

Appeal No. VA06/2/092

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

**Dr. P. Burke, Dr. J. Moran, Dr. O'Grady & Dr. Barry**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Surgery, Office(s) at Lot No. 53B (pt flr 1 and 2nd flr), McCurtain Street, Fermoy  
Fermoy Urban, County Cork

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Mairéad Hughes - Hotelier**

**Member**

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

**Member**

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

By Notice of Appeal dated the 28th day of June, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €169.00 on the above described relevant property.

The grounds of Appeal are set out in correspondence accompanying the Notice of Appeal a copy of which is contained in Appendix 1 to this judgment.

1. The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on Tuesday, 3<sup>rd</sup> October, 2006. At the hearing the appellants were represented by Ms. Kate Curran BSc.(Surv) MRICS, ASCS, MIAVI, Dip. Arb. Law, of Moynihan Curran, Chartered Surveyors. Ms. Elizabeth Murphy, a District Valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation.

### **The Property Concerned**

2. The property concerned, known as the Fermoy Clinic, forms part of a new development with frontages on to McCurtain Street and Connolly Street, Fermoy. Due to the contours of the site the building is three storey on McCurtain Street and two storey on the Connolly Street frontage.
3. The ground floor of the development fronting on to McCurtain Street comprises a chemist shop, (separately valued), and the entrance to the Fermoy Clinic which comprises a doctor's surgery at part first and the entire second floor levels. The remainder of the ground floor accommodation is occupied by a physiotherapist and is also separately valued. There is a second pavement entrance to the Clinic from Connolly Street.
4. The accommodation measured on a net internal area basis is agreed as set out hereunder:

Ground Floor Entrance Lobby	N/A
First Floor Surgeries and Reception area	213.24 sq. metres
Second Floor Surgery and reception area	<u>281.50 sq. metres</u>
Total Area	494.74 sq. metres

All floors are accessed by a lift and staircase. There is no dedicated car parking attached to the property.

5. The subject property is occupied under a 25 year lease from 1<sup>st</sup> October 2004 subject to an initial yearly rent of €60,000 per annum. The lease provides for rent reviews at 5 yearly intervals and in addition to rent the tenant is responsible for rates and all other outgoings including the payment of a service charge to cover the cost of insurance and other services provided by the landlord. The premises were let on a fully fitted out basis

including carpets, lighting and partitioning. The lease also includes a tenants' break option at five yearly intervals.

### **Rating History**

6. The property concerned was first valued at a rateable valuation of €212.00 which figure was reduced to €186.00 following representations by the appellants. As a result of an appeal to the Commissioner of Valuation the valuation was further reduced to €169.00 and it is against this decision by the Commissioner that the appeal to this Tribunal lies.

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

7. Prior to the hearing a written précis and valuation was forwarded to the Tribunal by Ms. Curran which was adopted by her at the hearing as being her evidence-in-chief.
8. In her evidence, Ms. Curran contended for a rateable valuation of €90.00 calculated as set out below:

1 <sup>st</sup> floor Surgery	213.24 sq. metres @ €48.00 per sq. metre =	€10,236
2 <sup>nd</sup> floor Surgery	281.50 sq. metres @ €28.00 per sq. metre =	€7,882
NAV say		€18,000
Rateable Valuation @ 0.5%		= €90.00

9. Ms. Curran did not introduce any comparable evidence to support her opinion of Net Annual Value.
10. In her evidence and submission Ms. Curran claimed that the Valuation Act, 2001 was inequitable in operation and gave rise to serious anomalies. In her opinion there should be a consistent relationship between open market rental values and rateable valuations but due to the vagaries of the Valuation Act this was not the case. In order to illustrate her contention Ms. Curran said that she had carried out an analysis of the rents and rateable valuations of the constituent elements of the development of which the property concerned formed part. The outcome of this analysis is shown in the following table:

<b>Rateable Occupier</b>	<b>Floor</b>	<b>Total Size</b>	<b>2004 OMRV PA</b>	<b>Assessed RV</b>	<b>Implied NAV Nov 1988</b>	<b>% 1988/2004 Rent PA</b>
Pharmacy	Ground	324.26 sq. m. (3,490 sq ft)	€88,000	€136.00	€27,200	30.91%
Concerned Property	First & Second	494.74 sq. m. (5,325 sq ft)	€60,000	€169.00	€33,800	56.33%
Physiotherapist	First	107.00 sq. m. (1,152 sq ft)	€13,000	€40.00	€8,000	59.25%

11. Ms. Curran said she had examined the details of the comparisons put forward by the respondent in support of the assessment of €169.00. In her opinion the only relevant comparison was the Kevin Barry Hill premises (comparison No. 1) insofar as it was a modern, purpose built surgery. The rest of the comparisons introduced by the respondent, she said, were not truly comparable to the property concerned in terms of location, size, use and nature of construction.

12. In relation to the assessment of the property concerned Ms. Curran said the respondent had made no allowance for quantum which in her opinion was justified having regard to the fact that the subject property was about four times larger than the Kevin Barry Hill premises. Furthermore, she was of the opinion that car parking in the vicinity of the Kevin Barry Hill premises was much better than that of the subject and that this too should have been reflected in the respondent's valuation. Finally Ms. Curran pointed out that the accommodation at first floor level in the Kevin Barry Hill premises was valued at half the sq. metre rate applied to the ground floor accommodation whereas all the accommodation at the property concerned was valued at a common rate per sq. metre.

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

13. Ms. Murphy having taken the oath adopted her précis and valuation which had previously been received by the Tribunal as being her evidence-in-chief.

In her evidence Ms. Murphy contended for a rateable valuation of €169.00 calculated as set out below:

First Floor – McCurtain Street                      213.24 sq. m. x €68.34 per sq. m. = €14,572.82  
 (Ground floor – Connolly Street)

Second floor – McCurtain Street                      281.50 sq. m. x €68.34 per sq. m. = €19,237.71  
 (First floor off Connolly Street)

Valuation Office Estimate of Rent/NAV €33,810

Rateable Valuation = Net Annual Value x 0.5%

Valuation Office Rateable Valuation      €169.00

In support of her opinion of Net Annual Value Ms. Murphy introduced six comparisons, details of which are set out in Appendix 2 attached to this judgment.

14. Ms. Murphy said that when first requested to value the new development at McCurtain Street/Connolly Street she valued the ground floor premises by reference to the assessments of other retail premises in the immediate vicinity. Similarly she had valued the surgery premises on the upper floors of the development by reference to the valuations of other surgeries in the town. Such an approach she said was consistent with the requirements of Section 49 (1) of the Valuation Act, 2001.
  
15. Ms. Murphy said that the property concerned occupied a good central location with access from McCurtain Street and Connolly Street. Access to each floor was by way of a lift and stairs and in these circumstances it was standard valuation practice to value each floor at the same rate per sq. metre. The Kevin Barry Hill premises, Ms. Murphy said, did not have a lift and the accommodation at first floor level was inferior to that at ground floor level and was used primarily for staff and administration purposes. In the circumstances she considered it appropriate to apply differential rates per sq. metre to reflect these shortcomings.
  
16. Under cross examination, Ms. Murphy agreed that market rents were a good guide to prevailing market levels, but when it comes to valuing property for rating purposes the tone of the list, she said, was a more material factor. In arriving at her opinion of Net

Annual Value for the property concerned she had regard to the values of other surgeries in the town as they constituted the tone of the list.

## **Findings**

The Tribunal has carefully considered all the evidence and arguments adduced both written and oral and finds as follows:

1. The Valuation Act, 2001 which came into effect on 2<sup>nd</sup> May, 2002 is the sole statute dealing with the valuation of property for rating purposes.

2. Section 49 of the Act states:

*“(1) 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.*

*(2) For the purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then—*

*(a) in case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in [section 48\(1\)](#), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of [section 20](#),*

*(b) in case an existing valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in [section 48\(1\)](#) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988, but the amount estimated by those means to be the property's net annual value shall, in so far as*

*it is reasonably practicable, be adjusted so that the amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act.”*

The above section may be paraphrased as saying that the value of a property to be valued should be assessed in accordance with the “tone of the list”, an expression which is well known and understood by all those involved in rating practice.

3. The Tribunal accepts Ms. Murphy’s evidence that she valued the property concerned 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*” and in so doing she applied the correct statutory procedure.
4. The Tribunal accepts that there is some validity in Ms. Curran’s claim that the valuation list contains anomalies. Indeed, given the fact that there has not been a general revaluation in the Fermoy area it would be surprising if it were otherwise. Nonetheless, the introduction of the Valuation (Amendment) Act, 1986 (now repealed) did change the situation to a marked degree and has given rise to a tone of the list for properties in all categories. In arriving at her opinion of NAV of the property concerned Ms. Murphy had regard to the tone thus established whilst Ms. Curran introduced no comparisons to support her opinion of net annual value.
5. The Tribunal has examined the details of all the comparisons put forward by Ms. Murphy and attaches most weight to the Kevin Barry Hill premises practice (comparison No. 1) insofar as it is a modern purpose-built premises in a similar but perhaps slightly inferior town centre location. The remainder of the comparisons are of limited value by virtue of their size, location and nature of construction.
6. The Kevin Barry Hill premises are considerably smaller than the property concerned and do not have the benefit of a lift whilst the property concerned has. The Tribunal accepts Ms. Murphy’s evidence that in premises which have the benefit of a lift it is standard valuation practice to apply a uniform rate per sq. metre to accommodation at all levels.

7. Having regard to the facts in relation to the property concerned the Tribunal has come to the conclusion that Ms. Murphy did not adequately take into account the differences between it and the primary comparison, which by common consent is the Kevin Barry Hill premises. This is a single stand alone property whereas the property concerned forms part of a mixed development scheme. The property concerned is also almost four times the size of the Kevin Barry Hill premises.

### **Determination**

Having regard to the foregoing, the Tribunal determines the rateable valuation of the property concerned to be €148.00 calculated as set out below:

Doctor's surgery (1<sup>st</sup> and 2<sup>nd</sup> floor)

494.74 sq. metres @ €60 per sq. metre = say €29,600

RV @ 0.5% = €148

And the Tribunal so determines.