

Appeal No. VA16/3/008

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Michael McGinn

APPELLANT

And

Commissioner of Valuation

RESPONDENT

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

Property No. 1738501, Licensed Shop at 113.114/a, Ballymore Eustace, Ballymore Eustace East, Ballymore Eustace, Naas 1, County Kildare.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF FEBRUARY, 2018**

BEFORE:

Majella Twomey - BL

Deputy Chairperson

Michael Connellan Jr - Solicitor

Member

Hugh Markey- FSCSI, FRICS

Member

1. THE NOTICE OF APPEAL

1.1 By Notice of Appeal dated the 21st day of July, 2016 the Appellant appealed against the determination of the Respondent pursuant to which the rateable value '(the RV)' of the above relevant Property was fixed in the sum of €196.

1.2 The Notice of Appeal states that the valuation of the Property is incorrect on grounds that:

- "1) ***Estm. NAV is excessive and inequitable.*** *The reason that the subject property had such a high historic assessment was its turnover, due to its exceptional operator (and as a result, its perceived capital value) at the time of its original assessment in 1994. Indeed, despite having half of the trading area of the Ballymore Inn in 1994, the subject was valued at nearly treble the RV. The 1994 report indicates that the subject was at that time the best pub in Ballymore Eustace, and it is valued accordingly, far in excess of all other pubs in the town on a turnover and capital value basis, because of the exceptional skill of the operator and the high level of personal goodwill attached to it. Indeed, at that time the pub had the strongest trade in the town but not enough weight was placed on the exceptional business acumen of the operator at that time. As other pubs in the town were renovated and the cyclical nature of turnover ebbed and flowed, the operator left and the subject fell out of fashion with locals, who have preferenced both Headons and The Ballymore Inn (formerly the Auld Triangle, when last revised in 1994) for the best part of a decade. At the time of the current revision the property must be fairly assessed as it now exists and against the broad tone of comparable properties on the 1988 tone of the list basis.*
- 2) *The appellants believe that the most appropriate way to do this may be to analyse the accounts. However, the appellants are aware that the Commissioner no longer wishes to use the turnover method as turnovers fell following the 2008 downturn, as his adopted system of 20 years could then be used against him to give reduced assessments. In the absence of a turnover method, the Commissioner turned to the devaluation of pubs on a square metre basis. In the normal course of events the appellants take issue with this, as it is not a method of valuation but merely a method of analysis. However, despite all the appellants' misgivings about the practice even this flawed interpretation of the tone of the list illustrates that the subject property is substantially over-valued versus the other pubs in the village as noted above. The issue of Section 49 and the tone of the list for public houses is discussed at length in the judgment of VA14/4/023 MMEM public houses.*
- 3) *The proposed level points to a flawed interpretation of the historic tone given the relative value of the subject."*

1.3 The Notice of Appeal stated that the Appellant considers that the rateable valuation of the Property ought to have been determined in the sum of €77,(if determined on a bar overall and licence basis), or €50 if considered on a 1988 turnover basis.

2. THE HEARING:

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 25th day of May, 2017. At the hearing the Appellant was represented by Mr Eamonn Halpin B.Sc. (Surveying) MRICS, MSCSI. and Ms Gillian Beale BSc. MSCSI MRICS, Valuation Surveyor of the Valuation Office represented the Respondent.

3. THE PROPERTY:

- 3.1 The property is located in a corner position in the village of Ballymore Eustace, Co Kildare. It comprises a single storey licensed premises including bar, lounge/restaurant, a fitted kitchen and stores. There is customer parking to the rear of the property accessed from Main Street.
- 3.2 The property is operated as ‘The Thatch’ public house and has the benefit of an ordinary 7 day licence; the restaurant has capacity for approximately 60 diners.

4. VALUATION HISTORY

- 4.1 The property was previously valued as a single property before being considered separately in July 2013 as part of a 3rd Party revision request to the Commissioner of Valuation, having been divided into two units.
- 4.2 The property is held freehold.
- 4.3 On the 29th May 2014 a proposed valuation certificate was issued indicating a valuation of €197. Representations were received on 24th June 2014, following which the valuation was reduced to €196. The Final Certificate was issued on the 17th November 2014 at a valuation of €196.
- 4.4 On 24th December 2014, an appeal was submitted to the Commissioner; this appeal was disallowed and a Valuation Certificate issued at €196. This decision was appealed to the Valuation Tribunal

5. THE RELEVANT STATUTORY PROVISIONS:

- 5.1. The value of the Property falls to be determined for the purpose of section 28(4) of the Act (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose

8.3 Mr Halpin noted that the Property was due for revision under the revaluation exercise in Kildare; the Appellant wished to be treated in line with his competitors as they existed at the valuation date 17th November 2014, on a 1988 basis. He drew attention to the judgment of another Division of the Tribunal in the VA/4/023 MEM Public Houses (Appendix X) and, in particular, to the approach to the revision officer and the interpretation of section 49.

9. THE APPELLANT'S EVIDENCE

9.1 Mr Halpin gave a detailed outline of the development of the rateable valuation of the Property and the relative positioning relative to the other pubs in the village. He introduced 4 comparisons, all pubs in Ballymore Eustace; these are included in Appendix 1 of this judgment.

9.2 Comparison No. 1 – The Ballymore Inn, Ballymore Eustace – PN 1738497

Mr Halpin described this pub as an exceptional pub, the largest in the village with a very strong food trade. This property which has a trading area of 387.60 sq. m. has a rateable valuation of €72.37 (set in 1994).

9.3 Comparison No 2 - Headon's , Ballymore Eustace- PN 1738499

This is a pub with similar characteristics to the subject but assessed at 1/3 of the rateable valuation.

9.4 Comparison No. 3-Paddy Murphy's, Ballymore Eustace – PN 1738617

He put forward this property's rateable valuation (set in 1994) as evidence of inequity of the subject's valuation. He gave evidence that the subject's current turnover was 1/3 of this property's and its valuation was more than double that of the comparison.

9.5 Comparison No. 4 - Mick Murphy's, Ballymore Eustace - PN 1738500

Mr Halpin introduced this comparison as the 'poorest in the village, being the smallest and least developed'. The bar area is 68.53 sq. m. This property has a rateable valuation of €33.01 (set in 1997). He suggested that the subject property's valuation should be no more than three times this property.

9.6. Mr Halpin's Opinion of Rateable Value:

Mr Halpin suggested two alternative methods of valuation viz:

- A) Tone of the List – Direct Comparison. Using this method, he was of the opinion that the RV of the property would not exceed €65.
- B) 1988 Historic Turnover Basis. Extrapolating from the known 1994 turnover of the Ballymore Inn of £75,000 and that of Paddy Murphy's (£150,000 in 1994); the subject's relative turnover would not have exceeded £120,000 in 1988, if considered on a comparative basis. This led him to form the opinion that the rateable valuation should be €62 (T/o. €150,000 @ 9% = €13,500*0.5%).

10. **THE RESPONDENT'S EVIDENCE:**

10.1 Ms Beale outlined the locational and physical characteristics of the subject property and also recited the valuation history of the property. She outlined how the Commissioner no longer adopted a turnover approach when valuing licensed premises, preferring to adopt a rate per sq. metre.

10.2 **Comparison No. 1 - The Thatch – PN 1738501**

Ms Beale introduced the valuation of the subject arising from the 1994 revision as suggesting that the previous valuation represented a higher rate per sq metre than was proposed – NAV €41,901/€189.29 per sq. m.

10.3 **Comparison No 2 – Paddy Murphy – PN 1738617**

This is a common comparator with the Appellant (Comparison 3). Ms Beale analysed the rateable valuation as representing a rate of €169/33 per sq. m. on the trading area.

10.4 **Comparison No 3 – Gerard O Rourke – PN 1738477**

The Respondent introduced this comparison which is located in Sallins, Co Kildare. She suggested that the valuation analysed at a rate of €197 per sq. m. on the ground floor trading area.

10.5 **Comparison No 4 – The Corner House Pub – PN 1738892**

This property is located in Clane, another former village in Kildare. Ms Beale's analysis of the valuation is a rate of €159 per sq. m.

11. TRIBUNAL'S FINDINGS AND CONCLUSIONS

- 11.1 On this appeal the Tribunal must determine the value of the Property by reference to the value of other properties on the valuation list comparable to the appeal property.
- 11.2 This Division's attention was drawn, by the Respondent, to the previous Tribunal's judgments in the cases VA10/4/002 – Mia Taverns and VA96/4/035 – Ray Murray. The former centred on the Tribunal's view that nothing in section 49 indicated that regard should be had to the turnover or profitability of a business. The latter suggests caution should be adopted in considering valuations established before the coming into force of the Valuation Act 1988 as establishing the tone of the list.
- 11.3 In turn, the Appellant drew the Division's attention to the judgment in the case of MMEM Public Houses – VA/14/4/023 where the judgment considered, at some length, the methodology a revision officer should adopt in attempting to slot a property's rateable into the 'tone'.
- 11.4 The Division finds, in this instance, that the revising officer did not take all necessary steps to establish where the subject should sit in the hierarchy of values. It appears that the Respondent adopted a tendentious approach and rather than consider the evidence immediately available in the village (albeit some predating the 1988 Act) or considering evidence from similarly sized villages in the same rating authority; chose to cast the net wide, as far as Sallins and Clane in an effort to bolster the determined opinion of value. As was evidenced at the hearing, both of these locations have grown exponentially and are vastly larger than the subject's village and are therefore in a position to attract a much larger trade and thus higher rentals.
- 11.5 While accepting the Respondent's approach – that is considering the values on an overall rate per sq. m. and ignoring any goodwill attaching thereto; the Division believes that a more appropriate approach is to consider the immediate evidence of the relatively similar circumstanced licensed premises in the Village.
- 11.6 Analysing the rateable valuations of the subject (prior to change) and those of the other four licensed premises in the village results in an average rate per sq. m. of €116.70. This result is arrived at by multiplying the rateable valuation by 20 (inverse

of the multiplier) and dividing the resultant Net Annual Value (NAV) by the trading area. This is effectively the methodology adopted by the Respondent in this instance.

11. DETERMINATION:

Accordingly, the Tribunal allows the appeal and decreases the Rateable Valuation of the Property as stated in the Valuation Certificate as follows:

Trading Area 221.4 sq. m. @ €116.70 per sq. m. = €25,837

NAV €25,837 * Reducing Factor 0.005% = €129.19, say €129.

And so the Tribunal determines.