

Appeal No. VA05/2/032

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

**Bernard Fox**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Lot No. 93, Main Street, Manorhamilton, County Leitrim.

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Frank O'Donnell - B.Agr.Sc. FIAVI.**

**Member**

**Maurice Ahern - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 8TH DAY OF NOVEMBER, 2005**

By Notice of Appeal dated the 31st day of May, 2005 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €182.00 on the above described relevant property.

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

"The RV is excessive and inequitable and bad in law. The property is described as a shop where in fact it is Retail, Warehousing & Stores."

This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 12<sup>th</sup> July & 30<sup>th</sup> September, 2005.

At the hearing the appellant was represented by Mr. Walter Murphy F.I.A.V.I of Murphy & Sons Auctioneers Limited. The respondent, Commissioner of Valuation, was represented by Mr. Damien Curran, B.Sc. Surveying, M.R.I.C.S, a Team Leader in the Valuation Office.

The property concerned is a detached part single storey, part two storey premises used for the sale of furniture and hardware products. The premises are located at the eastern end of Main Street at the junction with Congress Terrace, Manorhamilton, County Leitrim. At the side and rear there is an enclosed yard used for customer car parking purposes. An adjoining occupier has a right of way across this yard.

In November, 2004 the revision officer, appointed pursuant to Section 28(3) Valuation Act, 2001, issued a certificate to the effect that the rateable valuation of the property concerned had been assessed at €182. No change was made by the Commissioner of Valuation on foot of an appeal by the appellant and it is against this decision that the appeal to this Tribunal now lies.

### **The Appellant's Evidence**

At the hearing, Mr. Murphy having taken the oath adopted his written précis and valuation, which had previously been received by the Tribunal and exchanged with the respondent as being his evidence-in-chief.

In evidence Mr. Murphy contended for a rateable valuation of €84.30 calculated as set out below:

#### Ground Floor:

Retail area 1	140.70 sq. metres @ €26.91 per sq. metre	= €3,786.24
Retail area 2	104.42 sq. metres @ €26.60 per sq. metre	= €2,777.57
Show room	374.60 sq. metres @ €22.60 per sq. metre	= €8,465.96

#### Lower Ground Floor:

Store 1	135.52 sq. metres @ €5.40 per sq. metre	= €731.80
Store 2	135.52 sq. metres @ €8.10 per sq. metre	= €1,097.70
	Say €16,860 @ 0.5%	= €84.30

In support of his opinion of net annual value Mr. Murphy introduced one comparison, details of which are set out in Appendix 1 to this judgment.

In his evidence Mr. Murphy said the subject premises were located at the east end of Main Street at the junction with Congress Terrace. Mr. Murphy said the layout of this junction was such to render the subject property virtually out of sight for those coming from Congress Terrace onto Main Street. This, he said, was a major disadvantage, which together with the long, narrow configuration of the property would make it difficult to let on the open market. These factors, he said, had not been sufficiently recognised by the revision officer. Mr. Murphy said no discussions regarding the area of the property or the details of its layout had taken place at representation or appeal stage.

Under cross-examination Mr. Murphy once again confirmed that no discussions regarding measurements or area had taken place at appeal stage. When questioned about his comparison Mr. Murphy agreed that the analysis of this rateable valuation of €120 and the areas quoted were his figures and not those contained in the Valuation Office records. When shown an extract of the Valuation Report form and survey prepared by the revising valuer at the 1999 revision, he agreed it had been valued as a factory/warehouse and not as a retail property.

When asked about the location of the subject property Mr. Murphy agreed that it was on Main Street, but pointed out that the east end of Main Street was the inferior end. Mr. Murphy also said he was familiar with the comparisons introduced by Mr. Curran but contended that they were not particularly relevant due to their better location on the street and the fact that they were shops and not akin to a retail warehouse such as was the subject property.

### **Respondent's Evidence**

Mr. Curran having taken the oath adopted his written précis and valuation, which had previously been submitted to the Tribunal as being his evidence-in-chief.

In his evidence Mr. Curran contended for a rateable valuation of €182 calculated as set out below:

Retail:

Original section to front 107.2 sq. metres	@ €61.50 per sq. metre	= €6,592.80
New Section Middle 220.39 sq. metres	@ €47.84 per sq. metre	= €10,543.37
New Section Rear 296.40 sq. metres	@ €41.00 per sq. metre	= €12,152.40
Store:		
Lower Ground Floor 148.20 sq. metres	@ €27.33 per sq. metre	= €4,050.31
Lwr. Ground Fl. 148.20 sq. metres	@ €20.50 per sq. metre	= €3,038.10
	Total NAV	= €36,376.10
@ 0.5%	SAY	RV €182.00

In support of his opinion of net annual value Mr. Curran introduced four comparisons, details of which are set out in Appendix 2 to this judgment.

At this stage in the proceedings the Tribunal expressed the view that it could not reconcile the areas of the various constituent elements of the property concerned as presented by the two expert witnesses. The Tribunal, having pointed out to the witnesses that since it was not in a position to say which survey, if either, was correct, suggested that the hearing be adjourned to afford the valuers the opportunity of providing an agreed survey which would form the basis of the Tribunal's determination.

Mr. Curran objected to this course of action and contended that since the matter of areas had not been raised at first appeal stage it could not be raised at Tribunal stage. Reference was made to **VA95/5/015 - John Pettitt & Son Ltd. v Commissioner of Valuation** and in particular to the following extract which Mr. Curran said was relevant. *“So, it is therefore our decision that whilst, as a general rule, where a ground of appeal has not been advanced before the Commissioner it will not be possible to raise it before us nevertheless, in exceptional circumstances where the interest of justice requires, this Tribunal will permit the raising of a ground, the reception into evidence and the reliance on a point of law none of which have previously been so raised or so adduced.”*

Mr. Curran said the disparity in the areas did not represent an exceptional circumstance and hence it was not open to the Tribunal to allow the matter to be raised at this late stage in the appeal process. In support of his submission, Mr. Curran referred the Tribunal to another case, **VA04/3/040 - Centre Operators Ltd. v Commissioner of Valuation**. Nonetheless Mr. Curran agreed to the adjournment as requested and agreed that he and Mr. Murphy would

prepare a joint survey of the property concerned and agree a schedule of areas to be submitted to the Tribunal.

At the resumed hearing on the 30<sup>th</sup> September, 2005, an agreed survey and schedule of areas was submitted to the Tribunal (see Appendix 3 to this judgment). Mr. Curran in further submission reiterated his opinion that since the area of the property concerned was not raised by the appellant at representation or first appeal stage it was not open to the Tribunal to accept any other areas than those used by the revising officer in preparing his original valuation. This opinion, he said, was supported by the **Pettitt judgment (VA95/5/015)**. The area of the property concerned put forward by Mr. Murphy in his evidence to the Tribunal represented a new ground of appeal and hence must be considered inadmissible.

In response to a question from the Tribunal, Mr. Curran agreed that the survey and schedule of areas prepared by him and Mr. Murphy were accurate and represented what existed on the ground. Mr. Curran said the survey and schedule of areas were being submitted by him on a without prejudice basis and that the rate per square metre used by him in his original valuation remained unaltered.

Mr. Curran said that in arriving at his opinion of net annual value he had taken into account all relevant factors including the location of the property concerned and its configuration. Mr. Curran referred the Tribunal to his comparison No. 4 – Rooneys Supermarket t/a Centra. This property, he said, was located beside the subject property and was valued at €76.18 per square metre, as against €61.50 which he had applied to the front section of the subject in order to reflect its lack of profile. Mr. Curran said that his other comparisons, which were all located on Main Street, were a sample of prevailing levels of value on the street and indicated that his opinion of net annual value for the property concerned was fair.

Mr. Curran said Mr. Murphy's comparison was not relevant as it was valued as a factory/warehouse and not as a shop.

Under cross-examination Mr. Curran agreed that Manorhamilton could not be described as a thriving town and that there were a number of vacant retail premises on the Main Street. When asked if the property concerned would be hard to let, Mr. Curran said he was not in a position to give an authoritative opinion on this point. As far as he was concerned the property had been valued in accordance with the provisions of the Valuation Act, 2001. He agreed that

the property had a poor profile and that it was a long narrow premises, but said he had taken all of this into account in arriving at his opinion of net annual value.

When asked about Mr. Murphy's comparison, Mr. Curran repeated his opinion that it was not a relevant comparison. Whatever about its current use, he said, the property when last valued at the 1999 revision was assessed on the basis of a factory and warehouse.

### **Findings**

The Tribunal has carefully considered all the submissions and evidence introduced by the parties and makes the following findings:

1. There are two fundamental elements in arriving at an estimate of net annual value – an accurate survey of the property concerned and the appropriate rate or rates per square metre used in order to reflect all the intrinsic and extrinsic characteristics of the property. The latter element is, by its very nature, opinion-based on an analysis of the valuation of other properties considered to be relevant comparisons. The former however is one of fact. In property disputes whilst there may be and usually is a divergence of opinion in many matters, there is no reason for any dispute regarding the measurement and resulting survey of a property where expert witnesses are engaged.
2. In this appeal it would appear that the measurement and survey of the property concerned was not raised at either representation or first appeal stage. When the matter came before this Tribunal it was apparent that there were differences in the schedule of areas presented by the witnesses which could not be reconciled and which varied to such an extent that they could not be disregarded by virtue of their impact on the valuation process. In the circumstances the Tribunal suggested that the witnesses get together and prepare a schedule of areas that accurately reflected the size and layout of the property concerned. This they ultimately agreed to do, although Mr. Curran reserved his position regarding this course of action.
3. In submission, Mr. Curran contended that since the schedule of areas prepared by the revision officer had not been challenged at representation or appeal stage any attempt to do so at the Tribunal appeal stage represented a new ground of appeal which could not, as a matter of principle, be entertained. In support of his contention, Mr. Curran

referred the Tribunal to the **Pettitt case (VA95/5/015)** and more particularly, paragraph 10 found on page 8.

4. From time to time this Tribunal has allowed expert witnesses to amend errors contained in their written précis of evidence. In so doing the Tribunal recognises that no matter how diligently a person may carry out their functions, mistakes can and do occur and to deny a witness an opportunity of rectifying an error made in good faith would be, to say the least, perverse in the extreme. In those unusual circumstances where the Tribunal is presented with conflicting evidence in relation to basic facts, it must surely be open to it to request the expert witnesses to take such steps as are necessary to ensure that the Tribunal is given information which is accurate in all respects and which will then form the basis of its determination. In the circumstances of this appeal, the Tribunal is satisfied that its request represented “an exceptional circumstance” which the interests of justice demanded as envisaged by **Pettitt (VA95/5/015)**. Accordingly therefore the Tribunal proposes to adopt the agreed schedule of areas as the basis of its determination. Indeed if the Tribunal were to reach a determination on measurements and areas which it finds not to be accurate it would be unfair both to the ratepayer himself and indeed to ratepayers in general.
5. The Tribunal makes no comment as to why or how an appeal could progress to Tribunal stage without some debate or discussion on the matters of areas having been raised and resolved.
6. It is common case that the subject property presents a poor profile onto Main Street and that it is not readily visible from Congress Terrace. It is also common case that it is long and narrow in configuration.
7. Of all the comparisons introduced, the Tribunal attaches most weight to Mr. Curran’s comparison No. 4 by virtue of the fact that it is beside the property concerned and was the subject of a revision in 2004. Lesser weight is attached to Mr. Curran’s other comparisons, which are much smaller in size. Mr. Murphy’s comparison is of no assistance whatsoever, in that it was not in retail use when last valued at the 1999 revision stage.
8. The Tribunal notes Mr. Curran’s evidence that he made what he considered to be appropriate allowances for the relatively poor profile of the property and its configuration. Nonetheless the Tribunal has come to the conclusion that such allowances as he did make were not sufficient and accordingly determines the rateable valuation of the property concerned to be €132.00 calculated as set out below:

**Ground Floor - Retail:****Plan ref.****(See App. 3)**

Block 1	99.34 sq. metres	@ €55 per sq. metre	= €5,463.70
Blocks 2 & 3	204.78 sq. metres	@ €40 per sq. metre	= €8,191.20
Blocks 4 & 5	287.59 sq. metres	@ €30 per sq. metre	= €8,627.70

**Lower Ground Floor - Stores:****Plan ref.****(See App. 3)**

Block 4	129.83 sq. metres	@ €12 per sq. metre	= €1,557.96
Block 5	143.43 sq. metres	@ €18 per sq. metre	= <u>€2,581.74</u>
		Total NAV	= €6,422.30
		@0.5%	RV €132.11
			<b>Say €132</b>

And the Tribunal so determines.