

**Appeal No: VA17/5/053**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**THOMAS CLERKIN  
AND JOHN CLERKIN**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 1137408, Off-Licence, Pub at 5 Church Street, Carlow, County Carlow.

**B E F O R E**

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

**Deputy Chairperson**

**Dairine Mac Fadden - Solicitor**

**Member**

**Michael Brennan – BL, MSCSI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 3<sup>RD</sup> DAY OF MARCH, 2021.**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 29<sup>th</sup> day of September, 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 €22,000.

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 : “*Valuation too high*”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €11,000.

## **2. REVALUATION HISTORY**

2.1 On the 25<sup>th</sup> day of May, 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 €22,000.

2.2 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €22,000.

2.3 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 25<sup>th</sup> day of November, 2020. At the hearing Mr. Thomas Clerkin attended as the Appellant and the Respondent was represented by Mr. Adrian Power Kelly FRICS, FSCSI, ACI Arb, RICS Reg Val 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**

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

4.1 The property comprises an end terrace licensed premises and is located at 5 Church Street Carlow, Co. Carlow and has return frontage to Centaur Street;

4.2 The accommodation comprises a bar, lounge and function room at ground floor level together with a keg room and ancillary accommodation to the rear of the property;

4.3 The property is owner occupied;

4.4 There was no dispute relation to the floor areas as follows:

<b>Accommodation</b>	<b>SQ M (Net Internal Area)</b>
Public Bar	45.50
Lounge / Function Room	118.03
Keg Stores	40.86
Lobby	4.53
Boiler House	9.00
<b>Total</b>	<b>217.92</b>

4.5 Turnover details were not provided by the Appellant during the revaluation process. However, during the course of the appeal and prior to the hearing, the Appellant provided details of turnover for the financial years 2013, 2014, 2015 and 2016 to the Respondent and are set out in **Appendix 1** hereto.

## **5. ISSUES**

5.1 The main issue between the parties is the assessment 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 Clerkin, for the Appellant, adopted his précis of evidence and contended for a valuation of €11,000 which he believed was a more realistic, affordable and manageable cost for the business.

7.2 Mr Clerkin provided some background information in relation to the current ownership. He confirmed that he and his brother Mr. John Clerkin inherited the subject property from his mother who died in 2015 and now operated the business carried on in the subject property. He stated that they have received limited information in relation to the revaluation process and did not make representations for this reason.

7.3 Under cross-examination Mr Clerkin confirmed that he received the valuation certificate. He also confirmed that he received the LP1 form from his brother but after the expiry of the time to make a submission.

7.4 When questioned by the Respondent's representative he confirmed that he submitted financial statements and details of turnover to the Respondent as set out in more detail in **Appendix 1** hereto. He confirmed under cross-examination that it was his evidence that the valuation of €22,000 was not affordable and he believed that the valuation is higher than it should be because turnover had reduced.

7.5 He confirmed to the Respondent under cross-examination that the turnover figures supplied by him were accurate but it was his view that they were not relevant because he was not the owner at the valuation date.

7.6 Mr Clerkin also confirmed under cross-examination that the Respondent inspected the property in 2018 and when questioned regarding his opinion of the correct valuation he confirmed that it was €16,000 to €17,000 at present.

7.7 In summarising his case, the Appellant confirmed that the rates equate to €5,700 based on the current valuation. He said that while the comparisons submitted by the Respondent are higher than the subject property he believes they are over assessed. He confirmed that the rates have increased as a result of the revaluation but the turnover has gone down and the valuation

has to be overvalued if turnover is down. In relation to NAV comparison 1 provided by the Respondent, he confirmed that it was his belief that this business was doing triple the turnover of the subject property and yet was only paying in the region of €6,000 in rates. He confirmed that NAV comparison 2 was the most similar to the subject property and he believed them to be paying rates of €4,600. He opined that the other six comparisons provided by the Respondent were all undervalued.

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

8.1 Mr Adrian Power-Kelly, for the Respondent, adopted his précis of evidence and contended for a valuation of €22,000 based on his estimation of the Fair Maintainable Trade (the "FMT") of the business.

8.2 Mr Power-Kelly confirmed that no representations were received and that no turnover figures were provided to them by the Appellant until appeal stage (see below 8.6). He confirmed that turnover for the year end 26<sup>th</sup> August 2015 was for a 16 month accounting period.

8.3 The Respondent relied on eight properties in the area that were all valued on a FMT basis with NAV's ranging from €18,000 to €69,800. Details of the NAV comparisons provided by Mr Power-Kelly are set out in **Appendix 2** hereto.

8.4 In relation to his NAV comparison 1 and 2, Mr Power Kelly confirmed that they were located on the opposite side of the square to the subject property. He confirmed that they received turnover figures for both of these comparisons which were valued at a rate of 0.08 of the FMT. In relation to NAV comparison 3, he also confirmed that they received turnover figures and there was no appeal to the valuation of 0.08 of the FMT. He also relied on NAV comparison 4 which was located on the old Dublin Road and at the hearing amended his précis to state that the NAV of this was €50,000, being at a rate of 0.08 of the FMT NAV comparison 5, on Dublin Street was also valued on the same rate of 0.08 of the FMT. He confirmed that they did not receive turnover figures for either of them but that there were no representations and no appeal in relation to the valuation of 0.08 of the estimated FMT.

8.5 In relation to NAV comparison 6, Mr Power-Kelly confirmed that this was located on the Main Street. He confirmed that it was subject to appeal by the Valuation Tribunal and that the

valuation was affirmed on appeal. He confirmed that turnover figures were provided and that it was valued at 0.08 of the FMT for drink sales. In relation to NAV comparison 7, Mr Power-Kelly confirmed that this was a nightclub venue and valued at 0.09 of the FMT to reflect the nature of the business and operation. He further confirmed that they were supplied with limited financial information by the occupier but that the valuation was based on higher estimated turnover than the financials provided to them. In relation to NAV comparison 8 as relied on by the Respondent, he confirmed that they received no representations or appeal in relation to the estimation of FMT which was valued at a rate of 0.08 relation to drinks sales.

8.6 Mr Power-Kelly confirmed that the LP1 form was not returned by the Appellant in this case and that the financial information in relation to turnover was provided in 2020 and not in 2016. Having received financial information subsequent to the valuation, Mr Power-Kelly stated that he saw no reason to alter his estimate of FMT and that the valuation as estimated by them was correct.

8.7 Under cross-examination, the Appellant referred Mr Power-Kelly to number photographs that were taken by him at the time of this inspection. Mr Clerkin put it to him that the photographs show evidence of no trade as they were taken on a Friday afternoon at 14.40 p.m. with only the proprietors and their accountant present. Mr Power-Kelly was unable to recall the time of the photographs but confirmed that the valuation was assessed on an estimated FMT which he saw no reason to alter in light of the financial statements provided by the Appellant. He further confirmed that the valuation date was October 2015 and the certificate issued in 2016, based on the estimated FMT.

8.8 The Appellant put it to Mr Power-Kelly that his NAV comparison no 1 was a business with three bars, smoking area and 15 beds, in use as a bed-and-breakfast, yet it only had a valuation of €26,000. Mr Power-Kelly confirmed that the bed-and-breakfast was not valued under the Act and the FMT valuation was only based on licensed trade. In relation to NAV comparison no 4 provided by the Respondent, the Appellant suggested that this property received income from car parking and was the fourth best pub in the town, to which Mr Power Kelly replied by confirming that the valuation was based on licensed trade only. In relation to NAV comparison no 7, the Appellant stated that it was unlikely to open again, to which Mr Power-Kelly replied by stating that it was open at the valuation date and assessed on this basis.

8.9 Mr Clerkin questioned Mr Power-Kelly as to whether the comparisons are assessed by the Respondent or based on the financial information relating to each of the businesses. In response, Mr Power-Kelly confirmed that turnover figures were applied where appropriate but in some cases were disregarded. When further questioned as to what was disregarded, Mr Power Kelly confirmed that NAV comparison no 7 was a case where the Respondent disregarded the turnover information supplied.

8.10 Mr Clerkin also put it to Mr Power-Kelly that a new dance floor had been put in the subject premises in 2016, but Mr Power-Kelly said that as this was after the valuation date, it was not relevant for the purposes of this appeal.

8.11 When questioned by the Tribunal regarding rear access to the comparisons, Mr Power-Kelly confirmed that NAV comparison 1 & 4 had rear access but he was unaware what rear access was available to the other comparisons.

8.12 When asked by the Tribunal if there was any market rental evidence, he confirmed that there was but it was not at arm's length and there was limited information in relation to third-party leases. He confirmed that FMT's were looked at in light of connected party leases and that the properties were visited and it was his view that there was an established tone of the list.

8.13 Mr Power-Kelly was questioned by the Tribunal in relation to the turnover figures provided and particularly regarding the average turnover for the 12 month trading period in 2015. Mr Power-Kelly confirmed that 2015 was an unusual year due to the death of the previous proprietor and that this would have affected trade. For this reason he stated that he ignored the 2015 turnover figures. When questioned by the Tribunal if it was reasonable to assess FMT if the 2015 turnover figures were ignored, given the fact that FMT rises on this basis, Mr Power-Kelly confirmed that a hypothetical tenant would have regard to rising turnover.

8.14 Mr Power-Kelly confirmed that the Respondent undertook an exercise to establish FMT and that he saw no reason to alter that estimate in light of the turnover figures that were subsequently supplied. The grounds of appeal are based on an inability to pay which is not a valid ground under the Act. He further stated that there was an onus of proof on the Appellant to provide justification for his valuation but that no evidence was proffered by him in respect

of this. It was his view that the emerging tone was now settled and the NAV comparisons demonstrate the correctness of the list.

## **9. SUBMISSIONS**

9.1 No legal submissions were put forward 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 Carlow County Council.

10.2 The Tribunal has assessed the comparable evidence submitted by the Respondent as set out in **Appendix 2** and also confirms the valuation methodology adopted by the Respondent to be fair and equitable in the circumstances.

10.3 The onus of proof is on the Appellant, Mr Clerkin. He was of the view that the valuation proposed by the Respondent was exorbitant, however he did not provide any valuation evidence to support his position. The estimate of FMT by the Respondent at the valuation date of 30<sup>th</sup> October 2015 has not been upset by the actual turnover of the subject property subsequently submitted by the Appellant to the Respondent in the course of the appeals process. The Respondent has fairly disregarded the actual 2015 trading figures in their assessment due to the specific circumstances relation to the subject property at that time. The approach adopted and resulting valuation by the Respondent is reasonable. Inability to pay or affordability are not grounds for an appeal.

### **DETERMINATION:**

Accordingly, for the above reasons The Tribunal disallows the appeal and confirms the Valuation of the Respondent of €22,000.

And the Tribunal so determines.



## APPENDIX 1 – APPELLANT TURNOVER DETAILS

<b>Year End</b>	<b>Food Sales</b>	<b>Drink Sales</b>	<b>Total Turnover</b>
30/04/2013	€1,214	€262,076	€263,090
30/04/2014	€1,330	2264,491	€265,856
26/08/2015	€19,312	€325,733	€345,045 <sup>1</sup>
31/08/2016	€13,470	€286,702	€300,173

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<sup>1</sup> The turnover figure for the year end 2015 reflects a 16 month trading period.

**APPENDIX 2 – SCHEDULE OF RESPONDENT NAV COMPARISONS**

<b>Nav Comp</b>	<b>Name</b>	<b>Use</b>	<b>Rate on Drink Sales</b>	<b>Rate on Food Sales</b>	<b>NAV</b>
1	Ewings	Drink Sales	0.08	N/A	€26,000
2	Nancy Whiskey's Bar	Drink Sales	0.08	N/A	€18,000
3	Carpe Diem	Drink Sales	0.08	N/A	€32,000
4	The Irishman	Drink Sales	0.08	N/A	€50,000
5	Morrissey's	Drink Sales	0.08	N/A	€28,000
6	Tully's Bar	Drink Sales Food Sales	0.08	0.06	€69,800
7	Scraggs Alley	Drink Sales	0.09	N/A	€67,500
8	Cava	Drink Sales Food Sales	0.08	0.06	€35,600