

Appeal No: VA17/5/271

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

MICHAEL & BRENDA MARSHALL

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1446675, Hospitality at Local No/Map Ref: 6Ba, Kilbeg, Lauree, Mullingar,
County Westmeath.

B E F O R E

Barry Smyth – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Orla Coyne - Solicitor

Member

Hugh Markey – FSCSI, FRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF AUGUST, 2018**

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th 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 €9,590.

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.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €4,670.

2. REVALUATION HISTORY

2.1 On the 12th January 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 €10,300.

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 Property was reduced to €9,590.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017, stating a valuation of €9,590.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th 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 23rd day of April, 2018. At the hearing the Appellant was represented by the Mr Eamonn Halpin BSc. (Surveying), MRICS, MSCSI and the Respondent was represented by Mr Dean Robinson BSc. Hons (Surveying) 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 property is situated in the village of Horseleap, situated upon the Offaly, Westmeath county border. It comprises a small shop with licensed premises and ancillary stores and toilets. Owner’s residential accommodation is provided overhead and to the side.

4.2 The property is located on the R 446 (previously N6), This was, in the past, the main Dublin to Athlone/Galway road. The village is now bypassed.

4.3 The premises straddle the Offaly/Westmeath border and the NAV falls to be divided equally as between the Local Authority areas.

The agreed floor areas are:

Bar/Lounge 85 sq. m.

Shop 21.10 sq. m.

Store 35.22 sq. m.

4.4 The turnover for the years 2013, 2014 & 2015 were set out and presented to the Tribunal. It was further agreed that there was not a separate off licence; a single licence covered both activities.

5. ISSUES

5.1 The only issue is the quantum of the NAV

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 outlined the nature of the property and its location in a village which is now bypassed and which, he suggested, has an estimated population within 2 kilometres, of 109 persons.

7.2 Mr Halpin outlined his views on the condition of the pub trade and in particular how pubs in rural locations, such as the subject, in his words were a 'dying breed'.

Mr Halpin posed a number of queries as arising in this case:

1. Whether the actual on- sale turnover represented Fair Maintainable Trade (FMT).
2. What percentage of the FMT would a hypothetical tenant bid as rent?
3. Whether the zone A rate applied to the shop was appropriate, taking into account the comparables.
4. Whether the rental derived represented a fair rent or was a further adjustment needed?

7.3 Mr Halpin contended that the actual level of turnover enjoyed and used by the Respondent was not in fact, the FMT. He suggested that this level of business was only possible through the hard work and business acumen of the proprietors. He referred the tribunal to the decision in VA14/5/959 where the tribunal cautioned against an overly rigid application of FMT.

7.4 He further contended that a scale should be applied to FMT, depending on the immediate population.

7.5 Mr Halpin adduced 6 rental comparables which, he suggested, indicated an average rent in the order of €12,000pa. Of these rental comparables 3 are in rural locations and 3 are located in the towns of Moate, Ferbane and Rochfortbridge. He suggested that 2 of these latter comparables were valued at lower NAV's than the subject, despite their urban setting and the third was valued at a marginally higher NAV, although it was significantly larger in terms of trading area. The comparables of a rural nature introduced by Mr Halpin had NAV's varying between €6,300 and €14,000. He posited that they were similar in nature to the subject and given a choice a tenant would opt for a pub in an urban setting with more potential, albeit with greater competition. He also introduced 3 Tone of the List comparisons with NAV's of €8,750, €11,200 and €11,550.

7.6 He arrived at his estimate of the Net Annual Value (NAV) on 2 differing bases:

1. Applying a rate of 7% to a reduced FMT of €125,000 with a rate of €100 per sq. m. Zone A, applied to the shop and €10 per sq. m. to the store or
2. Applying a reduced multiplier (4%) to the Commissioner's estimated FMT and rates as above to the shop and store.

7.7 Both methods resulted in an NAV of €5,600, a figure which he suggested to the Tribunal should find to be the NAV.

7.8 Mr Halpin was questioned on his evidence and methodology employed in arriving at his estimate of NAV but following robust questioning, stood over the figure submitted.

8. RESPONDENT'S CASE

8.1 Mr Robinson, representing the Respondent, outlined how the village, apart from the subject property, also had a church, a primary school and a filling station. He also said that this now bypassed village was on a bus route with the last service at 1910hrs. He noted that the subject was the only licensed premises in the village; the nearest competing premises being 5km distant.

8.2 Mr Robinson had included some photographs in his précis; these showed that part of the shop was devoted to the sale of alcohol.

8.3 He explained to the Tribunal how the concept of FMT operated and the manner in which the Respondent had assimilated all of the information provided in the revaluation of counties Offaly and Westmeath.

8.4 He further explained that a figure of 7% of the estimated FMT was applied and this was combined with the rent resulting from the application of rates of €150 per sq. m. zone a to the shop and €15 per sq. m. to the store. The NAV was, therefore, €9,590, in his opinion. Mr Robinson presented 4 comparables of properties in rural locations in counties Westmeath and Offaly as key rental transactions. The NAV of these comparables varied between €6,300 and €14,000. These were all assessed at a rate of 7% of FMT. He posited that the actual rents, when expressed as a percentage of FMT, justified the use of 7%.

8.5 He introduced 4 further comparables as NAV comparisons in the list. These were also assessed at 7% of the FMT. Their NAV's were in the range €10,500 - €15,350 – the latter containing a 'symbol' brand convenience store attached to the licensed premises.

8.6 Mr Robinson asked that the Tribunal to affirm the NAV as being €9,590

9. SUBMISSIONS

9.1 There were no legal submissions.

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 County Westmeath.

10.2 The actual pub turnover needs to be adjusted downwards to take account of the particular input of the proprietor. The Tribunal arrives at this conclusion having considered the evidence provided by both valuers of similarly circumstanced premises and some that were better located in greater centres of population. Equity dictates that a pub operator should not be punished for applying his own acumen. The Tribunal determines that the adjusted FMT in this case is €160,000.

10.3 The Tribunal was not persuaded by Mr Halpin's argument that a reduced percentage should be applied to the Commissioner's FMT and believes that 7% is accepted by the majority of pub occupiers.

10.4 The zone A rate applied to the shop area should be adjusted to reflect the fact that part of the retail space is devoted to sales of intoxicating liquor to avoid double counting as it will be captured in FMT calculation for off sales. The parties were not in a position to assist the Tribunal by giving an estimate of this area and it is appropriate that an adjustment be made to reflect the shared use. The appropriate level to adopt is, in the view of the Tribunal, €120 per sq. m. zone A. The store is used for both the shop and the pub and as such, an adjustment is required to allow for the pub usage being captured in the FMT calculation. An appropriate rate to apply is €10 per sq. m.

10.5 The Tribunal finds that no further adjustment is required in arriving at the NAV.

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 €7,400.

Use	FMT	%	NAV
On Sales	€160,000	7%	€11,200
Off sales	€22,000	3%	€660
USE	Area	Rate/sq. m.	
Shop - zone A	21.2 sq. m	€120 zone A	€2,544
Stores	35.22 sq. m.	€10	€352,20
			€14,756.20
Total NAV	say, €14,800		

The valuation falls to be divided equally as follows:

Property Number 1514517 (Offaly) - €7,400

Property Number 1446675 (Westmeath) - €7,400

And the Tribunal so determines.