

Appeal No: VA19/5/1807

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

EMG Bars Thurles Limited trading as Kennedy's Tower Lounge APPELLANT

and

Commissioner of Valuation (Tailte Éireann) RESPONDENT

**In relation to the valuation of
Property No. 1331878, Off-License/Pub at Bohernamona Road, Thurles, County Tipperary.**

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF MAY, 2024**

BEFORE

Mr Donal Madigan - MRICS, MSCSI

Deputy Chairperson

1. 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 **€26,600**.

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: *“We are aware that other public houses in the town of Thurles have received a discount of €0.01 on their NAV € per unit. We are led to believe that one reason for this discount is down to the level of entertainment expenses incurred. We attempt to set ourselves apart from the rest of the public houses in town by endeavouring to offer a full range of sporting coverage which includes Golf, Formula One, GAA, Soccer, Rugby and minority sports such as Cricket and Moto GP. This form of entertainment is*

expensive currently costing for the current year €15,456 approx. We believe that this form of entertainment should entitle us to receive the discount given to the other public houses in the town under principle of equity and uniformity of value between properties on the valuation list.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of **€22,800**.

2. RE-VALUATION HISTORY

2.1 This is a Revaluation appeal arising from the Tipperary County Council revaluation which was undertaken as a result of the Tipperary County Council Valuation Order 2017 that was signed by the Commissioner of Valuation on 6th October, 2017 and is for the Valuation List published on 17th September 2019.

2.2 The functions of the Commissioner of Valuation are now performed under the authority of Tailte Éireann with effect from 1st March, 2023. (S.I. No.58/2023 - Tailte Act 2022 (Commencement) Order 2023)

2.3 On the 29th 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 **€ 26,600**. Following representations to the Proposed Valuation Certificate, the Valuation Manager chose not to alter the valuation.

2.4 A Final Valuation Certificate issued on the 10th September 2019 stating a valuation of **€26,600**.

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

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents only, 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.

3.3 The rateable occupier/Appellants are not professionally represented in this appeal and submit their written precis for the appeal themselves (by Mr. Michael Gleeson) whilst Tailte Éireann is represented by M/s Claire Callan, M.Sc. (Planning & Development), B.Sc. (Surveying) as the Respondent Valuer.

4. FACTS

From the evidence submitted by the parties, the Tribunal finds the following facts:

4.1 This property is located on the Eastern side of Thurles town near the junction of Bohernamona with Mitchel Street & Loughtagalla.

4.2 The property comprises a licensed public house with first floor over, comprised in a single and part two-storey building, the first floor of which, being residential, is excluded from this Determination.

4.3 The property is operated as a 7-day licensed premises at ground floor level (first floor excluded, being residential) with ancillary space together with stores, office and toilet.

4.4 Reference was made to trading information which is redacted here for the sake of preserving confidentiality and the details therein do not require repetition as they are known to both parties. The Tribunal has noted these details.

4.5 The property is freehold

4.6 The parties do not appear, from the papers submitted, to disagree on the method of valuation to be used in this appeal which is the shortened version of the Receipts & Expenditure method where unit rates (expressed as percentages) are applied to streams of income (being categorised as fair maintainable trade or **FMT**) for each component part (be that drink, food, accommodation etc) from a business to derive the net annual value (**NAV**). This is the established method for the valuation of pubs for rating being that type of property that is valued having regard to the earning capacity. In this case there is only one stream of income (FMT), which is drink-on sales.

4.7 The branding/signage for this Property may have changed since this appeal was lodged, taking account of image captures on web maps contrasted with the photograph in the precis of the Respondent Valuer at page 6 (in sequence) of her précis.

5. ISSUES

(a) The sole issue arising in this appeal is one of quantum only being that the Appellant considers an allowance should be granted to them, in the calculation of the valuation by the **FMT** method, for entertainment, which by their calculation would reduce the NAV to **€ 22,800** as opposed to that contended for by the Respondent of **€ 26,600**.

(b) This difference relates only to one aspect of the calculation, being specifically the rate(%) to be applied to the FMT, adopted in the valuation by the Respondent, and can be summarised as follows:

Appellant	FMT € 380,000 @ 6%	NAV € 22,800
Respondent	FMT € 380,000 @ 7%	NAV € 26,600

(c) The difference between the parties in NAVs is therefore € 3,800.

6. RELEVANT STATUTORY PROVISIONS:

6.1 All references in this document to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015 and other Acts.

6.2 In **Revaluation** type appeals, as in this appeal, sec. 37 of the Act provides that the Valuation Tribunal must reach a determination having regard to the provisions of sec. 19 (5) of the Valuation Act, 2001,

that shall achieve both (insofar as is reasonably practicable)—

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list, and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

6.3 The net annual value (**NAV**) of the Property must 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.”

6.4 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the basis 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. Michael Gleeson, owner and occupier, of EMG Bars Thurles Limited, submitted a summary of evidence on 29th November, 2023 in which he stated that they are aware that other public houses in Thurles had received a discount in their net annual value of 1% which he understands is due to the level of entertainment expenses incurred. He states that this pub seeks

to differentiate themselves from others in the town by offering a complete range of sporting coverage including golf, GAA, Formula One, soccer, rugby together with minority coverage of cricket, Moto GP, snooker, darts, Aussie Rules football, American football, College football etc. He submits that this is expensive and in the year they incur costs of € 10,000. [On the Notice of Appeal he had stated that this cost € 15,456 approx. see section 1.2 above] He contends that this form of entertainment should entitle them to receive the discount that is granted to other public houses in the town on the principle of equity and uniformity of value between properties on the Valuation List.

7.2 Mr. Gleeson attached to his written evidence a letter from his Accountants dated 7th May, 2019 which had been a response to the proposed valuation in addition to the on line Representations form confirming what they were seeking i.e. a rate of 6% to be used instead of 7% to value the FMT to NAV.

7.3 At the back of this submission from November 2023, there are two sheets which appear to relate to the breakdown of the valuations of two other public houses, as far as can reasonably be ascertained, but no identification is provided by means of the provision of an address or Property Number. These are the usual pages that would accompany a Valuation Certificate (either Proposed or Final), normally to be found on page 2 of that document, but without the inclusion of page one, it will be appreciated that they are not capable of independent verification. It is expected that these will most probably relate to other public houses in the same rating authority area or, indeed, even within the Thurles area, itself, but without any identifying criteria they must lack validity for reliance in an appeal.

Notwithstanding this lack of verification, for the sake of completeness, the details are set out hereunder, slightly re-arranged for ease of reading and understanding, as follows:

No. 1

Drink Sales	€ 400,000 @ 0.07	€ 28,000
Allowance	@ 0.01	€ <u>4,000</u>
	NAV	€ 24,000

No. 2

Drink Sales	€ 210,000 @ 0.07	€ 14,700
Allowance	@ 0.01	€ <u>2,100</u>
		€ 12,600
Off Sales	€ 10,000 @ 0.03	€ <u>300</u>
	NAV	€ 12,900

8. RESPONDENT'S CASE

8.1 M/s Claire Callan, Valuer for the Respondent, submitted a detailed precis of evidence which contained the usual Declaration and Statement of Truth in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules 2019. In her written evidence she outlined the location, description, tenure and other aspects of the Property supplemented by photograph, copies of the valuation certificates and a copy of the LP1 return outlining trading details for the Property supplied by the Appellant's Accountant.

8.2 M/s Callan provided her opinion of the valuation of the Property as calculated as follows:

$$\text{Drink On-Sales FMT } € 380,000 @ 0.07 = € 26,600.$$

8.3 In support of her valuation she submitted the following NAV comparables (precise identities obscured here to preserve confidentiality):

NAV Comparable Number 1 Thurles

Public House valued at the NAV of € 23,400. This is calculated as follows:

Drink On Sales FMT € 380,000 @ 7%	26,600
Less entertainment allowance of 1%	<u>3,800</u>
	22,800
Off Sales FMT € 20,000 @ 3%	<u>600</u>
	23,400

This was amended at Reps stage but subsequently no Valuation Tribunal appeal lodged.

Entertainment expenses ranged from 6.06% to 6.56% of FMT (excluding TV subscriptions).

NAV Comparable Number 2 Thurles

Public House valued at NAV € 21,000. This is calculated as follows:

Drink On Sales FMT € 300,000 @ 7% 21,000

No Representations made but Valuation Tribunal lodged and agreed at €21,000.

No entertainment expenses provided.

NAV Comparable Number 3 Thurles

Public House valued at NAV € 36,700. This is calculated as follows:

Drink On Sales FMT € 525,000 @ 8% 42,000

Less entertainment allowance of 1% 5,250

36,750 say, € 36,700

No Representations made. Valuation Tribunal appeal lodged and agreed at €36,700

Entertainment Expenses (including TV subscriptions) range from 6.59% to 8.54% of FMT for the years provided.

Small quantity of food sales. These are not valued as the FMT is below €100,000.

NAV Comparable Number 4. Thurles

Public House valued at NAV € 42,100. This is calculated as follows:

Drink On Sales FMT € 568,452 @ 7% 39,791

Food Sales FMT over € 100k 46,188 @ 5% 2,309

42,100

No Representations made. Valuation Tribunal appeal lodged and agreed at €42,100

Entertainment Expenses (excl. TV subscriptions) range from 3.54% to 4.71% of drink sales FMT for the years provided.

8.4 In addition to the comparable information M/s Callan explained the rationale for the valuation scheme adopted to value pubs in Tipperary County rating authority area. She explained that pubs are valued by having regard to their FMT and applying a suitable percentage to value that FMT to Net Annual Value. The scheme adopted by Tailte Éireann does apply a 1% allowance if

entertainment such as bands, DJs and TV subscriptions are provided on site at a cost to the occupier. Under the valuation scheme, the entertainment costs provided must be in excess of 5% or more of the drink on-sales for the allowance to be applied. She further outlined that within Thurles Urban District there are 21 licensed premises on the Valuation List, and that 12 of these completed and returned Section 45 forms providing their trading information of which the subject property was one. She clarified that out of 21 licensed premises, 10 properties made representations and 6 properties appealed to the Valuation Tribunal. From the 6 properties that appealed, one case was withdrawn (VA 19/5/0126), the other four cases were agreed prior to hearing (VA 19/5/0596, VA 19/5/1703, VA 19/5/1776, VA 19/5/1171) and the subject property is the sixth case. She contends, therefore, that this is an indication of the acceptance and uniformity of the valuation scheme for the town.

9. SUBMISSIONS

There were no legal submissions in this case.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine the value of the Property in order to achieve, insofar as is reasonably practical, a valuation that is correct, equitable and uniform, 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 Tipperary County Council.

10.2 For hospitality properties, such as in this current appeal, that are valued by reference to earning capacity (Fair Maintainable Trade-FMT) the Tribunal recognises the difficulty for Appellants and/or their agents in obtaining a breakdown/analysis of comparable properties to benchmark their appeal, because the information displayed on the Tailte Éireann (TE) map for the relevant valuation list, deliberately omits this information on the grounds that it relates to trading details that are deemed to be confidential. This gives rise to the inevitable (albeit, unintentional) consequence that the Appellants are placed at a disadvantage in the fair presentation of their case, unless they have alternative sources to obtain this information, for example, by being provided with those details by other Ratepayers for those other comparable

properties. This is unlike the case of other commercial properties (shops, warehouses, offices etc) which are, by contrast, valued by reference to a unit value rate per square metre (the comparable method) where such information is displayed on the TE website map and readily accessible to all enquiring parties.

10.3 The chief authority for the Tribunal in deciding appeals is limited by the provisions of sec.37 of the Valuation Act, 2001, as amended, and in these appeals the Tribunal can only reach a conclusion based on the evidence placed before it. In a Revaluation type appeal, such as in this case, the primary direction to the Tribunal is to ensure compliance with the requirements of sec.19(5), being to determine a valuation that is correct, equitable and uniform on the basis of the net annual value mandated by sec.48(3), as set out in section 6. of this Determination.

10.4 The rules of the Tribunal are clear (especially rules 35, 36 & 39.) in what is to be expected of an Appellant to submit and support their case, and further directs what is expected from the Respondent in the reply to any arguments for a changed valuation. However, as is the case here, the framework to properly determine an appeal falls away if insufficient information is provided by the Appellant to challenge the valuation appearing in the Valuation List, as that leaves the Respondent with inadequate information to consider a change to the valuation and denies the Tribunal an opportunity of exploring, more fully and fairly, the case for the Appellant.

10.5 The Appellant asserts that he should obtain an entertainment allowance which would reduce the NAV from € 26,600 to € 22,800. He relies on two unidentified comparable NAVs but as presented these do not inform the Tribunal because the background trading figures on which those valuations are based, are not made known, and so it is not possible to conclude if they meet the requirements of the scheme.in terms of the percentage of actual entertainment expenses relative to total FMT drink on-sales. All that these show is the application of the scheme. They indicate overall FMT levels but do not record the level of entertainment expenses relative to FMT drink on-sales. In the absence of full information to the contrary, the conclusion must be that these two comparables meet the criteria for the entertainment allowance to be granted. Apart from the two comparables cited by the Appellant, he had provided an LP1 form of trading return via his Accountants on 20th July, 2018 which the

Respondent Valuer included in her written evidence. An examination of that document reveals that the amount for TV subscriptions falls well below the threshold amount for the allowance to be applied and no other amount for entertainment is included in the space allocated for that on that return. The financial information from the LP1 form is paramount here as later financial details are of less relevance and weight because these details on the LP1 form provide information to be captured in the years leading up to the issue of the Valuation Certificate (issued on 10th September, 2019) because, importantly, the valuation date is 15th September, 2017 for the Tipperary Revaluation.

10.6 The Respondent Valuer contends that the amount of entertainment incurred by the Appellant falls short of what is required to enable an allowance to be granted in the calculation of the valuation. She demonstrates the application of the valuation scheme by the provision of four comparable net annual values for pubs in Thurles. One of these was subject to representations and the three others were agreed prior to Tribunal hearing. As such, with this evidence, the scheme valuation can be said to have been properly tested and no inference can be gained to question it otherwise, especially given the passage of time since this Valuation List was instigated

10.7 Accordingly, the Tribunal, having considered both the submissions of the Appellant and the Respondent, is not persuaded that the valuation set out in the Final Valuation Certificate of €26,600 can be changed because:

- (a) The FMT adopted for drink on-sales is not disputed;
- (b) The information provided by the Appellant with regard to two other licensed premises is inconclusive and incomplete;
- (c) The trading details provided on the LP1 form do not support an entertainment allowance;
- (d) The Appellant has failed to discharge the onus of proof in demonstrating why the valuation made by the Respondent is incorrect;
- (e) The Respondent has provided evidence of the application of the valuation scheme and by reference to comparable properties in the Thurles area that the valuations for licensed premises are all conducted on a uniform basis, thus being equitable, and

(f) In the absence of rental information or other evidence to cast doubt on the integrity of the valuation scheme that has been applied by the Respondent, the Tribunal determines that the resultant net annual value that is computed is therefore deemed to be correct.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent

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.