

Appeal No. VA92/6/046

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

**Penny Sheehy**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Lot No: 9.9a/3., Townland: Emlagh West, E.D. Dingle, Co. Kerry  
Quantum

**B E F O R E**  
**Henry Abbott**

**S.C. Chairman**

**Mary Devins**

**Solicitor**

**Brian O'Farrell**

**Valuer**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 21ST DAY OF APRIL, 1993**

By Notice of Appeal dated the 1st day of November, 1992 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £15 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:-

- (1) the valuation on the subject premises is too high relative to other properties in Dingle.
- (2) the property was situated on the outskirts of the town and therefore did not enjoy the same flow of business.
- (3) the turnover would not justify the rateable valuation applied.

**The Property:**

The property is situated on the eastern side of town at the intersection of the Tralee Road and the New By-pass, close to the quayside, in a retail location. It consists of an end of terrace single storey shop of stone and concrete construction with slate roof built in 1989/90 in a cluster of 3 units. It is in good condition and is used to sell craft items.

**Tenure:**

The property is held leasehold from Mr. Michael Kavanagh.

**Accommodation:**

The accommodation consists of:

- Shop - 296 square feet
- W.C. - 20 square feet
- Frontage - 20 square feet

**Valuation History:**

The hereditament was first valued in 1991 at £16 R.V.. On appeal this was reduced to £15 and it is against this determination that an appeal lies to the Tribunal.

**Written Submissions:**

A written submission was received on the 7th of April, 1993 from Mr. Frank O'Connor, a Valuer with 13 years experience in the Valuation Office, on behalf of the respondent. In the written submission Mr. O'Connor set out details of the property as above and the valuation history.

Commenting on the appellants grounds of appeal Mr. O'Connor stated that the R.V. was assessed in line with other recently revised R.V.'s in Dingle and throughout County Kerry, at .5% of the estimated N.A.V. as at November 1988. At First Appeal stage note was taken of the appellant's grounds of appeal.

Mr. O'Connor contended that the appellant was precluded from introducing new grounds of appeal at Tribunal stage by virtue of the decision of the Tribunal in the case of **VA89/201 - Stafford Shipping V Commissioner of Valuation**. Mr. O'Connor wished it to be noted that the appellant intends renting a double unit in the complex of shops from the 1st January, 1993 even though she contends that the R.V. and therefore by implication, the rent of these shops is too high and that the shop units are away from the main business area.

Mr. O'Connor set out his calculation of the rateable valuation on the subject premises as follows:-

Rent passing . June 1991 - June 1992 - £4,000 per annum.

Devalues 296 sq.ft. @ £13.51/sq.ft..

N.A.V. as follows - 296 sq.ft. @ £10.00/sq.ft. = £2,960 N.A.V.

at November 1988 @ 0.5% = £15.00 R.V.

Mr. O'Connor set out details of comparative premises as follows:-

- 1) Lot 9.9a/1, Occupier: O'Mathuna Teo, Shop and Restaurant  
R.V. £25 (1991 Revision)
- 2) Lot 9.9a/2, Occupier: Suzanne Chesquire, Shop - 1½ year lease  
from June 1990. R.V. £15.

Finally Mr. O'Connor stated that there was rent passing on this property and on each of the adjoining comparisons. In each case the rent passing had been adjusted backwards from the various dates of commencement to November 1988 to produce an equitable N.A.V. and R.V..

Mr. O'Connor also referred in his written submission to a U.K. Lands Tribunal Rating Decision which he attached to his written submission, where it was held that rent payable under lease is the best evidence for arriving at gross value and therefore rateable value.

### **Oral Hearing:**

The oral hearing took place herein in The Courthouse, Tralee, Co. Kerry, on the 20th April, 1993. The appellant appeared for herself and the respondent was represented by Mr. Frank O'Connor, A.R.I.C.S. B.Sc. (Surveying), who is a Valuer with 13 years experience in the Valuation Office. The appellant gave evidence that initially she was paying a rent of £4,000 a year on the subject but that when a second unit became vacant next door she took same and thereby achieved a rent of £7,200 per annum for the two premises. She argued that the rent was too high initially. She showed photographs of the properties on both sides of the subject, namely, O'Mahoney's consisting of a fish shop and the other part a restaurant having a rateable valuation of £25 and she indicated that it was a much more substantial premises.

Another craft shop known as Donal O'Connors had recently been built and that was valued at £12. She stated that it was nearer to Dingle and much larger than the subject. She also gave

evidence of Eileen Moriarty's Cafe on The Quay having a valuation of £14 in a more central location. She also produced photographs and details of other comparisons, namely, Brian De Staic Jeweller at £3.50; Mr. De Staic's factory at The Wood, Dingle, Udaras owned, at £7; Udaras owned craft units at the outskirts of Dingle at £7 each; Devans "Danny Flahive's" Souvenir Shop in the heart of Dingle at £7. She also gave a list of premises described, but not shown, as centrally located commencing with O'Keeffe Chemist and ending with Denis Higgins, Publican. The photographs of some of the premises referred to and written submissions of the appellant in relation thereto are set out in the Annex to this judgment.

Mr. O'Connor argued strongly on the basis of the evidence given by him in relation to the passing rent and urged that the valuation be determined in accordance therewith.

The appellant produced a confidential report from Mr. John Clifford, Auctioneer, in relation to his view of the value of the subject. However, this was hearsay evidence and the Tribunal ignores same.

Accounts were produced by the appellant and they did not show either way that the rent was inappropriate.

### **Findings:**

The Tribunal adopts the approach of Mr. Frank O'Connor in adjusting the rent backwards to 1988. The Tribunal is mindful of the submissions of the appellant in relation to the excessive nature of the rent and is prepared to accept that if the rent was reduced in recent times by approximately 10%, then Mr. O'Connor's adjustment for 1988 might be reduced accordingly.

On this basis and having regard to all the evidence and comparisons given by the parties and their arguments, the Tribunal finds that the rateable valuation of the premises ought to be £13. The question of valuing the premises which is now held on a common lease with the subject may be addressed at the next revision.

The appellant mentioned some premises which were obviously of a much lower valuation and argued strongly for a level playing field in relation to rates. Mr. O'Connor stated that he had not had notice of such valuations but opined that they were probably valuations which were not adjusted in modern times. The tendency seems to be for local authorities to submit premises which are recently constructed or altered for revision while leaving more stable premises with their older valuations. This can create anomalies and inequality. The modern rating legislation

provides that any rate payer may request that any premises may be revised and if the local authority or Commissioner of Valuation do not ensure equity in relation to these matters, then the question of establishing equity may be addressed by the individual rate payer taking action. This is a course in respect of which the appellant may take her own advice.