

Appeal No. VA17/5/037

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTAÍ LUACHÁLA, 2001 - 2015
VALUATION ACT, 2001 - 2015**

ELAINE MITCHELL

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:
Property No. 1988306, Hospitality at 8B, Smithfield, Foxhall, Ballymahon, County Longford.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF AUGUST, 2018

BEFORE:

Dearbhla M. Cunningham – BL

Deputy Chairperson

Liam G. Daly – MSCSI, MRICS

Member

David Gill – FSCSI, FRICS, FCI Arb, Dip Arb Law

Member

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 Commissioner of Valuation in fixing a net annual value of €10,500 on the above described relevant property on the grounds as set out in the Notice of Appeal

1.2 The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence on the 18th day of January, 2018 adduced before us by Mr David Halpin, M.Sc. (Real Estate), BA (Mod) of Eamonn Halpin & Co

Ltd on behalf of the Appellant and Mr Dean Robinson SCSl, MRICS, ACI Arb, ACCA Dip of the Valuation Office on behalf of the Respondent to the appeal.

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5,000.

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 €11,900.00.
- 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 €10,500.00
- 2.3 A Final Valuation Certificate issued on the 7th September 2017 stating a valuation of €10,500.00
- 2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is 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 18th January 2018. At the hearing the Appellant was represented by the Mr. David Halpin M.Sc. (Real Estate). BA (Mod) and the Respondent was represented by Mr. Dean Robinson MSCSl, 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 subject property is a licensed premises located on Main Street, Lagan, Co.Longford. Edgeworthstown is the nearest town approximately 8.3km from the subject property and Longford Town approximately 15.5km away.
- 4.3 The property comprises of a bar and lounge of approximately 150.67 m² which from the photographic evidence that was adduced appears to be unremarkable in its appearance. It adjoins the appellant's residence.
- 4.4 It is the only licensed premises in the village of Legan which has a population of approximately 215
- 4.5 Also located in the village is Naomh ni Ri Community Centre, Lenamore National School, Lenamore Church, Aurora Social Club, Whytes Supermarket. Legan Sarsfields GAA sports ground and clubhouse is 200 metres of the subject property and does not itself have a licence. Also, in close proximity to the subject property is a housing estate.

5. ISSUES

- 5.1 The Commissioner utilises two factors when approaching the determination of Net Annual Value (NAV) for licenced premises.
- 5.2 Firstly, the Commissioner estimates a Fair Maintainable Trade being the annual level of trade (Excluding VAT) that can be achieved by a reasonable efficient operator of the business of that property.
- 5.3 The Commissioner then applies a percentage to the estimated Fair Maintainable Trade to arrive at a figure for Net Annual Value (NAV). The Commissioner states that the main indicator in establishing a fair percentage comprises of analysis of rental details and available data.

- 5.4 From the Commissioners analysis of rental details and other available data, the Commissioner is applying a uniform rate of 7% of Fair Maintainable Trade to all licensed premises in the Co. Longford region.
- 5.5 The Appellant is disputing the mechanism been used by the Commissioner in determining on the NAV
- 5.6 The appellant submits the fair maintainable trade for the property as estimated by the Respondent is overstated by reason of it including goodwill that has been established by the operator and is personal to the operator herself and not to the premises.
- 5.7 The Appellant submits that the uniform application of a rate of 7% of a fair maintainable trade on all licensed premises within the county of Longford is incorrect in that it fails to acknowledge the distinct characteristics of licensed premises located in rural areas such as the subject property. And in particular in contrast to those located in urban locations.

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 The Appellant was represented by Mr. David Halpin. Mr. Halpin commenced his evidence by outlining three questions which in his opinion needed to be considered by the Tribunal,

- (1) Does the occupiers turnover represent FMT?
- (2) What is the appropriate percentage to be adopted to estimate the Net Annual Value as rent ?
- (3) Does the figure arrived at by this method give a fair assessment of NAV?

Mr. Halpin suggested the answers to the above questions are influenced by the individual characteristics of the subject property. Mr. Halpin described the subject property as being in a rural, disadvantaged and sparsely populated location. Mr Halpin also stated that the subject property did not enjoy the benefit of passing trade and the only other commercial premises within the village impacted negatively as it has a wine license.

7.2 Mr Halpin contended that the methodology adopted by the Valuation Office in assessing FMT was flawed. Mr. Halpin explained how without the correct interpretation as to what represents goodwill, the approach been adopted by the Valuation Office is a taxation on the business, which he maintained is incorrect. It was put forward by Mr. Halpin, that the correct FMT for the subject property should be one third less.

7.3 Mr. Halpin also explained his dissatisfaction with uniform adoption by the Valuation Office of 7% of FMT as an appropriate percentage rate. Mr Halpin sated this was an unsustainable percentage in a County such as Longford. Mr. Halpin maintained such an approach failed to recognise significant operational differences between rural and urban licenced premises. It was Mr. Halpin's opinion that a reduction of the percentage rate from 7% to 5% would address this anomaly for the subject property.

8. RESPONDENT'S CASE

8.1 The Respondent was represented by Mr. Dean Robinson of the Valuation Office. Mr. Robinson gave a brief outline with regard to process undertaken in accessing the valuation of the subject property.

8.2 Mr. Robinson stated the Net Effective Rent (NER) for licensed premises was based on two combined factors:

(1) An estimated Fair Maintainable Trade being the annual level of trade (Excluding VAT) that can be achieved by a reasonably efficient operator of the business in that property. The main indicator of this is the actual turnover achieved in the year applicable to that of the Valuation Date 2015 with the property operating hours which match its maximum beneficial level.

(2) An applicable percentage of Fair Maintainable Trade to represent a uniform and equitable Net Annual Value (NAV) as specified on Section 48 of the 2001 -2015 Valuation Acts. The main indicators in establishing a fair percentage comprise of analysed rental details and available trading data.

8.3 Mr. Robinson explained that although the two combined factor discussed above form the basis of establishing an NER, the process is not done in isolation. In the event that there are any relevant considerations in relation to an individual property, relative to that group, further adjustments may be made to a property's NAV.

8.4 In considering the appropriate NAV for the subject property, Mr. Robinson outlined details relating to five rental transactions and three comparables from the Longford Valuation List.

8.5 In terms of trading information, Mr. Robinson informed the Tribunal that the Valuation Office had been provided with audited financial statements together with Profit and Loss accounts for the years 2013 to 2015. From this information provided by the appellant, the Valuation Office established what in their opinion was a Fair Maintainable Trade. A percentage of 7% was then applied to the Fair Maintainable Trade to arrive at an NAV of €10,500.00.

9. SUBMISSIONS

9.1 There were no additional submissions made

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal is 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 Longford County Council.

- 10.2 The Tribunal carefully considered and has had regard to the information provided concerning the various comparators put forward by Mr. Halpin for the Appellant and Mr. Robinson namely:

By Mr. David Halpin for the Appellant:

1. Top of the Hill (Formerly Casey's) Carrickboy, Co. Longford
2. Paddy's Bar, Main Street, Ballymahon, Co. Longford
3. The Oasis, Lurgan, Co. Longford
4. Rooney's, Abbeysrule, Co. Longford.
5. Mangan's , Kilashee, Co. Longford.
6. The Chestnut Tree, Kilashee, Co. Longford
7. Gav's Bar, Keenagh, Co. Longford.
8. The River Inn, Main Street, Ballymahon, Co. Longford.

and by Mr. Dean Robinson for the Commissioner:

1. The Vintage Bar, Moydow, Co. Longford
2. Kearney's. Doory, Ballymahon, Co. Longford
3. Mangans Kilashee, Co. Longford
4. Boomerangs Bar, Main Street, Granard, Co. Longford
5. Clarkes Bar, Lanesborough Co. Longford
6. The Stags Head, Main Street, Ballinalee, Co. Longford
7. The Old Forge, Kiernan's Cross, Carryglass, Co. Longford
8. The Local, Newtown Cashel, Co. Longford

- 10.4 From the evidence presented by both the Appellant and the Respondent, the Tribunal recognised the challenges encountered in determining NAV for properties of this character. The Tribunal found there were considerable variations between what was considered comparable evidence between both parties. The evidence presented contributed more toward highlighting the difficulties associated with rural licensed

premises rather than direct comparisons to the subject property. The Tribunal therefore found the evidence restrictive in its applicability to the subject premises.

10.5 The Appellants representative contended that the methodology adopted by the Valuation Office in assessing FMT was flawed. It was argued by the Appellants representative that there was an incorrect interpretation as what represents good will, thus the Appellant was subject to a form of double taxation. However the Tribunal was not persuaded of this and decided on the balance of evidence to adopt the figure for FMT of €150,000.

10.6 It was also outlined by the Appellants representative of their dissatisfaction with unformed adoption by the Valuation Office of 7% of FMT as an appropriate percentage rate. The Tribunal is of the opinion that during the course of the hearing both parties highlighted the unique challenges in operating rural licenced premises in areas with limited catchment and small local population. It is therefore the Tribunal's opinion that in this circumstance, an operational difference between rural and urban license premises was shown. The Tribunal takes account of this by reducing the appropriate percentage rate from 7% to 5%

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 €7,500.

Fair Maintainable Trade = €150,000

multiply by 5%

Net Annual Value: €7,500.

And the Tribunal so determines.