

Appeal No: VA17/5/129

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

GE CLANCY ATHY LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 1992814, Hospitality at 25-26 Leinster Street, Athy, County Kildare

B E F O R E

Barry Smyth FRICS, FSCSI, MCI Arb

Deputy Chairperson

Thomas Collins PC, FIPAV, NAEA, MCEI, CFO

Member

Barra McCabe - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF JULY, 2019.

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 €28,700.

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 is not in line with actual rental values.*
2. *The Commissioner’s approach to the subject property is flawed. The subject property is located in Leinster Street and is valued at 400% more than the premises next door, despite being of similar value.*

3. *The occupiers family have been involved with the property for 100 years. Over this time, they have built up a unique personalised goodwill which cannot be taxed.*
4. *The goodwill is proven by the Commissioner's valuation of virtually every pub in Athy many of which are assessed at a fraction of the subject but are similar or superior premises on Leinster Street."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €12,000.

2. REVALUATION HISTORY

2.1 On the 10th 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 €28,700.

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 the valuation manager did 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 €28,700.

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 10th day of January, 2019. At the hearing the Appellant was represented by Mr David ES Halpin M.Sc (Real Estate) BA (Mod) and the Respondent was represented by Mr Martin O'Halloran M.SC, B.SC, MSCSI, MRICS 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 The subject property is a licensed premises located at Leinster Street, Athy, Co. Kildare. The ground floor trading area comprises front and rear bars, a lounge area, a covered smoking area and a yard.

The accommodation areas are agreed as follows:

Front Bar & Lounge	50.63 sq m
Back Bar/Function area	61.54 sq.m
	112.17 sq.m
Covered smoking area	64.05 sq.m
Yard	105.87 sq.m

5. ISSUES

5.1 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 outlined the state of the commercial property market at the valuation date of 30th October 2015. He stated that 2015 marked a turning point in terms of commercial investment and sales activity levels. He noted however, that outside of Dublin, Cork and Galway rental values continued to remain static or decline slightly throughout 2015 and 2016. The Appellant commented on the difficulties in the licensed market in Athy, noting the high number of pubs in the environs of the subject property, the extreme level of competition and the high deprivation index applied to Athy which he said is known as the poorest town in Kildare.

7.2 Mr Halpin reported that the actual trade of the subject property is declining having peaked in 2014 despite a generally improving market. He noted that the occupier’s family has been involved with the pub for 100 years, and cited this as the reason for sustaining turnover at current levels. Average turnover in the street according to the Appellant does not exceed €165,000. Additionally, he reported that pub values whether on a letting or sale basis are very moderate. Mr Halpin stated that the subject property would not be seen as a high value entity and would not be treated differently by the hypothetical tenant.

7.3 The Appellant provided comparable information on the 9 other pubs located on Leinster Street, Athy and noted that the subject property is valued at more than 2.5 times the average property on the street. The 9 pubs have been valued between €6300- €18,200 NAV and Mr Halpin proposed that based on location, type and size the subject property falls in the middle of this range.

7.4 The Appellant outlined the difficulties with equating turnover with Fair Maintainable Trade (FMT) and gave his view that the €410,000 utilized by the Commissioner in this case does not represent FMT. He referenced Tribunal judgement VA14/5/959 (Keith Kirwan) wherein the Tribunal cautioned against a ‘too rigid application ‘ of the FMT method of valuation of licensed premises and the rationale for discounting actual turnover to reflect the business acumen of the occupier and arrive at FMT.

7.5 The Appellant proposed a FMT of €171,500 and estimated the NAV at 7%, agreeing with the Commissioners per centage, to be €12,005.

Say €12,000.

8. RESPONDENT'S CASE

8.1 The Respondent gave his opinion that the subject property should be valued at a valuation percentage of 7% of on sales. He stated that this method of valuation is a well-established method of valuing licensed premises and cited previous Tribunal judgements including VA95/5/025 (Swigmore Inns Ltd t/a Doherty & Nesbit, Baggot Street Lower, Dublin 2) VA 95/5/024 (Nallob Ltd t/a O'Donoghue's, Merrion Row, Dublin 2.)

8.2 The Respondent noted that both judgements indicated that the profits method is the preferred method of valuing a licensed premises. Additionally, both judgements determined that no allowance was warranted for the fact that both licensed premises were well known landmark Dublin pubs.

8.3 Mr O'Halloran stated that the hypothetical tenant would base his rental offer on the level of trade he can generate. He outlined how the hypothetical tenant could seek to maximize the potential turnover of the subject business and stated that the Appellant had not identified any characteristics of the subject occupier that cannot be replicated by the hypothetical tenant. Additionally, he noted that where the turnover is considerably different from the hypothetical achievable turnover an adjustment to the supplied turnover may be appropriate. However, in this case he suggested that the Appellant had not identified any characteristics that would increase turnover that would not be available to the hypothetical tenant.

8.4 The Respondent disagreed with the approach taken by the Appellant to reduce revenues stating it is not in line with best practice, is not reflective of previous trading patterns and is not an approach a hypothetical tenant would make in arriving at his rental bid.

8.5 The Respondent gave evidence of a number of comparable properties but did not include any of the licensed premises in the vicinity of the subject property on Leinster Street.

8.6 Mr O'Halloran gave his view that the FMT of €410,000 estimated by the Commissioner was entirely reasonable given that the financial information available at the valuation date would have informed the hypothetical tenant that the property was achieving €457,257.

8.7 The Respondent concluded by giving his opinion that the level of trade achieved by the current tenant could be replicated by any hypothetical tenant and that the valuation of €28,700 is fair, reasonable and equitable.

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 Kildare County Council.

10.2 It is long established in practice, and by the Tribunal, that the appropriate method of Valuation in licenced premises is by the application of a percentage to the Fair Maintainable Trade. However in considering what the Fair Maintainable Trade may be, and what factors affect it, consideration has to be given to more than just the turnover, and judgement has to be made as to whether a premises is under or over trading and what level of Fair Maintainable Trade the reasonably competent operator or Hypothetical Tenant could achieve or maintain. There is also the question of equity and fairness between rate payers and it must be borne in mind that what is being valued is the building and not the business. This Tribunal is conscious of not straying from an established method of Valuation and does not propose to value licenced premises on the basis of the size of the trading areas but information on floor areas would assist in considering whether or not the level of turnover or FMT is realistic and whether or not a reasonably competent operator/the Hypothetical Tenant, could improve or maintain that level.

10.3 In this case, as evidence of equity and uniformity, the Respondent provided comparisons of 3 pubs in Athy, one of which is under Appeal, but there was no information available as to the trading areas in each. It is therefore difficult to make a judgment as to how the subject property is trading relative to these.

10.4 The Appellant provided nine comparisons on Leinster St., Athy, with estimates of the Fair Maintainable Trade derived in each case from the Net Annual Value and also provided estimates of trading areas. From this it is apparent that the subject property is trading at a level in excess of its competitors on the street. Many of those comparisons are either run down or closed and therefore not of much assistance in this instance. However, the immediately adjoining property, The Nags Head (Nortons), 13 Leinster St., Athy, has greater frontage, a similar, albeit estimated, floor area and appears from the photograph provided to be in good condition, yet on the basis of its Net Annual Value of €11,200, it would appear that the estimate of FMT is €160,000 per annum

10.5 The Tribunal finds that the Appellant has given convincing evidence that the business acumen of the occupier needs to be taken into account when arriving at a figure for FMT for the subject property. Additionally, the Respondent did not provide in the opinion of the Tribunal sufficient evidence to support a NAV for this property significantly in excess of the comparable licensed premises on Leinster Street in Athy and in fact did not include any of these properties in his submission. Therefore in this case the Tribunal believes it is appropriate to apply a discount of 20% to allow for the business acumen of the occupier and to arrive at a fair figure for FMT.

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 €23,000.

Fair Maintainable Trade	€328,000
NAV 7% of FMT	€22,960
	Say €23,000

And the Tribunal so determines