

Appeal No. VA90/2/014

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**John Muldowney "The Pantry"**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Restaurant Lot No. 79C High Street, Kieran Street, Co. Kilkenny  
Quantum - Ratio, upsurge in rental values

**B E F O R E**  
**Mary Devins**

**Solicitor (Acting Chairman)**

**Paul Butler**

**Barrister**

**Brian O'Farrell**

**Valuer**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**DELIVERED ON THE 5TH DAY OF OCTOBER, 1990**

By notice of appeal dated the 11th day of July, 1990, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £98.00 on the above described hereditament.

### **The Property**

The subject restaurant is located on the west side of Kieran Street, Kilkenny opposite the Dunnes Store Complex and comprises the ground floor of a mews building, forming part of a larger premises fronting High Street. The building comprises a two-storey (plus attic) premises of masonry construction with pitched slated roofs, solid ground floor, together with suspended timber upper floors. The premises is laid out as a restaurant/coffee shop, together with a kitchen, preparation area and ladies and gents w.c.'s. Total net internal floor area is 1,669 sq. ft. The premises are in fair repair consistent with their age and construction. All main services are connected to the property.

### **Valuation History**

Prior to 1989 revision the R.V. was £40. In the 1989 revision the R.V. was increased to £78 and new lot created with R.V. £25. The rateable valuations were appealed. Mr Edward Hickey was deputed by the Commissioner to investigate and report. He inspected the property in May 1990 and the Commissioner, having considered his report, amalgamated the two lots to give a single R.V. of £98. This R.V. of £98 has now been appealed to the Tribunal.

### **Written Submissions**

A written submission was received from Mr Edward Hickey, a Surveyor with 19 years experience in the Valuation Office on behalf of the Commissioner of Valuation on the 19th September, 1990 in which he said that agreement on the net annual value of the property had been reached with the consultant for the appellant. He made reference to the Valuation Act, 1852 and said that it is required that a uniform valuation is to be made and to section 5 of the Valuation Act, 1986. He said that the important matter to be decided is as to how section 5 subsections 1 and 2 are to be applied to the net annual value and what reductions are to be

made. He submitted that .63% of net annual value is the appropriate fraction to use to determine rateable valuation and that the correct rateable valuation is £98.

In a written submission received on the 27th September, 1990 from Mr John W. Devlin, ARICS, a Chartered Surveyor with Donal O'Buachalla & Co Ltd., on behalf of the appellant. He said Kieran Street is a narrow, one-way street, where on-street car parking is prohibited, containing a mixture of commercial and residential uses as well as a number of derelict/vacant sites.

He drew attention to Section 5 of the Valuation Act, 1986 and to the judgment of Mr Justice Barron in the Irish Management Institute v. Commissioner of Valuation (appeal no. 88/101) delivered on the 9th March, 1990. Mr Devlin submitted six comparisons in High Street, Kilkenny as follows:

<u>Name</u>	<u>R.V.</u>
J.R. Porter	£ 47
Martin O'Carroll	£ 40
White's Pharmacy	£ 75
Saxone Shoes	£ 95
The Book Centre	£ 75
Crotty's	£125

Details are attached as Appendix "A".

Mr Devlin said that the analysis of the valuations of six comparable entities of similar function, which have recently been revised, shows a range of percentage ratios between N.A.V and R.V. of 0.2% and 0.34%. With regard to the valuation on the subject property he said that the application of a ratio of .63% is wholly inappropriate, as it bears no relationship

to the factor of 0.3% indicated by the analysis of the attached comparisons. He said that the application of .63% is inequitable in that it effectively doubles the liability to rates on newly revised premises in comparison to premises with established valuations in line with the existing "tone of the list" in Kilkenny.

Mr Devlin said that in his opinion the ratio properly applicable in determining the R.V. of the subject is 0.3% of the agreed N.A.V.

N.A.V.	£15,600	
	x 0.3%	£46.80
R.V.	say	£47.00

At the oral hearing which took place in Kilkenny on the 3rd October, 1990, the appellant was represented by Mr John W. Devlin of Messrs O'Buachalla & Co. Ltd. Mr Stephen Lanigan-O'Keeffe, Barrister at Law instructed by the Chief State Solicitor appeared on behalf of the respondent. Mr Edward Hickey, Valuer with the Valuation Office also appeared.

Mr Devlin referred to his written submission dated the 26th September, 1990 and confirmed that both parties are in agreement as to the N.A.V of the subject property viz. £15,600.

The parties fundamentally disagreed on the correct percentage to be applied as a ratio between N.A.V. and R.V. Mr Devlin disagreed with the figure of .63% purported to be applied as a fraction by the Commissioner and submitted that the appropriate fraction based on his comparisons should be 0.3%.

He stated that the .63% was adopted by the Commissioner only after a very selective pilot study of a particularly select area of Dublin, viz. Grafton St. and Henry St. He also submitted that the .63% penalised properties which have been newly revised in contrast to traders in, for example, better business areas who have been revised within the past five years. The

R.V.s in High Street which is the main shopping area of Kilkenny range between £40 and £125.

He reiterated the dicta of Barron J. in Irish Management Institute v. Commissioner of Valuation (unreported - 9th March, 1990) in relation to the interpretation of Section 5 subsection 1 and 2 of the Valuation Act, 1986.

Asked by Mr Lanigan-O'Keeffe why all of his comparisons are situated in High Street as opposed to Kieran Street Mr Devlin said that Kieran Street has until recently been a secondary street and that he is more familiar with the comparisons in High St., most of which had been dealt with by him or his firm.

Mr Lanigan-O'Keeffe referred to Mr Hickey's written submission and said that the Commissioners aim was to apply a uniform fraction to all hereditaments. In support of the application of the fraction of .63% Mr Lanigan-O'Keeffe submitted (though there was no evidence on this) that a survey of industrial, office and retail premises showed the following, viz:

	Average	Range
Industrial	.75%	1.35% to 0.44%
Office	.51%	0.65% to 0.38%
Retail	.57%	0.75% to 0.4%

Resulting in an overall average of 0.61%, which, in his submission, came close to the figure relied upon.

Mr Hickey, in evidence, referred to his written submission and said that the .63% ratio was based on a very detailed survey carried out in Dublin's Grafton St. and Henry St.

He stated that the .63% fraction had been accepted by many valuers in Waterford, Cork and now Kilkenny. He argued that a "global" figure must be sought as a fraction to apply to all types of properties e.g. retail, office and industrial. It emerged, he said, as a result of the application of the fraction that the valuations of retail and office properties increased while that of industrial properties decreased.

In this case, the Tribunal has been asked to determine not only the correct R.V. of this property but the correct ratio to be applied between N.A.V. and R.V. Both parties have agreed the N.A.V.

### **The Law**

Section 5 subsection 1 and 2 of the Valuation Act, 1986 states as follows:

"5. (1) Notwithstanding section 11 of the Act of 1852, in making or revising a valuation of a tenement or rateable hereditament, the amount of the valuation which, apart from this section, would be made may be reduced by such amount as is necessary to ensure, in so far as is reasonably practicable, that the amount of the valuation bears the same relationship to the valuations of other tenements and rateable hereditaments as the net annual value of the tenement or rateable hereditament bears to the net annual values of the other tenements and rateable hereditaments.

(2) Without prejudice to the foregoing, for the purpose of ensuring such a relationship regard shall be had, in so far as is reasonably practicable, to the valuations of tenements and rateable hereditaments which are comparable and of similar function and whose valuations have been made or revised within a recent period."

In the judgment of Barron J. above referred to, he said that in reference to subsection 2 of Section 5 of Valuation Act, 1986 that it "is not a provision on its own. What is being sought is an overall proportion between hypothetical rents and valuations. This must be borne in mind when applying its provisions. What must be considered are valuations which:

- (a) are comparable;
- (b) relate to tenements and hereditaments of similar function; and
- (c) have been made or revised within a recent period.

Where there is evidence under each of these headings sufficient to obtain the relevant proportions then the valuations can be determined by reference to the subsection alone.

Where the evidence is insufficient, then the overall proportions predicated by subsection (1) must be adopted. In each case, the sufficiency of the evidence is a matter for the Tribunal."

The respondent offered no evidence of hereditaments which are (a) comparable or (b) relate to tenements or hereditaments of similar function or (c) have been made or revised within a recent period.

The Tribunal accepts the appellant's figures in relation to estimated N.A.V. of his comparisons but is conscious of the fact that these comparisons are located in a trading area which differs from that of the subject area, in that the latter is a comparatively secondary retail location.

While the Tribunal finds the comparative evidence offered on behalf of the appellant helpful, it does not seem sufficiently comprehensive to achieve an overall proportion for this particular area.

While the Tribunal is conscious of the desirability of achieving a uniformity in the ratio to be applied between N.A.V. and R.V. it does not accept the respondent's contention that this can be achieved by taking an average of properties which are not only widely diverse but each of whose range of ratios is extremely wide.

In view of the above and in view of the fact that between 1985/86 when the appellant's comparative properties were revised and the date of the subject appeal there has been a general upsurge of retail values in the property market, the Tribunal has determined that a fair and equitable rateable valuation of the subject property is £75.