

Appeal No: VA17/5/551

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

CRESTINGTON BARS LTD.

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 466677, Hospitality at Killinarden Shopping Centre, Tallaght, Dublin 24.

B E F O R E

Hugh Markey- FSCSI, FRICS

Deputy Chairperson

Michael Brennan – BL, MSCSI

Member

Sarah Reid - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF FEBRUARY, 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 €135,000.

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 applied by the Commissioner is not in line with its potential rental value.*

2. *The subject property was purchased at auction for €493,000 in September 2016. After almost a year, the occupiers trading is approaching €1,000,000 inclusive of VAT (ca. €770,000 exclusive of VAT). This is arguably one of the poorest pubs in one of the most disadvantaged areas in South Dublin.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €69,300.

2. REVALUATION HISTORY

2.1 On the 13th day of April 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 €135,000.

2.2 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €135,000.

2.3 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 29th day of November 2019. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin and Co. 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.

The premises under appeal comprise a 2-storey structure constructed in 1978, part of a small local neighbourhood shopping centre in Tallaght. The ground floor is used as a bar and lounge with a commercial kitchen and toilets on the ground floor. The first floor was in use as a bar until 2001. It is being converted to residential use.

4.2 The areas were agreed:

Ground floor:

Bar	118.82 sq. m.
Lounge	226.18 sq. m.
Canopy	31.32 sq. m.
Stores	83.23 sq. m.
Kitchen	26.46 sq. m.

Total trading area: 338.01 sq. m.

4.3 The property is freehold.

5. ISSUES

5.1 The sole issue is one of quantum.

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 outlined how the property was constructed in 1978 and was purchased, at auction, in September 2016 for €493,000. He outlined how there were once 8 pubs in Tallaght and how the city of Limerick had more than 300 pubs serving a similar population. He gave evidence that many of the pubs in Tallaght had ceased to trade and were developed for other uses. He cited The Belgard Inn, The Cuckoo’s Nest, The Traders and The Fortunestown Inn as examples. He posited societal change and other factors for a change in the pattern of the licensed trade. He outlined how the establishment had been purchased in September 2016 and was uncertain but believed it may have not been trading at the time.

7.2 He suggested the Respondent would not consider the accounts for the business and the purchase price was indicative of the standard and level of trade achievable; West Tallaght where this pub was located, was a particularly disadvantaged area.

7.3 He indicated that turnover was not available for the relevant period, but the accounts were available for 2017 and 2018 and it would be possible to extrapolate from these to arrive at an estimate of Net Annual Value. He suggested that if one were to consider the purchase price and apply an appropriate yield or adopt a percentage of turnover, the Respondent’s opinion of value was totally unsustainable.

7.4 Mr Halpin outlined how the Respondent had valued all pubs in South Dublin on an FMT basis as of 30th October 2015.

7.5 Mr Halpin outlined how the turnover for 2016 was €797,208 (on-sales); €106,698 (food) and €105,929 (off-sales). The equivalent figures for 2017 were: €953,398; €123,798 and

€111,035. He suggested 8% as being the appropriate percentage to apply to the turnover of the subject, due to the fact that the majority of trade was in pints and the nature of the area.

7.6 He noted that the Respondent ruled out a consideration of the accounts for the business, which had been supplied and suggested the Respondent's view on value was unsustainable. He relied on 8 comparators in various locations in South Dublin to support his opinion of value, suggesting that if the Tribunal did not find the accounts to be of assistance, the tone of the list valuations of the comparables set a range of €52,000 - €85,000, into which the subject property should fall.. He had turnover information on 3 of these and suggested they were valued at 9% of on-sales turnover. He relied on others in terms of their location or style of trading to suggest that the instant property could not have a valuation higher than these comparisons. He introduced a number of rental comparisons to support his opinion.

7.7 His opinion of Net Annual Value as of 30th October 2015 is:

On-sales €800,000 @ 8% €64,000

Off-sales €105,000 @ 4% €4,200

Food €106,000- first €100,000 = €6,000 @ 5% €1,200

Total NAV €69,400.

7.8 Under cross examination from the Respondent, Mr Halpin defended his estimate of value on the basis that this was a unique property and location in a deprived area. He confirmed that he had limited evidence to support the value for which he contended; he was unaware of any pubs valued at 8% of on-sales but re reiterated his view that the subject was unique in many respects.

8. RESPONDENT'S CASE

8.1 Mr Power, on behalf of the Respondent, outlined how, following an analysis of financial information, compared with the available rental information informed the application of a percentage to be applied to Fair Maintainable Trade (FMT). For South Dublin, this was in the range 9-10%.

8.2 He evidenced that no trading information for the subject was supplied for 2015 and the 2017/2018 accounts supplied were beyond the one year allowed (by the Respondent) to allow them to be considered.

8.3 The Respondent's estimate of NAV was based on 2 'informers'; both of which had been let. The NAV in each case corresponded with the annual rent payable. He further evidenced the NAV's of the 8 pubs in Tallaght, all of which were valued at 9% of FMT and of which 3 were under appeal. He noted the range of NAV's was €85,000 - €364,000.

8.4 In response to arguments put forward by the Appellant, he suggested that the use of the profits/turnover method of valuing pubs was one that had been affirmed in a number of Valuation Tribunal judgments. He further suggested that a notional tenant, on the valuation date, would have access to the trading data of the subject and also be in a position to retain the staff.

8.5 He suggested these factors had been taken into account in valuing the subject, albeit trading information was not available for that particular period; the subject was valued in line with other pubs in the locality.

8.6 Mr. Power contended for a NAV of €135,000; he did not provide a breakdown as to how this figure had been arrived at. Mr Power was examined on his evidence, in some detail, by Mr Halpin and maintained his opinion of value was viable and/or justified in the circumstances.

Summing Up

8.7 In summing up, Mr Halpin suggested that the proposed NAV was 'troubling' given the wealth of information available in the Tallaght area and there was nothing to justify this level. He said the valuation 'flew in the face' of the available rental evidence. He said there was one fact and that was the purchase price of €493,000, close to the valuation date. Further Mr. Halpin argued the Respondent had actual turnover figures available but chose to ignore these in its calculations.

8.8 Mr Power, in summing up, suggested the onus was on the Appellant to make their case and suggested this had not been achieved. He said a hypothetical tenant would have paid the

suggested level of rent; the valuation was in line with the comparisons and was 'fair and equitable'.

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 South Dublin County Council.

10.2 The Tribunal finds that the Respondent has chosen to ignore actual financial information which, had it been considered (with appropriate adjustment), would have allowed it to arrive at a fair and equitable valuation of the subject based on verified trading figures rather than speculative projections of same. There was no evidence that the subject was trading at the valuation date and in circumstances where it was unclear if the subject property was trading at the valuation date, cognisance should have been taken of the available financial information which would confirm the position as this would instruct a reading of FMT and the attractiveness of the property to a hypothetical tenant. Furthermore, it would appear that the NAV proposed by the Respondent suggests a level of turnover which is much higher than that actually achieved in subsequent years, given the trading information to hand.

10.3 The Tribunal finds the most realistic approach is to take a level of turnover based on what was known to be achieved in subsequent years and apply a multiplier, as is the practice generally. The Tribunal sees no reason to deviate from the generally applied percentages of 9, 4 and 7 applied to on-sales, off-sales and food sales (disregarding the first €100,000). It has further decided to adopt turnover figures of €900,000 (on-sales); €110,000 (off-sales) and €110,000 (food). These are estimates based on the evidence placed before it.

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 €86,000.

On-sales €900,000 @ 9%	€81,000
Off-sales €110,000 @ 4%	€4,400
Food sales €110,000 - €100,000 = €10,000 @ 7%	<u>€700</u>

NAV €86,000

And the Tribunal so determines.