

Appeal No: VA17/5/047

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

SEAN MAUNSELL

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1514780, Hospitality/Pub at Local No/Map Ref: 16Db, Cloncollog, Tullamore
County Offally.

B E F O R E

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Orla Coyne - Solicitor

Member

Donal Madigan – MRICS, MSCSI

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF JANUARY, 2019.**

1. THE APPEAL

1.1 By Notice of Appeal received on the 28th day of September, 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 €33,800.

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:

“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.”

“The subject property is a pub on a filling station forecourt on the edge of Tullamore. The subject property is licenced to sell alcohol but derives 2/3rds of its income from food sales. Owing to its actual location, 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 resolves around drink trade, is inappropriate. The subject property should be compared with restaurants on a rate per m² in order to ensure fairness and equity."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €18,800.

2. REVALUATION HISTORY

2.1 On the 3rd day of March, 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 €46,500.

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 €33,800.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €33,800.

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 9th day of January, 2019. At the hearing the Appellant was represented by the Mr Eamonn Halpin BSc Surveying, MSCSI, MRICS of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr Anthony Mulvey BSc (Hons) Surveying, Dip Finance & Accounting, 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

From the evidence adduced by the parties, the Tribunal finds the following facts:

(a) The property is located some 2-2.5Kms south east of the centre of Tullamore on the old Portarlinton Road close to the roundabout on the Tullamore ByPass (N52).

(b) The property adjoins a Gala supermarket and Applegreen service station (which are a separate assessment) and neighbouring occupiers to the rere of the subject property includes a Tesco Extra supermarket, a Retail Park (Woodies, Argos, Harry Corry, DID Electrical, Burger King), Aldi, an industrial estate and residential estates.

(c) The property comprises of a single storey bar/restaurant of a roadhouse type, to the left hand side (East) of the fuel forecourt canopy with shared parking facilities with the adjoining service station/supermarket.

(d) The parties have agreed the floor areas of the property as follows:

Bar & Lounge	173.24m ²
Off-Licence	28.90m ²
Kitchen	91.00m ²
Cold Store	18.50m ²
Smoking Area	26.00m ²
Toilets	27.68m ²
Total:	365.32m ²

(e) The property is owner occupied.

(f) The current operation has been established since 2000 although the retail offer has changed somewhat over that time but currently offers food seven days a week from breakfasts and lunches through to evening dinners. The subject property closes at 8pm.

(g) Trading figures have been provided for the years leading up to and beyond the valuation date (30th October 2015) as set out in Section C of the Appendix to this decision.

(h) The property has the benefit of an ordinary 7 day licence

5. ISSUES

5.1 The property falls to be valued on the basis of trading (i.e. Fair Maintainable Trade and appropriate rates applied to various categories of turnover) and the parties are agreed on the level of assessment for the drinks and off sales, the only issues remaining in dispute being the FMT of food sales and the value to be attributed to the food sales.

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. Eamonn Halpin for the Appellant contended for a valuation of € 26,300 which he calculates as follows:

			€
Drink sales	€ 150,000	@ 7%	10,500
Off sales	€ 110,000	@ 3%	3,300
Food Sales	€ 250,000	@ 5%	<u>12,500</u>
			26,300

He calculates the food sales by making a judgment discount on the food turnover by 30% and then deducting the standard allowance of the reduction in the turnover of the first € 100,000 which is customarily allowed as a concession in the valuation of the food element of these establishments- that are valued on an FMT basis.

7.2 Mr. Halpin also uses three other methods to arrive at NAV (i.e.(2) by reducing the rate applied to food FMT, (3). by valuing the restaurant etc. on a comparative per metre rate, and (4). by direct tone of list comparison) but adopts as above, in 7.1, to be his preference.

7.3 Mr. Halpin puts forward four comparables in support of his case which are set out in Section A to the Appendix to this decision.

7.4 It will be seen from his comparables that only one is assessed on the basis of FMT (as clarified by Mr. Mulvey, for the Respondent, at the hearing) the other three being analysed by reference to a comparative unit rate per m².

7.5 Mr. Halpin contends that the food sales are exceptional here for a public house and considers that this is accounted for by the special goodwill/acumen of the operator which he feels would not be replicated by the hypothetical Tenant envisaged for the purposes of sec. 48 of the Valuation Act 2001, as amended.

7.6 Mr. Halpin justifies his discounting of the FMT by reference to three other decisions of the Tribunal, being, namely:

VA14/5/959 (Keith Kirwan)

VA17/5/075 (Reddys of Carlow)

VA17/5/118 (Joe & Rena Bracken)

7.7 Mr. Halpin submits that the subject property's business is the inverse of the standard model (being the accepted ratio, in his opinion, of food to drink sales) in which he contends that for every € 1.00 of food sales this should generate roughly € 3.50 in drink sales but in this case the actual ratio is reversed in that for every € 3.33 in food sales only € 1.00 in drink sales results. He considers therefore that the standard formula applied by the Commissioner of Valuation does not fit the subject property. He goes on to state that publicans who sell € 1.00 food for every € 1.00 of drink are exceptional and have, in his own words, transitioned into a restaurant type property as opposed to a normal pub. He draws upon the report on the licensed premises market prepared by Morrisseys (2016) in this regard for endorsement of the statement that licensed premises' operators now acknowledge that wet sales can be bolstered by the provision of a quality food offering.

7.6 Mr. Halpin also submits extracts from a Bord Failte report (Tourism Facts 2016) from which he concludes that the Midlands Region (which includes Offaly) had the lowest tourist numbers and lowest tourism revenue of any region in the country.

8. RESPONDENT'S CASE

8.1 Mr. Anthony Mulvey, for the Respondent, contends for a valuation of NAV € 33,800 which he calculates as follows:

Drink sales	€ 150,000	@ 7%	10,500
Off sales	€ 110,000	@ 3%	3,300
Food Sales	€ 500,000		
Less	€ <u>100,000</u>		
	€ 400,000	@ 5%	<u>20,000</u>
			NAV € 33,800

8.2 Mr. Mulvey puts forward eight comparables in support of his case which are set out in Section B of the Appendix to this decision.

8.3 Mr. Mulvey submits that this is a well located property close to Tesco Extra, the retail park, industrial estates and residential estates and being only 54 metres from the roundabout with the N52 By Pass. It is fitted out to a high specification with ample parking on site too. The property has pub, restaurant and off licence and the benefit of a seven day licence.

8.4. Mr. Mulvey submits that the developments in the immediate area over the last 10-15 years have positively impacted on the subject property, most notably since the opening of the By Pass in 2009. In addition he states that the nearest competition is approx. 2 Kms North West of the property in Tullamore town, there being no competition in the immediate vicinity, except a fast food outlet.

8.5 Mr. Mulvey comments on the trading figures by stating that the overall turnover has increased by 23% between 2012 and 2016 with drink sales remaining stable over the period but off sales increasing by over 50% and food sales by 23%.The figure for FMT food sales which he has adopted in his valuation is substantially less than the actual turnover.

8.6 Mr. Mulvey rejects a method of valuation put forward by Mr. Halpin based on comparative rates per square metre making reference to the decision of the Valuation Tribunal in VA14/5/967 Longstone Investments Limited from which he quotes that FMT has been confirmed as the best valuation approach in the case of licensed premises and that regard to zoning is irrelevant.

9. SUBMISSIONS

9.1 There are no legal submissions in this case the issue in dispute being one of quantum only.

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 Offaly County Council.

10.2 The key issue in dispute in this case is the value that should be assigned to the food sales element of the overall valuation. Mr. Halpin has accepted that the property falls to be valued by reference to Fair Maintainable Trade, as he has accepted this approach for the drink sales and for the off sales, as adopted by Mr. Mulvey for the Respondent.

10.3 The net point of dispute is whether the adopted formula customarily used for the valuation of food turnover in public houses is appropriate here. In rural Offaly, a rate of 5% of food FMT is adopted to arrive at NAV, after the deduction of the first € 100,000 of turnover, before applying that rate. The key questions for the Tribunal are (a) what is the FMT for food sales and (b) what rate should this be valued at. Mr. Halpin contends that the food turnover is disproportionate to drink sales and thus this fact must be because of the special operation (goodwill)/acumen of the owner which would not, within the statutory rating hypothesis, be replaced by (or transferable to) the hypothetical Tenant.

10.4 The Tribunal considers that no evidence has been demonstrated to show exceptional factors being due to the operator and believes the location, amenities and physical characteristics of the property are the main drivers of the level of food and other sales. In particular with regard to the location of the subject property, the Tribunal agreed with Mr Mulvey's assessment that the location is instrumental in the subject property's success in generating such a high food turnover. It having very little local competition, being just beside the N52 Bypass and the high density of people from the nearby industrial, retail, commercial parks and residential areas.

10.5 Mr. Halpin made reference to other decisions of the Tribunal dealing with FMT and discounting FMT for various reasons but it is important to state that each case decided by the

Tribunal falls to be decided on its own facts, and thus calculations and rates adopted in one case, might not automatically apply in another case that is valued on a similar basis.

10.6 It appears to the Tribunal that the more appropriate comparables are the Appellant's No.1 in the Appendix Section A. (Loughreys) and the Respondent's in Section B. being No.1 (Brewery Tap); No. 4 (Hennesseys); No.5 (Lukers) and No. 6 (Flynn's). In all of these a rate of 5% for food sales has been adopted for turnover in excess of € 100,000.

10.7 The Tribunal considers that, based on the actual turnover in the years prior to the valuation date of 30th of October, 2015 and agreed between the Respondent and the Appellant, the Tribunal accepts that the FMT adopted by Mr Mulvey is correctly derived.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the valuation of the property at NAV € 33,800.

And the Tribunal so determines.