

Appeal No. VA17/5/015

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

J.J. Byrne

APPELLANT

And

Commissioner of Valuation

RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 80283, Office(s) at Floors: 0, 1, 13, Vicar Street, Kilkenny, County Kilkenny.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19TH DAY OF JANUARY, 2018**

BEFORE:

Barry Smyth - FRICS, FSCSI, MCI Arb

Deputy Chairperson

Rory Hanniffy - BL

Member

Donal Madigan - MRICS, MSCSI

Member

By Notice of Appeal received on the 21st day of September, 2017 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €16, 680 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

"FLOOR LEVEL 1 IS UNINHABITABLE

A request was received from the agent representing the appellant on 21st November 2017 requesting to amend the grounds of appeal to:

- “1. Floor level 1 is uninhabitable as offices. It is in poor condition and only suitable as rough storage.*
- 2. The NAV as assessed is excessive and inequitable in view of the tone of the list for comparable property.”*

The Valuation Tribunal advised that this would be dealt with as a preliminary issue at the hearing.

This appeal was heard by the Valuation Tribunal on 6th December 2017 and Mr. Eamonn Halpin B.Sc.(Surveying), MRICS, MSCSI attended and gave sworn evidence on behalf of the Appellant and the Respondent, Commissioner of Valuation, was represented by Mr. Terry Devlin, B.Sc., MSCSI, MRICS. who also attended and gave sworn evidence.

Preliminary Issue

Mr Halpin, in correspondence addressed to the Registrar, dated the 21st November 2017, sought to have the grounds of appeal originally submitted altered as follows:

“The current grounds (sic) of appeal as submitted by the appellants are as follows
Floor level 1 is uninhabitable.

The appellants request a change to the following grounds:

- 1. Floor level one is uninhabitable as offices. It is in poor condition and only suitable as rough storage.*
- 2. The NAV as assessed is excessive and inequitable in view of the tone of the list for comparable property.*

The appellants cite the exceptional circumstances that the appeal was filed by a lay-appellant and as such put forward grounds which were not professionally informed”

Mr. Devlin, on behalf of the Commissioner/respondent, objected to the proposed change on the basis that the respondent’s précis of evidence has already been completed based on the grounds of appeal submitted to the appellant and copies of his précis had been lodged with the Tribunal and exchanged with Mr. Halpin.

At the hearing, on the 6h December 2017, Mr Halpin made application to admit further grounds of appeal as follows:

1. Floor level one is uninhabitable as offices. It is in poor condition and only suitable as rough storage.
2. The NAV as assessed is excessive and inequitable in view of the tone of the list for comparable property.

Mr. Halpin stated that the grounds of appeal had been prepared by the occupier of the property, who was a lay litigant, and that he, Mr. Halpin, had only been called in on the matter very late in the day and well after the lodgement of the appeal notice. In his opinion the first floor was not fit for office use but was fit for storage and he therefore sought to amend the grounds on that basis. He stated that the Tribunal had discretion in the matter under Rule 11 of the Tribunal's rules 2008. He submitted Tribunal judgment **VA08/5/081** Kay Ingham & Sylvia Kelly v. Commissioner of Valuation issued on 11th March 2009, where a similar preliminary issue had arisen concerning changing the grounds of appeal and the Tribunal had confirmed that that was in order.

In connection with the original grounds he stated that the occupier had clearly dealt with the quantum in lodging an appeal and had attributed a nil value to the first floor whereas he was now proposing some value on the first floor. He argued that the second new ground of appeal would not have been clear to the appellant.

In response Mr. Devlin, on behalf of the Commissioner, resisted the admission of further grounds of appeal or altering the existing grounds of appeal. He stated that the grounds were clearly set out by the appellant and that the appellant is a firm of accountants who should have been aware of the basis on which such appeals are dealt with. He also noted that solicitors apparently lodged the appeal and were certainly referred to in the appeal document and therefore the occupier was obtaining advice. He stated that in fairness to all other rate payers' further grounds of appeal should not be admitted. There were no exceptional circumstances as provided for by Rule 10 of the Tribunal rules 2008; the appellant had every opportunity to employ a rating consultant at any stage.

Determination of the Preliminary Issue:

1. The Tribunal is very reluctant to admit any amendment to the grounds of appeal at this very late stage.
2. The Tribunal has considered the particular arguments made by both sides.
3. The Tribunal does not accept that a firm of accountants should necessarily have known the correct procedures and it was subsequently confirmed that the firm of solicitors referred to were never consulted or instructed in the matter and that their name had been inserted simply since this information was requested on the form.
4. The Tribunal is of the view that in itself the fact of an expert valuation consultant being brought in late in the day is not a determining factor for the admission of new grounds of appeal or altering grounds of appeal already submitted in any case.
5. The Tribunal does not see how amending the grounds of appeal on the basis requested in this case is unfair to other rate payers.
6. The application for an amendment is on the basis of Rule 11 which allows the Tribunal discretion and we have not been asked to consider any exceptional circumstances as provided for by Rule 10.
7. In the particular circumstances of this case the proposed amendment does not amount to a substantial departure from the original grounds of appeal and to not permit the amendments could amount to an injustice to the rate payer.

The Tribunal therefore will allow the amendments as proposed.

The Property

The relevant property, 18 Vicar Street, Kilkenny, (Valuation Office Property Number 80283) comprises a two storey period terraced building in use as an Accountant's office which is held freehold by the Appellants. There is a yard to the rear of the building which is accessed via an archway under the adjoining building with car parking spaces for six cars.

Valuation Date

30th October, 2015. This is the statutory date for the Kilkenny County Council Revaluation.

Valuation History

22nd June 2017.

Proposed Valuation Certificate issued proposing a Valuation

of € 17,230.

7th September 2017. Following earlier representations, the Commissioner of Valuation issued a Final Valuation Certificate at € 16,680. This adjustment reflected a change in floor area adopted following a survey.

21st September, 2017. Appeal received by the Valuation Tribunal.

Agreed Matters

The relevant property is 18 Vicar Street, Kilkenny although the Valuation List references No. 13 Vicar Street.

Floor areas: Ground Floor (Level 0) 104.47 square metres
First Floor (Level 1) 41.31 square metres

Car Parking spaces: 6

Appellant's Case

Following on from the oral hearing the Appellant's Valuer, Mr. Halpin put forward a Builder's quotation (omitted in error from his original Precis) regarding the works which he envisaged would be required to make the first floor useable as offices. This was provided by Sheridan Construction of Kells, Co. Kilkenny and was issued on 7th November 2017 in the sum of € 36,700.00 plus VAT in respect of "Renovation of derelict first floor offices". It excluded painting/decoration and floor coverings.

The scope of works entailed the following:

- (a) removal of entire existing flooring
- (b) reinforcement of existing joinery and replacement of decayed joists
- (c) treatment of all existing timberwork
- (d) reinstatement of flooring with plywood finish ready to receive carpets
- (e) removal of existing dry lined walls
- (f) reinstatement of new walls with skim finish ready for painting
- (g) installation of skirting and architraves
- (h) provision of three new doors to match doors on the ground floor

- (i) removal of existing wiring and upgrade to current building regulations with fire alarms and exit signs
- (j) installation of thermostatically controlled radiators to each of the three offices
- (k) removal of decayed timber head to the front office and reinstate with new concrete lintel and repair of plasterwork
- (l) all rubble and waste to be removed off site on completion.

This quotation was sent to the Respondent's Valuer, Mr. Devlin, who responded with the following observations:

- (a) No evidence has been advanced by a qualified witness such as a Chartered Building Surveyor to prove that the first floor is unsafe or unfit for use.
- (b) No evidence has been put forward that the level of work referred to is actually required.
- (c) The scope of work is excessive.
- (d) From inspection, the first floor is capable of beneficial occupation in its current state
- (e) The quotation includes work that is not necessary to make the floor any more suitable for office use than it already is.
- (f) The description of the works refers to "renovation of derelict first floor offices" which is disputed and has not been put forward as such by the Appellant's Valuer
- (g) The quotation refers to replacing flooring, joists, wiring and plumbing whereas it is contended that the building is sound in terms of having an intact roof, heating, lighting and bathroom facilities which facts were not disputed by the Appellant's Valuer at the hearing.
- (h) One would expect to have a minimum of three quotations from registered contractors for works such as these whereas only one has been provided with no breakdown of the cost of each element of the work.
- (i) Some of the works quoted for would rank as "decoration" i.e. skirting, architrave and doors.

Mr. Halpin submitted the following valuation at the hearing:

Office (Ground Floor)	83.30 sq.metres @ € 85.00	=	€ 7,080.00
Store (Ground Floor)	21.17 sq.metres @ € 85.00	=	€ 1,799.00
Store (First Floor)	41.31 sq.metres @ € 35.00	=	€ 1,446.00
Car spaces - 6	@ €150.00	=	€ 900.00

Total		€ 11,225.00
NAV	say,	€ 11,220.00

In support of his valuation, Mr. Halpin put forward the following comparisons:

1. 40 Parliament Street, Kilkenny (Property Number 79913)

This is occupied by Sherry FitzGerald and has a NAV of € 11,000 calculated as follows:

Office 92.87 sq.metres @ € 105.00

Store 11.90 sq.metres @ € 105.00

2. Michael Boyd, The Parade, Kilkenny (Property Number 80249)

This is a rental comparison and the office is let on a 4 year 9 month tenancy from May 2017 at a rent of € 10,400 per annum which devalues as Office 71.12 sq.metres @ € 146 per sq.metre. It is assessed at NAV € 7,460.00 which devalues @ € 105.00 per sq.metre.

3. Rear 8 Parliament Street, Kilkenny (Property Number not provided)

This is an office and one car space available to let at a quoting rent of € 3,600.00 per annum which devalues as Office 53.00 sq.metres @ € 61.32 plus one car space @ € 350.00

4. 86 High Street, Kilkenny (Property Number 2185644)

This is a first floor office assessed at NAV € 2,650.00 which devalues as Office 35.38 sq.metres @ € 75.00 per sq.metre.

5. 15 Dean Street, Kilkenny (Property Number 76789)

This is a retail property with first and second floor offices assessed at NAV € 9,620.00 which devalues as follows:

Retail Zone A 27.80 sq.metres @ € 200.00

Store (ground floor) 2.70 sq.metres @ € 20.00

Office (first floor) 36.48 sq.metres @ € 65.00

Office (second floor) 36.48 sq.meters @ € 45.00

6. 34 High Street, Kilkenny (Property Number 77317)

This is a retail and office property assessed at an NAV of € 37,700.00 which devalues as follows: Retail Zone A 28.06 sq.meters @ € 730.00

Retail Zone B 4.14 sq.meters @ € 365.00

Office (first floor) 243.00 sq.meters @ € 65.00

7. Ormonde Street Car Park, Kilkenny (property Number 2206892).

82 marked spaces assessed at NAV € 28,700.00 devaluing at € 350.00 per space

Respondent's Case

Mr. Devlin, for the Respondent, submitted the following valuation:

Level 0 Office 104.47 sq.meters @ € 110.00 = € 11,491.70

Level 1 Office 41.31 sq.meters @ € 75.00 = € 3,098.25

Cars 6 @ € 350.00 = € 2,100.00

Total € 16,689.95

NAV say € 16,680.00

In support of his valuation, Mr.Devlin put forward the following comparisons:

1. Teach Tom, 15 Ormonde Road, Kilkenny (Property Number 77700)

This property was let on a one year lease from 1st November 2016 at a rental of € 13,600.00 per annum which when adjusted for Net Equivalent as at the valuation date is € 12,910.01 reflecting a devaluation of € 137.40 in respect of the ground floor.

The property is assessed at NAV € 10,270.00 which devalues as follows:

Level 0 Office 43.40 sq.meters @ € 110.00

Level 1 Office 49.59 sq.meters @ € 75.00

Level 2 Office 32.34 sq.meters @ € 55.00

2. 35 Friary Street, Kilkenny (Property Number 78485)

This property was let on a 4 year 9 month tenancy from 21st September 2015 at a rent of € 10,947.00 per annum which when adjusted for Net Equivalent as at the valuation date is € 10,159.47 per annum reflecting a devaluation of € 92.39 in respect of the ground floor.

The property is assessed at NAV € 12,020.00 which devalues as follows:

Level 0 Office 85.09 sq.metres @ € 110.00

Level 1 Office 35.54 sq.metres @ € 75.00

3. Lilac Lodge, Hotel Kilkenny, Callan Road, Kilkenny (Property Number 2201712)

This property operates as a salon and spa and was let on a 5 year lease from 11th November 2014 at a rent of € 12,014.60 per annum which when adjusted for Net Equivalent at the valuation date is € 11,595.89 which devalues to € 134.93.

The property is assessed at NAV € 9,450.00 which devalues as follows:

Level 0 Office 85.94 sq.metres @ € 110.00

4. Property Number 80475

Office in similar type building assessed at NAV € 3,990 devaluing at:

Level 0 Office 36.30 sq.metres @ € 110.00

5. Property Number 80295

Office in similar building assessed at NAV € 4,840.00 devalues as:

Level 0 Office 26.97 sq.metres @ € 110.00

Level 1 Office 25.09 sq.metres @ € 75.00

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence on the 6th December, 2017 adduced before us by Mr. Halpin on behalf of the Appellant, who contended for a valuation of € 11,220.00, and Mr. Devlin on behalf of the Respondent to the appeal, who sought to have the valuation in the Valuation List of € 16,680.00 affirmed.

DETERMINES

That the net annual value of the subject property be as set out below:

€ 16,150 a Decrease

This is calculated as follows:

Ground Floor (Level 0)	Office	104.47 sq.metres	@ € 105.00 =	10,969.35
First Floor (Level1)	Office	41.31 sq.metres	@ € 75.00 =	3,098.25
Car parking spaces		6	@ € 350.00 =	2,100.00

Total: € 16,167.60

NAV say, € 16,150.00

The reasoning being

1. The Tribunal considers that the Appellant has not demonstrated beyond doubt that the first floor is incapable of beneficial occupation and considers that this floor should be valued as offices, notwithstanding that the current occupier might choose not to bring it into active use.
2. The Tribunal considers that the case submitted by the Appellant of **Marie Boland v. Valuation Tribunal and Commissioner of Valuation [2017] IEHC 660** is not relevant to the issue of the use of the first floor. Indeed the said case related entirely to a failure by a Tribunal Division to provide a reasoned judgment.
3. The devaluation of the rent in the case of Teach Tom, 15 Ormonde Road (Property Number 77700) indicates a ground floor rent per square metre of € 137.40. The devaluation of the rent in the case of 35 Friary Street (Property Number 78485) indicates a ground floor rent per square metre of € 92.39. At first hand, the rents analysed appear to sustain the rate of € 110.00 per square metre adopted by the Respondent's Valuer, Mr. Devlin, but the tribunal considers it incorrect to have a contrasting tone of values for city centre offices at € 105.00 for ground floors in similar buildings. In this regard, reference to Mr. Halpin's comparison Michael Boyd, The Parade, Kilkenny (property Number 80249) is helpful as in that case the rental for the ground floor analyses at € 146.00 per square metre whereas the valuation adopted by the Commissioner of Valuation is at € 105.00 per square metre. Similarly, reference to his comparison: Sherry FitzGerald (Property Number 79913) is of assistance as that is also valued (for ground floor office) at € 105.00 per square metre. Accordingly, we feel that a rate of € 105.00 per square metre is more appropriate in the circumstances.

4. In regard to the first floor, the Tribunal feels that the rents from the properties Teach Tom, 15 Ormonde Road and 35 Friary Street support the adoption of a rate of € 75.00 per square metre.
5. In regard to the car parking spaces, the Tribunal considers that 6 no. spaces are capable of use and no evidence was put forward to persuade the Tribunal to depart from the rate used by Mr. Devlin to value these at € 350 per space.

And so the Tribunal determines.