

Appeal No. VA96/2/003

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

**Daly Shee & Duffy**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Offices at Map Ref: 83d (2nd floor)(incl.11b, 12b Mount Kennett Place), Street: Henry Street, Ward: Dock "A", County Borough of Limerick  
Quantum

**B E F O R E**

**Liam McKechnie**

**S.C. Chairman**

**Rita Tynan**

**Solicitor**

**Patrick Riney**

**FSCS.FRICS.MIAVI**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 8TH DAY OF JANUARY, 1997**

1. By Notice of Appeal dated the 29th March 1996 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £265 in respect of each of the above described hereditaments.

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

- "(1) The valuation is excessive, inequitable and bad in law.
- (2) That proper regard should be had to *Section 5 of the Valuation Act 1986*.
- (3) That the provisions of *Section 3 of the Valuation Act 1988* in relation to prior Notice of Revision have not been complied with by the Rating Authority and that the RV of £265 should be struck out."

2. The appeal proceeded by way of an oral hearing which took place on the 8th day of January 1997 in the Council Chamber, Limerick County Council. The appellant was represented by Mr. Eoin O'Buachalla, of Messrs. Eoin O'Buachalla & Company, and the respondent was represented by Mr. Brian O'Flynn, Valuer in the Valuation Office with 21 years experience.

3. The property known as the Mill House is a modern five storey office block situated on the west side of Henry Street. It is approximately mid-way between Lower Mallow Street and Kennett Place. To the south lies Kennett House and to the north is an old Protestant church which was converted recently into offices. The building is "L" shaped and its entrance is approximately 25 or 28 metres set back from the street. At ground level, it has a partially enclosed court yard and there is a car park in the basement. The building has a reinforced concrete construction with part brick faced cavity walls, part metal framed window cladding. It has a lift and toilets on each floor. It is in a designated area for the purposes of urban renewal and has the benefit of the financial incentives that are available as a result. The hereditament, the subject matter of this appeal comprises 5,670 sq.ft. or 527 sq.m. of office space on the second floor. The offices are well finished with suspended ceilings and storage heaters.

There is some good natural lighting and there are six car parking spaces available. The office area is held on a 35 year FRI lease commencing 13th January 1993 with an annual rent of £45,000. That rent is fixed for a term of ten years and is to be reviewed on the 10th anniversary of the commencement of the lease and every 5th anniversary thereafter. It is rented as a fully fitted unit.

4. There are, as above indicated, three issues arising from the Notice of Appeal to this Tribunal. The third issue dealt with an allegation that *Section 3(4) of the 1988 Act* was not complied with in the manner above indicated. This Tribunal has already, during the course of this hearing expressed its interim view as to what the position was on the evidence then before it. Subsequent to that, the Commissioner called Mr. O'Brien from Limerick Corporation, who gave evidence to the effect that in 1992, presumably coinciding with the application for revision on the 26th August 1992, that he was an assistant Staff Officer and acting Staff Officer in the Rates Department. The R2 forms were produced and he identified the hand writing thereon as being his own. It was signed by the Deputy County Manager and he was satisfied that in accordance with the procedures that prevailed and in accordance with his own recollection and knowledge of the events then happening, that the listed occupier on

the R2, namely Limerick County Council, would have been notified of the Rating Authority's application to the Commissioner to list the property for revision. That evidence was not challenged and accordingly the Tribunal is now satisfied that *Section 3(4) of the 1988 Act* has been complied with and that therefore there is no substance in the third ground of appeal to this Tribunal, the first to be dealt with in this judgment. The second issue on the Notice of Appeal referred to *Section 5 of the 1988 Act*. *Section 5 of the 1988 Act* has been taken into account in that both Valuers accept that from the NAV a percentage factor of 0.63% should be applied in order to obtain the Rateable Valuation. The third issue which is the substantive issue now before this Tribunal relates to the appropriate rateable valuation which should be attached to the subject property.

5. **Mr. O'Flynn**, on behalf of the Commissioner suggests that a figure of £7.40 should be placed on the area of 5,670 sq.ft. which gives an NAV of £41,958 which converts to an RV rounded to £265. **Mr. O'Buachalla**, on behalf of the rate payer suggests that the correct price per square foot should be £6.35 which gives an NAV of £36,010 and a resulting RV of £227.

6. On behalf of the Commissioner in page 4 of Mr. O'Flynn's précis of evidence which, at the commencement of the hearing he adopted as his evidence in chief, he sets out three alternatives as being possible methods by which the subject property is to be valued. The first is that indicated above, namely, the price of £7.40 psf attaching to the area in question. The second is to take the passing rent which was fixed on the commencement of the lease in January 1993 at £45,000, apply the appropriate CPI index to relate that to November 1988 which gives a figure of £39,296. And applying the factor of 0.63% this gives a Rateable Valuation in accordance with Mr. O'Flynn's view of £250. That breaks down at a figure of £6.93 psf. The third possible method of approach suggested by him related to the situation pertaining on the third floor which is the subject matter of the second appeal which will be hereinafter dealt with. In relation to that he suggested that the rent on the third floor as of the 13th January 1993 was £39,697. Improvements were carried out by the tenant to the value of £180,000 which, by applying a 10 yp gives a figure of £18,000, with an NAV of £57,697, converting that to 1988, he suggests that the figure should be £50,384 giving an RV of £317.

7. Accordingly, as can be seen, Mr. O'Flynn suggests three different methods of valuation, all with fairly significant resulting differences in RVs. The lowest was £250 and the highest was £317. In cross examination, he fairly admitted that in fact the suggested alternative methods resulted from some uncertainty on his part, as to what was the correct

method of approach or as to indeed what the correct rateable valuation was, although he did assert that in his opinion it was not less than that suggested by him, namely £265.

8. On behalf of the rate payer, Mr. O'Buachalla, as already indicated, suggested that a figure of £6.35 be applied to the area in question. In addition, he has suggested one comparison. In his précis of evidence which he also accepted at the commencement of the hearing as being his evidence in chief, he included in page 6 a second comparison which on subsequent consideration he felt was not a direct comparison and was not of any great assistance to this Tribunal and accordingly it was not further considered. The one comparison by Mr. O'Buachalla was the property known as Mount Kennett House situated in Henry Street, Limerick, which is presently occupied by G.N. Power, Accountants. That was also the first comparison, numerically at least given by Mr. O'Flynn on behalf of the Commissioner. Before dealing with that comparison and a number of the other comparisons referred to by Mr. O'Flynn, there are a number of individual points we would like to make.

9. The first is that at the commencement of the hearing this morning an issue arose as to whether *Section 3(4) of the 1988 Act* had been complied with. That issue had been a live one since the appeal to the Commissioner at first appeal stage and since the appeal to this Tribunal. Given that that issue was raised it, is incumbent on the respondent to satisfy this Tribunal by way of acceptable and credible evidence that the required notices have been served or perhaps more accurately put, that the provisions of *Section 3(4)* where applicable, have been complied with. In purported discharge of that onus and obligation there was a Staff Officer from Limerick Corporation, Ms. Robinson available to give evidence which she did, but it was clear that since she was not in the Rates Section in 1992, she was not familiar with the procedure and since there was no copy of any notice served on Limerick County Council, her evidence was not of any worthwhile weight or benefit to this Tribunal when dealing with this issue. Subsequently, as set out above that position was rectified by the evidence of Mr. O'Brien. It is our view that the evidence of some person who is familiar with the situation and who would be in a position to deal with the issue in question should in future be available at the appropriate time. Whilst we appreciate that difficulties might arise, nevertheless once the issue is raised, it is incumbent on the respondent to deal with it, if not as a preliminary issue, certainly at the beginning of the hearing.

10. The second point is this. Mr. O'Flynn lists six comparisons in his précis of evidence, whereas Mr. O'Buachalla lists two only abandoning one at the hearing. It is incumbent, we feel on both parties to list whatever comparisons are available or ought to be available,

whether they are for or against their particular contentions. In that regard it is to be noted that Mr. O'Flynn did list comparison number 1, Mount Kennett House, which during the course of the evidence he sought to distinguish on a number of grounds which are hereinafter referred to. In that context it would be quite helpful to this Tribunal if for example, Mr. O'Buachalla had responded to the six comparisons listed by Mr. O'Flynn and had in fact so responded in writing. It is somewhat unsatisfactory to respond to them only by way of cross examination or only during the course of the hearing. It would we feel, be more satisfactory for the more orderly dispatch of business if in fact there was some response in advance of the hearing to comparisons made by one side or the other.

11. The third point is that we feel where at all possible if comparisons are raised by either party and are intended to be relied upon then the subject matter of such comparisons should be inspected. In some instances this may not be possible. In other instances it may add nothing to the information already available. But in many cases, and we have had several examples today, by relying solely on files or relying solely on, perhaps abbreviated, notes or summaries of third party's inspections or third party's recollections, it all adds up to a somewhat unsatisfactory situation with regard to the weight or acceptability of the evidence from our point of view. Accordingly, we would urge that where practical and where possible inspections of comparisons should be carried out by those who attend the hearing and who give evidence in respect of them.

12. Finally, we feel that photographs should be liberally used if possible and certainly maps, in particular location maps, should be furnished to members of the Tribunal. All of this simply adds to the evidential information available to us and hopefully will result in a determination equating with the interests of justice.

13. May I now revert to the main issue and indeed the only live issue in this appeal, namely what is the correct rateable valuation of the subject property. The comparison, Mount Kennett House is situated at 84, Henry Street. It is occupied by G.N. Power Accountants. It comprises office spaces on both second and third floors. The second floor has an area of 4,463 sq.ft. and the third floor has an area of 2,311 sq.ft., making a total of 6,774 sq.ft. Prior to an appeal to this Tribunal being heard, the parties in question agreed on an RV of £270 in respect of the accommodation that I have just mentioned. That equates with an NAV of £43,000. A very considerable amount of time was taken up during the course of this hearing with what should be the correct breakdown of that figure. In Mr. O'Flynn's précis which was sourced from the Appeal Valuer dealing with this particular hereditament (now a Staff

Valuer), a figure of £7 was placed on the second floor offices and £5 on the third floor offices. This property is a corner building, is in a very good location, is more prominent than the subject property, and it abuts the street whereas the subject property is at least 25 m back from it. It also has eight car parking spaces attached to it whereas there are only six in the subject property.

14. Under no circumstances do we believe that Mount Kennett House could be described as being inferior to the subject property. We believe that in all probability it is superior. In those circumstances it is our view that it would be quite inequitable to place any valuation on the subject premises in excess of that pertaining to Mount Kennett House. Mr. O'Flynn seeks to explain the rateable valuation of £270 attached to Mount Kennett House. He may or may not be right in the explanation that he gives and it should be said in fairness to him that most of this information comes from the source already identified. But from the occupier's point of view what he is unquestionably aware of and what he is unquestionably concerned about is the fact that his rateable valuation is £270. It would in our opinion be quite unjust if the occupiers of the subject premises were forced to pay by way of rates a figure in excess of what is being paid in Mount Kennett House. Accordingly, we believe that the valuation on the subject property has to be less than £7 psf.

15. There were several other comparisons referred to by Mr. O'Flynn. The second comparison was the property occupied by Ivernia West Plc at 85e Henry Street. In his own evidence he stated that it was an irregular shaped office building, it was on the fourth floor and that the square footage in question was 2,862 @ £8.50 psf. This area is significantly smaller than the subject property. It is clearly out of line with the £7 psf placed on the second floor offices of G.N. Power Accountants. The third comparison can be dealt with in a similar way in that the offices are only 1,766 sq.ft., are occupied by Inver Resources Limited and have £9 psf price placed on them. The fourth comparison is of interest but there are many distinguishing features. It is the building of An Bord Telecom. It is in a non-designated area. It is a good building in a good location, it abuts the street, and is used principally as showrooms by An Bord Telecom. It was built in 1983 and significantly, is held under a 35 year lease with a rent review either from September 1988 or 1st January 1989. One way or the other the passing rent as determined in that review equates almost precisely with the NAV from which the rateable valuation is deduced. It has an area which is significantly greater than the subject property of 24,370 sq.ft. and it devalues at £6.80 psf. The fifth comparison is that of the Custom House, the property occupied by Deloitte & Touche and the sixth comparison is the property at 3.4.5 Barrington Street which is occupied by Cara Data

Processing Limited. The Tribunal finds it unnecessary to go into these comparisons in any great detail.

16. As previously stated the passing rent in this property is £45,000 in January 1993 adjusted to £39,296 in November 1988. That equates to a rate of £6.93 psf. That in fact gives an RV of £247.56 according to our calculations. We believe that having taken this into account and being of the view that Mount Kennett House is the most reliable comparison the rate per square foot attaching to the subject property of 5,670 sq.ft. should be £6.90 psf which equates to a rateable valuation of £246. It should be stated that the Tribunal is not making any binding decision as to the precise effects upwards or downwards which the status of designation has on the subject property. It should not be taken that a figure of £6.90 psf, so close as it is to what emerges from the 1993 rent (adjusted to November 1988) is in any way a precedent for how any future Tribunal should deal with the question of designation. It is an important question and a question which we will reserve for a future appeal which may require a precise determination of the effect of designated status and the resulting financial incentives on the rateable valuation which this Tribunal is obliged to determine.

Accordingly, the Tribunal determines that the correct rateable valuation in this case is £246.