

**Appeal No: VA17/5/316**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020  
VALUATION ACTS, 2001 - 2020**

**James Irish**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 213629, Hospitality at Local No/Map Ref: 41, Hugginstown, Aghaviller,  
Thomastown, County Kilkenny.

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 12TH DAY OF APRIL 2022**

**BEFORE**

**John Stewart - FSCSI, FRICS, MCI Arb**

**Deputy Chairperson**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 10<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 €7,000.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: "454% increase in valuation from 2016. Turnover and profitability has not increased from 2015 to 2016."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €1,542.

**2. RE-VALUATION HISTORY**

2.1 On the 25<sup>th</sup> 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 €7,000.

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 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 €7,000.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is the 15<sup>th</sup>, day of September, 2017.

### **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 subject property comprises a ground floor licensed premises located in the village of in Hugginstown Co. Kilkenny.

### **5. ISSUES**

5.1 The grounds of appeal are that the valuation increased by 454% from 2016 whereas the turnover and profitability had not increased from 2015 to 2016.

### **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 The Appellant represented by John Moore FCCA contended that the proposed Certificate of Valuation at €1,700 was excessive and provided for an increase in rates of 454% as the 2016 liability was €323.62 and the 2017 liability was €1,700.

7.2 The Appellants had provided turnover figures for 2013 to 2016 inclusive which had generally remained at the same level over the period. They provided final accounts for year ending 31<sup>st</sup> December 2015/2016.

7.3 The Appellants stated that the subject premises comprised a single storey premises 56.48sqm (based on measurements of 16ft x 38ft). They stated that the village was home to two pubs and had a population of approx. 2,000. They confirmed that the subject pub did not serve food.

7.4 They argued that it was unfair on a small business that the proposed valuation could give rise to an increase of 454% between 2017 and 2018 and the NAV should be €1,542.

7.5 No comparisons were provided.

7.6 This concluded the submission of the Appellants.

## 8. RESPONDENT'S CASE

8.1 The Respondents were represented by Mr Adrian Power-Kelly who provided a context as to how the revaluation arose for Kilkenny County Council pursuant to Part 5 of the Valuation Act 2001 as amended. He confirmed that the valuation of the subject property had been conducted according to the provisions of the Valuation Act 2001, as amended by the Valuation Act (Amendment) Act 2015. The net annual value (NAV) of the property has been estimated in accordance with Section 48 of that Act and the requirement to:

*“achieve both (insofar as is reasonably practicable) (a) correctness of value and (b) equity and uniformity of value between properties on that valuation list”* as required by Section 19 (5) of the Act.

He stated that the valuation is based on the premise of a hypothetical tenant paying a rent for exclusive occupation, one year with another, for property in its actual state on the assumption that the probable annual costs of repairs, insurance and any other expenses necessary to maintain the property in that state including rates and other taxes are borne by the tenant.

8.2 The Respondents stated that the subject property was located in the centre of Hugginstown village on the east side of Main Street and that neighbouring properties comprised a mix of residential and commercial units. He noted that the property was located approximately 200 metres from the Holy Trinity Church Carrickshock GAA club and Doyle's Concrete Works. He provided an aerial map indicating the subject property.

8.3 He described the subject property as comprising part of the ground floor of a two storey premises in use as a licenced public house comprising a lounge bar, smoking/poolroom and customer toilets. He noted there was an external store. He stated that the internal finishes included tiled floors, painted and plastered walls and timber panelled ceilings. He provided a block plan with measurements and calculated the floor areas. He stated the ground floor lounge bar and the toilets (male and female) comprised 45.92 sqm; the smoking/pool room comprised 28.99 sqm and the external store comprised 14.99sqm. He provided an external photograph taken on 23rd of August 2018 as well as five internal photographs taken on the same date. No rental informers or comparators were provided.

8.4 In relation to the revaluation history the Respondents confirmed that the valuation date was 30th of October 2015 and that proposed valuation certificate was issued on the 25th of May 2017 at €7,000. He noted that representations were received on the 23rd of June 2017 and the

final valuation certificate issued on the 7th of September 2017 at €7,000. He provided statistics in relation to revaluation facts and figures noting that 2,928 proposed valuation certificates were issued and 1,632 S. 46 forms were received.

8.5 The Respondent addressed the grounds of appeal before the Tribunal and confirmed that an LP1 form containing trading information for the years 2013 to 2016 for these premises was provided. Details are provided in the appendix. He stated that the recommendation of the valuer following representations was that the valuation should remain unchanged at €7,000. This was based on an estimated FMT  $\text{€}100,000 \times 0.07 = \text{€}7,000$  NAV. He noted that submissions were received by the commissioner on the 10th of August 2018. Referring to the submission he stated that the Appellants argued that the rates liability for 2017 was €323.62 which was increased to €1,470 in 2018 which he argued was a rates liability. He stated that ability to pay rates is not a valid ground of appeal nor is the level of rates payable prior to the Revaluation being carried out. He noted that the valuation as applied achieves insofar as is reasonably practical both (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 He stated that the valuation calculated was based on an FMT estimate of €100,000 which was below turnover levels actually being generated on the premises and that no food sales were included in the calculations.

8.7 He stated that the Appellants had not included any evidence to support an opinion of Valuation and requested that the Tribunal should disallow the appeal. This concluded the respondents evidence.

## **9. SUBMISSIONS**

9.1 No legal submissions were made.

## **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 Kilkenny County Council.

10.2 The floor areas were not agreed however valuations for licenced premises for rating purposes are not based on the size of the premises.

10.3 The Appellants have not provided any supporting evidence for their claim and the onus of proof in appeals before the Tribunal rests with the Appellant. See VA 00/2/032 Proudland Ltd t/a Plaza Hotel; VA 17/3/054 William Savage Construction Ltd and VA 09/01/018 O'Sullivan's Marine Ltd.

10.4 It is established practice that the ability to pay rates is not a valid ground of appeal before the Tribunal and therefore the Tribunal finds that the appeal must be disallowed.

## **DETERMINATION:**

Accordingly, for the above reasons, the Tribunal the Tribunal disallows the appeal and confirms the decision of the Respondent.

