Appeal No: VA17/5/124

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

EDDIE WALSH	**APPELLANT**
AND	
COMMISSIONER OF VALUATION	**RESPONDENT**

In relation to the valuation of
Property No. 1445810, Hospitality at 48 (lot 23) Dominick Street, Mullingar, County Westmeath.

B E F O R E

Majella Twomey - BL	**Deputy Chairperson**
Donal Madigan – MRICS, MSCSI	**Member**
Kenneth Enright - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF MAY, 2019.

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 €41,200.

1.2 The grounds 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 is excessive and inequitable. The property's value as applied by the Commissioner is not remotely in line with its potential value.
- The assessment of the off-licence is completely inequitable. The subject property is being unfairly prejudiced for operating an off-licence business. As can be seen from the

off-licence accounts, there is no profit out of the off-sales from which a rent could be paid.

- The Commissioner is attempting to tax the business rather than the property which is contrary to the valuation statute.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €29,600

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 €44,900.

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 €41,200.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €41,200.

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 13th day of November, 2018. At the hearing the Appellant was represented by Mr David Halpin MSc Real Estate, BA Mod of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr Dean Robinson MSCSI, MRICS, 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.

4.2 The property is an off-licence premises attached to a bar. Both the bar and the off-licence are owned and occupied by the Appellant, a single licence covers both premises and the facilities are shared.

4.3 The floor areas are agreed as follows:

Bar	98.18 sqm
Off-licence	27.84 sqm

4.4 The turnover of the on-licence business has been declining year on year since year since 30 June 2013.

4.5 There is parking available outside the property with a limited free period.

5. ISSUES

5.1 The sole issue is the quantum to be applied to the off-licence portion of the property. The Commissioner's valuation of the bar part of the property is not in dispute.

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 expressed the view that the bar with a separate off-licence type of business is dying out in the face of low margins and competition from off-licences held by supermarkets and shop retailers, which properties often have better access and parking facilities. He pointed to the fact that of the 24 licenced premises in the Mullingar valuation list, only 3 had separate off-licences. There were, Mr Halpin noted, a total of 16 off-licences operating in Mullingar on the valuation date, most of them supermarkets and filling stations.

7.2 Mr Halpin introduced, as comparisons, two licenced premises in Mullingar that had an attaching off-trade and which are set out in Appendix I, Appellant's Comparisons 1 and 2, the latter of which was also brought forward by the Respondent as his Comparison 6. Mr Halpin explained that the Commissioner had not provided him with the FMT or floor areas of Comparison 1 and the only information he had been able to obtain in regard to that comparison was the overall NAV. Mr Halpin noted that the Respondent had included in its precis another public house with off-licence attached and which premises was now closed (Respondent's Comparison 12). Mr Halpin also provided three context comparisons, a retail premises (Appellant's Comparison 3), a stand-alone off-licence (Appellant's Comparison 4) and a supermarket with an off-licence (Appellant's Comparison 5). It will be clear from the Tribunal's findings set out below that it had particular regard to the Appellant's Comparison 2 (Respondent's Comparison 6) as well as the Respondent's Comparison 12 in coming to its decision.

7.3 Mr Halpin presented accounts which showed, he said, the receipts and expenditure specific to the off-licence component of the business. Mr Halpin argued that, based on the figures he had presented, the business could not sustain a level of rent anywhere near the Commissioner's NAV of €20,250.

7.4 Mr Halpin referred to the Commissioner's different methods of valuation for two distinct types of off-licence premises. When an off-licence is attached to a pub, as in the case of the subject property, the Commissioner applies the Fair Maintainable Trade (or FMT) method, whereby a percentage rate is applied to the turnover to calculate the NAV. When, on the other hand, the off-licence is a stand-alone property or attached to a retail premises, the Commissioner adds 15% to the retail value up to a maximum NAV of €10,000.

7.5 In the context of the subject property, where the sales in the off-licence were 2.3 times those of the on-sales, and where the floor area of the off-licence premises is, at 27.84 sq metres, relatively small (compare the bar area 98.18 sq.metres), Mr Halpin felt that the standard FMT calculation produced an anomalous result.

7.6 Mr. Halpin argued that the property was "exceptional" in terms of its off-licence turnover and that this was due to the business acumen of the Appellant and the goodwill he had built up over a long period in business.

7.7 Mr Halpin said the property was effectively being punished for having a single licence covering the pub and the off-trade premises. If the off-licence were a stand-alone premises, unattached to a pub, the "retail value (in terms of Zone A) plus 15% method" would have been applied. This would have resulted in an NAV for the off-licence of €9,604. However, because the premises are attached to a pub and both properties are covered by a single licence, the Commissioner applies the FMT method which, in the case of the subject property, results in an NAV, as aforesaid, of €20,250. Mr Halpin argues it is inequitable that the NAVs of stand-alone and supermarket off-licences are capped at €10,000 when no such cap applies to bar and off-licence premises held under a single licence.

7.8 Mr Halpin made it clear that he was not arguing for the retail value plus 15% method to be applied, rather that the FMT or the percentage rate applied to the FMT be reduced to take account of the exceptional nature of the business, its significant goodwill and the business acumen of the Appellant. One should, says Mr Halpin, look at the turnovers of comparable premises and this would inform an assessment of the turnover of the subject property relative to the market in which it sits. The way the exercise has been carried out on the subject property is, in Mr Halpin's view, a taxation on the business and not an assessment of the property. Mr

Halpin referred to VA14/5/959 *Keith Kirwan and the Commissioner of Valuation* as authority for his view that turnover can be discounted to reflect the business acumen of the occupier.

7.9 Mr Halpin was cross-examined by Mr Robinson on the specifics of the property and the relationship between the bar and the off-licence. Mr Halpin confirmed that the utilities were shared between the pub and the off-licence and that takeaway sales could be made anywhere on the premises, including over the pub counter.

7.10 Mr Halpin confirmed in cross-examination that there were no off-licence premises annexed to a bar that were *not* valued using the 3% of FMT method. He agreed that the 3% rate was in line with Section 19(5) of the Act in that its application was fair and equitable. Mr Halpin proposed that one could adjust the FMT rather than the percentage in order to take due account of the net profit which was falling year on year.

7.11 Mr Robinson questioned Mr Halpin on his contention that the Commissioner was valuing the business and not the property. Mr Halpin said that a valuation derived from annual turnover values the business carried on in the property rather than the property itself but acknowledged, at the same time, that the business was an element to be considered in valuing the property and that the accounts were a starting point for a determination of the NAV.

7.12 Mr Halpin agreed in cross-examination that the premises was close to Mullingar train station – if not quite opposite the station, as Mr Robinson had suggested to him.

7.13 Mr Halpin acknowledged there was parking outside the premises with a 15 minute free period.

7.14 Mr Robinson questioned Mr Halpin on the Receipts and Expenditure accounts for years end 30 June 2014 and 2015 which Mr Halpin had submitted at page 10 of the Appellant's precis and which Mr Halpin had relied upon to show the profits specific to the off-licence element. Mr Robinson asked Mr Halpin if these were audited accounts. Mr Halpin said he didn't know if the accounts were audited but that that these accounts had been filed with Revenue. Mr Robinson referred to the Form LP1 at Appendix 3 page 48 of his own precis which showed the respective sales figures of the off-licence and the bar but which did not show a similar breakdown between the two elements of the business for the *cost* of sales, for which a combined total was provided. Mr Robinson put it to Mr Halpin that the figures on the LP1 had been certified by an accountant but that the figures in Mr Halpin's R&E accounts (and the Trading and Profit and Loss Accounts for 2014 included at page 49 and 50 of the Respondent's precis) and which showed the expenses attributed separately to the bar and the off-licence had not been certified. Mr Halpin said that these accounts were real and did exist and had been submitted to Revenue and the Commissioner but that the Commissioner's LP1 form did not have space to accommodate a breakdown of the expenses between the two separate elements of the business. Mr Robinson went on to query some individual entries on the accounts and asked Mr Halpin whether it made sense that the insurance expenses and the wage bill attributable to the off-licence in the accounts were much higher than the corresponding figures for the bar. Mr Halpin agreed that this seemed odd and said he was unable to explain it.

7.15 Referring to Mr Halpin's contention that the alleged exceptionality of the business was due to the Respondent's business acumen and carefully cultivated goodwill, Mr Robinson asked Mr Halpin for examples of what the Respondent had done to achieve his high turnover. Mr Halpin said that the Respondent had cut prices. Mr Halpin explained that he was unable to introduce the accounts of other businesses to back up his claim that the Respondent's margins were lower than his competitors because he had no means of access to anyone else's accounts.

7.16 Mr Halpin asked that the NAV be reduced to a rounded amount of €25,500 by applying either of the following methods:
(a) Discounting the *percentage* FMT for off-sales to 0.65% and applying that to the FMT of €675,000, or
(b) Discounting the *actual* FMT for off-sales to the sum of €150,000 and applying to that figure the uniform 3%.

8. RESPONDENT'S CASE
8.1 Mr Robinson outlined the location of the subject property on Dominick Street which he said was a continuation of Oliver Plunkett Street, the main street in Mullingar. The property was 190 metres from the Main Square and less than 60 metres from the train station.

8.2 Mr Robinson stated that the availability of parking outside the premises benefitted off-sales.

8.3 He confirmed that one licence covered the whole property and that off-sales could take place anywhere. He said that where the facilities are shared, the Valuation Office applies the same methodology to each element: it would never in such circumstances apply the FMT method to a bar and the retail value method to an off-licence.

8.4 Mr Robinson said that the Valuation Office had initially worked off the 2013 and 2014 figures and that the NAV was reduced at representations stage when the 2015 sales figures were provided. He said that Valuation Office would never rely on non-audited accounts to do an R&E analysis and that in this case the splits given between the on and off-trade expenses and cost of sales could not be relied upon.

8.5 In regard to the Appellant's claim that the business, rather than the premises, was being charged, Mr Robinson said that any hypothetical tenant would take account of the turnover.

8.6 Mr Robinson outlined how the Commissioner relied on five comparable items of market information as set out in the Key Rental Transactions in the Respondent's precis in order to estimate the Net Effective Rent. The collection of the NERs, he said, informed the Commissioner's assessment of an appropriate NAV for the subject property. The NAV of licenced premises were established, said Mr Robinson, on the basis of a uniform and equitable percentage rate applied to the FMT. The main indicators of this uniform and equitable percentage were analysed rental details and available trading information. He said that the FMT was based on the actual level of trade as set out in the certified accounts. Adjustments were applied depending on individual considerations.

8.7 Mr Robinson's 5 Key Rental Transactions and his 12 comparisons to establish equity and uniformity are set out in Appendix II. The Tribunal notes that all the the comparables were either public houses or pubs with off-licences annexed and, while some of the stand-alone public house comparisons were useful to the Tribunal in terms of illustrating the relationship of rental levels to that of the NAVs as assessed on the FMT at the applicable percentage rate, the Tribunal has had particular regard to KRT 3 and the Respondent's Comparison 6 (equivalent to the Appellant's Comparison 2) and the Respondent's Comparison 12, all of which concerned pub and off-licence businesses similar to that of the Appellant. Mr. Robinson stated that no appeals were made to the Tribunal in respect of the valuations of any of the properties in his KRTs or comparisons.

8.8 Mr Robinson referred to KRT 1, a pub on Oliver Plunkett Street, approximately 300 metres away from the subject property which had a rent of €52,000 and an FMT of €620,000. When the 7% rate for a public house was applied to the FMT, the NAV worked out at €43,400. The rent was 8.54% of the FMT. Similarly, KRT 2, a pub on Dominick Street, 100 metres from the subject property, had a rent of €36,000, an FMT of €400,000 and an NAV of €28,000. In this case, the rent worked out at 9% of the FMT.

8.9 The Respondent’s KRT 3 was a public house and off-licence in Athlone, operating out of a single property held by the same occupier under separate leases. In this property, the annual rent was €41,600 for the bar element and €15,600 for the off-licence. The FMT for the bar, assessed at €400,000 was charged at the rate of 7%, resulting in an NAV of €28,000. The FMT for the off-licence, assessed at €550,000, was charged at 3%, providing an NAV of €16,500. Mr Robinson compared the levels of rent and the accepted NAV of this property to the much lower figures applicable to nearby retail units of similar size, which showed, he said, there was no relationship between the levels applicable to an off-licence annexed to a bar and the levels applicable to a retail premises, and certainly not one of equality.

8.10 The Respondent’s Comparison 6 was a public house and off-licence located on O’Growney Street, Mullingar. The same premises had been put forward by the Appellant as his Comparison 2. As Mr Halpin had noted, the trading area of this comparison was much bigger than that of the subject property. The Respondent measured the bar at 162.27 sq. metres and the off-licence at 89.19 sq metres. Mr Robinson, referring to his location map, said that this premises was in a much poorer location than that of the subject property being somewhat away from the main commercial area of the town. The property’s’ locational difficulties – in terms of its off-licence trade – were significantly compounded by the presence of a large Tesco superstore just 25 metres away, which had the benefit of an off-licence.

8.11 The FMT of the on-sales in this comparison was €320,000, with the off-sales at €750,000, resulting in an NAV for the latter of €22,500 when the 3% rate was applied. Mr Robinson noted that the off-sales in this premises were much higher than its on-sales. Moreover, the off-sales were higher than those of the subject property, notwithstanding the locational difficulties. Mr Robinson argued that there were significant advantages to having an off-licence annexed to a bar business.

8.12 The Respondent's Comparison 12 was a pub and off-licence operation located 150 metres from the subject property, on the other side of the railway line and the Royal Canal, on Patrick Street. The NAV of this property was €20,600 calculated at 7% of the on-sales FMT of €230,000 plus 3% of the off-sales FMT of €150,000. This property had, said Mr Robinson, encountered trading difficulties, changed hands a few times, and was now closed and up for sale. Mr Robinson argued that this property, though close to the subject property, was in a more secluded area. He said that when one crossed the bridge into Patrick Street, the levels of trade dropped off immensely.

8.13 Under cross-examination by Mr Halpin, Mr Robinson agreed that the off-licence part of his Comparison 12 was of similar size to that of the subject property and that while this property had closed the subject property had always remained open. Mr Halpin asked Mr Robinson if he would not agree that, in the light of this, there must be some element of goodwill attaching to the Appellant's business and his FMT of €675,000. Mr Robinson referred to his Comparison 10, the bar and nightclub premises associated with the late singer, Joe Dolan, as a better nearby illustration of the nature of goodwill and noted the much higher NAV attaching to that property. Mr Robinson expressed some doubt that there was much goodwill attached to the off-licence sale of alcohol. When asked by Mr Halpin to account for the fact that his Comparison 12 was closed and the subject property was open and to acknowledge that there must be something else at play in the context of the subject property, Mr Robinson identified what he saw as the subject property's ideal location and the fact that there was no other off-licence attached to a bar nearby. He said that bar customer's drive off-sales in that they purchase bottles of beer and other items before they go home.

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 Westmeath.

10.2 The subject property is in a good, reasonably central position. While it is set some 200 metres from the main square it close to the train station. It is, in the Tribunal's view, much better located than the other pub and off-licence properties located in Mullingar and offered as comparisons.

10.3 The Commissioner must take the premises as he finds it. The property is an off-licence attached to a pub with shared facilities. It is the Tribunal's view that the FMT method is the most appropriate to establish the NAV of a public house and that where an off-licence is attached to a public house, that the off-licence should be valued by the same method. The appropriateness of the FMT method – and the particular percentage rates applied – is borne out by the five Key Rental Transactions presented by the Respondent, the most significant of which was KRT 3, the only *rental* transaction brought forward for a pub and off-licence business operated out of a single property. The NAVs set by the Commissioner for the various properties – arrived at using the FMT method – were generally commensurable with the rents payable. The method, moreover, has been accepted by the occupiers of the various properties put forward as comparisons and it would not be appropriate, fair or equitable for the Tribunal to apply either a different method – such as, for example, the retail method – or apply a different percentage rate to the FMT in the case of the subject property.

10.4 Mr Halpin for the Appellant argued that the level of turnover of the subject property was exceptional and that the Appellant should not be penalized for what Mr Halpin described as his business acumen and the goodwill he had built up during many years of trading. The Appellant has not persuaded the Tribunal that he has shown any exceptional business acumen or has established a level of goodwill beyond that which might be expected of an off-licence attached to a public house in this particular, reasonably attractive, location. Moreover, the Tribunal finds, in the light of the FMT figures provided by the Respondent for its Comparison 6 (the same property as the Appellant's Comparison 2), the level of trade of the subject property is not exceptional. The FMT of the off-licence in that comparison is much greater than that of the subject property and the ratio of on-trade sales to off-trade sales is similar. While it is the case that the off-licence element of the comparison property is larger than that of the subject property, the Tribunal takes the view that the comparison is in an inferior location and subject to competition from the Tesco off-licence located beside it.

10.5 It is the Tribunal's view that, all in all, the Respondent's Comparison 6 is the most appropriate comparable to the subject property and the Tribunal notes that the assessment (made after a reduction at representation stage) was not subject to appeal.

10.6 There is a question about what weight, if any, the Tribunal should give to the figures submitted purporting to show the division of the cost of sales between the on-licence and the off-licence. Insufficient evidence was provided to the Tribunal that the accounts were audited or certified and no explanation was provided as to why certain items of expenditure relating to the off-licence were much higher than those of the bar. Consequently, the Tribunal has reservations about accepting the breakdown of the cost of sales figures between the pub and the off-licence. In any case, the Tribunal is of the view that the evidence of several rental transactions in the area and the acceptance by multiple occupiers of NAVs (derived from market rents and FMTs) for comparable properties, carry more weight than the R&E figures (certified or otherwise) in terms of assessing the NAV of the subject property.

10.7 The Tribunal accepts that the turnover of the business has declined year on year and it is of the view that a hypothetical tenant would have regard to that decline and would demand that due account be taken of it in the rent payable. Consequently, it should be taken into consideration in the determination of the NAV. While the Commissioner has taken some account of this decline in setting the FMT at €675,000 on a turnover for year end 30 June 2015 of €681,943, the Tribunal is of the view that he has not taken sufficient account.

10.8 On the basis of the evidence presented, the Tribunal finds that the turnover declined as follows:

Year Ending	Off-Sales €	% decline year on year
30/06/2013	853,522	
30/06/2014	764,782	10.40
30/06/2015	681,943	10.83

The average rate of decline over the period is accordingly, 10.62%. If this were applied on an ongoing basis from year end 30 June 2015 up to the statutory valuation date of 30 October 2015, a further four months, the rate of decline based on that average would be 3.54%. Applying this to the figure of €681,943 results in an FMT of €657,802.

It is the Tribunal’s view that this figure, €657,802, say €658,000, is the appropriate FMT for the off-sales of the subject property. When the rate of 3% is applied to this, it results in an NAV of €19,740.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the subject property as stated in the valuation certificate to €40,740.

USE	FMT	%	NAV
On Sales	€300,000	7%	€21,000
Off Sales	€658,000	3%	€19,740
		TOTAL NAV	€40,740

And the Tribunal so determines.