

Appeal No: VA19/5/1780

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

THE ANGLERS REST

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1989518, Off-Licence, Pub at 8 Main Street, Ballyconnell, County Cavan.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF MAY, 2023**

BEFORE

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

1.0 THE APPEAL

1.1 By Notice of Appeal received on the 14th day of October 2019 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 €78,000.

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: "(a) The Valuation is Incorrect

The split of sales on the valuation between drink, food and accommodation is incorrect. The valuation also seems wholly excessive and would represent well over a threefold increase in commercial rates. Our accountant has reviewed the valuation and has noted the following: The inclusion on the valuation for Retail Zone A is not correct as this element of the premises has been vacant since 2013, when the fishing tackle business housed in this part of the premises closed due to the decline in its turnover and the increase in its overheads. The decline in this business reflected the falloff in fishing tourism in the area. The split on turnover for the past few years is as follows:

Year ended 30th April 2018 DRINK €289,755 FOOD €743,039 ROOM €52,625

Year ended 30th April 2017 DRINK €282,177 FOOD €679,073 ROOM €51,670

Year ended 30th April 2016 DRINK €296,474 FOOD €517,098 ROOM €47,201

Year ended 30th April 2015 DRINK €185,015 FOOD €448,155 ROOM €45,405
Year ended 30th April 2014 DRINK €149,877 FOOD €338,333 ROOM €38,110

The room sales detailed above relate to the accommodation charge and exclude food and drink charged to the room numbers.

We have requested a detailed breakdown of how the units were calculated for Drink Sales, Food Sales, and Room Sales but we were informed that this is not available to the public. We find this incomprehensible as it has caused us to doubt the system due to a real lack of transparency. We would be obliged if we could receive a detailed explanation and calculation as to how these unit figures were arrived at. We also understand that the total NAV should be representative of the annual rental that the property would realise on the open market. A figure of €78,000 is not just unrealistic but is fanciful in the extreme. We have asked our accountant to assess what a likely market rent for the property would be and we have also discussed this issue with an eminent firm of auctioneers in Cavan town. Our accountant determined a monthly rental of €2,750 as being realistic to allow the tenants to retain a level of profitability to justify the time commitment required to run the business. Our auctioneer determined a monthly rental in the range of €2,500 to €3,000 per month. On this basis we believe a monthly rental of €2,750 to be realistic resulting in a valuation of €33,000. We have also reviewed the valuations for all public houses / guesthouses on the Valuations Office Website and this has reinforced our view that the valuation of €33,000 is realistic on a comparable basis. "

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €33,000.

2.0 RE-VALUATION HISTORY

2.1 On the 29th day of March 2019 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 €78,000.

2.2 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €78,000.

2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is 15th day of September 2017.

3.0 DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4.0 FACTS

4.1 The parties are agreed as to the following facts.

4.2 The subject property comprises a public house and guest house. The property has a ground floor bar, lounge, and dining room with guest rooms on the 1st floor. The remainder of the property comprises a shop which was vacant. The Appellant states that the first-floor accommodation comprises 14 en suite bedrooms whereas the Respondents stated that it comprised 8 bedrooms on the upper floors from a Discover Ireland website.

4.3 No floor areas have been provided.

5.0 ISSUES

5.1 The issue refers to quantum.

6.0 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.”

APPELLANT’S CASE

7.1 The Appellants have argued that the subject property which is currently for sale has been offered to the market in October 2019 has attracted no acceptable offers. They added that from June 2023 the Appellants were prepared to accept an annual rent of €20,800pa. They stated that the shop had been vacant since 2013.

7.2 The Appellants argued that the operating company Pat Phildies Ltd returned a net profit of €68,000 for the year ending 30th of April 2022 and €77,505 for the year ending 30th of April 2021.

7.3 The Appellants provided details of trading information presented by their accountant in the LP1 form as follows:

Financial information A/Cs Year end		2014	2015	2016	2017
	Drink on sales	€149,877	€185,015	€296,474	€282,177
	Food sales	€376,443	€493,560	€546,299	€730,743
	Total T/o	€526,320	€678,575	€860,773	€1,012,920

He also included the gross profit and cost of sales.

7.4 As part of their Appeal to the Valuation Tribunal they provided additional information to the above and showed the food sales and included room sales as follows:

Financial information A/Cs Year end		2014	2015	2016	2017	2018
	Drink on sales	€149,877	€185,015	€296,474	€282,177	€282,177
	Food sales	€338,333	€448,155	€517,098	€679,073	€743,039
	Room sales	€38,110	€45,405	€47,201	€51,670	€52,625
	Total T/o	€526,320	€678,575	€860,773	€1,01,2920	€1,077,841

7.5 The Appellants stated that the salaries for the two directors were €41,600 and €28,267 for the respective years 2021 and 2022 and that both were severely restricted from taking time off and repeatedly worked over 65 hours a week.

7.6 The Appellants referred to another bar and restaurant which traded as Vista Mar II on Main Street Ballyconnell which they stated was a similar property and business. They added that this property had benefitted from a considerable redevelopment reopening in September 2019 and following the COVID-19 pandemic the reduced footfall and increased costs resulted in the business closing in April 2022.

7.7 The Appellants had requested a detailed breakdown of how the units were calculated for Drink Sales, Food Sales, and Room Sales but they were informed that this information is not available to the public. They claimed that this approach was incomprehensible and lacked any real transparency. They requested a detailed explanation and calculation as to how these unit figures were arrived at while acknowledging that the total NAV should be representative of the annual rental that the property would realise on the open market. They claimed that a figure of €78,000 was unrealistic. Their accountant determined a monthly rental of €2,750 as being realistic to allow the tenants to retain a level of profitability to justify the time commitment required to run the business. Their auctioneer determined a monthly rental in the range of €2,500 to €3,000 per month. On this basis they argued for a monthly rental of €2,750 equating to a valuation of €33,000. They stated that they have also reviewed the valuations for all public houses / guesthouses on the Valuations Office Website and this has reinforced our view that the valuation of €33,000 is realistic on a comparable basis.

7.8 They provided 23 photographs of the subject property which showed a high-quality lounge bar facility, a fully fitted kitchen as well as an external smoking area and a large surface car park. No photographs of the guest bedrooms were provided.

RESPONDENT'S CASE

- 8.1 The Respondents represented by Claire Callan provided a precis of evidence which included a statement of truth and background information regarding the revaluation statistics for Cavan County Council.
- 8.2 The Respondents confirmed that the subject property was located on Main Street Doon Ballyconnell Co. Cavan noting that industry in the area was mainly agriculture, but it also contained a large cement factory a plastics factory and an animal feeds plant. The Respondents noted that tourism was an important part of the town's economy wherein many cabin cruisers navigating the Shannon Erne waterway used it as a stopping off spot. She confirmed that the town was a national tidy towns winner in 1971 and 1975 and at the population according to census of 2022 was 1422.
- 8.3 The Respondents stated that the property comprised a public house and guest house with a ground floor bar, lounge, and dining room and eight guest bedrooms on the first floor. She noted that the property was listed on the Discover Ireland website as comprising 2-star 8-bedroom guest house and had the benefit of a seven-day licence with food being served from 12 noon to 9:00 PM. The property included a designated smoking area.
- 8.4 The Respondent noted that the property was held on a leasehold basis at a passing rent of €4004.00 per month which equated to €48,048 per annum and that the rent expense was included in the LP1 return form.
- 8.5 The Respondent noted that 199 licenced premises were valued in the Cavan Revaluation 2019 113 submitted S45-LP1 forms and 46 were subject to Tribunal appeal; 153 were not appealed and the Respondents stated that they had been valued on the same basis as the subject property. She added that there were 19 pubs listed in the Ballyconnell area for revaluation in 2017 of which two were subject to appeal to the Valuation Tribunal and she noted that the second appealed property was agreed prior to the Valuation Tribunal hearing.
- 8.6 The Respondent stated that the valuation scheme for guest houses in the county included ten guest houses of which five had provided financial information; Six were not appealed and valued on the same approach as that adopted for the subject property. She stated that guest houses were valued at 10% of the estimated/provided turnover and if a property has off sales, on sales and food sales the percentages applied was derived from the relevant pub scheme. She noted three of the guest houses that had lodged Valuation Tribunal appeals have since been agreed the VA 19 5 1031, VA 19 5 0252, and VA 19 5 0140. She noted that all three appeals were agreed at the 10% room rate applied to the room sales Fair Maintainable Trade.
- 8.7 The Respondents response to the Appellants claim noted that the valuation date was the 15th September 2017 and that for the pub/guesthouse sector it is established in practise that the appropriate method of valuation is by the application of a percentage to the Fair Maintainable Trade FMT. She stated that an FMT is adopted for each income stream namely drink on sales, food sales and room sales and she noted that the appellant did not specify room sales data which she understood were included as part of the food sales. She added that the Respondent was not provided with any information regarding the breakdown of turnover between the food

and room sales prior to the Valuation Certificate issuing in September 2019. She stated that a combined FMT for food and room sales was adopted at €800,000 and in the absence of additional information the sales were split evenly between food and room sales but discounting the €100,000 from the estimated food sales to €300,000. The Respondent noted that the Appellant had provided a breakdown of the turnover in the Notice of Appeal and stated that the Respondent had sought to verify the breakdown on a number of occasions by e-mail correspondence but as at the date of submission no response was received and in the absence of a verified certified breakdown there was not sufficient evidence to amend the NAV as applied to the property.

8.8 The witnesses' opinion of value is for a NAV of €78,000 calculated as follows:

Floor level	Additional items	Units	NAV/Unit	Total NAV
0	Retail Zone A	23.20sqm	€120.00	€2,784
0	Drink sales	€290,000	0.07	€20,300
0	Food sales	€300,000	0.05	€15,000
0	Room sales	€400,000	0.10	€40,000
	Total			€78,000

8.9 The Respondent provided four NAV comparisons details of which are included in the appendix (N/A to public). In each case drink sales were valued at either 0.08 or 0.07 depending on the level of FMT; food sales were valued were valued at 0.05 and room sales were valued at 0.10. Three of the four were agreed at Valuation Tribunal stage.

8.10 Summary and conclusion: The Respondents stated that the Appellants opinion of value was based on the rent sought after for the premises in June 2023 whereas the valuation date was September 2017 and that as the intervening period had included Covid it was unreliable. The Respondents stated that regard had been made to the trading figures provided by the Appellant in the LP1 form returned in July 2018 however she argued that the Appellant had argued that the room sales were excessive, but she argued had failed to verify the same despite numerous requests. She stated that the subject property had been valued in line with comparable pubs and guest houses and that the onus of proof lies with the appellant. She stated that the appellant had not provided any room sales evidence accordingly the Appellant failed to meet the burden of proof.

9.0 SUBMISSIONS

9.1 There were no legal submissions.

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 Cavan County Council.

10.2 The Appellants claimed that the shop was unoccupied and had been vacant for a number of years following the closure of the fishing tackle business but did not provide any evidence as

to why it should be derated and consequently the valuation for this element of the subject property remains unchanged.

10.3 The Tribunal took note of the four NAV comparables provided by the Respondents and particularly the calculations of value in each case for the rooms. It appears to the Tribunal that the rates of 0.07/0.08 for drink sales is established as is the rate of 0.05 for food sales and the room sales rate of 0.10 is also uncontested.

10.4 Based on Comparable no 2 which had 19 bedrooms with an estimated FMT of €85,000 and an NAV of €8,500 and Comparison No 4 which had 9 ensuite bedrooms an estimated FMT of €33,000 and an NAV of €3,300 the estimated FMT for the subject property at €400,000 which the Respondents stated had 8 bedrooms would appear to this Tribunal to be disproportionate. The Tribunal noted that the total for food sales provided in the LP1 form provided an estimated FMT of €800,000, however, to apportion a value for rooms of 50% or €400,000 when the NAV comparables provided by the Respondents showed materially lower values for similar or larger premises seems to it to be inequitable.

10.5 The additional detail provided in the Revaluation Appeal form showed that the food turnover for year ending 30/04/2014 was €38,110; for year ending 30/04/2015 was €45,406; for year ending 30/04/2016 was €47,201; for year ending 30/04/2017 was €51,670 for year ending 30/04/2018 was €52,625. These values are generally supported by and in line with the Respondents own evidence of room FMT rates. This would indicate that a correct FMT for the rooms in the subject property should be €52,000.

10.6 The Tribunal finds that the Drink sales calculated at €290,000 x 0.07 = €20,300 to be corrected; however, adjusting the undisputed FMT of €800,000 to take account of the above estimated room FMT of €52,000 leaves a residual of €748,000 for food less €100,000 (first €100,000 of food FMT excluded as standard approach giving rise to a valued FMT of €648,000).

Floor level	Additional items	Units	NAV/Unit	Total NAV
0	Retail Zone A	23.20sqm	€120.00	€2,784
0	Drink sales	€290,000	0.07	€20,300
0	Food sales	€648,000	0.05	€32,400
0	Room sales	€52,000	0.10	€5,200
	Total			€60,684
	Total		Say	€60,600

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 €60,600.

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.