

Appeal No: VA17/5/248

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

JOE BRENNAN

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 77721, Hospitality at Floors: 0,1, 58,60,62 (Incl. No 2 Watkins Street) New Street Lower, Kilkenny, County Kilkenny.

B E F O R E

Hugh Markey – FRICS FSCSI

Deputy Chairperson

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

Member

Caroline Murphy - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF JANUARY, 2019.**

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th 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 €34,400.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

- 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 rental value, as illustrated particularly by PN 78482.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €24,400.

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 €34,400.

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 manager did it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €34,400.

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 7th day of December, 2018. At the hearing the Appellant was represented by Mr David Halpin MSc (Real Estate), BA (Mod) 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.

4.1.1 The NAV applied by the Respondent to the bar areas of €16,400 was not in dispute.

4.1.2 The floor areas of the property were agreed:

Ground floor:

Front bar	50.30 sq. m.
Rear lounge and staff area	69.72 sq. m.
Games room	56.65 sq. m.
Off Licence	44.19 sq. m.
External keg store	24.33 sq. m.

First floor:

Stores	89.65 sq. m.
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4.1.3 The property is freehold.

5. ISSUES

5.1 The issue is one of quantum and how the off licence element of the premises be dealt with.

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 gave evidence that it was highly unusual to have a situation whereby the turnover in an off licence was in the proportion such as 2.2:1 versus the on sales turnover, as in the instant case. He suggested that this brought about an unfair situation when the Respondent chose a particular method of arriving at the NAV, namely, a percentage of turnover. He outlined how the Respondent in valuing standard off licences chose either a turnover basis or a rate per square metre with an additional 15% adjustment to reflect the off licence use. He further outlined how, in the case of supermarkets, the Respondent adopted a 'cap' of €10,000 for off licences in convenience stores, supermarkets and shops, irrespective of their turnover capacity.

7.2 He evidenced that there was rarely a conflict between the first two methods chose because, generally, the on sales turnover was the major part of the business. Mr. Halpin relied on ten comparables:

1. PN 78810
2. PN 210012
3. PN 79351
4. PN79381
5. PN 80180
6. PN 78137
7. PN 78482
8. PN 79992
9. PN 77724
10. PN 78514
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He drew the Tribunal's attention to his Comparison No. 3, which he suggested was a pure off licence in a city centre location and where no regard had been taken of turnover; instead the NAV of €21,100 was arrived at by applying a rate per square metre and adjustment for the licence. He posited that, given the choice, a notional tenant would take the comparison premises in advance of the subject.

7.3 Mr Halpin outlined how the operator had traded in this location for almost 30 years and had built up the off sales trade during this time. He suggested that there was a risk of double taxation insofar as the occupier was being punished for his business acumen and drew the

Tribunal's attention to the judgment of another Division of the Tribunal in VA/14/5/959 (Keith Kirwan).

7.4 Mr Halpin submitted 7 other comparables of licensed premises (he accepted a further comparable was under appeal and could not be considered). He also submitted a single comparable to illustrate the rental tone adopted by the Respondent in the area of the subject.

7.5 The Appellant placed reliance on his Comparisons 1 and 3 to illustrate the different basis used by the Respondent to arrive at the NAV of an off licence. He suggested his Comparison No. 5, which is one of the best located licensed premises in the city has an NAV of €28,500 and contrasted this with the level applied to the subject's off licence element.

7.6 As the level applied to the on sales was agreed, it is not necessary to discuss the other comparables.

7.7 Mr Halpin suggested either one of 2 bases was appropriate in arriving at the NAV of the off licence element; these were:

a) Application of a discount to reflect the business acumen of the owner; he suggested this should be achieved by capping the level of off sales to the same level as that of the on sales and applying a rate of 4% to same. This gave rise to an NAV, based on FMT of €24,600, arrived at by applying 8% to the on sales turnover and 4% to an equal (adjusted) off sales turnover. The off licence portion of the NAV is €8,200 under this scenario.

b) Treating the off licence as a stand-alone retail unit and adding 15% to the rental value. He suggested this would give a total NAV figure of €25,700 to include the on sales agreed level of €16,400.

7.8 Mr Halpin deemed Option a) above as being the most appropriate method to apply.

7.9 Under cross examination, Mr Halpin confirmed that the entire premises were covered by a 7 day licence; that the off licence was fully interconnecting with the bar areas and the difference between a supermarket or pure off licence and the subject was the nature of the licence. He further accepted the total turnover of the business operated.

7.10 He responded that not all of the off sales turnover would be converted to on sales should the off licence area be incorporated into the bar.

7.11 In respect of his Comparison No 1, he was unaware of the nature of the licence held and whether, as the Respondent suggested, it was a 'wholesale' licence. He confirmed that the off licence, in this instance was completely separate and operated as wholesaler; that the main thrust of the business was supplying clubs and that it did not operate as a 'normal' off licence.

8. RESPONDENT'S CASE

8.1 Mr Power Kelly outlined the location of the property at the junction of New Street and Walkin Street, close to the centre of Kilkenny City. He outlined how the property had dual frontages and that the IMC cinemas were opposite.

8.2 The witness outlined 9 comparables:

1. PN 78482
2. PN 78434
3. PN 77724
4. PN 77456
5. PN 76506
6. PN 2179668
7. PN 224313
8. PN 207362
9. PN 206701

These illustrated the levels applied to on and off sales turnover in Kilkenny City and county. As there is no dispute as to the levels applied, it is not necessary to consider in detail.

8.3 In response to a question from the Tribunal, Mr Power Kelly responded to say that if the entire turnover were attributable to on- sales, the NAV would have been significantly higher.

8.4 The Respondent was not in a position to assist the Tribunal as to the detail of some of his comparables, citing 'confidentiality'.

9. FINDINGS AND CONCLUSIONS

9.1 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.

9.2 The onus is on the Appellant to persuade the Tribunal that the Respondent has erred in some way in arriving at his estimate of value.

9.3 The Tribunal notes that the Respondent was not in a position to assist as to the detail of some of his comparables, citing ‘confidentiality’. The Tribunal found this to be a source of frustration in attempting to consider the evidence placed before it, and relied on, by the Respondent.

9.4 In this case, the Appellant has not persuaded the Tribunal that an error has been made in the methodology adopted and therefore it accepts same.

9.5 The Tribunal is, however, persuaded that there is a clear case of the owner/operator’s clear business acumen at play in the very substantial (and disproportionate vis á vis the level of on-sales) turnover in the off licence element. The Tribunal considers that an adjustment should be made to the off – sales turnover and an appropriate level is a one third reduction.

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 €28,400.

On – sales FMT	€205,000 @ 0.08%	€16, 400
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Off – sales FMT (adjusted to 2/3rds)	€300,000 @ 0.04%	<u>€12,000</u>
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Total NAV		<u>€28,400</u>
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And the Tribunal so determines.