Appeal No. VA15/5/036

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

JRW Ltd **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

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

Property No. 1259291, Licensed Premises, 3A, The Square, Newcastle West, County Limerick.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF DECEMBER, 2016

BEFORE:

Niall O'Hanlon – BL	**Deputy Chairperson**
Mairead Hughes – Hotelier	**Member**
Orla Coyne – Solicitor	**Member**

Introduction

A Notice of Appeal in respect of Property No. 2163141 (hereafter "the Subject Property") was received by the Tribunal on the 10th of September, 2015. The grounds of appeal were stated to be:

"the Property's NAV is excessive and inequitable, the Occupier has extremely personalised goodwill."

This is an appeal against a revaluation, the Valuation Date being the 1st of March, 2012. Hearings in respect of the appeal took place in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 20th day June, 2016, the 6th day of July, 2016, and the 10th day of August, 2016. Mr. David Halpin represented the Appellant whilst Ms. Joanne Duggan appeared on behalf of the Respondent. Both Mr. Halpin and Ms. Duggan adopted their respective précis as their evidence-in-chief.

Description of the Subject Property

The Subject Property, which is held under a related party lease, is a licensed premises located on the south east side of an area known as The Square in Newcastle West, County Limerick. Newcastle West is on the N21, which is the main Dublin to Limerick to Killarney road and it is 40km southwest of Limerick city. The town has a population of 6,327 according to the 2011 census.

The Subject Property includes two bars, a disco, a beer garden, a covered smoking area and ancillary areas, located in a 3 storey mid terrace building. It has an ordinary 7 day licence and in addition to the normal pub opening hours the pub and night club trade until 2am Friday to Sunday nights. A cover charge of €5 is in operation for the past year for admission to the late bar and disco, however the revenue generated from these door takings is not included in the valuation. Food is served daily.

The agreed main trading floor areas of the property are as follows:

Front Bar	68.75sqm
Rear bar	97.42sqm
Covered smoking area	56.24sqm
Beer garden	50.60sqm
Ground floor rear store	45.56sqm
First floor kitchen	39.36sqm
First floor cloakroom	9.00sqm
First floor office/plant room	27.48sqm

The Respective Valuations of the Parties

The Appellant, utilising four valuation methods, sought a net annual value of €23,200. The Respondent, utilising the Fair Maintainable Trade Method, arrived at a valuation of €52,300.

The Appellant's Valuation Methodologies

The Appellant's figure was arrived at by taking the rounded average of its four valuation methods. The first method, a variation of the Zoning Method, applied various rates per square metre, ranging between €17.50 and €70, to different parts of the Subject Property and adding on €5,000 in respect of the attached licence to arrive at a valuation of €23,300. The second method was Adjusted Turnover (described as Fair Maintainable Trade by the Respondent) and produced a valuation of €21,250. The third method was described as Per Week and multiplied a figure of €450, which was stated to relate to Pub and Ancillaries, by 52, to arrive at a valuation of €23,400. The fourth method was described as Tone of the List and the valuation was simply set down as €25,000. In the course of the hearings Mr. Halpin settled on Adjusted Turnover (hereafter referred to as Fair Maintainable Trade) as the Appellant's preferred method and in consequence thereof sought a valuation of €21,250.

The Appellant's Fair Maintainable Trade Valuation

The Appellant estimated the Fair Maintainable Trade; *firstly,* in Drink to be €350,000 to which a rate of 5.5% was applied to arrive at a figure of €19,250, and; *secondly,* in Food to be €50,000 (net of a deduction of €100,000) to which a rate of 4% was applied to arrive at a figure of €2,000; thus giving rise to the valuation of €21,250.

The Respondent's Fair Maintainable Trade Valuation

The Respondent estimated the Fair Maintainable Trade; *firstly,* in Drink to be €550,000 to which a rate of 7% was applied to arrive at a figure of €38,500, and; *secondly,* in Food to be €230,000 (net of a deduction of €100,000) to which a rate of 6% was applied to arrive at a figure of €13,800; thus giving rise to the valuation of €52,300.

The Differences in the Respective Fair Maintainable Trade Valuations

The differences arising between the parties relate; *firstly,* to the estimate of the Fair Maintainable Trade in both Drink and Food, and; *secondly,* to the appropriate percentages to apply to those figures.

The First Difference – Fair Maintainable Trade Estimates and Goodwill

The reason for the differences in the estimates of the Fair Maintainable Trade for Drink and Food go to the heart of the issue arising between the parties, namely the extent to which the volume of trade carried on in the Subject Property is dependent upon the goodwill of the occupiers of the Subject Property. It is the Appellant's case that there should be a significant reduction in the Fair Maintainable Trade estimates of turnover in Drink and Food to reflect such goodwill, it is the Respondent's case that an appropriate reduction has already been made for such goodwill. Accordingly, insofar as there is a difference between the parties in relation to the question of goodwill it is in relation to the question of quantum.

Mr. Halpin, in his précis, at page 10, stated that the majority of the Appellant's case centred around the relativity of the Subject Property within the town of Newcastle West and its nearest competitors. The Appellant produced a list of 17 properties in the vicinity of the Subject Property; however, only seven of these properties (Comparisons 1 to 6 and Comparison 9) served food. Further, in respect of one of the seven properties, Comparison 5, it was conceded that the Net Internal Area was unknown.

Indeed, the Appellant contended that more than 50% of the comparison properties had what was described as *"potential matter of fact issues"* in that it was claimed that; *firstly,* the Respondent did not have measurements for three of the properties (as noted in the preceding paragraphs only one of those properties served food); *secondly,* measurements for a further six properties were from plans dating as far back as the 1970's; *thirdly,* of the eight further properties that the Respondent might have inspected more recently three of them had significantly different areas than the Appellant's believed them to have.

The Tribunal notes that the *"potential matter of fact issues"* that the Appellant referred to fall into three categories. With the exception of the first category, the Appellant did not identify which of the comparison properties were affected by the alleged *"potential matter of fact issues",* and did not take steps to resolve such claimed evidential issues. The net effect was to undermine the very comparisons upon which the Appellant invited the Tribunal to place reliance.

However, even if such *"potential matter of fact issues"* had not arisen, such evidence, whilst showing a difference between the valuation applied by the Respondent to the Subject Property as against the comparisons, did not assist the Tribunal in determining the extent, if any, to which that difference was attributable to the goodwill of occupiers rather than the characteristics of the Subject Property. Further, Mr. Halpin did not explain how an inspection of the Subject Property by the Tribunal would assist in resolving that issue.

The Tribunal notes that when Mr. Halpin was asked for the basis for the turnover figures advanced on behalf of the Appellant he stated that they were estimates based on his professional judgement as a valuer. However, Mr. Halpin did not go on to explain how he had arrived at his professional judgement or what sources of evidence he had relied upon in forming that judgement.

Although, in the course of the hearings Mr. Halpin asserted that the occupiers, who, it appears, were the owners of the business operating from the Subject Property, would be able to generate significant levels of turnover in Drink and Food if they were to operate from another premises, by virtue of their goodwill, no evidence was adduced in support of this proposition other than Mr. Halpin's bare assertion.

The Tribunal also notes that Financial Statements relating to the business operated from the Subject Property were included in the Respondent's précis of evidence. However, there was no entry in the Balance Sheet in respect of goodwill. Whilst the Tribunal draws no adverse inference from this fact, the presence of goodwill on the Balance Sheet of the business would have assisted the Appellants in establishing the existence and quantum of the goodwill which they maintained existed.

This is not to say that the occupiers of the premises did not enjoy goodwill which contributed to their turnover in Drink and Food, it is simply the case that the evidence adduced on behalf of the Appellants did not go towards establishing either the quantum of that goodwill or, more particularly, the magnitude of its impact on turnover.

In the circumstances, the Tribunal finds that the Appellant has not adduced any evidence to call into question the turnover figures, advanced by the Respondent, for Drink and Food, in the context of the Fair Maintainable Trade Valuation. In so finding the Tribunal notes Ms. Duggan's evidence that the Respondent's figures for Fair Maintainable Trade were calculated based on the analysis of the audited accounts and the Gross Profit Margin over a 3-year period, and also factoring in issues such as location, expenses, opening hours as well as the level of trade on comparison properties. The Tribunal further notes that the Respondent's Fair Maintainable Trade figures in this instance are less than the actual turnover figures of the Subject Property as shown in the Financial Statements.

The Second Difference – Percentage to be applied to Fair Maintainable Trade Estimates

The second difference arising relates to the appropriate percentages to apply to the Fair Maintainable Trade. Ms Duggan, for the Respondent, explained that a range percentages were applied to Drink turnovers, in the City of Limerick it was 9% and outside the City it varied from 7% to 8%. For the subject property a level of 7% had been applied to Drink. Ms. Duggan indicated that a rate of 6% was applied by the Respondent to Food turnovers. Mr. Halpin indicated that he had used his professional judgement in applying a rate of 5.5% for Drink turnover and a rate of 4% for Food turnover. However, Mr. Halpin did not go on to explain how he had arrived at his professional judgement or what sources of evidence he had relied upon in forming that judgement. In the circumstances, the Tribunal finds that the Appellant has not adduced evidence to displace the percentages applied by the Respondent.

The Appellant's Alternative Valuation Methodologies

Although Mr. Halpin indicated in the course of the hearings that Fair Maintainable Trade was the Appellant's preferred methodology, three other methods were utilised to support the net annual value argued for by the Appellant using Fair Maintainable Trade.

The first of these alternative methods applied various rates per square metre, ranging between €17.50 and €70, to different parts of the Subject Property and adding on €5,000 in respect of the attached licence to arrive at a valuation of €23,300. The lower rates used by the Appellant in applying this method were, the Tribunal was told, derived from the highest rate of €70. No explanation was advanced for the use of a rate of €70 beyond the statement that it had been arrived at using the zoning model applied by the Respondent on The Square of €190 per square metre for Zone A. Accordingly, there is no evidence before the Tribunal as to why €70 was the particular figure utilised by the Appellant in applying this method.

The second of the alternative methods was described as Per Week and multiplied a figure of €450, which was stated to relate to Pub and Ancillaries, by 52, to arrive at a valuation of

€23,400. The Tribunal notes €450 was Mr. Halpin's estimate of the appropriate weekly rent for the Subject Property. The Tribunal further notes that according to page 16 of the Financial Statements for the occupier for the year ended 31st of December, 2012, the rent for the 18 months to the 31st of December, 2011, was stated to be €23,400. However, given the uncontested evidence of Ms. Duggan that the Subject Property was held under a related party lease the Tribunal is not persuaded that it can place great reliance upon the figure produced by the Appellant utilising the Per Week methodology.

The third of the alternative methods was described as Tone of the List and the valuation was simply set down as €25,000. The Tribunal is not persuaded it can rely on this methodology in the absence of better evidence as to how the figure of €25,000 was derived.

Leaving aside the concerns, which have been set out above, in relation to particular aspects of the alternative valuation methodologies, the Tribunal notes that there was no evidence offered by the Appellant as to why these alternatives were appropriate methodologies to use in arriving at a valuation of the Subject Property. The Tribunal finds in favour of Ms. Duggan's argument that Fair Maintainable Trade is the appropriate valuation methodology in the present case.

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 and submissions of the parties, considers that the NAV of €52,300 as determined by the Commissioner of Valuation to be fair and reasonable.

DETERMINES

That it is appropriate to disallow the Appeal and, accordingly, it confirms the decision of the Commissioner.