

Appeal No. VA17/5/075

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

REDDY'S OF CARLOW

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1138130, Hospitality at 71Bc (67) Tullow Street, Carlow, County Carlow.

B E F O R E

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

Orla Coyne - Solicitor

Member

Hugh Markey - FSCSI, FRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF DECEMBER, 2018.**

1. THE APPEAL

1.1 By Notice of Appeal received on the 4th 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 €75,000.

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 by the Commissioner is not in line with its actual rental value.*
2. *The subject property is a pub on Tullow Street, close to the junction of Barrack Street. The subject property is licenced to sell alcohol but derives almost 2/3rds of its income from food sales. Owing to its actual location at the poorer end of Tullow Street, the*

food sales are not as a result of drink trade but the opposite way around (i.e. that any drink sales result from food sales). As such, the Commissioner's formula, which revolves around drink trade, is inappropriate and further allowance needs to be made. Either the FMT must be discounted or the % applied to the FMT as rent must be discounted.

3. *The subject is the oldest pub in Carlow (1768) and as such there is a very significant amount of personalised goodwill which has been built up over years by the Reddy family. This cannot be taxed."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €50,600.

2. REVALUATION HISTORY

2.1 On the 25th 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 €75,000.

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 it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €75,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th 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 22nd day of June, 2018. At the hearing the Appellant was represented by Mr David ES Halpin M.Sc. (Real Estate) Ba (Mod) and the Respondent was represented by Mr Adrian Power-Kelly FRICS, FSCSI, ACI Arb, RICS Registered Valuer 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 subject property comprises an extensive licensed premises situated on Tullow Street, close to its junction with Barrack Street, Carlow. The property has the benefit of a private car park to the rear together with external stores and a keg room.

4.2 The areas were agreed as follows:

Ground Floor

Front Bar	78.60 sq. m.
Lounge	116.84 sq. m.
Food Prep and Kitchen	72.42 sq. m.
Dining Room	54.9 sq. m.
Restaurant	59.63 sq. m.

First Floor

Function Room	143.34 sq. m.
Kitchen	46.95 sq. m.
Reception Area	<u>16.33</u> sq. m.
Sub Total	572.68 sq. m.

Smoking Area	28.37 sq. m.
External Stores	<u>114.34</u> sq. m.
Overall Total	715.39 sq. m.

4.3 The agreed turnover for the years ending 31/12/13 to 31/12/16 are included in the Appendix 1.

5. ISSUES

5.1 The issues before the Tribunal were the manner of computing the NAV of the subject and whether sufficient allowance had been made for exceptional turnover generated by the owners and their personal goodwill. Also, whether the percentage applied to the drink element of the trade was appropriate given that it represented only 1/3rd of the total turnover. The appellants sought a reduced NAV of €51,400 based on a reduced FMT or the €52,000 based on a reduced percentage applied to the food FM T or €49,500 based on the rental value of comparable properties.

5.2 The Respondent claimed that the valuation should be confirmed at €75,000.

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 in his direct evidence said that the subject was acknowledged as the oldest pub in Carlow and dates from the mid-18th century and it had been in the ownership of the Appellants for many years. He argued that ownership such as this included a substantial portion of personalised goodwill directly associated with the Reddy family which should not

be taxed. He suggested that Barrack Street, which is the principal street in Carlow Town, was run down and had many vacant premises – he suggested 35 shops had closed in ‘the immediate vicinity’. He included photographs of several vacant properties to support his opinion. He added that the street was one of those most badly affected by the recession and cited various closures in the immediate vicinity of the subject including the PTSB bank branch and the SuperValu store.

7.2 He said that it was unusual for licensed premises to be so heavily dependent on the food element of its trade.

7.3 Mr Halpin stated, for the above reasons that the NAV level set by the Respondent was not representative of its actual rental value. He suggested an adjustment of 20% should be applied to the FMT to bring it into line with comparable properties.

7.4 Mr Halpin introduced 3 rental comparisons and a single comparator as evidencing what he suggested was the inconsistent way the Respondent applied a percentage to the elements of a licensed business. These are included in Appendix 2 to this judgment.

7.5 Mr Halpin suggested that a precedent was established in VA14/5/959 for adjusting turnover where it can be demonstrated that the particular business acumen of an operator led to particularly high levels of turnover and such a discount should be applied in this instance.

7.6 Mr Halpin suggested 4 alternative methods of arriving at the NAV.

These were:

a/ Adjusting the FMT to a level that excludes the operator’s particular goodwill (30%); then applying the accepted discount of the first €100,000 of food turnover and applying rates of 6% (food) and 7% (Drink). This results in a NAV of €51,400.

b/ Applying the same percentage to drink (7%) and a reduced percentage to food (4%), having allowed for the first €100,000 of turnover. This results in a NAV of €52,000.

c/ By direct comparison to other rental properties suggested an NAV of €49,500.

d/ An application of the full receipts and expenditure method gave rise to a suggested NAV of €34,746.80.

7.7 Mr. Halpin was cross-examined on the level of trade in Carlow and he responded by stating that the area of the subject property was very poor due to significant numbers of vacancies. He stated that Carlow had suffered particularly during the downturn.

8. RESPONDENT'S CASE

8.1 Mr Power-Kelly on behalf of the respondent noted that the areas had been agreed with the Appellant's valuer. Having described the location and characteristics of the property, he put forward 6 comparators as evidence of equity and uniformity. These are contained in Appendix 3 to this judgment. In response to a question from the Tribunal, Mr Power-Kelly noted that accounts had been submitted in the case of only two of the comparators and of these, one was for a single year and was subject to further adjustment. The Tribunal noted its concern that the Commissioner's powers under S. 46, which could lead to greater transparency, were not being enforced.

8.2 The Respondent suggested that the percentage multipliers had been adopted after consideration of the comparators and in particular that of Comparator No 3 which is located opposite the subject property and had similar characteristics.

8.3 Mr Halpin questioned Mr. Power-Kelly on the calculations as to how FMT was arrived at and he responded that they were based on confidential information provided by various operators.

8.4 The Tribunal commended the Commissioner on the quality of photographs provided as it allowed them to more satisfactorily weigh up the merits of each property and urged the Appellants to provide more complete information for future cases. The Tribunal stated that they were not satisfied with the level of information being provided to the Commissioner. They also recommended that the Commissioner should utilise his statutory powers to obtain satisfactory turnover figures from each licensed premises. They further recommended that more complete information, while accepting the confidential nature of the information, should

be provided to it to allow it to adjudicate more fairly on cases coming before the Tribunal. This recommendation is directed at providing for more equitable outcomes.

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 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 Carlow County Council.

10.2 The Tribunal, having considered the evidence placed before it and considered the direct evidence of the valuers for the Appellant and Respondent, is of the opinion that insufficient cognisance was taken of the particular characteristics of the operator; in particular the longevity of their ownership and indeed the historical nature of the licensed premises as being reputedly the oldest in the town. Furthermore, the upside-down nature of the business with food sales outstripping those of drink by a wide margin (62% vs 38%) also supported this Tribunal finding. This strongly suggests a high degree of personal business acumen and goodwill attaching to the operator of the business. The Tribunal has therefore determined that an adjustment must be applied to arrive at a Fair Maintainable Trade for the food element of the trade. The appropriate adjustment is 30% of the turnover to arrive at a fair FMT. This approach has been previously adopted by another Division of the Tribunal in VA14/5/959 (Kirwan's).

10.3 Given the relatively low (proportionately) quantum of drink sales, no adjustment from the adopted 8% is justified.

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 €63,000.

The calculation is as follows – figures have been rounded:

Drink Sales	€452,000	@ 8%	€36,160
Food Sales	€ 742,000		

Less standard adjustment: <u>€100,000</u>			
	€642,000.		
Reduced by 30%	€449,400	@ 6%	<u>€26,964</u>
Total NAV			€63,124

Say, €63,000

And the Tribunal so determines.