Appeal No: VA17/5/592

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

SD ENTERTAINMENTS LTD **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of
Property No. 2174333, Hospitality at Liffey Valley Shopping Centre, Lucan, County Dublin.

B E F O R E

Hugh Markey –FRICS FSCSI **Deputy Chairperson**

Claire Hogan - BL **Member**

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

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF JUNE, 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 €209,000.

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 value.*

2. *The subject property was sold to the current occupiers in April 2017 for €950,000. The Commissioner's estimate of rental value implies a yield of 22% which is not remotely in line with expected yields. The subject property is occupied on a related parties rent at €150,000 and in reality based on the actual turnover (for the 5 months of the current occupiers operation) the property would not exceed €134,300 by the Commissioner's own turnover formula."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €134,300.

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 €209,000.

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 €209,000.

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 28th day of February, 2020. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate), BA. (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.

4. FACTS

4.0 From the evidence adduced by the parties, the Tribunal finds the following facts, after some discussion and agreement between the parties at the hearing.

4.1The property is a substantial bar, with a function area and takeout unit over three levels with a trading area of 929.62sq. m. There are ancillary areas extending to 247.22sq. m. The areas have been agreed.

4.2 The property is held on a related parties lease. It was purchased as one of a bundle of properties, on the site, in April 2017 at a price of €2,625,000 for the three; Lemongrass Restaurant, Paddy Powers Bookmakers and the subject. The subject property was then leased back to the occupier by the purchasers at an annual rental of €150,000 under a 15 year lease from 7th of May 2017.

4.3 The property subsequently ceased trading approx. 18 months later, on 30th December 2018 and was placed on the market for letting.

4.4 There were some turnover figures presented on behalf of the Appellant; CTO for 2018 and CTO for 1/4/17 to 31/12/17 (9 months). Also the trading figures for drink, off sales and food turnover were submitted in evidence. The gross profit margin figures for the years ending 2013/2014/ 2015 and 2016 were proffered by the Respondent.

5. ISSUES

The issue before the Tribunal is one of quantum.

5.1 The valuation is believed to be excessive and inequitable. The Appellant argues that the property's value, as applied, is not in line with its potential rental value.

5.2 The subject property was sold to the current owners in April 2017 for €950,000.The Appellant argues that the Commissioner's estimate of rental value implies a yield of 22%, which is not remotely in line with yield expectation. The Appellant further argued that the subject property was occupied on a related parties rent of €150,000 and that in reality, based on the actual turnover (for the 5 months of the Appellants' operation), the property's rental value would not exceed €134,300.

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 pointed out that this property is of a significant size but limited trading figures were available to the Appellant prior to their purchase in April 2017. He felt that as the property has closed in December 2018, this was proof that the Commissioner's estimate of FMT is unsustainable.

7.2 Mr Halpin gave four examples of suburban Dublin pubs that have similarly ceased trading and have subsequently been redeveloped for alternative uses indicating, in his view, that this pub type is outdated and obsolete in essence. This he regards as being further evidenced by the selling agent describing the property as having potential as a car showroom or retail warehouse in their marketing campaign. He felt this marketing to be unique to this property.

7.3 Mr Halpin also questioned the validity of the FMT system of percentages applied to Fair Maintainable Trade (FMT) as follows:

10% applied to Drink-On sales

4% applied to Off sales

7% applied to Food sales

He suggested a figure of 9% for drink on sales would be fairer, in this instance.

7.4 The Appellant went on to offer five market comparisons;

1. Comparison 1, PN 459369, was a significantly smaller residential type pub along the N4 with a large lunchtime food trade: NAV €52,000.
2. Comparison 2, PN 2186394, was a larger similar sized pub/nightclub however with no food or off sales offering: NAV €62,500
3. Comparison 3, PN 444226, was a small residential bar with no function or food business: NAV €50,000
4. Comparison 4, PN 211052,3 was a very well run suburban bar/restaurant within a smaller suburban shopping centre. Again, no function room or off sales were noted: NAV €125,400
5. Comparison 5, PN 2150857, was another bar/restaurant in a suburban location with no function or off sales business: NAV €172,200

7.5 Mr Halpin concluded by reaffirming his valuation of NAV €134, 300.

7.6 In his later summary, Mr Halpin reaffirmed that in his opinion the FMT figure suggested by the Respondent was unsustainable. He was of the opinion that this was confirmed by his comparisons. He informed the Tribunal that off sales at this property were the 'star performer' and when they dwindled, so did the business. Mr Halpin reaffirmed his opinion that the property had a good operator but was in a bad location. He repeated his view that the percentage applied to on-sales in this case should be 9%. He concluded by suggesting the FMT should be taken as the actual turnover figure at the relevant date of valuation.

8. RESPONDENT'S CASE

8.1 Mr Power opened his case by suggesting that the method of valuing pubs was well established and cited two judgements of the Valuation Tribunal:

VA95/5/025 Swigmore Inns Ltd t/a Doheny and Nesbitt's Baggot St, D2 and

VA95/5/024 Nallob Limited t/a O'Donoghues, Merrion Row, D2

He said both judgments indicated the profits method as being the preferred method of valuation for valuing licensed premises.

8.2 These Tribunal judgments determined *inter alia*:

1. That no allowance was warranted for the fact that both premises are landmark Dublin pubs,
2. Pubs, bars and nightclubs are among the types of property generally referred to as trade related property. They are normally bought sold and leased having regard to their trading potential. A hypothetical tenant will estimate the level of trade he would anticipate to achieve in the premises and base his bid on this trade. The primary factor in the hypothetical tenant's mind, when assessing what he can afford to pay, is the level of trade he can generate.

8.3 Other determinations confirming the profits method of valuation by the Tribunal are;

VA.14/5/914 Oarlands Taverns (Oarsman Ringsend) and

VA.14/5494 O'Connell St Inns Ltd (Murrays Connell St Dublin).

Both confirmed the profits method as accepted by the Tribunal.

Mr Power outlined how, of the licensed premises in the South Dublin County Council administrative area, nine had been the subject of Valuation Tribunal decisions and the percentages applied to the turnover by the Respondent of the various elements of the business had been upheld in each case.

8.4 At the valuation date, the hypothetical tenant would have access to the financial statements and trading data of the premises. The hypothetical tenant would also have access to the same management and staff as the current occupier. He can choose to hire these people if he wishes. Mr Power outlined the certified trading information supplied by the then occupier (see Appendix 1). The turnover for Drink-On, off sales and food covered the 3 years prior to the valuation date. Based on the figures supplied, the Respondent had estimated the FMT for each of the 3 categories of trade and applied multipliers of 10%; 7% and 4% respectively. On this basis, the NAV of €209,000 was derived.

8.5 Mr Power stated that there are a range of physical factors that affect the value of a public house *inter alia*, the attractiveness of the property, its location, physical characteristics and size. These attributes of the premises are reflected in the actual level of trade achieved in the premises.

8.6 Mr Power stated that, without actual trading information from the relevant years, these factors have been taken into consideration when valuing the premises on an estimated basis. The valuation is in line with similar developments in the locality.

8.7 The Respondent went on to use two market rental comparison;
Comparison 1 was a suburban pub with drink on sales only - PN407524,
Comparison 2 was previously used also by the Appellant and had no function or off sales aspect: PN 459369.

8.8 Mr Power introduced six rated NAV properties for consideration;
PN 459282: NAV €243,000
PN 457369: NAV €200,000
PN 2149825: NAV €253,000
PN 445877: NAV €185,000
PN 2110523: NAV €125,400
PN 484313: NAV €199,500.
Mr Power concluded by putting forward his estimate of the Net Annual Value of €209,000.

8.9 During his summing up, Mr Power contended that the valuation in this matter was fair and equitable. He suggested the onus was on the Appellant to disprove the valuation. He said the valuation was based on actual figures supplied and it was 'unfair' to consider turnover figures from times after the relevant date. He went on to say that he had no idea of the breakdown of the purchase price as between the various elements. Finally, he suggested the NAV of €209,000 was fair and equitable and asked that the Tribunal dismiss the appeal.

9. SUBMISSIONS

9.1There 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 onus in this case, as in every appeal, is on the Appellant to prove that the valuation placed on the property by the Respondent should be disturbed. The Tribunal noted that the Appellant placed much weight on the purchase price of the property – this, in his view, indicating its actual market value. The property was purchased as one of a number of actual/potentially rent producing properties and the subject was then let to a related party on a 15 year lease. The Tribunal prefers the Respondent's view; that a simple analysis of the purchase price to derive a notional rental value is not a reliable method of arriving at the NAV. This is particularly so in the light of the availability of the actual trading figures for the business at the relevant time.The usual practice of applying a percentage to the FMT of the various elements of the business is usual practice in these circumstances and no evidence was given as to why there should be a departure from this practice. The Tribunal did recognise that some adjustment to the percentage applied to the Drink-On sales FMT was necessary in order to arrive at a fair NAV, given the particular circumstances as outlined by the Appellant.

10.3 The Tribunal believes that an average of the actual three years of turnover, as certified on behalf of the Occupier, should be used as the established FMT. The Tribunal notes the percentages adopted by the Respondent in the comparisons provided varied, with some valued at 9% and some at 10% of Drink On-sales FMT and the Tribunal determines, in the absence of an explanation for this variation that the lower rate of 9% be applied to Drink-On sales in the instant case with 7% applied to Off sales and 4% to Food turnover. The Off sales FMT has been agreed between the parties and the Tribunal adopts the Respondent's FMT figure for Food.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and reduces the valuation of the Property as stated in the valuation certificate to €191,000.

Drink FMT: average turnover (y/e 31/08/2013–y/e 31/08/2015) €1,245,621 @ 9% = €112,106

Drink Off-sales 2013/14/15 FMT –€400,000 (agreed) @ 4% = €16,000

Food 2013/14/15 FMT --€900,000 @ 7% =63,000

Total	€191,106
Say	€191,000

And the Tribunal so determines.

APPENDICES

APPENDIX 1

TURNOVER; THE APPELLANT.

APPENDIX 2

THREE YEARS Certified Turnover as certified by the Occupier's accountant.