

**Appeal No: VA17/5/078**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**PAT FITZPATRICK**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of:**

Property No. 198933, Hospitality at 1,1A The Square, Ballyragget, County Kilkenny.

**B E F O R E**

**Barry Smyth - FRICS, FSCSI, MCI Arb**

**Deputy Chairperson**

**Hugh Markey – FRICS, FSCSI**

**Member**

**Dairine Mac Fadden - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 3<sup>RD</sup> DAY OF SEPTEMBER, 2018**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 4<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 (“the subject property”) was fixed in the sum of €19,250.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the subject 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 by the Commissioner is not in line with its potential rental value.*

*2. The subject property is the only functional pub in Ballyragget. There are, however, 4 other licensed properties in Ballyragget. The subject's turnover is inflated by the closed pubs, as evidenced by the growth in turnover between 2013-2015 as the other pubs in the village closed down. Pubs in the village are slowly reopening and the trade of the subject is about to contract sharply*

*3. Taking a flat percentage of turnover in this instance over-assesses the subject property as it is over-trading on a one year with another basis''*

1.3 In the said Notice of Appeal, the Appellant considered that the valuation of the subject property ought to have been determined in the sum of €14,000.

## **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 subject property was sent to the Appellant indicating a valuation of €27,300.

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 subject property was reduced to €19,250.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €19,250.

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 11<sup>th</sup> day of April, 2018. At the hearing the Appellant was represented by the Mr. David Halpin M.Sc. (Real Estate) BA (Mod) and the Respondent was represented by Mr. 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.

4.1.1 The area to be valued is 111.35 sq. m.

#### **5. ISSUES**

5.1 The parties agreed that with the inclusion of the pool room area the area to be valued was now 111.35 sq. m.

5.2 The parties were in agreement that the Fair Maintainable Trade (FMT) method of valuation was, broadly speaking, the accepted method of valuation in the licensed trade and the Appellant's representative stated that he was not challenging the percentage (7%) of the FMT used to arrive at the NAV. However, the parties differed as regards the calculation of the FMT.

5.3 The Respondent estimated a FMT of €275,000 having considered the three year average gross turnover for the years ending 31/10/2013 to 31/10/ 2016, on the basis of figures supplied by the Appellant and appended to this judgment. The Respondent thus proposed an NAV of €19,250 on the basis of FMT €275,000 @ 7%. The Appellant contended that in respect of the subject property, the actual average turnover did not give a guide to the FMT but that it required adjustment, having regard to the position of the subject vis a vis the other licensed premises in the town in which the subject and said properties were located (Ballyragget, Co. Kilkenny) and proposed an NAV of €9,800.

#### **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 said that the subject property was a licensed house located on the Square in the town of Ballyragget, Co. Kilkenny, which town he said had a population of 1,082. As of the valuation date, the 30th October 2015, he said that there were 4 pubs in the town, all located within 250 metres of one another but that on that date, the subject property was the only fully functioning pub open seven days a week in the town. He said that this meant that in effect the actual trade of the subject property at the valuation date was essentially that of the entire town; that this should not be used as the basis for the subject’s FMT; that it was unfair to use what he described as “hyper inflated” turnover as representing FMT as a hypothetical tenant would say that it could not be sustained when the other licensed premises were fully operational. He asked the Tribunal to note that the Public Valuation List does not contain any FMT information. He submitted that in assessing the subject property, the other information which would inform FMT such as the turnovers of other comparable pubs in order to establish overtrading or indeed under trading must be looked at; that in the subject property the “overtrading” was down to two factors; one being the long-standing goodwill of the Appellant and the other being the fact that the subject property was the only pub fully trading at the valuation date. As a result of this he said that its actual trade was vastly inflated; that the situation had changed somewhat with the sale of both the Sportsmans Inn and the Corner House which were now open and competing directly with the subject property.

7.2 He said that in the case of VA14/5/959 (Keith Kirwan and the Commissioner of Valuation) the actual turnover of the subject in that case had been discounted by the Valuation Tribunal to establish the FMT to reflect an increase in the turnover as a result of the business acumen of the operator.

7.3 He said that it was very unlikely that the hypothetical tenant would pay more than €9,800 p.a. for the subject property based on a FMT of €140,000, which he said was the highest other value in the town. He said that even if the Respondent was suggesting that the total FMT for the town was €545,000, being the combined FMT for all 4 pubs, that if one was to divide this equally between the pubs, one would arrive at an FMT of €136,250.

7.4 He referred to the following properties by way of comparison which he said were all located within the town of Ballyragget.: **1. The Sportsmans Inn, PN 198780.** He said that the Commissioner had assessed this property which was only located 150 metres from the subject property, at a NAV of €4,550, which equates to a FMT of €65,000 if a multiplier of 7% is adopted; that it had a trading area of 151.07 sq. m. which was substantially larger than that of the subject property; that it had been sold for in the region of €150,000 in 2016 and included a four bedroomed residential property at first floor level. He said that the property was sold without the benefit of a licence but the licence was restored by the current occupier; the property had been on the market for around six months and had been vacant for two years at the time of sale. He said that on the valuation date this property would have been vacant and that hence there would have been no trading data; that it was essentially a “brand new pub” having been fitted out to a good modern standard, following a complete refit in 2016; that the premises re-opened for trading in September 2016 and was open seven days a week, competing directly with the subject property. Yet, he said this property was assessed at a FMT of less than 25% of that of the subject property. He said that if the hypothetical tenant would only pay €4,550 p.a. for the Sportsmans Inn, there was no way that such a tenant would pay €19,250 p.a., as suggested by the Respondent for the smaller subject property 150 metres away. **2. The Corner House, Patrick Street, Ballyragget, Co. Kilkenny, PN 198871.** He said that the Respondent has assessed this property which was located 120 metres from the subject property, at NAV €9800, which equates to a FMT of €140,000 if a multiplier of 7% is adopted; that at the time of its sale in 2017 for in the region of €250,000 it had been acknowledged by the selling agent that it was under trading, the owner having "slowly pulled back"; that it had a trading area of 115.84 sq. m. and a seven bed residential property included in it; that the Appellant did not

know if the previous occupier had provided the Valuation Office with trading data but that if he had it would not be representative of what a hypothetical tenant might pay as a rent. **3. The Hogan Stand, The Square, Ballyragget, Co. Kilkenny PN 198951** (described in error in the Appellant's Summary of Evidence as Patrick Street). He said that the Respondent had assessed this property which was located 120 metres from the subject property, at NAV€4,550, which equates to a FMT of €65,000 if a multiplier of 7% is adopted; that the pub closed in 2014 but was due to be open in 2018 and that it was fitted to a high standard internally. He suggested that if a hypothetical tenant would only pay €4,550 p.a. for these premises that there was no way that such a tenant would pay €19,250 p.a. as suggested by the Respondent for the subject property located only 120 metres away.

7.5 He also referred to three other properties located in nearby towns namely **Comparison 4**, one of only two pubs in in Paulstown, Co. Kilkenny, which town he said had a similar population base to Ballyragget, coming in with a valuation of €12,600, which equates to a FMT of €180,000 if a multiplier of 7% is adopted. It is held on a 5 year 6 month lease from June 2016 at €10,400 p. a., equivalent to a weekly rent of €200; **Comparison 5**, one of 4 pubs in Mooncoin, Co. Kilkenny, a town having a similar population to Ballyragget and where all were fairly weighted against each other and valued at virtually identical levels of approximately €14,000; **Comparison 6, Pilltown**, being the only pub operating in a town of similar population size, which had been valued at €24,500 which would be indicative of a FMT of €350,000, close to the Commissioner's estimate of FMT in the subject case; the difference here being that there was no prospect of opposition whereas the subject property faced opposition from 3 pubs within 250 metres; **Comparison 7 Hendersons Bar, Rose Inn Street, Kilkenny City**, which had been valued at €9,000, a lesser NAV than the subject property even though it had one of the best locations in all of Kilkenny and where retail units were valued at €435 per sq. m. on a Zone A basis.

7.6 In summary he said that there were three other pubs in the town of Ballyragget valued by the Respondent at €4,550, €4,550 and €9,800 respectively, that the Appellant did not believe that the subject property was superior to any of them; that as the subject property and the Corner House were like two peas in a pod, that it was the most comparable and proposed a similar NAV to that (€9,800) or at the very most an NAV based on a rent of €200 per week (€10,400).

7.7 In response to questions from the Tribunal he said that the 7% was his assumption as regards the percentage of FMT used to calculate the NAV on the comparable properties as he had worked “backwards” but that his assumption had been confirmed as being correct and referred to the Respondent’s précis of evidence.

7.8 In response to cross examination by Mr. Power-Kelly, he accepted that the Hogan Stand was open in 2013 during the period of the first set of accounts submitted by the Appellant although he said that as it closed shortly thereafter this was indicative of trade going down. It was put to him in respect of the Corner House that while the sales brochure may have stated that the vendor was letting the trade run down, that the accounts submitted actually showed an increase in trade; that in respect of Blake’s Bar, the occupier did not appeal and that Hendersons in Kilkenny City was not on a High Street location. He was asked how he had arrived at a proposed figure for FMT of €140,000 and he responded that the Respondent was using this as the FMT figure for the Corner Bar, the subject property’s nearest competitor and that the subject’s turnover represented the turnover of three other pubs also given that it was at the time of valuation the only fully functioning pub and that there was no other objective reason as to why the subject property should overtrade others. Finally, it was put to him that there were in fact three other pubs trading in 2013 and he responded that two of them had been in decline and quickly closed thereafter and that the Corner House was at that time being operated by an elderly man.

## **8. RESPONDENT’S CASE**

8.1 Mr Adrian Power-Kelly on behalf of the Respondent said that the subject property is located at a corner location in the centre of the town and close to the residential areas and as such occupied a prominent position. The turnover figures submitted by the Appellant are appended to this judgment. As evidence of correctness, he furnished market information of comparable properties as follows:

**PN 193343**, annual rent €4,800; expressed as a percentage of turnover - 21.46%;

**PN 224233** annual rent €15,000; expressed as a percentage of turnover -7%;

**PN 221463** annual rent €5,200; expressed as a percentage of turnover -3.15%;

**PN 211692**, annual rent of €10,400; expressed as a percentage of turnover - 5.84%.

8.2 As evidence of equity and uniformity he said that there were 147 licensed premises in rural Kilkenny, all of which were valued at a level of 7% to 8% of FMT; that a total of 28

properties made representations at proposed valuation certificate stage and that only nine were under appeal to the Valuation Tribunal, one of which had been settled. He gave as NAV comparisons the first three properties also submitted by way of comparison by the Appellant and also referred to three other properties as follows:

**PN 206701 - Market Square Freshford**, NAV €6,140;

**PN 223076, Chapel St., Johnstown**, NAV €16,200, which he said was a well-established pub in the town doing food and drink;

**PN 223083, Johnstown**, NAV €19,250.

8.3 In answer to a question from the Tribunal as to whether accounts were actually produced for these properties or estimates made by the Respondent, he replied that it was a mix of both. He asked that the Tribunal affirm the valuation of the subject property with an estimated FMT of €275,000 at a rate of 7% giving an NAV of €19,250 which he said reflected all the factors at play taking into account the other pubs in the town and the quality of the subject property. He accepted that the subject property's turnover could fall if the other pubs re-opened

8.4 Under cross examination by the Appellant as to what qualities the subject property had which made it different to the other pubs in the town, he said that the subject occupied a prominent position at the end of the town close to the residential area. When it was put to him that the Corner House was in fact closer to the residential areas, he responded that they were both at the same end of the town. He was asked how many of the pubs in the town he had actually inspected and he said that he had attended them all but could only get in to the subject property. When asked if he could assist the Tribunal as regards the internal fit outs of the pubs in the town, he said that he could not comment on that but only on their location. He was asked whether in arriving at a valuation of a pub, the size of the pub was a useful or material consideration and he said that the Respondent did not value pubs on the basis of floor area; whether it would be useful to include the nature of the lease and whether it was on a full repairing and insuring basis, he agreed that it would. It was put to him that all his key rental transactions had valuations which did not exceed €15,000 and he was asked whether he had any properties with valuations in excess of this which could assist the Tribunal and he said that he did not. As regards his NAV Comparison 4, it was put to him that this was not comparable to the subject as it had an off-licence which the subject did not have; as regards Comparison 5, that unlike the subject this also had a food trade which the subject did not have; as regards



Comparison 6 which the Appellant's representative did accept might in theory be more comparable, the Respondent's representative was unable to give the square footage but did say that in his view it might be slightly bigger than the subject.

## **9. SUBMISSIONS**

9.1 There were no submissions of a legal nature.

## **10. FINDINGS AND CONCLUSIONS**

10.1 On this appeal the Tribunal has to determine the value of the subject property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the subject 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 County Kilkenny.

10.2 In the case of VA14/5/959, Keith Kirwan and the Commissioner of Valuation referred to by the Appellant, the Tribunal cautioned against a "too rigid application" an application of the FMT method of valuation of licensed premises.

The nub of the Appellant's case is that there are four pubs in the town of Ballyragget including the subject property and all located within 250 metres of one another, that three of these pubs were valued by the Respondent at €4,550, €4,550 and €9,800 respectively while the Appellant's subject property is being valued at €19,250; that the Appellant does not believe that the subject property is superior to any of these other pubs.

10.3 The Respondent has not satisfied the Tribunal that there is anything about the subject property that justifies a NAV significantly in excess of the NAV's for the other 3 pubs in the town. As regards location, they are all within 250 metres of one another. As regards size, the Respondent did not furnish the floor area of any of the key rental transaction properties or of the NAV comparison properties and while the Tribunal notes that the FMT is, broadly speaking, the accepted method of valuation in the licensed trade, such information would, having regard to section 48(3) of the Act, assist the Tribunal in determining what a hypothetical tenant might pay. All the information as regards "the area" was supplied by the Appellant and from that information supplied, the Tribunal notes that the subject property at 111.35 sq. m. is the smallest of the four pubs in the town but broadly similar to the Corner House (115.84 sq. m.), The Sportsmans Inn at 151.07 sq. m. is much larger and the "area" was not available for the Hogan Stand. Having perused the photographs supplied, the Tribunal finds no

distinguishing features which would lead it to conclude that the subject property was in any way superior as regards fit-out to the three other pubs and this was not argued by the Respondent, who the Tribunal notes was unable to inspect the other pubs, as they were closed. The information regarding the length of the leases for the Respondent's comparator PN 193343 (Dunnamaggin); PN 221463 (Gathabawn) and PN 211692 (Paulstown) was not furnished to the Tribunal by the Respondent but rather was gleaned from an attachment to the Appellant's Notice of Appeal. There was no information furnished by the Respondent as to the terms of these leases and whether they were on a full repairing and insuring basis or otherwise.

10.4 The one distinguishing feature relied on by the Respondent is the FMT figure. The Respondent was in receipt of actual turnover figures for the Corner House and the subject property but not for the Hogan Stand or the Sportsmans Inn. Consequently this leads to the anomaly whereby the FMT of 4 co-existing licensed premises, all located within metres of each other, has been calculated by the Respondent differently, in that two were valued by reference to turnover figures actually supplied, whereas the other two were valued on a turnover based on an average drawn from a general pool of information supplied. As stated by the Tribunal in VA14/5/959, Keith Kirwan and the Commissioner of Valuation, "Equity, uniformity and fairness require the individual who seeks to impose such a manifestly irrational scheme to offer some coherent and rational explanation for same" and obliges a Tribunal where there is, on the face of it, disproportionate disparity of treatment between properties subject to such a scheme, to inquire what is it about a subject property that merits such disparity. In that case the NAV was significantly reduced so as to take account of the business acumen of the occupier and to bring the property into line with the properties in the immediate locality. In the case before this Tribunal, the Appellant's argument that at the valuation date the subject property was the only fully functioning pub in the town and that the turnover figures supplied by it were indicative of overtrading is compelling, notwithstanding the fact that in one of the accounting periods in question (2013) the Sportsmans Inn was operating. The representative for the Appellant in his cross-examination of the Respondent's representative asked him to set out what qualities the subject property had which made it different to the other pubs in the town and in the Tribunal's view the response given did not lend credence to the proposition that the subject property should be treated differently. The Tribunal can find no objective basis for the disparity in the treatment of the four pubs in the town and in these circumstances accepts the Appellant's figures for FMT of €140,000 to bring it in line with the other pubs in the town.

10.5 The onus is on the Appellant to prove that the NAV applied by the Respondent should be amended and in this instance the Tribunal finds that based on the evidence put before it, that an adjustment is appropriate. The Tribunal accepts the Appellant's estimate of FMT of €140,000 p.a. The Appellant also gave evidence that in his opinion the maximum rent that the subject property would achieve would be €200 p. w. (€10,400 p.a.). The parties accepted that 7% was the appropriate percentage to be applied to the FMT.

**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 €10,000.

Calculated as follows

FMT €140,000 @ 7%    €9,800

Say                                    NAV €10,000

And so the Tribunal Determines