

Appeal No: VA19/5/0372

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

ARROW BAY LIMITED

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1989248 Hospitality, 5 Market Street, Kingscourt, County Cavan

B E F O R E

Carol O'Farrell – B.L.

Liam Daly - MSCSI, MRICS

Sarah Reid – B.L

Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17th DAY OF JUNE 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th of October 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value 'the NAV') of the above relevant Property (hereinafter referred to as "Willows") was fixed in the sum of €26,600.

1.2 The grounds of appeal as briefly summarised below contend that Willow's valuation does not accord with the requirements of section 19(5) of the Valuation Act 2001 as amended ('the Act') Act because:

- the NAV is not in line with its potential rental value as illustrated by the tone of the list for comparable property.
- Willows was purchased for €180,000 in March 2017. Turnover above €200,000 is attributable to the goodwill and acumen of the operator.
- There is an acute oversupply of public houses in Kingscourt. Since the re-opening of Murtaghs, pub business has been dramatically affected.
- There is a 30% vacancy rate in commercial properties on Main Street and the trend is deepening as owner occupiers cease to trade or retire.

1.3 The amount stated in the Notice of Appeal as the figure the Appellant considered ought to have been determined as being the NAV of Willows is €14,000.

2. REVALUATION HISTORY

2.1 On the 15th of March 2019 a copy valuation certificate proposing a valuation of €26,600 was issued to the Appellant under section 24(1) of the Act. On the 2nd of May 2019 representations were made on behalf of the Appellant to the valuation manager seeking a reducing in the assessment. Those representations proved unsuccessful as the final valuation certificate issued on the 17th day of September 2019 stated an unchanged valuation of €26,600.

2.2 The date by reference to which the value of Willows was determined is the 15th of September 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing, held remotely, on the 18th of February 2022. The Appellant was represented by Mr. David Halpin M.Sc. (Real Estate) Ba. (Mod) of Eamonn Halpin & Co. Ltd. and the Respondent by Mr. David Colhoun MSc BA HDip Business of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties filed and exchanged their respective reports and précis of evidence prior to the commencement of the hearing. 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. RELEVANT STATUTORY PROVISIONS

4.1 The NAV of the Property must 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.”

Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be considered 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 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.”

5. ISSUES

- 5.1 The dispute related to the fair maintainable trade ('FMT') attributed to Willows by the Respondent and the resulting valuation. The Appellant contended that the FMT is excessive and adopting the same percentage split applied by the Respondent (i.e., 7%) proposed that the NAV be reduced to €14,000 based on an FMT of €200,000.

6. FACTS

- 6.1 From the evidence adduced by the parties, the Tribunal finds the following facts.
- 6.2 Willows is a ground floor licenced premises in a three-storey building situated on Main Street in Kingscourt, County Cavan. The accommodation comprises a bar and lounge, pool room, and a small commercial kitchen. It is well appointed and in excellent decorative condition. The measurement of the trading area is 171.68 m².
- 6.3 Willows was purchased in March 2017 and is owned and occupied by the Appellant. Prior to purchase, the property, a former licensed premises, had been closed for a period of four years.
- 6.4 Main Street is the main trading street in Kingscourt and there are nine public houses situated on Main Street within 210 metres of Willows all of which are reasonably accessible to the same customer base. Kingscourt has a population of 2,499 per the 2016 census. The parties identified two public houses on Main Street occupied by tenants, namely Murtaghs and The Wishing Well. All nine pubs submitted trading information to the Respondent pursuant to requests made under section 45 of the Act.
- 6.5 The Respondent devised a valuation scheme for 199 licensed premises in the rating authority area of County Cavan. Pursuant to that scheme licenced premises were valued at between 6% and 8% of estimated Fair Maintainable Trade (FMT): 6% was applied to premises with an FMT below €100,000, 7% was applied to premises situated outside Cavan Town having an FMT above €100,000 or a gross profit below 56% while 8% was applied to premises having a gross profit above 56%.
- 6.6 There was no trading date for Willows for the four-year period prior to the valuation date. The gross turnover of Willows for the trading period from May to the 31st of December 2017 was €380,000. The FMT that the Respondent attributed to Willows at the valuation date was €380,000 in respect of its drink trade.
- 6.7 By reference to FMT the four busiest licensed premises on Main Street Kingscourt at the valuation date were Willows, Malone's, Murtaghs and The Wishing Well.

7. APPELLANT'S CASE

- 7.1 Mr Halpin briefly described Willows which, he said, he had inspected in April 2019 and again in May 2021. He based his valuation from his knowledge of the property the locality, information provided by the Appellant and by some of the local publicans.

7.2 Mr Halpin stated that Willows has the highest valuation of the 'drink trade only' premises and was valued at three times the average FMT of the six other 'drink only' premises. He said Malones and The Wishing Well were both under appeal to the Tribunal and in any event, each of those premises had a second income stream; off licence sales in the case of Malone's and food in the case of The Wishing Well. He was informed anecdotally by local publicans that Murtaghs is the best pub on Main Street. Murtaghs has an extensive commercial kitchen (larger than the subject's), and, despite that fact, he pointed out that food sales had not been assessed. More significantly, he said Murtaghs is let on a 4-year 9-month lease from the 24th of December 2017 at an annual rent of €44,200 which exceeds the valuation determined by the Respondent in respect of that premises. He considered Murtagh's provided an example of a public house to which significant goodwill is attached given the difference between the €17,500 NAV and the passing rent. He was of the opinion that Willows could not possibly be let at a rent exceeding €17,500 per annum.

7.3 Mr Halpin provided the details in the Table below of the licensed premises of Main Street. The estimated FMT of these premises (none of which were challenged) are set out in the Appendix

Licensed Premises	Valuation	Estimated Trading Area m ²	Distance from Property
Murtaghs	€17,500	230 m ²	20 metres
The Court Inn	€8,050	97.75 m ²	30 metres
Clarke's Corner Bar	€8,050	70 m ²	50 metres
M & F's Bar	€6,600	50 m ²	60 metres
Gartlan's Bar	€8,400	152.8 m ²	210 metres
Paddy's Bar	€9,450	198m ²	100 metres
The Wishing Well	€32,600	211.41m ²	100 metres
Malones	€33,700	177.45m ²	95 metres

7.4 Mr Halpin said Willow's purchase price in March 2017 indicated that a maximum FMT of €180,000 would be achieved by a reasonably competent operator. He said that The Court Inn, on the same side of the street as Willows was remodelled in 2017 and its value was that of a "standard" pub in the town. He said Willows at almost twice the size would be unlikely to have double the rental value of The Court Inn. He said Gartlan's Bar is an extensive pub with front bar and lounge, rear lounge for functions and a commercial kitchen but like Willows is too small to provide a full food service. He described Paddy's Bar as an extensive pub premises and commented that despite its size the turnover of this premises is only marginally better than the smaller public houses.

8. RESPONDENT'S CASE

8.1 Mr Colhoun provided a summary of his case, his response to the Appellant's case, the valuation history, a location map, and a floor plan. He gave evidence that the NAV of Willows had been established by reference to actual drinks turnover figure supplied by the Appellant. The NAV has been calculated at 7% of the estimated FMT for drink sales in line with comparable properties in the immediate vicinity. He considered the actual turnover to be representative of FMT as in his view there was nothing to suggest that the figure required any adjustment and the assessment looked reasonable when considered alongside those of comparable properties. Accordingly, he contended that the certificate value which had been arrived at by adopting 7% of FMT was correct.

8.2 He stated that the nine public houses on Main Street fell into three categories:

A: Premium Pubs with high drinks trade and no or low food turnover:

- The Willows
- Malone's
- Murtaghs

B: Premium Pub with Food offering

- The Wishing Well

C. All remaining pubs

- The Court Inn
- Clarke's Corner Bar
- Gartlan's
- Paddy's Bar
- M & F's Bar

8.3 Mr Colhoun relied upon the following three comparable properties. The FMT of those premises are set out in the Appendix.

Licensed Premises	Scheme %	NAV	Total
The Wishing Well	0.07%	€10,150	€32,600
	0.05%	€22,500	
Malone's	0.07%	€27,650	€33,700
	0.03%	€10,050	
	0.01%	(€3,950)	
The Court Inn	0.07%	€8,050	€8,050

8.4 Mr Colhoun confirmed that The Wishing Well is a larger property than the subject with a substantial kitchen area and capacity for significant food trade. The trading figures provided indicated that primary driver of this premises trade is food rather than drink. He described The Court Inn as a quiet pub with less than a third of the drink trade enjoyed

by Willows and, unlike the Willows, does not offer food. He pointed out that it is significantly smaller than the Willows and is further from the Station Road/Hall Road junction at centre of Main Street. He said Malones has a similar drink trade to Willows and though the location is slightly inferior, it has an attractive stone façade, high quality fit out and a trading area slightly larger than Willows, all of which were reflected in the slightly higher FMT applied to Malones.

- 8.5 Mr Colhoun gave evidence that Murtaghs, physically the nearest main competitor being almost directly opposite Willows, is of similar size but is an inferior premises in terms of internal fit out, TV facilities, smoking areas and drinks trade. He said that unlike Willows it does not offer food. He said Gartlan's Bar is furthest from Willows being located some 210m north at the quieter end of Main Street. He described that premises as a thatched period property and a Listed Building with technological and alteration limitations. His evidence was that recent refurbishments had not altered the trading area significantly and it remains substantially smaller than Willows' He said the main building comprises a series of small rooms with thick structural walls. He disputed Mr Halpin's description of the rear lounge of Gartlan's Bar as a "function room" because planning records indicate this area to be a 46 sqm tearoom/seating area.
- 8.6 Having analysed the trading figures of all the public houses on Main Street, he was of the view that the FMT figures for Malones and Murtagh's contradicted Mr Halpin's assertion that there was any element of excess trading in Willows. He said that the other public houses on Main Street, to varying degrees, were primarily of inferior quality being average traditional pubs and based on his analysis of their trading figures they were not comparable properties. Mr Colhoun stated that the onus of proof has not been met by the Appellant and he requested the Tribunal to affirm the valuation as determined by the Respondent.

9. FINDINGS AND CONCLUSIONS

- 9.1 The long-established method for valuing public houses involves determining the FMT that the property could achieve at the valuation date in the hands of a competent hypothetical tenant who is assumed to be willing to take the tenancy from year to year. Broadly speaking, under this valuation method the valuer ascertains the FMT of the drinks trade, the FMT of food trade (if any) and the FMT of any other income stream and then decides the percentage of FMT that might reasonably be expected to be the rent that would be agreed by the hypothetical landlord and tenant.
- 9.2 The valuation scheme adopted by the Respondent was not challenged by the Appellant and so the rental percentage (7%) applied to the FMT of the Property is not disputed. The size or capacity of a premises is not a determining factor as there is no direct proportional relationship between the floor area and the turnover of a licensed premises. Location, floor area, fittings and fixtures, facilities and ambience, however, are all factors that may contribute towards the turnover of a public house.

- 9.3 The FMT should represent the annual trade considered to be maintainable at the valuation date having regard to the location and physical characteristic of the public house on the assumption that the business is carried out by a competent publican. The hypothetical tenant is assumed to be reasonably competent publican who is aware of the actual trade in Willows up to the valuation date, which is the starting point of the valuation. When estimating the hypothetical tenant's rental bid a valuer should disregard any impact on turnover that is attributed solely to the personal skill, reputation and expertise of the existing operator.
- 9.4 In *Watney Mann Ltd v Frederick George Langley* (1963) 3 All ER 967 Mr Justice Thompson stated that the hypothetical tenant would
- "endeavour to estimate what trade could reasonably be expected to be done by the ordinary tenant if he were the licensee in the particular premises as they now are, in the area in which they are located. While I do not doubt that such a prospective tenant would consider in his mind whether he could make as great or a greater success of the house than his predecessor, the base from which he would ponder on his prospects would, I have no doubt whatever, be the actual trade his predecessor had in fact done"*.
- 9.5 The best evidence of a reasonably competent operator has as its starting point the last three years' trade accounts of the actual operator. However, at the valuation date the hypothetical tenant would have had no historic trading information in respect of Willows and in making his rental bid would consider not just the six months' trading figures available at the valuation date but the competition in the locality and the trade being carried on in comparable properties in the locality.
- 9.6 No evidence was adduced by the Appellant upon which the Tribunal could be satisfied that there is an acute oversupply of public houses in Kingscourt or that since the re-opening of Murtaghs, the pub business on Main Street has been dramatically affected. The fact that the Appellant who have been involved in the pub business in Kingscourt for 18 years decided to re-open a long-closed public house on Main Street in 2017 which traded well during 2017 belies the substance of that particular argument. The contention that trade had fallen off since October 2018 due to stricter enforcement of amended drink driving legislation was not pursued at the hearing and rightly so. Furthermore, no evidence was presented to the Tribunal to support the contention that there was a 30% vacancy rate in commercial properties on Main Street in or around the valuation date.
- 9.7 Mr Halpin contended that the Appellant traded at a greater volume than the other public houses on Main Street and so this 'excessive' trade fell to be adjusted to the level of trade the hypothetical tenant would achieve, namely an FMT of €200,000. To succeed on this appeal the Appellant has to clearly demonstrate that the list value is patently out of line and inconsistent with the assessments of comparable public houses on Main Street Kingscourt.
- 9.8 Unlike the eight other public houses on Main Street the FMT of Willows was not based on a trading pattern discerned from three or four year's trading accounts, a fact readily

acknowledged by Mr Colhoun. The adoption of €380,000 as the FMT might well be highly questionable given that Willows only commenced trading in or about May 2017 just six months prior to the valuation date.

- 9.9 Actual trade figures may be very misleading as, for example, if the publican is exceptionally able or exceptionally incompetent. Furthermore, the initial trade of a newly opened public house could be higher or lower than subsequent turnover and so it could hardly be said that Willow's trade had settled prior to the valuation date and nor was there any justifiable basis for treating the actual turnover for the period May to December 2017 as fairly representing an annual trade that would be maintainable at the valuation date. The Tribunal considers that valuation of Willows should not have been determined on the limited trading information available and that too much weight was attached to the value of the Appellant's business over an eight-month period to the 31st of December 2017. In the absence of sufficient trading information to assess the anticipated FMT of a newly opened public house, the hypothetical achievable turnover should be estimated by comparison with similar circumstanced public houses in the locality.
- 9.10 Undoubtedly, the best comparable evidence is to be found on Main Street in Kingscourt. Though all 8 other pubs are broadly comparable in terms of location and have access to the same customer base those factors alone do not render them directly comparable to Willows. There are a range of physical factors that affect the value of public house, and they include attractiveness of the property, prominence, size and ambience. Mr Halpin presented an analysis of the eight other public houses in terms of their values in the list. The NAV values of those public houses ranged from €6,600 to €33,700. From that analysis, the drink trade of Willows was broadly comparable to the assessed FMT of only one other competitor, namely, Malone's.
- 9.11 The Tribunal accepts that Willows is superior to some of the other public houses on Main Street as a result of its different size and character, but the eight other public houses are all located in close proximity, and thus, are trading in the same market. The Tribunal attaches little weight to Clark's Corner Bar despite its prominent corner location at the junction of Main Street and Kells Road as it is smaller public house with a substantially lower drinks trade. M & F's Bar is accepted by both valuers to be the smallest public house on Main Street with a low drinks trade and the Tribunal does not consider it a comparable property. The Tribunal does not accept that Paddy's Bar is in an inferior location by reason of being 100 metres from Willows and accepts, based on the estimated area put forward by Mr Halpin and there being no evidence to the contrary, that it not much bigger than Willows. It is difficult to see how Gartlan's Bar is a comparable property despite its similar size as it is a different type of building. The Tribunal considers the aforementioned premises to be more in the nature of traditional country type drinking establishments.
- 9.12 Mr Colhoun identified Malone's, The Wishing Well and The Court Inn as the best comparables for Willows. The respective list values of these premises are €33,700, €32,600 and €8,050. Mr Halpin considered that Mr Colhoun's reliance on Malone's and Murtagh's as comparable properties to be inappropriate are both under appeal to the Tribunal. Of the nine public houses on Main Street, the Tribunal heard evidence that only one of them had a food income stream, namely, the Wishing Well despite Mr Colhoun

distinguishing several of the public houses from Willows on the basis that they did not have any food trade. No evidence was adduced by either of the parties' valuers as to what portion of the FMT attributed to Willows related to food trade and it is noted that the Respondent does not value food sales below €100,000 which possibly explains why Willows is valued solely on the basis of drink trade. In any event, regard should be given to the occurrence of similar (but not necessarily identical) turnovers at other public houses on Main Street.

- 9.13 The Tribunal was dissatisfied that Mr Colhoun was unable to give any evidence regarding how the trading figures had been interpreted to derive the FMT of the other eight public houses on Main Street and whether any adjustments had been made. The opening of Willows prior to the valuation date would surely have had implications for the turnovers of the eight other public houses yet all that he could say was that four years accounts were considered. When compared with the other public houses, Willows undoubtedly traded much better than The Court Inn, Clarke's Corner Bar, M & F's Bar, Paddy's Bar and Gartlan's Bar during an eight month period in 2017. This would suggest that the best comparable properties for establishing a fair maintainable turnover for Willows are Murtagh's, Malone's and The Wishing Well.
- 9.14 As regard The Wishing Well, the nature of the custom that it does is clearly different from that of Willows, Malone's and Murtaghs. The FMT of the drink trade of The Wishing Well is about a third of its food trade and both valuers accepted that the primary driver of the custom of that premises is food. The total trade of the Wishing Well exceeded that of the Willows, Murtagh's and Malone's while its drinks trade is considerably less than that achieved by those public houses. In the Tribunal's view this premises is not truly comparable as it is more a bistro pub than a drinking establishment.
- 9.15 What the Tribunal has to consider is whether the Appellant has clearly demonstrated that the valuation of Willows is patently out of line (not just because it is traded well in 2017 and has a higher valuation than other public houses in the locality) with comparable properties valued on disclosed trading information. The evidence adduced on this appeal demonstrates that the actual turnover achieved at Willows in 2017 is higher than that achieved by five other publicans trading in public houses on the same street. The FMT figure adopted is substantially higher than the drink FMT of seven of the public houses on Main Street and is approximately 4% less than that of Malones. Indeed, Malone's, which is a similarly sized licenced premises (approximately 3.5% larger) had, for the three years prior to the opening of Willows, achieved a turnover far higher than that of every other licensed premises indicating that its turnover was greater than would be expected from a reasonably efficient operator and, despite the competition arising from the Willow's opening in May 2017, continued to achieve a high turnover reflecting better than average performance. The drinks turnover of Willow in 2017 exceeds that of Murtaghs, reputedly "the best pub in town" and during 2017 and the evidence before the Tribunal suggests that Willows traded broadly in line with Malones during 2017.

- 9.16 In the valuation of a licenced premises it is not proper to rely upon one year's trading figures to establish FMT; a fairer result is reached if an average is taken over a period of at least three years. Where, however, as here, the premises has been in existence for such a short time, there is insufficient data to enable a valuer to arrive at a proper FMT. The Tribunal finds that it was incorrect to take the gross turnover for six months prior to the valuation date and two months post the valuation date as determining the FMT at the valuation date. Under the Act, what is required to be entered on the valuation list as the NAV is the amount which might reasonably be expected from year to year as rent, and that cannot adequately, or even approximately, be ascertained by taking the revenue of a new business over a period of eight months. Willows had not been in operation for a sufficiently long period to provide a reliable basis for the shortened receipts and expenditure (R&E) method of valuation. The FMT adopted by the Respondent's valuer simply cannot be said to be fair to the Appellant.
- 9.17 However, the Tribunal does not agree with the adjustment proposed by Mr Halpin to bring the FMT down to €200,000 on the basis that such figure might be reasonably expected to be achieved at the Willows by the reasonably competent hypothetical tenant. The Tribunal accepts that Malones is the best comparable available. Mr Halpin argued that this comparable should be disregarded because it was then subject of an outstanding appeal and the Tribunal agrees that it carries less weight for this reason.
- 9.18 Nonetheless, the Tribunal considers that it should place some weight on the valuation of Murtaghs given its proximity to Willow's. Even though Murtaghs is a larger premises, and its turnover was less than that of Willow's in 2017, it is a licenced premises of similar character. While its values serves as a useful guide, the Tribunal does not agree that it should adopt the FMT of Murtaghs as a proxy for the revenue that might be achieved by a competent hypothetical tenant as that premises may well be under performing given that little or no use appears to be made of its large commercial kitchen. The Tribunal considers that the drink trade FMT adopted by the Respondent in respect of Willows should be reduced by 25%.
- 9.19 No evidence was adduced by the Appellant upon which the Tribunal could be satisfied that there is an acute oversupply of public houses in Kingscourt or that since the re-opening of Murtaghs, the pub business on Main Street has been dramatically affected. The contention that trade had fallen off since October 2018 due to stricter enforcement of amended drink driving legislation was not pursued at the hearing and rightly so. Furthermore, no evidence was presented to the Tribunal to support the contention that there was a 30% vacancy rate in commercial properties on Main Street in or around the valuation date.

10. DETERMINATION

- 10.1 For the foregoing reasons, the Tribunal allows the appeal in part and decrease the NAV of Willows to €19,900, assessed as follows:

FMT Drink on-sales [€380,000 less 25%) – €285,000 @ 7% = €19,950
SAY € 19,900