

Appeal No: VA17/5/663

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

SEAMUS O' HARA

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 220699, Hospitality at 30 Low street, Thomastown, County Kilkenny.

B E F O R E

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Frank O'Grady – MA, FSCSI, FRICS.

Member

Orla Coyne - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 6TH DAY OF JULY, 2021

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 €36,000.

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

2. The subject property is one of 10 pubs in Thomastown. The NAV range of the other 9 is €12,000-17,860. The Commissioner is suggesting that this pub is more than twice as valuable

than any other pub in Thomastown. This is deeply flawed.

3. Indeed, the only way the Commissioner could come to this NAV is by taxing the goodwill and exceptional expertise of the operators. The subject property has no locational nor size advantages over its competitors and in the circumstances would not achieve any more than €16,000 in the open market.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €16,000.

2. REVALUATION HISTORY

2.1 On the 25th 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 €36,000.

2.2 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €36,000.

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 a remote hearing, on the 10th day of December, 2020. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate), BA. (Mod) of Eamonn Halpin & Co. 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 affirmation, 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.

4.2 The property comprises a ground floor licenced premises in a 3storey end of terrace, corner building at the intersection of Low Street and Logan Street, in the centre of Thomastown.

4.3 The subject is one of 10 pubs in the town and the population of Thomastown is 2,445 (2015).

4.4 The accommodation includes Lounge Bar, Bar, Ladies and Gents toilets, external Smoking area/ Beer Garden and Keg store. The agreed floor areas are;

Lounge Bar, Dining area and Kitchen	118.38 sq.m.
Keg store	<u>9.81 sq.m.</u>
Total	128.19 sq.m.
Beer Garden	18.92 sq.m.

5. ISSUES

5.1 The matter at issue is quantum.

5.2 The appellant claims that the valuation is excessive and inequitable and is seeking a reduction in the NAV to €16,000.

5.3 The Respondent states that the NAV of €25,200 is in line with the tone of the list for Co. Kilkenny and requests the Tribunal to affirm same in accordance with the Valuation Acts.

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 for the Appellant adopted his precis as his evidence in chief and went on to describe the location, description and physical nature of the property and the business carried on therein.

7.2 He confirmed that both parties were using the exact same comparisons and that there was a shortage of rental information available and stated that the subject was the best pub in Thomastown.

7.3 He further stated that it had no physical or locational advantages and was similarly charged as most of the licenced premises in the town.

7.4 Mr. Halpin said that following the recession 3 pubs were permanently closed at the effective date and that the median value for pubs in the town was €16,000. He stated that there was no objective reason why the subject property should be considered superior to the median pub and that any additional value arises from the occupier’s goodwill and business acumen.

7.5 To support his opinion reference was made to several Tribunal cases and in particular VA17/5/078, Ballyraggett, Co. Kilkenny where the accuracy of FMT as a method of valuation was questioned.

7.6 Mr. Halpin also referred to VA14/5/959, the Kirwin case and the business acumen of the occupier and the possibility of double taxation on the property. Several other Tribunal cases

were also referred to stressing the importance of size, location etc. in addition to FMT as a valuation tool.

7.7 Mr. Halpin produced a chart on the 10 licenced premises in Thomastown (Appendix 1) with details of the NAV and estimated FMT of each property. This information he stated confirmed that the subject property was of average size for the town and that the FMT was more than twice any of the other pubs.

7.8 He stated that 4 pubs were valued @ €16,000 and the balance except the subject were valued between €12,000 and €17,680. He believed that the Commissioner had not relied entirely on FMT in most cases and where the T/O, which had been provided, did not fit the model, the median value was used. Reference was made to a similar situation in Callan, Co. Kilkenny (pop.2,475) where the highest value in the town was €20,000.

7.9 Mr Halpin proceed to compare and contrast the comparison licenced premises based on valuation by FMT and distance from the subject and could not find any justification for the NAV of €25,200 and therefore suggested €16,000 as fair and equitable.

8. RESPONDENT'S CASE

8.1 Mr. Power Kelly for the Respondent adopted his precis as his evidence in chief and contended for an NAV of €25,000. He confirmed agreement with details supplied for location and floor areas. He stated that the subject was a good pub with a large physical presence and was well fitted out.

8.2 He stated that many rural pubs were owner occupied and that there was a shortage of rental information. He confirmed that there were 147 licenced premises in rural towns in Co. Kilkenny, all of which were valued at a level of 7%-8% of FMT.

8.3 To support his case he used a similar chart of the 10 licenced premises (Appendix 2) giving details of the NAVs and the basis of value @ 8% of FMT. He confirmed that details of T/O had been received from 8 of the properties. He noted that with the exception of the subject which showed an initial NAV of €36,000, the NAVs ranged from €12,000 to €17,680.

8.4 Mr. Power Kelly further stated that the figures indicated a stable level of T/O above the originally estimated figure and it was noted that 3 premises in Thomastown were not trading at the relevant period, which could account for the T/O figures and therefore the NAV was amended to allow for this fact and reduced to €25,200. He requested the Tribunal to affirm the reduced NAV in equity and uniformity and in accordance with the Valuation Acts.

8.5 Under cross examination Mr. Power Kelly confirmed the adjustment of 30% to NAV was due to potential overtrading and also stated that the size of the subject was not an important factor in arriving at the valuation.

9. SUBMISSIONS

9.1 There were no submissions of a legal nature.

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 County Kilkenny.

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 revised valuation of €16,000 and Mr Power Kelly on behalf of the Respondent who sought confirmation of the NAV @ €25,200.

10.3 Both parties used the same comparisons and the interpretation of that information in a vastly different manner. The lack of available rental information as referred to by both parties is noted.

10.4 During the course of the hearing and in cross examination it was evident that the parties differed on the approach to valuation and the assessment of the various loadings/weightings to be accorded to size, location and turnover which resulted in the large difference of opinion in rental value/NAV.

10.5 The Tribunal has on several occasions including those mentioned by the Appellant, cautioned against a “too rigid application” of the FMT method of valuation of licensed premises. The Tribunal has to show equity as well as uniformity in arriving at the determination in all cases and must therefore allow for overtrading and occupiers business acumen so that their decisions do not fall into the bracket of double taxation of a property.

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 €16,000.

Calculated as follows;

FMT €200,000 @ 8% = €16,000.

And so the Tribunal Determines