

Appeal No: VA17/5/118

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

JOE & RENA BRACKEN

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 1447402, Hospitality at 35 Main Street, Kinnegad, County Westmeath.

B E F O R E

Niall O’Hanlon – BL

Deputy Chairperson

Michael Connellan Jr - Solicitor

Member

Frank O’Grady - FRICS, FSCSI, FIABCI.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF NOVEMBER, 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 €23,200.

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.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €11,250.

2. REVALUATION HISTORY

2.1 On the 12th day of 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 €23,200.

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 €23,200.

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 27th day of June, 2018. At the hearing the Appellant was represented by Mr Eamonn Halpin, BSc (Surveying), MRICS, MSCSI and the Respondent was represented by Mr Dean Robinson, SCSi, MRICS, ACI Arb, ACCA Dip 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 property is situated on Main Street, Kinnegad, Co. Westmeath. Kinnegad is a small commuter town (pop. 2745, census 2016) at the junction of the Dublin – Galway / Sligo roads and was bypassed in 2005 by the M4 and M6 motorways.

4.3 The property comprises a small bar/ lounge (63.41 sq.m.) and kitchen (17 sq.m.) in a two storey building with shared access to a private residence overhead.

4.4 The premises are owner occupied, held freehold and the turnover (detailed in Appendix 1) was agreed between the parties.

5. ISSUES

5.1 The appeal concerns the application of valuation principles;

- (a) Does the occupier's actual turnover represent FMT.
- (b) What is the appropriate % of FMT applicable as rent.
- (c) Does this figure yield a fair rental value.

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 stated that the physical size of the property (80 sq.m) was the smallest of the 5 pubs on Main Street. The operators with over 30 years in business had worked long hours and established significant goodwill and business acumen and therefore boosted the turnover.

7.2 Reference was made to the Kieth Kirwan case (VA 14/5/959) and the double taxation on turnover by the use of the FMT valuation model. He believed that the Commissioner could have applied a shortened R&E method of valuation in this instance.

7.3 To support his case 3 rental comparisons were offered (Appendix 2), detailing rents and NAV in neighbouring towns, Rochefortbridge, Moate and Athlone, which showed rents @ 4 - 5% of FMT as opposed to the 7% applied by the Commissioner.

7.4 In addition Mr. Halpin gave details of 8 NAV or tone of the list comparisons (Appendix3), 4 from Kinnegad, 2 from Mullingar and also Milltownpass and Kilbeggan.

The information provided showed the 2 larger local pubs,

1. Donnelly's, @ NAV €15,750.
2. Scanlons, @ NAV €35,700 and the neighbouring pubs,
3. Coyne's, @ NAV €21,000 and
4. B.Coyne's, @ NAV €24,500.

Contrasted with the Mullingar pubs,

5. Druids Chair, @ NAV €14,050 which is larger and has a function area and
6. J. Cosgrove's, @ NAV €8,750 which is smaller (40 sq.m.)
7. McNamara's, Kilbeggan, @NAV €9,970 and
8. The Tavern, Milltownpass, @NAV €11,200.

7.4 The above evidence in Mr. Halpin's opinion showed the lack of supporting comparisons for the Commissioner's contention that properties would let at a uniform 7% of on- sales across the county.

7.5 Taking the above into consideration he suggested a revised NAV of €13,900 to reflect the changed status of Kinnegad to a commuter town, now bypassed and also the extraordinary business acumen and goodwill of the operator who had a reputation for good food for over 30 years. This number was an increase on the original €12,250 presented to the Tribunal.

8. RESPONDENT'S CASE

8.1 Mr. Robinson for the Commissioner contended for an NAV of €23,250. He stated that Kinnegad was a thriving town and that the property was in a prominent position on the Dublin/Athlone road. He agreed with the turnover figures and stated that the premises was a good good pub, well fitted out with air conditioning and free parking on the street in front.

8.2 He advised the Tribunal that the valuation was based on the premise of a hypothetical tenant paying a rent for the exclusive occupation of the property in accordance with S.19 (5) of the Act. The approach adopted by the Commissioner, allowing for individual considerations relative to the subject group of properties;

$$\text{FMT multiplied by X} = \text{NAV}.$$

8.3 Mr. Robinson arrived at his NAV figure taking an average on-sales turnover figure from 2013 - 2015 and applying a 7% multiplier to achieve €15,750.

In addition the average food sales for the same period, less €100,000 had a multiplier of 5% applied to achieve €7,500 for a total NAV of €23,250. He noted that both drink and food sales generally had an upward trend.

8.4 To support his case Mr. Robinson offered 4 rental comparisons (Appendix 4) some of which had also been detailed by the Appellant.

(1) Scanlons, Kinnegad, a large pub/ restaurant (176.61 sq.m. and function area 131sq.m.) has an NAV €35,700 arrived at using the 7% and 5% multipliers and no appeal has been lodged with the Tribunal.

(2) B.Coynes, Kinnegad, a neighbouring pub while useful must be considered as a related party transaction.

(3) The Drake Inn, Castletown Geoghegan, a small pub (97.31 sq.m.) also had the 7% multiplier applied to give a NAV €14,000 ---- which is substantially higher than the passing rent.

(4) The Olive Bar, Clonbursk, Athlone, a stand alone residential premises, leased out and with an NAV €23,415, which had been assessed @ 7% and no appeal lodged to the Tribunal.

8.5 Under cross examination Mr. Robinson stated that in his opinion the Appellants were not exceptional operators and he had allowed only 5% discount to cover the 30 year goodwill attached to the business. He also stated that no allowance was made for the shared access to the overhead residential accomodation.

8.6 In conclusion he confirmed the uniformity of the 7% multiplier on on-sales of licenced premises across the county.

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 Tribunal has examined the particulars of the property and considered the written and oral evidence adduced by Mr. Halpin on behalf of the Appellant who contended for a revised NAV €13,900 and Mr. Robinson on behalf of the Respondent who sought confirmation of the revision managers determination of €23,250 NAV as fair and equitable.

10.3 The Tribunal noted the location of the subject property, its position within the town and also the fact that the town itself was bypassed and is now considered a dormitory / commuter town for Dublin.

10.4 The comparisons offered gave a general view of the licenced trade in Co. Westmeath and were assistance to the Tribunal. Further detailed information on accommodation/size and turnover would have been beneficial from both parties.

10.5 The Tribunal is of the opinion that a generic rate across the county and indeed the rest of the country and the widely differing geographical locations should be tempered with consideration to take into account population nodes and competition, together with business acumen.

10.6 The Tribunal is aware of the Kirwan case and the effect on turnover of an occupiers business acumen and has taken account of the drink and food FMT and the hard work of the occupiers, noting the comparison with the much larger neighbouring properties and consequently it finds that the FMT in the subject property should be adjusted to reflect this difference.

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 €20,000. NAV.

FMT on sales adjusted to €200,000 @ 7 % = €14,000

FMT food sales adjusted to €120,000 @ 5% = € 6,000

NAV	€20,000
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And the Tribunal so determines.

Appendix 1

Agreed Turnover Figures

Year Ending	On – Sales	Food Sales
30/4/2013	€222,633	€253,943
30/4/2014	€242,525	€277,269
30/4/2015	€230,661	€308,500
30/4/2016	€251,892	€366,197

Appendix 2

Appellants Rental Comparisons.

1. Bagnells, Main Street, Rochefortbridge, Co. Westmeath.

Lease details; 1 year lease from June 2012 @ €12,000 pa.

1 Year lease from June 2013 @ €14,400 pa.

4 year 8 month lease 11 December 2017 @ €15,000 pa.

NAV €21,000

2. Cochranes Pub, Main Street, Moate, Co. Westmeath.

Lease details; 4 year 9 month lease 13 September 2016 @ €7,800 pa.

NAV €10,150

3. The Bottleneck, Dublin Gate Street, Athlone, Co. Westmeath.

Lease details: 2 year lease 1 February 2017 @ €18,200 pa.

NAV €22,400

Appendix 3

Appellants Tone of the List Comparisons

1. J C Donnellys, Main Street, Kinnegad. *

Substantial bar and restaurant NAV €15,750.

2. Scanlons, Main Street, Kinnegad. *

Large bar and restaurant (approx 3 times the size of the subject) NAV €35,700

3. Denis Coyne's, Main Street, Kinnegad. *

Near neighbour (2 doors) bar/lounge NAV €21,000.

4. The Tavern, Milltownpass, Co. Westmeath.

Similar style pub, on old Dublin Road, now bypassed. NAV €11,200.

5. J. Cosgraves, Oliver Plunkett Street, Mullingar, Co. Westmeath.

Small pub (40 sq.m.) in centre of Mullingar town NAV €8,750.

6. The Druids Chair, Pearse Street, Mullingar, Co. Westmeath.

Substantially larger pub / restaurant in centre of Mullingar NAV €14,050

7. Mc Namara's Pub, Dublin Road, Kilbeggan, Co. Westmeath.

Larger pub in smaller town (pop.1,288), also bypassed. NAV €9,97

Appendix 4

Respondents Rental Comparisons

1. Scanlons, Main Street, Kinnegad. *

Lease details; 4 year 9 month lease I March 2014 @ €90,000 pa.

NAV €35,700

2. The Drake Inn, Castletown Geoghegan, Co. Westmeath.

Lease details; 20 year lease 1 September 2014 @ €11,750 pa.

NAV €14,000

3. The Olive Bar, Clonbursk, Athlone, Co. Westmeath.

Lease details; 4 year 11 month lease 1 June 2015 2 €31,200 pa.

NAV €23,415

Appendix 5

Respondents NAV Comparisons

1. D. Coynes, Main Street, Kinnegad. *

Neighbouring bar / lounge (75 sq.m.) NAV €21,000

2. J C Donnelly, Main Street, Kinnegad. *

Large prominent corner pub NAV €15,750

* (Referenced by both parties).