

Appeal No. VA90/3/029

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

**Lucy O'Connor t/a Kellys**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop and Store at Lot No. 23, The Mall, Tralee, Co. Kerry

**B E F O R E**

**Henry Abbott**

**Barrister Chairman**

**Mary Devins**

**Solicitor**

**Padraig Connellan**

**Solicitor**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 27TH DAY OF FEBRUARY, 1991**

By notice of appeal dated 20th day of September, 1990, the appellant appealed against the determination of the Commissioner of Valuation in fixing the rateable valuation of the above described hereditaments at £80.

The grounds of appeal as set out in the Notice of Appeal state that the subject property is surrounded by new buildings with twice the retail space but not twice the rateable valuation, that the appellant would never be able to convert the upstairs into a retail outlet but that it would

remain as storage only. It states that the rateable valuation unjustly penalised the appellant for carrying out essential repairs.

The subject property is a three storey plus attic building on The Mall, Tralee. The ground floor is used as a Pharmacy and the upper floors are used for storage. The floor areas are as follows:-

Ground floor	551 sq. ft.
1st floor	499 sq. ft.
2nd floor	499 sq. ft.
Attic	491 sq. ft.

### **Valuation History**

The property was first valued in the 1860's as two separate lots each with an R.V. of £11 with a description of "House (pt of)". The lots were amalgamated in the 1870 revision with a R.V. of £22 and description "House". In the 1941 revision the R.V. was increased to £32 and described as "Shop and warehouse". This R.V. was reduced to £30 on 1st appeal. It was revised again in 1970 and the R.V. increased to £48 and described as "Shop and store rooms". This R.V. was appealed to the Commissioner of Valuation and the R.V. was reduced to £43. In 1989 the local authority requested that the property be listed for revision to "value improvements" and the R.V. was increased to £85 and described as "Shop and stores". At 1st appeal stage agreement of £80 was reached between the respondent and Mr Alan McMillan of Donal O'Buachalla & Co Ltd who represented the appellant. It is against this R.V. of £80 that the appellant, Mrs Lucy O'Connor has appealed to the Tribunal.

### **Written Submissions**

A written submission was received from W H Giles & Co Ltd, Auctioneers, Valuers, Estate and Insurance Agents on behalf of the appellant on the 26th February, 1991. Mr Giles describes the ground floor as a shop with working area at the rear and stairs to the 1st, 2nd floors and attic. He

said that apart from the ground floor the remainder of the property is in very bad structural repair and that it can only be used as storage. Mr Giles stated that the adjacent buildings have been completely re- built in recent years. He said that there is no separate entrance to the upper portion which requires substantial repairs. He attached details of comparisons as follows:-

1. No 2 Denny Street, Tralee, R.V. £43
2. Lock up units in Abbey Court, The Square, Tralee, R.V.s approximately £45
3. 3 Old Abbey Court, The Square R.V. £30
4. 1 & 2 The Mall, Tralee, R.V. £19
5. 9, The Square, Tralee R.V. £26

He said that in view of the foregoing he could not see any justification in increasing the rateable valuation of the subject property to £80.

A written submission was received from Mr Declan Lavelle on the 20th February, 1991 on behalf of the respondent. Mr Lavelle said that the appellant is bound by an agreement reached at first appeal stage between a valuer from Donal O'Buachalla & Co Ltd on behalf of the appellant. He described the property and the improvements carried out and outlined how he arrived at the rateable valuation of £80 as follows:-

Ground floor retail	Zone A	400 sq. ft. @ £29.00	£11,600
Ground floor retail	Zone B	151 sq. ft. @ £14.50	£ 2,190
1st floor storage		499 sq. ft. @ £2.00	£ 998
2nd floor storage		499 sq. ft. @ £2.00	£ 998
Attic storage		491 sq. ft. @ £1.00	<u>£ 491</u>

£16,277

Say N.A.V. £16,000 R.V./N.A.V. ratio 0.5%

Rateable Valuation £80.

Mr Lavelle attached details of three comparisons as follows:-

1. Lot 26 The Mall R.V. £75
2. Lot 14a The Mall R.V. £35
3. Lot 25 The Mall R.V. £115

Details of these comparisons and those supplied by Mr Giles are attached as Appendix "A".

### **Oral Hearing**

The oral hearing took place in the Courthouse Tralee on Tuesday the 26th day of February, 1991.

Mr W.T.N. Giles appeared for the appellant and Mr Lavelle appeared for the respondent. Both valuers gave evidence as set out in their precis, (which in the appellants case was presented at the hearing with a prospectus for the properties for letting in Abbey Court, The Square, Tralee).

From the outset, an issue arises in the appeal as to whether the Tribunal and the parties are bound by an agreement reached at First Appeal in relation to 1989/3 First Appeal between Messrs Donal O'Buachalla & Co Ltd for the appellant and Mr Lavelle, with the authority of the respondent, whereby the valuation of the subject premises was agreed at £80.

The Tribunal has held in other cases and continues to be of the view that such agreements and settlements ought to be binding on the parties and that the Tribunal should accept and uphold same unless there are some grounds upon which such agreements are manifestly and demonstrably unjust and made without proper or any reasonable consideration of the facts of the case. The evidence to establish such grounds should be strong and perhaps even coercive.

In relation to the agreement in relation to the subject property, the Tribunal heard the evidence outlined by the appellant and the respondent and finds that the net annual value estimation offered by the respondent is not inconsistent with the rents of comparable premises in The Mall and vicinity of the subject premises. The recently fixed valuations of newly let shopping units in the Abbey Court area were argued by the appellant as a comparable base which could be used to lower the valuation of the subject property. However, Mr Lavelle stated in evidence that these recently revised valuations were in fact now being revised upwards in consequence of a mistake in relation to the rents charged.

Having regard to the foregoing considerations and all the evidence offered by the parties the Tribunal finds that it is not moved at all to alter the valuation fixed by agreement between a competent firm of valuers on behalf of the appellant and the respondent. The Tribunal accordingly fixes the valuation of the subject premises at £80.