

Appeal No: VA17/5/706

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

TULLY'S BAR LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1138280, Hospitality at Floor: -1,0,1, 151-152/Ln 148.149 Tullow Street,
Carlow, County Carlow.

B E F O R E

Eoin McDermott – FSCSI, FRICS, ACI Arb

Deputy Chairperson

Liam Daly – MSCSI, MRICS

Member

Orla Coyne - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF OCTOBER, 2019.

1. THE APPEAL

1.1 By Notice of Appeal received on 12th 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 €74,100.

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.*

2. *The subject property is not superior to PN 1138054 immediately across the street. This premises is owned by Weatherspoons and would have a turnover many multiples of the subject property once it reopens. It is valued by the Commissioner at €40,000.*
3. *The appellants made a very detailed submission on the subject property at reps stage and intend to rely on this at Tribunal stage.”*

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 25th 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 €95,000.

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 reduced to €74,100

2.3 A Final Valuation Certificate issued on 7th September 2017 stating a valuation of €74,100.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is 30th 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 20th August 2019. At the hearing the Appellant was represented by Mr. Eamonn S. Halpin B.Sc. (Surveying) MRICS, MSCSI of Eamonn Halpin & Co. together with Mr. Edward Cahill, the son of the owner; and the Respondent was represented by Mr. Adrian Power-Kelly FRICS, FSCSI, ACI Arb, RICS Reg. Val.

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 comprises a licenced premises located on the northern side of Tullow Street, Carlow, close to its junction with Dublin Road.

4.3 The net internal floor areas of the property are agreed as follows: -

Ground floor	
Bar	110.32 M2
Lounge	70.58 M2
Rear lounge	59.01 M2
Food preparation & kitchen	28.72 sq. M.
First floor	
Stores & office	193.13 M2
Second floor	
Stores	31.19 M2
Sub total	<u>492.95 M2</u>
Smoking area	23.59 M2
Overall total	516.54M2

4.4 The valuation applied to the food element of the Fair Maintainable Trade (“FMT”) is agreed at 6% of €30,000, equating to €1,800.

4.5 The valuation to be applied to the on-sales element of the Fair Maintainable Trade (“FMT”) figure is agreed at 6%.

5. ISSUES

The issues before the Tribunal were the manner of computing the NAV of the subject, whether sufficient allowance had been made for exceptional turnover generated by the owners and their

personal goodwill, and whether any allowance had been made for the possibility of a major competitor opening across the street from the subject property.

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 opened his case by querying the valuation approach adopted by the Respondent, which he described as being inequitable and liable to lead to unfair outcomes.

7.2 Mr. Halpin developed his case by describing the location and layout of the property, using photographs contained in his précis. He noted that Tullow Street was historically the main shopping street in the town but that it had suffered greatly in the last 20 years as a result of the growth of shopping centres and out of town retail parks. He pointed out that the units on either side of the subject were vacant and gave details of vacancy rates in the area.

7.3 Mr. Halpin described the property as an averaged sized bar with a small kitchen and a limited lunchtime food trade. He said that the trade was driven by two main factors, the longstanding goodwill of the operators (in business since 1982) and a strong student trade

predicated on low margin selling. He noted that the turnover of the subject property had increased significantly in the years from 2010/2011 (total turnover approximately €630,000) to 2014/2015 (total turnover approximately €1,075,000) and ascribed this increase to the closure of The Traders public house, directly across the street. He said that he had studied the accounts of a number of licenced premises in the town and had not seen this type of growth anywhere. He further noted that The Traders had been purchased by Weatherspoons in 2015 and that that property had re-opened in 2019. He said that the purchase of The Traders in 2015 was known in the market at the valuation date and that a hypothetical tenant would have had regard to this in assessing his rental bid.

7.4 Mr. Halpin quoted from a number of previous Tribunal decisions (VA14/5/959, VA 17/5/078, VA 17/5/129 and VA17/5/075) to progress his argument that the turnover figures were unsustainable and due to the business acumen of the owner and should therefore be discounted in arriving at an NAV.

7.5 Mr. Halpin put forward two rental comparisons (both sourced from the Commercial Lease Register) as follows

Property	Lease details	Rent
The Traders, Tullow Street	15-year lease from September 2012	€52,000
Cava Gastro, Tullow Street	4.75-year lease from December 2016	€47,000

Mr. Halpin noted that both businesses had failed with 18 months of opening and argued that this proved that rental values of pubs in the town were at lower levels than that suggested by the Respondent and that the market at the time was extremely challenged.

7.6 Mr. Halpin also considered the NAVs of a number of pubs in the vicinity of the subject and on Tullow Street.

Property	NAV
The Traders, Tullow Street	€40,000
Scraggs Alley, Tullow Street	€67,500
Morrissey's, Dublin Street	€28,000
O'Loughlin's, Dublin Street	€17,200

Reddy's Tullow Street	€63,000
Cava Gastro, Tullow Street	€35,600

Mr. Halpin pointed out that the information available to him, in terms of size and turnover of these properties, was minimal, but expressed surprise that all these properties had a lower NAV than that sought by the Respondent, and that his clients were being unfairly penalised.

7.7 Mr. Halpin sought a NAV of €41,800, made up as follows: -

On sales	€500,000	8%	€40,000
Food	€30,000	6%	<u>€1,800</u>
			€41,800

7.8 In response to cross examination by the Respondent, Mr. Halpin pointed out that there was a fresh intake of students every year, thereby generating steady trade. He maintained that the increase in turnover was due to the closure of The Traders, although there was sustained questioning from both the Respondent and the Tribunal regarding the dates of closure. There was further questioning on works undertaken by Weatherspoons that had reduced the size of The Traders but Mr. Halpin argued that their model required large kitchen facilities. Mr. Halpin accepted that Weatherspoons moving into the area affirmed its status as a destination but said that this would impact on the subject properties business. Mr. Halpin was also questioned as to why he had not included other properties in Tullow Street in his list of comparisons, specifically The Barracks and Teach Doman, both of which had higher NAVs than that proposed for the subject. He was also questioned on the surroundings of some of the comparisons he had used.

7.9 In a response to queries from the Tribunal, Mr. Halpin stated that he did not consider the increase in turnover of the subject property to be connected with the improving economy. He also confirmed that the property did not have a late licence and that the only property he knew of with such a licence was Scraggs Alley. The Respondent advised that The Barracks also had a late licence.

8. RESPONDENT'S CASE

8.1 Mr. Power-Kelly, on behalf of the Respondent, gave evidence of the location and layout of the property. He described the surrounding area as mainly commercial and described the layout of the subject using photographs and survey notes contained in his precis. He noted that the decision of Wetherspoons to locate in the area emphasised the quality of the location.

8.2 Mr. Power-Kelly noted that the turnover of the property showed a steady increase over the five years prior to the valuation date. He pointed out that his valuation was effectively based on an average of the 2013 and 2014 on-sale figures and noted that the figure put forward for on-sales by the Appellant in his valuation was less than the figures shown in any of the five years of management accounts provided.

8.3 Mr. Power-Kelly put forward no rental comparisons. He put forward seven NAV comparisons as follows.

Property	NAV
The Barracks	€72,000
Scraggs Alley	€67,500
Teach Dolman	€104,000
The Plough	€84,000
Cava	€35,600
Carpenters	€70,000
The Traders	€40,000

He explained that each of the properties was valued on an FMT basis, that two were valued on a 9% FMT basis as they had late licences and the remainder were generally valued at 8% of on-sales turnover and 6% of food sales turnover. Off-sales, where applicable, were valued at 4% of turnover. He gave evidence of which of his comparisons had provided accounts and, some cases, the level of weight applied to those accounts.

8.4 Mr. Power-Kelly's precis also provided information on the trading history of The Traders, taken from the planning application submitted by Wetherspoons, its new owner. It indicated that that property was not trading between 2010 and August 2012, that it did trade between August 2012 and mid-2014, and then traded for approximately 10 months from late 2014.

8.5 Mr. Power-Kelly sought a NAV of €69,800, made up as follows: -

On sales	€850,000	8%	€68,000
Food	€30,000	6%	<u>€1,800</u>
			€69,800

8.4 In response to cross examination by the Appellant, Mr. Power-Kelly explained that the Respondent had not provided any rental evidence as there was no independent evidence available. The leases that had been notified to the Respondent under the S. 45 procedure turned out, on inspection, to be between related parties. He further noted that in those premises where connected party leases were in place, R & E exercises indicated that the rent was equivalent to approximately 8.3% of turnover. He confirmed that no turnover figures had been obtained from The Traders and that the FMT had been estimated, based on advices received from both local agents and experts in the licenced trade. He did not accept that there was an anomaly between the valuations of The Traders and the subject and said that they reflected the properties as they were at the time, not as they are now. He confirmed that where accounts evidence was provided, they tended to show a steady growth. He had not used Reddy's as a comparison as it was a Tribunal decision and he was unsure as to whether it was subject to challenge.

8.5 In response to a query from the Tribunal, Mr. Power-Kelly confirmed that accounts from the subject property were only received at Representations stage. He noted that responses to S. 45 notices were generally poor and that while in an ideal world the Respondent could use its powers under S. 46, the deadlines imposed for the completion of the List made this impossible.

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 Carlow County Council

10.2 There was considerable evidence and cross-examination of the respective merits of the subject property and The Traders across the road. Mr. Halpin, in his precis, specifically states that “the turnover of the subject property almost doubled between 2012 and 2014 due to the failure of The Traders...” Mr. Power-Kelly was able to demonstrate in his evidence that the property was closed between 2010 and August 2012, that it did trade between August 2012 and mid-2014, and then traded for approximately 10 months from late 2014. The Tribunal can therefore attach little weight to the Appellants evidence in this regard.

10.3 The Appellant queried the valuation methodology and what it described as the danger of considering turnover in isolation. It also queried whether sufficient consideration had been given to the business acumen of the owner, which had resulted in the turnover of the subject property increasing substantially. The Appellant has not given any rationale for its valuation based on turnover figures that are lower than those recorded in its own accounts for the period 2010 - 2015, nor has it provided any substantial evidence to suggest that the business acumen of the owner is the driver of the increase in the turnover of the subject property (which is ascribed, elsewhere, to the demise of The Traders.) The Tribunal notes that the Respondent has not utilised the higher figure as set out in the 2015 accounts but has instead taken the average of two lower figures from the preceding two years in considering the on-sales figure and The Tribunal considers that this is an appropriate approach in this instance.

10.4 Finally, the Appellant queried whether sufficient consideration was given to the possible impact of a major competitor opening opposite the subject property and argued that a hypothetical tenant would take this into account in assessing their rental bid. The Tribunal notes that while the market would have been aware of the change of ownership, the property did not in fact re-open until May 2019. The Tribunal also notes the contention of the Respondent that the arrival of a major competitor will be likely to increase the attractiveness of the location as a whole. The Tribunal does not consider that any specific allowance should be made for this point.

DETERMINATION:

Accordingly, for the above reasons, The Tribunal disallows the appeal and confirms the valuation of the Respondent as follows.

On sales	€850,000	8%	€68,000
Food	€30,000	6%	<u>€1,800</u>
			€69,800

And the Tribunal so determines.