

Appeal No: VA17/5/338

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

THE TURN INN LTD.

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 1738808, Hospitality at 4Da Derrinturn, Derrinturn, County Kildare.

B E F O R E

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Raymond J. Finlay – FIPAV, MMII, ACI Arb, TRV, PC

Member

Patricia O'Connor – Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF DECEMBER, 2019

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 10th 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 €35,000.
- 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 potential rental value.*

2. *The subject property is in a [sic] Derrinturn, a low population area in North Kildare. The subject property's value as established by the Commissioner on a turnover basis is not in line with the nearest comparisons in terms of NAV – namely PN 1738807 (€11,200), PN 1739145 (€7,000), PN 5009360 (€30,500 inclusive of a funeral home), PN 1738670 (€24,500) and others in the general area. The subject is not the best pub in the general area and has a very significant level of goodwill – as evidenced by a higher than expected drink trade (€500,000) but with no ability to sustain a meaningful food trade.*
3. *The occupier's exceptional business acumen including the novel running of a private bus to ferry customers should not be taxed rather its value on a vacant and to let basis should be established."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €25,900.

2. REVALUATION HISTORY

2.1 On the 10th 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 €35,000.

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 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 €35,000.

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 14th day of June 2019. At

the hearing the Appellant was represented by Mr. Eamonn S. Halpin B.Sc. (Surveying), MRICS, MSCSI and the Respondent was represented by Mr. Ian Power 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 public house which has been trading as a pub since the early 1950s. The trading area comprises of an old front bar, a small lounge area and a modern rear bar with kitchen. There is also ground floor storage with a covered smoking area and beer garden to the rear of the pub. The modern rear bar and kitchen was extended and renovated in 2004.
- 4.3 The total floor area measures 303.3 square metres and the internal trading area extends to 247.25 square metres.
- 4.4 Certified extracts from the subject property's accounts have been provided for the years 2013 to 2015. The average turnover over for the three-year period 2013 to 2015 was provided and a fair maintainable trade (FMT) of €500,000 was estimated for this property.

5. ISSUES

This appeal raised the sole issue as to whether the net annual value of the Property as determined by the Commissioner is correct.

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 gave a brief outline of the information contained in his précis. He argued that the level of FMT ascribed to it property by the Commissioner was a tax on the business which was not correct and referred to VA 17/5/959 (Keith Kirwan) whereby it was stated inter alia that taxing the business acumen was in effect double taxation. He also argued that Derrinturn had a low population and was in a rural location. He pointed to the lack of FMT information for all licensed premises which he claimed made it very difficult for any appellant to compare one property with another, but he had made his best estimate of the various FMT’s contained in his precis. Mr. Halpin stated that there was a related party agreement in place in respect of the subject property which include the residence as well as the bar. Mr. Halpin pointed out that the operator had purchased a bus which he uses to drive customers to and from the pub. Mr. Halpin described this as a piece of enterprise which he hadn't come across before and contended that this action placed the

operator into the category of an Exceptional Operator. Mr. Halpin went on to state that the operator had had limited success with their food trade and that it was the innovation of the bus which had brought their trade back.

- 7.2 Mr. Halpin provided number of rental comparisons which are set out in Appendix 1. Mr. Halpin commented on the rental comparisons as follows:

No. 1 – Edenderry which he described as a property that had a significant food and drink trade which has been the winner of a number of food trade awards. It was let for a term of 4 years from 22nd July 2013 at €22,560pa according to the Commercial lease register. It had an NAV of €17,500 which he argued was an FMT of €250,000 @ 7%. No floor area was provided.

No. 2 – was located in Two Mile House and he suggested that the parties to this agreement may be related and stated that this property has also won a number of food awards and has employed a number of well-known chefs. Mr. Halpin described this property as a landmark pub on the Kildare food scene which is well located between Naas and Kilcullen. He stated nonetheless that the lease as for a term of 4 years 9 months from June 2016 at €32,400pa and this property had an NAV of €26,300 and he claimed that the Commissioners assessment did not punish the operator or the business.

No. 3 – was located on a rural crossroads and this property was of a similar type condition to the subject property and the only pub located in a similar rural village. He stated that it had a lease for 4 years 9 months from 9th August 2016 at €28,600pa and was relet for 2 years 10 months from 25th June 2018 at a rent of €26,000pa sourced from the Commercial Lease Register. He argued that the NAV of €14,000 was reasonably based on a turnover of €200,000 @ 7%.

- 7.3 Mr. Halpin also provided a number of tone of the list comparisons details of which are set in Appendix 2. Mr. Halpin commented on these comparisons as follows:

No. 4 – was located in Carbury and he described this as being an inferior property to the subject property and noted that it has been valued at less than one-third of the subject property. It had an NAV of €11,200 which he calculated was based on an FMT of €160,000 @ 7%.

No. 5 – was in Timahoe and he stated that he would not have expected the subject property to be 5 times better than this rural comparison which had an NAV of €7,000 which he calculated was based on €100,000 @ 7%.

No. 6 – was in Allenwood and he described it as the best comparison although it also comprised a Funeral Home and an off-licence. It had an NAV of €30,500.

No. 7 – this was a common comparison with the Commissioner. Mr. Halpin stated that this property enjoyed a significant food and drink trade and that it has a well-established reputation for food. It had an NAV of €32,000 but no information on how this valuation was calculated.

No. 8 – this comparison in Prosperous was valued at €32,000 and had no food trade. He calculated the NAV based on an FMT of €400,000 @ 7%.

No. 9 – The final tone of the list comparison was located in Straffan and he stated that this property has a well-established roadside premises with a reputation for food however based on an estimated FMT of €255,000 @ 7% he stated that it appeared the Commissioner had not allowed for any food business.

- 7.4 On cross examination Mr. Halpin stated that he had used the comparison in Number 1 because it is only 10 kilometers away from the subject property, albeit in a different county. He was certain that a hypothetical tenant would look at this comparison. In response to Mr. Power, Mr. Halpin stated that the first thing that he would do would be to inspect a property. He agreed with Mr. Power that he would also look for trading information for a pub in order to weigh it up against other trading pubs but reiterated that the most important thing to do was to inspect the property. Mr. Halpin stated that the 2015 accounts clearly show that the subject property was losing money on the food trade which had been brought in to try to save the business. The bus was then purchased, and this has proved far more successful.

8. RESPONDENT'S CASE

- 8.1 Mr. Power gave a brief outline of the information contained in his précis and stated that Derrinturn's population had expanded substantially in recent years and was of 1,602

2016. He confirmed that the Commissioner accepted Mr. Halpin's floor area and agreed the figure of 249.92 sqm. He stated that it was a traditional pub which also served food at the weekends and that the premises comprised an old front bar, a small lounge area and a modern bar and kitchen. He also referred to the related party's lease. Mr Power referred to VA95/5/025 Swigmore Inns Ltd t/a Doheny & Nesbitt and VA95/5/024 Nallob Ltd t/a O'Donoghues and stated that these judgements indicated that the profits method was the preferred method for valuing a licensed premises. He quoted from these judgements "...*The rateable valuation is a function of the net annual value of the building and not the business and it is therefore important to distinguish the elements of turnover which reflect the location and nature of the building as opposed to those that reflect the ability(or lack of it) of the proprietor. In our opinion Doheny (O'Donoghues) is now so long established as a landmark pub that its turnover is less affected by its proprietor than might be the case otherwise.*" Mr Power stated that it is open to the hypothetical tenant to adopt the same trading methods as the existing occupier and he claimed that the appellant did not identify any characteristics that cannot be replicated by a hypothetical tenant. Mr Power also referred to VA 15/5/036 Dan Cronin's Pub Newcastlewest and noted that the balance in the financial statements included in the respondents precis did not include any reference to goodwill but the Tribunal did not attribute any adverse inference from this fact but indicated that it would have assisted the appellants case for goodwill exclusion. The Tribunal did not allow for any goodwill in that case and VA 14/5/901 Mulligan's of Poolbeg Street. Mr. Power provided number of rental comparisons details of which are set out in Appendix 3. Mr. Power commented on the rental comparisons as follows:

No. 1: This property which comprised a trading area of 144.27sqm was located in Robertstown and had been let on a rolling lease from December 2016 at €28,600pa based on a rent from February 2013 and had an NER of €27,170. It had an FMT of €325,000 @ 7% which provided a NAV of €22,700 and rent was 8.36% of FMT.

No. 2: This comparison referred to licensed premises in Monasterevin and had a trading area of 117.48sqm out of a total 284.64sqm and was held on a 4 year 9 month lease from 1st April 2014 at €36,000ps with an NER of €32,550 and it had been valued at 7% of FMT of €330,000 with an NAV of 23,100. The ratio of FMT to rent was 9.86%.

No. 3: This premises was located in Ballintore Athy and had a trading floor area of 275.55sqm out of a total of 353.12sqm. It was let for 10 years from 1st September 2016 at €60,000pa with an NER of €57,000. The Commissioner reduced the figure to reflect external repairs. The premises were valued on a drink FMT of €225,000 and food €250,000 at 7% and 5% respectively giving a total NAV of €28,200. The ratio of FMT to rent was 9.91%.

8.2 Mr. Power also provided a number of tone of the list comparisons which are set in Appendix 4. Mr. Power commented on these comparisons as follows:

No. 1: was located in Carbury and he described this as being an inferior property to the subject property. It had an NAV of €11,200 based on an FMT of €160,000 @ 7%. This is a common comparison. Mr. Power stated that this property was much older with no extensions and described the subject property as being far superior to this one.

No. 2: This is a similar type premises to the subject property situated in Prosperous and had NAV of €30,800 based on a drink FMT of €320,000 and food FMT of €280,000 based on 7% and 3% This was a similar property in a similar location.

No. 3 This smaller property is located in Caragh Co. Kildare close to Naas and was described as being in a similar rural location and was in a similar condition with a predominant drink trade. The NAV as €28,000 based on an FMT of €400,000 @ 7%.

No. 4: This is a similar size premises to the subject property situated about 10 miles away in Moyvalley a small rural village. This premises had a predominantly drink trade with a small food business and the NAV of €28,000 was based on an FMT of €400,000 @ 7%.

No. 5: This is a common comparison with the Appellant. It is situated in a rural location close to Prosperous and was sold in 2014 for €200,000. The NAV was €32,000 but no FMT was supplied. There is a 4-year 9 months Lease in place from 2014 at a rent of €39,000 per annum. This is a similar size property but probably not as well laid out as the subject property.

8.3 On cross- examination, Mr. Power was unable to point to any other pubs which operated a bus service. Mr. Power was not aware of the subject property operating the bus service and had not seen it advertised. Mr. Power stated that a bus service was not unique and said that it was something that the hypothetical tenant could also do. Mr. Power went on to state that if he was a hypothetical tenant, there was no reason why he would not to operate a bus service given that there are no significant costs to it but he pointed out that the Commissioner had not been provided with any costs in respect of the bus service.

8.4 Mr. Power stated while the subject property was revalued some 18 to 24 months ago, it had only been given a very cursory inspection recently. Mr. Power described the valuation of the subject property as being very fair and equitable and that the Commissioner had taken into consideration the fact that the pub trade had taken a nosedive. The Tribunal enquired as to what were the populations of Robertstown and Monasterevin but Mr. Power did not have this information. Mr. Halpin pointed out that Robertstown benefits enormously from the canal and Mr. Power agreed with this.

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 Kildare.

10.2 Both the Appellant and the Respondent sought to rely on previous judgments of the Tribunal. The Appellant sought to rely on VA 14/5/959 (Keith Kirwan), The Respondent sought to rely on VA 14/5/901 Mulligans Pub, VA 15/5/036 Dan Cronin's Pub, VA 95/05/024 Nallob Limited t/a O'Donoghues, VA 95/5/025 Swigmore Inns Limited Trading as Doheny & Nesbitt's and VA 14/5/914 Oarland's Taverns. While the Tribunal is not bound by precedent, it has considered these decisions and there are a number of points arising from them which should be noted as follows.

1. In the Kirwans decision (VA 14/5/959), the Tribunal followed the approach to valuation based upon “fair maintainable trade” and, in passing, noted that this is a method of valuation which has, broadly speaking, become accepted by and acceptable to both the Commissioner and rate-payers, or at least their professional advisors. The Tribunal stated in the Kirwans decision regarding Fair Maintainable Trade that *“Briefly, it is a method which has been used when determining the fair and equitable rate for licensed premises and, as a variant, licensed premises offering food for consumption as a significant adjunct. Evidently, in order to apply this particular method, the valuer must have before him or her data furnished to him or her by the owner and/or operator of the undertaking involved. This is done on a voluntary basis. Significantly, as evidenced in this appeal, the owner and/or operator furnishes accounts for a number of years, which said accounts give a flavor of the turnover of the business for those years. In some instances, and where relevant, the figures as furnished for turnover are broken down into individual constituent parts, notably:*

- *on sale drink*
- *food*
- *off-license.*

The valuer having been furnished with this information (evidence), sets about considering same and so as to determine a rate which is uniform and equitable and in addition meets the requirements as expressly provided for under Section 48(1) of the Valuation Act 2001.

From the information as furnished, the valuer, it seems arrives at what has been referred to in evidence as “fair maintainable trade” (FMT). It is clear from the evidence in this particular case that FMT is not and is not intended to equate with the actual turnover figures as furnished by the rate payer to the Commissioner whether those figures are taken in respect of a particular financial year or whether, as an average of the financial years as furnished. Insofar as the Tribunal can determine, FMT is intended to present as the valuer’s fair and best estimate of what the property is likely to achieve (turnover wise) and in a typical year and assuming that that hypothetical tenant is interested in the property and naturally enough wants to have some idea of the level of business he or she is likely to achieve and should he or she decided to acquire same.”

2. In the Oarland's Taverns decision (VA 14/5/914), the Commissioner submitted that the method of FMT was the correct method of valuation to have been utilized to arrive at a valuation of the subject premises and cited previous Valuation Tribunal judgements to support this including VA95/5/025 (Swigmore Inns Ltd T/A Doheny & Nesbitt, Baggot Street Lower, Dublin 2 and VA 95/5/024 (Nallob Limited t/a O'Donoghue's Merrion Row, Dublin 2).
3. The Tribunal accepts that in the valuation of licensed premises the method of utilizing turnover or an estimate of FMT is the fair and correct method to ensure fairness, equity and uniformity so that the burden of commercial rates is distributed as equitably and as fairly as possible.
4. In both the Swigmore Inns Ltd (VA95/5/025) and Nallob Limited (VA 95/5/024) decisions, the Tribunal pointed out that both properties were undoubtedly well-known Dublin public houses enjoying both local and tourist business. The Tribunal went on to state that the dilemma facing both the appellant's and respondent's valuers was "*how to deal with what can best be described as the goodwill of any public house where undoubtedly the turnover can be affected by the ability of the proprietor*" and that the rateable valuation is a function of the net annual value of the building and not of the business and it is therefore important "*to distinguish the elements of turnover which reflects the location and nature of the building as opposed to those that reflect the ability (or lack of it) of the proprietor*". The Tribunal held in both cases that Doheny & Nesbitts (Swigmore Inns Ltd) and O'Donoghues (Nallob Ltd.) were both now so long established as landmark pubs that their turnover is less effected by their proprietor than might be the case otherwise.
5. The Appellant evidently spotted an opening in his area whereby he purchased a bus and used it to transport customers to and from the subject property in order to bolster trade. While this action may be innovative, it should not however be overstated as it does not take a significant measure of business acumen to operate a bus service and the provision of a bus service is one which could easily be replicated by a hypothetical tenant. The Tribunal does not accept Mr. Halpin's contention that the operation of such a service places the Appellant in the category of an operator with exceptional business acumen.

The Tribunal finds that no further adjustment needs to be made to the figure arrived at by the Commissioner's method of applying 7% of FMT.

6. The Tribunal is concerned to note that costs relating to the provision of the bus service were not dealt with in the Accounts in the way they should have been. There were no figures provided in the accounts, or indeed to the Tribunal, for petrol, insurance and associated costs.
7. The Tribunal is further concerned to note the lack of inspection of the subject property by the Commissioner. It was admitted in evidence that the property had not been inspected until one month prior to the hearing. The Tribunal is of the view that it is difficult to see how a fully informed decision can be made at any of the stages prior to the hearing if the property has not been inspected by the Valuation Office in a timely fashion, not merely once the Appeal has been assigned a hearing date at a call over. In addition, due to the cursory nature of the inspection, the floor area submitted by the Commissioner was incorrect and had to be agreed with Mr. Halpin during the course of the hearing.

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

And the Tribunal so determines.