

Appeal No. VA14/5/713

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

Edenmore Taverns Ltd

APPELLANT

And

Commissioner of Valuation

RESPONDENT

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

Property No. 689944, Licenced Premises including rear of 6 & 7 Edenmore Shopping Centre,
146 Edenmore Avenue, County Borough of Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23rd DAY OF MAY, 2017

BEFORE:

Niall O’Hanlon - BL

Deputy Chairperson

Thomas Collins - PC, FIPAV, NAEA, MCEI, CFO

Member

David Gill – FRICS, FSCSI, FCI Arb, Dip Arb Law

Member

By Notice of Appeal received on the 4th day of September, 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €120,000 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

“The valuation is excessive and inequitable.”

Representation

Mr. Terry Devlin of CRBE appeared on behalf of the Appellant Edenmore Taverns Ltd.

Mr. Patrick Nolan appeared on behalf of the Commissioner of Valuation.

Valuation Certificate

The valuation date of the subject property is 7th April, 2011. The proposed Valuation Certificate was issued on 23rd October, 2012 with a valuation of €135,000. The Valuation Certificate was issued in December, 2013 at a Net Annual Value (NAV) of €120,000. Following first appeal the Valuation Certificate was confirmed on 8th August, 2014 with a NAV of €120,000. The assessment has been appealed to the Valuation Tribunal.

Issue for determination by the Valuation Tribunal

No issue of law arises in connection with this appeal and, only the quantum of the valuation being in dispute, the Tribunal has been requested to determine the NAV in accordance with the Valuation Act, 2001.

The Subject property

This appeal concerns a licenced premises (with a 7 day Publican’s Licence) at Edenmore Shopping Centre. The subject property comprises some 483 square metres at ground floor with a basement cellar of 109 square metres the property is leased for a term of 9 years and 11 months from 24th May 2013 and the initial rent reserved is €88,400 per annum.

The Appellant’s case

The Appellant is represented by Mr. Devlin of CBRE who lodged a written précis of evidence and gave evidence under oath. The Appellant’s case is that:

- 1) The Respondent’s approach in making an estimate of Fair Maintainable Trade (FMT) at April 2011 is incorrect being based primarily on figures derived from other properties.
- 2) The Respondent has relied on an assessment placed on the Concorde Lounge a successful pub also located in Edenmore Shopping Centre.

- 3) Actual trading figures for the subject property indicate turnover of €506,000 for 2014 and €439,000 for 2015, whereas the Commissioner's estimate of FMT is €1,500,000. This produces an assessment of NAV which is argued to be excessive and inequitable.
- 4) The Respondent's assertion that regard should be had to the Concorde Lounge is incorrect since there is no evidence that the subject premises is capable of doing a comparable trade.

Mr. Devlin referred to 7 comparables namely:

Madigans, Kilbarrack, Dublin 5;

The Ramble Inn, Killester, Dublin 5;

The Foxhound, Raheny, Dublin 5;

Graingers, Fairview, Dublin 3;

The Roundabout, Artane, Dublin 5;

Artane House, Artane, Dublin 5;

The Concorde Lounge, Edenmore Shopping Centre, Dublin 5 (in common with the Respondent)

Mr. Devlin submitted that the NAV should be €37,000 based on adjusted turnover figures.

The Respondent's case

Mr. Nolan also gave evidence under oath. He confirmed that the measurements and floor areas of the property were generally agreed between the valuers and he outlined the valuation history of the subject property.

Mr. Nolan explained that in carrying out the revaluation of licenced premises in the city of Dublin the Commissioner had developed a valuation model, the objective of which was to estimate the FMT of such properties. This method then applied a % rate to the estimated FMT figure to calculate a figure for NAV.

Mr. Nolan contended:

- i. The Concorde Lounge, also located in Edenmore Shopping Centre, was the best comparator and that its trading figures provided a guide as to the potential for the subject premises.

- ii. Equity demanded the NAV assessed for the subject premises should have regard to the Concorde Lounge.
- iii. If the property had been leased in 2011 the rent would have been higher than €88,400 and probably over €100,000.

In his submission Mr. Nolan provided details of 6 comparable properties:

The Concorde Lounge, Edenmore SC, Dublin 5 (a common comparator);
Newtown House, Coolcok, Dublin 5;
The Donaghmede Inn, Donaghmede, Dublin 5;
The Kilmardinny Inn, Santry, Dublin 9;
The Horse & Hound, Artane, Dublin 5;
Martins, Clonshaugh, Dublin 17.

Mr Nolan argued that, based on the Commissioner's estimate of FMT, an NAV of €120,000 should be assessed.

The Tribunal's conclusions and reasons were as follows

The Tribunal examined the particulars of the property; confirmed its valuation history; examined and considered the written evidence submitted; heard oral evidence on the 23rd May, 2016, adduced by Mr. Terry Devlin, and by Mr. Patrick Nolan.

1. The Tribunal notes the Respondent's evidence that the 2011 trading accounts for the nearby Concorde Lounge indicated a FMT of €1,900,000 based on which an amended NAV was determined following representations at €152,000. In his precis (see page 14) Mr. Nolan stated that initially a NAV of €170,000 had been assessed for the Concorde Lounge and that following representations the NAV was reduced to €152,000. Mr. Nolan referred to an estimated figure for FMT of €1,900,000 for the Concorde but did not provide any information as to how this had been calculated nor would he say what relationship the FMT figure of €1.9m bore to the actual trading figures for the Concorde supplied by the pub owners.
2. The Tribunal holds that the Respondent's methodology of estimating FMT for the subject premises, primarily based on the actual turnover being generated by the Concorde Lounge - another competing licenced premises located in the same

Shopping Centre - can not be relied on as the primary basis for NAV. Such an approach depends on the unproven hypothesis that the two pubs were capable of generating comparable trading figures. The Tribunal notes that the Respondent sought to establish relativity between similar premises in the licenced trade, but rejects the contention advanced by Mr. Nolan that it would be inequitable not to value the subject premises without having direct regard to the trade being generated by the nearest competitor namely The Concorde Lounge.

3. The Tribunal does not accept that consistency demanded that a calculation for FMT of €1,500,000 be attributed to the subject premises and from this a NAV of €120,000. The Tribunal considers the Respondent attached insufficient weight to the actual turnover for the subject premises for 2014 and 2015 or the rent being paid and had relied primarily on its own estimate of FMT as the method by which the NAV should be determined.
4. Furthermore, the Tribunal is not persuaded by the alternative contention put forward on behalf of the Respondent, that the licenced trade had declined between April 2011 and May 2013 and that if the rent actually paid for the subject property had been agreed in or about the valuation date in April 2011 it would have been higher than €88,400 per annum and probably not less than €100,000 per annum. There was no evidence put forward to support this assertion.
5. The Tribunal notes the argument put forward on behalf of the Appellant that, in the city centre, there is a large captive market and that nearby pubs can often successfully compete. However, in a suburban location such as this there is a limited pool of local customer business and if one pub is highly successful there will frequently not be enough business to enable another local pub to trade at comparable levels.
6. On an overview of all the comparators, the Tribunal finds three of the comparisons submitted by the Respondent to be of assistance because they contained evidence of actual rents being paid for licenced premises at or about the Valuation Date in April 2011. These were The Kilmardinny Inn, Santry, The Horse & Hound, Artane and Martins in Clonshaugh. While the Respondent provided estimates of FMT for these establishments, for the purposes of determining NAV, the Tribunal notes that with the

exception of the Kilmardinny Inn, Santry the figures estimated for FMT were not corroborated by financial information or accounts supplied by the operators.

7. The Tribunal therefore concludes that, in this instance, the relationship of NAV to rents actually being paid for comparable licenced premises under arms length leases represents a more reliable basis on which to assess the NAV than an estimate of FMT.
8. As regards the subject property the Tribunal concludes that the 2013 rent actually agreed by a tenant, who could be taken to have been adequately informed, based on prior knowledge of the property, can be treated as a reliable guide to market rental value, in the absence of more persuasive evidence. There was no evidence put to the Tribunal to support the proposition, advanced on behalf of the Commissioner, that in April 2011 the rental value for the subject property would have been greater than the rent agreed in 2013. Having regard to all the circumstances, the Tribunal considered the 2013 passing rent as the best available evidence of market rent.
9. As the table illustrates: in the case of the Kilmardinny Inn, the NAV represented 86.5% of the rent payable (from September 2011); in the case of the Horse & Hound, Artane the NAV represented 80.0% of the rent payable (from March 2011) while in the case of Martins in Clonsaugh the NAV represented 93.5% of the passing rent (from June 2011).

Licenced Premises	Rent	NAV	NAV as %
Kilmardinny Inn, Santry	€104,000	€90,000	86.5%
Horse & Hound, Artane	€130,000	€104,000	80.0%
Martins, Clonsaugh	€123,240	€115,000	93.5%

10. The Tribunal considers that, based on the 3 comparators referred to above, a factor of 85% should be applied to the rental of €88,400 per annum for the subject premises Edenmore House to arrive at an estimated NAV of €75,140 which the Tribunal rounds to €75,000 as the appropriate NAV to be determined for the subject property.

The Tribunal

Having carefully considered the submissions made on behalf of both the Appellant and the Respondent and having due regard to all the evidence submitted makes its determination accordingly and fixes the Net Annual Value of the subject property at €75,000.

And the Tribunal so determines.