

Appeal No: VA17/5/581

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

PAT DUNNE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 1992956, Hospitality at 4.5/1 Woodstock St/Barrack St, Athy, County Kildare.

B E F O R E

Barry Smyth – FRICS, FSCSI, MCI Arb

Deputy Chairperson

Dairine Mac Fadden - Solicitor

Member

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

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF MARCH, 2020

1. THE APPEAL

1.1 By Notice of Appeal received on the 12th 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 €29,200.

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 because:

1. *“The Valuation of the subject property is excessive and inequitable. The property’s value is not in line with its potential rental value.*

2. *The Commissioner's approach to the subject property is flawed. The subject property is a pub in a secondary location in the town of Athy.*
3. *The occupiers family have been involved with the property for 80 years and the current operator has been behind the bar for 32 years. Over this time, they have built up a unique personalised goodwill which cannot be taxed.*
4. *This goodwill is proven by the Commissioner's valuations of virtually every pub in Athy many of which are assessed at a fraction of the subject but are superior premises on Leinster Street.*
5. *The Commissioner is taxing the business and not the property on a vacant and to let basis as set down in the statute."*

1.3 The Appellant in the Notice of Appeal to the Tribunal considered that the valuation of the Property ought to have been determined in the sum of €12,000 and at the hearing put forward a valuation of €19,200

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 €29,200.

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 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 €29,200.

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 7th day of February 2020. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate), B.A. (Mod)

of Eamonn Halpin & Co. Ltd. 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. The Appellant's valuer confirmed that the area off the off-licence is 36.96m² and amended his précis to reflect this. The Respondent's valuer confirmed that the correct description for Comparison No. 4 PN 1992956 in his précis was Doyle's Bar and amended his précis to reflect this also.

3.3 On the conclusion of the hearing the Tribunal requested that any additional material that was available in respect of the sums specified under "other" in the extract from the Accounts and Trading Information included on page 54 of the Respondent's précis be furnished by the Appellant to the Tribunal and also furnished to the Respondent so that it would be clear precisely what was included. This material was received and considered by the Tribunal and no submissions regarding same were received from the Respondent.

4. FACTS

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

4.1 The Property is a residential bar, lounge and off-licence with ancillary storage.

4.2 The Property is held freehold.

4.3 The agreed floor areas are:

Bar/Lounge 152.54m²/Off-Licence 36.96m²/ (Kitchen 6.6m²/Canopy 9.75m²)

4.4 The agreed Turnover for the years 2013 – 2015 is set out in Appendix 1.

5. ISSUES

5.1 The issue that arises in this appeal is the quantum of 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 there were 17 pubs in Athy including the subject Property and that one of these remains under appeal pending determination. Athy was the poorest town in Kildare and one of the poorest towns in Leinster. The subject Property, he submitted is located in one of the poorest streets in Athy.

7.2 He referred to the table of summary information which he had compiled for the 15 pubs whose valuations had been established and as set out in Appendix 2. The Respondent’s representatives had not provided the trading area information and the figures set out in his summary were therefore estimated areas, but they had not been challenged by the Respondent. The average Valuation, excluding the subject and one other property which was under appeal, was €12,773 and the average estimated fair maintainable trade (FMT) was €182,533. He said that what was most apparent from his table was that despite the fact that the subject Property was an average size for on- sales, it had been assessed at 1.65 times the average value for on-sales. The effect of the Respondent’s valuation was suggesting, when compared with the valuations of other pubs in the town, that the hypothetical tenant could rent at least two pubs

in the town for the same price as the subject Property could be rented for. He submitted that this could not possibly be true in the market. The Appellant did not believe that the sums for FMT utilised by the Respondent in fact represented FMT. The Respondent was equating turnover with FMT, which was in effect a taxation of the business. He submitted that the question under the statute is what a hypothetical occupier might be able to achieve, not what the actual occupier is achieving. In the subject's case, the overtrading was down to two factors (1) the long-standing goodwill of the occupiers, being located in the premises since 1936 and with the Appellant behind the bar since 1984 and (2) the fact that the Appellant was willing to work for up to 80 hours per week to drive turnover. As a result, he said the actual trade was significantly inflated.

7.3 The rationale for discounting actual turnover to reflect the business acumen of the occupier, was fully reflected in the Tribunal's recent decisions in respect of pubs in Athy, along with a number of previous decisions such as the VA 14/5/959 Keith Kirwan and VA 17/5/078 Pat Fitzpatrick.

7.4 Based on the Respondent's estimate for the comparisons, it was very unlikely that the hypothetical tenant would pay more than €19,200 for the subject Property. This was made up of €12,600 NAV for the subject Property's on-sales based on a discount of 40% on the on-sales FMT proposed by the Respondent and an NAV of €6,600 for the off-sales based on a discount of 20% on the off-sales FMT proposed by the Respondent. As regards his methodology for arriving at his proposed discounts, he said that he was of the view that the discounts to be applied lay somewhere mid-way between those applied by the Tribunal in Doyle's Bar, which was immediately across the road from the subject Property (VA17/5/145) and in which the Tribunal allowed a 50% reduction and GE Clancy Athy Ltd (VA17/5/129) in which the Tribunal had allowed a 20% discount. He accepted that the subject Property had a larger trading area than both of these but submitted that it was poorer than Clancy's in terms of location.

7.5 In summary he submitted that FMT should not be taken as interchangeable with actual turnover as was highlighted by the Tribunal in the Doyle's and Clancy cases. He was proposing an NAV of €19,200 comprising €12,600 for the on-sales and €6,600 for the off-sales on the basis set out in Part 1 of Appendix 3.

7.6 Under cross-examination, Mr Halpin accepted that there was generally no goodwill attached to off-licence sales. The sales were conducted through what he described as a "hatch" with no separate entrance to the off-licence.

8. RESPONDENT'S CASE

8.1 Mr Power submitted three market rental comparisons as more particularly set out in Appendix 4. He also included in his précis a table of NAV comparators with 16 properties listed by way of evidence of equity and uniformity (Appendix 5).

8.2 He said that the method of valuation used to value the subject Property was well established as per numerous Tribunal judgements and referred in particular to VA95/5/025 (Swigmore Inns Ltd t/a Doheny & Nesbitt) and VA 95/5/0249 (Nallob Limited t/a O'Donoghue's). In both these cases it was held that the profits method of valuation is the preferred method for valuing a licenced premise.

8.3 At the valuation date the hypothetical tenant would have access to the financial statements and trading data on the subject Property and would also have access to the same management and staff of the current occupier. Further the hypothetical tenant could replicate the characteristic skill and approach of the current occupier.

8.4 There was no evidence of anything out of the ordinary within the financial statements that could not be replicated by a hypothetical tenant.

8.5 He referred to Rating Valuation – Principles and practice (3rd edition) by Bond & Brown at page 291 "It may be that the actual tenant is achieving exceptional trade due to personal characteristics of the licensee, who may achieve the additional trade through perhaps being a famous ex-footballer or TV chef, having exceptional personality or business acumen . The likely trade needed for the valuation is what a reasonably competent individual would achieve not what a particular individual can achieve".

8.6 He said that where there was clear evidence that the actual turnover was considerably different from the hypothetically achievable turnover, an adjustment to the supplied turnover may be appropriate. The Appellant had not identified any characteristics which would justify any such adjustment.

8.7 He referred to the decision of the Tribunal in the case VA15/5/036 JRW Ltd (Dan Cronin's Pub) and in which he said that that the Tribunal had noted that there was no entry in the balance sheet in respect of good will. In the case of the subject Property he said that there was no evidence of the extent of the goodwill suggested by Mr Halpin other than his "bare assertion". The current occupier of the subject Property was also a potential hypothetical tenant and any other reasonably efficient tenant occupying the Property would expect to achieve a similar level of trade.

8.8 He said that there is a range of physical factors that affect the value of a pub inter alia, the attractiveness of the property, its location, physical characteristics and size. These attributes are reflected in the actual level of trade achieved on the premises. The level of trade on the subject property is the most reliable determinant of NAV.

8.9 In summary he said that the Appellant had not discharged the required onus of proof. He was proposing an NAV of €21,000 for the on-sales and €8,250 for the off-sales on the basis set out in Part 2 of Appendix 3. He requested that the Tribunal affirm the valuation.

9. SUBMISSIONS

9.1 There were no legal submissions made by either party.

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 Co.Co..

10.2 It was accepted by both parties that 7% of FMT is appropriate in relation to on- sales, and 3% of FMT is appropriate in relation to off -sales reflecting the lower profit margin obtainable on off sales.

10.3 Mr Halpin for the Appellant submitted that this Tribunal should follow the approach of previous Tribunals in the Doyle's and Clancy cases and discount the NAV proposed by the Respondent on the basis that the FMT utilised by the Respondent was significantly inflated as

a result of what he described as overtrading by the Appellant. He contended that this overtrading was down to two factors (1) the long-standing goodwill of the occupiers, being located in the premises since 1936 and with the Appellant behind the bar since 1984 and (2) the fact that the Appellant was willing to work for up to 80 hours per week to drive turnover.

10.4 Having regard to the evidence in this case, it is the opinion of this Tribunal that the subject Property is a long-established Pub with ancillary business from its off- sales offering. The Tribunal cannot identify anything to suggest a special operation. We feel that a competent hypothetical tenant could be reasonably confident of sustaining turnover.

10.5 It is also worthy of note that the two pubs in the town with the highest turnovers are located in Woodstock Street indicating a locational advantage which would attach to the Property rather than the operator.

10.6 The Tribunal does however note that in the agreed turnover figures there has been a reduction in the gross profit margin in the years ending 2013 to 2015. The Tribunal also notes that in determining the NAV for the subject Property, the Respondent had discounted the average drink turnover for the three- year period when calculating the FMT. To reflect the risk of maintaining turnover and margins on on-sales at their current level, the Tribunal finds that a deduction of 10% of the Respondent's FMT in relation to on -sales fairly reflects the risk to a hypothetical tenant. The Tribunal does not accept that there are any distinguishing factors as regards the valuation of the off-sales to justify any change to the Valuation proposed by the Respondent.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation to :

On-Sales €270,000 @ 7% = €18,900

Off-Sales €275,000 @ 3% = €8,250

Equals = €27,150

Say €27,000

And the Tribunal so determines