

Appeal No. VA92/6/029

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

**M.F. Kent & Company**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Warehouse at Map Ref: 13j, Townland of Raffeen, Monkstown Rural Ward, R.D. Cork  
Lower Co. Cork  
Ratio - Cork

**B E F O R E**

**Paul Butler**

**S.C. (Acting Chairman)**

**Mary Devins**

**Solicitor**

**Joe Carey**

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

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 10TH DAY OF FEBRUARY, 1994**

By Notice of Appeal dated the 2nd November, 1992 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £315.00 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the valuation is excessive, inequitable and bad in law".

The only matter at issue between the parties was that of the correct fraction to be applied to the agreed Net Annual Value of £50,000.

A written submission dated 18th October, 1993 was presented on behalf of the Respondent by Mr. Peter Conroy, a District Valuer with more than 20 years experience in the Valuation Office. The said submission is annexed to this judgment at Appendix A.

A written submission dated 20th October, 1993 was signed on behalf of the Appellant by Mr. Desmond Killen and Mr. Jack Devlin of Messrs. Donal O'Buachalla & Company Limited. The said submission is annexed to this judgment at Appendix B. A further submission in the form of a letter dated 9th December, 1993 by Messrs. Donal O'Buachalla & Company Limited on behalf of the appellant is appended to this judgment at Appendix C. The said submission, *inter alia*, referred to submissions made by that firm in **A.I.B. Ballincollig** (VA92/3/007).

A submission in the form of a book of documents presented on behalf of Cork County Council was received by the Tribunal on the 4th February, 1994. The same is appended to this judgment at Appendix D. The same included maps, a report from Mr. Nicholas Mansergh, Senior Executive Planner, a joint report of Mr. Brendan Kelleher, Chief Planning Officer and Mr. C.B. Devlin, County Engineer, a further report of Mr. C.B. Devlin and a report of the County Secretary Mr. E. Murnane.

### **Oral Hearing**

The oral hearing took place in the Council Chambers, City Hall, Cork on the 9th day of February, 1994. Patrick McCarthy, Barrister-at-Law, instructed by the Chief State Solicitor appeared on behalf of the Respondent. David Holland, Barrister-at-Law, instructed by Ms. Mary Roche, Cork County Council, appeared on behalf of Cork County Council. Mr. Desmond Killen appeared on behalf of the appellant.

Prior to the oral hearing it was agreed by all parties that the determination of the Tribunal in this appeal in relation to the appropriate ratio to be applied to N.A.V. would apply to appeal numbers:-

|                  |   |                                |
|------------------|---|--------------------------------|
| VA92/3/008       | - | E.S.B.                         |
| VA92/6/017       | - | T.S.B., Ballincollig           |
| VA92/6/019       | - | T.S.B., Carrigaline            |
| VA92/6/022       | - | A.I.B. Carrigaline             |
| VA92/6/028 & 030 | - | Unigrain International Limited |

Mr. Killen relied on his written submissions. His basic contention was that the Tribunal had in, the case of **A. I.B.** Ballincollig, (VA92/3/007) decided that the correct ratio to be applied to Net Annual Value in the subject rural district was .5%. He submitted that in no rating area within the state were there two different fractions applied. He further referred to his submissions in the said *Allied Irish Banks* case and to the analysis that he produced in that case supporting his contention for a 0.5% fraction. He accepted the *bona fides* of the analysis produced by Mr. Conroy and set out in his said submission but submitted that it was not sufficiently wide and did not extend into 1989, 1990 or 1991.

Mr. Conroy, in evidence, referred to his written submission. He said that in preparing his analysis he only took properties that he himself had inspected. He said that the .63% fraction has not been imposed; it has been arrived at following numerous agreements with valuers, including Messrs. Donal O'Buachalla & Company Limited. He went on to say that the .63% was an appropriate fraction having regard to the type of development in this area.

Under cross examination Mr. Conroy said that he did not know how many properties were revised between 1988 and the hearing of the *Allied Irish Bank* case. He gave numbers of appeals as follows:-

|      |   |     |
|------|---|-----|
| 1988 | - | 87  |
| 1989 | - | 67  |
| 1990 | - | 123 |
| 1991 | - | 81  |
| 1992 | - | 75  |
| 1993 | - | 50  |

He said that as a general average 14 to 15% of all revision cases were appealed. It was, therefore, evident that a substantial number of properties were revised on the basis of the fraction of .63%. Mr. Conroy said that he had worked mainly in Dublin and Cork. He was not aware of anywhere within the state where two fractions were applied in one rating area. He accepted that the fraction of .5% is applied in Kilkenny. He further accepted that his analysis gave findings that were contrary to the trend of there having been inflation. Asked by Mr. Killen how the .63% fraction was arrived at, Mr. Conroy said that he believed that there had been an analysis but that there was no record available thereof.

Mr. Holland called both Mr. Mansergh and Mr. C.B. Devlin to give evidence. Their evidence was entirely in line with the written submissions. The general thrust of their evidence was

that there has been and there is envisaged substantial movement of what can be termed urban activity from the centre of Cork to its outlying districts in the vicinity of Cork crossing the boundaries of the Borough and placing these new developments within the Cork rural district. Rather than extend the Borough boundaries it was agreed between the Borough Council and the County Council that the County Council should be responsible for these developments that came within its jurisdiction. With the application of the 0.63% fraction they were treating these "new" areas as urban areas and the extra money which they collected therefrom as opposed to the rest of the rating area was used entirely for the extra services that were required in those areas. Both of these witnesses referred at length to the Cork Land Use and Transportation Survey (LUTS). This survey was produced in an attempt to anticipate Cork's development and to synchronise the services required by the city and county to achieve the best advantages in the future.

It emerged that there was absolutely no controversy on the factual evidence given by either of these witnesses.

Mr. Mc Carthy in his closing submissions asked:-

- (1) Can the Tribunal fix more than one ratio for a single rating area?
- (2) If so, is there evidence in terms of valuations to allow the Tribunal to do so?
- (3) If the answer to the foregoing questions are in the affirmative what is the status of the judgment of the Tribunal in the said *Allied Irish Banks (Ballincollig)* case?

Mr. Mc Carthy submitted that you may have different ratios in one rating area. He said that the Act does not preclude differentiation and he cited the judgment of Barron J. in the case of *Irish Management Institute -V- Commissioner of Valuation* (unreported, delivered 9th March, 1990) in which Barron J. said, *inter alia*, that notwithstanding the general intention expressed in Section 5 (1) of the 1986 Act subsection (2) thereof recognises that the overall ratio may differ as between rateable hereditaments of different function for example as between offices on the one hand and say shops on the other. Mr. Mc Carthy further submitted that the subject rural district was in substance the same as the County Borough area. In relation to the second question posed by Mr. Mc Carthy he submitted that there was evidence in this case which would support a fraction of .63% and that was the evidence produced by the analysis made by Mr. Conroy.

Mr.Holland in closing said that anomaly is inevitable. He said that the question of a rating district is an illusory proposition. He referred to the **Irish Management Institute** judgment herein before referred to. He pointed out that the urban district council in county areas strikes different rates. He pointed out that if the .5% fraction was adopted in the instant case Cork County Council would lose vast revenue but he accepted that this was not a relevant consideration for the Tribunal. He pointed out a number of anomalies that would be created in the event of the fraction of .5% being applied in the subject area. The most glaring of these is the comparison between the Wilton Shopping Centre which is situate within the County Borough and the Douglas Shopping Centre which is in the Cork rural district. Both centres are very comparable and they compete against each other.

In summary Mr.Killen went over the points already raised by him and added in relation to Mr. Conroy's excellent analysis that the same was condemned in advance in the said Allied Irish Banks case where the Commissioner offered no analysis and submitted the following namely:-

"A true analysis would need samples of probably 500 plus units selected under statistical control.

Anything less would be scientifically meaningless."

Mr. Killen pointed out that all the information necessary to provide the answer as to what should be the correct ratio to apply was within the Commissioner's procurement and that the Commissioner had in this and a number of other cases refused to provide the necessary analysis. It was unfair to the appellant that the Commissioner should withhold this information from him.

### **Determination**

Counsel for the Commissioner has asked the Tribunal to make a determination as to whether more than one ratio can be applied in the same rating area. From the reference to the judgment of Barron J. herein before referred to that, as a matter of law, the overall ratio may differ as between rateable hereditaments of different function, it is clear that the ratio may differ in a single rating area. However, circumstances in which the ratio can differ have not been defined beyond the general example of offices and shops given by Barron J.

What is urged on the Tribunal in this case is that there can be a different ratio on the basis of evidence of valuations in the same "sub" areas. The Tribunal is not satisfied that such

evidence would be sufficient to upset the general intention of subsection (1) of Section 5 of the Valuation Act, 1986 but finds it unnecessary to make a final determination on this issue in view of the finding hereinafter contained.

The Tribunal refers to its judgment in the said Allied Irish Banks appeal. In that case the Tribunal found that the .5% fraction is applied in 25 County Council areas and that it had been shown that out of 19 rural districts in Cork, 16 applied the .5% fraction. Apart from submissions and the accepted evidence which was adduced on behalf of the County Council the only new evidence adduced in this case was the excellent analysis prepared by Mr.Conroy. The Tribunal is satisfied that Mr.Conroy attempted to and was fair in preparing this analysis but it must have regard to the clear submission on behalf of the Commissioner that such an analysis was scientifically meaningless.

The Tribunal, therefore, determines that on the submissions made and evidence adduced in this case, the same fraction ought to be applied in Cork Rural District as applies in the rest of the County. The rateable valuation on the subject premises is therefore determined at a ratio of 0.5% giving a Rateable Valuation of £250.00.