

Appeal No: VA19/5/1714

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

S & TS Bar & Restaurant Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1278143, Off-Licence, Pub at 6A.7A Newtown, Drogheda, County Louth.

B E F O R E

John Stewart -FSCSI, FRICS, MCI Arb

Deputy Chairperson

Claire Hogan - BL

Member

Frank O'Grady - MA, FSCSI, FRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13th DAY OF JULY, 2023**

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 (NAV) of the above relevant Property was fixed in the sum of **€212,000**.

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

“The valuation is incorrect as the majority of sales turnover is generated by food sales with alcohol sales included in those transactions and should be re-evaluated accordingly. The business is exceptional as its predominantly a food business. The method of rates calculated for other similar business offers no transparency.

The evaluation figure issued is based on previous years business turnover and this year we have seen a decline in turnover and profitability due to increase over heads to run the business. This increase in over heads has been necessary to sustain a viable business.

There is no transparency or available information to see how other rates are calculated for similar businesses in the area.

Based on redoing of current turnover figures and outgoings we feel the amount listed below is the chargeable rate for this property”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €82,000.

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 €212,000.

2.2 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €212,000.

2.3 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 an oral hearing held remotely on the 3rd day of May 2023. At the hearing, the Appellant was represented by Mr. David ES Halpin M.Sc. (Real Estate) Ba. (Mod) and the Respondent was represented by Mr Terry Devlin 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

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

4.2 The subject property is situated along the Dublin Road (R132), on the southside of the River Boyne, approx.1.7 km. from Drogheda Town centre and some 4.1km. from the M1 motorway.

4.3 The property comprises a ground floor bar, restaurant and kitchen with offices and stores at first floor level. There is an adjoining Mace convenience store operating in this location with retail ground floor and office/stores at first floor. There is a large car park adjoining the building.

4.4 The floor areas have been agreed between the parties.

Bar, Lounge and Restaurant	315.80 sqm.
Kitchen	94.28 sqm.
Retail ground floor	253.80 sqm.
Stores	22.12 sqm.
Stores first floor	168.90 sqm.

4.5 The property is freehold.

4.6 Details of the drink and food sales were provided and are set out in Appendix 1 (N/A to public).

5. ISSUES

The issue before the Tribunal is quantum, in particular the manner of computing the NAV of the subject and whether sufficient allowance has been made for what the Appellant argues is the exceptional turnover generated by the owners and their personal goodwill and business acumen.

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 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 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 having adopted his precis as his evidence in chief, outlined the location, description and accommodation of the property and stated that the parties had agreed that the licenced premises should be valued by reference to fair maintainable turnover (FMT) and that the shop would be valued by reference to other retail properties.

7.2 He stated that there were thirty-eight pubs in Drogheda (Appendix 2 - N/A to public), ranging in NAV from €2,600 to €204,000 with an average NAV of €41,020. He confirmed that all were licenced and capable of trading as pubs, but that some had commercial kitchens, off-licenses, night-clubs, and other attributes. He continued that it is a fact that the subject’s value at €173,000 NAV in respect of the pub is exceptional. He then opined as to whether the valuation is justified by the exceptional skill of the occupier or the exceptional attributes of the physical property.

7.3 To assist his case he provided details of 6 suburban pubs of similar size, location, and nature of trade, giving details of NAV, size, and turnover (Appendix 3 – N/A to public).

7.4 He stated that the Commissioner’s representatives were unable to provide sizes in all cases, but the above comparisons are fairly accurate following an in-depth inspection of the records.

7.5 He made the following points:

1. The subject property is not the largest pub in Drogheda by trading area nor is it the largest suburban pub.
2. Despite the above the subject is valued at 2.6 times the next highest 7 -day licenced premises and over three times that of the average premises.
3. A hypothetical tenant could rent 3 equivalent or superior licenced premises in the town for a combined lower rent than he would pay for the subject.

7.6 Mr. Halpin stated that the disparity between the subject's NAV and the other suburban pubs is not sustainable and can only be explained by the overtrading or goodwill and business acumen of the occupiers.

7.7 He stated that the owners were second generation, the family having traded in this location since 1979, with a loyal customer base, which would not be available to the hypothetical tenant and is clearly not available to the other publicans in Drogheda. Moreover, he stated that the subject had a substantial food trade which equally cannot be replicated.

7.8 Mr. Halpin referred to several Tribunal determinations, notably VA/17/5/078, VA17/5/0372 and VA17/5/0380 on the matter of FMT and quoted from VA17/5/666:

"10.2 The Tribunal is of the view that it is long established in practice that the appropriate method of valuation in licenced premises is by the application of a percentage to the Fair Maintainable Trade. However, in considering what the FMT may be and what factors effect it, consideration must be given to more than just turnover, and judgement must be made as to whether a premises is under or overtrading and what level of FMT 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. The Tribunal is conscious of not straying from an established method of valuation and does not propose to value licenced premises based on size of trading areas but information on floor areas assists in considering whether the level of turnover or FMT is realistic and whether a reasonably competent operator/ hypothetical tenant could improve or maintain that level."

7.9 Mr. Halpin referred to the retail element and confirmed acceptance of the Commissioner's approach and values @ €150/sqm. for Zone A etc., however he disputed the rate applied to the first- floor stores @ €80/sqm. which is four times the rate applied to the ground floor stores @ €20/sqm., and which he argued is inequitable and unsustainable.

7.10 The Appellants seeks to have the NAV determined in line with the comparable properties in the list in terms of its actual rental potential and requested the Tribunal to reduce the NAV to €95,700 (Details set out in Appendix 5 – N/A to public).

8. RESPONDENT'S CASE

8.1 Mr. Terry Devlin for the Respondent adopted his precis as his evidence in chief and made the following points in respect of the Appellant's evidence as follows:

1. The Appellant has not shown that a hypothetical tenant could not produce revenues comparable to those produced by the actual occupiers. He referred to VA 19/5/0376 Solazzi Ltd. which stated that the onus of proof lies with the appellant.

2. He stated that FMT provides a consistent approach to the valuation of these properties and no evidence has been provided to show that the subject operators are any more specialised or exceptional than any of the pub occupiers in Drogheda.
3. The Appellant has provided no evidence to support a lower valuation on the upper floor of the retail unit.

8.2 Mr. Devlin confirmed agreement with the details on location, frontage, size, title, floor areas and turnover and provided additional photographs of the property and comparisons.

8.3 Mr. Devlin stated that the Appellant was not disputing the FMT method applied to the scheme of valuation and therefore the issue to be determined is whether the FMT level applied is fair and equitable and in turn whether an NAV of €173,000 for the pub and €212,000 overall is fair and equitable.

8.4 Mr. Devlin commented on the comparisons supplied by the Appellant.

1. PN 2203990 The Thatch, Donore Road, Drogheda. NAV €53,200.
Common comparison between the parties, Located on the edge of Drogheda.
FMT based on turnover figures supplied.
2. PN 1277626 Greenmount House NAV €65,400.
Suburban Bar, restaurant, and off-licence, with good food offering.
3. PN 1278149 The Pheasant NAV €55,700.
Located in residential area in Drogheda town centre. Limited food offering
FMT based on accounts provided.
4. PN 5014431 The Social, Dublin Road, Drogheda. NAV €50,200.
Common comparison, located in residential close to the subject. Large food offering.
FMT based on accounts provided.
5. PN 1277823 Barlow's, Dublin Road, Drogheda. NAV €28,000.
Common comparison, located close to subject. No Food. No parking.

8.5 To assist his case additional NAV retail comparisons were provided.

1. PN 2203545 Unit 4 Hungry Hall Road, Drogheda. All Pets Veterinary Hospital.
NAV €18,000.

Level	Use	Sqm	NAV/Sqm €	Total Nav €
0	Retail zone A	30.50	€150.00	€4,575.00
0	Retail zone B	30.50	€75.00	€2,287.50
0	Retail zone C	30.50	€37.50	€1,143.75
0	Retail remainder	6.40	€18.75	€120.00
0	Shop	56.81	€90.00	€5,112.90
0	Shop	9.35	€20.00	€187.70
1	Store	57.25	€80.00	€4,458.00
				€18,006.15
			Say	€18,000

2. PN 5012657 Dublin Meat Company 2 North Road, Moneymore, Drogheda.

Level	Use	Sqm	NAV/Sqm €	Total Nav €
0	Retail zone A	33.81	€150.00	€5,746.50
0	Retail zone B	21.50	€75.00	€1,613.25
1	Store	80.00	€80.00	€4,792.80
				€12,152.55
			Say	€12,150

3. PN 1278552 Drogheda Motor Factors (last known) 2 Lower Mell, Loughboy, Drogheda.

Level	Use	Sqm	NAV/Sqm €	Total Nav €
0	Retail zone A	51.61	€120.00	€6,192.00
0	Store	16.50	€20.00	€330.00
1	offices	68.10	€80.00	€5,448.00
				€11,970.00
			Say	€11,970.00

8.6 A summary of Mr. Devlin's comparisons are attached in Appendix 4 (N/A to public).

8.7 Mr. Devlin also quoted from several Tribunal cases, including VA/002/032, which referred to the burden of proof lies with the Appellant. He maintained that the case was not proven that the hypothetical tenant could not continue to achieve the current level of trade/business.

8.8 He requested that the Tribunal confirm the NAV of €212,000 in accordance with S. 49 of the Valuation Act 2001 as amended. (Details set out in Appendix 6 – N/A to public).

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, 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 Louth County Council.

10.2 The issue for determination by the Tribunal is whether the FMT of the subject property is attributable to the exceptional skill and/or the business acumen of the occupiers, and whether an allowance should be made for same in the calculation of the NAV of the subject, as contended by the Appellant, or whether the FMT is attributable to the location and condition of the property itself and not the business conducted therein, as contended by the Respondent.

10.3 There is also the question of equity and fairness between the ratepayers, as it is the building that is being valued and not the business. The Tribunal is conscious of not straying from the established method of valuation and does not propose to value the premises based on the trading area. However, information on floor areas assists in considering whether the level of turnover

or FMT is realistic and whether a competent hypothetical tenant could maintain that level of trade.

10.4 The Tribunal noted the quality of the comparable evidence and photos and that the parties had submitted several similar comparisons to support their respective cases.

10.5 The Tribunal finds the scheme used by the Commissioner to assess FMT with rates of 9% for Drink sales and 5% for Food sales has been established and accepted from the evidence adduced.

10.6 The Appellant has given convincing evidence that the business acumen of the occupier needs to be considered when arriving at a figure for FMT. Both parties refer to similar suburban licenced premises close to the subject and trading in the same marketplace but when comparing their NAVs, the subject premises has a significantly higher value than its neighbouring competitors.

10.7 The Tribunal finds that the Respondent has failed to take a “stand back and look” approach to the FMT valuation of the property and has not provided sufficient reasons as to why the valuation of the property should be higher than those attaching to agreed comparable premises in the vicinity. In accordance with the Guidance Notes published by the Joint Rating Forum for valuing licensed premises by reference to trading potential, the valuer needs to compare a property’s trading profitability with properties of similar type or similar location and operation, to arrive at a value that appears reasonable in comparison with values of similar premises.

10.8 The matter regarding the first-floor stores can be addressed in a comparable manner, i.e., with an overview approach, when one notes the rate on the ground floor in the same premises and the obvious difference with access to the first floor and the rate applied therein. It is clear to the Tribunal that the first-floor storage accommodation for similarly circumstanced accommodation cannot be higher than the rate for the ground floor store and the Tribunal finds that the rate of €20.00/sqm should be applied to the first-floor store.

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 €159,525.00.

(Details set out in Appendix 7 – N/A to public)

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal’s determination as being erroneous in point of law may declare such dissatisfaction, require the Tribunal to state, and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.