

Appeal No. VA05/2/040

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

**Michael Butler**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Marina, Store, Land at Lot No. 5M.5N.5B, Attirory, Carrick-on-Shannon, County Leitrim.

**B E F O R E**

**John Kerr - BBS. ASCS. MRICS. FIAVI**

**Deputy Chairperson**

**Michael F. Lyng - Valuer**

**Member**

**Joseph Murray - B.L.**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 5TH DAY OF DECEMBER, 2005**

By Notice of Appeal dated the 27th day of June, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €402.00 on the above described relevant property.

The Grounds of Appeal are as set out in the Notice of Appeal a copy of which is attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing which took place on the 19<sup>th</sup> September 2005 at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. The appellant, Mr. Michael Butler, represented himself. The respondent was represented by Mr. Damien Curran, a Team Leader in the Valuation Office.

### **Valuation History**

The Valuation Certificate, fixing a rateable valuation of €402 on the subject property, was issued on the 6<sup>th</sup> December 2004. The Commissioner of Valuation received an appeal against the valuation on the 28<sup>th</sup> April 2005. Following consideration of the appeal the valuation was issued unchanged.

### **The Property Concerned**

The property is a marina with detached office and storage buildings. It includes a cruiser storage facility with jetty on the river Shannon in close proximity to Carrick-on-Shannon.

### **Appellant's Evidence**

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

In his written précis Mr. Butler contended for net annual values based on the following measurements and on a maximum of 5 months' usage per year for stores as set out below:

Offices	132.85 sq. metres	@	€34.17 per sq. metre	=	€4,539.48
Stores	3,310.16 sq. metres (internal)	@	€20.50 per sq. metre * <sup>5</sup> / <sub>12</sub>	=	€28,274.28
Marina	100 moorings			=	€2.11

He said he was relying on the Tribunal judgment in **VA90/3/014 – Trustees of Kinsale Yacht Club** in support of his net annual value on the moorings. In his précis of evidence Mr. Butler set this out as “*the jetties being pro-rata with Kinsale i.e. €2.50 ÷ €60 = 4.166% so 4.166% × €50.79 = €2.11*” [where €60 and €2.50 = the rateable valuations in the Kinsale case pre- and post- appeal to the Tribunal respectively]. Mr. Butler did not allude to the difference in currency values between the Irish Pound in which Kinsale was valued and the

Euro in which his property was valued. In the Kinsale case the Valuation Tribunal held that the marina did not fall for exemption under Reference 2 of the Schedule of Categories of Fixed Property in the 1852 and 1986 Valuation Acts. Although there was a sporting element involved it did not constitute a development of land. Further, the marina was not a fixed mooring within Reference 4 of the Schedule as the piles could be removed from the sea bed. Accordingly, it was judged to be an easement within Section 12 of the 1852 Act and valued at £2.50.

Mr. Butler stated the following:

1. That his business was providing berthing and jetty facilities for private boat owners during the summer and winter.
2. He employed one lady who looked after all the bookings etc. All of his other services were contracted out.
3. The site was about 5 acres with a detached office building.
4. The indoor berthage fees received for 2004/2005 were €37,193.68 with a further charge added for the usage of the jetties over the summer months.
5. The fees paid for 2005/2006 were only €9,929.92 to date and a number of his clients had cancelled or were thinking of cancelling their berthage facilities at his marina for 2005/2006.
6. His rates bill for 2005 was €2,548.18 as against €12,393.01 in 2004.
7. He was most disappointed with the services offered to him by the Valuation Office and he stated that he had had no contact with the Revision Officer until the Valuation Certificate was issued.
8. That he was at a disadvantage because he could not afford professional advice as his business was too small.
9. That the marina had closed down on four previous occasions.
10. That his last tenant went into receivership on the 16<sup>th</sup> October 2000.

Mr. Butler also said that three of the comparisons used by the Valuation Office (see Appendix 2 to this judgment) were not relevant. He stated that Comparison no. 1 – Archway Products – manufactured steel trailers etc., had about 20 employees and was open all year round, that Comparison no.2 – Sealion Services – was in receivership since 16<sup>th</sup> October 2000 and that in relation to Comparison no. 4 – New’Gore Ltd – he had never been to that

premises but had phoned the company and been told it was an engineering factory manufacturing steel items including farm sheds and employed 40 people.

If the present valuation of his property was not changed, he said, he would be paying 60% of his income in rates this year, which he felt was unjust. He said that Mr. Curran had suggested to him at First Appeal stage that he could rent the shed to a transport company for €80,000 per annum which he disputed. He stated that no other business similar to his existed in County Leitrim, in fact he felt there was none similar in Ireland. The winter indoor berthage facility, he said, was unique and the premises was not suitable for any other purpose because:

- (a) the building had perforated sheeting metal sides and, as a result, could not be heated;
- (b) it was open to all the elements except rain;
- (c) the floor was not level as it sloped 2 feet to the front in order to allow water to run off;
- (d) the floor was of poor quality being  $\frac{1}{4}$  inch tarmac over stones;
- (e) its only function was to store boats for the months of November, December, January, February and March every winter.
- (f) It was located at the end of a narrow country road .

Mr. Butler stated that the reason he did not follow up on his appeal to the Commissioner in 2000 was because he had other problems at the marina which had to be dealt with at that time including the fact, mentioned earlier, that his tenant had then gone into receivership. The description of his property as “Marina/Store” was, he felt, a wrong description because he had no stocks at the store. He also stated that all his jetties were floating jetties and therefore should not be subject to rates. He further said that if the subject property had been valued on the contractor’s basis as per section 50 of the Valuation Act 2001 the rateable valuation would be €50 calculated as 5% of the replacement cost which he estimated at €200,000 to which Mr. Curran replied that the contractor’s basis of valuation did not arise in this case.

Mr. Curran, for the Valuation Office, told the Tribunal that Mr. Butler did avail of the representation stage prior to his appeal to the Commissioner. He also stated that Mr. Butler availed of First Appeal procedures in 2000 and that he, Mr. Curran, personally dealt with that appeal.

When asked by Mr. Curran if he agreed that the jetty was rateable, Mr. Butler stated that he did and that he also accepted the Valuation Office measurements and levels per square metre on the office. He would not however accept their valuation and measurements of the winter storage facility for boats. Mr. Butler would not accept that the net annual value was relevant in the case of this part of the property because it had rental value for a portion of the year only. In describing the property in the year 2000 he stated that at that time the storage shed had a roof with no sides. He would not agree that because he enclosed the property and made it more secure it was any more valuable. In reply to the Tribunal Mr. Butler said that his property was the only one of its kind where the storage shed could not be used during the summer months for any other business.

### **Respondent's case**

Mr. Curran having taken the oath adopted his précis as being his evidence-in-chief. He contended for a rateable valuation of €402 calculated as set out below:

Offices	132.85 sq. metres	@ €34.17 per sq. metre	= €4,539.48
Stores	3,448.47 sq. metres	@ €20.50 per sq. metre	= €70,693.63
Marina	100 moorings	@ €50.79 per mooring	= €5,079.00
Net Annual Value			= €80,312.12
RV @ 0.5%			= Say €402

Mr. Curran stated that the property in question was the subject of a first appeal in 2000 at which stage a reduction was given in the valuation. This was agreed by Mr. Butler. The only change to the property since that time was to the winter storage shed, which was enlarged and improved by the enclosing of the building, which he believed made the property more valuable. Mr. Curran referred Mr. Butler and the Tribunal to the fact that the Tribunal decision in **VA90/3/014- Trustees of Kinsale Yacht Club** and the subsequent decision of the High Court **1992 ([1993] ILRM 393** had been overturned by the Supreme Court **[1994] 1 ILRM 457**. By way of a Case Stated the High Court (Mr. Justice Barr) held that it was a fixed mooring marina within Reference 4 of the Schedule of Categories of Fixed Property in the 1852 and 1986 Valuation Acts. However by virtue of Reference 2 of the Schedule, the marina could not be regarded as rateable being developed for sport. The Supreme Court, in

applying a strict interpretation of the 1986 Act, held that the marina constituted a fixed mooring within Reference 4 of the Schedule. Section 2 of the 1986 Act provided, without any ambiguity, that property falling within any of the categories of fixed property specified in the Schedule was deemed to be rateable and in this case the marina came within Reference 4 and was accordingly rateable. The matter was remitted to the Tribunal to assess the quantum of the valuation of the subject hereditament.

In regard to his comparisons, Mr. Curran stated that they were old structures, moderate in type and design and in much inferior locations to the subject. In reply to Mr. Butler, Mr. Curran said his main comparison, his comparison no. 1, i.e. the subject property itself pre-revision, had been agreed in the year 2000 and was much improved since then.

### **Determination**

The Tribunal has carefully considered all the evidence and argument adduced by the parties and makes the following findings:

1. The Stores part of the property has increased considerably in size (from 2,071.72 sq.m. to 3,448.47 sq.m.) since the last Revision and a quantum allowance should accordingly be made;
2. Demand for a premises of this size in this location would be limited.
3. The hypothetical tenant would take into account the two-foot gradient in the floor of the store and the tarmac (skin) surfacing of same;
4. Access to the subject is via a narrow single-lane country road, a fact which the hypothetical tenant would also take into account;
5. There was no challenge to Mr. Butler's statement that at least two of the respondent's comparisons had concrete floors, embedded workshop machinery, lighting & heating systems and block walls up to two metres and that they were engaged in industrial production and employing up to forty people. The Tribunal was also informed that those comparisons were weather-secured.
6. There is a very significant difference in size between the subject and all of the respondent's comparisons.

Taking all of the foregoing into consideration the Tribunal determines the rateable valuation of the subject property to be €370 calculated as set out below:

Offices	132.85 sq. metres	@ €34.17 per sq. metre	= €4,539.48
Stores	3448.47 sq. metres	@ €18.79 per sq. metre	= €64,796.75
Marina	100 moorings	@ €50.79 per mooring	= €5,079.00

Net Annual Value = €74,415.24

RV @ 0.5% = €372.08

**Say RV €370**

And the Tribunal so determines.