

Appeal No. VA09/3/007

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

John R. McCarthy

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2197851 Shop, Store at Lot No. 2/12, Gortamullin, Kenmare, Kenmare,
County Kerry

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

Frank Walsh - Valuer

Member

Veronica Gates - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19TH DAY OF OCTOBER, 2009

By Notice of Appeal dated the 8th day of July, 2009, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €290.00 on the above described relevant property.

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

- "1. Incorrect area being calculated for main warehouse section.
2. Comparables used in valuation report not totally appropriate.
3. The total NAV applied on the building is excessive."

This Appeal proceeded by way of an oral Hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 15th day of September, 2009. At the Hearing, the appellant was represented by Mr. John Daly, Sherry Fitzgerald, Daly Kenmare. Mr. David Molony, BSc, MRICS, a Valuer in the Valuation Office, appeared on behalf of the Respondent, the Commissioner of Valuation. Each representative, having taken the oath, adopted their respective précis of evidence and valuation, both of which had been previously received by the Tribunal and exchanged with the other party, as their evidence-in-chief.

History, Location and Description

The subject property, John R. McCarthy, Hardware, Gortamullin Business Park, Kenmare, Co. Kerry is situate on a secondary road adjacent to the main Kenmare/Killarney road and approximately 1.5 miles north of Kenmare Town. The property comprises a new purpose-built builders' provider shop, stores and yard. The accommodation comprises ground floor shop, offices and warehouse and the first floor comprises a showroom, offices and store. There is a yard to the front, side and rear of the property.

It was accepted by the Valuation Office that incorrect areas were calculated for the main warehouse section and that, accordingly, the correct floor area is 1,000 sq. metres.

Appellant's Evidence

Mr. Daly adopted his précis of evidence, specifically highlighting a number of sections therein. It was accepted by both parties that the first ground of appeal was no longer relevant as the warehouse floor area was now agreed at 1,000 sq. metres. Mr. Daly, with reference to the second ground of appeal, emphasised that the comparisons used by the Valuation Office were, in his opinion, inappropriate, given that two of the comparisons are situate in Dingle which is 60 miles from Kenmare, and the third comparison is situate in Castleisland which is 50 miles from Kenmare. In relation to the third ground of appeal, Mr. Daly submitted that the subject property is situate in the newly constructed Gortamullin Business Park and stressed that such business parks are a recent phenomenon in Ireland. Taking this factor into consideration, in Mr. Daly's opinion, there are no direct comparisons dating from 1988. In Mr. Daly's opinion, in 2005/2006, the average rate per sq. metre for commercial premises in Kenmare on Henry Street was €375.50 and the average rate per sq. metre for warehouse space in the area of Gortamullin Business Park was €48.44. He contended that in 2009, the average rate per sq. metre for commercial premises in Kenmare on Henry Street, which is one of the

main commercial streets in Kenmare, is estimated to have fallen by at least one third since 2005/2006. Therefore Mr. Daly submitted that this would equate to an average rate per sq. metre for commercial premises on Henry Street in 2009 of €247.50, with the average rate per sq. metre for warehouse in the area of Gortamullin Business Park falling to €29.60. Mr. Daly said that in 1988 the average rate per sq. metre for commercial premises in Kenmare on Henry Street was €134.87. Therefore, on this basis, he assumed that the rate per sq. metre for warehouse/retail in the area of Gortamullin Business Park, if it had existed in 1988, would have been €16.52. Mr. Daly said that he made the assumption of the NAV per sq. metre at €16.52 for warehouse/retail in 1988 on the basis that rents have fallen between 30% to 40% in the Kenmare area since 2006 in both the prime commercial and warehouse sectors, indicating that there is a strong correlation between the two respective NAVs per sq. metre for both these types of rental comparisons.

Mr. Daly argued that the evidence shows that NAV per sq. metre of a warehouse in Gortamullin Business Park is 11.96% of the 2009 NAV of commercial premises in Henry Street. The evidence also shows that NAV per sq. metre of a warehouse in Gortamullin Business Park was 12.9% of the 2006 NAV of commercial premises in Henry Street. In his opinion, it was, therefore, logical to conclude a similar differential would have been in place in 1988 between commercial premises on Henry Street and warehouses in Gortamullin Business Park. Accordingly, the NAV per sq. metre for the warehouse space in 1988 should be €16.52. In light of his evidence, Mr. Daly assessed a fair rateable valuation for the property at €173.00, having made a reduction of 25 sq. metres on the warehouse section as agreed.

Cross-examination

Mr. Molony put to Mr. Daly that Section 49 of the Valuation Act, 2001 was the appropriate method of determining valuation and cited, in support of his submission, the judgement in appeal **VA09/1/006 William Neville & Sons Construction Ltd.** In reply to Mr. Molony, Mr. Daly confirmed that he understood and acknowledged the methodology of the Valuation Office in determining the rateable valuation but continued to question how the same could be arrived at, given that neither the subject property nor the comparables existed in 1988. Mr. Daly confirmed that he was familiar with the “tone of the list” and indicated that he felt he was not in a position to submit comparables as there are very few properties sufficiently similar to the subject property in Kerry. Mr. Molony said that he had submitted three

comparisons in his précis of evidence. Mr. Daly, however, felt that only comparison No. 2 might be relevant. In response to Mr. Molony's observation that Mr. Daly had presented no comparison properties in his précis of evidence, Mr. Daly emphasised that Kenmare has its own rental market and, therefore, he had concentrated on cost per sq. metre. Mr. Daly continued to assert that there were no relevant comparisons based on "the tone of the list".

The appellant, Mr. John McCarthy, having taken the oath, also gave evidence. He outlined the history of the business which had been opened by his father in Kenmare Town in the 1960s. He said that the business had gradually developed, particularly over the last 10 years and said that he was now in a position to employ 11 people. He said that there were both advantages and disadvantages in the situation of the subject property and that, in particular, he had noted difficulties in the growth of the business over the last 18 months. He asked the Tribunal to take into consideration the location, the storage ratio and local rateable valuations in making its decision. Under cross examination, he confirmed that the site was acquired in and around 2005/2006 for the sum of €400,000.00 and that a further €1,000,000.00 had been expended on building works. This cost did not include fixtures and fittings. When asked how the location of the subject property compared with similar businesses situate in Kenmare Town, Mr. McCarthy said that the road on which the subject property is situate is a tourist route and is not on the main Killarney/Kenmare Road.

The Respondent's Evidence

Mr. Molony adopted his précis of evidence and referred to a number of sections therein. Mr. Molony referred the Tribunal to the photographs of the subject property contained in his précis of evidence and described the property as being situate in a new, developing commercial area of Kenmare comprising approximately 15 rated occupiers. He said that the property comprises a new purpose built hardware and builders' provider shop and ancillary accommodation built to a modern standard with a tarmac surface car parking area to the front of the property and extensive tarmac surface yard at the side and rear which is used extensively for storage purposes. Mr. Molony emphasised that the commercial market has recently experienced a trend for relocating hardware/builders' providers stores from town centre locations to peripheral areas to facilitate ease of access for delivering and customer car parking and to accommodate the size required for such businesses. He referred to the three comparable properties set out in his précis of evidence and submitted that, of the three, comparison number 2, being a hardware shop located in Ballynabooly Industrial Estate,

approximately one mile northwest of Dingle is the most appropriate comparison. Mr. Molony submitted that the Valuation of €287.00, as amended to reflect the agreed floor area, was fair and reasonable, calculated as follows:

Ground Floor:

Shop & Office: 422.70 sq. metres @ €37.57 per sq. metre = €15,880.84

Warehouse: 1,000 sq. metres @ €27.32 per sq. metre = €27,320.00

First Floor:

Show Room & Offices: 365.36 sq metres @ €23.92 per sq. metre = € 8,739.41

Store: 142.5 sq. metres @ €20.50 per sq. metre = € 2,921.25

Yard: 4,568 sq. metres @ €0.54 per sq. metre = € 2,466.72
 €5,328.22

Estimated NAV = €5,328.22 @ 0.5% = € 286.64

RV Say = € 287.00

Cross-examination

Under cross-examination, Mr. Molony did not accept that his second comparison is the only relevant comparison, stating that his third comparison has a good amount of storage area, and whilst his first comparison has little storage, it has a lot of yard space. Mr. Molony said that he had taken into account that the subject property is situate in a rural town. Despite questioning, he repeatedly confirmed that the “tone of the list” was the most relevant consideration.

Findings and Determinations

The Tribunal has taken into consideration all of the evidence adduced by the parties, both in their written précis and in the course of evidence-in-chief and cross-examination.

1. Section 49 (1) of the Valuation Act, 2001 states that the valuation of a property which is the subject of revision shall be determined “*by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property*”.
2. Having regard to Section 49 of the 2001 Act, the Tribunal concludes that the most relevant comparison is that of Fitzgerald’s of Dingle, a hardware shop located in

Ballynabooley Industrial Estate situate approximately 1 mile northwest of Dingle. The Tribunal notes that both Dingle and Kenmare have approximately similar populations.

3. The Tribunal notes that the appellant did not adduce evidence of a more appropriate comparison.
4. In light of the foregoing findings, the Tribunal determines the valuation of the subject property to be €287.00, in accordance with the calculation of the respondent as set out in full in the preceding paragraphs.

And the Tribunal so determines.