

**Appeal No: VA21/4/0110**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Lahinch Craft Ales Ltd T/A Flanagans Bar**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 1442780, Licensed House at 24 Main Street & 7A Ennistymon Road, Main Street, Lahinch, Dough, Ennistymon, County Clare.

**B E F O R E**

**Dairine Mac Fadden, Solicitor  
Frank O'Grady, MA, FSCSI, FRICS  
Liam Daly, FSCSI, FRICS**

**Deputy Chairperson  
Member  
Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 28<sup>TH</sup> DAY OF MAY, 2024**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 17<sup>th</sup> day of November, 2021 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 €118.

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 28(4) of the Act because:

“(a) *The Valuation is Incorrect.*

The full grounds which were set out in the Notice of Appeal and can be briefly summarised as follows:

1. Having checked the property valuation register the value given to the property does not seem appropriate in relation to the similar properties in the area. This represents an almost threefold increase in the rates due on the property.
2. Extensive renovations took place in subject property at tenant's own expense after lease commenced in February 2019.
3. Lahinch heavily dependent on summer trade.
4. Covid restrictions were in place for 2 summer seasons.
5. Unfair to carry out a revision in 2021.

1.3 In the Notice of Appeal, the Appellant considered that the valuation of the subject property ought to have remained unchanged.

## **2. VALUATION HISTORY**

2.1 On the 7<sup>th</sup> day of September, 2021 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 €118.

2.2 A Final Valuation Certificate issued on the 20<sup>th</sup> day of October, 2021 stating a valuation of €118

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely, via Zoom, on the 26<sup>th</sup> day of April, 2024. At the hearing the Appellant was represented by Mr. Michael Eustace and the Respondent was represented by Sean Donnellan, MSCSI, MRICS, BSc Hons in Property Valuation and Management of Tailte Éireann (previously 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**

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

4.1 There was a material change of circumstances to the subject property within the meaning of the Act

4.2 The floor areas of the subject property are as follows:

	<b>Floor</b>	<b>M2</b>
<b>Bar</b>	<b>Ground</b>	<b>153.28</b>
<b>Store</b>	<b>Ground</b>	<b>73.43</b>
<b>Kitchen</b>	<b>Ground</b>	<b>27.60</b>
<b>Bar</b>	<b>First</b>	<b>70.97</b>
<b>Store</b>	<b>First</b>	<b>82.88</b>
<b>Total</b>		<b>408.16</b>

## 5. ISSUES

5.1 The issue to be determined is the valuation of the subject property on the revision following a request from the relevant Local Authority. The Appellant did not dispute that a material change of circumstances had occurred but said that it had happened before he acquired the subject property and that the revision valuation should have happened then and not during “covid”.

## 6. RELEVANT STATUTORY PROVISIONS:

6.1 The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

*“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property. In the Act, at section 3, “material change of circumstances” means a change of circumstances that consists*

*of—*

*(a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or*

*(b) a change in the value of a relevant property caused by—*

*(i) the making of structural alterations to that relevant property, or*

*(ii) the total or partial destruction of any building or other erection which forms part of that relevant property, by fire or any other physical cause,*

*or*

*(c) the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or*

*(d) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4, or*

*(e) property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or*

- (f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property, or
- (g) the fact that relevant property has been moved or transferred from the jurisdiction of one rating authority to another rating authority (other than in accordance with the Local Government Act 2019), or
- (h) relevant property or part of any relevant property becoming licensed or ceasing to be licensed under the Licensing Acts 1833 to 2011;

## **7. APPELLANT'S CASE**

- 7.1 Mr. Eustace for the Appellant said that the basis of his appeal was that the valuer had come out in 2021 during covid and while they were operating under restrictions. The subject property has since been re-valued and he has no difficulty with the valuation arrived at under that.
- 7.2 He did not accept that the Respondent's comparisons were comparable to the subject property. Respondent comparison 3 has the best location in the town of Lahinch. It was a purpose built property operating three businesses out of it, a coffee shop, fish and chips take away and a high end restaurant. It was over twice the size of the subject property. It was wrapped around the entire frontage while the subject property only had a 10 m road frontage on the Main Street and another 6m down on another street. The whole building in the subject property was only used for about 2 months compared to the building on the Promenade which operates all the year round. The subject property had a front room which could only hold about 30 people.
- 7.3 The Respondent's comparison 2 was a brand new purpose built building with a main restaurant which could hold 150 people. Notwithstanding that the square footage of Slattery's and the subject property were almost the same, he contended that the Respondent's comparison 2, had a better lay out.
- 7.4 The valuation arrived at on revision during covid was unfair when they were struggling to keep things going.
- 7.5 Under cross-examination by Mr. Donnellan for the Respondent, Mr. Eustace accepted that there had been a change to the subject property by the amalgamation of a domestic and commercial premises but he said that had happened years before he had taken over and that he had simply upgraded the subject property. The combining of the properties had happened in 2017 before he took the lease. A revision should have been done then and not when the business was operating under Government restrictions. He confirmed the current rent agreed this year. He also gave the rent applicable at the revision date, as per the Appendix hereto (N/A to public). It was put to him that the RV for the subject property of €118 reflecting an NAV of €23,658 was substantially less than the rent. He did not have those figures but said that his rates at the moment are about €8,000 p.a under the revaluation, in contrast to €9,300 on the revision. He was referred to the tone of the list and responded that there were plenty of comparisons that could have been used, such as Kenny's, Frawley's and the 19<sup>th</sup> pub, which he said were more in line with the subject property. He accepted that the subject property fronts on to two different streets but not that it had the prime pitch. His view was that the

Promenade and Slattery's were the main pitches in the town. When it was put to him that Slattery's was at the less developed, opposite end of the street, he said that it was beside the Hotel and caravan parks. He was asked how much had been spent on renovations and he gave the sum set out in the Appendix hereto (N/A to public). He did not accept the renovations added value but that it had made it into a nicer pub. It was put to him that the subject property had a beer garden and he responded that it had always been there. Mr. Donnellan pointed out that it had not been included in the valuation. He confirmed that he would have had no problem with the valuation if it had been done in 2019. It was the timing of same during covid that upset him.

7.6 Under questioning by the Tribunal as regards the 3 pubs he mentioned which he had said were more comparable, he said that while initially he had been able to find details of their NAV, when he went to look again, those details were not available.

## **8. RESPONDENT'S CASE**

8.1 Mr. Donnellan said that the appeal had arisen from the revision of the subject property following the exercise by an officer of the Commissioner, on appointment, of their powers under section 28, of the Valuation Act 2001-2020. A Material Change of Circumstances had occurred on the subject property which consisted of "(e) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property" Property Number 1442762 was amalgamated into this property. In particular, he explained that the amalgamation incorporated what had previously been a shop on the ground floor, there was also another space which had been non-commercial before the revision and finally before the revision, the subject property just had profile on to the Main Street. He said that a revision request had been received from the Local Authority. He himself dealt with the revision valuation and the more recent revaluation referred to by Mr. Eustace in his evidence.

8.2 He described the subject property as a mid-terrace bar and restaurant of a 2 storey building, in good condition and with profile and access both onto Main Street and Kettle Street. The floor area had been agreed at over 400m<sup>2</sup>, measured on a net internal basis. It included a substantial beer garden.

8.3 The rent for the subject property at the date of the revision was as set out in the Appendix hereto (N/A to public).

8.4 No representations had been received.

8.5 He had valued the subject property in its actual state as required by s.49 of the Act. This section provides that the valuation of the subject property is determined "by reference to the values, as appearing on the valuation list relating to the same rating authority area as the property is situate in, of other properties comparable to that property." This is historically referred to as the 'Tone of the List' and aims to ensure that there is equity and uniformity as between ratepayers. The onus of proof rested with the Appellant. The Appellant had not provided any comparative evidence or valuation or method of valuation

8.6 He put forward the following properties by way of comparisons, which he said were all located in the immediate vicinity of the subject property and shared similar characteristics:

PN 1442780 – the subject property prior to the extension and the refurbishment.

Level	Description	Size (sq.)	NAV per sq.m
0	Bar	71.47	€151.11
0	Store	21.50	€93.02
	Total	92.97	€12,800
	RV ( rounded to)		€64

PN 1442905 – Church Street, Lahinch

Level	Description	Size (sq.)	NAV per sq.m
0	Bar	136.71	€92
0	Kitchen	27.38	€41
0	Store	44.26	€27.34
1	Guesthouse	162.99	€27.33
	Total	371.34	€19,364.49
	RV ( rounded to)		€95

PN 1442767 – The Promenade, Lahinch

Level	Description	Size (sq.)	NAV per sq.m
0	Bar	139.20	€95.64
1	Restaurant	139.20	€54.65
0	Shop	40.38	€95.64
0	Store	13	€27.34
0	Night Club	103.46	€41
1	Night Club	134.12	€41
-1	Kitchen	72.09	€41
	Total	641.45	€37,834.20
	RV ( rounded to)		€190

8.7 Taking all of the foregoing into account, he was of the opinion that the correct NAV for the subject property was €23,658 with RV rounded to €118. He had arrived at this valuation as follows:

Use	Floor	M <sup>2</sup>	NAV per sq.m
Bar	0	153.28	€95.65

Bar	1	70.69	€54.65
Kitchen	0	27.60	€41.00
Store	0	73.43	€27.33
Store	1	82.88	€23.91
Total NAV		408.16	€23,658.31
Total RV	@ .005	€118.29	€118

8.8 Under cross-examination by Mr. Eustace for the Appellant, he agreed that as regards the old photo at page 24 of his précis and the new photo, that there was no change to the front of the building but said that the material change was the amalgamation of another building and the refurbishment. He stated that the subject property had profile on to two streets and was the first pub a person would meet coming into the town. It was put to him that the pub part of the subject property was fronting on to the Main Street with what had been a coffee shop (now closed) fronting on to the Ennis Road. Mr. Donnellan agreed that the Main Street was where the main section of the subject property fronted but said that it was being assessed as a licensed premise as a whole.

8.9 Under questioning by the Tribunal, he was asked why he had not included the three pubs referred to by the Appellant (Kenny's, Frawley's, the 19<sup>th</sup>) in his comparisons. He responded that he was of the view that the comparisons he had provided were the most suitable. He was asked if those pubs were valued at the rate of €95m<sup>2</sup> but he said he did not have that information but he did know that RV's were available on the website while they were effective. After revaluation the NAV's were given with a breakdown but not for licensed properties as they are done on a FMT basis and confidential information is given. The RV would be there but not the breakdown so the evidence as regards the RV's could have been presented by the Appellant.

## **9. SUBMISSIONS**

9.1 Mr. Eustace said that he had nothing more to add. He had no issue with the valuation but with the timing of it.

9.2 Mr. Donnellan said that the Appellant had not discharged the onus of proof. He had submitted no comparable evidence and had only referred to same in his oral evidence. There was no valuation or method of valuation provided. The Respondent had provided comparisons and a rationale for his valuation. The Appellant's only issue as stated by him was in relation to the timing of the revision valuation.

## **10. FINDINGS AND CONCLUSIONS**

10.1 On this appeal the Tribunal has to determine the value of the subject 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 Co. Clare.

10.2 The onus of proof rests on the Appellant to show that the valuation is incorrect and does not accord with the tone of the list. As noted above, the Appellant did not dispute that a material change of circumstances had occurred. His position was that such a change had happened before he acquired the subject property and that the revision should have been done then and not during covid. However, it is not open to the Appellant to challenge the valuation on either of those grounds. The Local Authority was entitled to make a revision application in respect of the subject property and the fact that the works were carried out by the Appellant's predecessor in title is not relevant. While it was unfortunate that the revision valuation happened during covid, the timing of the valuation is a matter for the Respondent having received a revision request from the Local Authority and is not a matter that the Tribunal can have regard to under s. 37(1) of the Act.

10.3 The Appellant did not prior to the hearing put forward any properties which he considered to be more comparable than the Respondent's comparisons. In fact, it was only during cross examination by Mr. Donnellan that he referenced three other pubs. However, no evidence was submitted or given in relation to same to enable the Tribunal to consider whether or not they were more comparable than the Respondent's comparisons.

10.4 The Tribunal has noted that the NAV per sq.m for the bar and store prior to the revision was in fact higher than that determined on the revision. The Tribunal has noted also that the Respondent's tone of the list evidence is all consistent with the NAV per sq.m levels applied by the Respondent's valuer on the revision.

10.5 In conclusion, the Tribunal cannot identify any facts upon which the Tribunal could find that the Respondent's valuation was incorrect or to justify the valuation for the subject property entered on the valuation list on revision, being altered.

**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.