

Appeal No: VA17/5/171

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

WILLIAM COMERFORD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 222233, Hospitality at Local No/Map Ref: 11A,12A Tubbrid Lower,
Clomantagh, Urlingford, County Kilkenny.

B E F O R E

Barry Smyth – FRICS, FSCSI, MCI Arb

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Dairine Mac Fadden - Solicitor

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF SEPTEMBER, 2018**

1. THE APPEAL

1.1 By Notice of Appeal received on the 5th day of October, 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV’) of the above relevant Property was fixed in the sum of €11,900.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal.

1.3 The Appellant considers that the valuation of the Property ought to have been Determined in the sum of €7,000.

2. REVALUATION HISTORY

2.1 On the 25th day of May, 2017 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 €12,600.

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 reduced to €11,900.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €11,900.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th day of October, 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on 28th day of March, 2018. At the hearing the Appellant appeared in person and the Respondent was represented by Adrian Power-Kelly FRICS, FSCSI, ACI Arb 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. The subject property is the part ground floor of a 2 story detached building rurally located at the crossroad intersection of the Tubbrid road and the Clonmantagh road, and is about 6 miles from the nearest village. The ground floor bar area measures 94 SQM and comprised a front bar and a pool table room to the back of the premises as well as toilets. The subject property

turnover is higher than other comparable properties in the rating area and this is mainly due to music in the bar on Saturday nights as well as the long hours worked by the Appellant

5. ISSUES

5.1 The sole issue is the quantum of the NAV .The Appellant is contending for a valuation of €7000 while the Respondent is requesting that his valuation of €11900 be affirmed

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 The Appellant contended that a fair NAV of the subject property should be €7,000 and not the €11,900 proposed by the Valuation Office. He said that in order to achieve the annual average turnover on drink sales, he must work long hours, provide music every Saturday night, and then at the end of the night he has to drive his pub patrons home. He said that if he didn’t work all the long days he puts into the business that he does that he wouldn’t be trading. The Appellant introduced 3 comparisons to support his case.

Comparison 1 (Connolly's bar, Tullaroan, Co Kilkenny) is in a village and is 8 klm from the subject property, is similar in size and has an NAV of €7,000.

Comparison 2 is currently closed.

Comparison 3 Kavanaghs in Freshford has an NAV of €7,000, is 6 km from the subject and though located in a village and larger than the subject is similar overall.

8. RESPONDENT'S CASE

8.1 The Respondent contended for a valuation of €11,900 for the subject property. He supported this valuation by introducing 16 comparisons, most of which he visited, 6 of which are closed but are nevertheless on the list. He said that the majority of rural pubs are owner occupied, and that of those that are rented, short term leases are common while some of these leases are not at arm's length. According to the Respondent, his analysis of the rental evidence indicated that rents equated to an average of 9.36% of turnover, and regard was had to this percentage in arriving at the NAV for properties such as the subject. The Respondent preferred his 3 comparisons that are located in Freshford, however he said that his comparison 16, Mackey's Bar in Urlingford was the most comparable, though it served food but this element of sales was not rated, and it has an NAV of €10,850.

Comparison 1 O'Farrell's Bar has an NAV of €3,640 and is similar to the subject, while Comparison 3, McGrath's of Freshford has an NAV of €6140 and is also similar.

The Respondent finished his evidence by telling the Tribunal the average turnover of the subject property at the valuation date and that the estimated FMT for drink sales was €170,000 a discount on the turnover, that music drives the pub trade and that this option was open to all publicans.

9. SUBMISSIONS

9.1 No legal submissions were introduced

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 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 Kilkenny County Council.

10.2 The Tribunal prefers that the Fair Maintainable Trade (FMT) of the subject property should reflect the additional costs of music and transport borne by the Appellant. The FMT therefore should be reduced from €170,000 to €150,000 and this is to reflect these extra costs to the business.

10.3 The Respondent in his evidence introduced 4 rental transactions on page 11 of his precis, the premises located in Dunnamaggan in Callan had a rent of €4800 and produced a rent/turnover of 21.46%, while the other 3 premises had an average of rent/turnover of 5.33%. Therefore the Tribunal prefers to set a rate of 6% on the FMT of the subject property, as it introduces some equity and fairness when looking at comparison 4 - Kavanagh's in Freshford. Both sides agreed that this comparison was very important and the most comparable.

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 **€9000**.

[Drink Sales FMT €150,000 @ 6% = €9,000]

And the Tribunal so determines.