

Appeal No: VA17/5/1229

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

MARY JORDAN

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2175349, Retail (Shops) at Local No/Map Ref: 7/1, Kilbride Cross, Boggan, Carlow, County Carlow.

B E F O R E

Hugh Markey – FSCSI, FRICS

Deputy Chairperson

Pat Riney – FSCSI, FRICS, ACI Arb, FIABCI, PC

Member

Úna Ní Chatháin - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 29TH DAY OF JULY, 2020.

1. THE APPEAL

1.1 By Notice of Appeal received on the 13th 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 €19,300.

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

- The valuation incorrectly partitions the property and part of the property is in use as a residence

- No similar restaurants in area; difficult to judge the equity of the valuation
- Local public houses and fast food premises have lower valuations

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €13,910.

2. REVALUATION HISTORY

2.1 On the 11th 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 €14,830.

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 increased to €19,300.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €19,300.

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 8th day of November, 2019. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate), BA. (Mod) of Eamonn Halpin & Co. Ltd 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.

The Property comprises a detached former cottage, located in a rural location at a crossroads on the N80 Carlow to Bunclody road. It is situated approximately 5km from the village of Ballon and approximately 10km from Bunclody.

4.2 The ground floor has been converted for use as a restaurant. The property is freehold.

At the hearing, the floor areas were agreed as follows:

Ground floor:

Restaurant: 86.86 sq m

Kitchen: 73.78 sq m

'Zone 1': 18.3 sq m

Store: 27.46 sq m

First Floor: 53.53: sq.m.

5. ISSUES

5.1 The sole issue is one of 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 Mr Halpin outlined how the premises had been closed for trade since September 2018 and was on the market for letting at €200 per week (€10,400 p.a.). He said that while the overall areas had been agreed, he believed it appropriate to consider the property as having different ‘zones’, i.e. rateable zones and non-rateable zones. The floor areas are agreed as outlined above at para. 4.2. The appellant submitted that Zone 1 and the Property’s first floor were not rateable as they were in domestic use.

7.2 He gave direct evidence as to the rural nature of the property and how part had been used for domestic purposes since August 2017 and was therefore exempt from rates. He stated that he had carried out an inspection of the property in or about July 2019 and had observed at that date that the property was partly in use as a residence. He had photographed and measured the property during the course of that inspection.

7.3 He outlined the efforts to market the property at a rent of €200/week and how these were, so far, unsuccessful, despite having a high quality commercial kitchen. He suggested the location was not as advantageous as an urban setting and that the property would have achieved the rent if it was located in a town or village. The property was the only commercial property in the immediate vicinity.

7.4 He suggested that the Respondent had allowed for the rural location when it came to valuing public houses and instanced examples to support this view. He outlined how the valuation of the nearest pub, in Whitemills, at €7,000, was at a level 50% of that in local towns and just 35% of the subject, despite being of at least the same size. He introduced the valuations of nine public houses and in particular pointed to PN 2173206, a licensed premises with a commercial kitchen located in Kildavin village, 5km from the Property, which was valued at €12,000 and suggested this was anomalous insofar as if a willing tenant could rent such a pub (with a full commercial kitchen) in the immediate vicinity for €12,000pa; why would they pay the level suggested of €19,300 for the subject?

7.5 Mr Halpin suggested that as there were no properties similar to the Property in its vicinity, the Respondent was using information from towns across the county to inform the valuation of the property, and this was inappropriate. He went on to say that the subject was valued at a higher level than every shop and pub in the town of Ballon (pop. 712). He posited that the uniform rate of €80 per sq. m. was unsustainable; a fact further exaggerated because of the nature of the property..

7.6 To support his opinion of value, he introduced six NAV comparisons of pubs and restaurants in various locations in Co. Carlow, both rural and urban. The valuations varied from €2,740 - €18,970. He placed particular reliance on one public house/restaurant– PN 2173206 (Kildavin). This was valued at €12,000 and is as outlined earlier.

7.7 The appellant submitted that the restaurant areas should be valued at €80 per sq m, the kitchen, stores, and ancillary areas at €15 per sq m, and the external store at €10 per sq m. The appellant submitted that part of the ground floor and the entire first floor should not be valued as they were in domestic use.

Cross Examination of Mr Halpin

7.8 In response to questioning from the Respondent, Mr Halpin conceded that the onus was on the Appellant to prove their case; that the nearest evidence to the valuation date before the Tribunal was the Respondent’s survey of July 2017 and the letting agent was not present to give direct evidence as to the letting value. He further accepted that pubs were valued on a different basis but as there were no other restaurants on the N80, he had to consider other types of property. The Property was an unusual property in an unusual location. He accepted the property had the benefit of a large car park but that it ‘wasn’t obvious’ to passers-by.

8. RESPONDENT’S CASE

8.1 Mr Power Kelly, in his direct evidence, outlined how the property had been inspected in July 2017 and adduced photographs outlining the use of the property at that time. He said this was evidence that the entire was in commercial use at that time and therefore fell to be valued. He outlined how there was a paucity of letting evidence in rural locations and the Respondent had relied on two lettings in arriving at a level to apply. These are outlined in Appendix 1 and are both located in Hacketstown, some distance from the Property.

8.2 He further relied on nine NAV comparisons of restaurants in various locations in Carlow. These were all valued at levels between €80 and €150 per sq. m. for the restaurant areas. The largest of these (PN 2188008) is located in Clonegal, has a restaurant area of 87.32 sq. m. and is valued at €80 per sq. m.

8.3 In the respondent's opinion, the restaurant area of the Property (to include kitchens and ancillary areas) should be valued at €80 per sq m, the cold room area at €13.80 per sq m, the external store at €10 per sq m, and the first floor area at €50 per sq m.

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.

DETERMINATION:

The Tribunal finds that the Respondent's evidence in respect of the residential use of part of the property under appeal was compelling and finds that the entire property was in commercial use at the appropriate date and accordingly Zone 1 and the Property's first floor fall to be valued.

The Tribunal further finds the uniform application of €80 per sq. m across the entire restaurant, kitchen, and ancillary areas to be flawed. While the Appellant did not dispute this level of valuation for the restaurant and kitchen areas, albeit it had been derived from a very limited sample of lettings, the Tribunal preferred his view that the valuation of €80 sq. m. should only be applied to the actual restaurant and kitchen area, and a lower level applied to ancillary areas, and accordingly adopts this approach in applying differing values to the distinct areas.

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €14,350 .

Restaurant	86.86 sq m @ €80 per sq m:	€6,948.80
Kitchen/ancillary	73.78 sq m @ €60 per sq m:	€4,426.80
Zone 1	18.3 sq m @ €60 per sq m:	€1,098
Store	27.46 sq m @ €10 per sq m:	€274.6
First floor	53.53 sq m @ €30 per sq m:	€1,605.90

Total NAV €14,354.10

Say €14,350

And the Tribunal so determines.

APPENDIX 1

No. 1

Key Rental Transaction 1	PN 1207456
Address	Dynasty Chinese Restaurant ,18 Main Street, Hacketstown, Co. Carlow
Occupier	Michael Hynds
Total floor area	79.09 sq. m.
Lease commencement	1 May 2016
Lease term	4 years
Rent per annum	€18,200
NER ZA per sq. m. per respondent's evidence	€346.02

No. 2

Key Rental Transaction 2	PN 2163350
Address	The Chip Shop, 3/5 Main Street, Hacketstown, Co. Carlow
Occupier	Anne Humphries
Total floor area	27.61 sq. m.
Lease commencement	1 January 2013
Lease term	5 years
Rent per annum	€6,240
NER ZA per sq. m. per respondent's evidence	€269.55