

Appeal No. VA10/2/030

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

**Michael Kinsella**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2200969, Shop, Showroom at Lot No. 61 Main Street, Bray, Bray No. 3, Bray UD, County Wicklow.

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Patrick Riney - FSCS FRICS FIAVI**

**Member**

**Aidan McNulty - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 7TH DAY OF DECEMBER, 2010**

By Notice of Appeal dated 8th day of June, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €150 on the above described relevant property.

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

1. 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 29<sup>th</sup> July, 2010. At the hearing the appellant was represented by Ms. Siobhan Murphy, BSc (Surv), MSCS, MRICS, a senior valuer with Valuation Rating Consultants, GVA Donal O Buachalla. Ms. Fidelma Malone, BSc (Hons) Estate Management, MIAVI, a valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation.
2. Prior to the commencement of the oral hearing and in accordance with the rules of the Tribunal both valuers submitted and exchanged a written précis of evidence and the valuation they proposed to adduce at the hearing. From this evidence and the additional evidence given at the oral hearing the following material facts emerged or were so found:

### **The Property Concerned**

3. The property concerned in this appeal is a self-contained retail unit in a new four storey development with retail use at ground floor level, with apartments overhead and car parking at basement level. In all, this development provides 6 retail units and at the relevant revision date 3 units were, and still are, vacant. The property is located at the southern end of Main Street, Bray, in a predominantly retail and service outlet area adjacent to Bray Town Hall.

### **Accommodation**

4. The subject property is essentially rectangular in configuration with a frontage of 6 metres and an overall internal area of 173.53 sq. metres measured on a net internal area basis to include storage and toilet accommodation at the rear. Part of the retail space at the rear is at a slightly higher level than the front section.

### **Rating History**

5. On 30<sup>th</sup> June, 2009 the Revision Officer issued a valuation certificate to the effect that it was proposed to enter the rateable valuation of the property concerned in the valuation list in the sum of €150. Following representations by the appellant a valuation certificate in final form was issued on 7<sup>th</sup> October, 2009 confirming the rateable valuation of the property concerned at €150. No change was made following an appeal to the Commissioner of Valuation under section 30 of the Valuation Act, 2001 and it is against this determination by the Commissioner that the appeal to this Tribunal lies.

### The Appellant's Evidence

6. Ms. Murphy, having taken the oath, adopted her written précis, which had previously been received by the Tribunal and by the appellant, as her evidence-in-chief. In her evidence Ms. Murphy contended for a rateable valuation of €13 as calculated as set out below:

Ground floor retail space	173.53 sq. metres @ €30 per sq. metre =	€22,559.00
Net annual value		Say €22,600
Rateable Valuation €22,600 @ 0.5%		= €13

7. In support of her opinion of net annual value Ms. Murphy introduced 6 comparisons, details of which are set out in Appendix 2 attached to this judgment.
8. In her evidence Ms. Murphy expressed the view that the southern end of Main Street was an inferior retail location than that section at the northern end of the street between Quinnsborough Road and Novara Avenue, where Dunnes Stores and other major retailers have their premises. Furthermore Ms. Murphy was of the opinion that the configuration of the subject property was not desirable for many retailers in two respects: first, the frontage-to-depth ratio was not ideal, and second, the fact that the retail space at the rear of the property was at a higher level (3 steps up) was a distinct disadvantage.
9. Ms. Murphy said that she had examined the valuations of other retail units on Main Street, many of which occupied a better retail location than the subject property and, in order to provide a consistent valuation approach, had analysed the valuations of these properties on an overall basis for comparison purposes. Having carried out this exercise, she made such allowances as she considered necessary or relevant to reflect the location, size and configuration of the subject property and contended that €30 per sq. metre was appropriate on an overall basis.
10. Under cross-examination Ms. Murphy conceded that the overall sq. metre rate attributable to the Permanent TSB premises (Comparison No. 1) seemed low relative to her other comparisons. When questioned about those other comparisons Ms. Murphy agreed that Diva Restaurant (Comparison No. 2) was somewhat similar in size to the subject property, but occupied, in her opinion, a slightly inferior location and had a somewhat

irregular configuration. She further agreed that Comparisons 3 and 4 were some distance away from the subject and that the Dunnes Stores premises (Comparison No. 5) was a department store trading at three levels. However, Ms. Murphy contended that her Comparisons 3, 4 and 5 occupied a much superior retail pitch compared to the subject property and that this should be reflected in the valuation of the property. When asked if more weight should be attached to the valuation of other premises in close proximity to the subject property such as the Bank of Ireland premises (Comparison No.1) and Diva Restaurant (Comparison No. 2), Ms. Murphy said that it was better to take an overall view of the assessments on Main Street in order to establish the prevailing tone of the list on the street and that this is what she had done.

### **The Respondent's Evidence**

11. Ms. Malone, having taken the oath, adopted her written précis and valuation, which had previously been received by the Tribunal and by the appellant, as being her evidence-in-chief. In her evidence Ms. Malone contended for a rateable valuation of €147.00 calculated as set out below:

Ground floor retail	138.83 sq. metres @ €170 per sq. metre	= €23,601.10
Ground floor retail	34.7 sq. metres @ €170 per sq. metre	= €5,899.00
Rateable Valuation	€29,500.10 @ 0.05%	= €147.50
Rateable valuation Say	€147	

It should be noted that the rateable valuation of €147 put forward by Ms. Malone is slightly less than that which appears on the valuation list, i.e. €150.

12. In her evidence Ms. Malone said that in arriving at her opinion of net annual value she had regard to the provisions of section 49(1) of the Valuation Act. In so doing she had particular regard to the assessments of other properties of a size similar to the property concerned and which were located nearby. All her comparisons, details of which are set out in Appendix 3 attached to this judgment, are located relatively close to the subject property.

13. Under cross-examination Ms. Malone agreed that the location of the property concerned was not prime, but said that she had taken this into account in arriving at her opinion of

net annual value, which is based on an assessment of other similar premises in the immediate vicinity. When questioned about her Comparison No. 1 (The Diva Restaurant premises and Ms. Murphy's Comparison No. 2) she confirmed that this valuation had been agreed with a colleague of Ms. Murphy's on the analysis as set out in her report and not on an overall basis of €148.46. Ms. Malone said the agreed valuation reflected retail use and did not include a loading for restaurant use. In relation to her Comparisons 3 and 4, Ms. Malone agreed that these were considerably smaller than the subject property but did not accept Ms. Murphy's suggestion that there should be some allowance for quantum when it came to valuing the subject property.

14. Ms Malone agreed that 50% of the retail space in the development was vacant but felt that this was due to current difficult trading and economic circumstances rather than the location of the property. When asked by the Tribunal which of her comparisons was the most relevant, Ms. Malone said her comparisons were numbered by reference to their relevance.

## **Findings**

The Tribunal has carefully considered all the evidence and argument adduced by the parties and finds as follows:

1. The statutory basis for valuing property on foot of a request for a revision of valuation is set down in section 49(1) of the Valuation Act, 2001 which states:

*“If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28 (4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property”.*

In other words, the valuation of the property concerned is to be determined in accordance with what is known as “the tone of the list”, although this expression is not explicitly referred to in the Act.

2. When the valuation of a property concerned falls to be determined under section 49(1) the value of this property must be made by reference to the value of other comparable properties to the property concerned appearing in the valuation list. When it comes to considering which properties are truly comparable it is essential that greater weight be attached to those which are similar in location, mode of use, size and other relevant factors which would have a bearing on its rental value.
  
3. The Tribunal accepts as a fact that the property concerned does not occupy a prime pitch from a retailing point of view on Main Street. Nonetheless the comparisons introduced by the appellant do not seem to bear out that and it is clear that there does not exist in the valuation list a consistent pattern of values expressed in rates per sq. metre which represent the differences in locational terms along the Main Street. This perhaps is not surprising given the fact that there has not been a revaluation of all the relevant properties in the area for some considerable time. It is inevitable in such circumstances that there will be a lack of consistency in assessments despite the precise wording of section 49(1).
  
4. Having examined all the comparables put forward by both parties, the Tribunal accepts Ms. Malone's contention that greater weight should be given to the valuation of those premises of a similar nature which are located in close proximity to the property concerned. Accordingly therefore the Tribunal attaches most weight to the valuation of the Bank of Ireland premises and the "Diva" restaurant premises both of which are common comparisons and are located close to the property concerned. In relation to the Permanent TSB premises it has to be said that the overall analysis of this assessment is clearly out of line. This may, and probably is, due to the way the property was valued in the first instance, where differential rates were applied having regard to the actual use of the accommodation, as is set out below:

Ground floor public office	111 sq. metres @ €136.67 per square metre	= €15,170
Attic/Canteen	59 sq. metres @ €4.67 per square metre	= €3,225
ATM	5.5 sq. metres @ €136.67 per square metre	= <del>€751</del>
Total NAV Say		= €19,000
Rateable Valuation @ 0.50%		= €95.00

Lesser weight is attached to all the other comparisons for a range of reasons such as size, location, property type and use.

5. The Tribunal accepts to some degree Ms. Murphy's opinion that regard should be given to the fact that the retail space at the rear of the subject property is at a different level to the space at the front and that a hypothetical tenant will take this into account together with other relevant factors such as location, size and configuration in arriving at his/her opinion of rental value.

### **Determination**

Having regard to the above findings the Tribunal determines that the rateable valuation of the property concerned in accordance with section 49(1) of the Valuation Act, 2001 is €134.00 which figure may be devalued as set out below:

Shop space 173.53 sq. metres @ €155 per sq. metre = €26,897

Net Annual Value say €26,800

Rateable Valuation @ 0.50% = €134.00

And the Tribunal so determines.