

Appeal No: VA19/5/0335

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Kenny Connolly t/a Kenny Connolly Public House

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1990639, Off-Licence, Pub at 18 (inc. 2 Cavan New Rd) Bridge Street, Cootehill,
County Cavan.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF FEBRUARY, 2024**

BEFORE

Barry Smyth - FRICS, FSCSI, MCI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th 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 €34,200.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: “I did not receive original documents. Valuation is incorrect as I did not get any documents for my accountant to fill in and my turnover has decreased. I informed your office of this and now have to appeal. The property is valued on turnover and no figures were entered according to your office. No document received. I informed your office of this and told to appeal when Sept form arrived. If I had received proper forms or even got them when I informed your office this would have been sorted already”.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €2,000 approx.

2. RE-VALUATION HISTORY

2.1 On 29th 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 €34,200.

2.2 A Final Valuation Certificate issued on the 10th September, 2019 stating a valuation of €34,200.

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

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the Appellant's summary of evidence was submitted to the Respondent who in turn replied and provided a summary of evidence to which in due course the Appellant replied.

4. FACTS

The parties are agreed as to the following facts:

4.1 The property is located in Cootehill, Co. Cavan on Bridge Street at the junction with Cavan Road. Cootehill has a population of 1,853 (2016 Census). Occupiers on Bridge Street include a bookmaker, a takeaway, a delicatessen, a pharmacy and 4no. public houses within 20m of each other. In the town there is a total of 13no. public houses on the valuation list with 4no of those vacant. A major employer in the area is Abbott Ireland nutrition division.

4.2 The property comprises a two-storey corner building with a bar/lounge and ancillary accommodation at ground floor and residential first floor which is not rateable. There is an outside smoking area and external stores. The trading area is 63.56 sq. m., ground floor stores 3.89sq.m. outside smoking area and external stores.

4.3 The title is Freehold.

4.4 The valuation scheme for Co. Cavan public houses, other than Cavan town, is based on 6% of the Fair Maintainable Trade of €100,000 or less per annum; 7% of FMT if above €100,000 and profit margin 56% or less and 8% of FMT if above €100,000 and profit margin above 56%.

5. ISSUES

5.1 The two issues between the parties are the quantum of the NAV and the admissibility of accounts at Appeal stage.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the 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 in respect of the property, are borne by the tenant.”

7. APPELLANT’S CASE

7.1 Claire Mason BSc (Property Economics), Associate Director, Avison Young submitted a Precis of Evidence dated 6th June 2023.

7.2 Ms. Mason said it was unclear if any of the other public houses in Cootehill had submitted trading information pursuant to Section 45 of the Valuation Act and in her view only her comparison number 3, The Oakland Arms, had submitted trading information with the balance valued on the basis of an estimated FMT. She stated that the proprietor, Mr. Connolly, confirmed that he had returned the Section 45 Form and that the Valuation Office have no record of receiving this information and therefore the final valuation issued based on an estimated NAV. She attached profit and loss accounts for 2017 to 2020 in appendices to her Precis. (N/A to public)

7.3 She set out details of 13 public houses in Cootehill including property number, name, address, NAV, estimated FMT @ 7%, and comments and these details are attached in the Appendix to this judgment (N/A to public). In her opinion Mullens Lounge in Market Street is the most comparable to the subject in terms of size but is in a better central location and has a better fit out.

7.4 In her methodology/rationale she stated that the property is removed from the central trading area of the town on Market Street and is small relative to the comparisons. The net annual value applied would suggest that the subject is the best performing pub in the town despite being significantly smaller than most other public houses in the town. The trading accounts do not support this suggestion.

7.5 She noted the Oakland Arms valuation which in her view was valued having regard to trading information and that it is a larger public house.

7.6 In her opinion the appropriate NAV for the subject property is €4,800.

8. RESPONDENT'S CASE

8.1 Mr. John Shaughnessy of Tailte Eireann on behalf of the Head of Valuation submitted a Precis of Evidence dated 11th August 2023.

8.2 He noted that as no financial details had been received by the effective date an estimate of NAV was given and that the Section 45 information returned in May 2021 noted that the premises had been leased for 2014,2015 and part of 2016 but information sought in relation to this had not been provided.

8.3 He noted that the premises have a publican's licence attached and therefore accounts must have been available to be lodged with the Revenue to obtain a tax clearance certificate. He also noted that the licence fee referred to in the Section 45 information that was provided in May 2021 does not coincide with the turnover reported although this was corrected by the Appellant in noting that it occurred because of an adjustment from a 20-month accounting period to a 12-month accounting period.

8.4 He drew attention to Section 45(1) of the Valuation Act 2001 to 2020 which obliges a rate payer to make specified information available and that is an offence not to do so (Section 45(2)).

8.5 He noted that there were 13 pubs listed in Cootehill and four had appealed their valuation with one withdrawn, one settled prior to the hearing, the third having its NAV reduced from €14,400 to €14,100 at the hearing with the subject property the fourth appeal in Cootehill. The remaining nine pubs did not appeal their valuation.

8.6 He stated that his report sets out comparative evidence to demonstrate that both correctness and equity and uniformity of value have been achieved in this case.

8.7 Mr. Shaughnessy provided three key rental transaction comparisons to demonstrate a relationship between the net effective rent and the net annual value in each case. Each of the comparisons was located in a town in Co. Cavan but not in Cootehill. In summary, these are as follows:

Address	Lease Date	Rent per Annum	NER	NAV
Baileborough	20/01/2017	€11,700 p.a.	€10,700 p.a.	€9,300
Belturbet	10/09/2018	€12,000 p.a.	€12,000 p.a.	€10,500
Kingscourt	1/04/2017	€36,400 p.a.	€35,672 p.a.	€32,600

8.8 Mr. Shaughnessy provided four NAV comparisons in Cootehill , two on Bridge Street with NAVs of €10,000 and €12,000 and two in Market Street with NAVs of €14,000 each. Mr.

Shaughnessy provided considerable detail on each of the NAV comparisons, and these are in the appendix to this Judgment (N/A to public)

8.9 Mr. Shaughnessy stated that having considered the evidence of the appellant in his opinion the burden of proof had not been met. Therefore, the NAV should not be disturbed.

8.10 Mr. Shaughnessy said that as the Appellant had not provided the accurate trading information the Appeal should be disallowed and drew attention to Section 34(3) of the Valuation Act which states the following:

(3) A person who fails to supply information specified in a Notice served under Section 45(1).....shall not be permitted to ground or support an Appeal to the Tribunal by reference to information that the person has so failed to supply.

8.11 He referenced the Valuation Tribunal case reference VA19.5.1716 Silver Stream Service Station -v- Commissioner of Valuation noting that in Section 10.3 of that Judgment that the Tribunal notes that the Appellant had not provided relevant information and at 10.4 of the same Judgment that Section 34(3) of the Valuation Act as amended is clear in its direction that an appellant relying on information shall not be permitted to ground or support an appeal before the Tribunal where such information was not previously provided when requested by the Respondent.

8.12 He further commented that the accounts submitted in May 2021 are not certified management accounts and do not comply with Section 45 of the Act.

8.13 In summary and conclusion, he noted that it is regrettable that this situation has transpired, however the evidence from the tone of the town suggests that public house premises are valued between €10,000 and €14,000 with some outliers on the list and requested that the Tribunal affirms the valuation of the subject property appearing on the relevant valuation list as representing its Net Annual Value in accordance with Section 48 of the Valuation Act 2001 and the requirements of section 19(5).

9. RESPONSE OF THE APPELLANT

9.1 Ms Mason referred to i) the Appellant Mr Connolly being a lay appellant without full knowledge of the revaluation process and only engaging professional advice at Tribunal stage, ii) the Valuation Office having an incorrect address for Mr Connolly in relation to the proposed NAV and iii)the Valuation Office having no record of the accounts submitted by email.

9.2 Ms. Mason clarified the Lease information and the pub licence background in that the property had been let for a five-year term from September 2008 at €200 per week and subsequently reduced to €100 per week and then sub-let. The sub tenant vacated the property before the lease term expired and let the licence lapse. The pub was then closed until the licence was reinstated in May 2015.

9.3 She had relied on the accounts as submitted in May 2021 in assessing the FMT.

9.4 She concluded by stating that the evidence submitted by both the Appellant and the Respondent demonstrated that the subject property is over valued by the Valuation Office and asked that the Tribunal consider this evidence along with the certified trading accounts in arriving at its decision.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable and uniform 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 As noted above, the only issues here are the quantum of the valuation and whether or not in relation to that the accounts submitted in May 2021 and included in the appellant's precis for this Tribunal are admissible.

10.3 It is most unfortunate that the Appellant apparently did not receive the notification from the Valuation Office about the proposed valuation of the property. It is equally unfortunate that the accounts that the Appellant emailed to the Respondent could not be found. It is beyond the scope of the Tribunal to investigate the circumstances that gave rise to this situation.

10.4 Section 45(1) of the Act empowers the Commissioner to require the occupier of any property to provide necessary information within a specified period and Section 34(3) states that a person who fails to supply such information...shall not be permitted to ground or support an Appeal to the Tribunal by reference to information that the person has so failed to supply and this was upheld by the Tribunal in VA 19/5/1716. Therefore this Tribunal cannot consider the accounts as now submitted. However, Section 34(3) does not state that the Appeal should be disallowed as suggested by the Respondent.

10.5 Section 37(1) of the Act directs the Tribunal to achieve a determination of the value of the property concerned that accords with the requirement of Section 19(5) to achieve both (in so far as is reasonably practicable)-

(a) correctness of value; and

(b) equity and uniformity of value between properties on that valuation list,

10.6 It is abundantly clear from the evidence that there is much agreement between the parties in relation to this property and the Respondent while arguing that the accounts cannot be considered and that the NAV on the list should be confirmed notes that the evidence of the tone of the town suggests that public house premises are valued between €10,000 and €14,000 with some outliers on the list. This is a fair and reasonable attitude.

10.7 The range of Net Annual Values in the town of Cootehill where the subject is the only licensed property remaining under appeal is, as confirmed by the comparisons submitted by both

parties, €10,000 to €14,000 with outliers. The NAV assessed on the subject is an estimate as no accounts information was received. The implication of the estimated NAV is that this is the best performing public house in the town by some distance and the closest NAVs are for vacant properties. The accommodation in the subject does not support the view that it could be the best performing as it is no bigger than any and smaller than many. The Tribunal must determine a valuation that is correct and equitable and uniform, and the Appellant has demonstrated with its NAV comparisons that the valuation is incorrect. Furthermore, such a level of NAV as proposed would not be equitable nor uniform. It is most important that the Tribunal achieve a correct valuation.

10.8 The most relevant NAV comparisons are the neighbouring properties, particular no. 11 Bridge Street. No.20 Bridge Street is a larger bar with an NAV reduced by agreement prior to an appeal hearing, while No. 22 Bridge Street might be described as an outlier for whatever reason that has not been provided to the Tribunal. The NAV comparisons on Market Street support the view that the proposed NAV is incorrect.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation to

€10,000
(Ten Thousand Euro).

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 and 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.