

**Appeal No: VA17/5/050**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Ollie Hayes**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**  
Property No. 1514057, Hospitality at 5 Moneygall, Moneygall, County Offaly.

**B E F O R E**

**Niall O'Hanlon – BL**

**Deputy Chairperson**

**Mairead Hughes - Hotelier**

**Member**

**Frank O'Grady – MA, FSCSI, FRICS, FIABCI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 14<sup>TH</sup> DAY OF MAY, 2018.**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 28<sup>th</sup> day of September, 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV)' of the above relevant Property was fixed in the sum of €19,600.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because :

- "1. The valuation of the subject property is excessive and inequitable. The property's turnover has been declining year on year since 2011 and shows no sign of levelling off.*
- 2. The subject property is only one of two surviving pubs in the village. The occupiers uncle operates the pub across the road and this premises is valued at €4,200 NAV. The subject is therefore valued at almost 500% more than the only other pub in the village.*
- 3. The occupier is 4<sup>th</sup> generation and has a significant amount of goodwill being in occupation over 30 years. Even with the established goodwill the business is suffering badly with declining turnover.*

4. *Moneygall had a once off-benefit from former US President Barrack Obama's visit in 2011. This one time effect has been ebbing away ever since.*

*Other grounds*

*The Appellants do not believe that the Commissioner's fair maintainable trade based formula approach to Pubs is universally correct. The formula can be effective in dealing with pubs in main population centres where there is a significant supply of rental evidence to justify a percentage of fair maintainable trade approach as rent. Even then, extreme care must be exercised to ensure that the formula does not obstruct rental evidence in valuing the occupier's personal business rather than the property. In the case of rural pubs, this is much more difficult as there are very few young leaseholders running rural pubs. As such, rural pub operators tend to have a much higher level of goodwill as they have built up the trade over a very significant period and tend to be a well respected member of the community. Such an operator will tend to work 70-80 hours a week and live on site. It is well known in the trade that it is much more taxing to turnover €100,000 in a rural location than in an urban location. Therefore a flat percentage of turnover will discriminate against a rural operator. The system either needs to discount the level of turnover to discount goodwill and reach an appropriate level of FMT, or discount the percentage of FMT, or both, in order to arrive at a fair level of value for a rural pub."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €10,400.

## **2. REVALUATION HISTORY**

2.1 On the 3<sup>rd</sup> day of March, 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €19,600.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €19,600.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> day of October, 2015.

## **3. THE HEARING**

3.1 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 6<sup>th</sup> day of April, 2018. At the hearing the Appellant was represented by Mr Eamonn S. Halpin B.Sc. (Surveying) MRICS, MSCSI and the Respondent was represented by Mr Anthony Mulvey B.SC (Hon) Surveying, DIP Finance and Accounting of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them

to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

#### **4. FACTS**

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

The floor areas were agreed:	Bar	62.56 sq.m.
	Lounge	<u>45.60 sq.m.</u>
		108.16 sq.m.
	Pool Room	27.40 sq.m.
	Kitchen	<u>7.26 sq.m.</u>
		34.66 sq.m.
	<b>Total</b>	<b>142.82 sq.m.</b>

4.2 The drinks turnover figures were supplied and agreed between the parties

#### **5. ISSUES**

5.1 The issue in question is Quantum. The Appellant claims that the valuation should be set at €12,600 due to the declining turnover.

5.2 The Respondent claims that the valuation should be €19,600 due to the iconic and landmark fame of the premises and in accordance with the established practice of valuation adopted for Co. Offaly.

#### **6. RELEVANT STATUTORY PROVISIONS:**

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

#### **7. APPELLANT’S CASE**

7.1 Mr. Halpin described the property, the village of Moneygall, (population 313), its location 1km from Motorway (M7) junction and the fact that there were only 3 commercial properties now trading in the village.

7.2 The visit of former President Obama in 2011 was described in detail and the resultant growth and popularity of the village and the new art gallery, café and festival all of which have now closed.

7.3 The construction of the Obama Plaza on the motorway at Junction 23 and the adverse impact on trade in the entire village and the subject property was also described in detail.

7.4 The decline in turnover and trade was alluded to as the ebbing effect of the Obama visit, despite of the efforts of an experienced operator.

7.5 The use of Fair Maintainable Trade (FMT) as a method to arrive at a fair rent was questioned by Mr. Halpin in that it did not give sufficient weight to the goodwill and business acumen of a 3<sup>rd</sup> generation publican and was a tax on the business and not the property.

7.6 The Kirwan Case (VA14/5/959) was referenced and the decision quoted to support the Appellant's case on business acumen and endeavour to increase turnover.

7.7 Mr. Halpin contended that the uniform application of 7% FMT for Co. Offaly was unsustainable and suggested that FMT should be banded by population or on an urban/ rural basis :

0 – 500 pop.	4 - 5 % of FMT
500 – 1000 pop.	5 - 6% of FMT
1000 + pop.	6% + of FMT as rent

7.8 He further commented that the Commissioner had only examined turnover and not rental values in arriving at the estimate of NAV. He stated that Shinrone (pop. 645) twice that of Moneygall, had an average rental value of €10,500 p.a. and Birr (pop. 4,370) had an average rental value of €13,430 p.a. and therefore the subject property at NAV €19,600 was out of line with the tone of the list.

7.9 Mr. Halpin provided 5 rental comparisons from several locations throughout Co. Offaly, details attached in appendix.

7.10 In addition Mr. Halpin offered 4 NAV comparisons in Shinrone, Co. Offaly, (pop.600) approx 5 km. from Moneygall, details attached in appendix

7.11 Mr Halpin concluded with the comment that due to the Motorway (M7), Ballygall had been bypassed and now had little or no passing traffic.

7.12 He suggested 3 different approaches to arriving at a fair and equitable NAV:

(a) Reduce T/O to reflect the diminishing “Obama” effect and account for business acumen and goodwill;

Drink €180,000 @ 7% = €12,600 NAV

- (b) Reduce the % applied to FMT to allow for lower population numbers in rural areas;  
Drink €250,000 @ 5% = €12,500 NAV
- (c) Opinion of rental value @ € 250 per week  
Rent €13,000 p.a.

Say Total NAV €12,600

## **8. RESPONDENT'S CASE**

8.1 Mr Mulvey described the village of Moneygall, the advent of the M7 motorway and the construction of the Barack Obama Plaza which opened in 2014. He went on to fully report on the Obama visit in 2011.

8.2 In his submission he stated that rental transactions for pubs in Co. Offaly were analysed and investigated in accordance with the Valuation Office policy and procedures and that regard was had to ;

- (a) the date of the transaction
- (b) any inducements included in the transaction
- (c) any other individual features of the transaction.

8.3 Analysis of the rental and financial information produced a valuation scheme of 7% of the estimate of Fair Maintainable Drink Trade (FMT) on all licensed premises.

8.4 In relation to the subject property a valuation of 7% on on-sales and 5% on food sales (disregarding the first €100,000 of turnover) was deemed appropriate.

8.5 Mr Mulvey described the subject property as a landmark pub with a distinguishing feature situated close to a major road network that should maintain its current turnover for the coming years. He noted that the turnover had been declining but had now stabilised at around €280,000 per annum.

8.6 He did not consider the proprietor an exceptional operator.

8.7 Mr Mulvey provided 3 rental comparisons from various location in Co. Offaly, details attached in appendix.

8.8 In addition Mr. Mulvey offered 6 additional NAV comparisons as evidence of equity and uniformity, details attached in appendix.

8.9 In summary Mr. Mulvey contended that the turnover had stabilised and the 7% FMT was established and suggested €19,600 was a fair, reasonable and equitable valuation.

## **9. SUBMISSIONS**

9.1 No legal submissions were made.

## **10. FINDINGS AND CONCLUSIONS**

10.1 The Tribunal, having weighed and evaluated all of the evidence before it, comes to the following conclusions:

10.2 The property is situated in the village of Moneygall, approx. 1 km west of the M7 motorway at Junction 23, some 15 km south of Birr. In 2010 the construction of the M7 motorway saw the village bypassed and it was no longer on the main Dublin - Limerick route. In 2011 the visit by then President Barack Obama brought prominence and fame to the village with much fanfare and commercial activity. In 2014 the opening of the Barack Obama Plaza at Junction 23 removed most of the commercial activity from the village and the closure of all but 3 businesses, two pubs and a shop.

10.3 The comparitors offered by both parties give a general view of the licenced trade in Co. Offaly and clearly shows the urban/rural divide from a population and trade standpoint.

10.4 The appellant has made a case for a review of the formula used by the Valuation Office in assessing turnover (FMT) only and some consideration has to be made to recognise the rural/urban divide and the business acumen of the occupier.

10.5 The Tribunal is aware of the Kirwan case (VA 14/5/959) and the effect on turnover of occupier's business acumen and is tended to make allowance for same in this instance.

10.6 The appellant has shown that the larger centres of population ie. Birr and Tullamore offer a more attractive business proposition in the pub trade than smaller village pubs with longer working hours. On the evidence, the ratio between turnover and rent /NAV favours the larger urban centres.

10.7 From the evidence produced it is noted that in villages/ population centres of circa 600 ie. Shinrone and Walshes Island with FMT (€170,000 - €225,000), the NAV's are in the order of €12,000 - €15,750 and these comparisons, together with The Pull Inn and The Hoppers Bar, both with small populations and located in isolated locations and about 60 km. from the subject are of some assistance to the Tribunal in this case.

10.8 The Tribunal has taken into consideration, inter alia, the evidence adduced on the Shinrone pubs and the Dunkerrin Arms, the ebbing effect of the Obama visit, together with the recent bypass of the village and the opening of the Obama Plaza. It concurs with the appellant that they have had, and will continue to have, a depressing effect on turnover in the subject premises.

#### **DETERMINATION:**

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the Valuation Certificate to €15,000.

CALCULATED as follows:

FMT €250,000 @ 6% €15,000

**And the Tribunal so determines.**