

Appeal No: VA19/5/0376

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Solazzi Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2008069, Off-Licence, Pub at The Courtyard, Main Street, Ferns, Enniscorthy,
County Wexford

B E F O R E

Dolores Power - MSCSI, MRICS

Deputy Chairperson

Rowena Mulcahy – Solicitor C.Arb., FCI Arb.

Member

Peter Stapleton - FSCSI, FRICS, Dip Arb Law

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF JUNE 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 (the Subject Property”) was fixed in the sum of €67,200.

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 in the village of Ferns, a very moderate commercial location, which is about to be by-passed (Summer 2019). What little business there is in Ferns has depended entirely on the N11. The village is already carrying 3 closed pubs – Richies, O’Loughlin’s and Murphys. This accounts for nearly half the pubs in the village.

2. The subject property is the only pub in the village with a food trade, and the acumen of the operator is clearly exceptional. This means it has far more to lose from the bypass than any

standard drink alone pub as it depends primarily on the road traffic. The occupiers estimate that the food trade will reduce by a minimum of 50% once the bypass opens. This means food FMT will drop to a maximum of €650,000. Indeed, Ferns will not even have a dedicated exit from the motorway. The bypass has been a known risk which would have materially affected the hypothetical tenants bid through the relevant period but cannot be shown in the accounts until it actually opens.

3. This type of business, with nearly 80% food, does not transfer well. The hypothetical tenant would be very uncomfortable above 1.5x drink on as food, even without the effect of the bypass. One must remember that a pub is licenced to sell alcohol, not licenced to sell food.”

1.3 The Appellant considers that the valuation of the Subject Property ought to have been determined in the sum of €52,800.

2. REVALUATION HISTORY

2.1 The Statutory Valuation Date for the Subject Property is 15 September 2017.

2.2 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 €87,600.

2.3 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 €67,200.

2.4 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €67,200.

2.5 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. The Effective Date for the valuation of the Subject Property is 31 October 2019.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 22nd day of February, 2022. At the hearing the Appellant was represented by Mr. Eamonn S. Halpin B.Sc.(Surveying) M.R.I.C.S. M.S.C.S.I. of Eamonn Halpin and Co. and the Respondent was represented by Patrick Nolan B.Sc. (Hons) Property Valuations & Management, MSCSI, MRICS, Dip. Rating 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

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

4.2 The Subject Property is located on the Upper Main Street (R745) in the town of Ferns opposite St. Aidan's Church. Ferns is linked to the M11 motorway at Junction 24. The Subject Property is a two-storey commercial licensed premises in good condition throughout with trading areas laid out on two floors, the ground floor and first floor, and which comprises a bar, two restaurants, large function room, kitchen and two outdoor terraces on the ground floor and an office/staff room and two meeting rooms on the first floor. The Subject Property was by-passed after the Valuation Date but prior to the Effective Date. The property is held Freehold

4.3 The Floor Areas of the Subject Property were agreed between the parties as follows:

Ground floor

Bar area	127.44 sq m
Restaurant Area	162.3 sq m
Function Room Area	214.58 sq m

First floor

Meeting room areas	<u>53.24 sq m</u>
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Total 557.57 sq m

4.4 The Trading Data as set out in the Appendix (N/A to public) hereto is not in dispute.

5. ISSUES

The sole issue that arises in this Appeal is one of quantum.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Subject 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 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 Referring to his précis of evidence Mr. Halpin described the Subject Property as being one of four pubs in the centre of Ferns, located within 250m of one another, and the only one which served food. Mr Halpin claimed that the value of the Subject Property by reference to actual trade (Refer Appendix I – N/A to public) was complicated by the by-passing of Ferns in June 2019 and that all financial statements for the Subject Property were from the period prior to the by-pass when the N11 was running ‘virtually outside the door’. He further claimed that the impact of such a fundamental change in passing trade is difficult to estimate but did acknowledge that the Commissioner had attempted to make allowances for this.

7.2. Mr Halpin set out three comparisons in the immediate vicinity of the Subject Property (Refer Appendix II – N/A to public).

7.3 Mr Halpin referred to the case of *Bracken v the Commissioner of Valuation*, VA17/5/118, which concerned a pub in Kinnegad which was bypassed in 2006 and then refers to this case which involves the use of pre-bypass financial statements.

7.4 Tone of the List: Mr Halpin introduced six comparisons from across the County, only one of which is known to serve food and some of which the Appellant contended were affected by the bypass (Appendix III – N/A to public).

7.5 Mr Halpin disputed the approach to food by the Commissioner in terms of assessing FMT and drew attention to the food to drink ratio of 1:4.57 of the Subject Property which he claimed was completely at odds with the standard relationship. He claimed that the Commissioner’s approach is, in effect, a taxation of the business and that both parties are charged with considering other information which would inform FMT such as the turnovers of other comparable pubs in order to establish over or under trading.

7.6 Mr Halpin referred to the business that a hypothetical occupier might be able to achieve and referred to the fact that the occupier is a chef with significant personalised skill that could not be transferred to the hypothetical tenant and that the business has led to very long trading hours with the result that the food trade is artificially increased.

7.7 Mr Halpin referred to a number of decisions in the 2017 Revaluation on the subject of turnover and FMT, including VA17/5/075, VA17/5/118, VA17/5/243 and VA17/5/579 and in particular to the judgment in VA17/5/579 which refers, inter alia, to realistic turnover or FMT and the ability of a hypothetical tenant.

7.8 Mr Halpin summarised the comparisons provided by the appellant referring to the local pubs which were drink only establishments. He submitted that the most helpful comparison was the River's Edge Bar in Bunclody, located on the N80 at the subject date with both it and the Subject Property located in towns having similar populations located just 16kms apart in North Wexford and both suppliers of food with a similar drink trade.

7.9 Under cross examination, Mr Halpin agreed that the notice of the by-pass was dated 14 October 2015 and so the appellant had notice of the bypass well before the valuation date and that a planning application for works to the kitchen was lodged in 2016.

7.10 In response to questioning by the Tribunal regarding the post by-pass trade of the Subject Property and an enquiry regarding the availability of financial information from bi-monthly VAT returns following the opening of the by-pass in June 2019, Mr Halpin referred to the closure of the licensed premises for extended periods during the Covid 19 pandemic and stated that there was no post by-pass trading information available.

7.11 In response to questioning by the Tribunal in relation to the Bailey comparison, Mr Halpin confirmed that 30% of the trading area was at ground floor with the balance over the other floors.

7.12 Subsequent to the hearing, Mr Halpin confirmed to the Tribunal, at the request of the Chairperson that:

- 1) The owners Mr Donegan and Mr Doyle have been running the licensed premises in the Subject Property since they purchased it in 1997.
- 2) The resident chef, Mr Thomas Martin, has been in charge of the kitchen since 2012.

7.13 The Appellant sought to have the NAV of the Subject Property reduced in line with its 'actual potential rental value' and the emerging tone of the list.

8. RESPONDENT'S CASE

8.1 Mr Nolan for the Commissioner contended for a NAV of €67,200. He stated that the Subject Property was located directly opposite the Church and in excellent condition throughout. He provided floor plans of the Subject Property indicating the layout of the building over two floors.

8.2 Mr Nolan stated that the NAV of the Subject Property had been reduced from €87,600 to €67,200 following the receipt of financial information from the Appellant and that the Commissioner had already made an allowance to reflect the fact that Ferns was bypassed in 2019. He referred to the considerable increase in food turnover from 2014 to 2015 and stated that this contrasts with the trend from 2015 to 2017 when turnovers relating to both drink and food sales were relatively stable. Mr Nolan contended that far more weight should be attached to trading information at the valuation date than is attached to trading information from 3 years prior to the valuation date and supported this view by the judgement of the Valuation Tribunal in *Pelco Limited v The Commissioner of Valuation (VA 14/5/175)*.

8.3 Mr Nolan took issue with Mr Halpin's evidence regarding the provision of food in his comparisons and certain aspects of the drink to food ratio which he advised were factually incorrect. He stated that the property was freehold and not leasehold.

8.4 Mr Nolan described the Subject Property as operating under a seven day licence and indicated the accommodation available to cater for a 'sizeable food trade' of about 300 persons along with the kitchen which had been extended on foot of the 2016 planning application.

8.5 Mr Nolan referred to four Tribunal judgements which considered the role of food in licensed premises that had been cited by Mr Halpin and stated that information furnished by the appellant was factually incorrect. Mr Nolan set out the correct methodology that he stated the Valuation Tribunal had adopted in the cases.

8.6 Mr Nolan described Mr Halpin's three local comparisons in terms of their limited floor area, accommodation, potential and offering:

1. Dunbar's of Ferns, Main Street, Ferns – described as very modest and old with no potential to operate a food trade due to its limited size and lack of a commercial kitchen; a trading area confined to a bar area of 91 sq m; and no off-street parking in comparison to the Subject Property which is an extensive, modern and well laid out licensed premises with trading areas across a bar, two restaurant dining areas, a function room, and two first floor meeting rooms; and off street parking at the rear of the Subject Property and directly opposite in the church car park.
2. The Thatch Bar, Ferns – inferior in size and providing a bar area only, this comparison does not provide off-street parking and was described as very modest and old without a commercial kitchen.
3. Doyle's Bar, Main Street, Ferns – which is under appeal, was described as significantly smaller and inferior to the Subject Property, without a commercial kitchen and with a trading potential restricted to on-sales only

8.7 Mr Nolan submitted that the tone evidence put forward by the appellant relating to properties situated in Ferns supports the drink FMT adopted on the Subject Property by the Commissioner.

8.8 Mr Nolan referred to the six Tone of the List comparisons offered by Mr Halpin as

1. River's Edge Bar & Grill - located in Bunclody which has a similar population to Ferns but has 8 pubs, as distinct from 4 pubs in Ferns, and a small number of restaurants. This comparison property serves drink and food but the trading area of this property comprises a single bar area, in contrast with the Subject Property.
2. Jack's Tavern - located in Camolin, a smaller locality with 1/3 of the population of Ferns but more pubs, this property has very limited off-street and on-street parking. Mr Nolan questioned the floor area cited by the appellant.
3. The Bailey Cafe Bar - located in Enniscorthy, a larger town than Ferns, with 22 pubs, some of which serve food; 2 hotels both of which operate a strong food trade; and a number of restaurants. The layout is inferior to the Subject Property with trading areas spread out over four floor levels with only 30.7% of the trading areas at ground floor level. This property, which is in a stronger location than the Subject Property, has been without a nightclub since 2012.
4. Boggans of Kilmuckridge - facing competition from a hotel which provides a good food trade and closed at the end of 2016. Mr Nolan stated that contrary to the Appellant's assertion, the property does not serve food and the former restaurant area has been converted into a dance studio which is separately assessed.
5. The Sixty Four Bar, Main Street, Gorey - a late night entertainment venue, the property does not serve food, contrary to the Appellant's assertion. The level of competition from pubs, hotels and restaurants for food trade is considerably greater in Gorey which

has 11 pubs, including this comparison, 3 hotels and a number of restaurants, than in Ferns.

6. The Porterhouse, Castlebridge – is located 5km from Wexford Town and competes for trade with pubs, hotels and restaurants in Wexford Town. The food operation in this comparison property is a take-away which operates independently of the licensed premises. The take-away and the kitchen are valued on a rate per sq metre basis.

8.8 Mr Nolan drew the Tribunal's attention to several contradictions between the submissions by Mr Halpin and his firm in this case and in their submissions to the Tribunal in relation to other cases.

8.9 Mr Nolan set out his view at length that the revenue generated at the premises is not exceptional having regard to the extent and favourable layout of the premises and that the operator was operating the Subject Property in a manner which is achievable by a reasonably efficient operator or hypothetical tenant.

8.10 Mr Nolan set out the level of regard that The Commissioner had relating to the evolving trend of the trade and placed weight on the stable trade from 2015 to 2017 inclusive (Refer APPENDIX III – N/A to public).

8.11 Mr Nolan described how he valued the drinks FMT of the Subject Property at 7% of FMT, less an allowance of 1% of FMT in respect of entertainment expenses. He further valued food sales (less the first €100,000) at 5% which was the rate suggested by the appellant.

8.12 Mr Nolan set out the details of five NAV Comparisons, some of which were offered also by Mr Halpin and summarised his points as follows:

1. Dunbar's of Ferns, Main Street, Ferns, Co. Wexford - substantially inferior to the Subject Property with drink trade only.
2. The Thatch Bar, Castleland, Ferns, Co. Wexford – substantially inferior to the Subject Property with drink trade only.
3. The Holy Grail Bar & Restaurant, Market Square, Enniscorthy, Co. Wexford - with ground floor bar/restaurant and first floor function room
4. The Bailey, Island Road, Enniscorthy, Co. Wexford - with trading over four floors.
5. Mary Barry's Bar, Kilmore, 16 kms south of Wexford Town - with bar, lounge and restaurant areas within the premises and external seating areas situated to the front and rear of the property and a large beer garden.

8.13 Mr Nolan referred to the decision of the Valuation Tribunal in VA 00/2/032 which he stated placed the burden of proof on the appellant. He submitted that the appellant had not provided evidence to show that the actual receipts of the licensed premises in the Subject Property are in excess of those that a reasonably efficient operator could expect to achieve and that it was not possible to conclude that the operator's management measures, policies and structures produce a higher level of trade than the hypothetical tenant might expect.

8.14 In cross examination, Mr Nolan affirmed his view of the applicability of The Bailey with only 30% of the trading area at ground floor level and also referred to the car parking provided to the rear of the Subject Property and within the church car park.

8.15 The Respondent contended that the trading figures of the Subject Property and the comparable evidence furnished, supported the current valuation of €67,200, and that the Appellant had not discharged the onus that lies on the Appellant to show that the revenues generated at the Subject Property are exceptional and that the operator is operating the Subject Property in a manner which is not achievable by a reasonably efficient operator or hypothetical tenant for this property.

8.16 Mr Nolan submitted that the correct NAV for the Subject Property is €67,200 and he requested the Tribunal to affirm the valuation of the Subject Property on the Valuation List as representing its Net Annual Value in accordance with S. 45 of the Valuation Act, 2001 and the requirements of S.19(5).

9. SUBMISSIONS

9.1 There were none

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Subject Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Subject 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 Wexford County Council.

10.2 In the Notice of Appeal, the Appellant claimed that *“The by-pass has been a known risk which would have materially affected the hypothetical tenants bid through the relevant period but cannot be shown in the accounts until it actually opens.”* It is common case that the by-pass opened in June 2019. The Statutory Effective Date for the Subject Property’s valuation is 31 October 2019. No trading information was furnished by the appellant for the period from the opening of the by-pass in June 2019 to 31 October 2019. The Tribunal accepts Mr Halpin’s evidence that the licensed premises in the Subject Property was closed for extended periods during the Covid-19 pandemic. However the premises were not closed because of the pandemic until mid/late March 2020, approximately 9 months after the opening of the by-pass. The Tribunal does not accept that post by-pass trading information was unavailable because the licensed premises were closed for extended periods during the Covid-19 pandemic.

10.3 It was acknowledged by Mr Halpin on behalf of the Appellant that an allowance had already been made by the Respondent to reflect the effect of the by-pass on the FMT of the Subject Property. The NAV was reduced from €87,500 to €67,200 following receipt of financial information from the Appellant. The Tribunal finds that the allowance for that purpose is fair and equitable.

10.4 The issue for determination by the Tribunal is whether the FMT of the Subject Property is attributable to the exceptional skill of the chef and/or the business acumen and/or long trading hours of the occupiers of the Subject Property and that an allowance should be made in respect of the same in the calculation of the NAV of the Subject Property, as contended by the Appellant, or whether the FMT is attributable to the location and condition of the Subject Property itself, not the business conducted therein, as contended by the Respondent.

10.5 It was stated by the Valuation Tribunal in Appeal No: VA17/5/579 that “it is long established in practice that the appropriate method of valuation of licensed premises is by the application of a percentage to the Fair Maintainable Trade. However, in considering what the Fair Maintainable Trade may be and what factors affect it, consideration has to be given to more than just the turnover, and judgement has to be made as to whether a premises is under or over trading and what level of Fair Maintainable Trade the reasonably competent operator or hypothetical tenant could achieve or maintain. There is also the question of equity and fairness between rate payers and it must be borne in mind that what is being valued is the building and not the business. This Tribunal is conscious of not straying from an established method of valuation and does not propose to value licensed premises on the basis of the size of the trading areas but information on floor areas and rents assists in considering whether or not the level of turnover or FMT is realistic and whether or not a reasonably competent operator/the hypothetical tenant, could improve or maintain that level.’

10.6 The comparisons offered by both parties gave a general view of the licensed trade in County Wexford. However, the Tribunal found the majority of comparisons offered to be of limited, if any, assistance:

Jack's Tavern - No FMT provided. Not helpful.

The Bailey - No trading figures, trading over four floors. Not helpful.

Boggans - No food trade. Not helpful.

The Sixty Four - Drink only and a late night entertainment venue. Not relevant.

The Porter House - No trading figures presented. Not helpful.

Doyles Bar - Drink sales only and much smaller than Subject Property. Not helpful.

Dunbar's - No potential for food trade. Not helpful.

The Thatch Bar - Drink sales only. Not helpful.

The only comparison offered which, like the Subject Property, served drink and food and as such was a relevant comparison, was the River's Edge in Bunclody albeit that the comparison property had a considerably smaller trading area and a much smaller food trade than the Subject Property.

10.7 The Tribunal finds that the rates of 7% for drink, an allowance for entertainment of 1% of the FMT for Drinks on Sales and 5% for food have been established

10.8 The Tribunal prefers the Commissioner's approach to the FMT by concentrating on the more stable trading period of 2015 to 2017 and allowing a discount of €100,000 from the Food Sales. The Tribunal sees no merit in Mr Halpin's reference to turnover in 2014.

10.9 The Tribunal is not persuaded by the evidence that the sales ratio of food to drink of 1:4 is exceptional given the lack of commercial competition in respect of food in Ferns and the extensive accommodation and layout provided by the Subject Property compared to other properties in Ferns that were furnished as comparisons. The Subject Property has designated restaurant and function room facilities which are designed to target the food market whereas none of the comparisons in Ferns have such potential or accommodation and are restricted primarily to the drinks trade.

10.10 No evidence was adduced by the Appellant to show that the level of the FMT of the Subject Property is attributable to the skill of the chef employed by, or the goodwill or business acumen or long trading hours of, the operator of the Subject Property.

10.11 The onus of proof lies on the Appellant. The Tribunal finds that the Appellant has failed to prove that the hypothetical tenant could not generate similar revenues

12. DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal, confirms the decision of the Respondent and affirms the valuation of the Subject Property at €67,200 as follows:

Valuation Applied:

Drink FMT: €350,000 @ 7% =	€24,500
Less entertainment allowance €350,000 @ 1% =	<u>-€ 3,500</u>
	€21,000
Food sales: €1,025,000	
Less first <u>€ 100,000</u>	
€ 925,000 @ 5% =	<u>€46,250</u>
Total NAV:	<u>€67,250</u>

SAY: €67,200 NAV

And the Tribunal so determines.