

Appeal No. VA92/6/105

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

**Joe Thoma**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Lot No. 17c/2.3 Henry Street, Town of Kenmare, Townland of Kenmare, E.D.  
Kenmare, District of Kenmare, Co. Kerry  
Quantum - Passing rent

**B E F O R E**

**Henry Abbott**

**S.C. Chairman**

**Padraig Connellan**

**Solicitor**

**Brian O'Farrell**

**Valuer**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 22ND DAY OF JULY, 1993**

By Notice of Appeal dated the 30th October, 1992 Mr. Joe Thoma appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £43 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal in summary were that "the two original rateable valuations on the subject hereditament were out of line with the tone of the list of valuations for Kenmare and that the amalgamation of the separate units into one unit would seem to be incorrect". The Notice of Appeal and a list of valuations in Kenmare are attached to this judgment as Appendix A.

### **The Property**

The property consists of two adjoining shops of concrete block construction with slate roof in good condition. One shop sells craft items, tweeds and gifts, the other sells records and tapes. The accommodation consists of a ground floor shop of 606 square feet with a frontage of 14½ feet and a store of 438 square feet and a ground floor shop of 258 square feet with a frontage of 10 feet.

### **Valuation History**

The entire building was last revised in 1970, rateable valuation £35. In 1989 Kerry County Council listed Lot No. 17c to value two shops and a doctors surgery. At revision four lots were valued in the building. Lot No. 17c/2 and Lot No. 17c/3 both shops are the subject of this appeal.

At revision a rateable valuation of £13 was applied to Lot No. 17c/2 and a rateable valuation of £15 was applied to Lot No. 17c/3. On First Appeal the Commissioner of Valuation reduced the R.V. to a total of £43, and it is against this determination that an appeal lies to the Tribunal.

### **Written Submissions**

A written submission was received on the 7th July, 1993 from Mr. Tony Brooks of Tony Brooks & Company, Valuation, Rating & Property Consultants on behalf of the appellant. In the written submission, Mr. Brooks described the property and the accommodation. He said that the subject premises was located on the west side of Henry Street, Kenmare. It was a three storey building and that there was a one way traffic system in operation on Henry Street running northward therefore, parking facilities were confined. He said that the shops were used Lot No. 17c/3 as a music shop and Lot No. 17c/2 as a craft shop and store.

In the written submission, Mr. Brooks stated that Mr. Thoma leased Lot No. 17c/3 from the landlord on a yearly basis and in 1990 Lot No. 17c/2 was also leased on a yearly basis and used as a craft shop. The current rent for both premises is £6,000 per annum. Mr. Brooks stated that the rateable valuation should be reduced on the basis of the passing rent of £6,000 per annum which he said represented N.A.V. and would yield a rateable valuation of £30. He said that this represented about £120 per week N.A.V. which would appear to be a fair rent for the subject premises.

Mr. Brooks submitted appeal number VA/91/2/41 **Mervyn Robinson, Seebeck Limited t/a Strawbridge -V- Commissioner of Valuation** as a comparison.

A written submission was received from Mr. Frank O'Connor, a Valuer with the Valuation Office on behalf of the Respondent. In the written submission, Mr. O'Connor set out the details of the property and its valuation history as set out above.

Commenting on the appellant's grounds of appeal, Mr. O'Connor said that it was assessed in line with other recently revised properties in Kenmare and throughout County Kerry at .5% of the estimated Net Annual Value as of November, 1988. He also said that the rateable valuations were amalgamated on the basis of information supplied by Mr. Mc Carthy, who had previously acted as agent for Mr. Thoma. He said that he had researched the list of rateable valuations supplied by the appellant and he said that only three of the fifteen had been revised since 1988 and four since 1986, therefore, he said, it is not a list of recently revised properties of comparable function as was necessitated by Judge Barrons decision in the case stated of **I.M.I. -V- Commissioner of Valuation**. Mr. O'Connor set out his calculation of the rateable valuation on the subject premises as follows:-

**17c/2**

|       |            |                |        |              |
|-------|------------|----------------|--------|--------------|
| Shop  | 606 ft.sq. | @ £8.00/ft.sq. | = 4848 | £5943 N.A.V. |
| Store | 438 ft.sq. | @ £2.50/ft.sq. | = 1095 | <u>@ .5%</u> |
|       |            |                |        | £30.00 R.V.  |

**17c/3**

|      |            |             |  |              |
|------|------------|-------------|--|--------------|
| Shop | 258 ft.sq. | @ £10ft.sq. |  | £2580 N.A.V. |
|      |            |             |  | <u>@ .5%</u> |
|      |            |             |  | £13.00 R.V.  |

Total: £30 + £13 = £43.00 R.V.

He also supplied details of comparisons as follows:-

1. Lot 30/2 Henry Street.  
**Occupier:** Felicity Small.  
Weekly tenancy at £60 per week. R.V. £13.00 at 1991 Revision
2. Lot 23c Henry Street.  
**Occupier:** J. Cassidy.  
Two year eleven month lease from June, 1989 at £90 per week.  
R.V. £19.00 1990 Revision.

3. Lot No. 17c/4 Henry Street.

**Occupier:** Dr. Rory O'Driscoll.

Two year eleven month lease from May, 1988 at £2,600 per annum.

R.V. £13.00 1990 Revision

### **Oral Hearing**

The oral hearing took place in Tralee Urban District Council, Tralee, Co. Kerry on the 21st July, 1993. Mr. Tony Brooks of Tony Brooks & Company, Valuation, Rating and Property Consultants appeared for the appellants and Mr. Frank O'Connor appeared for the Respondent.

At the outset, Mr. Brooks mentioned that the services enjoyed by the two shops were not enjoyed within same but had to be availed of by going up stairs outside the shops. He stated that the rent is £5,850. Mr. & Mrs. Thoma gave evidence in relation to the matter and stated that the rent was charged at £150 for 26 weeks during the peak tourist season and £75 during the other 26 weeks during which time the premises could be closed. Mrs. Thoma gave evidence that 3 previous occupiers of the premises went out of business and that the rent was a market rent such as the market could bear. While she was optimistic that her commitment to genuine local merchandise would ensure the success of her particular trade in the premises she did indicate that the premises were old and had problems with wiring giving rise to high risk. When the Tribunal questioned Mr. O'Connor in relation to the allegation about the rent not being at arms length, he stated that, he did not wish to formally insist on this allegation but nevertheless challenged the rent. It emerged that he was concerned in relation to the level of the rent having regard to two factors. The first factor was the reasonably high rent paid by the doctor for a surgery at the rear of the property at approximately £8.00 per square foot and secondly, he had a general concern that the valuation emerging from the conversion of the passing rent of the subject on a rule of thumb basis did not reflect the tone of the list having regard to valuation of other premises in the vicinity recently fixed. He mentioned that the late Mr. Mc Carthy had negotiated to a certain extent and that the figure of £43 emerged as a result of certain negotiations with him and that had these negotiations not taken place the starting point of the Respondent would have been £50.

The Tribunal is satisfied that there is no element of a lack of arms length in the rent. Possibly as a result of the poor trading history of the premises, the rent which has emerged has been moderate enough and the Tribunal is generally disposed to consider same as the guide-line for fixing valuation but must have regard to the tone of the list considerations mentioned by Mr. O'Connor. This approach compels a compromise between the valuations offered by the parties

in this appeal and accordingly fixes the valuation at £33. As the premises are held from the same landlord and are adjacent and essentially constitute the same building they may continue to be amalgamated unless more compelling reasons emerge for separating same.