

Appeal No: VA19/5/0903

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

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APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1554322, Hospitality at 23 Edgeworth Green, Longwood, County Meath.

B E F O R E

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

Martin Connolly - MAgrSc, MSc, MSCSI, FCInstArb

Member

Mema Byrne - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 31ST DAY OF OCTOBER, 2024**

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 Property') was fixed in the sum of **€9,000**.

- 1.2 The sole ground 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: *“The valuation as stated on 10/9/19 is not a true reflection of its value”*
- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5,000.

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 €8,100.
- 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 increased to €9,000.
- 2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €9,000.
- 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 an oral hearing held on the 13th day of December, 2023 remotely via Zoom. At the hearing, the Appellant Mr Michael Burke appeared in person and was represented by Ms Niamh Burke. The Respondent was represented by Ms Roisin Carey of the Tailte Eireann.
- 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 their précis as their 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 Property is a ground floor licenced premises located at 23 Edgeworth Green Street, (Main Street) Longwood, Co Meath. The upper floor is in residential use.
- 4.3 Longwood is a town with a population of 1,581, approximately 14.7 km from Trim and 8.7 km for Enfield.
- 4.4 The floor area, agreed by the parties, is 229.45 m², which is set out in the table below.

Use	Floor	Area (m ²)
Bar Area	0	126.67
Store	0	72.54
WC	0	30.24
Total		229.45

- 4.5 Evidence on behalf of the Respondent, which was not contradicted, was that the Property was in good condition.
- 4.6 The Appellant provided trading figures for the years 2014-2017 on Form LP1 and turnover figures for the years 2018 and 2019. These data are analysed at Appendix 1 (N/A to public).

5. ISSUES

- 5.1 The sole issue in this case is quantum.

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 Ms Niamh Burke presented evidence on behalf of the Appellant. Her submission could be summarised as follows.
- 7.2 The Appellant runs a family business in rural Co Meath, which had been closed for 17 months during the Covid pandemic.
- 7.3 The business has been in decline for a number of years because of the smoking ban, the availability of cheap alcohol in supermarkets and the stricter drink driving laws.
- 7.4 It was accepted by the Appellant that the valuation is based on rental values but there are a number of retail premises in Longwood that cannot be rented at present. In any event the Appellant has no intention of letting the Property.

- 7.5 The business has been hit with various increased costs in recent years, including rates and insurance. It cannot afford any further increases.
- 7.6 The Appellant submitted trading accounts for the years 2015 to 2017 and turnover figures for 2018 and 2019, these are set out in Appendix 1 (N/A to public). The Appellant submitted that the increase in trade in 2018 and 2019 was not indicative of a recovery of trade in the Premises, rather it reflects the success of the local Gaelic football with which the Appellant and his family were closely associated. The Appellant submitted that the general trend is downwards and that 2018 and 2019 were anomalies to the general trend.
- 7.7 On questioning by the Tribunal Ms Burke stated that the Property was a listed building. Ms Casey for the Respondent was unable to either confirm or contradict this.
- 7.8 The Appellant in his notice of appeal contended for a valuation of €5,000.

8. RESPONDENT'S CASE

- 8.1 Ms Casey provided a summary of her case that included her response to the Appellant's case, commentary on the valuation scheme for licenced premises used in the Co Meath revaluation, the valuation history of the Property, a location map, block plans and photographs in support of her description of the Property.
- 8.2 The Property is described as ground floor licenced premises, in good condition and comprising 229.9 m², situated on Main Street, Longwood, Co Meath.
- 8.3 Ms Casey set out the methodology used to value licenced premises in the Co Meath revaluation. A combination of market rental evidence and the trade information provided under s 45 of the Valuation Act, 2001 by approximately 54% of the occupiers of licenced premises was used to devise a valuation scheme. She stated that Key Rental Transactions ('KRTs') were analysed to derive a Net Effective Rent ('NER') at the valuation date. These NERs were compared with actual trading figures to generate the valuation scheme.

- 8.4 To derive the Net Annual Value ('NAV') of licenced premises in County Meath, in the absence of robust rental information, what is an abbreviated version of the Receipts and Expenditure Method of Valuation was used. A factor was applied to the Fair Maintainable Trade ('FMT') with an allowance where appropriate for entertainment expenses. Where the FMT was greater than €100,000 per annum a factor of 7% was applied where the gross profit is below 56% and 8% if above. An allowance of 1% of the FMT is applied where entertainment expenses are above 5% of total drink sales.
- 8.5 Ms Casey provided evidence of four KRTs and four NAV comparisons. Details of these are set out at Appendix 2 and Appendix 3, respectively (N/A to public). On questioning by the Tribunal Ms Casey confirmed that trading information had been provided for all of the KRTs and the NAV comparisons, either initially or in the case of one NAV comparison at representation stage. Floor areas were not available.
- 8.6 Ms Casey contended that the valuation scheme for licenced premises in Co Meath was well accepted. Of the 198 licenced premises in the County 153 had accepted the valuation applied and she was confident that many of the remainder would be agreed in accordance with the scheme on the submission of trading information. On questioning by the Tribunal, Ms Casey was unable to provide an updated figure on the number of agreements since her précis was drafted in August 2021.
- 8.7 On questioning by the Tribunal Ms Casey accepted that it may be more difficult to rent a listed building but contended that in this was not a relevant consideration in the case of licenced premises which were valued on a turnover basis. She also accepted that the floor areas of the KRTs and NAV comparisons put forward were not available but argued that licenced premises are not valued on an area basis.
- 8.8 In summing up Ms Casey stated that the valuation scheme for licenced premises in Co Meath was well accepted and that the valuation of the valuation certificate should be affirmed.

- 8.9 Ms Casey contended for a valuation of €9,000. This was based on a FMT derived from the average turnover in the years 2014 to 2019 which reflected a fall from 2014 to 2017 with a recovery thereafter. The detailed calculations are set out at Appendix 4 (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 so as to achieve, insofar as is reasonably practicable, 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 Meath County Council.

- 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 Brown¹ 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 Ms Casey put forward evidence of four rental transactions. These appear to have been submitted to validate the valuation scheme rather than as market comparators. Except for KRT No 1 which was close by, the others were from 25 to 50 kilometres distant. They also had considerably higher NAVs, ranging from 173% to 558% of the Property's NAV. None per se were of any assistance to the Tribunal as a guide to the letting value of the Property.
- 10.4 Four NAV comparisons were put forward by Ms Casey, one in Longwood and the other three in rural settings, two in the general vicinity of Longwood. All had higher NAVs,

¹ *Rating Valuation Principles and Practice* (4th Edition) Routledge, 2018

ranging from 123% to 187% of the Property's. Three were valued at 7% of FMT and one at 8%. Two had and entertainment allowances. None were directly comparable. They do, however, illustrate the operation of the valuation scheme.

- 10.5 The Tribunal accepts Ms Casey's evidence that the valuation scheme, which is based on an abbreviated version of the Receipts and Expenditure Method rather than the Comparative Method used for other property types, is well accepted. Consequently, the Tribunal finds that there is now a well-established tone of the list for licenced premises in Co Meath.
- 10.6 The Tribunal must assess the NAV of the Property in accordance with the Act so that as far as is practicable it is both correct, s.19(5)(a), and that there is equity and uniformity of value between properties on the list s 19(5)(b).
- 10.7 Ms Casey's evidence, which was not contradicted, was the valuation scheme for licenced premises in Co Meath and which was used to value the Property, was well accepted. The Tribunal finds, therefore, that use of the scheme to value the Property is consistent with s.19(5)(b) of the Act.
- 10.8 The difference between the parties is the correctness of the NAV on the Valuation Certificate, €9,000, as required by s 19(5)(a) of the 2001 Act. Ms Casey stated that her assessment of FMT, was averaged over the six year's trading figures available, including 2018 and 2019 which showed a recovery. (See Appendix 1 and Appendix 4, N/A to public). However, Ms Burke argued that these two years were anomalous. The increased trade was generated by the success of the local Gaelic Football team, with which the Appellant and his family were closely associated. Ms Casey did not contradict this.

10.9 The Tribunal found Ms Burke's argument convincing. Bond and Brown² at page 284 discuss this issue. Specifically, they point out that:

Actual receipts should be used as a guide to the likely gross takings the hypothetical tenant could achieve. It may be that the actual tenant is achieving exceptional trade due to the personal characteristics of the licensee, who may achieve additional trade through perhaps being a famous ex footballer or a TV chef ...

In this instance the Tribunal finds that increased trade in 2017 and 2018 was due to the particular circumstances of the Appellant and his family. It is unlikely the hypothetical tenant would replicate it. Thus, Tribunal finds that the FMT proposed by Ms Casey is too high. The Tribunal's estimate of FMT and the calculation of NAV is set out at Appendix 5 (N/A to public).

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 €8,400.

The calculation of the NAV is set out at Appendix 5 (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 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.

² *Rating Valuation Principles and Practice* (4th Edition) Routledge, 2018