

Appeal No: VA19/5/0962

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Waterfront Inns Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2164618, Hospitality at 124/Unit 2 (GD FL AND PT FF) Strand Road Bray Co. Wicklow

B E F O R E

John Stewart - FSCSI, FRICS, MCI Arb

Claire Hogan - BL

Liam Daly - MSCSI, MRICS

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF MAY, 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on 11 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 was fixed in the sum of €250,000.

1.2 The grounds of appeal, as summarised in the Appellant’s Précis of Evidence (page 6) are 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 :

“1. The subject property is not a pub. It is a restaurant with a 7 day licence. These two categories are quite distinct from one another.

2. The Commissioner valued this property as a restaurant at proposed certificate stage with a proposed valuation of €59,000 NAV. No representations were filed by

the occupiers, and the Commissioner has now published the final certificate as a pub at €250,000 NAV. Even if the Commissioner's categorisation is correct, the Commissioner has never asked the occupiers to provide turnover or any other financial data in regards to the property. The Commissioner has effectively prevented the occupiers from making effective representations, contrary to Section 28 of the Valuation Act. If the Commissioner wished to change the category of the property in this manner, he would have had to issue a new proposed certificate to the subject property. The appellants fully accept the Commissioner's proposed certificate valuation of €59,400 NAV."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €59,400.

2. REVALUATION HISTORY

2.1 On 15 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 €59,400.

2.2 No representations were made by the occupier. However, a Final Valuation Certificate issued on 17 September 2019 stating a valuation of €250,000 with a category of hospitality and user as a pub..

2.3 The date by reference to which the value of the property, the subject of this appeal, was determined is 30 October 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of a remote hearing on 1 April 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. and the Respondent was represented by Ms. Carol Spain, Director of Appeals, of the Valuation Office.

3.2 Ms. Spain made an oral adjournment application in respect of the hearing. This application had previously been made in writing. The chronology of events is as follows:

- (i) 2 December 2021: the appeal was first warned – this process encourages engagement between both parties with a view to narrowing the substantive issues of the appeal and reaching an agreement before the direction letters are issued and the appeal is progressed to the next stage;
- (ii) 8 February 2022: Tribunal directions were issued to the Appellant for filing the précis of evidence;
- (iii) 1 March 2022: receipt of the Appellant's précis of evidence;
- (iv) 2 March 2022: the Appellant's précis of evidence was forwarded to the Respondent with Tribunal Directions to the Respondent to file its précis in reply by 24th March 2022;
- (v) 10 March 2022: callover of cases, at which the appeal was given a hearing date of 1 April 2022;
- (vi) 25 March 2022 and 28 March 2022: reminder letters sent to the Respondent to file its précis, no extension of time was requested by Respondent to do same;
- (vii) 30 March 2022: emailed adjournment request made by Ms. Olivia Bellamy of the Appeal Unit of the Valuation Office.

3.3 It should be noted that the email of 30 March 2022 stated the following:

“In correspondence dated 16th February 2022 we advised that the Valuation Office did not have sufficient capacity at that time to resource the full number of appeals being listed for hearing. In correspondence dated 19th February 2022 we further advised of the appeals that we would have capacity to deal with at the Callover scheduled to take place on 10th March 2022. The above appeal was an appeal in which we did not have capacity to deal with.

We are currently endeavouring to resource the above appeal therefore I now write to request an adjournment of the hearing for a period of 6 weeks to facilitate the respondent's participation in the appeal."

3.4 However, on 19 February 2022, an email entitled "*Capacity for cases in the next Callover List*" was sent to the Tribunal by the Valuation Office. Ms. Spain was the author of this email, which attached an Excel spreadsheet in respect of the callover of 10 March 2022. In the body of the email, she stated: "*As things stand, we have capacity to deal with 43 items on the updated list (marked in green)*". This appeal was one of those 43 items, marked in green. Therefore, the Tribunal does not accept it had any notice, prior to 30 March 2022 when the last-minute request for an adjournment was made, that the Valuation Office was not in a position to defend the appeal on 1 April 2022.

3.5 The Tribunal rose to consider the oral adjournment application, made by Ms. Spain, and having considered the application, refused it. The Valuation Office was reminded of Rule 87 of the Tribunal's Rules:

"An application by a party for an adjournment of an appeal hearing will be considered only in exceptional circumstances."

3.6 The Tribunal did not consider that such exceptional circumstances existed, and that to adjourn the hearing would result in greater injustice to the Appellant. The Tribunal had regard to the last minute nature of the adjournment, the insufficiency for its basis, and also the fact that the Appellant was not informed of the request by the Respondent.

3.7 The representative for the Commissioner was asked whether she wished to remain present and to cross-examine Mr. Halpin on the evidence put forward. However, Ms. Spain indicated that she was not in a position to do so, and she declined, and left the online hearing. The hearing proceeded in her absence.

4. FACTS

4.1 Evidence was only adduced by the Appellant. Accordingly, the Tribunal finds the following facts about the Property were not in dispute:

- (i) The subject property is located on the Strand Road, Bray, County Wicklow. It consists of restaurant over two floors. A 7-day alcohol licence applies to a 94 m² area of ground floor space only, granted in December 2016 and subject to planning m² under ref: 13630100.
- (ii) The property is held on a related leasehold between Taleb Investments Limited and Waterfront Inns Limited. The landlord (Taleb) owns 51% of Waterfront Inns Limited.
- (iii) The accommodation areas are as follows:
 - Ground floor Restaurant (part licenced): 110.32m²
 - Ground floor Store: 49.06 m²
 - First floor Kitchen: 156.50 m²
 - First floor Restaurant: 478.40 m² .

5. ISSUES

5.1 The issues centre on fair procedures and correct 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 The Appellant contended in essence that:

- (i) The subject property is not a pub. It is a restaurant with a 7 day licence that applies to 94sqm on the ground floor;
- (ii) The Commissioner valued the Property initially at €59,400 NAV as a restaurant at proposed certificate stage. No representations were filed by the occupiers. However, the Commissioner then published the final certificate as a pub at €250,000 NAV. The Appellant complains about the denial of an opportunity to make representations about this change of category, and also complains that the Commissioner has never asked the occupiers to provide turnover or any other financial data in respect of the Property;
- (iii) The Appellant sought to confirm the original NAV of €59,400 but during his evidence he accepted that the drink licence would attract an additional valuation of 15% and accordingly he added €9,060 to the original valuation This provided a valuation of €68,400 NAV on the Property, as the fairest reflection of the market evidence, to inform the hypothetical tenant’s bid per Section 48 of the Valuation Act 2001.

(iv) NAV calculated as follows:

Description	M ²	€/ M ²	NAV €
Ground floor restaurant	110.32	€180.00	€19,857.60
Ground floor store	49.06	€30.00	€1,471.80
First floor kitchen	156.50	€100.00	€15,650
First floor restaurant	478.40	€100.00	€47,840
Less first floor allowance (-40%)			-€25,396
Plus licence 15%			€9,060
Total			€68,484 Say €68,400

8. RESPONDENT’S CASE

8.1 The Respondent did not make a case in defence of the appeal, for the reasons set out above in Section 3.

9. SUBMISSIONS

9.1 There were no legal submissions.

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 Wicklow County Council.

10.2 As set out above in Section 3, an adjournment request was made by the Valuation Office, and denied by the Tribunal. Accordingly, there was no *legitimus contradictor* in respect of the Appellant's case.

10.3 That being so, the Appellant's evidence was uncontested, and the Tribunal accepts it.

10.4 The Tribunal notes, in particular, that there was no explanation for the lack of an opportunity afforded to the Appellant to make submissions on the change of categorisation of the Property between proposed and final certificate stage, and the failure to elicit financial information from the Appellant in respect of turnover.

10.5 The Appellant's grounds of appeal ought to be upheld.

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 **€68,400 NAV**.