

Appeal No: VA17/5/315

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

PATRICK KENNEDY & GIBBONS KENNEDY LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 78661, Office(s) at Floors 0, 1, -1, 2, 12 (6) William Street, Kilkenny, County Kilkenny.

B E F O R E

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Liam G. Daly – MSCSI, MRICS

Member

Dairine Mac Fadden - Solicitor

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF MAY, 2019.**

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th of October, 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV)’ of the above relevant Property was fixed in the sum of €8,790.

1.2 The grounds of appeal as set out in the Notice of Appeal are that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act and that the details stated in the relevant Valuation List are incorrect. Further particulars are set out in the letter attached to the Notice of Appeal which can be briefly summarised as follows:

“the basement (referred to as Floor -1) is a file store area for Patrick J. Kennedy & Company Chartered Accountants and a family Kitchen used solely by members of the Kennedy Family during the week and also at weekends when in Town. It is not available to

contractors/clients/employees to use and is mostly used by Mrs. Kennedy as a social space where she entertains her friends for a morning coffee and a chat. This room has an area of 21.37 metres squared and is not available for office use.

Second First Floor (referred to as Floor 2) has always been residential and doesn't have planning for commercial use and the Appellant has always paid LPT thereon. The rooms on this floor have been largely unused over the years – they comprise a large sitting room, a smaller tv room and a bathroom. This floor has been let to a property development company, Gibbons Kennedy Limited, on the basis that it is converting same into a one bedroom apartment.....works are currently underway on this floor, and the lease is for 20 years....this entire floor is not available for office use”.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5614.05.

2. REVALUATION HISTORY

2.1 On the 11th of May, 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €8,790.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €8,790.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th day of October, 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 5th day of April, 2018 and on the 31st day of January, 2019. At the hearing the Appellant was represented by Ms Margaret

Kennedy and the Respondent was represented by Mr Terry Devlin BSc, SCIS, RICS of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearings, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

The subject property is in use as an Accountants' practice located at 6, William Street, Kilkenny. It comprises a Basement, Ground, First and Second Floor.

The floor areas are agreed as follows:

Basement (total):	30.47 sq.m
Ground Floor:	26.66 sq.m
First Floor:	28.43 sq.m
Second Floor:	31.59 sq.m

5. ISSUES

5.1 The Parties were agreed on the level of assessment for Ground and First Floor, but the Appellant contended that only part of the Basement area should be considered for rating purposes (c. 9.10 sq.m) which is used for file storage.

The Appellant contended that the Second Floor is residential and LPT has always been paid thereon.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

7. APPELLANT’S CASE

7.1 The Appellant’s agent, Ms. Margaret Kennedy, contended that the Basement level of the building is part file store and part family Kitchen. Patrick Kennedy occupies floors -1, 0 and 1 inclusive, and Gibbons Kennedy Ltd occupies the Second Floor.

7.2 The Appellant stated the building was granted Planning Permission for the proposed part change of use from Residential to Offices at 6 William Street, Kilkenny dated 11th December 1984.

7.3 A copy of a Lease Agreement for the ‘top floor’ at 6, William Street, Kilkenny was produced in evidence and dated 20th September 2017. The Lease showed Patrick J Kennedy as Landlord with the Tenant being Gibbons Kennedy Ltd. with an initial 3 year rent of €50 per month as the Tenant undertook to upgrade the building, and the remainder of the term of 20 years being set at €500 per month.

7.4 The Appellant contended for a valuation of €5614.05 as follows:-

Level -1 (Basement):	Store 9.1 sq.m @ €75@	€682.50
Level -1 (Private)	21.37 sq.m @ €0	
Floor 0:	Office 26.66 sq.m @€105	€2799.30
Floor 1:	Office 28.43 sq.m. @ €75	€2132.25
Floor 2:	Residential 31.59 sq.m. @ €0	_____
Total:		€5614.05

8. RESPONDENT'S CASE

8.1 Mr. Terry Devlin, for the Respondent, gave evidence that the building at 6, William Street, Kilkenny, is in use as an Accountants' practice and contended for a Valuation as follows:

Level -1:	Office 30.47 sq.m. @ €75	€2285.25
Level 0:	Office 26.66 sq.m. @ €105	€2799.30
Level 1:	Office 28.43 sq.m @ €75	€2132,25
Level 2:	Office 31.59 sq.m @ €50	<u>€1579.50</u>
Total NAV:		€8796.30

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8.2 In his written evidence, Mr. Devlin for Respondent produced a Summary of Key Rental Transactions in the Kilkenny City area (see Appendix I hereto).

8.3 Mr. Devlin also provided 5 NAV Comparisons, two of which were offices on William Street and in the same style as the subject property (see Appendix II hereto) – Property Nos. 2197299 and 2163560. These NAV Office comparisons were value at a level of €105 per sq.m. in respect of the ground floor.

8.4 Mr. Devlin also produced photographic evidence of the inspection by the Respondent of the subject property taken in April 2017 (see Appendix III hereto).

8.5 Mr. Devlin, for the Respondent, said that second floor (Level 2) of the building was in use as offices on the date of initial inspection, but were in the process of being converted on the inspection in 2018.

9. SUBMISSIONS

9.1 There are no legal submissions in this case. The issue in dispute being one of quantum only.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Kilkenny County Council.

10.2 The key issue in this case is whether the Basement (Level -1) and the Second Floor (Level 2) is in commercial use.

10.3 At the first Hearing, Ms. Kennedy was asked to submit evidence of LPT payments on the part of the property which she contended was in residential use.

10.4 At the second Hearing, Ms. Kennedy produced a document showing that LPT in the amount of €90 was paid for the period 01/01/2016 to 31/12/2016. Ms. Kennedy did not produce evidence of other payments made prior to, or since, the above mentioned dates. The LPT statement referred only to the property at '6 William Street, Kilkenny', but did not specify whether it was the whole or part of the said building.

10.5 The relevant valuation date is 30th October 2015. The Valuation Date is the most relevant and important date, and the information received from her in relation to LPT was not sufficient. Further even it could be shown that LPT had been paid at the Valuation Date this is not determinative of the issue to be decided by this Tribunal. It is apparent from the photographic evidence produced by the Respondent that the Second Floor (Level 2) of the subject property was clearly in use as offices in April 2017 – approximately 18 months after the Statutory Valuation Date. The evidence produced by the Respondent in respect of the Basement (Level -1) also shows file storage areas and Kitchen, which in the opinion of the Tribunal is also being used for the benefit of the offices of the Appellant. The Tribunal does not give weight to the Residential Lease Agreement provided in evidence by the Appellant, which is dated 20th September 2017.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and affirms the Respondent's NAV of €8,790.

And the Tribunal so determines.