Status of Judgment: **Distributed**

Appeal No. VA98/2/005,
VA98/2/017, VA98/2/018,
VA98/2/19 & VA98/2/035

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Daithí O'Connor
Philip Wheeler t/a Seancara
Chris & Colette Short t/a Associates
Seamus O'Sullivan
Dan Horan t/a Horan's Fruit & Vegetables **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Shop at Lot No. 12.13 (Unit 3 incl. 37 Abbey Street), The Square, Tralee, Co. Kerry
Shop at Lot No. 12.13 (Unit 4 incl. 37 Abbey Street), The Square, Tralee, Co. Kerry
Shop at Lot No. 12.13 (Unit 5 incl. 37 Abbey Street), The Square, Tralee, Co. Kerry
Shop at Lot No. 12.13 (Unit 8 incl. 37 Abbey Street), The Square, Tralee, Co. Kerry and
Shop at Lot No. 12.13 (Unit 9 incl. 37 Abbey Street), The Square, Tralee, Co. Kerry
Quantum - Units in a shopping centre

B E F O R E
Liam McKechnie - Senior Counsel **Chairman**

George McDonnell - F.C.A. **Member**

Barry Smyth - FRICS.FSCS **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF APRIL, 1999

By Notices of Appeal dated the 14th day of April 1998 and 27th day of April 1998 the appellants appealed against the determination of the Commissioner of Valuation in fixing rateable valuations of £65 on all the above named hereditaments.

The grounds of appeal as set out in the said Notices of Appeal are that:

VA98/2/005 – "As before, rented premises on £45, valuation set at the time, changed subsequently at £65."

VA98/2/017, 018, 019 & 035 - "The valuation is excessive in comparison to similar properties."

The appeal proceeded by way of an oral hearing which took place on the 23rd day of March 1999 in Tralee UDC, Town Hall, Princes Quay, Tralee. Mr. Colman Forkin, a District Valuer with over 19 years experience in the Valuation Office appeared on behalf of the Commissioner of Valuation. The appellants were represented by Mr. Nicholas McAuliffe of Kenneally McAuliffe Surveyors, Rating Consultants, Valuers & Estate Agents. In accordance with the rules of the Tribunal and following established practice the parties, prior to the hearing had exchanged their written submissions. At the oral hearing both valuers, having taken the oath, adopted their written submissions respectively as their evidence-in-chief.

This appeal hearing as previously stated is concerned with five appeals which numbers and descriptions are set forth and described above. The hereditaments the subject matter of these appeals are part of an eleven unit development known as "Abbey Court" just off the Mall in Tralee Town Centre. This development which took place in the late 1980's was ready for occupation probably by September 1989 though in many cases the Leases in question were made as and from November or December 1988.

Valuation History

In 1989 that is up to but not including November 1988, Units 3, 4, 5 & 9 were revised. In the same year or the year following those units were also revised but this time up to November 1988 the significance of course being that the first revision mentioned was on a pre-November 1988 rental basis whereas the second one was not. In 1990 Unit No. 8 was also revised, as was Unit No. 6 which had placed on it an R.V. of £65. In 1993, the forth quarter, Unit 2 and Unit 7 at first appeal stage had an R.V of £65 placed thereon. In 1997 six units were listed for revision with a revised list issuing in November of that year. Those units were 3, 4, 5, 8, 9 & 11 and all had the

R.V. of £65 placed thereon. No change was made at 1st Appeal and these are now before us as five appeals from this decision. The exception is Unit No. 11 which is occupied by Mr. & Mrs. Barrett, the explanation as given to us by Mr. McAuliffe being that the occupiers were late in the service of the required Notice of Appeal. In any event five appeals were by agreement heard together before us and these relate to the units above identified.

Details of the premises being Unit No's 2 to 11 with the exception of Unit No. 10 in respect of which there was no evidence are under appeal are set out below at Appendix 1.

It should be noted that from the evidence presented before us the location in terms of valuation law of each of these units is similar if not identical. Equally so the available parking and or the parking restrictions in terms of vehicular traffic that would service these units. In three of these units a mezzanine floor has been constructed. In Unit No. 5 the area is 228 sq.ft., Unit No. 8 the area is 416 sq.ft. and in Unit No. 9 the area is 242 sq.ft. Mr. McAuliffe, has put a separate valuation on each of these areas whereas Mr. Forkin on behalf of the Commissioner has not. In our view if one adopts the practice as followed by Mr. McAuliffe then that separate valuation necessarily reduces the value of the underlying area. As valuation is not based on a scientific mathematical calculation, we are of the opinion that it would be reasonable and proper to effectively offset the additional value attaching to the mezzanine as against the reduced value of the area underneath. Accordingly for the purposes of this judgment no distinction in terms of valuation is made on account of the construction and presence of these mezzanines.

It should also be noted that our function is to ascertain the N.A.V. and hence the R.V. in accordance with well established and well recognised principles being essentially those set forth in Section 11 of the 1852 Act as amended by Section 5 of the 1986 Act. In the application of those principles it is worth while recalling that the obligation is to place a valuation on the buildings and not on the business conducted therein or therefrom. Whilst the nature of such business and more particularly the profitability thereof can in some instances be a measure of the valuation of a building, nonetheless there is and there should remain a clear distinction between the value of a business and the value of a building.

Before commenting on and dealing with the individual cases, the Tribunal would like to make this observation with regard to comparisons. As previously stated there are five of eleven units, as the No's then were, under appeal. More accurately since we do not have any information about Unit 10, there are five of ten units details of which are available. There are therefore at least three if not four of these units which are not under appeal and accordingly it is quite clear on any reading of the situation that, these units must be taken into account in considering comparisons. Bearing in mind the obligation of any professional witness who appears before this Tribunal but in particular a professional witness who is a specialised expert, it is essential for that person to remember, practice and implement his duties as an expert. In cases like these it is incumbent upon him to refer to comparisons which are relevant whether or not these support the client's case. It is not within his choosing to make a decision to omit such comparisons when undoubtedly these ought to be considered, whether favourable or unfavourable.

In any event from the information contained above and in Appendix One, one can see firstly that with regard to Units 4, 5 & 8, the area in question ranges from 820 sq.ft. to 825 sq.ft. Incidentally we should record that after considerable confusion with the regard to the areas in question, both valuers ultimately compromised and agreed what areas could be used for the purposes of this judgment. Units 3 & 9 have lesser areas ranging from 788 to 791. The difference between the smaller and larger of these units (788 and 825) is therefore 4.7%. Unit No. 6, which is not under appeal, has an area of 798 sq.ft. Unit No. 7 again not under appeal has an area of 823 sq.ft. and a third Unit not under appeal namely Unit 11 has an area of 819 sq.ft. All of these are broadly comparable and broadly similar in area with the greatest difference being less than 5%. The exception being Unit No.2, which is occupied by Peter Mark Ltd., which has an area of 966 sq.ft., which unit will be referred to later in this judgment.

In endeavouring to assess what the passing rent was as at November 1988, we conclude that with regard to Unit 4 which had a phased rent it would be reasonable to take £10,800 as being an average although this could be increased given the fact that occupation was not available until September 1989 where as the rents commenced prior to that. We believe that Unit No. 5 had an appropriate rent of £12,000 but note that key money of £10,000 was paid. The rent for Unit No. 8 was £12,600 but again key money of £10,000 was paid. As can however be seen Unit 4 is

similar in size to Units 5 / 8 but the rent is quite different and considerably less and in that instance no key money was paid. Unit No. 5 had an appropriate rate of £12,000 and Unit No. 8 £12,600.

With regard to Unit No. 3 which has an area of 788 sq.ft. the appropriate rent was £11,790 and in that instance there was key money of £15,000, though from the evidence it is not clear precisely as to what this key money related. It may have been referable to the trade or, it may have been referable to some sort of fit out, we do not know. Unit No. 9 with an area of 791 sq.ft. has the same size as Unit No. 3 and has a rent of £12,800. There was key money of £6,000 paid in that unit.

In support of the R.V. of £65 placed on all of these units Mr. Forkin on behalf of the Commissioner has referred us to four of the other five units within this development with the exception being Unit No. 10. Unit No. 6 has an area of 798sq.ft and a rate of £12,835, Unit No. 7 - 823 sq.ft. - £12,120 and Unit No. 11 - 819 sq.ft. - £13,250. Accordingly it can be seen that by and large the areas in question are comparable, as are the rents even though there is obviously a variation between the rent attributable to Unit No. 6 and No. 11. He also refers us to Unit No. 2, the unit being occupied by Peter Mark Ltd. As previously stated there is no doubt but that this is larger in area than any of the other units contained within this development. It has 966 sq.ft. and also it has a larger rent namely £13,500 from November 1988.

On behalf of all of the occupiers for whom collectively Mr. McAuliffe appeared, he offered comparisons, six in number, relating to certain premises in Tralee and in Killarney, both in Co. Kerry obviously. We do not consider it necessary to rely on or refer to comparisons outside of Tralee Town as in our view, the best comparisons are located in the town.

In the context of this development it has been urged upon us that a tone of the list principle should apply. On the one hand the Commissioner strongly suggests that it has direct relevance to the circumstance of these cases whereas a query is raised about its application and its result on behalf of the occupiers. It seems to us that this is a classic type of situation where this principle applies. There were eleven units originally constructed being the entirety of a single

development. They are obviously in the same location, they are similar in size and shape, they suffer from and have the same advantages/disadvantages one with the other, they are of the same age, type of construction and probably the same type of condition. They are immediately adjacent one to the other in terraced formation except the end two. Access to all is similar, the availability of parking or the restrictions thereon are the same. It could not be said there is a bias or prejudice on one section of units as against the other. Accordingly we are quite satisfied that within the rating area in question, this development itself is susceptible to the principle of tone of the list.

If I can revert then for a moment to take Units 4, 5 & 8 together.

As previously stated Unit 5 has an appropriate rent of £12,000 which when converted gives an R.V. of £60. In addition there was key money paid of £10,000. Unit 8 has a rent of £12,600 which when converted gives an R.V. of £63 and with the same key money having passed. Unit 4 again as above noted is similar in size but is certainly not similar in terms of the rent and certainly not similar in terms of key money. Why these discrepancies should exist we do not know. No direct evidence has been given in relation to this but bearing in mind that we are valuing the buildings and that whilst the passing rent is of course of the first importance and whilst the giving or otherwise of key money is also a factor to be taken into account, nevertheless the primary indication is the shape, size, nature and facility of the building. In our view accordingly these three units should be valued in the same way. Unit's No. 3 & 9 are similar in area, one being 788 sq.ft. and the other being 791 sq.ft. The rent on the former being £11,900 gives an R.V. of almost £60. As I have said previously there was key money of £15,000 also passing in that case. The area was undoubtedly 4.7% less than the greatest of the areas above mentioned apart from Unit No. 2, which is 966 sq.ft. Unit No. 9 is the same size as Unit No. 3, has a rent of £12,800 giving an R.V. £64 and as again stated key money of £6,000.

It seems to us that all of these units should have the same valuation as indeed these have had since 1990 (R.V. £65). It seems to us that in order to apply a tone of the list in certain circumstances where it is appropriate to do so, it is necessary to make some adjustments and some variations. The other choice available to us would be to allow the obvious discrepancies in

Unit No. 4, to distort this tone of the list and in particular a further option would have been to allow the Unit No. 2 to dictate what the R.V. should be in relation to the other units. As above stated Unit No. 2 is the largest and has the highest rent of all. We do not believe that this approach would be appropriate, we do not believe that these units should be given such prominence or such significance, that the rest should be dictated by them. We are therefore of the opinion, as I say, that all of the units the subject of these appeals should have the same valuation and we see no reason nor have we been referred to any compelling evidence to our satisfaction which would enable us to reduce the R.V. of £65 which is placed thereon. Accordingly we are satisfied that the R.V. should remain on these units and therefore we so affirm the RV in relation to each of the units appealed at £65.