

Appeal No: VA17/5/284

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

RICHARD O' KEEFFE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

**In relation to the valuation of
Property No. 217671, Guesthouse/Pub at 39 Main Street, Inistioge, County Kilkenny.**

B E F O R E

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Thomas Collins – PC, FIPAV, NAEA, MCEI, CFO

Member

Rory Hanniffy - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF NOVEMBER, 2018**

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th 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 €14,000.

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 of the subject property is excessive and inequitable. The property’s value as set by the Commissioner is not in line with its actual and potential rental value.”

“The subject property is one of 3 pubs in the village – the subject and PN 217637 are under appeal. The remaining pub in the village is valued at NAV €4,550 (PN 217552). The

Commissioner is suggesting that the pubs with goodwill in the town should pay an extra €2,000 per annum in rates for up to the next 10 years or up to €20,000 more than their competitor for the lifetime of the assessment.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €4,550.

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 €14,000.

2.2 No representations were made by the Appellants in relation to this case.

2.3 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €14,000.

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 the 11th day of May 2018. At the hearing the Appellant was represented by Mr David Halpin MSc (Real Estate), BA (Mod) of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr Adrian Power-Kelly FRICS, FSCSI, ACI Arb, RICS Reg Val 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 comprises a licensed premises with a bar, lounge and ancillary accommodation and is located on the Square Inistioge County Kilkenny. The subject property comprises the ground floor of a three-storey semi-detached building. The village has a population of 285 and is situated on the R 700 2km south-east of Kilkenny City.

4.3 The agreed floor areas are as follows:

Ground floor	
Lounge bar	72.54 m ²
Dining room	32.79 m ²
Kitchen	22.97 m ²
Store	20.89 m ²
Total	149.19 m ²

4.4 The turnover figures provided are as follows:

Year	On-sales	Food
year ending 31/12/13	€192,309	€8,221
Year ending 31/12/14	€204,391	€18,948
Year ending 31/12/15	€201,378	€30,399
Year ending 31/12/16	€228,493	€24,283

4.5 The property is freehold.

5. ISSUES

5.1 The issue in this case is quantum. The Appellants claimed that the NAV is excessive and inequitable and not in line with its actual and potential rental value. They claimed the NAV should be reduced to €4,550 excluding occupiers' goodwill or €5,200 based on a reduced percentage multiplier of 4%.

5.2 The respondents claimed that the valuation of €14,000 is correct taking account of other NAV comparisons in Kilkenny.

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 Mr Halpin for the Appellants stated that the village of Inistioge with a population of 285 had 3 licensed premises in the village and that this provides an exceptional level of competition with one pub for every 95 inhabitants. He stated that the hypothetical tenant would not willingly pay €14,000 per annum when other pub premises are available between €4,800 and €10,400 per annum.

7.2 He referred to the trading area of 72.54 m² and stated that the dining room and kitchen were ancillary whereas the stores were associated with the licensed section. The valuation date was 30th October 2015 and the turnover had fallen between 2014 - €204,391 and 2015 - €201,378.

7.3 Mr Halpin has queried whether the actual on-sale turnover represents FMT; what is the appropriate percentage of FMT applicable as rent and does the final figure arrived by this method yield a fair rent or does a further final adjustment need to be made?

7.4 He also stated that of the 3 licensed premises in the village two are under appeal and the only pub in the village not under appeal is the Otter Bar which has an NAV of €4,550.

7.5 Mr Halpin argued that in his opinion the FMT of €200,000 adopted by the Commissioner in this case does not represent FMT. He claimed that the Commissioner's approach was incorrect as it looked at an average of several year's accounts for the subject property only and then equated turnover with FMT. He further argued that this methodology is a taxation of the business and does not account for the business acumen of the individual publican. He claimed that the correct methodology would require comparison with comparable pubs to establish over or under trading. In relation to the subject property he claimed that the actual trade is vastly inflated when compared with the Otter Bar and in support of this argument he has referred to case 14/5/959 (Keith Kirwan) and he has provided an extract from page 9 and 10 of the judgement:

“The individual whose business acumen pushes a business into a healthy turnover and in turn into a healthy profit drives himself and the business into extended arms of another branch of revenue, that is to say, the Collector General, with such turnover and/or profit scrutinised and with appropriate tax lawfully deducted and paid.

It would and in the circumstances be palpably unfair for such a profit, driven as it is by business acumen and endeavour, to be taken into account on the one hand when assessing liability for corporation and/or income tax and at the same time taken into account when striking the appropriate measure of rate to be borne by the same individual. Such collateral intrusion on an already stretched tax base demands extreme caution.

All of this illustrates the potential mischief of a too rigid application of the practice, when assessing rates for licence premises by reference to FMT, informed residences by evidence of turnover.”

7.6 Mr Halpin argued, that based on the Commissioner's estimate for the comparisons that it is very unlikely that a hypothetical tenant would pay more than €5,200 for the subject property based on a maximum FMT of €130,000. He referred to several rents from towns and villages which backed up values of €4,000-€6,000 in lower population areas.

7.7 The Appellants took issue with the uniform application of 7% of FMT as they claimed rents calculated on this basis are unsustainable in rural Kilkenny. They stated that it is common cause that rural publicans face greater challenges than urban ones and that every €100,000 earned in a rural context requires more effort than the urban equivalent. In support of this claim they stated that rural publicans will often work 60 to 80 hours a week and live above or adjacent to the licensed premises. The Appellants sought to have rural pubs banded to reflect different sizes of populations-villages with up to 500 persons should have an FMT of 4% to 5%; villages with populations from 500 to 1,000 persons should have an FMT of 5% to 6% with villages over 1000 persons having an FMT of 6% +.

7.8 The Appellants point to the fact that the Valuation List does not contain any FMT information and consequently FMT's quoted in the appellant's submission are best estimates based on the existing schematic.

7.9 Comparison number 1 provided by the Appellants referred to The Otter Bar in Inistioge which has an NAV of €4,550 which the Appellants state is based on an FMT of €65,000 at 7%. They also provide lease details whereby this property was let for 2 years on 5 September 2016 at €20,800/pa (Commercial Lease Register). They point to the divergence between the lease rent and Commissioner's assessment which they find extraordinary as the commissioners NAV is only 22% of the passing rent. Mr. Halpin stated that in his opinion The Otter Bar is arguably the most valuable in the village yet would pay €2,000 per annum less in rates than its competitors which is inequitable and unfair on the other pubs in the village.

7.10 Comparison number 2 provided by the Appellants referred to Mackey's Bar in Gathabawn, a village with a population of 100 persons, which was leased on a four-year agreement from 1 June 2016 at €5,200/pa (The Commercial Lease Register and the Valuation Office). The NAV in this instance was €10,850 based on an FMT of €155,000 at 7% which the Appellants state provides the rent/turnover percentage of 3.15%. The Appellants claimed that the Valuation Commissioner disregarded the rental value and adopted a schematic that did not reflect the reality of this property in this location.

7.11 Comparison 3 referred to Townsend's Pub in Dunnamaggin which was let on a 3-year lease from 22 March 2016 at €4,800/pa. The village had a population of 150 persons and the rent in this instance referred to both the pub and the post office however the Appellants claim

that the basis of calculation of the NAV of €5,940 in this case is unknown as the property comprised a licence premises and a retail unit.

7.12 Comparison 4 referred to Blake's Bar (formerly the Silverweir Inn) Main Street Paulstown which was let for a term of 5 years and 6 months from 23 June 2016 at €10,400/PA (Commercial Lease Register) however this property has an NAV of €12,600 calculated on an FMT of €180,000 at 7%. Paulstown has a population of 905 in comparison to Inistioge at 285 and there are only 2 pubs in the town.

7.13 Comparison 5 comprises the Sportsman's Inn Ballyragget which was sold for €150,000 in 2016 and comprised a bar and lounge 107 m², a ground floor self-contained apartment 30 m² and overhead a 4-bed residential property 100 m². This property was sold without a licence however the licence was subsequently restored. This property was assessed by the Commissioner based on an FMT of €65,000 at 7% providing an NAV of €4,550. The Appellants pointed to the fact that in this instance as the pub was closed for 2 years there would have been no trading data. They also pointed to the fact that this was a much larger licenced premises yet the Commissioner's estimate of FMT was only €65,000.

7.14 Comparison 6 was the Hogan Stand which is also located in Ballyragget and had an NAV of €4,550 based on an FMT of €65,000 at 7%. The Appellants pointed to the fact that the subject property had been fitted out to a high standard and as it was closed c.2014 it was unlikely to have been valued by reference to actual trade yet the FMT was determined at €65,000. The village had a population of 1,082 persons.

7.15 The seventh and final comparison referred to was Henderson's (The Parade Bar) Rose Inn Street Kilkenny which has an NAV of €9,000 based on an FMT of €100,000 at 9%. The Appellants provided this comparison to show that a hypothetical tenant could have leased property such as the Parade Bar for €9,000 versus €14,000 for the subject property. He referred to the rental comparison for retail accommodation in Rose Inn Street at €435/M² versus €145/M² in Inistioge. The Appellants stated that the Commissioner is incorrect as he has rated the subject property at a higher level than a prime bar in Kilkenny City.

7.16 In conclusion Mr Halpin maintained that the NAV as at 31 October 2015 may be calculated on one of two bases; either by reducing the FMT to a level reflective of the premises

without the occupier's personalised goodwill but utilising the Commissioner schematic turnover of €65,000 at 7% which equals €4,550 or by reducing the percentage applied to the FMT in line with the Appellants proposed schematic and based on a turnover of €130,000 at 4% equals €5,200. He pointed to the fact that Inistioge had a population of 285 and that there are 3 pubs in the village. He further argued that he could find no objective reason to value the subject property at a higher level than the Otter Bar particularly when it had an actual rent of €20,800 per annum which he stated indicates that is the most valuable licence premises in Inistioge. He further stated that in his opinion a value of €4,000-€5,000 per annum is firmly supported by the rental evidence for rural pubs with similar potential for trade and the fact that the subject property has generated a turnover in the region of €200,000 is purely down to the goodwill and business acumen of the operator.

7.17 During cross-examination Mr Halpin agreed the subject property and village benefited from tourists visiting the Woodstock Gardens and the River Nore Valley and he added that these benefits would also have applied to the Otter Bar which had an NAV of €4,550. When questioned as to whether the property benefited from bed-and-breakfast business overhead Mr Halpin confirmed that any such income comes from a non-rated source. He reiterated that in his opinion the trading figures of €192,000 to €201,000 was due to the exceptional business acumen of the operator. When questioned in relation to the methodology adopted by the Respondent, Mr Halpin confirmed that the principal was acceptable however he argued that the FMT should not take account of the exceptional acumen of the operator and he argued that if 7% was correct for Ballyragget it was not appropriate for the subject property with such a small population. Mr Halpin conceded that the rental comparisons adduced by him were not perfect however the Paulstown and Ballyragget ones showed clear inequity when compared to the subject property. When queried in relation to the Otter Bar he conceded that there may be concerns attached to the veracity of the rental agreement and furthermore that he was not relying on the 3.15% rent/turnover analysis in relation to Gathabawn He confirmed that he had not inspected the Parade Bar in Kilkenny and did not have the floor area and was not able to dispute the fact that the floor area was only 53m² and much smaller than the subject property. He also agreed on cross-examination that he did not inspect the bar in Paulstown and he was unaware of its size. In conclusion when questioned as to why he put forward two alternative valuations, Mr Halpin confirmed his firm only had turnover information in respect of their own clients but the 4% would be appropriate and he did not accept 7% or 8% was equitable for small villages.

8. RESPONDENT'S CASE

8.1 Mr Power-Kelly for the respondents stated that in his opinion Inistioge was a tourist centre on the River Nore and that the subject property comprised a substantial premises. His report included external and detailed internal photographs.

8.2 Mr Power-Kelly referred to the drink sales from 2013 to 2016 - €192,309 to €228,493 and indicated that additional income was available from the bed-and-breakfast business overhead.

8.3 He confirmed that the Commissioner had relied on market information to inform the estimate of NAV for the subject property and noted that most of the pubs were owner occupied. He argued that several rented properties are subject to short-term periodic tenancies and/or are not at arms-length. He referred to the following 5 key rental transactions involving licensed premises:

Dunnamaggin village let at €4,800 per annum from March 2016 which provided a rent/turnover analysis of 21.46%. In relation to Dunnamaggin, he stated that the landlord traded from the property and the post office extended to 16 m² and that an FMT of €67,000 at 7% established the NAV €5,940.

Urlingford let at €15,000 per annum in November 2016 with rent/turnover analysis of 7%. He confirmed that the NAV for his 2nd comparison was predicated on an FMT of €200,000 at 7%.

Gathabawn let at €5,200 per annum from June 2016 was a rent/turnover analysis of 3.15%. In relation to Gathabawn he confirmed that this was a rural location and stated that the NAV was calculated on an FMT of €157,000 at 7% and he stated that in his opinion the letting in this instance was not an arm's length transaction.

Paulstown let at €10,400 per annum from June 2016 with the rent/turnover analysis of 5.84%

Graiguenamanagh let at €36,500 per annum from March 2015 which had a rent/turnover analysis of 6%. He confirmed that the property had a drink turnover of €108,000 and a food turnover of €480,000.

8.4 He confirmed that there are 147 licensed premises in rural towns in Kilkenny all of which have been valued at 7% or 8% of FMT and representations were made on a total of 28 properties at proposed valuation certificate stage and only 9 were under appeal to the Valuation Tribunal.

8.5 Mr Power-Kelly relied on the following seven NAV comparisons for Kilkenny:

The first was in Listerlin and the property was closed but turnover figures had been provided from €152,000 to €166,000 and an FMT of €160,000 was established. The floor area was 104 m².

The second was in Chapel Street Johnstown and this property extended to 291 m² and had an FMT of €180,000 at 7% for drink sales and €60,000 at 6% for food sales which were based on submitted financial information.

The third was also located in Johnstown, Old Maine Road and this property had a floor area of 108 m² and no turnover information was provided. The FMT was determined at €220,000 at 7%

The fourth comprised a rural licensed premises located in Gathabawn, close to the local church and GAA grounds, and this property comprised 99.4 m². Representations had been made without change and the valuation was based on an FMT of €155,000 at 7%.

The fifth comprised a small pub located in Lisdowney, Ballyragget, and this property extended to 35.9 m². No turnover was provided and an FMT of €65,000 at 7% was used to determine the NAV.

The sixth was in Market Street Thomastown and this property extended to 171 m² with turnover values of €205,000-€267,000 provided and an FMT of €205,000 at 8% was used to determine the NAV.

The seventh and final comparisons was also located in Thomastown, was closed. It extended to 283 m² and reported annual turnover figures which ranged from €143,700 to €172,600. The FMT was determined at €200,000 at 8%.

8.6 Mr Power-Kelly relied on these rental and NAV comparisons which provided the basis for the Commissioner's determination of €14,000 for the subject property and the respondent's requested that the Tribunal confirm the NAV at €14,000.

8.7 Under cross examination Mr Power Kelly agreed that the Dunnamaggin comparison was inconsistent. He agreed that including all 5 comparisons provided an average rate of 8.69% but once the outlier was disregarded the percentage dropped to 5.49%. When queried as to why he did not use the Otter Bar rental he indicated that the transaction may have been between related parties. He also agreed that while Paulstown had a larger population than Inistioge, the subject property benefited from a strong tourist trade. Mr Power-Kelly did not accept that the rental market for rural pubs varied from €4,800/€5,200/€10,200.

8.8 In relation to the plan provided outlining the location of the various pubs in Kilkenny, when questioned as to why comparisons 2, 3, 4 and 5 were located significant distances from subject property Mr Power-Kelly replied that they were all within a reasonable distance.

8.9 In relation to the second comparison in Johnstown, the respondent confirmed this was a rural town and consequently was comparable to Inistioge. In relation to his third NAV comparison, when questioned as to why the FMT was determined at €220,000 without financial information, Mr Power-Kelly replied that a uniform approach was adopted which was fair and equitable. In relation to the Gathabawn premises he stated that as the food turnover was less than one hundred thousand euro it had been disregarded. In relation to the respondent's NAV comparison six, Mr Power-Kelly stated that it had not been measured but confirmed that it was a good pub in the town centre.

8.10 Mr Halpin provided a summary in conclusion and queried why a direct comparison in the Otter Bar should be valued at an NAV of €4,550 based on an FMT of €65,000 at 7% whereas the subject property was valued at €14,000 based on an FMT of €200,000 at 7%. He maintained that there was a clear inequity between this bar and the other two in the village. He pointed to the Commissioner's rental transaction analysis which provided a rate of 5.54% when the outlier in Dunnamaggin was excluded. He maintained that this undermined the approach adopted by the Commissioner based on 7% and 8%. He concluded by stating that in his opinion all rural pubs in Kilkenny would have a rental range of between €100 and €200 per week.

8.11 Mr Power-Kelly stated that in his opinion Inistioge was an established tourist location and that the FMT of €200,000 was not exceptional and that 7% was an established rate for rural pubs in Kilkenny. He maintained that the approach adopted by the Commissioner was fair and uniform and despite excluding the outlier the approach was based on rental value analysis. In his opinion, the FMT established for the subject property did not include added value for business acumen. In conclusion he stated that both parties had different opinions relating to the Otter Bar and in his opinion, it was an outlier and the rental value was not reliable. He concluded by requesting the Tribunal affirm the NAV of €14,000.

9. SUBMISSIONS

9.1 No legal submissions were produced.

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 having considered all the evidence, both written and oral presented before it is arrived at the following conclusions:

10.3 The subject property is in a small rural village with a population of 285 and is served by three licensed premises. While the Tribunal accepts Inistioge benefits from the tourist trade associated with Woodstock Gardens and the Nore River Valley it does accept that one pub per 95 persons is unusual.

10.4 The Tribunal has noted the rental details provided in relation to the Otter Bar, which appears to be excessive in relation to all the other rental comparisons and we have attached no weight to this rental comparison. However, the Tribunal is concerned that the NAV established for this bar is significantly less than the NAV established for the subject property and no explanation for the disparity has been provided.

10.5 The Tribunal has considered that Blake's Bar in Paulstown with its rental value of €10,400 PA and NAV of €12,600 is of assistance.

10.6 The evidence of correctness provided by the respondents in support of 7% and 8% based on five key rental transactions has been undermined by the exclusion of key rental transaction number one, which now provides for a percentage of 5.49%. Nonetheless the Tribunal has noted that seven NAV comparisons provided show 7% and 8% respectively.

10.7 The Tribunal has noted the Appellants proposed schematic for licensed premises in different sized towns in the County. However, it does not account for particular attractions in an area such as special tourist offerings and the Tribunal finds that the appropriate analysis of the financial information is more likely to provide for fairness and equity.

10.8 The Tribunal has taken note of the Kirwan case VA 14/5/959 and has decided that the level of FMT at €200,000 for the subject property is too high and does not appear to have considered the reduction in turnover between 2014 and 2015 and includes an element of individual business acumen. Accordingly, it has reduced the FMT to €160,000 and maintained the percentage at 7%.

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 €11,200.

$$\text{FMT } \text{€}160,000 \quad \times \quad 7\% \quad = \text{€}11,200$$

And the Tribunal so determines.