

**Appeal No: VA17/5/256**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**EDDIE KELLY**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**  
Property No. 192480, Hospitality at 38,39 Green Street, Callan, County Kilkenny.

**B E F O R E**

**John Stewart – FSCSI, FRICS, MCI Arb**

**Deputy Chairperson**

**Rory Hanniffy – BL**

**Member**

**Grainne Duggan – BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 23<sup>RD</sup> DAY OF JULY, 2018/**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 9<sup>th</sup> day of October 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 €19,200.

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 value as set out by the Commissioner is not in line with its potential rental value and other comparable properties in Callan.*

*2. The subject property is a pub on Green Street in Callan. It is being assessed as one of the most valuable pubs in Callan. Not only is this untrue in terms of the physical property, it is also untrue in terms of trade as the subject's trade is steadily declining as pubs which closed in the recession re-open."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €12,600.

## **2. REVALUATION HISTORY**

2.1 On the 25<sup>th</sup> day of May 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 of the Property was reduced to €19,200.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September 2017, stating a valuation of €19,200.

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 17<sup>th</sup> day of April 2018. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying) MRICS, MSCSI and the Respondent was represented by Adrian Power-Kelly FRICS, FSCSI, ACI Arb 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.

4.2 The subject property which is mid-terraced is located on Green Street, Callan which had a population of 2,475 in the 2016 Census.

4.3 It comprised a ground floor licensed premises which included a lounge bar, pool table area, male and female toilet accommodation an external smoking area and a beer garden.

4.4 The agreed floor areas are:

Bar 107 m<sup>2</sup>

Kitchen/utility room 9 m<sup>2</sup>

External keg store 33 m<sup>2</sup>

4.5 The property is freehold.

4.6 The confirmed turnover for the subject property was:

2013 €260,565

2014 €258,297

2015 €244,515

at representation stage the appellant provided turnover for 2016 at €238,420.

#### **5. ISSUES**

5.1 The issue is quantum.

5.2 The Appellant claims that the NAV of €19,200 is too high and is excessive and inequitable. They state that the turnover has declined from €260,565 in 2013 to €238,420 in 2016 and that the operator has generated a significant amount of goodwill which should not be taxed. They are seeking a discount of FM T to €180,000.

5.3 The Respondents maintain that the NAV of €19,200 is fair and reasonable when set against the NAV comparisons provided.

## **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 Eamon Halpin for the appellants stated that there were 10 pubs in Callan which was too many considering the size the population. He also claimed that the Commissioner was seeking to tax the business acumen of the operator.

7.2 Mr Halpin maintained that the subject property despite its average size and average location was being assessed at a much higher FMT (fair maintainable trade) than almost all of its rivals. He provided 9 comparisons from the pubs in the town and stated that with a single exception - The Old Charter House - all of the other 8 had FMT’s set at lower levels than the subject property.

7.3 He referred to Grogan’s which he stated was one of the best pubs in the town and having been on the market for a number of years was recently offered in a BidX1 auction with a reserve of €100,000 and failed to sell.

7.4 Mr Halpin argued that the FMT rate of 8% in Callan was unreasonable bearing in mind the fact that other towns across the county Ballyraggett, Moincoin and Piltown had been assessed as 7% of FMT and he saw no reason why the same major not apply to Callan.

7.5 Mr Halpin further argued that in his opinion €240,000 did not represent FMT. He maintained that the system operated by the Commissioner was introspective as it only reviewed a number of year's accounts and then equated turnover with FMT. This he argued was taxation of the business which was incorrect. He claimed that the analysis undertaken by the Commissioner did not account for comparisons with turnovers from other pubs which would have highlighted over or under trading. In support of this argument he referred to the judgement in VA 14/5/959 which stated:

*“the individual whose business acumen pushes a business into a healthy turnover and in turn into a healthy profit drives himself and the business into extended arms of another branch of revenue, that is to say, the Collector General, with such turnover and/or profit scrutinised and with appropriate tax lawfully deducted and paid.*

*It would and in the circumstances be palpably unfair for such a profit, driven as it is by business acumen and endeavour, to be taken into account on the one hand when assessing liability for Corporation and/or Income tax and at the same time taken into account when striking the appropriate measure of rate to be borne by the same individual. Such collateral intrusion on an already stretched tax base demands extreme caution.*

*All of this illustrates the potential mischief of a too rigid application of the practice, when assessing rates for licensed premises by reference to FM T, informed as it is by evidence of turnover.”*

He claimed that based on the Commissioner's estimates for the comparisons that it is unlikely that the hypothetical tenant would pay more than €14,000 for the subject property based on an FM T of 7% at €200,000 or 8% at €175,000.

7.6 As well as the 9 comparisons in Callan referred to by Mr Halpin, he also sought to rely on The Sportsman's Inn, Bridge Street, Ballyraggett (a town with a population of 1,175) and

which was sold for €150,000 during 2016. These premises comprised a bar and lounge in a trading area of 151.07 m<sup>2</sup> as well as a ground floor self-contained apartment of 30 m<sup>2</sup> and a 4-bed residential property of 100m<sup>2</sup> at 1<sup>st</sup> floor level. Mr Halpin maintained that the NAV based on an FMT of €65,000 at 7% was inequitable compared to the subject property. He also referred to Blake's Bar in Paulstown (a town with a population 909) which was let for 5 years and 6 months from the 23<sup>rd</sup> June 2016 at €10,400 per annum. He maintained that the NAV based on an FMT of €180,000 at 7% was inequitable compared to the subject property. Mr Halpin also stated that there are 4 pubs in Mooncoin (a town with a population of 1,175) which are generally valued around €14,000 NAV and he claimed that the similarity of pubs per head of population reflected unfairly on the subject property. He also relied on Anthony's Inn, Piltown, (a town with a population of 1,220) where there was an FMT of €350,000 at 7% and no opposition. He again argued that this premise unfairly reflects on the subject property at €19,200. Finally, he referred to the Parade Bar in Kilkenny which had an NAV of €9,000 based on an FMT of €100,000 at 9%. He claimed that the hypothetical tenant would not consider the subject property with a level of €19,200.

7.7 In conclusion, Mr Halpin reiterated his opinion that comparable evidence showed that the level adopted by the Commissioner was inequitable and he requested an NAV of €14,000 based on an FMT of €200,000 at 7%. He emphasised the population of Callan (2,475 persons) catered for by 9 other licensed premises which in his opinion was a very high level of competition. Against this background he maintained that the Commissioner's level of FMT €240,000 wasn't sustainable as it included the occupier's goodwill and business acumen.

7.8 During cross-examination Mr Halpin confirmed that there was on-street parking and agreed that Bridge Street was not as wide as Green Street. He also reiterated that in his opinion the subject property was not one of the better licensed premises in the town though the position adopted by the Commissioner with an NAV of €19,200 indicated that it was. He confirmed the subject property was opposite the Supervalu store.

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

8.1 Mr Adrian Power Kelly for the respondent stated that the subject property was in a town centre commercial location close to a Supervalu supermarket. He described the subject property as comprising the ground floor licensed premises in a 2-storey terraced building and had the benefit of on-street car parking. He confirmed that the accommodation included a lounge bar,

pool table area, male and female toilet accommodation, external smoking area and a beer garden. He described internal accommodation as comprising a ceramic floor partially finished with lacquered timbers and a seating area including fitted both freestanding chairs.

8.2 Mr Power Kelly provided 5 key rental transactions with net effective rents which had rent/turnover percentages that varied from 21.46% to 7% to 3.15% to 5.84% and 6%. He stated that analysis of the evidence indicated that rents equated to an average of 8.69% of turnover. He stated that there are 147 licensed premises in rural towns in Kilkenny and all of them are valued at 7 or 8% of FMT. He further stated that a total of 28 properties made representations and 9 are under appeal to the Valuation Tribunal.

8.3 He provided 9 NAV comparisons all of which were based on 8% of FMT and the locations ranged from Green Street to Mill Street and Upper Bridge Street. He also showed the NAV comparisons on a map of Callan town and provided photographs of each unit.

8.4 In conclusion he reiterated that in his opinion the subject property had been valued on a consistent basis in line with the policy adopted for Kilkenny and requested that the Tribunal affirm the valuation of the subject property at €19,200.

8.5 Under cross examination Mr Power-Kelly agreed that the first of his key rental transactions should be disregarded. He agreed that this exclusion brought the average down to approximately 5.5% as distinct from the 8.68% originally claimed. He did not accept that the weekly rent of €100-€200 was the market rent for properties such as the subject and he did not accept the fact that the rent for Blakes in Paulstown set the rental tone. He maintained that the Commissioner had adopted a fair and equitable policy throughout the county. He agreed that his second, fourth and fifth NAV comparisons had been determined without turnover/financial information having been provided. Mr Power-Kelly when questioned confirmed that in his opinion the valuation of the subject property did not include business acumen or personal goodwill and while the comparisons adduced by him following exclusion of the first comparison showed a percentage of 5 ½% he maintained that the NAV comparisons provided showed that the level of 8% FM T was consistent.

8.6 In summing up, Mr Halpin confirmed that in his opinion the subject property value at €19,200 included goodwill/business acumen and should be discounted by applying a rate of

7% and reducing the FMT to €180/€200,000. He claimed that the maximum value for the subject property should be €14,000.

8.7 Mr Power Kelly concluded by stating that in his opinion the subject property was well located in a central location opposite the main supermarket, that the tone of 8% had been established in Callan and that the FMT of €240,000 was fair and equitable. He requested that the Tribunal affirm the valuation at €19,200.

## **9. SUBMISSIONS**

9.1 No legal submissions were made.

## **10. FINDINGS AND CONCLUSIONS**

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of **Kilkenny County Council**.

10.2 The Tribunal having considered all the evidence, both written and oral presented before it, has arrived at the following conclusions;

10.3 The appellants did not to the satisfaction of the Tribunal establish that the FMT of €240,000 included an element of business acumen or personal goodwill.

10.4 The Tribunal did not accept the appellant's contention that the level of 8% of FMT applied was inconsistent and the Tribunal finds that the NAV comparisons put forward by the Respondent's showed that the level of 8% was equitable.

10.5 The question of whether actual on-sale turnover represents FM T is difficult to determine without the benefit of financial records for the comparison properties, however the description of the subject property and the attached photographs provided by the Respondent have persuaded the Tribunal that the subject property comprises a good quality licensed premises.



**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal dismisses the appeal and affirms the valuation of €19,200.

And the Tribunal so determines.