

Appeal No. VA06/2/015

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

C. Wilkie/C.Murphy T/A Barrow Spinal & Sports Physio Clinic APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Surgery at Lot No. 92 (local no 31), Staplestown Road, Carlow Urban, Carlow UD,
County Carlow

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Leonie Reynolds - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF SEPTEMBER, 2006

By Notice of Appeal dated the 27th day of April, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €24.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal and in a letter attached thereto, copies of which are at Appendix 1 to this judgment.

This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 19th of June 2006. At the hearing the appellants were represented by Mr. C. Wilkie. The respondent was represented by Ms. Orlaith Ryan, B.Sc (Surveying), Dip. in Prop. Ec., MIAVI, a District Valuer in the Valuation Office.

Valuation History

The Property was revised in 2005 at a rateable valuation (RV) of €24. An appeal was lodged and having considered the appeal the Commissioner made no change. An appeal was made to this Tribunal on 27th April 2006.

Location

The property is located on Staplestown Road on the east side of Carlow town. The area is described by the respondent as a mainly residential area on the edge of the town which has experienced a number of commercial developments in recent years.

The Property

The subject property is a dormer, mid-terrace house with a single storey extension to the rear. The ground floor consists of a hall used as a waiting room, two treatment rooms, a kitchen and a bathroom. The first floor is accessed via a narrow stairway and consists of two small rooms with restricted head room. There is on street parking to the front of the property. The property is in use as a spinal and sports injury clinic.

Tenure

The property is held on a 12 monthly renewable lease from May 2005 at a rent of €8,400 per annum.

Area

Ground Floor - total = 39.77 sq. metres

First Floor - total = 22.01 sq. metres

Appellant's Evidence

Having taken the oath, Mr. Wilkie said that both he and Ms. Murphy worked as physiotherapists from the subject property on a part time basis in the evening. They rented the entire of the subject property on a 12-monthly renewable lease. The property was not

adapted for commercial use. They chose it because it had both a commercial and a domestic component.

He stated they were unclear about the valuation process and that it was only very recently the Valuation Office had told them they could seek a revision on the basis of mixed usage of the property. He also did not understand why they received a rates notice before they received the result of the first appeal to the Commissioner.

He said that the valuation was excessive compared to other similar properties such as surgeries which are in better locations in the town and had been converted and adapted for such use. The Valuation Office had initially told them verbally that they were being compared to similar properties - a doctor's surgery and a dentist's surgery - on the same road as their property.

The Valuation Office had not informed them at any stage how their RV was arrived at nor what calculations it was based on. They were told it was a complex formula based on rentable areas etc.. He had asked Ms. Ryan how the RV was arrived at and was told it was a low valuation and that they could appeal to the Tribunal but that an appeal would not be successful. It was only at Tribunal stage they were told by the Valuation Office that because they were using the property as a "mixed property" they could have it re-listed for valuation.

Not all of the property was suitable for commercial use and, in any case, planning permission for commercial use was restricted to the ground floor front rooms. The owner had received planning permission for development but that was confined to permission to develop or improve the domestic part of the property.

The first floor rooms had a ceiling height of approximately 6ft. at its highest and sloped at each side. This and the stairs access made them unsuitable for commercial use. At the date of inspection there was a double bed in one of the rooms although not then in use, and it had been there since they rented the property. That room was now used as a bedroom when they worked late. The Valuation Office had valued both first floor rooms as storage space but they did not use either room for storage as they had nothing to store.

Mr. Wilkie then reviewed his own comparisons – see Appendix 2 to this Judgment. He said he had looked at other surgeries centrally located in the town, primarily at GPs' surgeries because that was what they initially understood the subject was being compared with. These had all been adapted and now accommodated one or two GPs with reception staff. The subject had just 2 physiotherapists with no staff.

His other comparisons, he said, were direct comparisons to other sports injury clinics. For most of these they could not find an RV. They had spoken to Ms. Ryan a week before the evidence was due and she said it was too late to get comparisons. His sports injury clinic comparisons were:

Comparison 5.1 – Spinologist, Pollerton Road, was directly behind the subject and had the same market as the appellants. He had not been able to find an RV for it. It had significant signage advertising the business.

Comparison 5.2- Sleaty Road - a physiotherapy practice with two full-time practitioners in direct competition with the appellants. He had not been able to find an RV for it.

Comparison 5.3 – Tullow - a physiotherapy practice valued at RV €25. It appeared larger and more suitable for commercial physiotherapy practice than the subject. It also had significant signage advertising the business.

Comparisons 5.4 – Feltham Road and 5.5 Green Road – were listed with the Irish Society of Chartered Physiotherapists of which both appellants were members. The Green Road practice had two full-time physiotherapists and, to his knowledge, the Feltham Road practice had one. He had not been able to find an RV for either of these properties.

He was familiar with the respondent's Comparisons No.s' 1 and 3 (see Appendix 3 to this Judgment) although he had not been inside them. Comparison No. 1 (a common comparison) was occupied by two full-time dentists with receptionist staff and it had car-parking for clients. Comparison No. 3 was not the closest doctor's surgery to the subject. It was a ground floor full-time GP practice with, presumably, a receptionist and practice nurse. He was not familiar with the respondent's Comparison No. 2 which was offices and he was unsure why their property would be compared with offices.

Under cross-examination Mr. Wilkie confirmed that the property was not being used as a dwelling at the date of valuation. He was insistent that there was a bed in the first floor room at the inspection date. He said Ms. Ryan had informed them that they were being compared primarily to a property at 23, Staplestown Road and to a lesser extent to her comparison No. 1. The subject property could not easily accommodate the occupiers of her comparison No. 1. He thought her Comparison No. 2 was an office. He was not familiar with it but the respondent's map showed it to be close to various retail developments.

When Ms. Ryan confirmed that the appellant's Comparisons No's 5.1, 5.2, 5.4 and 5.5 were not valued the appellant said that all four were much longer in existence than the subject practice.

He was not disputing the respondent's areas for Comparison No. 1 but found them hard to believe as he had visited the adjacent property when it was for sale and it appeared more suitable commercially than the subject. He could not comment on whether the use of domestic property as treatment rooms without modification was quite typical. He said that all of Ms. Ryan's comparisons had been modified in some way for commercial use.

Asked to confirm that the storage area was attached to a commercial area and not used as a dwelling at the valuation date he did so but said he definitely disputed Ms. Ryan's claim that there was no bed there at that date. He agreed that the correct address was on the Valuation Certificate.

He accepted that his Comparison No. 5.3 was in a different rating area but said he used it as a comparison with another sports physiotherapy clinic. He was not aware that the GP surgery comparisons listed by him were all valued pre-1988. He had relied on the dates shown in the Valuation Office website and would not have been aware that those dates were not the valuation dates but the dates on which old file data was transferred to a computer system by the Valuation Office. He confirmed that those comparisons were put forward only at Tribunal stage and also confirmed that the change of use of the premises – to part domestic – was also put forward only at Tribunal stage. However, he said, he had been told that this change to domestic use did not affect the rateable value at the time and they were not given the opportunity to say they had moved premises. He confirmed that the change happened after the valuation date.

Respondent's Evidence

Ms. Ryan, having taken the oath, adopted her précis as her evidence-in-chief. Having given a description of the location and accommodation of the property Ms. Ryan said the two upstairs rooms were empty and not in use on the day of inspection. However, they would be suitable for storage. The property was generally in good condition and there was on-street parking to the front.

Ms. Ryan contended for the following net annual value (NAV) and RV:

| | | | |
|--------------------------------|--------------|---|----------------|
| Ground floor surgery: 39.77sqm | @ €95.66/sqm | = | €3,804.40 |
| First floor storage: 22.01sqm | @41.00/sqm | = | €902.41 |
| Restricted headroom | | | |
| | Total NAV | = | €4,706.81 |
| | RV @ 0.5% | = | €23.53 say €24 |

Ms. Ryan in her evidence relied on 3 comparisons (see Appendix 3 hereto):

Comparison 1 - a Dental surgery at the end of Staplestown Road which was also the appellant's Comparison 4.2. This premises was similar to subject property but the first floor accommodation was better than that of the subject and was valued higher. It looked deceptively large but was only one room deep.

Comparison 2 – Basic first floor office accommodation with a larger area of 83.50sqm.

Comparison 3 – A ground floor doctor's surgery of 53.54sqm @ €123/sqm and situated on Barrack Street. This premises was located in a superior trading area to subject.

Ms. Ryan went on to say that the subject property was in use as a physiotherapy clinic on the edge of Carlow town. She said that the under-utilisation of the property should not have a significant bearing on the November 1988 NAV. She also stated that there was no domestic element as of the date of valuation which the appellant had confirmed not only in his précis but in his oral evidence. She further stated that the Valuation Act defined domestic premises as any property which consists wholly or partly of premises used as a dwelling and which is

neither a mixed premises nor an apart-hotel. The Valuation Office valued the subject property as it found it using comparisons of similar properties whereas all of the appellant's comparisons with the exception of 4.2 were valued pre-1988. These might have extensions not included in the original valuations.

Asked by the Chairperson if she had looked up any other physiotherapy clinics in Carlow in order to compare like with like Ms. Ryan said she would not specifically have looked up physiotherapy clinics but had looked up surgeries in general.

Ms. Ryan said that at no stage had she informed the appellant that No. 23 Staplestown Road – the appellant's Comparison No. 1 - was the primary comparison as alleged by him. The valuation she had referred to was her own Comparison No. 1 – Dr. Murphy. No. 23 was valued pre-1988 and what was there now was not necessarily what was valued at the time.

With regard to Mr. Wilkie's written claim that inadequate information was provided by the Valuation Office Ms. Ryan said he was informed of the revision process and invited to make representations and to appeal to the Commissioner. There were recorded notes on file that the appellant was telephoned and messages were left but no phone calls returned. At the start of the revision process a leaflet setting out the procedures was given to the appellant. She also stated that she informed Mr. Wilkie that, based on the facts, it was her opinion that no change would be made on appeal but that the decision on appeal would be made by the Appeal Officer and not by her.

Under cross-examination Ms. Ryan explained that it was standard practice to use as comparisons properties valued post 1988. Her office comparison was included to show levels applied to first floor properties. She accepted that the property was an ordinary house used commercially and that it had not been modified in any way for that use. She said that the kitchen was included in the valuation as it was also used partially as an office in relation to the business. She referred to a photograph supplied by the appellant which, she said, showed a second table in the kitchen used as a work table for office work and she said that there was a filing cabinet in the kitchen on the inspection date. The appellants challenged this saying that neither the second table nor a filing cabinet was there at the date of inspection and that the photograph in question was taken a few weeks before the Tribunal hearing. Questioned further by the Chairperson, Ms. Ryan revised her evidence to say that she had seen files

rather than a filing cabinet but said that no-one was residing in the subject property on the valuation date. She said she was certain there was no furniture in either of the two upstairs rooms at the inspection date. There was restricted headroom at the sides of each room – making the ceiling height less than 6 feet there. There was a record on file that the Appeal Officer had telephoned the appellant in order to go through the details of the appeal. No contact was made. A message was left that the Consideration of Appeal form was being emailed. No response was received.

Findings and Determination

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

- 1) The subject property has limited use.
- 2) Planning permission for commercial use was granted in respect of the ground floor front rooms only.
- 3) The premises does not have a reception area or waiting-room.
- 4) Headroom at first floor level is very limited which renders it unsuitable for commercial purposes.
- 5) A hypothetical tenant would take these factors into consideration.
- 6) The Tribunal notes that the subject property appears to be the only physiotherapy clinic of several such clinics in Carlow Town to be valued.

Having regard to the above the Tribunal has determined the NAV and RV of the property to be as follows:

| | | | | |
|--------------|--------------------|-------------------|---|----------------|
| Ground floor | 39.77 sq. metres @ | €75 per sq. metre | = | €2,982.75 |
| First Floor | 22.01 sq. metres @ | €10 per sq. metre | = | <u>€220.10</u> |
| Total NAV | | | | €3,202.85 |
| @0.5% | | | = | €16.01 |

SAY €16

And the Tribunal so determines.