

Appeal No. VA08/3/009

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

**Thomas O'Sullivan**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2192338, Office at 3 Earl Street, Curragh, Kanturk, County Cork.

**B E F O R E**

**Michael P.M. Connellan - Solicitor**

**Deputy Chairperson**

**Joseph Murray - B.L.**

**Member**

**James Browne - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 12th DAY OF JANUARY, 2009**

By Notice of Appeal received the 14th day of July, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €36.00 on the above described relevant property.

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

The appeal proceeded by way of an oral hearing which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 7<sup>th</sup> day of November, 2008. The appellant Mr. Tom O'Sullivan, represented himself and by Mr. Liam Murphy, IPAV. The respondent was represented by Mr. Daniel Griffin, B Comm, MIAVI, a Valuer in the Valuation Office. Both parties adopted their written submissions, which had previously been exchanged between them and submitted to the Tribunal, as being their evidence-in-chief given under oath.

### **The Property**

The property concerned, a solicitor's office, comprises a 2-storey office building. It was formerly a residential property and underwent minor renovations and was converted into offices in or about 2 years ago. On the ground floor the property consists of a central hallway, with a room to the left used as a waiting room, and a room to the right used as a reception and staff office. At the back is a solicitor's office. The ground floor comprises a total area of 55.8 sq. metres. The first floor comprises an office, two smaller offices, two file stores and toilets. The offices on the first floor comprise a total area of 40.26 sq. metres and the file stores on the first floor comprise a total area of 15.68 sq. metres giving a total of 55.94 sq. metres.

### **Location**

The property is located on Earl Street, Kanturk, in County Cork. The street was traditionally a residential street but has seen increased commercial activity in recent years. It is approximately 350 metres from the commercial centre of the town.

### **Tenure**

The property is subject to a rent of €1,000 per month.

### **Valuation History**

The rating authority is Cork County Council. The property was until recently a residential property and was not subject to a valuation. The property was valued on 6<sup>th</sup> September, 2007 at a valuation of €36 which was unchanged on appeal to the Commissioner of Valuation.

### **The Appellant's Case**

Mr. O'Sullivan, having taken the oath, adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief. He confirmed that the floor areas were agreed.

In his evidence, Mr. O'Sullivan stated that Strand Street is the main thoroughfare in Kanturk and that the subject premises is slightly off-centre. He stated that there was a low level of footfall on the street. He said the street opposite comprised domestic properties, while on his side of the street there were both residential properties and business properties, but that the upstairs of the business properties were residential and he had difficulty with the valuer rating the upstairs of his premises as it was not possible to rent it. He stated that the subject property was a two storey property renovated two years ago as a house; and that he recently set up his offices in the property but made no other major change to it. He stated that he works in the office at the back. He accepted the area of the subject property as put forward by the Valuation Office, but questioned the areas of the comparators.

He stated that while there was ongoing commercial development of the area there were a number of properties for rent, some of which had been unoccupied for a period of time. He noted that there were previous issues concerning flooding in the area but he believed these had now been addressed. He stated that the waiting room was in fact a kitchen and that it had not changed since he commenced using the premises as an office. He accepted that it was used as a waiting room also, but that it was primarily a kitchen.

Mr. O'Sullivan then introduced his comparisons (details at Appendix 2 hereto) as follows:

He was of the view that the first comparator of the Valuation Office, which was also his first submitted comparator, the National Safety & Training Limited, situate at Greenane St Lower, Kanturk, was the most appropriate comparator. This was a house that was converted to offices and is off centre with the main thoroughfare. It has 3 offices downstairs and two offices upstairs. A revision of this comparator took place in 2007 and a rateable valuation of €18 attached. He stated that it was smaller premises compared to the subject property and that it was in a slightly better location than the subject property. The ground floor of this property was valued at €82.02 per sq. metre and the first floor was valued at €54.68 per sq. metre. He was of the opinion that he would pay no more rent for the comparator premises than he would

for the subject property. He stated that he did not want to focus on the price per square metre of the properties, but rather the rent he would be paying. He further stated that this would be his number 1 comparison.

Mr. O'Sullivan referred to his second comparison, John Fintan Daly Solicitors. This is not referred to in the valuer's comparators. Evidence was given that it has 3 floors, is roughly the same size as, but is in a more central location than, the subject property and has a rateable valuation of €25.

Reference was then made to the other units in Earl Street, which are much smaller than the subject property but have a rateable valuation of €15. Mr. O'Sullivan suggested the rental thereon is about €180 per week, compared to a rental of about €230 per week on the subject property.

Another comparator referred to was O'Leary, Carter & Co., Solicitors, Strand St. at photo 7 of the appellant's submissions. It was stated that this was more central, that it had 3 floors; that the valuation was €17.14, and Mr. O'Sullivan believed the last revision was in 2000. He stated that it is a comparable property and he objected to paying twice the rates of this property.

The fifth property referred to by Mr. O'Sullivan was Liam Murphy, an auctioneer, which was exhibited at Photograph No. 8 of his submissions. He accepted that this property is only a ground floor property for the purposes of rating. He believed that this property had a valuation of €8.

Mr. O'Sullivan then described two other comparison properties which were located in Newmarket town, County Cork. Newmarket was stated as being a smaller town, about half the size of Kanturk, in the same rural district and about 6 miles from Kanturk. The first property in Newmarket relied on was Charles O'Connor and evidence was given that it had a rateable valuation of €7.62, which had an issue date of 6<sup>th</sup> November, 2003. The second property relied on was David O'Connor, with a rateable valuation of €8.89 from 5<sup>th</sup> June, 2001.

These were the extent of the comparators relied on by the appellant. The appellant then went on to state that he had a difficulty with the comparisons relied on by the Valuation Office. The first property referred to was the second property on the valuer's comparison list which was Lucey & Son, Greenane St. Lower, Kanturk which had a rateable valuation of €25.39 and which was subject to an appeal. Mr. O'Sullivan stated that since this comparator was valued the premises has been extended to include the adjoining property and therefore the property is inappropriate as a comparator due to the significant changes made to the property since its valuation. Mr. Griffin, valuer, accepted that the adjoining property was not part of the valuation in 1990. Mr. Griffin stated that in using it as a comparator he only used that portion of the property valued in 1990.

Mr. O'Sullivan also objected to the fourth property used by Mr. Griffin as a comparator, namely Tim Lenihan, of Egmont Square, Kanturk, which was subject to a revision in 2004 and which has a rateable valuation of €30. Mr. O'Sullivan stated that this property was also different today compared to the valuation date, that the premises is not factually the same as at the date of valuation and that it was very difficult for him to compare the properties in these circumstances. He also stated that it is more central than the subject property.

Mr. O'Sullivan also objected to the fifth property used by the Valuation Office as a comparator, namely Don O'Connor, Percival St, Kanturk. The appellant stated that when the premises was subject to its most recent revision, in 1999, it consisted of 2 separate office properties whereas at present the 2 offices have been combined into a single premises and this made it very difficult for him to compare the properties in these circumstances.

In deciding on the rent he is paying, Mr. O'Sullivan said, he firstly looked at the property and decided what he was willing to pay for it, and the landlord decided what he was willing to accept for it, and they reached an agreement. He felt that he could rent the Health and Safety premises for the same rent. He accepted he may have to pay a little more as he had two rooms upstairs more than the Health and Safety premises and his premises did look better; but considered a price based on a per square metre basis would never come into the normal letting that one would do. He believed that the subject premises is 2 and a half times the size it needs to be.

Mr. Griffin put it to Mr. O'Sullivan that if the planning on the premises was in order that the premises would fetch a higher rental than €12,000 p.a. Mr. O'Sullivan disagreed and stated that his landlord had told him that he was using it as part of his business and that previously there was a doctor's surgery there. He stated that he was there since June 2007 and that the planning matter was with the County Council. Mr. Griffin pointed out that the fact that other properties are for rent in the area is not a relevant consideration.

### **Cross examination of Mr. O'Sullivan**

In cross examination, Mr. Griffin asked, in relation to the Health and Safety premises, whether Mr. O'Sullivan agreed that the premises was half the size of the subject property. Mr. O'Sullivan in reply stated that he was unaware of the size of the Health and Safety premises and he had no authority to enter the premises to measure it. Mr. Griffin submitted that the areas are taken from the Valuation List and that these are correct. The Chairperson stated that the figures from the Valuation List must be taken as correct. Mr. O'Sullivan stated "that it's the whole thing that has to be taken into account and not simply... the square footage." Mr. Griffin stated that the size, location, quality of the accommodation are all taken into account and that it is not strictly on the size of the property.

Mr. Griffin observed, in relation to John Daly of O'Brien St, that the valuation was carried out pre-1988 and this was also the case with O'Leary Carter and Liam Murphy. In relation to Charles O'Connor in Newmarket, Mr. Griffin pointed out that this was also a pre-1988 valuation and that while Charles O'Connor was looked at in 2003, this was in the context of a neighbouring property. With reference to David O'Connor, Mr. Griffin acknowledged that this property was revised in the 1990's, that the property was very small, but despite this the unit pricing is the same as the subject property.

### **Mr. Liam Murphy**

Mr. Murphy confirmed that he was an auctioneer in Kanturk, that he obtained his first licence in 1972, that he was very familiar with property in Kanturk, and with the subject property. He stated that €12,000 rent per annum for the subject property was above average. He added that he had been on the ground floor of the National Safety & Training Ltd. premises and that it is hard to see that the subject property is twice the size of this premises, although when pressed by Mr. Griffin he did not dispute the measurements. He felt that the rent that could be

attracted for both premises was about the same but stated that properties in Kanturk are not rented on a square footage basis. He was of the view that the usual rent is €200-220 per week for a premises in Kanturk such as the subject property and that it would be difficult to rent the property to anyone looking for high footfall. He assessed the comparator of James Lucey's office as attracting a rent of about €500 per week as a going concern. He accepted that it was a much bigger office than the subject property but that the property when rated in 1990 was of a different size and it has not been revised since. In relation to O'Keefe & Partners, Mr. Griffin's third comparator, he felt that you would need a number of tenants to occupy a building of that size. He assessed the comparator of Tim Lenihan's as having a very small ground floor and being very difficult premises to rent out. He went on to state that it is virtually impossible to rent upstairs property in Kanturk as frontage is required. He acknowledged that the most comparable property was the National Safety & Training Ltd. premises.

### **Respondent's evidence**

Mr. Griffin having taken the oath adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief. He agreed with Mr. O'Sullivan on the location and description of the subject property.

Mr. Griffin introduced his comparisons (see Appendix 3 hereto) as follows:

Comparison No. 1 – National Safety & Training Ltd – RV €18;

Comparison No. 2 - James Lucy - RV of €25.39;

Comparison No. 3 – Tony O'Keefe & Partners - RV €57.14;

Comparison No. 4 – Tim Lenihan – RV €30;

Comparison No. 5 – Don O'Connor - First property RV €31.74 & Second property RV €16.51.

All these comparators are based in Kanturk and are in the vicinity of the subject property. He accepted that the fifth comparison, Don O'Connor, was more central and on more of a retail street than the subject property; it was valued as two separate properties, and the back office of this property was valued at a lower level due to dampness. He also accepted that the second comparison was only rated on part of the property as now presented.

In cross examination Mr. O’Sullivan asked Mr. Griffin why he used comparison properties that had changed factually since they were valued. Mr. Griffin stated that he relied on the valuations as presented in the Valuation Office and that he was unaware of the changes since valuation. Mr. Griffin rejected the contention that a discount should be applied to the kitchen. He accepted that it can be still used as a kitchen and was laid out as a kitchen but that it was a prominent room that was being used as a waiting room. He accepted that the main office is comfortably large but rejected the contention that it was overly large and that a discount should apply. He further stated that whether or not the first floor would attract a rent is not something to be taken into account and that in assessing the valuation he must have regard to the tone of the list irrespective of whether the tone of the list reflects the present market value.

### **Findings**

The Tribunal has carefully considered all of the oral and written evidence produced by the parties and the arguments adduced at the hearing and makes the following findings:

1. The subject property was originally a residential property and Mr. O’Sullivan has occupied the premises and used it as an office since June, 2007.
2. The Tribunal notes that the description of the property and its size are agreed.
3. The Tribunal has considered the comparisons offered by both parties and notes that it must make any findings in accordance with Section 49 (1) of the Valuation Act 2001.
4. The Tribunal notes the location of the subject property and accepts that there are a number of properties available for rent in the area at present.
5. The Tribunal accepts that the availability of other properties for rent in the area cannot be taken into account.
6. The Tribunal notes that it cannot take the actual rent being paid by the appellant as the criterion and must have regard to the overall property and the tone of the list.
7. The Tribunal notes that both parties regard the first comparison property, that of National Safety & Training Ltd., as the best comparator. The Tribunal agrees with the parties in this regard.



**Determination**

In reaching its determination the Tribunal has been required to consider only the evidence submitted and adduced. In so doing the Tribunal has made the foregoing findings and in the light of those findings determines that the valuation of the respondent is fair and reasonable. The Tribunal therefore affirms the valuation of €36.

And the Tribunal so determines.