

**Appeal No: VA17/5/243**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**INFINITY RESTAURANT LTD T/A THE VENUE**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**  
Property No. 1993960, Hospitality at 13a Carrowbunnaun, Strandhill, County Sligo.

**B E F O R E**

**John Stewart – FSCSI, FRICS, MCI Arb**

**Deputy Chairperson**

**Donal Madigan – MRICS, MSCSI**

**Member**

**Caroline Murphy - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 4<sup>TH</sup> DAY OF MARCH, 2019.**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 9<sup>th</sup> 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 €70,500.

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 is occupied by an exceptional chef who has carefully built up his trade over a lifetime. This exceptional goodwill would not be transferrable and should not be taxed.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €40,000.

## **2. REVALUATION HISTORY**

2.1 On the 16<sup>th</sup> day of March 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 €70,500.

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 not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September 2017 stating a valuation of €70,500.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> 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 22<sup>nd</sup> day of January 2019. At the hearing the Appellant was represented by Mr Eamonn Halpin BSc Surveying, MRICS, MSCSI of Eamonn Halpin & Co Ltd and the Respondent was represented by Mr Alan Sweeney BSc Property Val & Mgmt, MRICS, MSCSI 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 This subject property is located on the R292 in Strandhill, County Sligo. It is approx. 1.2 kilometres from the sea front and beach area.

4.3 The subject property comprises of a bar, snug and restaurant (with associated commercial kitchen, stores and toilets).

4.4 The accommodation is agreed as set out below:

- Bar/Snug: 46.10m<sup>2</sup>
- Restaurant (Dining area): 157.32 m<sup>2</sup>
- Kitchen & Store: 88.14 m<sup>2</sup>
- WC's: 21.16 m<sup>2</sup>

Total net floor area including stores and toilets is 312.72 m<sup>2</sup>.

4.5 The subject property is held on a related parties' leasehold on a 9-year 9-month lease from the 1st of June 2014 at €56,992 per annum, which includes 3 bed residential accommodation.

## **5. ISSUES**

5.1 The issue that arises in this appeal is the quantum of value.

## **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 in his direct evidence said that the property is located on the roadside, on the R292 (the Top Road) in Strandhill, County Sligo which he said is known as a coastal tourism location and trade is intensely seasonal. He said the subject property is fundamentally a renowned restaurant which happens to be in a premises with a seven-day licence. The principal occupier is a chef with over 50 years’ experience, with more than 15 years at the subject property.

7.2 Mr. Halpin gave evidence that the subject property is located 1.2 kilometres from the waterfront and hence gains no foot traffic from there. He said as trade was seasonal and weather dependent, the majority of it is concentrated on the waterfront which is served by two licenced premises which both serve food.

7.3 Mr. Halpin argued that in order to trade well on the Top Road the hypothetical tenant needs an exceptional ability. He said in order to achieve the turnover of the subject property on the Top Road one must be exceptional, let alone survive. He said this was evidenced by the property two doors up from the subject property which was formerly a large pub that lost its licence and is now a residential property.

7.4 Mr. Halpin argued that the subject property relies on its exceptional skill and exceptional food trade to survive. He said that the occupier sells more than €2.35/€2.25 of food for every €1 of on-sale drink. He said, in his opinion, the subject business is the inverse of the standard model, in which roughly €2-5 in on-sales is sold for every €1 in food, in a premises where food is sold. He suggested that this means that the standard formula applied by the Commissioner does not fit the subject and implies that the value of the food as rent is 1.5 times the value of the on-sales. He stated that this trade has taken a lifetime to develop with 15 years in the current location and 50 years of cooking and restaurant experience. He said that the Respondents standard formula based approach is neither fair nor equitable and results in a deeply unfair assessment which taxes the occupier’s skill rather than the property (in the hands of the hypothetical tenant).

7.5 Mr. Halpin put forward two ways to value the subject property:

- (a) Treat it as a pub, with food. In this case, the Food FMT must be discounted to a maximum of parity with the drink trade. Namely, if the Drink trade is €400,000 the food trade cannot be more than €400,000.

Drink €400,000 @ 7% = €28,000

Food €400,000 -1<sup>st</sup> €100,000 = €300,000 @ 5% = €15,000

Total NAV €43,000

- (b) Value the subject's restaurant on a rate per m2 basis in line with other restaurants. He said the Respondent has valued PN2210578 at €75/ with €12.50/m2 on the ancillaries (see comparison No. 6).

Drink €400,000 @ 7% = €28,000

Restaurant (Dining area) 157.23 m<sup>2</sup> @ €75/ m<sup>2</sup> = €11,792

Kitchen/Store 88.14 m<sup>2</sup> @ €12.50/ m<sup>2</sup> = €1,101

Total NAV €40,893 say €40,800

Mr. Halpin said the aim of the Appellant raising the 2 methods as above is to tax the property, and not the business. He added that blindly following a non-standard turnover and applying a standard formula can only lead to inequalities in the list. Mr. Halpin said the Appellants believe that method (a) is the most sustainable and replicable. Hence a valuation of €43,000 is contended for.

7.6 Mr. Halpin stated that both of the valuations can be checked by direct reference to other comparisons of pub/restaurants in the Respondents tone of the list. He introduced six comparisons (**Appendix 1**). He said that Strandhill is one of three main tourism destinations in Sligo, the other two being Enniscrone and Rosses Point which he said the Appellants can benchmark the subject property against a pub/restaurant premises from each of these 3 towns namely 1, 4, and 5. He said that the subject property is inferior to the Comparison No.1, PN1993947 and broadly equivalent to Comparison No. 5, PN 1993440 and Comparison No. 6. PN 2210578.

7.7 Mr. Halpin suggested that the Respondent had failed to apply the final step in any valuation which was "stand back and look". He said that this applies to all methods of valuations, but particularly where direct rental evidence is not used. He referred to the Tribunal's decision in

VA14/5/1959 Keith Kirwan. He said the Appellants seek to have their NAV in line with the comparables in the list in terms of its actual potential.

7.8 In respect of Comparison No.1 the Appellants contend that this pub has every facility that the subject has, plus the benefit of additional floor space and the advantage of being located at the waterside. He said the comparison was completely renovated and rebranded in 2015, with an exceptionally high level of detail which the Appellants estimate cost between €200,000 - €300,000. The Appellants are certain that this pub has the potential to out-trade the subject property, due to its size, type and location.

7.9 In cross examination, Mr. Halpin agreed the Appellants were not disputing the valuation applied to the drinks sales. Mr. Halpin further agreed that the majority of the NAV comparables put forward by the Respondent are exceptional operators. In response to a question from Mr. Sweeney about the passing trade Mr. Halpin agreed that you would have to travel along the Top Road should one be driving along the Wild Atlantic Way route.

## **8. RESPONDENT'S CASE**

8.1 Mr. Sweeney gave evidence that the subject property is located on the Wild Atlantic Way in a predominately residential area of Strandhill. He said the area is well known as a surfing centre and for its scenic walks with ocean and mountain views. He said the subject property dates from 1860 and is said to be the second oldest building in Strandhill.

8.2 Mr. Sweeney gave evidence that the subject property is leasehold between related parties. The sister of one of the occupiers owns the freehold of the property. The occupiers are responsible for refurbishing the entire interior, adding an extension to the ground floor lounge/conservatory, an extension to the kitchen including new equipment and the addition of a new roof.

8.3 Mr. Sweeney said the financial information supplied on the subject property supports a higher valuation than the agent contends for which is considerably less than the annualised trading figures detailed in his precis. He said the total FMT estimated by the Commissioner on this property is €1,250,000. He said the estimated FMT for drink sales in the subject property has been valued at 7% in line with comparable properties in the immediate vicinity. He said the estimated FMT for the food sales in the subject property has been valued at 5% with a nil

valuation on the first €100,000 of turnover in line with comparable properties in the immediate vicinity. He said this level had been applied consistently across the county.

8.4 Mr. Sweeney provided details of four key rental transactions relied upon in arriving at the NAV for the subject property (**Appendix 2**). He said that the Respondent's Key Rental Transaction No.1, PN1993947 is a relevant comparable. He said the property was located on Shore Road in Strandhill, approx. 900m from the subject property and that the financial information for 2016 was given verbally at the date of inspection. He said the Appellant's comparison No. 5, PN1993440 is located some distance away from the subject property in Enniscrone and is not directly comparable.

8.5 Mr. Sweeney provided details of six properties valued along the Wild Atlantic Way which he said were in close proximity to the subject property (**Appendix 2**).

8.6 He said the level of trade achieved by the subject property could be replicated by the hypothetical tenant.

8.7 During the course of cross examination, Mr. Sweeney said that two of the Respondents Key Rental Transactions were outliers and that one of the NAV comparisons could not be relied upon as it was under appeal. Mr. Sweeney did not agree with Mr. Halpin's assertion that the chef's expertise and trade would not travel with him if he was to move to a new premises. Mr. Sweeney said in reply to a question from the Tribunal that he would pick the location of the subject property if he was a hypothetical tenant over the seafront on account of the passing traffic on the Top Road.

## **9. SUBMISSIONS**

9.1 There are 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 Sligo County Council.

10.2 The Tribunal, having examined the particulars of the property and considered the written and oral evidence adduced by Mr. Halpin on behalf of the Appellant who contended for a revised NAV of €43,000 and Mr. Sweeney on behalf of the Respondent who sought confirmation of the revision managers determination of €70,500 as fair and equitable.

10.3 The Tribunal noted the location of the subject property on Top Road, which is approximately 1.2 kilometres away from the seafront in a town noted for its coastal tourism.

10.4 The comparisons offered gave a general view of the licenced trade in Co. Sligo and were of assistance to the Tribunal. The Tribunal found the Appellants Comparison No.1 and the Respondent's Key Transaction No.1 to be the most relevant comparison due to its location, size and type of operation as a gastropub. The Tribunal notes however that the property is located by the seafront and has the benefit of footfall which the subject property does not.

10.4 The Tribunal is persuaded by the evidence put forward by the Appellant that the chef with over 50 years' experience and with over fifteen years' experience at this location brings a particular expertise which would not necessarily be transferred to a hypothetical tenant. The Tribunal notes the upside-down nature of the business with food sales outstripping those of drink by a wide margin also supported this finding. This strongly suggests a high degree of personal business acumen and goodwill attaching to the operator of the business.

10.5 The Tribunal has therefore determined that an adjustment must be applied to arrive at a Fair Maintainable Trade for the food element of the trade. This approach has been previously adopted by another division of the Tribunal in Kirwan VA14/15/959.

**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 €65,500.

Valuation Applied:	Drink FMT: €400,000 @ 7% = €28,000	
	Food FMT: €850,000 less €100,000 @ 5% = €37,500	
	Total: €65,500	<b>SAY €65,500</b>

And the Tribunal so determines.