

Appeal No. VA90/3/014

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

**Trustees of Kinsale Yacht Club**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Marina adj Town Pier, U.D. Kinsale, Co. Cork

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

**Solicitor (Acting Chairman)**

**Brian O'Farrell**

**Valuer**

**Joe Carey**

**P.C. M.I.A.V.I.**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 31ST DAY OF MAY, 1991**

By notice of appeal dated the 18th day of September, 1990, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £60 on the above described hereditament.

The grounds of appeal are that -

1. The valuation is excessive and inequitable.
2. The hereditament comprises non-rateable "categories of fixed property".
3. The valuation is bad in law.

### **Valuation History**

In 1980 a valuation of £84 (absolute) was entered under description "Right of erecting and using marina (pt of)". In 1983 the valuation was increased to £120 absolute and the valuation outside the UD boundary was deleted. This was appealed to the Circuit Court and the valuation was deleted as the floating marina was not a rateable hereditament. The hereditament was assessed again on the 1988 revision and a rateable valuation of £120 was entered in the absolute column. This was reduced to £60 on an appeal to the Commissioner of Valuation and it is against this determination that the appeal now lies with the Tribunal.

### **Written Submissions**

A written submission was received from Mr Desmond M Killen FRICS, IRRV, of Donal O'Buachalla & Co Ltd on behalf of the appellants on the 24th April, 1991. In this Mr Killen dealt with the valuation history of the hereditament. He said that the 1989 phase three revision of valuation was issued on the 10th November, 1989 and the entry made on 1988 revision was unchanged with a rateable valuation of £120. He said this was appealed and as a result of the appeal the Commissioner of Valuation issued a determination reducing the rateable valuation to £60 but the description was unchanged. It is against this decision that the appeal lies to the Tribunal. Mr Killen said that evidence regarding the construction and function of the floating marina would be described at the oral hearing. He said that the appeal referred only to the portion within the urban district i.e. approx one third of the marina. He said that Kinsale Yacht Club has a right over a portion of the harbour, an area of 0.80 acres, for which they pay an annual rent to Kinsale Harbour Commissioners of £1,400 per annum. He said that only a portion of this area lies within the jurisdiction of Kinsale U.D.C. Mr Killen said that the Yacht Club is in exclusive use of this right or easement. Mr Killen said that the floating marina is not a rateable hereditament. He said that it is not "fixed moorings, piers or docks". He also said that it should be noted that development for sport is exempted and that evidence would substantiate the claim that the marina was used for "sport" as envisaged by the 1986 Act. Mr Killen said that it is

accepted that an "easement" - rateable as per section 12 of the 1852 Act - does exist. He said that the valuation of this easement can be calculated with reference to the rent i.e. £1,400 per annum which would yield a rateable valuation by Mr Killen's calculations of £7.00. He said that the easement applies to both the portions of the marina within and without the U.D. boundary. The rateable valuation of the easement applicable to the portion within the U.D. boundary is calculated as follows:-

$$\underline{\text{R.V. } \pounds 7 \times \text{one third} = \pounds 2.50.}$$

Mr Killen outlined what the rateable valuation might be if the Tribunal accepted the respondent's submission that a rateable hereditament is to be valued. Using the Contractor's basis for calculation for rateable valuation Mr Killen outlined as follows:-

- (a) On the assumption that the complete Marina is rateable.

Construction cost 1979	£150,873
Estimated cost 1988 x 2	£301,746
Allow for depreciation say 20%	<u>£ 60,349</u>
<b>Estimated Capital Value 1988</b>	<b>£241,397</b>

@ 7.5%

Estimated N.A.V.	£ 18,104
R.V. (N.A.V. @ 5%)	£ 90
Valuation of one third Marina (within U.D.)	£ 30

- (b) On the assumption that the only 'fixed' portion of the Marina to be valued is the piling.

Cost 1979	£ 39,415
Estimated cost 1988	£ 78,830
Allow for depreciation 20%	<u>£ 15,766</u>

£ 63,064

@ 7.5%

Estimated N.A.V.	£ 4,730
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R.V. (N.A.V. @ 5%)	£	24
Valuation of one third Marina (within U.D.)	£	8

Mr Killen submitted that he was not aware of any other Marina having been assessed for rateable valuation. He said that the Marina was not a commercial enterprise but a sporting development for club members and their guests. Mr Killen said that it was the "easement" not the Marina which was rateable and the correct rateable valuation for the easement was £2.50. In the alternative, Mr Killen said valuations as calculated above, viz: R.V. £30 and R.V. £8 were submitted.

A written submission was received on the 24th April, 1991 from Mr Terence Dineen B.Agr.Sc., a valuer with 17 years experience in the Valuation Office. Mr Dineen outlined the valuation history of the property and said that by 1988 the 1986 Valuation Act was in place and under description "Marina" a valuation of £120 was entered in the absolute column. Mr Dineen said that Kinsale is a highly desirable location for a Marina. He said that access to the Marina is excellent, off a quay wall quite close to the town centre. He said that the property is portion of a 117 berth marina in Kinsale harbour and provided a sketch of its structure. He said the number of allocated berths at inspection was 109 plus 8 for visitors and lengths varied from 10 foot boats to 40 foot yachts. He said that there were 19 finger berths and 68 double berths and the balance (including visitors) tied directly onto pathways. A berth holder may lease to a visitor during the season and visitor berthing is restricted to members of yacht clubs. Mr Dineen said that the entire marina was designed by Walcon Marine Ltd of Hampshire, a specialist in these marinas. The structure, he said, is floated on blocks of polystyrene of varying sizes encased in concrete. Bolts projecting from the top of the blocks are secured to underside of space - boarded pathways. He said that a collar around each pile and attached to a pathway enables the marina to float up and down with the tides. There is no horizontal or lateral movement. He said that there are individual electricity plug points for 75% of the boats and water is on tap at five points. He said

that the marina is split by the UD boundary and that the portion outside the boundary is outside the jurisdiction of any local authority and is not subject to valuation. He said that about 42 berths of the 117 are inside the UD boundary and about 323 sq. m. of pathways are also inside the boundary. He said that evidence given in the Circuit Court appeal in 1987 was that the original costs were £160,000 in 1979. He said that in 1988 costs inflated from this would be about £375,000 or £3,200 per boat. Mr Dineen said that the fees set in 1989 were £17 per foot length in respect of year 1, £18 per foot length, year 2 and £19 per foot length, year 3. He said that additionally each berth holder must be a member of the Yacht Club at £150 per annum and that there were no free spaces in March 1990. Mr Dineen produced an analysis of rents paid in various yacht clubs and on this basis he estimated that a net rent in Kinsale was in the order of £250. He said that in his opinion the foreshore rent of £12.30 per space was too low. Mr Dineen submitted that a valuation of £1.50 per berth was not unreasonable on the basis of it being .63% of £250.

Regarding rateability Mr Dineen said that the marina was valued primarily on the basis of section 3(1) of the 1986 Valuation Act under the category of fixed property ref. 4 viz. "fixed moorings". He said that apart from section 3(1)4 of the 1986 Act the marina is rateable under section 3(1)1 as a construction affixed to land - other than a building, in the nature of a building. Mr Dineen said that the servicing and preparation of the yachts is done on board which is what happened prior to the marina being built. He said non rateability on sports grounds should be confined to the sporting surface with its essential fittings.

### **Oral Hearing**

At the oral hearing which took place in Cork on the 30th April, 1991, Mr Paul Sreenan, B.L., instructed by Messrs Guest Lane Williams, Solicitors, appeared on behalf of the appellant. Mr

Aindrias O'Caoimh, B.L., instructed by the Chief State Solicitor, appeared on behalf of the respondent.

Also present were Mr Clifford O'Donnell, Solicitor of Messrs Guest Lane Williams, Mr Desmond Killen of Messrs Donal O'Buachalla & Co Ltd, Mr Paul Kingston, Vice-Commodore of Kinsale Yacht Club and Mr Terence Dineen of the Valuation Office.

Mr Sreenan, in his opening submissions, said that only approximately 1/3rd of the subject hereditament lay within the jurisdiction of the U.D.C. and that this appeal referred only to that portion.

He stated that the marina, being a floating entity, was not a fixed mooring within the meaning of Category 4 of the Schedule to the Valuation (Ireland) Act, 1852.

He further stated that even if the marina were a fixed mooring, it was developed for sport and must therefore be exempt as coming within the terms of Category 2 of the above Schedule. In his view, any other interpretation of the legislation might be considered unconstitutional.

Mr Sreenan pointed out that although marinas were introduced into Ireland in the 1970's, the Valuation Act, 1986 did not refer specifically to marinas, and, in his view, this indicated that all marinas were used for sporting purposes only.

Mr Kingston, in evidence, explained that a swinging mooring was a buoy or float on the surface of the water, attached by a chain to a heavy weight on the sea bed. He said that a fixed mooring, while not an exact term in the context of sailing, was in the nature of a fixed bollard or post on a quay or pier.

Mr Kingston stated that Kinsale Yacht Club found it necessary to establish a marina to facilitate safer, all-season sailing. The marina was completed in 1978 at a cost of approximately £150,000. At one stage there were more berths on the south side of the marina but, because of dust problems from nearby discharging boats, portion of the marina had to be re-aligned and two of the piles removed and replaced on the northern side.

Mr Kingston enumerated the many sailing events which took place in Kinsale Yacht Club, most of which, he said, would not have chosen Kinsale as a venue, were it not for the marina facilities there. He said that apart from two paid employees, every aspect of the club was run on a voluntary basis by its 400 members.

In reply to questions from Mr O'Caomh, he said that the floating marina was attached by collars to piles which were driven into the sea-bed. He explained that Kinsale Yacht Club held the site on a lease from the Harbour Board which in turn, held it on a foreshore lease from the Department of the Marine.

Mr Killen conceded that a rateable easement within the terms of S.12 of the Valuation (Ireland) Act, 1852 existed. He said, however, that only 1/3rd of the easement could be said to lie within the jurisdiction of the U.D.C. Applying a 0.5% fraction (which, he said, had been applied by the Valuation Office in recent revisions in Kinsale), to the rent of £1,440 paid by the Yacht Club, and apportioning the resultant figure between the portions inside and outside the U.D. boundary, Mr Killen said that the correct valuation for the easement was £2.50.

In reply to cross-examination by Mr Sreenan, in relation to his written submission, Mr Dineen agreed that out of six marinas in the Republic of Ireland, four of which are clubs and two

commercial, none had so far been rated. Mr Dineen said that he felt they had not been rated because they lay outside the high water mark.

Mr O'Caomh, in his submissions, said that even though portion of the marina might float, it must be regarded as a fixed mooring, since it was secured to piles driven into the sea-bed. He said that while the pathway out to the floating section was obviously a fixed element, an overall view of the marina, as a fixed mooring attached to piles, must be taken. He referred the Tribunal to the Greater Oxford dictionary definition of mooring:

**"Something by which a floating object is made fast; also the object to which it is moored."**

Mr O'Caomh contended that the marina could not be considered as exempt under Category 2 of the Schedule to the Valuation (Ireland) Act, 1852, since it was not land and therefore not lands developed for sport.

Mr Sreenan submitted that the marina was a development of land and in this connection, referred the Tribunal to the parcels as described in Lease dated 8th August, 1986 made between Kinsale Harbour Board and the Trustees of Kinsale Yacht Club.

He further argued that the marina did not come within the definition of fixed mooring and must therefore be considered exempt for rating purposes.

### **The Law**

#### S.12 Valuation (Ireland) Act, 1852

"For the purposes of this Act the following Hereditaments shall be deemed to be the rateable Hereditaments; viz., all Lands, Buildings, and opened Mines; all Commons and Rights of Common, and all other Profits to be had or received or taken out of any Land; and in the Case of Land or Buildings used exclusively for public, scientific, or charitable Purposes, as herein-after specified, Half the annual



Rent derived by the Owner or other Person interested in the same, so far as the same can or may be ascertained by the said Commissioner of Valuation; and all Rights of Fishery; all Canals, Navigations, and Rights of Navigation; all Railways and Tramroads; all Rights of Way and other Rights or Easements over Land, and the Tolls levied in respect of such Rights and Easements, and all other Tolls: Provided always, that no Turf Bog or Turf Bank used for the exclusive Purpose of cutting or saving Turf, or for making Turf Mould therefrom, for Fuel or Manure, shall be deemed rateable under this Act, unless a Rent or other valuable Consideration shall be payable for the same: And provided also, that no Mines which have not been opened Seven Years before the passing of this Act shall be deemed rateable until the Term of Seven Years from the Time of opening thereof shall have expired; and no Mines hereafter to be opened shall be deemed rateable until Seven Years after the same shall have been opened; and mines bona fide re-opened after the same shall have been bona fide abandoned shall be deemed an Opening of Mines within the Meaning of this Act."

S.2 of the Valuation Act, 1986 provided that

"For the purposes of the Act of 1852, property falling within any of the categories of fixed property specified in the Schedule to the Act of 1852 (inserted by this Act) shall be deemed to be rateable hereditaments in addition to those specified in Section 12 of that Act."

The schedule is as follows.

### "SCHEDULE

(1) Reference Number	(2) Categories of Fixed Property
1.	All constructions affixed to lands or tenements, other than buildings referred to in section 14 of this Act.
2.	All lands developed for any purpose other than agriculture, horticulture, forestry or sport, irrespective of whether or not such land is surfaced, and including any constructions affixed thereto which pertain to the development.
3.	All cables, pipelines and conduits (whether underground, on the surface or overhead), and including all pylons, supports and other constructions which pertain to them.
4.	All fixed moorings, piers and docks.

5. Plant falling within any of the categories of plant specified in the Schedule to the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860 (inserted by the Valuation Act, 1986)."
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### **Findings**

It is agreed by the parties that only approximately 1/3rd of the hereditament lies within the U.D. boundary. It is also agreed that a rateable easement exists, regardless of the rateability of the floating marina section of the hereditament.

What remains to be determined by the Tribunal is whether the marina is rateable or whether it falls for exemption under Reference No. 2 of the Schedule inserted after S.48 of the Valuation (Ireland) Act, 1852 or under Reference No. 4 of said Schedule.

The Tribunal is of the opinion that regardless of the essential sporting element of the marina, it cannot be said to be land, in view of the Greater Oxford dictionary definition of land as -

"the solid portion of the earth's surface, as opposed to sea water."

The inherent nature of this marina, it would seem, is that it floats on water. It cannot, therefore, be said to be a development of land.

The marina itself is a floating object which is attached by collars to piles sunk into the sea-bed. As was so comprehensively described by Mr Kingston the collars can be slipped and the marina floated off to another location.

Accepting the dictionary definition of the term "mooring" as put forward by Mr O'Caoimh, the marina platform itself is not the mooring. The piles and the collars are the "mooring" portions of the marina, being respectively the objects to which something, i.e. the marina is moored and the somethings by which a floating object i.e. the marina is made fast.

The Tribunal is satisfied that the collars, while obviously moorings, are equally obviously not fixed since evidence has been given that they can be easily removed.

The piles, on the other hand, while it might be argued that they are fixed in the lay person's use of the term are not "fixed" in the nautical sense, in that they can be removed if necessary, and are not fixed bollards or posts on a wharf or quay.

The piles and the short pathway out to the floating marina are an integral and essential part of the marina which is a floating entity with moorings. Therefore the Tribunal is of the opinion that the marina itself is not a fixed mooring.

In the circumstances the Tribunal has concluded that the correct rateable valuation of the subject hereditament is £2.50.