissioner to agree at €147. He said if he had been aware that it would be an issue before the Tribunal he would not have signed the letter.

Mr. Murphy informed the Tribunal that there were two operating companies involved, Drolain Point Ltd which operated the hostel accommodation in the top two floors i.e. the BES-financed part of the business and The Islander's Rest which operated the ground floor part of the business i.e. the pub and food. Mr. Murphy owns and occupies the entire premises with agreements between him and the two operating companies.

Asked if he could offer any comparisons, for example the Jolly Roger Pub also on Sherkin Island, Mr. Murphy replied that due to a great difference in size the properties were not comparable. He had no comparisons to offer. He confirmed that the business was losing money and that he had incurred very large debts to the bank and to his family because of the refurbishment which had cost €1.6m. It was done at the height of the building boom and he could not get builders/tradesmen locally so he had to get them in from London and Kildare.

Mr. Murphy confirmed to the Tribunal that he knew about the appeal process on 25<sup>th</sup> May 2004 but that Mr. Fahey had told him his letter would not affect the Tribunal appeal. In writing the letter he was accepting that Mr. Fahey could do no more. To a question from the Chairperson, Mr. Fahey said that on 25<sup>th</sup> May 2004 he was conscious that Mr. Murphy did not have an agent, that he explained all to him, that he informed him that he could not prevent him from appealing to the Tribunal but that he could not reduce the valuation without Mr. Murphy's letter of agreement.

On being asked if he was aware on 25<sup>th</sup> May 2004 of a previous Tribunal decision (now contained in his précis of evidence) where an appellant was estopped from proceeding with an appeal to it by reason of his prior agreement of an RV with the Valuation Office, Mr. Fahey replied that he was unaware of such a decision at that time. He further stated that as far as he was concerned the letter of 25<sup>th</sup> May 2004 was required and that it was a letter of agreement. Mr. Fahey also stated that all new Hostels on the mainland had an NAV of €27.34 per sq. metre, which was the tone of the list.

The Chairperson asked Mr. Fahey whether, in view of the financial circumstances of the appellant, he could reduce the valuation further or seek instructions to do so. Mr. Fahey replied that the decision to reduce was made by the Appeal Officer and that he had made it clear to Mr. Murphy that he, Mr. Fahey, could not reduce it. He explained that the actual size of the subject property was the issue, the function room alone was 1,900 square feet, there was also a large pool area and overall the size was vastly greater than what most hostels would have. He had valued it at less than similar property on Bere Island. If it were on the mainland he would have valued it higher than other hostels there and they are typically valued at €27 per square metre. Mr. Murphy would benefit from the lower rate of €19.13 per square metre and from the 50% reduction in rates for island-based properties. In valuing a property he could not take the financial position of the occupier into account.

The Chairperson told Mr. Fahey the Tribunal was not pre-judging the issue of the letter of the 25<sup>th</sup> of May 2004 but would ask whether, in view of the circumstances of the appellant - i.e. an island location, considerable debts, business not doing well and no buyers for the property - he could seek instructions from the Appeal Officer about a possible reduction. He also told Mr. Fahey that he had a strong case on the basis of the letter of the 25<sup>th</sup> May 2004 to which Mr. Fahey replied that the idea of getting the letter was not to prevent Mr. Murphy having a fair hearing.

In reply to questions from the Tribunal Mr. Murphy said that he knew on 25<sup>th</sup> May 2004 that he could refuse to sign the letter of agreement but he had no reason to doubt Mr. Fahey who told him he could do no more and that the letter would not affect his appeal to the Tribunal. Mr. Fahey, also in response to the Tribunal, said that he was conscious that Mr. Murphy did not have an agent acting for him and so he had explained all to him. He told him he could not stop him going to the Tribunal but also that he could not reduce the RV without the letter of

agreement. He confirmed to the Tribunal that he was not then aware of a previous Tribunal decision where an appellant was estopped from proceeding with an appeal to it by reason of his prior agreement of an RV with the Valuation Office and that he only later become aware of it. Asked by the Tribunal if he had told Mr. Murphy in May 2004 that he could appeal to the Tribunal Mr. Fahey said he had told Mr. Murphy he could not prevent him from doing so.

Mr. Fahey agreed to consult with the Appeal Officer, Mr. Gormley as requested by the Chairperson. The hearing was adjourned briefly to allow for this consultation.

When the hearing resumed Mr. Fahey informed the Tribunal that Mr. Gormley had instructed him that he could offer Mr. Murphy a further reduced RV while upholding his position with regard to the binding nature of Mr. Murphy's letter of 25<sup>th</sup> May 2004. He had made the offer to Mr. Murphy before the hearing resumed and Mr. Murphy had rejected it. Mr. Fahey stressed that he was making the offer outside the Tribunal proceedings and without prejudice to the letter of 25<sup>th</sup> May 2004.

Mr. Murphy confirmed to the Tribunal that he was not accepting the offer of a reduced RV and wished to proceed with his appeal.

The Chairperson thanked Mr. Fahey for consulting with the Appeal Officer.

### **Respondent's Evidence**

Mr. Fahey, having taken the oath, adopted his précis as his evidence-in-chief. He stated that the property was on 2.2 acres, had a 40-berth marina, was located right at the harbour where the ferry comes in and was 10 minutes from Baltimore. He said that his valuation was based on a gross external area of 1532.58 sq. metres @ €19.13 per sq. metre, giving an NAV of €29,318.26 which at 0.5% gave an RV of €147 and that he relied on the letter of agreement of the 25th May 2004 as an agreement by Mr. Murphy.

Mr. Fahey offered a number of comparisons (see Appendix to this judgment) in support of his opinion of NAV on the subject property:

- (1) Rolf's Hostel, Baltimore, at under 800 sq. metres, half the size of the subject and having a small bar with an RV €100 based on:

Hostel (New Section)	568.74 sq. metre	@ NAV €23.92 per sq. metre
(Old Section)	122.34 sq. metre	@ NAV €27.34 per sq. metre
Restaurant	34.54 sq. metre	@ NAV €61.51 per sq. metre

(2) The Lawrence Cove Lodge, Bere Island: the closest comparison, at one-fifth the size of the subject property with an RV €34 based on:

309 sq. metre @ NAV €22.21 per sq. metre

This property had no liquor licence and the location was not as attractive as the subject property's.

(3) The 12 Arch Hostel, Ballydehob, RV €33.80 based on:

335 sq. metre @ NAV €27.34 per sq. metre.

(4) The Ocean View Lodge, Castletownbere, RV €31 based on:

229.06 sq. metre @ NAV €27.34 per sq. metre

Mr. Fahey said that the RV of €147 on the subject property reflected the quality of the building and said that the rooms, all of which were ensuite, were superior to those in a standard hostel and the property had the benefit of the marina. He stated that he had applied a reduction of 35% in respect of the island location and that the valuation was 60% - 65% less than it would be on the mainland.

Mr. Murphy cross-examined Mr. Fahey, asking him why he changed his comparisons from Inis Mór, Aran Islands, at first appeal to which Mr. Fahey replied that, under Section 49 of the Valuation Act, 2001 he had to use comparisons in the same rating authority area. In reply to the same question from the Chairperson he said that his comparisons before the Tribunal were all hostels, the one on Bere Island had been valued since the subject property was valued and the others were all in the Baltimore area. He accepted it was unusual to vary comparisons between first appeal and Tribunal appeal but said that he would still have arrived at an RV of €147.

Mr. Fahey, in reply to further questions from Mr. Murphy, said that accounts were sought in order to get an overall view but that Valuation Office practise was to value on a rate per square metre basis; that in his role as Revision Officer he could only propose a reduction with



a letter of agreement and that the final decision lay with the Appeal Officer who could decide to keep the RV unchanged or reduce it.

The Chairperson, referring to Mr. Fahey's earlier statement that he could not prevent Mr. Murphy from appealing to the Tribunal, asked Mr. Fahey if Mr. Murphy could have got the impression that he could still go the Tribunal. Mr. Fahey said that at that stage he himself did not know of the earlier Tribunal decision in a case where an RV had been agreed by an appellant at first appeal stage and by virtue of that agreement the appellant was prevented from appealing to the Tribunal. He said that he had told Mr. Murphy that he had to go back to the Appeal Officer with the proposal to reduce the RV and with the letter of agreement; that Mr. Murphy had asked him if he could appeal to the Tribunal and he had said he could not prevent him from doing so. Asked by the Chairperson whether, in view of what was said, a bystander could say that Mr. Murphy could be under the impression that he could still go the Tribunal Mr. Fahey said yes.

The Chairperson then asked Mr. Fahey what his best comparison was and he replied that all were of great relevance. He said so far as he knew the Laurence Cove (his second comparison) did not have a liquor licence and it was not as good as the subject property the latter having 21 ensuite rooms compared to one big room with shared bathroom in the former. His first comparison had a wine bar, his third and fourth comparisons did not have liquor licences and the subject property had a bar.

On being asked by the Chairperson if a tenant might consider the NAV of the subject property less than that of comparisons because the business was not going well and the owner was trying to sell, Mr. Fahey said that the business did not look to him be as bad as it appeared from Mr. Murphy's evidence, that it was a start-up business and while it was in a bad phase now it could improve. Mr. Murphy was not a "blow-in" and the bank had loaned money. He agreed with the Chairperson that the accounts did not paint a great picture but said that most businesses have a start-up phase like this.

### **Findings and Determination**

1. Mr. Murphy spoke to Mr. Fahey on the telephone on the morning of 25<sup>th</sup> May 2004 and during the course of this conversation in response to a question from Mr. Murphy to the

effect that if he (Mr. Murphy) wrote a letter to Mr Fahey accepting Mr Fahey's proposal of a Rateable Valuation of €147 on the subject relevant property if this would in any way affect his right to any further appeal and Mr. Fahey replied that he could not prevent Mr. Murphy from appealing to the Valuation Tribunal. At the time of this telephone conversation Mr. Fahey was not aware of the Judgment of the Tribunal in the case of **VA94/1/026 - John Moran, Wood Systems Limited v. Commissioner of Valuation.**

2. After this telephone conversation took place Mr. Murphy sent the letter dated 25<sup>th</sup> May 2004 from him to Mr. Fahey.
3. It was reasonable for Mr. Murphy to believe and he did in fact believe that if he sent the said letter he could still appeal to the Valuation Tribunal pursuant to Section 34 of the Valuation Act, 2001.
4. In the circumstances outlined Mr. Murphy was not estopped from pursuing this appeal to the Valuation Tribunal by virtue of the said letter of 25<sup>th</sup> May 2004.
5. From the map and tourism literature supplied to the Tribunal it is clear that Sherkin Island is much smaller than Bere Island where the respondent's nearest comparison is located. It is also clear that Bere Island is a better tourist location with more facilities and a larger population.
6. The Tribunal is of the opinion that a quantum allowance should be made in regard to the size of the subject property which is 1532.58 sq. metre as against the Bere Island comparison of 309 sq. metres.
7. The Tribunal determine the Net Annual Value and the R.V. of the subject relevant property as follows :-  
 Gross External Area 1532.58 sq. metre @ €16 per sq. metre = NAV €24,521.28  
 €24,521.28 @ 0.5% = RV €122.61

SAY RV €123

And the Tribunal so determines.