

Appeal No. VA11/3/017 & 018

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

**Liam Molloy**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2206888, Shop at Lot No. 4 to 12 / 3 Local No. 51B, floor 0, St Kieran Street, Kilkenny No. 1 Urban, Kilkenny Borough, County Borough of Kilkenny and Property No. 2206889, Restaurant/Café at Lot No. 4 to 12 / 4 Local No. 51C, flr 0 + 1, St Kieran Street, Kilkenny No. 1 Urban, Kilkenny Borough, County Borough of Kilkenny.

**B E F O R E**

**Maurice Ahern - Valuer, IPAV**

**Deputy Chairperson**

**Frank O'Donnell - FRICS, B Agr Sc, MIREF**

**Member**

**Fiona Gallagher - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 23RD DAY OF JANUARY, 2012**

By Notices of Appeal dated the 22nd day of July, 2011 the appellant appealed against the determinations of the Commissioner of Valuation in fixing valuations of €43 (VA11/3/017) and €67 (VA11/3/018) on the above described relevant properties. The grounds of appeal are set out in the respective Notices of Appeal, copies of which are attached at Appendix 1 to this judgment.

VA11/3/017:

"On the basis that the RV as assessed is excessive & inequitable given the moderate location, relative worth of the property & the established tone for comparable property ". "This is a very moderate part of this street with low footfall well away from the main retail area adjacent to Dunnes Sores & High Street. Greater allowance must be made for the above factors."

VA11/3/018:

"On the basis that the RV as assessed is excessive & inequitable given the moderate location, relative worth of the property & the established tone for comparable property." "This is a very moderate part of this street with low footfall well away from the main retail area adjacent to Dunnes Stores & High St. Greater allowance must be made when fairly assessing the subject."

These two appeals were heard together by way of an oral hearing held at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 1<sup>st</sup> day of December 2011. At the hearing the appellant was represented by Mr. Eamonn Halpin B.Sc (Surveying), ASCS, MRICS, MIAVI and the respondent was represented by Mr. Briain Ó' Floinn, a District Valuer in the Valuation Office.

### **Location**

The two properties are adjoining units located on St. Kieran Street, Kilkenny.

### **The Properties Concerned**

#### **VA11/3/017**

This property is comprised of a ground floor shop with two display windows, currently in use as a hair salon under a short lease. It is in good condition, having recently been renovated. The property was measured on a Net Internal Area (NIA) basis and agreed accommodation, including the windows is 47.63 sq.metres.

#### **VA11/3/018**

This property comprises a café/restaurant unit. Accommodation is over two floors, but planning permission for the first floor is for retail only, while the ground floor has permission for use as a cafe/restaurant and retail. Frontage is approximately 8 metres and the property is permitted to use part of the street for additional dining space. The property is in a good state of repair, having recently been renovated. It is currently vacant and has been stripped out.

Agreed accommodation measured on a NIA basis is as follows:

Ground Floor Front Restaurant	36.54 sq. metres
Ground Floor Rear Restaurant	17.66 sq. metres
First Floor	96.09 sq. metres

### **Tenure**

Both properties are held freehold.

### **Rating History**

The subject properties were listed for revision by Kilkenny City Council following subdivision of the original unit. Proposed valuation certificates were issued in September 2010, with a rateable valuation (RV) of €43 in respect of the property the subject of appeal reference VA11/3/017 and a RV of €70 in respect of the property the subject of appeal reference VA11/3/018. Following representations, the valuation of the former property remained unchanged and the latter was reduced to a RV of €67. The appellant appealed against these valuations to the Commissioner of Valuation in December 2010, which appeals were rejected and the valuations of the properties affirmed. The appellant appealed against these decisions to the Tribunal by Notices of Appeal dated 22<sup>nd</sup> July 2011.

### **The Issue**

Quantum

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

Mr. Eamonn Halpin, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the respondent, as his evidence-in-chief. Mr. Halpin made a number of points which he asked the Tribunal to consider in assessing the rateable valuation of the subject properties as follows:-

1. He stated that the subject properties were located in a moderate part of Kilkenny city, at the end of St. Kieran Street furthest from Dunnes Stores and away from the majority of the footfall on the street. Mr. Halpin acknowledged that there is good footfall on St. Kieran Street, but only at the point where Dunnes Stores is linked to High Street.
2. Mr. Halpin submitted that the respondent had failed to make sufficient allowance for the relatively poor location of the subject properties and the lack of footfall. He stated that this was borne out by lettings at this end of the street, which tended to be of very short duration with lengthy vacancy periods. Mr. Halpin pointed out that the property the subject of appeal VA11/3/017 has had four tenants in five years and the property the subject of appeal VA11/3/018 was now also vacant.

3. Mr. Halpin argued that the respondent had failed to pay sufficient heed to the tone of the list and in particular had refused to accept his Comparison 2, Celtic Bookmakers, which is across the street from the subjects and is one of the few appeal decisions on this street in recent years. He further stated that the respondent's valuer when valuing that property saw fit to treat the location as a secondary location.
4. Mr. Halpin also stated that the buildings in which the subject properties are situate, although renovated, are old. They are protected structures, being the old stables of Kilkenny Castle and thus he stated are limited somewhat by their type and nature. However, Mr. Halpin noted that for about 30 years the properties housed the Molloy bakery and have therefore been in commercial occupation for some time.
5. In relation to the property the subject of appeal reference VA11/3/018, Mr. Halpin submitted that no allowance had been given for its irregular shape or for its poor internal layout. He further stated that any potential tenants had to take the first floor space along with the ground floor, as there is no access to the first floor, other than through the staircase from the ground floor. He said that the first floor was really only ancillary space and that a hypothetical tenant would not pay much for it.

Mr. Halpin contended for the following RVs:

**VA 11/3/017**

Ground Floor Retail (incl. windows)	47.63 sq. metres @ €123 per sq. metre =	€5,858
RV @ 0.5% =	€29.29	
Say	€29	

**VA 11/3/018**

Ground Floor Restaurant Front	36.54 sq. metres @ €109.36 per sq. metre =	€3,777
Ground Floor Restaurant Rear	17.66 sq. metres @ €54.68 per sq. metre =	€ 965
First Floor	96.09 sq. metres @ €41 per sq. metre =	€3,940
		€8,682
RV @ 0.5% =	€43.41	
Say	€43	

In support of his contention of rateable valuations, Mr. Halpin submitted details of 6 comparisons as follows:-

**1) Susan Walsh, St. Kieran Street**

This property is in Mr. Halpin's opinion located at the better end of St. Kieran Street, directly opposite Dunnes Stores. It consists of accommodation over two levels, with 44.96 sq.m. on the ground floor and 31.02 sq. metres on the first floor. The RV of this property is €38.09, which was the fixed by the Tribunal on appeal. Mr. Halpin believes that this would devalue at a maximum rate of €153/sq.m. on the ground floor.

**2) Celtic Bookmakers, St. Kieran Street**

This property is located directly opposite the subject properties and has a RV of €7.14, which was set at first appeal in 1999. It is valued on an overall basis at a rate of €11.73 per sq. metre. Mr. Halpin provided rental details in respect of a 9 year lease from 1999, with a stepped rent in Year 1 of IR£7,800 per annum, rising to IR£11,700 (€14,859) per annum in Year 5. In his view the reason behind the RV on this property is that the rent revealed that it was situated in a secondary location.

**3) Allermor Ltd. T/A Hennessy Sports, Parliament Street**

Mr. Halpin stated that this property is located just slightly beyond the prime retail area in Kilkenny, close to the junction of Parliament Street and High Street, which he stated was a vastly superior location to the subject properties. The retail space on the ground floor is zoned, with a Zone A rate of €205.05 per sq. metre and a first floor retail rate of €68.25 per sq. metre. Mr. Halpin stated that when one compares the ground floor Zone A rate on this property versus the rate of €180 per sq. metre the respondent has applied to the subject properties, it only amounts to a 10% differential, which he believes is ridiculous and supports his contention that insufficient allowance has been made by the respondent for the subjects.

**4) Culleton Insurances, John Street Upper**

Mr. Halpin stated that this property is in a similar off-centre retail location to the subject, being a secondary or indeed tertiary location. It is valued at a Zone A rate of €36.68 per sq. metre.

**5) EBS, Patrick Street**

This property in Mr. Halpin's opinion is in a much better retail location to the subject properties, located reasonably close to the junction with High Street, with passing trade and traffic. The ground floor accommodation is valued at a rate of €64.04 per sq. metre.

**6) Richard Dore, High Street**

Mr. Halpin stated that he did not consider this to be a direct comparison to the subject properties, but he had included it to show the absolute prime levels in Kilkenny at €341.75 per sq. metre Zone A.

In response to questioning from the Tribunal, Mr. Halpin stated that Comparison 2 was his most relevant comparison, being located across the street from the subject properties and also having the advantage of details of the passing rent. However, he stated that Comparison 1 was also significant, being a Tribunal decision and indicating the level at the better end of the street.

**Cross-Examination**

It was put to Mr. Halpin on cross examination that his Comparison 2, Celtic Bookmakers, was a former commercial garage converted into a bookmakers. Mr. Halpin however indicated that this was not correct and that the property had been a garage in the 1960s but was subsequently converted into a bakery prior to its current use as bookmakers.

Mr. Halpin admitted that generally when valuing properties the comparisons that are closest are the most persuasive. However, he contended if those properties had been valued in the recent past, particularly since the Valuation Act 2001 was enacted, many of the valuations were distorted, as they were valued during the boom period and had to be scrutinised to see if they fitted in with the established tone. Mr. Halpin admitted that St. Kieran Street had been improved and upgraded since Celtic Bookmakers was revised with the addition of paving, but contended that the upgrade had not lead to an improvement in the value of properties. He stated that the subject properties have not been able to maintain their tenants, which shows that this is a secondary location, bordering on tertiary with no footfall.

**Respondent's Evidence**

Mr. Briain Ó' Floinn having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as his evidence-in-chief. Mr. Ó' Floinn made a number of points which he asked the Tribunal to consider in assessing the RV of the subject properties:-

1. Mr. Ó' Floinn stated that the subject properties were not directly comparable to Celtic Bookmakers, being of better quality, with modern and recently renovated interiors and with better windows and frontage. He also contended that Celtic Bookmakers was an anomaly on the valuation list.
2. He further stated that there was a clear attempt by the Council to make St. Kieran Street into a shopping street with the upgrade of the street by the laying of paviour bricks. In Mr. Ó' Floinn's opinion, the street is within the old medieval and tourist areas of the city, with a link to Rose Inn Street, over which he stated tourists visiting Kilkenny Castle pass. The subject properties are also located quite close to Dunnes Stores, approximately 103m away.
3. Mr. Ó' Floinn stated that he was guided by the tone of the list when valuing the subject properties and that he had looked very carefully at what had already been done in order to arrive at fair valuations. He stated that the evidence from the comparisons was of a rate of approximately €240 per sq. metre at the other end of the street and that he had stepped back quite a bit from that to €180 per sq. metre and had also rounded the valuation in the property the subject of appeal VA 11/3/018 down to take account of quantum considerations and the restricted use on the first floor.

Mr. Ó Floinn contended for the following RVs:

**VA 11/3/017**

Ground Floor Retail (incl. windows) 47.63 sq. metres @ €180 per sq. metre=	€8,753.40
RV @ 0.5% =	€42.87
Say	€43

**VA 11/3/018**

Ground Floor Restaurant Front	36.54 sq. metres @ €180 per sq. metre =	€6,577.20
Ground Floor Restaurant Rear	17.66 sq. metres @ €90 per sq. metre =	€1,589.40
First Floor Restaurant	53.50 sq. metres @ €60 per sq. metre =	€3,210.00
First Floor Exhibition Area	42.59 sq. metres @ 60 per sq. metre =	<u>€2,555.40</u>
		€13,932.00
RV @ 0.5% =	€69.66	
Say	€67 (to allow for restricted usage on first floor and quantum)	

Mr. Ó Floinn submitted details of 6 comparisons in support of his valuations as follows:

**1) Beri Fashions, 14/2 St. Kieran Street**

This property is located beside the subject properties and is smaller than both properties at 23.32 per sq. metre. It was valued at revision in 2006 at a rate of €220 per sq. metre.

**2) Lautrec Restaurant, 17 Kieran Street**

This property is located just up from Mr. Halpin's Comparison 2, Celtic Bookmakers, and is operating as a restaurant over two levels. The ground floor Zone A rate is €246 per sq. metre with the middle part valued at €123 per sq. metre and the rear at €54.66 per sq. metre. The first floor is valued at €68.34 per sq. metre.

**3) Lisa Egan, T/A Individual Hair Salon**

This unit is located at the opposite end of St. Kieran Street to the subject properties. It is operating as a hair salon and is valued at an overall rate of €160 per sq. metre, which Mr. Ó' Floinn stated amounted to a Zone A rate of €30 per sq. metre.

**4) Mary O'Driscoll T/A Hair Court**

Like Comparison 3, this property is also a hair salon located on St. Kieran Street. The salon is valued at a rate of €225 per sq. metre and the balance at €12 per sq. metre

**5) Abbis Ghadini, 28b St. Kieran's Street**

This comparison is located close to the junction with St. Mary's Lane and is a former house. All the retail area is Zone A and is valued at a rate of €91.34 per sq. metre.

**6) 14/1 St. Kieran Street**

These are offices over Mr. Ó' Floinn's Comparison 1. The accommodation is split over two floors with Floor 1 valued at €92 per sq. metre and Floor 2 at €75 per sq. metre.

**Cross-Examination**

Mr. Ó' Floinn accepted that his Comparison 3 is at the corner of The Butterslip, which is the prime access point between High Street and Dunnes Stores. He denied however, that it was located in a key position, contending rather that it was only in a slightly more advantageous position to the subject properties. He admitted that this property had been valued on an overall, rather than on a zoning basis.

Mr. Ó' Floinn acknowledged that Celtic Bookmakers is not in a good retail location and that the area where it is located is less valuable than the other end of St. Kieran Street. He denied that he had failed to take this property into account when valuing the subject properties but



stated that he felt that it was somewhat anomalous and he could not square it with the other properties on the rest of the street and further that it was not comparable to the subjects and was of poor quality. It was put to him that a chain of bookmakers would not occupy a sub-standard property and also that the gross frontage of the property the subject of appeal reference VA11/3/017 and Celtic Bookmakers was virtually the same. Mr. Ó' Floinn however contended that the net frontage was not the same.

With regard to Mr. Halpin's first comparison, Mr. Ó' Floinn relied on the Revision and Appeal Officers' Reports when devaluing the RV of the property, which latter report he said noted the ground floor as having a rate of IR£18 per sq. foot and the first floor a rate of IR£4 per sq. foot, which Mr. Ó' Floinn stated gave a ground floor rate of €246 per sq. metre. He stated that the NAV had been agreed between the parties and the only argument before the Tribunal was the relevant fraction to apply

### **Findings**

1. When valuing a property at revision the guiding principle is what is known as the "tone of the list", as set out 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."*
2. When looking at the comparisons cited by both parties, there is a clearly established tone of the list with regard to properties located in St. Kieran Street. The top of this tone, at the opposite end of the street to the subjects, is evidenced by the appellant's first comparison, Susan Walsh, which Mr. Ó' Floinn calculated based on the Revision and Appeal Officers' reports as being valued at a ground floor rate of €246 per sq. metre and the respondent's second comparison, Lautrec Restaurant, the front of the restaurant being valued at the same rate per square metre. The very bottom of this tone is indicated by Celtic Bookmakers, which is valued at a rate of €111.73 per sq. metre.
3. It is felt that Mr. Halpin's primary comparison, Celtic Bookmakers, is not directly comparable to the subject properties, being a single storey, very basic building.

4. The respondent has valued the property the subject of appeal VA11/3/017 at a rate of €180 per sq. metre. as well as the front part of the restaurant in appeal VA11/3/018 and, having regard to Susan Walsh and Lautrec Restaurant, both valued at a rate of €246 per sq. metre, the Tribunal is of the view that a rate of €180 per sq. metre adequately takes into consideration the relative inferiority of the subjects' location with less footfall than at the opposite end of the street.
5. The first floor of the property, in appeal VA11/3/018, suffers from a number of disadvantages, namely that it must be taken with the ground floor and cannot be let separately, that it has no separate access and also the restrictive planning conditions which require it be used only for retail purposes. Mr. Halpin's contention that the hypothetical tenant would not pay much extra for this accommodation is accepted. In the circumstances, it is the Tribunal's view that the value placed on the first floor accommodation by the respondent is excessive.
6. The appellant's Comparison 3, Allermor Limited, contains first floor retail space valued at a rate of €68.25 per sq. metre. Having regard to the inferior location of the subject properties versus this comparison and the disadvantages of the first floor accommodation in appeal VA11/3/018 outlined above, the Tribunal determines that a rate of €41 per sq. metre for the first floor space in that property is appropriate.

### **Determination**

Having regard to the foregoing, the Tribunal determines as follows in respect of the two properties the subject of these appeals:

#### **VA 11/3/017**

The Tribunal rejects the appellant's appeal in this case and affirms the rateable valuation at €43

#### **VA 11/3/018**

The Tribunal determines that the RV of this property is as follows:

Ground Floor Restaurant Front	36.54 sq. metre @ €180 per sq. metre =	€6,577.20
Ground Floor Restaurant Rear	17.66 sq. metre @ €90 per sq. metre =	€1,589.40
First Floor	96.09 sq. metre @ €41 per sq. metre =	<u>€3,939.69</u>
		€12,106.29

RV @ 0.5% = €60.53

Say €60

And the Tribunal so determines.