

Appeal No: VA17/5/145

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

DOYLES BAR ATHY LTD.

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1993107, Hospitality at 54.55 Woodstock St/Barrack St, Athy, County Kildare.

B E F O R E

Dearbhla Cunningham - BL

Deputy Chairperson

Thomas Collins – PC FIPAV NAEA MCEI CFO

Member

Frank O'Grady – MA FSCSI FRICS FIABCI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF SEPTEMBER, 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 €28,000.

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 is not in line with its potential rental value.*

2. *The Commissioner's approach to the subject property is flawed. The subject property is a pub of just 60m² and on Woodstock Street, a secondary location in the town of Athy.*
3. *The occupier's family have been involved with the property for 100 years and the current operator has been behind the bar for 36 years. Over this time, they have built up a unique personalised goodwill which cannot be taxed.*
4. *This goodwill is proven by the Commissioner's valuations of virtually every pub in Athy in many of which are assessed at a fraction of the subject but are superior premises on Leinster Street.*
5. *The Commissioner is taxing the business and not the property on a vacant and to let basis as set down in the statute."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €7,800.

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 €28,000.

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 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 €28,000.

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 30th day of May, 2019. At the hearing the Appellant was represented by Mr. David ES Halpin M.Sc. (Real Estate) of Eamonn

Halpin & Co. Ltd and the Respondent was represented by Mr. Ian Power 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 a small long established public house on Woodstock Street, Athy, Co. Kildare. The premises is part of a 2 storey residential property situated in a secondary retail/residential area, a short distance from the town centre.

4.3 The trading floor areas have been agreed between the parties at 64.7 sq.m.

4.4 The property is owner-occupied and is held freehold.

4.5 The trading and turnover figures for 3 years, 2013/14/15 have been supplied and agreed between the parties, (Appendix 1).

5. ISSUES

5.1 The matter at issue is quantum.

5.2 The Appellant claims that the valuation is excessive and inequitable and is seeking a reduction in the NAV to €10,500.

5.3 The Respondent states that the NAV of €28,000 is in line with the tone of the list for Co. Kildare and requests the Tribunal to affirm same in accordance with the Valuation Acts.

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 Appellant adopted his precis as his evidence-in-chief and went on to describe the location, description and physical nature of the property and the business carried on therein.

7.2 He stated that the recovery in the economy remained at two speed, with the cities Dublin, Galway and Cork attracting increases in commercial rents and the smaller towns and villages remaining static or in decline through 2015 and 2016. He described Athy as a disadvantaged area, the poorest town in Co. Kildare with very limited tourism and little or no passing trade.

7.3 He also stated that Athy had 17 public houses, 13 on or near Leinster Street, the main commercial centre in the town and that the subject property was one of only 4 pubs at the tertiary end of the town, west of the Barrow River.

7.4 When describing the property he said that it had a very small trading area, was a bar only with no food trade and that the success of the business was mainly due to the goodwill and business acumen of the proprietor, a 3rd generation publican.

7.5 Mr. Halpin questioned the use of Fair Marketable Trade (FMT) and the Commissioner's method of applying 7% yield as a fair rent and asked should further adjustments be made to arrive at a fair rent/NAV. He quoted from a previous Tribunal case VA 14/5/959 (Kirwan case) "The individual whose business acumen pushes a business into a healthy turnover and in turn a healthy profit drives himself and the business into the extended arms of another branch of revenue, ie the Collector General, with such turnover and/or profit scrutinised and the appropriate tax lawfully deducted and paid."

He further stated that Turnover and FMT are not interchangeable and are two separate items and if not defined can contribute to double taxation on a property.

7.6 He provided a summary of 16 pubs in Athy, 12 of which have agreed or settled and 4 of which are currently under appeal to the Tribunal. The chart shows that the subject property is one of the smallest pubs in the town, has a substantial turnover and the highest NAV listed.

7.7 Mr. Halpin referred to another Tribunal case VA 17/5/078 (Fitzpatrick case) which commented on the disproportionate disparity of treatment of similarly appointed properties, when analysing business and turnover to arrive at NAV.

7.8 To support his case Mr. Halpin introduced information on 12 pubs in Athy, showing that size alone did not determine rental value, that location and turnover greatly influenced the NAV. Several premises of similar size and superior location had lower NAV's and the largest premises in the town also had a lower NAV.

7.9 Mr. Halpin stated that turnover had to be adjusted to accurately reflect FMT and allowance for location, size, hours worked and business acumen which could result in overtrading taken into consideration. He requested a reduction in FMT to €150,000 and a revised NAV of €10,500.

8. RESPONDENT'S CASE

8.1 Mr. Power for the Respondent adopted his precis as his evidence-in-chief and contended for an NAV of €28,000.

8.2 He confirmed that the location, description, floor areas, title and turnover were agreed between the parties. He also confirmed that the FMT method was the approach taken by the Commissioner and a yield of 7% applied.

8.3 To support his case 3 market rental comparisons were supplied.

8.4 He also supplied a similar chart of the 17 public houses in Athy, with details of the various levels of NAV, and 6 properties were introduced as evidence.

Comparison 1. Barrow Quay was a small pub fronting the river just off Leinster Street with bar and off licence trade and NAV €20,100.

Comparison 2. Leinster Street, similar to subject in size, close to train station with FMT €160,000 and NAV €11,200.

Comparison 3. Emily Square, off Leinster Street, a small shop and bar with mixed turnover and an NAV €10,460.

Comparison 4. Woodstock Street is under appeal to the Tribunal

Comparison 5. Duke Street is a ground floor bar, not inspected, but similar to subject, with estimated t/o of €220,000 with an NAV €15,400.

Comparison 6. Leinster Street, larger premises than subject with an FMT of €160,000 and an NAV €11,200.

8.5 Mr. Power went on to explain the method used in valuing pubs and referred to 2 previous Tribunal cases VA95/5/025 and VA95/5/024 issued in 2000 in which the profits method was used and they stated that

“ profits and turnover etc. are hughely influencial in the mind of the hypothetical tenant when determining the amount of rent he is prepared to pay.”

Furthermore the Tribunal determined that no allowance was warranted for the fact that the pubs were well known landmarks in the tourist trade.

8.6 Mr. Power also advised that the current occupier is a potential hypothetical tenant and that any other reasonably efficient tenant occupying the premises would expect to achieve a similar level of trade and he stated that the current occupier has no greater ability to trade than any other Hypothetical Tenant.

8.7 He further stated that it was the physical factors that effect the value of a public house, ie its attractiveness, location physical characteristics and size. He commented that the level of

trade on the subject premises was the most reliable determinant of NAV. He requested the Tribunal to affirm the NAV at €28,000.

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 The Tribunal has 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 valuation of €10,500 and Mr Power on behalf of the Respondent who sought confirmation of €26,000 NAV.

10.3 Both parties gave details on the various public houses in Athy which was extremely helpful to the Tribunal and gave a solid overview of the nature of the pub business in the town. The lack of market rental information was noted as both parties had little or no suitable information with regard to actual rents achieved in the town.

10.4 During cross examination it was very evident that the parties differed on the approach to valuation and the assessment of the various loadings/weightings to be accorded to size, location and turnover which resulted in the large difference of opinion in rental values/NAV. Mr. Powers comment that the subject was a well established, landmark pub and that size was not important as all pubs were equal with regard to location as there was no “Temple Bar” area in the town contrasted sharply with Mr. Halpins opinion that this was a small premises located in a tertiary retail street run by a experience publican working long hours.

10.5 The use of FMT as a method of valuation to arrive at a fair rent has to be questioned in that it does not give sufficient weight to the goodwill and business acumen of an experienced publican and was a tax on the business and not the property.

10.6 A number of Tribunal determinations as referenced in this case have commented on the effect on turnover of occupiers business acumen and have tended to make allowance for overtrading due to the goodwill of the occupier.

10.7 Mr Power's comments that location, size and physical attractiveness were not as important as trading information when assessing NAV or rent are misplaced when assessing the subject property which is a small premises on the edge of the town centre and therefore under the normal rules of valuation weight should be accorded to all factors including size and location.

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 €14,000.

CALCULATION

FMT €200,000 @ 7% = €14,000

Say NAV €14,000.

And the Tribunal so determines.