

Appeal No: VA19/5/0392

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Martin Gaffney

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of
Property No. 1558462, Hospitality at 2 (Abbey Bar) Railway Road, Cavan, County Cavan

B E F O R E

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

Sarah Reid - BL

Member

Allen Morgan - FSCSI, FRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF AUGUST,

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th day 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 was fixed in the sum of €23,200.

1.2 The grounds 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:

(i) The subject property's NAV is not in line with its potential rental value, as illustrated by the tone of the list for comparable property.

(ii) The subject property is significantly smaller than the average pub in the vicinity.

(iii) The Commissioner's treatment of the FMT is incorrect. The Commissioner is using the wrong FMT for drink on – using a maximum rather than an average. The % applied on the keg sales is also incorrect and has not taken proper account of the decline in trade in 2018.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €17,850.

2.

2. REVALUATION HISTORY

2.1 On the 29th day of March, 2019 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 €41,600.

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 of the Property was reduced to €23,200.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €23,200.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of a remote hearing on the 8th day of March, 2022. At the hearing the Appellant was represented by the Mr. David ES Halpin M.Sc. (Real Estate) B.A. (Mod) and the Respondent was represented by Mr. Herbert Mulligan MSCSI MRICS 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 is located in Cavan town, situated approx. 250 metres west of Main Street, on the west side of Coleman Road at its intersection at a roundabout with Railway Road, opposite the Bus Eireann depot.

4.2 The Property comprises a two-storey public house. The trading area comprises a bar and lounge at ground floor level, and a lounge at first floor level. Stores, WCs, are located at ground floor level. WC’s Kitchen (not used or fitted for commercial purposes) and office are also located at first floor level. At the rear of the premises is a storage shed and small yard.

4.3 The Property is in fair decorative condition. but has not been upgraded or otherwise decoratively updated to a modern finish inline with many of the other licenced premises it competes with.

3.

4.4 The floor areas of the Property are agreed as follows:

Bar - Ground Floor	37.41m ²
Lounge - Ground Floor	23.62m ²
Lounge (disused) - First Floor	67.68m ²
Total:	128.71m ²

4.5 Turnover details for the business are provided in the Appendix to this Determination.

4.6 The Property is owner occupied.

5. ISSUES

5.1 The Property falls to be valued, in common with other hospitality cases, on the shortened Receipts and Expenditure Method by reference to the trading/earning capacity of the Property where estimates are made for each component of trade by applying a rate (%) to the estimated Fair Maintainable Trade (i.e. the FMT) that a hypothetical Tenant would expect to achieve at the valuation date from which to calculate the Net Annual Value (NAV).

5.2 There are two areas of disagreement between the parties in this case that require to be considered by the Tribunal: (a) the expected level of FMT (turnover) for Drink Sales in the subject property and (b) the corresponding appropriate rate to apply to this FMT in order to derive the Net Annual Value.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value 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.”

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. David Halpin, for the Appellant, contended for a valuation of € 19,250 as at the valuation date of 15th September, 2017 and confirmed that the question of keg sales cited in the original Notice of Appeal was no longer being contested by the Appellant. In respect of his valuation of the subject property, this is calculated as follows:

	€
Drink Sales FMT € 200,000 @ 0.07	14,000
Off Sales FMT € 50,000 @ 0.03	1,500
Wholesale FMT € 250,000 @ 0.015	<u>3,750</u>
	19,250 NAV € 19,250.

7.2 In support of his valuation, Mr. Halpin relied on five comparable NAV assessments from the immediate vicinity (approx.. 500m radius) of the Property as detailed hereunder:

(a) Property Number **1557663** NAV € **26,700**.

This property is almost directly across the road from the subject property, an impressive premises with a massive frontage and with a trading area of 275m² and a full retail off licence. Despite its superior attributes to the subject property, the Commissioner had only placed a 15% differential upon that property over the equivalent figure for the subject Property, which Mr. Halpin found inequitable and illustrates that the issues relating to the principle of a “hypothetical tenant” are not being considered. As such he said it is not reasonable to rely inordinately on turnover alone. As regards this property he stated that whilst it is probably bigger than any other pub in Cavan town, that this is tempered by the fact of its similar location to the subject. He stated that therefore the difference in the comparative value of the two properties is not nearly as large as might first be indicated, but that nevertheless he believes it is much greater than 15% He referred to the FMT figures provided by the Respondents in relation to it as being on sales of €210,000 @ 8% and the off-licence sales as being €330,000 @ 3%.

(b) Property Number **1557660** NAV € **23,200**

This property is on the opposite end of Coleman Road (but on the same side of the road as the subject), and situated on the corner of Coleman Road with Wolfe Tone Street. Mr. Halpin said that he found it strange that the Respondent obviously chose not to include the PN 1557663, in (a) above, his best comparison, yet decided to include this property. This had a ‘drink on’ FMT figure of €290k @ 8%. He noted that their information included an area of 150m² over 2 floors, whereas the Commissioner’s information was that it was only the ground floor, indicating that there might be a separate tenancy involved on the first floor, but that he had no tenancy details regarding the 1st floor and that the Respondent’s witness might clarify. He noted that on the basis that the pub property only operates from the ground floor he commented that this is still a corner pub with a good frontage, superior profile and with a ground floor area which appears to be only slightly larger than that of the subject property.

(c) Property Number 1557436 NAV € 10,550

This is one of his three comparisons located on Bridge Street, a connecting street running from the crossroads of Coleman Street/ Wolf Tone Street eastwards to Main Street. Mr. Halpin stated that the trading information provided by the Commissioner confirmed that the property is valued in total at €10,550, with the pub at €8,050 based on a 'drink on' FMT sales of €115,000 @ 7% and the guesthouse being valued at €2,500 based on a Room Sales FMT @ 10%. Mr. Halpin drew the attention of the Tribunal to the Respondents' precis which stated that pubs in Cavan town are all valued at either 8% or 9%, the only exception being this pub, and that the percentage figure applied appears to be an error. Mr. Halpin said he was curious as to how an error (if that's what it was) could have occurred but regardless said that the significance of this comparison was that it was a pub property located less than 200m from the subject property and valued in the Valuation List at 7% and that, being in the List it is guaranteed as correct. He added that in Mr. Mulligan's precis there is no evidence of values in Cavan town itself and that there is nothing that suggests that properties in Cavan town need to be valued at more than 7%. He stated that since this property had been valued at €115,000 @ 7% he could see no reason why the subject should not be valued at €200k @ 7%. Mr. Halpin said that in his opinion this comparison is significant for a number of reasons.

(d) Property Number 1557455 NAV € 25,100

This property is centrally located in the town on Bridge Street and is all on ground floor level and Mr. Halpin put the floor area at approx.. 150m².

(e) Property Number 1557427 NAV € 25,000

This property is located adjacent to PN 1557455 above in Bridge Street also and Mr. Halpin estimates the floor area at approx.. 125m². In regard to this comparable and the preceding one he posited that the hypothetical tenant, looking at the subject Property in the context of these two pubs in the immediate vicinity, would reflect that if he could get either of these pubs at a valuation of €25,100/25,000 why would that tenant be prepared to go down the road to a lightly worse location and pay €23,200 with a poorer trading style. On a general level, even with limited information, Mr. Halpin believed these better located comparisons placed the subject property at a value of closer to €20,000.

7.3 In addition to the comparables cited above, Mr. Halpin, in summary, made the following points:

- (a) The Property is in a tertiary location of the town
- (b) The size of the Property is not superior to any others in the town
- (c) The first floor is not used by the occupier since being refitted in the eighties and the trade is done from the ground floor only which has a floor area of just over 60.00m². [61.03m²]

6.

(d) It is not clear how properties that have not made returns of trading have been assessed by the Commissioner and the Commissioner seems to have focused on the turnover for 2017 rather than taking the average over three years

(e) As a substantial part of the business is keg sales which does not require a physical premises to trade from it did not attract drink-on custom (but the keg sales figure is now agreed)

(f) That the FMT should not be simply taken as interchangeable with actual turnover as highlighted by the tribunal in the cases VA17/5/666, VA17/5/091 & VA17/5/145.

8. RESPONDENT'S CASE

8.1 Mr. Hubert Mulligan, for the Respondent, contended for a valuation of € 23,200 as at the valuation date of 15th September, 2017 which he calculated as follows:

	€	
Drink Sales FMT € 225,000 @ 0.08	18,000	
Off Sales FMT € 50,000 @ 0.03	1,500	
Wholesale FMT € 250,000 @ 0.015	<u>3,750</u>	
	23,250	NAV € 23,200.

8.2 In support of his valuation, Mr. Mulligan relied on five Key Rental Transactions (KRTs) for which full details are set out in the Appendix to this Determination and four NAV assessments from Cavan town.

Brief redacted details of the KRTs are outlined as follows:

(a) **KRT No. 1**

Bailieborough (town of 2,683 population 2016 Census) floor area of 45.27m²

NAV € **9,300**

No representations received; Not represented by an Agent; No appeal to Tribunal.

(b) **KRT No. 2**

Kingscourt floor area of 100.80m²

Not relied upon for development of valuation scheme as considered an outlier.

NAV € **17,500**

No representations received; Not represented by an Agent; No appeal to Tribunal.

(c) **KRT No. 3**

Kingscourt. Floor area of 248.66m².

NAV € **32,600**

Reps received, Represented by Agent and appealed to the Tribunal.

7.

(d) **KRT No. 4**

Belturbet. Floor area not provided.

NAV € **10,500**

Representations received not represented by an agent but appealed to the Tribunal.

(e) **KRT No. 5**

Mullagh, County Cavan. Floor area not provided.

NAV € **17,600**

Representations received; Not represented by an Agent; No appeal to the Tribunal.

Tone of the List Comparables.

(f) Property Number **1558338** NAV € **24,000**

This property is located on Main Street.

The NAV is calculated as follows:

FMT € 300,000 @ 0.08 = 24,000

Representations were received but the valuation was not amended. Trading information was received. Not represented by an Agent and no appeal to the Tribunal.

(g) Property Number **1558371** NAV € **18,000**

This property is located on Main Street.

The NAV is calculated as follows:

FMT € 225,000 @ 0.08 = 18,000

Representations were received and the valuation was amended. Not represented by an Agent and no appeal to the Tribunal.

(h) Property Number **1558302** NAV € **16,800**

This property is located on main Street.

The NAV is calculated as follows:

FMT € 210,000 @ 0.08 = 16,800

No representations received; Not represented by an Agent; No appeal to the Tribunal.

(i) Property Number **1557660** NAV € **23,200**

This property is located on Coleman Road/College Street.

The NAV is calculated as follows:

FMT € 290,000 @ 0.08 = 23,200

Representations received and valuation amended, Trading information provided. Not represented by an Agent and no appeal to the Tribunal.

8.

8.3 In addition to his comparable & KRT evidence Mr. Mulligan commented on Mr. Halpin's evidence as follows:

Appellant's Comparison No.1

He stated that this property, on Coleman Road, had been valued at €26,700, and that the pub element had been valued at €16,000 based on 'drinks on' sales of €210,000 @ 8% and that the off-licence was valued at €9,900 based on off-sales FMT of €330,000 @ 3%. He said representations and trading data were received at representation stage and that this property was not subject to an appeal.

Appellant's Comparison No. 2,

This property, also on Coleman Road, had been valued at €23,200, and that the FMT was based on €290,000 @ 8%. He said representations and trading data were received at reps stage, when the occupants confirmed they only occupied the ground floor and that this property was not subject to an appeal. He noted that the FMT applied to this property for the on drinks trade was substantially greater than had been applied to the subject property.

Appellant's Comparison No. 3

This property in Bridge Street is a bar and guesthouse, which had been valued at €10,550 and the pub is valued at €8,050 based on the 'drinks on' sales FMT of €115,000 @ 7% and that the guesthouse is valued at €2,500 based on a room sales FMT of €25,000 @ 10%.

Appellant's Comparisons No. 4 & 5

As regards Mr. Halpin's last two comparisons, Mr Mulligan confirmed that those valuations were estimated and the properties were valued at €25,100 and €25,000. Both of those properties did not submit any trading documents or representations.

Referring to these comparables, Mr Mulligan asserted that these demonstrated that the Valuation Scheme had been equitably applied, and that two of those properties had been valued at 8% of FMT as their gross profit is under 56% , noting that the Appellant's Comparison No. 3 was the only pub in Cavan town valued at 7%

8.4 Mr. Mulligan also provided background on the Revaluation in Cavan outlining that:

199 licenced premises were valued as part of Cavan Revaluation 2019.

113 submitted S45-LP1 as part of Revaluation Information request.

46 licenced premises are subject to tribunal appeal or 23%, many of these have been and will be agreed as trade data is supplied and the scheme applied.

153 have not appealed and are valued on the same approach described above and deemed correct in accordance with Section 63 of the Valuation Acts 2001-2015.

Based on the above, Mr. Mulligan asserts that this equates to 77% of properties having accepted their valuation as correct.

8.5 Mr. Mulligan outlined the basis of the valuation scheme applied by the Commissioner of Valuation and he noted that, as there was no clear market evidence provided in Cavan town itself, the KRTs presented in his precis were from outside Cavan town. The Commissioner had thus relied on trading information available relating to licenced premises within the town of Cavan. Each of those comparisons adduced had been investigated and analysed in accordance with Valuation Office policy. He stated that market rents were adjusted where appropriate to take account of the date of the transaction relative to the statutory valuation date as well as any inducements included in the transactions and any other information relevant to the transactions. The result of that research produces the Net Effective Rent in each case as stipulated to be followed as the basis of valuation in s.48. of the Valuation Act 2001 as amended.

8.6 Mr. Mulligan stated that financial information had been sought from all licenced premises in Co. Cavan and that this information had been received for 130 cases or 56.78% with no information being supplied by the remainder. He confirmed that the financial information on the KRTs was compared with the Net Effective Rent and that this produced a valuation scheme with a range of 7-9% of the estimated Fair Maintainable Trade on all licenced premises with 6% being applied on properties with a FMT of below €110,000 and that drink on sales are valued at 8% for pubs in Cavan town if gross profits are below 56%, and at 9%, if gross profits are above 56%. He said the only exception to this in Cavan town was the Appellant's Comparison No. 3 which he said was at odds with all other pubs in the town and appeared to be an error. He stated that drink off-sales are valued at 3% and that the subject property was the only property involved in keg sales and that these were valued at 1.5% and that these last two elements had been agreed with the Appellant.

9. SUBMISSIONS

There were no legal submissions in this case.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must 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 Cavan County Council.

10.2 The approach employed by the Commissioner of Valuation for valuing pubs is to analyse the data including financial returns of these businesses in order to calculate a scheme of valuation with rates of value being applied to the fair maintainable trade (FMT) of various business components of trade as clarified in this case by Mr. Mulligan.

The Tribunal notes that Mr. Halpin did not challenge the legitimacy of the Respondent's valuation scheme, per se, but disputed the figures adopted for the application of that scheme, to one component part of the valuation, in the circumstances of this case.

10.3 From examination of the evidence offered at the hearing and by the various exchanges it was established that the Respondent's scheme for valuing similarly circumstanced pubs to the subject property, applied levels of FMT based on actual analysis of accounts' figures from returns made or, alternatively, on estimates made without the benefit of such background information. The Tribunal noted that there appeared to be an absence of reliable rental evidence in Cavan town itself hence the KRTs relied on upon by Mr. Mulligan were from County Cavan towns.

10.4 Upon questioning by the Tribunal, the Respondent's approach adopted for valuing each of the KRTs was explained as follows:

KRT Comp 1. Valued at 7% including a 1% allowance for entertainment expenses.

Mr. Halpin opined that the net figure was thus 6%

KRT Comp 2. Valued at 7%

KRT Comp 3. Valued at 7% ('drink-on' sales), and food at 5%

KRT Comp 4. Valued at 7%

KRT Comp 5. Valued at 8% - (explanation: for pubs outside of Cavan town in Co. Cavan with a TO of greater than €100,000 they are valued at 7% if gross profit is less than 56%, and if more than 56% they are valued at 8%)

Accordingly, in regard to drink sales the valuation scheme in County Cavan operates to apply 7-9% of the FMT of Drink On sales with 6% being applied to properties with FMT below € 110,000 and with the scheme also applying 8-9%, depending on the level of gross profit, in Cavan town. There was one exception to this being Appellant's Comparison Number 3 which the Tribunal, in the absence of any information to the contrary, must see this (at 7%) as an outlier or anomaly. Aside from this, the pattern of assessments examined at the hearing indicates the application of a rate of 8% in the town itself.

10.5 The Tribunal notes the lack of town centre rental evidence despite several references to rents at the hearing that could have been further investigated for this type of property. There are 24 pubs in Cavan town so to have a situation where no rent is available is disappointing. It is noted that out of these 24 pubs only 12 provided trading information.

10.6 The Appellant sought to rely on the fact that they were not using the upper floor of the subject property. The Tribunal rejects this as a valid consideration because the statutory task of the Tribunal is to determine what use a hypothetical tenant would make of the property. It could well be that he/she would exploit the full potential of the property for trade regardless of whether the present occupier is doing so at present. Reliance on valuations subject to appeal is to be disregarded and, similarly, previous decisions of the Tribunal in other cases do not convey binding principle, being decided on their particular facts in each case.

10.7 Both the Appellant and Respondent are agreed on two of the three NAV components of the valuation, namely,

		€
Off sales	FMT € 50,000 @ 0.03	1,500
Wholesale (Kegs)	FMT € 250,000 @ 0.015	3,750

Therefore, differences lie in the valuation of the Drink Sales with Mr. Halpin contending for:

Drink Sales	FMT € 200,000 @ 0.07	14,000
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And Mr. Mulligan contending for:

Drink Sales	FMT € 225,000 @ 0.08	18,000
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Thus, the differences occur in both the estimate of the correct level of FMT (€ 200,000-Appellant versus € 225,000-Respondent) and in the choice of rate to value this component with 7% being applied by Mr. Halpin versus 8% being applied by Mr. Mulligan. Arising from the divergent views of the parties, there is a difference in the ultimate total NAV of the Property of € 4,000 (but actually € 3,950 after rounding of the figures: € 23,200 minus € 19,250).

10.8 Taking, firstly, the level of estimated FMT for Drink Sales, the Tribunal is of the view that, after consideration of the respective arguments, it was established from questions posed at the hearing that the correct analysis of turnover for drink sales, over three years, conceded both by Mr. Halpin, and in turn, by Mr. Mulligan, gave an average of € 210,000. In the light of this accepted correction of the evidence, the Tribunal considers this to be the appropriate level of the FMT for Drink Sales to adopt because, in the absence of any contradictory information, it represents the best indicator of what a hypothetical Tenant, as envisaged in the statutory basis, would consider to be an appropriate estimate, in these circumstances. Furthermore, this is because the estimate is based on hard facts (i.e. from the accounts) which would have been deemed to be available to the hypothetical Tenant at the relevant time from which to base his/her own estimate.

10.9 Turning to the second point of contention, the Tribunal considers that, after consideration of the evidence, that the appropriate rate to apply to the FMT of Drink Sales is, accordingly, 8% because, notwithstanding the shortcomings in the Respondent's valuation scheme for licensed premises in this Revaluation (namely that not all operators returned trading details for accurate valuations to be made, and town centre rental evidence is not to hand for this location, thus leaving the Respondent's data base incomplete and/or inadequate), the pattern of rates applied to drink sales in comparable assessments in Cavan town would seem to indicate, with the one exception previously referred to, as being that rate.

12.

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 **€ 22,050.**

This is calculated as follows:

	€	
Drink Sales FMT € 210,000 @ 0.08	16,800	
Off Sales FMT € 50,000 @ 0.03	1,500	
Wholesale FMT € 250,000 @ 0.015	<u>3,750</u>	
	22,050	NAV € 22,050.

And the Tribunal so Determines.

