

Appeal No: VA19/5/0406

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Stamullen Inns Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1553456, Hospitality, Moran's of Mornington, Mornington, County Meath

B E F O R E

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

Rowena Mulcahy – Solicitor, FCI Arb.

Member

Martin Connolly - M.Agrs., M.Sc., MSCSI, FCI Arb

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18th DAY OF AUGUST, 2022**

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 ("Subject Property") was fixed in the sum of € 38,400.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

"1. The subject property is overtrading. This is borne out by the flatness of the trade over the four-year period, in which sales across the greater Dublin area saw respectable growth.

2. The subject property is a very modest premises (108.57m² Trading area) with the majority of same being a former residential premises. The frontage of the pub is just 3.7 metres.

3. The Commissioner's assessment is the most aggressive possible based on the four-year period. Cognisance needs to be taken of the occupier's acumen and goodwill, having operated in the premises for over a decade. Sustainable drink-on is unlikely to exceed €320,000 per annum.

4. The property is not located near any other commercial premises on a local road, 2 kilometres from the village of Mornington. This is not a desirable commercial location.

5. The Subject Property is not superior to PN 1553327 (McDonagh's, Bettystown) and PN 1553370 (The Coast Tavern, Laytown)."

1.3 The Appellant considers that the valuation of the Subject Property ought to have been determined in the sum of €25,600.

2. REVALUATION HISTORY

2.1 On the 15th 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 Subject Property was sent to the Appellant indicating a valuation of €40,800.

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 Subject Property was reduced to €38,400.

2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €38,400.

2.4 The date by reference to which the value of the Subject 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 an oral hearing held remotely on the 28th day of February 2022. At the hearing, the Appellant was represented by Mr. David E S Halpin M.Sc. (Real Estate) BA. (Mod) of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Viorel Gogu of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective 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

4.0 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.1 The Subject Property is a ground floor licenced premises located on the Church Road (R150), approximately two kilometres from the village of Mornington, in an area of medium density housing close to the Estuary of the River Boyne. There are no other commercial premises in the vicinity.

4.2 The Subject Property is freehold.

4.3 The trading area, agreed by the parties, is 108.57 m².

4.4 The turnover and gross profit figures for the years 2014 to 2017 are shown in Appendix 1.

5. ISSUES

The sole issue in this Appeal is quantum.

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 and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant.”

7. APPELLANT’S CASE

7.1 Mr Halpin on behalf of the Appellant submitted that the Subject Property (public house) is located approximately two kilometres from the village of Mornington, with no other commercial premises in the vicinity, and it is not a desirable commercial location. He stated that it comprises a modest ground floor public house, the majority of which is a former residential premises, with a trading area of 108.57 m² and a frontage of 3.7m. He provided a number of photographs internally and externally.

7.2 He claimed that the estimate of Fair Maintainable Trade (FMT) on which the NAV is based is unreasonable. The business is over trading because of the acumen of the occupier.

7.3 Mr Halpin put forward six comparator properties from the List for the assistance of the Tribunal:

Property No.	Premises	Valuation	Estimated FMT	Estimated Trading Area	Distance from Subject
1553456	The Subject Property	€38,400 (Under appeal)	€480,000 (drink)	108.57 m²	N/A
1553327	McDonough’s Bar, Bettystown	€25,000	Unknown	120 m ² (d)	4.3 km
1553379	Alverno House, Laytown	€25,000	Unknown	150 m ² (d)	7 km

1553370	Coast Tavern, Laytown	€27,300	€455,000	350 m ² (d)	7 km
1553381	Cottage Inn Laytown	€44,400	€665,000, (drink); €150,000 (off).	300 m ² (d)	6.9 km
1553393	Cock Tavern, Gormanston	€17,600	€220,000	400 m ² (d)	12.7 km
1553344	Jack Gibney & Sons, Gormanston	€26,900	Unknown (Multiple elements)	400 m ² (d)	12.8 km

(d) indicates area estimated from OSI and Land Registry records.

7.4 Based on the list of comparators submitted Mr Halpin asserted that the Subject Property is:

- a) the smallest of all
- b) the comparisons and
- c) was assessed on a different percentage for drink on-sales from the known comparisons at 8% with 6% from the known comparisons in Laytown, a larger and more populous town.

7.5 It was argued on behalf of the Appellant that the estimate used by the Commissioner, €480,000, does not represent FMT. The Commissioner's approach in concentrating on turnover is effectively a tax on the business which is incorrect. He argued that when determining the FMT factors other than the actual turnover must be considered such as turnovers from comparable pubs to determine relativity. He argued that the subject is over trading and that turnover has been flat at a time when trade in the Dublin area had been improving.

7.6 He argued that the range of comparisons generally varies from a NAV of €25,000 to €27,300 and consequently the Subject Property at a NAV of €38,400 is overvalued in comparison to licenced premises in the area.

7.7 This anomaly can be corrected by either reducing the FMT or reducing the multiplier applied to give a NAV of €27,600. He submitted that the simplest adjustment is to take the lowest of the four years (2016) i.e., €460,000 and apply the effective rate of 6% which results in a NAV of €27,600.

7.8 Mr Halpin submitted four Tribunal judgements, VA17/5/145, VA17/5/078, VA17/5/037, and VA17/5/666 to support his contention that factors other than turnover should be considered in assessing the NAV of a licensed premises. He referred specifically to VA 17/5/666 where the Tribunal restated that the appropriate method of valuation for licensed premises was the application of a percentage to the Fair Maintainable Trade. He added that this decision stated that it was appropriate to also consider whether a business was under or over-trading and what a reasonably competent operator or hypothetical trader could achieve or maintain. He further stated that the issue of fairness and equity between ratepayers must also be considered and what was being valued was the building and not the business. He acknowledged that size was not a determining factor but that the relative sizes of different premises provided assistance when comparing premises.

7.9 Under cross examination by the Respondent, Mr Halpin repeated his assertion that the Commissioner's assessment was aggressive. He submitted that the levels of turnover

achieved were only sustainable by virtue of the occupier's special skill and could only be maintained by the hypothetical tenant if he or she employed the occupier to run the business. He did not accept that the hypothetical tenant would have access to the trading figures. Even if the Subject Property was closed, it would have to be valued by the Commissioner and the incoming tenant. Mr Halpin accepted that he had only become familiar with the Valuation Scheme when he received the Respondent's précis. On questioning by the Tribunal, Mr Halpin accepted that he could not point to any distinguishing feature of the occupier to which the goodwill of the occupier's business could be attributable and ultimately one must look at the turnover being achieved in similar premises in the locality. On being asked by the Tribunal what in his view was the most important criteria for the location of a pub, Mr Halpin replied that he considered the most important criteria was an adequate population to support local trade.

7.10 The Appellant maintained that the correct NAV at the valuation date, 15th March 2017, should be €27,600, calculated as follows:

Drink sales €460,000 @ 6% = €27,600.

8. RESPONDENT'S CASE

8.1 On behalf of the Respondent, Mr Gogu described the Subject Property as comprising two bars, Moran's Pub and Agnes Moran Bar, two stores including two chill rooms covering 51.21 m² at the rear of the premises, with a smoking area and a large car park at the rear of the premises. He provided a block plan of the premises and he stated that the premises were in excellent condition.

8.2 Mr Gogu added that the property was within walking distance of Mornington village and beach and on a walking trail along the estuary of the Boyne. He provided several internal and external photographs.

8.3 Trading figures for the years 2014-2017 were presented by the Respondent. These are shown in Appendix 1.

8.4 Mr Gogu addressing the Representations Stage put to the Valuation Manager argued that the Appellant had based its objections to the NAV on size and frontage and a poor location. He acknowledged that the Representations were considered together with other Representations and the financial information submitted and the NAV was reduced from €40,800 to €38,400. This was calculated at 0.8% of an FMT of €480,000 which had been reduced from €510,000 FMT to provide an NAV of €38,400. He confirmed that no rental evidence was submitted by the Appellants.

8.5 Mr Gogu commented on the Appellant's evidence and stated that the location with its proximity to Mornington Village, beach and river estuary was the reason the annual revenues were being generated. He referred to the six 'tone of the list' comparisons provided by the Appellants and took issue with the estimated floor areas and the source of these estimated areas. He acknowledged that in relation to Comparison No.1 PN 1553327 with an NAV of €25,000 that the S45 form had not been returned and that the premises had been valued without the benefit of financial information. He noted that no representations or appeal had been lodged and that the property was an old-style pub on the edge of Bettystown.

In relation to Comparison No.2 PN 1553379 with an NAV of €25,000 he stated that the S45 form had not been returned and that the premises had been valued without the benefit of financial information. He noted that no representations or appeal had been lodged and that the property comprised a ground floor premises.

In relation to Comparison No.3 PN 1553370 with an NAV of €27,300 he stated that the S45 form had been returned and that the premises had been valued with the benefit of financial information. The NAV of €27,300 is based on a FMT of €455,000 on drink sales @ 7% (the multiplier applied where the gross profit on drink sales was less than 56%) with a deduction of 1% of the total drink sales in respect of an entertainment allowance. He acknowledged that the location was adjacent to the R150 and overlooked Laytown beach.

In relation to Comparison No.4 PN 1553381 with an NAV of €44,400 he stated that the S45 form had been returned and that the premises had been valued with the benefit of financial information. He also stated that the Appellant had advanced an incorrect percentage of 6% as having been applied to drink sales. The NAV of €44,400 is based on a FMT of €665,000 on drink sales @ 7% (where the gross profit on drink sales was less than 56%) with a deduction of 1% of the total on drink sales in respect of an entertainment allowance plus off drink sales of €150,000 at a rate of 3%.

In relation to Comparison No.5 PN 1553393 with an NAV of €17,600 he stated that the S45 form had been returned and that the premises had been valued with the benefit of financial information. He noted that the rate applied to the FMT was 7% for drink sales and 5% for food FMT and that representations had been made but no appeal was made. He stated that this property was located approx. 1km from Gormanston village at the crossroads of the R132 and an unnamed road, but he regarded the building as slightly inferior based on his exterior inspection.

In relation to Comparison No.6 PN 1553344 with an NAV of €26,900 he stated that the S45 form had been returned and that the premises had been valued with the benefit of financial information. No representations were made and there was no appeal to the Tribunal. He noted that the rate applied to the FMT was 8% for drink sales less 1% for an entertainment allowance and 5% for food FMT. He stated that this property was located approx. 1km from Gormanston village on the R132 opposite PN 1553393 whereas he argued the Subject Property was in Mornington with no local competition.

He concluded by stating that in his opinion the Appellant had not shown any evidence of overtrading and argued that a hypothetical tenant could maintain the level of trade.

8.6 Mr. Gogu relied on three Key Rental Transactions (KRTs) and stated that Market Rents were adjusted to account for the date of transaction, any inducements, and other relevant features and that these investigations provided the Net Effective Rent (NER) in each case. He confirmed that financial information was requested in each licensed premises with a 63% success rate. Following receipt of the financial information this was compared with the NERs on the Key Rental Transactions. This he stated provided a valuation scheme range of 7% to 9% of the FMT on all licensed premises with 6% applied where the FMT was less than €100,000. He added that outside Navan Town all areas with an FMT above €100,000 were valued at 7% if the gross profit was less than 56% and at 8% if above 56%. He stated that a further discount of 1% can be applied where the entertainment is above 5% of total drink sales.

8.7 Mr. Gogu presented three Key Rental Transactions and details are shown in Appendix 2. The first KRT was in Nobber Co. Meath the lease for 20 years was dated from September 2012 and the NER and NAV were €15,132 and NAV €14,700 respectively for a premises comprising 100m². This case was referred to the Valuation Tribunal VA 19/5/1553 and the NAV was agreed.

The second KRT was in Ardnamullan, Clonard, Co. Meath and the lease was for 4 years 9 months dated from January 2014. The NER and NAV were €51,895 and NAV €50,200 respectively for this premises and no floor areas were provided. The drink sales had an FMT of €110,000 @ 7% with a food FMT of €850,000 @ 5%.

The third KRT referred to Main Street Carlanstown Co. Meath held on a rolling lease from 2012. It comprised a licensed premises of 434.77m² and it had an NER of €26,000 and an NAV of €13,000. The NAV was based on an FMT of €190,000 drink sales @ 7% as the gross profit was less than 56%. The Respondent also provided three comparisons from the List, two of which were common with the Appellant.

Property No	Occupier/Premises	Use	FMT	% Applied	NAV
1553381	James Gilna t/a The Cottage Inn, Ninch Co. Meath.	Drink sales	€665,000	0.07	€46,550
		Drink sales allowance	€665,000	-0.01	-€6,650
		Off sales	€150,00	0.03	<u>€4,500</u>
				Total NAV	<u>€44,400</u>
1553370	Bernard McLoughlin/ Coast Tavern, Ninch, Co. Meath.	Drink sales	€455,000	0.07	€31,850
		Drink sales allowance	€455,000	-0.01	<u>-€4,550</u>
				Total NAV	<u>€27,300</u>
1992677	Sean Monaghan t/a Maguires, Kentstown, Co. Meath	Drink sales	€510,000	0.07	€35,700

8.8 Mr Gogu argued that the scheme was accepted by 84.5% of occupiers. Of the 15.5% who appealed, many were settled on production of trading data, to which the scheme was applied.

8.9 In cross examination Mr Gogu was questioned on his description of the location of the Subject Property. He accepted that amenities listed such as Co Louth and Laytown Golf Courses and the beach were from 6.7 to 4.0 km from the Subject Property but contended that they formed part of the overall ambience, which he described as a nice place. Mr Gogu was questioned on the choice of comparable evidence that had been tendered on behalf of the Respondent and why he did not include the comparator properties, PN1553327 and PN 1553379 which were close to the Subject Property and approximately similar in size, which had been put forward by the Appellant. He responded that he was relying solely on properties for which trading data were available. The differences in the NAV of €27,300 for the comparator property PN 1553370, the NAV of €44,400 for the comparator property PN 1553381 and the NAV of €38,400 for the Subject Property were attributable to the application of the Valuation Scheme to the trading figures for the different properties. Regarding the Valuation Scheme, Mr Gogu admitted that he had not been involved in its preparation. It was put to Mr Gogu that the KRTs put forward were remote from the Subject

Property, with the nearest being 40 km away, and the lease dates were four to seven years prior to the valuation date. Mr Gogu contended that the market information had been fed into the Valuation Scheme and that the scheme, which was a good one, had been accepted by 84.5% of the publicans in Co. Meath.

8.10 Mr Gogu contended that the FMT of €480,000 for the Subject Property was correct and that a competent operator taking a lease of the premises would be able to maintain that level of trade. He argued that no evidence of overtrading had been provided by the Appellant. The NAV is not out of line with comparable properties and satisfies the requirement of S 19 (5) of the Valuation Acts, 2001-2015. He reaffirmed the valuation on the list, calculated as follows:
FMT €480,000 @ 8% = €38,400.

9. SUBMISSIONS

9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine the value of the Property to achieve, as 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 County Meath.

10.2 It is long established in practice that the appropriate method of valuing public houses is to apply a percentage to the FMT. Bond and Brown in *Rating Valuation Principles and Practice* (4th Edition Routledge, 2018) at page 283 specifically observe:

Rents [of public houses] are not analysed on a m² basis because the size of the public house is not what a prospective tenant would primarily be interested in when taking a tenancy. ... Rents are therefore analysed by reference to the FMT likely to be achieved by a reasonably efficient publican at the AVD.

10.3 However, while the Tribunal fully accepts that a prospective tenant would primarily be focused on the FMT like any other business premises the size in terms of the floor area as well as the location are important secondary considerations and can assist in differentiating one from another. It would greatly assist the Tribunal if all comparisons adduced included details of the floor areas.

10.4 The Tribunal was presented with three Key Rental Transactions by the Respondent. These rental transactions were found to be of limited assistance. One had a predominately food trade. They were all at a distance from the subject, at least 40 km, and the lease dates, namely September 2012, January 2014 and 2012, preceded the valuation date, September 2017, by some considerable length of time.

10.5 The Appellant presented details of six tone of the list comparisons and the Respondent provided three, two of which are common to both parties. Without the benefit of accounts or details of the Valuation scheme it was inevitable that the Mr Halpin would have difficulty in analysing his comparisons. This was clear in the differing analysis of Property Nos 1553381 and 1553370, which Mr Gogu contends provide the best tone evidence. Mr Halpin in cross

examination also described Property No 1553381 as significant. The Tribunal finds that comparators with the benefit of trading accounts are of most assistance.

10.6 The FMT of two of the comparisons submitted by the Appellant, namely McDonough's Bar (PN 1553327) and Alverno House (PN 1553379), were unknown. Insufficient information was furnished for these comparator properties to be of assistance to the Tribunal.

10.7 Two of the comparisons provided by the Appellant, namely the Cock Tavern (PN 1553393) and Jack Gibney & Sons (PN 1553344), are located opposite each other approximately 1 km outside Gormanston Village in direct competition with each other, as distinct from the Subject Property which is a standalone property in Mornington with no competition on a 4.5km radius. Both comparators have an estimated trading area of 400 m², almost four times the trading area of the Subject Property. The two comparator properties, both of which serve drink and food, in contrast to the Subject Property which serves drink only, were of little, if any, assistance.

10.8 It had been submitted on behalf of the Appellant that the Subject Property had been assessed at a different percentage for drink on sales (8%) than the known comparisons (6%) and the multiplier that was applied to the FMT on drink sales in these two comparators was noted. The NAV of €17,600 for the Cock Tavern was calculated based on a FMT on drink sales of €180,000 with a multiplier of 7% applied and a FMT on food sales of €200,000, less the customary first €100,000 discounted, with a multiplier of 5% applied. The NAV of €26,900 for Jack Gibney & Sons was calculated based on a FMT on drink sales of €245,000 with a multiplier of 8% applied, less an entertainment allowance of 1%, and a FMT on food sales of €195,000, the first €100,000 having been discounted, with a multiplier of 5% applied.

10.9 Two comparisons were submitted by both the Appellant and the Respondent, namely the Coast Tavern (PN 1553370) and the Cottage Inn (PN 1553381). The reference to a townland Ninch rather than Laytown was not helpful. The Coast Tavern is a well-known pub situated close to the beach in Laytown, 7 km from the Subject Property, with an estimated trading area of 350 m², more than three times the trading area of the Subject Property. The NAV of €27,300 is based on a FMT on drink sales of €455,000 with a multiplier of 7% applied (as the gross profit is below 56%) less an entertainment allowance of 1% of total drink sales. It was noted that the NAV without the 1% entertainment allowance would have been €31,850. The property was not the subject of a representation or tribunal appeal, and the valuation is deemed correct in accordance with S.63 of the Valuation Acts 2001 - 2015.

10.10 The Cottage Inn, located opposite the Coast Tavern and described as the best pub in Laytown with an estimated trading area of 300 m², has both drink on sales and off sales. The NAV of €44,400 was calculated based on a FMT on drink sales of €665,000 with a multiplier of 7% applied (as the gross profit was less than 56%) less an entertainment allowance of 1% of total drink sales and a FMT on off sales of €150,000 with a multiplier of 3% applied. The valuation based on FMT was not the subject of an appeal and its valuation of €44,400 informs the tone of the list.

10.11 A licensed premises occupied by Sean Monaghan, Maguires, located in a small village of Kentstown was furnished by the Respondent as a comparator. It was submitted that this property was a traditional pub similar to the Subject Property which served drink only and with trading figures similar to the Subject Property. The NAV of €35,700 was based on a FMT on drink sales of €510,000 with a multiplier of 7% applied. The property was not the subject of a

representation or a tribunal appeal and was deemed correct in accordance with S.63 of the Valuation Acts 2001 - 2015.

10.12 It was submitted on behalf of the Appellant that the Subject Property had been assessed at a different percentage for drink on sales (8%) than the known comparisons (6%). The Tribunal noted the multiplier that was applied to the FMT on drink sales in each of the comparator properties submitted by the parties where the said information was available and finds that this assertion was not correct; in the comparators furnished to the Tribunal, a multiplier of 7% or 8% was applied to the FMT on drink sales, depending upon whether the gross profit was less or more than 56%, with an allowance of 1% of total drink sales applied where entertainment expenditure in excess of a percentage of total drink sales had been incurred.

10.13 Four Valuation Tribunal judgements were submitted for the assistance of the Tribunal on behalf of the Applicant. The Tribunal found these judgements of help in elucidating the general principles to be applied in the valuation of licenced premises. However, none of the cases were found to be directly applicable to the Subject Property.

10.14 Mr Halpin for the Appellant argued that the FMT applied did not reflect the fact that the business was overtrading. He specifically asserted that the trading figures were flat while at the same time a survey showed that in the Dublin area trade was increasing. However, he provided no details of the survey on which the Tribunal could form an opinion. The Appellant contended that cognisance should be taken of the occupier's business acumen, but no evidence of the occupier's business acumen was adduced either in direct evidence or in response to questioning by the Tribunal. The Tribunal finds that the Appellant has not proved that the Subject Property was overtrading

10.15 There is a longstanding principle in rating valuation that reliable rental evidence should be accorded more weight than rating assessments unless there is an established tone of the list, which itself would have been derived from rental evidence. Unfortunately, in this case the Tribunal has no reliable rental evidence on which to base an assessment.

10.16 The Tribunal accepts Mr Gogu's evidence on the valuation scheme and that the tone of the list is well established

10.17 In this appeal the onus is on the Appellant to prove that the Respondent's valuation of the Subject Property is incorrect. The Tribunal finds that the Appellant has not done so.

10.18 Having regard to the foregoing the Tribunal disallows the appeal.

DETERMINATION:

The Tribunal disallows the appeal and confirms the decision of the Respondent.

