

Appeal No: VA17/5/091

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

LIAM GLENNON

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

**In relation to the valuation of
Property No. 192460, Hospitality at 16 Green Street, Callan, County Kilkenny.**

B E F O R E

Majella Twomey - BL

Deputy Chairperson

Mairead Hughes - Hotelier

Member

Liam G. Daly – MSCSI, MRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF NOVEMBER, 2018**

1. THE APPEAL

1.1 By Notice of Appeal received on the 4th 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 €21,000.

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

“1. 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 potential rental value and other comparable properties in Callan.”

“2. The subject property is a pub on Green Street in Callan. It is being assessed as the most valuable pub in Callan. Not only is this untrue in terms of the physical property, it is also

untrue in terms of trade. The bulk of the remainder is wholesale kegs sold to sporting clubs etc. at very low margin. The Commissioner's turnover based formula has clearly failed in the face of such a non-standard business"

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €13,245.

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 €18,000.

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 €21,000.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €21,000.

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 28th day of June, 2018. At the hearing the Appellant was represented by the Mr Eamonn Halpin, BSc (Surveying), MRICS, MSCSI and the Respondent was represented by Mr Adrian Power-Kelly, FRICS, FRC SI, 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.

4.2 The subject property is located on Green Street in Callan Co Kilkenny and is one of 10 pubs in the town. (Population 2475)

4.3 The property is a licenced public house that includes a bar, lounge, smoking area, stores and toilets.

4.4 The agreed accommodation areas are as follows, of which the trading area is 158.57sqm:

Bar/Lounge	76.6sqm
Rear Bar/Lounge	81.97sqm (includes former off licence measuring 21.9sqm)
Kitchen	15.72sqm
Stores	50.70sqm
Smoking area	37.80sqm

4.5 The property is held freehold.

4.6 The Turnover figures are available as an appendix to this Judgement.

5. ISSUES

5.1 The issue is Quantum.

5.2 The Appellant said that turnover at the subject premises in in decline, that the town in general has ‘died a death’ and that an off licence that was once part of the premises is now closed and currently forms part of the bar area.

5.3 The Commissioner has assessed Callan at 8% of FMT (Fair, Maintainable Trade)as NAV, however the Appellant has strongly contested this and believes this figure should be 7%, being the same as other similar small towns in the county.

5.4 The Commissioner has assessed the sale of kegs at the property at 4% and again the Appellant believes this to be too high, citing low margins, a statement that the Respondent did not have an issue with.

5.5 The Appellant believes that the NAV of €21,000 is too high and is excessive and inequitable, and instead is seeking a valuation of €13,245.

5.5 The Respondent claims that the NAV of €21,000 is fair and reasonable.

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 said that the subject property is being assessed by the Commissioner as the most valuable public house in the town of Callan. This is strongly denied by the Appellant. It was submitted that the annual turnover at the premises is low and an added dimension to the overall low turnover is the wholesale keg trade at the premises.

7.2 Mr Halpin said that keg sales have a very low margin and at most have a mark-up of €20 a Keg. He said that the Commissioner was assessing keg sales at 4% (same as off sales) but that this was incorrect, and suggested a figure of 1.5% instead.

7.3 The Appellant said that, like a lot of smaller towns in rural Ireland over the past decade, Callan had died a death. He said that because of the decline in drink sales over the years that the off licence had closed and the floor area of same was now part of the bar.

7.4 The Appellant argued that the FMT rate of 8% in Callan as assessed by the Commissioner was unreasonable, whilst at the same time similar towns like Mooncoin and Ballyraggett had an assessment of 7%.

7.5 The Appellant used 10 comparisons to support his argument, which are listed in appendix attached to this judgement.

8. RESPONDENT'S CASE

8.1 The Respondent stated that the subject property is in a town centre commercial location. He confirmed the description of the premises as being the same as already noted in earlier evidence.

8.2 The Respondent provided 5 key rental transactions that had NER's with rent to turnover percentages of 3.15%, 5.84%, 6%, 7%, and an outlier with 21.46%. He said that there are 147 licenced premises in Kilkenny and all are valued at 7% - 8% of FMT.

8.3 The Respondent provided 9 comparison properties and all of these were valued at 8% of the FMT.

8.4 The Respondent said that he only had 1 year information on turnover for kegs and that he did not have any more information to assist him.

8.5 He concluded his evidence by confirming that villages are valued at 7%, towns are valued at 8% and cities have 8%-9% valuation.

8.6 Under cross examination the Respondent said that 50-60% of pubs are valued without the benefit of annual accounts, and that all pubs in Callan are valued at 8% FMT.

8.7 The Appellant said that property number 193343 is an outlier with a rent to turnover of 21.46%. The Appellant asked the Respondent why he did not produce any evidence to back up his 8% valuation. He responded that all pubs in Callan are uniformly valued at 8% and that a tone was established, that the subject property was well located in a central location and asked the Tribunal to affirm his valuation of €21,000

9. SUBMISSIONS

9.1 No legal submissions were made.

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 has considered all of the evidence put before it and concludes as follows:

10.3 The Respondent put forward eight NAV comparisons of pubs in Callan. Four of these were on Bridge Street and four were on Upper Bridge Street. The Valuation Office was able to confirm that turnover figures were supplied in some of these and not in others. The Valuation Office confirmed that floor areas were not relevant in these valuations. Mr. Power Kelly also stated that the figure of 8% was uniform across all of Callan.

10.4 Mr. Power Kelly was asked if a figure of 7% would be more appropriate for the subject property, as suggested by the Appellant, and he said that such a figure would be more appropriate for a property in a village such as Geata Bán. T

10.5 The Appellant put forward the contention that Ballyragget, Mooncoin and Piltown have been assessed at 7% and that Callan should be the same. Mr. Power Kelly said the reason for this is that the population of Callan is much higher than Ballyragget, Mooncoin and Piltown. Having taken the evidence of Mr. Halpin and Mr. Power Kelly into account, coupled with the

consistency of 8% in relation to the rate applied to all of the comparators in the Respondent's precis of evidence, the Tribunal finds that the NAV comparisons put forward by the Respondent showing a level of 8% to be fair and equitable. This is particularly so, when the size and population of Callan is taken into account in contrast the size of Mooncoin, Ballyragget and Piltown, which are much smaller.

10.6 The Tribunal notes that subject property is a good quality licenced premises and that Mr. Power Kelly had two years of accounts from the Appellant, with a breakdown for one. While Mr. Power Kelly admitted that he did not have an actual breakdown of figures for 2014, as the Appellant had changed accountants, he said that he had a number of conversations with the Appellant in relation to same and that the information which the Appellant has given informed his opinion. The Tribunal accepts the evidence of Mr. Power Kelly in this respect and finds that the figure of 8% has been properly applied to the subject property, when all comparators have been assessed.

10.7 In relation to the keg sales, the Tribunal accepts, as was argued by Mr Halpin, and accepted by Mr. Power Kelly, that the keg sales elements of the Appellant's business was unusual. Mr. Power Kelly could not say how many pubs in Kilkenny sold kegs in a similar fashion. Mr Halpin asked Mr Power Kelly if The Valuation Office did any research in relation to the percentage which should be applied to wholesale kegs and he responded that the keg wholesale business was an unusual, but they treated the subject property as uniformly as they could. The Tribunal has weighed and evaluated the evidence before it and accepts Mr. Halpin's point that the keg sales element of the business is unusual and, therefore, this distinguishes it from other businesses in the area. Mr. Power Kelly accepted that it was difficult to find comparators in this respect. Taking all of the evidence into account and in the absence of a comparator which would suggest that 4% is the correct amount to apply to keg sales, the Tribunal finds that a fair level on keg sales to be 2%, given the low mark up and profit in relation to such sales, as was set out by Mr. Halpin in his evidence.

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 €17620:

Drink sales (estimated FMT)	153,000 @ 8%	=	€12,240
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Off sales (estimated FMT)	50,000 @ 4%	=	€2,000
Keg sales (estimated FMT)	169,000 @ 2%	=	€3,380

Say €17,620

And the Tribunal so determines.