

Appeal No: VA17/5/817

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

MICHAEL & HELEN DEVANE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 79159, Hospitality at 1B Greens Hill, Kilkenny, County Kilkenny.

BEFORE

Barry Smyth – FRICS, FSCSI, MCI Arb

Deputy Chairperson

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF JANUARY, 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 €24,000.

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 appellant considers that there is an excessive increase in rates.*
2. *Details of owners/occupiers stated in the relevant list are incorrect and should be Michael and Helen Devane.*

3. *The appellant advised that the property is heavily mortgaged, and an increase may cause undue hardship to owners.*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum €12,000.

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 €24,000.

2.2 No representations were made to the Valuation Manager in relation to the Valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €24,000.

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. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. FACTS

4.1 The parties are agreed as to the following facts.

4.2 The location of the property, its description, accommodation and size, its use as a Public House and its Freehold Title are all agreed.

4.3 The property is located on the north side of New Road close to its junction with Green's Hill immediately east of the River Nore.

4.5 The property comprises a single storey licensed premises with a smoking area/beer garden and keg stores. The entrance and bar measure 48.62 sq.m.; toilet accommodation 11.53 sq. m; the smoking area/beer garden 18.46 sq. m; the store/keg store 7.61 sq. m.

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

4.7 Details of the turnover are appended to this Judgement.

5. ISSUES

5.1 There are two issues in this case namely the validity of the grounds of appeal and the quantum of the net annual value to be assessed.

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

The Appellant's case was set out in an email dated the 10th of August 2020 to the Valuation Tribunal and was exchanged with the Respondent. The Appellant stated that:

7.1 The proposed net annual value would give rise to an increase of approximately 75% on the previous rates liability and that it appears to have been based solely on turnover.

7.2 This is a family business and a very small premises and is operated by the proprietors without any additional wage costs for staff.

7.3 There is a mortgage on the property and noted the monthly repayments.

7.4 That the Valuation proposed is excessive based on the small square footage of the property which is a very old single storey building with no living accommodation attached and no capacity for expansion.

7.5 The current Covid-19 trading restrictions are having a serious impact.

7.6 A rental value of €200 per week or €10,000 per annum is the most likely and realistic rent that could be achieved and thus €10,000 should be the NAV of the property.

7.7 The status of the facilities of the property are antiquated and require major upgrading.

7.8 Any Tenant might not adhere to licensing rules and impair the property value.

8. RESPONDENT'S CASE

8.1 The Respondent noted the Appellant's grounds of appeal as:

- i. The Appellant considers that there is an excessive increase in rates and
- ii. The Appellant advised that the property is mortgaged, and an increase may cause undue hardship to the owners

and stated that as these grounds of appeal do not relate to the value of the property as required by Section 35 (a) (i) of the Valuation Act 2001 as amended, but rather relate to the ability to pay that the grounds of appeal are not valid, and the appeal should be disallowed.

Without prejudice to that position the Respondent

8.2 Noted that Kilkenny is the County town and has a population of approximately 26,500 and is a noted tourism centre.

8.3 Provided a useful floor plan of the premises and set out details of the floor areas as surveyed.

8.4 Provided photographs, both external and internal.

8.5 Dealt with the Appellant's submission of the 10th of August 2020 and the grounds therein and repeated that the ability to pay rates is not a valid ground of appeal and that the Valuation as assessed must achieve and does achieve a) correctness of value and b) equity and uniformity of value between properties on the Valuation list as required by Section 19 (5) of the Act.

8.6 That the initial valuation was based on an estimate of Fair Maintainable Trade (FMT) as no trading or turnover figures had been supplied as requested. Trading details were only submitted by the Appellant on the 6th July 2020 and these were appended to this Judgement.

8.7 That Valuations of licensed premises are not based on floor area and domestic accommodation does not form part of the Valuation but that the property is assessed as existing on the effective date.

8.8 That an outstanding mortgage, supplier costs and increase in rates are unrelated to the Valuation as required per Section 19 (5) of the Valuation Act 2001 as amended. and that in assessing the NAV the requirement is to assume a Hypothetical Tenant.

8.9 In relation to Covid-19 he noted that the Valuation date is 30th October 2015, and the effective date is the 7th September 2017 and that at these dates Covid was not an issue.

8.10 That the Appellant had not provided any comparative valuation or "tone of the list" evidence in support of the contended valuation of €10,000 and the burden of proof lies with the Appellant.

8.11 Without prejudice to his assertion that the appeal was not valid and should be dismissed and solely in the interest of reflecting the duty to ensure correctness of value equity and uniformity for all rate payers (including the Appellant) he amended the Valuation as follows:

Estimate of Fair Maintainable Trade	€250,000
FMT/Ratio	0.08
NAV	€20,000

9. FINDINGS AND CONCLUSIONS

9.1 The Tribunal is satisfied that the grounds of appeal are adequate because it is reasonable to conclude from the words ‘excessive increase in rates’ that the Appellant is of the view that the Net Annual Value is too high.

9.2 On this Appeal the Tribunal must determine the Value of the property so as to achieve, in so far 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 Co. Kilkenny.

9.3 Net Annual Value is defined in Section 48 of the Valuation Act 2001 as amended as “the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average 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.”

Any outstanding mortgage, bank borrowings etc. are not relevant considerations in assessing the Net Annual Value.

9.4 It is long established that licensed premises are valued based on an estimate of the Fair Maintainable Trade that the premises could generate and that is the approach that this Tribunal will follow. However, that is not to say that floor area is irrelevant and it may be a useful guide in making a judgment on the Turnover or FMT relative to other similar properties. Floor area is always a consideration in Valuation terms.

It is regrettable that trading details were not submitted to the Valuation Office as requested until well into the Tribunal stage of the appeal in July 2020. It is conceivable that if such figures had been submitted at the time requested that agreement may have been reached on this Valuation.

9.5 It is noted that neither Respondent has provided comparative evidence in relation to rental values or Net Annual Values of other licensed premises in the locality and this presents difficulties for the Tribunal.

9.6 While it is correct to state that the onus of proof in an Appeal rests with the Appellant, it is disingenuous of the Respondent to quote part only of Section 63 (i) of the Act which in full reads “The statement of the value of a property as appearing on the valuation list shall be deemed to be a correct statement of that value **until it has been altered in accordance with the provisions of this Act**” Emphasis added. The provisions of the Act include, inter alia, the right of appeal to the Valuation Tribunal and the duty of the Tribunal to assess a correct valuation.

9.7 The Valuation Tribunal has no role in relation to an occupier’s ability to pay rates which is a matter for the Local Authority.

9.8 This property is on the edge of Kilkenny city centre somewhat removed from the busier tourist areas and has a small trading area with limited potential. The original estimate of the Fair Maintainable Trade is not supported or confirmed by the actual trading figures, which were supplied only in July 2020, and while such support is not necessarily necessary in every case to assess FMT in this instance it is a useful information.

9.9 At Tribunal stage of the appeal the Respondent reduced the estimate of Fair Maintainable Trade to €250,000 per annum

9.10 In response to a query from the Tribunal the Respondent confirmed that the ratio of Net Annual Value and Fair Maintainable Trade in Kilkenny City ranges from 8% to 10% having regard to location and trading circumstances.

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 €20,000.

This is calculated as follows:

Estimate of FMT €250,00 p.a. @ 8% €20,000.

And the Tribunal so determines.