

Appeal No. VA97/2/048

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

**William H. Good**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Map Reference 31.35 (incl. 1.2.3.6 Mary's Lane) High Street, Urban District  
of Kilkenny, Co. Kilkenny  
Quantum

**B E F O R E**

**Liam McKechnie - Senior Counsel**

**Chairman**

**Rita Tynan - Solicitor**

**Member**

**Finian Brannigan - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 16TH DAY OF OCTOBER, 1998**

By Notice of Appeal dated the 23rd April 1997 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £405 on the above described hereditament.

The grounds of appeal as set out in the said Notice of Appeal are that;

1. "The valuation is excessive and inequitable.
2. The valuation is bad in law".

This appeal proceeded by way of an oral hearing which took place in Kilkenny on the 14<sup>th</sup> of November 1997. Present and appearing on behalf of the Appellant was Mr Owen Hickey B.L.,

and evidence was given on behalf of the Appellant by Ms Sheelagh O’Buachalla, an Associate of the Society of Chartered Surveyors and a Director of Donal O’Buachalla & Company. The Respondent was represented by Mr Eamonn Marray B.L., and evidence was given on behalf of the Respondent by Mr Denis Maher, District Valuer, A.R.I.C.S., Chartered Surveyor with 22 years experience in the Valuation Office. Both Valuers adopted as their evidence in chief their written submissions which had been received previously by the Tribunal and exchanged between them. From the evidence so tendered the following relevant facts either agreed or so found emerged as being material to this appeal.

### **THE PROPERTY:**

The Property comprises a retail property with offices and stores occupying a corner position and extending to two floors plus attic over basement with intermittent mezzanine floors between ground and first floor levels on the east side of High Street at its junction with St Mary’s Lane and comprises lot 31.35 High Street (including lots 1. 2. 3. 6 St Mary’s Lane).

### **VALUATION HISTORY:**

The subject premises was revised in November 1994 wherein three valuations totalling RV £305 were increased to RV £460.

At First Appeal submissions to the Commissioner were made, following which the RV £460 was reduced to RV £405. The floor areas set out in Mr Maher’s Précis at page 5 were agreed between the parties and are as follows: -

<b><i>Basement</i></b>	Shop	2310	sq. ft.
	Stores	1425	sq. ft.
	Stores	803	sq. ft.
<b><i>Ground Floor</i></b>	Shop	4545	sq. ft.
<b><i>First Floor</i></b>	Shop	4363	sq. ft.

<b><i>Mezzanine Floor</i></b>	Shop	1250	sq. ft.
<b><i>Second Floor</i></b>	Offices	797	sq. ft.
	Stores/Kitchen	682	sq. ft.
<b><i>Attic Floor</i></b>	Offices	187	sq. ft.
	Stores	561	sq. ft.

### **EVIDENCE OF MS. O'BUACHALLA ON BEHALF OF THE APPELLANT**

In her précis Ms O' Buachalla set out her estimate of a fair valuation on the subject premises as follows:

		<b>Sq ft</b>		<b>£</b>		<b>£</b>
	Zone A	580	@	25.00	=	15080
	Zone B	736	@	13.00	=	9568
	Zone C	989	@	6.50	=	6428
	Remainder	2239	@	3.25	=	7276
1 <sup>st</sup> Floor	: Retail	4363	@	3.00	=	13089
Mezzanine	: Retail	1271	@	1.50	=	1906
2 <sup>nd</sup> Floor	: Offices/Stores	1274	@	2.00	=	2548
Basement	: Retail	2361	@	2.50	=	5902
	Stores	1491	@	1.00	=	<u>1491</u>
						63288
				Less 17.5%	=	11075
				Total NAV	=	52212
				@ 0.5%	=	260 RV

Ms O’Buachalla in her evidence to the Tribunal said that the subject premises was an unusual property. A copy of the ground floor plan of the premises was submitted by her. She stated that the property has two legs so to speak and both have frontages to High Street and there is a side entrance from St.Mary’s Lane at the rear of the property. Ms O’Buachalla went on to say that this created difficulty because there is a major portion of the frontage of the building which has been taken out of the total frontage and that the premises has two individual frontages of 18 and 16 feet. She stated that there was a difficult internal layout of the building which had implications in relation to customers and staffing and because the premises is on different levels it is not really open plan. She said that because of the different levels on the ground floor of the subject premises more staff were needed to adequately service the shop and she estimated that the business would require 20% less staff were it not for the unique layout. She further stated that there were various staircases on the ground floor and that the ground floor was not at one level.

Ms O’Buachalla proceeded to go through the plan and stated that lot number 31 was on the right hand side. She stated that the figure 1.3 on the map on the right hand side was the width at the stairs leading up to the mezzanine. She said that the mezzanine was a bit confusing but would actually be the first floor of the original building but within the context of the whole property it was a mezzanine. She stated that the two front buildings were obviously buildings on their own and that they had two floors overhead and those two floors are the first floor accessed from the rear ground floor level and the second floor is accessed from the rear first floor level. She said the rear part is at a different level to both of these. She stated that the front steps do not lead into the first floor level but lead you to the mezzanine. Ms O’Buachalla stated that in the back section of the building there is a central staircase that accesses all of the floors with the exception of the mezzanine and that this staircase goes to the basement, first and second floors and it is the only stairs in the building that accesses the double floors. She said that the history of the premises was that number 31 was acquired first and through time different buildings were acquired which the owners tried to incorporate and that that is the reason why they are at different levels. An attempt was made also she said, to acquire O’Connells Pharmacy which is in the centre of the frontage but without success.

Mr Hickey, Counsel on behalf of the Appellant stated that the premises did not easily lend itself to description but said that in lay terms the premises was all over the place and that there was clear space, ground floor small mezzanine spaces in the two prongs which are described in Ms O’Buachalla’s evidence as the mezzanine, four main floors at the back which are accessed by the central staircase and that the main floor exits next to the centre of the staircase at the back. He recommended that the Tribunal inspect the premises.

Ms O’Buachalla went on to say that because of the difficult layout and the unusual situation with two street frontages, which are quite small, it was difficult to find anything that would be comparable either in Kilkenny or in the country as a whole.

She went on to say that since the Market Cross Shopping Centre opened, the centre of the town has moved towards that end and further away from the location of the subject premises. She stated that the frontage to depth ratio which in a modern unit would be 1:2, contrasted with the ratio on number 31 at 1:8 and on number 33 at 1:5. She said the middle area has no street frontage and that a shopper found it easier to walk out of one front door and in through the other rather than get access through the shop itself.

Ms O’Buachalla had a number of comparisons set out in her précis but stated that her main comparison was Supermac’s Limited Restaurant and apartments at 50. 52. 54 High Street, Kilkenny across the road from the subject premises. She stated that the RV was £285 and the premises was a restaurant and apartment with a frontage of 43 feet onto High Street Kilkenny and that the premises devalues as follows: -

		<b>Sq Ft</b>		<b>£</b>
<b>Ground Floor</b>	Zone A	597	@	30.00
	Zone B	626	@	15.00
	Zone C	626	@	7.50
<b>1<sup>st</sup> Floor</b>		1021	@	3.75
	Restaurant	1222	@	8.00
	Office & Stock Room	978	@	5.00

<b>Ground Floor</b>	Store	994	@	3.00
	Domestic	1952	@	2.00

She stated that Zone A had a depth of 17 feet and the premises consisted of a refurbished open plan restaurant benefitting from partial designation. She supplied a photograph of the front of the premises and said that it was the only common comparison and that the frontage that Supermacs premises enjoyed in High Street is greater than the frontage enjoyed by the subject property. She further stated that it is an open-plan shop with no obstructions and that the premises is all on the same level. Furthermore it was nearer to the new Market Cross Shopping Centre which is a better location. She also stated that it was on a better side of the street being opposite to the subject premises as it was not affected by the position of the Tholsel which she contended adversely affected the quality of location of the premises on the same side of the street, as one proceeded in the opposite direction from the Market Cross Shopping Centre. Ms. O’Buachalla mentioned the Book Centre at 22 High Street but her RV at £150 was at variance with Mr Maher’s evidence that the RV of this premises was £185. She stated that she had included the Ulster Bank as a comparison in her précis but that it was not really comparable and gave as a further comparison the Sweater Shop at 59 High Street a Valuation Tribunal decision reference VA90/2/012 and said that the premises devalues at 622 sq.ft. at £25.90 p.s.f. She stated that because of the difficulties associated with the subject premises she would value Zone A of same at £25 psf which is slightly less than the Sweater Shop.

When questioned by Mr Marry on behalf of the Respondent on the matter of the proposed discount of 17½%, Ms O’Buachalla said that it was a difficult issue and was not an exact science but that taking into account the structure of the premises with timber floors and the fact that it was an old building a discount at 5% for each of these factors was appropriate with an additional amount for location. She agreed that in another matter a 10% allowance because of a wall and steps in the middle of a premises had been applied. She stated that a further 7½% reduction in valuation would be justified in the case of the subject premises because of the difficult layout and floor levels. She agreed however that this assessment might be regarded as arbitrary. Ms O’Buachalla referred to her comparison number 3 the Sweater Shop and accepted that the area

was in fact 590 square feet rather than the 622 square feet mentioned by her and she further accepted that her valuation of the Sweater Shop was based on a figure of £25.90 psf overall rather than as a valuation of Zone A alone. She stated that a range from £27 psf to £32 psf for Zone A in High Street, Kilkenny would apply generally with perhaps a higher zone rate for a particularly small shop. She was not aware of any premises in High Street, Kilkenny with a Zone A valuation of £40 psf. She did not agree that the premises had been refurbished but stated that they were being continually updated and she accepted that the square footage of the entire premises was approximately 17,000 square feet on the basis of Mr Maher's figures.

Ms O'Buachalla stated that her contention that the main focus of the town had shifted toward new Market Cross was also supported by the fact that Argos and Boots had taken lettings on two new premises near to the Market Cross Shopping Centre. She accepted that there was a good mix of shops on both sides of High Street near the subject premises.

#### **EVIDENCE OF MR DENIS MAHER ON BEHALF OF THE RESPONDENT**

Mr Maher was sworn and adopted his précis as his evidence in chief. He stated that in his view there were only two levels on the ground floor of the subject premises and further that the front two shops were at street level. He welcomed the fact that an inspection was to take place. He rejected Ms O'Buachalla's claim that the location was a secondary location in High Street, relative to other parts of High Street, as there was no rental evidence to suggest that rental levels were dropping in the area of the subject premises. In his expert opinion having worked in Kilkenny, the other end of High Street had poorer quality shops. The shopping centre, in his view while improving the area in which it was located, did not do so to the detriment of the shops at the other end of the street where the subject premises was located. He said that the Body Shop and Sasha's had taken shops close to the subject premises and that it was his belief that they would not have done so if they regarded it as a secondary location.

He rejected Ms O'Buachalla's suggestion that the divided frontages of the subject detracted from the value of the premises as a whole. He pointed out that part of the building was on the corner with St Mary's Lane and that it juts out onto High Street beyond the profile of the building which gives it a better visibility on the street. He further added that the occupiers had used this fact to

print their name on the wall and that people coming from the Town Hall direction towards the premises had a good view of this advertisement. He further stated that the frontage on the ground floor off St.Mary's Lane was used for display purposes and that St Kierans Street to which St.Mary's Lane was linked, was a busy street where Dunnes Stores was situated and that St.Mary's Lane is an access route from Dunnes Stores car park to High Street.

He pointed out that comparison A in his précis, Supermacs, was let to the occupiers at a rate of £72,000 per annum before any work was carried out on it. He had dealt with the premises on first appeal and he calculated that part of the ground floor in the order of 900 – 1000 sq ft was not used as retail area but rather as a cold store, food preparation area and changing rooms for the staff.

Mr Maher referred to this comparison which is his principal comparison and he stated that he did not know what the condition of the premises was prior to refurbishment by the current occupiers but that because £100,000 was spent on the re-development of the ground floor and first floor it could not have been in good condition.

Mr Maher mentioned the Book Centre, Ms O'Buachalla's second comparison and stated that the RV was in fact £185 and not £150 as stated by Ms O'Buachalla in her evidence. He further stated that he did not understand the valuation quoted in her précis for Ulster Bank as in his opinion the valuation of the Ulster Bank premises was not so assessed.

Mr Maher said that Zone A of a premises is normally taken as the frontage by the depth of 6 meters unless there was a natural barrier such as a wall or an artificial barrier which was present on a permanent basis. He said that zoning was a principle of valuation. He stated that the levels of valuation for Zone A in Kilkenny on average sized shops was £30 to £32 psf.

Mr Maher mentioned the premises of Richard Duggan at 50. 52. 54/1 High Street which was comparison B in his précis at page 7, which devalues as follows;-

### **Ground Floor**

<i>Shop</i>		1758 sq. ft.	at £14	£24612
<i>Shop</i>	Zone A	279 sq. ft.	at £32	
	Zone B	432 sq. ft.	at £16	
	Zone C	432 sq. ft.	at £8	
	Balance	615 sq. ft.	at £4	£21756
	Average N.A.V.			£23184
	R.V. at .5%			£115.92

Say £110 to reach agreement.

He did not accept Ms O’Buachalla’s allowance of 17½% to take into account the alleged affect of the size, frontage, layout and different levels together with irregular configurations. He would prefer to value the premises as it stood and stated that the premises was in effect two shops and that ignoring the back floor they were no different from any other shops in the High Street.

Mr Hickey on behalf of the Appellant asked Mr Maher if he would value the premises any differently if it constituted two separate premises with one prong of the premises being attached to half of the back area and the other prong being similarly attached. Mr Maher declined to answer this question on the grounds that he was being asked to get into a scenario situation and that he had not presented any scenarios in his evidence. The Tribunal felt that this was a legitimate question and if capable of answering same that Mr Maher should do so. In response Mr Maher said he would value both of such shops at £30 psf each for Zone A. In response to Mr Hickey he said he would not discount these at all. He explained that although he had given as his evidence that he valued Zone A at £32 psf for the subject premises overall, he had valued the left leg of the property at £35 because it was a corner shop and the right leg at £30. He also cited the comparison already referred to of Richard Duggan’s valued at £32 psf for Zone A because it was a corner property also. Mr Hickey on behalf of the Appellant suggested to Mr Maher that he would have to accept that the subject premises, being separated by a business owned by another party was at a disadvantage in trading terms. Mr Maher disputed this and said it was much better

to have these two street frontages than to have just one and he said that they gave full access to the shop. He further maintained that if the subject had the full unbroken frontage that it would have a higher rate psf and that the rate suggested by him reflected the smaller Zone A.

In reply to Mr Hickey's question regarding the number of levels in the subject, Mr Maher stated that when he looked at the property, he had understood that the two shops, the cosmetic shop on the left and the childrens clothing shop on the right had 5 steps leading into the open shop at the back. He said there were probably 5 levels overall. He said that the surface area overall was approximately 17,000 sq ft and this included 12,500 feet of retail. Mr Hickey suggested to him that there was no validity in comparing a two prong shop with 7 levels and 12,000 sq ft of retail space with a 590 sq ft shop nearby as the premises was a unique piece of retail real estate on High Street. Mr Maher agreed that in terms of its layout and the double pronged aspect with separate levels it was unique. Mr Hickey suggested to Mr Maher that the far side of the road where Supermacs was situated was the better trading side. Mr Maher said that he would not accept this and went on further to say that he did not think that the Supermacs pitch was any better because it was opposite the Town Hall. Mr Hickey on behalf of the Appellant put it to Mr Maher that it was totally irrational to value Zone A of Supermacs at £30 psf and the subject premises at £32 psf, when the ground floor at Supermacs was a much better shop with a better layout and a better frontage. Mr Maher said that he valued the subject premises at £32 psf Zone A because in common with the Duggan comparison the subject premises was a corner property: the Duggan property having frontage to the High Street and the laneway at the side, and the subject premises having frontage to the High Street with an entrance from St Mary's lane on the left hand side.

In summing up Mr Marray on behalf of the Commissioner stated that Mr Maher was experienced in dealing with revisions of shopping premises in this area of Kilkenny and that from his comparisons it was clear that the valuation he had assessed on the subject premises was fair and reasonable having regard to the peculiar features of the premises. He further stated that there was no basis for what would appear to be an arbitrary discount which Ms O'Buachalla sought to offer the Tribunal to reduce the RV of the property and that the Appellant was seeking to establish a lower figure than was in reality applicable.

In response Mr Hickey on behalf of the Appellant summed up by stating that inspection of the premises would show that Mr Maher's contention that two shops with two different frontages are as good as one was not valid and that on inspection the Tribunal would be satisfied that it was a matter of *res ipsa loquitur*. He said that Ms O'Buachalla had fairly taken rents at £27 psf to £32 psf Zone A on the street and had applied that to the subject premises in a fair manner at £25 psf Zone A. Taking into account the trading position and the unique nature of the shop with two frontages and many different levels, her value of £25 psf Zone A is a fair one.

### **INSPECTION**

Inspection of the premises by members of the Tribunal took place on the afternoon of the 14<sup>th</sup> November 1997. The subject premises appeared to be located in a busy end of High Street, Kilkenny and there did not appear to be a noticeable difference between this end of the High Street and the other end past the Tholsel building. Inspection of the laneway to the side and rear showed a narrow laneway leading onto a further section at the rear of the premises which did not appear to allow for vehicular access from the rear. The narrowness of the laneway suggested that it would not be the preferred access route of many people particularly on dark evenings.

The premises appeared to be bright, clean and attractive but the different levels and the interposition of the chemist shop between the two prongs of the premises on the ground floor appear to be a clear disadvantage. It was easier to move from the left frontage to the right frontage of the subject premises from the street than from inside the premises. There is access to St Mary's Lane by way of an exit at the rear left hand side of the premises which was at a higher level than the front left hand side which fronted onto High Street. The ground floor and mezzanine were in better condition than the upper floors. Overall the premises appeared to be in good condition and located in an excellent trading area but deriving very little benefit from St Mary's Lane as an avenue of access and with the obvious disadvantage of the broken frontage and the different levels.

The premises which was a common comparison, Supermacs, was quite nearby and on the opposite side of the street and did not appear to have a superior location to the subject premises.

**DETERMINATION**

The Tribunal notes that Ms O’Buachalla conceded that Mr Maher’s figures for area as set out on page 5 of his précis are correct and that she was prepared to accept them. The Tribunal notes that Mr Maher for the Respondent states in his précis at page 3 that “there are few shops on High Street of the size of the subject property and still less valued on an up-to-date net annual value basis”. In relation to the comparisons presented the Tribunal finds that:

the subject premises at approximately 17000 sq ft is almost 10 times the size of Mr Maher’s comparison B, the Duggan premises. It appears to the Tribunal that Mr Maher’s main reason for using this premises as a comparison is its status as a corner shop in common with the left prong of the subject premises. From the evidence contained in the written submissions, the oral evidence given at the hearing and the inspection which followed, the Tribunal accepts Ms O’Buachalla’s assertion that the premises is a unique property with the disadvantage of having a broken frontage and having a number of different levels. In relation to other comparisons offered to the Tribunal, it is clear that there is a difficulty with the Book Centre, both from the point of view of its relatively small size and the disagreement between Mr Maher and Ms O’Buachalla on the RV. There is also some difficulty in relation to the Sweater Shop which is extremely small in comparison to the subject premises and in addition different areas were given by the Appellant and Respondent for the premises. In evidence Ms O’Buachalla had stated that the Ulster Bank (Comparison No. 4) was not really comparable. Mr Maher’s comparisons C and D, the premises of Alwin Investments Limited, High Street and Cecil Paul, High Street respectively both appeared to have Zone A values of £30 psf with Zone B valued at £15 psf. The former premises has 400 sq ft of Zone A and the latter 380 sq ft of Zone A space.

The most appropriate comparison it appears to the Tribunal is the Supermac comparison which at 6000 sq ft overall is much less than half the area of the subject premises but is nevertheless much bigger than the other comparisons and is quite close to the subject premises. It is common case that Supermacs has an uninterrupted street frontage of 43 feet together with a level ground floor of approximately 2850 sq ft. The Tribunal notes that it is also common case that Zones A, B and C in the Supermac premises are valued at £30, £15 and £7.50 respectively with the balance at

£3.75 and that the areas applicable to each Zone and the balance are also agreed. The Tribunal accepts, that for the reasons set out above, the Supermac premises is a superior property.

The Tribunal accepts the uncontested evidence that the break in the road frontage combined with the different levels as one goes towards the rear of the subject premises, result in increased staff requirements of 20% approximately. The Tribunal accepts that this would be a further disincentive to a hypothetical tenant to take a lease of the property.

The Tribunal also accepts Mr Maher's contention that the subject premises does not suffer any disadvantage with regard to location by virtue of the fact that it is on the opposite side of the road to Supermacs or because it is on the same side of the road as the Tholsel and further away from the Market Cross Shopping Centre. The Tribunal accepts that Mr Maher is familiar with High Street in Kilkenny having worked in the town and accepts his evidence that the Shopping Centre at Market Cross may have improved the area in its vicinity but not to the detriment of the shops at the end of the street where the subject premises is situate. The Tribunal accepts further his evidence that well known businesses such as the Body Shop and Sasha's have set up near the subject premises. The Tribunal inclines towards Mr Maher's view that an allowance of 17½% should not be made in respect of the valuation of the subject premises. The Tribunal does not however accept Mr Maher's suggestion that, because St.Mary's Lane links around onto St Kierans Street and the Dunnes Stores property and car park therein, this is of any significant benefit to the subject property.

Taking all of the foregoing into account the Tribunal is of the opinion that the premises is a unique premises and does not easily admit to comparison. The Tribunal regards the Supermac premises as being the best comparison available both from the point of view of location and area. To take into consideration the unique disadvantages which the layout of the subject premises present, the Tribunal finds that the proper rateable valuation of the subject hereditament is £360 based on a net annual value of £71,434 calculated as set out below using Mr Maher's figures for areas.

<b><i>Basement</i></b>	Shop	2310	sq ft	@	£2.50	psf	£5775
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	Stores	1425	sq ft	@	£1.00 psf	£1425
	Stores	803	sq ft	@	£1.00 psf	£ 803.
<b><i>Ground floor</i></b>	Zone A	545	sq ft	@	£27.00 psf	£14715
	Zone B	750	sq ft	@	£14.00 psf	£10500
	Zone C	485	sq ft	@	£ 7.00 psf	£ 3395
	Balance of Ground Floor	2702	sq ft	@	£ 3.50 psf	<u>£ 9457</u>
<b><i>First floor</i></b>	Shop	4363	sq ft	@	£4.00 psf	£17452
<b><i>Mezzanine floor</i></b>	Shop	1250	sq ft	@	£3.00 psf	£ 3750
<b><i>Second floor</i></b>	Offices	797	sq ft	@	£3.00 psf	£ 2391
	Stores/Kitchen	682	sq ft	@	£1.50 psf	£ 1023
<b><i>Attic floor</i></b>	Offices	187	sq ft	@	£1.00 psf	£ 187
	Stores	561	sq ft	@	£1.00 psf	<u>£ 561</u>
						£71,434
	N.A.V. £71434	x	0.5%	=	R.V. =	£357.17
					say =	£360

The Tribunal therefore determines the rateable valuation at £360.