

**Appeal No: VA17/5/1151**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**DAVID ANDERSON**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 1992772, Pub at 3 Emily Square, Athy, County Kildare.

**B E F O R E**

**Barry Smyth – FRICS, FSCSI, MCI Arb**

**Deputy Chairperson**

**Caroline Murphy - BL**

**Member**

**Fergus Keogh – MSCSI, MRICS**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 4<sup>TH</sup> DAY OF JANUARY, 2021.**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 12<sup>th</sup> 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 €39,900.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

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 occupier's family have been involved with the property for almost 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.
3. This goodwill is proven by the Commissioners valuations of virtually every pub in Athy many of which are assessed at a fraction of the subject but are similar sized premises in good locations on Leinster Street.
4. 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 considers that the valuation of the Property ought to have been determined in the sum of €27,500.

## **2. REVALUATION HISTORY**

2.1 On the 10<sup>th</sup> 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 €39,900.

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 it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €39,900.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> day of October, 2015.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of a remote hearing on the 19<sup>th</sup> day of August, 2020. At the hearing the Appellant was represented by the Mr Eamonn Halpin BSc (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 been affirmed, adopted their précis as their 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:

i) The property is located on Emily Square in the centre of Athy, close to Leinster Street, the town's main retail street. Athy has a population of 9,900.

ii) The property comprises a three storey, mid terrace building with the following trading areas:

Ground floor bar/lounge area	108.26 sq. mts.
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Stores	36.66 sq. mts.
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iii) This is very much a traditional pub with no food trade and trades for normal trading hours.

iv) The turnover is predominately bar trade with an off-licence element and also sales of kegs to offsite locations. The turnover is set out in the Appendix to this Judgement.

v) The Title to the property is Freehold and it is owner occupied.

#### **5. ISSUES**

5.1 Both the Appellant and Respondent valued the property on the basis of Fair Maintainable Trade (FMT), the significant difference being the estimates of Fair Maintainable Trade of the bar trade. The off-licence and keg trade FMTs were agreed.

5.2 The Parties were also agreed that the applicable percentage to apply to the FMT to estimate the net annual value is 7% on the bar trade and 3% on the off sales FMT, although the Appellant reduced this figure to 1.5% for the keg sales element.

#### **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**

Mr. Halpin in his Précis and in his oral evidence noted:

7.1 That Athy is known nationally as the poorest town in Kildare and one of the poorest towns in Leinster.

7.2 The Subject Property is one of seventeen pubs in the town, thirteen of which are directly visible from Leinster Street, including five located around Emily Square.

7.3 The Subject Property is smaller than average in terms of trading area for on sales and also has a very small off-licence area.

7.4 That the property is successful and that this is as a result of the goodwill of the operators, David & John Anderson who are second and third generation publicans, the same family having occupied the premises since the 1940s.

7.5 That pub values in Athy are very modest, with one on Leinster Street let at €11,700 per annum in 2013, but now vacant and Kane’s also on Leinster Street with a trading area similar to the Subject available at €18,000 per annum, and that Murphy’s also on Leinster Street is for sale at €400,000.

7.6 That the following questions are relevant

- a) Does the occupier's actual turnover represent the Fair Maintainable Trade? and
- b) Does the figure arrived at by the Commissioner's method of applying 7% of FMT yield a fair rent or does a further final adjustment need to be made?

7.7 That the Tribunal made the following reductions from the Commissioner's estimate of FMT in determining the NAV: VA17/5/129 GE Clancy, Leinster St. Athy 20% ; VA17/5/145 Doyle's Bar, on Woodstock Street Athy 50% ; VA17/5/581 Pat Dunne, also Woodstock Street 10% .

7.8 That in the Pat Dunne judgment the Tribunal had stated that it is 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.

7.9 That these Tribunal judgments reflect the Tribunal's approach in other previous cases such as VA14/5/959 Keith Kirwan and VA17/5/078 Pat Fitzpatrick.

7.10 In tabular form, a copy of which is attached in the Appendix to this Judgment, the Valuations of all 17 pubs in Athy including the estimated FMT, the estimated trading area and the distance from the subject property.

7.11 That the property's value lies between that of Ann's Place, which has a NAV of €10,600, and the CI Bar which has a NAV of €18,200, being similar in size to Ann's Place and significantly smaller than the CI Bar

7.12 That although the subject property is smaller than the average size for on-sales area, it is assessed at 2.65 times the average value for on-sales.

7.13 He did not accept that the estimate of FMT at €500,000 by the Respondent represents the true FMT and noted 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 case the over trading is down to two factors.

1) the long-standing goodwill of the occupiers due to the family having been the owners and operators since the 1940s and

2) the current operator is willing to work up to 80 hours a week to drive turnover.  
As a result, the actual trade is significantly inflated.

7.14 He noted the very small off-sales trading area and that the property had not been re-fitted since the 1960s.

7.15 In cross examination he stated that the exceptional attribute of the operator is that he is a very warm individual and customers enjoyed going into the premises and that his father had a particular interest in horses which had generated an element of goodwill.

He stated that he had been guided in his assessment of the valuation by the actual property and the Tone of the List and had looked at the Emigrant Bar, CI Bar and Ann's Place and this led him to his conclusions.

He accepted that the range of reductions by the Tribunal in the previous 3 cases in Athy had ranged from 10% – 50% but did not accept that that was appropriate in the current case because of the tone of the Emigrant and the CI Bar etc.

He stated that the Tribunal said that Woodstock Street was the best location in the town.

## **8. RESPONDENT'S CASE**

Mr Power in his precis and oral evidence stated;

8.1 That public houses, bars and night clubs are among the types of property generally referred to as trade related property and that they are normally bought, sold and leased having regard to their trading potential and that a hypothetical tenant will estimate the level of trade that can be achieved on the premises and base his rental bid on that.

8.2 At the Valuation Date, the hypothetical tenant would have access to the Financial Statements and trading data on this premises. The hypothetical tenant would also have access to the same management and staff as the current occupier. It is always assumed that the hypothetical tenant will seek to maximise the potential turnover of the premises and he can replicate the characteristics, skill and approach of the current occupier.

8.3 That Bond and Brown, Third Edition, Principals and Practices Rating Valuation dealt with the effect on turnover of an operator having exceptional personality or business acumen. He referred to the Tribunal judgments in Nallob Limited, t/a O'Donoghue's Merrion Row (VA95/5/024) and Swigmore Inns Limited t/a Doheny & Nesbitt (VA95/5/025) and the Tribunals comment that each of these pubs was so long established as a landmark pub that its turnover is less effected by its proprietor than might be the case otherwise. He stated that the Appellant had not identified any characteristics that would suggest that an adjustment from the turnover was appropriate in the instant case and that there was no special factor affecting the FMT and he said that the actual level of trade on the subject premises is the most reliable determinant of Fair Maintainable Trade.

8.4 In cross examination, Mr Power stated that he had not used the CI Bar and Ann's Place as comparables as he had used closer comparables and Tribunal decisions, while accepting that the CI Bar and Ann's Place are in basically the same location as the subject. He noted that the CI Bar valuation had been based on trade information. He accepted that Woodstock Street achieves higher levels of turnover than many other locations in the town. He did not accept that the high level of turnover in the subject premises shows that the present operator is an exceptional trader but that this is a well-established pub that has been there for 80 years.

8.5 He accepted that the turnover of the premises was the highest in Athy and that is because it is well run and well established and noted that one pub in four in Athy does better than the others and there is no unique reason. He did not accept that the property was over trading when compared with the CI Bar but rather that it had an established turnover and was many years (80) in operation. He could not state why Andersons was the pub to go to but was confident that the turnover could continue. The property has no exceptional physical attributes, but the trade is an important part of its value and it is more valuable than other pubs in the town because there is a well-established trade. Trade is the first thing that the hypothetical tenant would look at.

8.6 He contended that he had made a fair and equitable reduction from the actual turnover to the assessment of the FMT.

8.7 In response to a question from the Tribunal, he stated that he would provide, where he had them available, the floor areas of the comparisons and whether or not actual trade figures had

been provided and this information was provided promptly to the Tribunal. He stated that he had not provided key rental transactions in Athy because there were no suitable comparables.

## **9. SUBMISSIONS**

9.1 Mr Halpin in summing up stated that the building being assessed has no outstanding features and the Act provides that the rent is for the building and its licence and that the Commissioner had no statutory power to assess the business. He said that there is little difference between this bar and the CI Bar and Ann's Place and the NAV assessment of €39,900 is remarkable. He added that there are 17 pubs in Athy for a population of 9,900 in a deprived area. The subject valuation is simply wrong.

9.2 Mr Power in summing up asked the Tribunal to affirm the Valuation and stated that the onus of proof that the valuation is wrong is on the Appellant and he has not done so. The hypothetical tenant would achieve the Fair Maintainable Trade. It should be noted that 4 out of 17 pubs appealed to the Tribunal had alleged goodwill issues but this had not been accepted by the Tribunal in its various decisions. This is a well-established bar that has had no significant investment, yet turnover had been maintained and the hypothetical tenant could also maintain the turnover.

9.3 There were no legal submissions made by the parties.

## **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 County Council.

10.2 The Tribunal has examined the particulars of the property and considered the written and oral evidence adduced by Mr. Halpin on behalf of the Appellant who contended for a revaluation of €27,500 and Mr. Power on behalf of the Respondent who sought confirmation of €39,900 NAV.

10.3 The parties gave details on the various public houses in Athy which was very helpful to the Tribunal and gave an overview of the nature of the pub business in the town. The lack of



market rental information was noted as both parties had little or no suitable information with regard to actual rents achieved in the town.

10.4 In VA 17/5/581 Pat Dunne, the Tribunal did not state that Woodstock Street was the best location in the town but rather noted that the highest levels of turnover were in Woodstock Street. This was before evidence in the subject case was heard.

10.5 As noted above, the only issue to be decided here is on what level of Fair Maintainable Trade the hypothetical tenant could rely upon. Utilising FMT is a long-established basis of valuation in licensed premises and other trade related premises and in this case it is the basis each party has used. It is noted that it is the building that is to be valued and not the business and therefore the personal goodwill of the operator must be ignored. The current proprietors are obviously very diligent business people and pleasant personalities doing the job of running this pub very well and while noting that this has been a family business for 80 years it is not proven to the Tribunal that the current proprietors have unique attributes that could not largely be repeated by the hypothetical tenant.

10.6 It is obvious from the comparisons produced that many pubs in Athy have failed or are failing and it appears that trade is concentrating in a smaller number than the 17 total number in the town. It is apparent from many of the photographs attached to the comparisons supplied that many of the comparisons are either closed or very run down and it is noted that many were not open for trade at normal daytime hours when inspected by the Respondent.

10.7 However, from the turnover as confirmed by the business' accountants, it is clear that this pub is one of the survivors and there must now be a greater emphasis on the pubs situation, and its location rather than the proprietors.

10.8 In view of the affirmed turnover figures the Appellant's estimate of the FMT is unrealistically pessimistic and the Respondent's estimate is more realistic. We note the Respondent's reference to Nallob Limited and Swigmore Inns Limited and the Tribunal's statement in those cases that the two pubs were so established as landmark pubs that their turnover is less effected by their proprietors than might be the case otherwise. The Subject Property, although not in the landmark category of the two noted above, has clearly established

a draw and a strong turnover over a long period of time that a reasonably competent hypothetical tenant could be confident of largely maintaining.

10.9 However that is not to say that the hypothetical tenant would not have an element of risk in relation to the FMT and the Respondent's suggestion that the hypothetical tenant could retain the same management is probably unrealistic in light of the family business nature of the undertaking. The Tribunal is of the view that a slightly greater reduction from the turnover to Fair Maintainable Trade than allowed for by the Respondent is appropriate to reflect this risk and therefore reduces the Fair Maintainable Trade from €500,000 to €450,000.

10.10 The Tribunal accepts the Appellants contention that keg sales are done on a wholesale basis and therefore reduces the percentage applicable to that element by half.

#### **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 €35,500. This is calculated as follows:

FMT	€450,000 @ 7%	€31,500
Off sales	€100,000 @ 3%	€ 3,000
Keg Sales	€65,000 @ 1.5%	€ 975
Total		€35,475

Say €35,500

And the Tribunal so determines.