

Appeal No. VA02/2/108

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

John Crowe, t/a Molly Heffernans

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed shop at Map Reference: 7Ab Fortunestown Comm. Dev., Townland: Gibbons,
ED: Tallaght Jobs town, County Dublin.

B E F O R E

Frank Malone - Solicitor

Deputy Chairperson

Frank O'Donnell - B.Agr.Sc. FIAVI.

Member

Patrick Riney - FSCS. MIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 2ND DAY OF APRIL, 2003

By Notice of Appeal dated the 15th day of April 2002, the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €600 on the relevant property described above.

The Grounds of Appeal as set out in the said Notice of Appeal are that:

“Oral Hearing Required. Over Valued & Rates To High For No Service.”

The Appeal proceeded by way of oral hearing that took place on the 30th day of September 2002 at Arbitration Room No. 1, The Law Library, Distillery Building, Dublin. The Appellant John Crowe appeared in person unrepresented. Mr Kevin Heery B.Comm, ASCS, MRICS, MIAVI a Staff Valuer with over 30 years experience in the Valuation Office was the Appeal Valuer. The Appellant did not submit a précis of evidence to the Respondent or to the Tribunal. The Respondent submitted a précis of evidence to the Appellant and to the Tribunal. At the oral hearing the Appellant and Mr Heery took the oath. The Appellant gave evidence in chief and Mr Heery adopted his précis as being and constituting his evidence in chief. This evidence was supplemented by additional evidence obtained either directly or via the cross-examination process. The Appellant made a closing submission.

1. ADJOURNMENT APPLICATION

At the start of this hearing the Appellant made an application for an adjournment on the basis that he only received Mr Heery's précis on the 25th or 26th September 2002. Mr Crowe said if the Tribunal thought him unreasonable he would go along with their decision. He stated the attitude of the Valuation Office was that unless he furnished them with his précis they would not furnish him with theirs and it was only after he pressed them under the Freedom of Information Act that he received Mr Heery's précis. He said that he did not intend having professional representation for the Tribunal hearing but he wanted to talk to people about the appeal and come up with an argument and put it in front of the Tribunal.

Mr Heery stated that when he was talking to the Appellant he indicated to him that his understanding was that there should be a simultaneous exchange of summaries under the Valuation Act, 1988 (Appeals) Rules, 1988. He said Mr Crowe had made representations to the Commissioner of Valuation who directed him, Mr Heery, to send his précis to the Appellant, which he subsequently did. He had sent his précis to Mr Crowe but had not received a précis from him. Mr Heery said he opposed the adjournment application. He said he was present and ready to go ahead. He stated that he had a lot of Tribunal cases and if a case got adjourned it imposed more work on him. He said he was prepared to go ahead with the hearing of the appeal without a written précis of evidence from the Appellant.

The Tribunal noted that it received Mr Heery's précis of evidence dated the 17th of September 2002 on the 19th of September 2002.

The Tribunal retired to consider Mr Crowe's application. The Tribunal decided as follows:-

- (a). The Appellant could have had the Respondent's précis of evidence much earlier than he actually got it if he had complied with Rule 7.(1) of the Tribunal Rules and Guideline Number 2 of the Guidelines for the hearing of Appeals attached to the said Rules.
- (b). The Appellant had a reasonable amount of time to prepare for the appeal.
- (c). For the reasons set out at (a) and (b) the application for an adjournment was refused.

From the evidence tendered to the Tribunal the following relevant facts either agreed or so found emerged as being material to this appeal.

2. LOCATION AND DESCRIPTION OF PROPERTY

The property comprises a new Licensed Premises and associated new Off-Licence shop located in a new neighbourhood shopping centre at the roundabout on Fortunestown Way in West Tallaght, within the administrative area of South Dublin County Council.

The net floor areas (internal) are as follows :-

Lounge	269.7 sq.m.
Bar	75.9 sq.m.
Off-Licence	65.5 sq.m.
Kitchen	39.9 sq.m.
Office	21.8 sq.m.
Stores	67.1 sq.m.
Toilets	75.1 sq.m.

Total : (Net Area) 615 sq.m.

There is also an open storage compound. Adequate parking is provided by the shared car park attached to the neighbourhood shopping centre.

3. TENURE

The property is held by the Appellant under a lease for a term of 4 years and 9 months from January 2000 at an annual rent of €253,947.61

4. SERVICES

All main services are provided.

5. VALUATION HISTORY

The property was listed for revision of valuation. The result of this revision with Publication Date and Valuation Date of 10th November 2001 was the issue of a Rateable Valuation of €672.96. An appeal was then lodged against this valuation to the Commissioner of Valuation on the grounds that the valuation was considered excessive. Mr Heery as the Appeal Valuer discussed the appeal with the Appellant and proposed a reduction to €600 which was accepted by the Commissioner following which the valuation of RV €600 issued (publication date 26th March 2002) and it is against this decision of the Commissioner that this appeal lies to the Tribunal.

6. APPELLANT'S CASE

Mr Crowe made the following points in his evidence in chief :-

(a). He had given his audited accounts prepared by Messrs Deloitte & Touche, Chartered Accountants to the Valuation Office. These accounts showed his turnover. Mr Heery on page 5 of his précis had inserted a figure for potential turnover. He should only have to pay rates on a profits basis. He had not made a profit since the premises opened. He should not be rated on potential turnover. To do so would be unfair. Potential never paid any bill for anybody. People said we were heading for a downward turn in the economy but Mr Heery had not taken that in to account. A business could have a large turnover and not make a profit.

(b). Pubs at the time of the hearing in Dublin were running about 5% to 7% below what they were running 12 months previous to that.

(c). Mr Heery's three comparisons were freehold properties whereas the subject relevant property was leasehold. If he owned the subject relevant property and held it freehold hopefully he would get a sale price in the region of €4,000,000 a figure which did not seem unreasonable to Mr Heery. Later in his cross-examination of Mr Heery, Mr Crowe seemed to qualify this evidence by suggesting in the course of a question that he doubted if any pub that was sold in Dublin in the last 18 months would sell for that level of figure at the end of the day and further that pub prices had fallen back.

(d). The subject relevant property was situated in a very deprived area of Tallaght. This was a brand new and disadvantaged area and it had not got potential.

(e). The cost of insurance on the subject relevant property had gone through the roof. The amount of claims being made was colossal.

In cross-examination by Mr Heery Mr Crowe stated the following :-

(i). An additional 400 houses were being built within 100 to 200 yards of the subject relevant property and construction commenced within the last four weeks prior to the hearing.

(ii). His customers were first time buyers with mortgages. This was a brand new area with a young population and they did not have spending power.

(iii). Because the subject relevant property was situated in Tallaght his security expenses were huge and higher than other areas and also the cost of insurance was higher because the said property was in Tallaght.

(iv). The pub at the time of hearing had an average turnover of £20,000 (€25,394.76) per week. This was a gross figure including VAT. At the time of hearing the Off-Licence had an average weekly turnover of €27,000.

(v). He thought he had ten insurance claims on the books at the date of the hearing.

In reply to questions from the Tribunal the Appellant stated the following :-

(1). His lease was negotiated at arms length.

(2). The Lease came complete with furniture and glasses though the kitchen was not there and the kitchen was only coming on stream in the last twelve months. The office was too

small and a few internal changes had to be made. The premises were ready to go apart from the stock.

(3). At the date of the hearing a good average weekly turnover for the pub and the off licence would be €55,000 – say approximately €24,000 - €25,000 a week for the pub and €30,000 a week for the off – licence. The gross profit margin on the pub was approximately 54% to 55% and on the off – licence approximately 18%.

(4). The lounge was not open all day and only opened for lunch and again at approximately 7pm and the reason for this was that there was not enough trade to put in staff all the time.

(5). He would agree a Rateable Valuation of €300 for the next five years even though he was not making a profit.

During the course of his cross-examination of Mr Heery, Mr Crowe stated that trade was down in all areas because of the 11th of September 2001 and that it was unfair to use potential because Mr Heery had not taken in to account what happened on 11th September 2001. Further during his cross – examination of Mr Heery, Mr Crowe stated that the kitchen in the subject licensed premises cost about £40,000 and that he, Mr Crowe, would not have installed such an expensive kitchen because the business was not there for such an expensive kitchen.

Mr Crowe made the following points in his closing submission to the Tribunal:-

(aa). The figure of €1,275,747 was stated at Page 3 of Mr Heery's précis to be the nett turnover for the year to 31st March 2001. This was in fact a gross turnover figure, which included VAT at 21% and was not a nett turnover figure. The Tribunal note that this figure whether nett or gross is in respect of the public house only.

(bb). The figure of €1,500,000 potential turnover at page 5 of Mr Heery's précis was used by Mr Heery as a gross figure including 21% VAT.

(cc). He did not have a nett turnover of €1,500,000.

(dd). The gross turnover in the pub was approximately €24,000 per week and that included VAT. This amounted to approximately €20,000 per week nett excluding VAT.

(ee). Mr Heery at page 5 of his précis was using a figure of €1,500,000 potential turnover which was an increase of approximately €300,000 on the figure in the supplied accounts. He could guarantee that it had not increased by that much. The turnover was static at the time of hearing.

(ff). The figure of €55,000 was the weekly turnover figure for the pub and the off – licence and included VAT at 21%. The pub and the off – licence paid VAT at the same rate namely 21%.

(gg). In practice you did not pay 21% VAT and the effective rate of VAT he paid was 11% which was the difference between the purchase and sale rates.

(hh). The nett turnover of the bar excluding VAT of 21% was €1,000,000 approximately and Mr Heery was giving a figure of €1,500,000 nett potential which was an increase of 50%.

(ii). The subject licensed premises got its custom from within a half mile radius of the said premises.

7. RESPONDENT'S CASE

Mr Heery stated that he thought Mr Crowe was optimistic about the potential of the licensed premises over time. The accounts showed a turnover in the bar of €1,275,747 for the year to 31st March 2001. When he visited the premises in February 2002 there was a turnover including the off-licence of €3,000 a week and there was no food except sandwiches. There was a fully fitted kitchen on the premises.

Mr Heery said he considered the valuation under three different headings namely rental evidence on the property, trading potential and local comparative evidence of licensed premises.

In his précis Mr Heery set out his Valuation as follows :-

“ Valuation Office Estimate of Rent/NAV

€95,200

How Computed:**Basis No. 1**

Rent passing (January 2000) €253,948 (Held on short lease – Fully fitted)

Area : 615 m. sq. @ €164 / m. sq. = €100,860 (Net Annual Value)

@ 0.63% = Rateable Valuation €635

Basis No. 2

Turnover (potential) Say €1,500,000

Index to 1988 – Drinks Index (220 / 135.5) = €23,863 @ 9% for NAV = €3,147

Add Off – licence shop 65.5 m. sq. @ €190 /m.sq. = €12,445

Total €5,592 @ 0.63% for Rateable Valuation == €602

Basis No. 3

Rateable Valuation (€600) reasonable in consideration of comparative evidence attached.

Valuation Office Valuation €600

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Mr Heery stated that if he went on the basis of the passing rent of €253,948 per annum and used the Drinks Index or the Consumer Price Index to index that back to 1988, he would be coming up with an RV of possibly €800 or €900 which he would consider to be unrealistic. He was not going on that basis which was an extreme example. The property was he said held on a short lease and let fully fitted.

Mr Heery said the second method of valuation he had used looked at potential turnover, which he had estimated at €1,500,000.

Finally Mr Heery said he used the comparative method as a check and that on the basis of the comparisons contained in his précis, which are set out at Appendix 1 to this Judgment he considered the RV of €600 to be reasonable.

Mr Heery stated that looking at the three methods of valuation he had used, the passing rent would indicate a very strong valuation but looking at the comparative evidence and at the turnover he would consider the RV of €600 to be reasonable in the circumstances.

In cross-examination by Mr Crowe, Mr Heery stated that he thought it reasonable to take potential into account and he had not got wild in his estimated of potential. He said that he had valued the off – licence and the pub separately. Mr Heery said he had valued the off – licence on a sqm. basis and rentalised it out separately. He would do this in every case. The figure for the pub turnover in his valuation did not include the off – licence.

In reply to questions from the Tribunal Mr Heery stated the following :-

- (a). The figure of €164 per square metre which he had used in Basis No. 1 of his valuation was a devaluation from the figure for NAV on page 4 of his précis of €5,200 and he had not got the rate of €164 per square metre from comparisons.
- (b). The Drinks Index referred to in his Basis No. 2 of valuation was issued by the Central Statistics Office and was reasonably well accepted as an index for licensed premises and would index back from the Valuation date to November 1988. The correct fraction to so index back was 135.5/220 and not 220/135.5 as stated in his précis.
- (c). The figure given for potential turnover in his Basis No. 2 of valuation namely €1,500,000 was nett turnover potential.
- (d). An off-license could trade by itself without a licensed premises and the standard method of valuing an off–licence would be to value it separately.
- (e). The rate of €190 per square metre in the off–licence valuation (Basis No. 2 of valuation in his précis) was the prevailing level on the 6 or 8 nearby shops in the aforesaid neighbourhood shopping centre at the roundabout on Fortunestown Way.
- (f). He relied most on his first two comparisons. He had put in his third comparison namely The Old Mill to show relativity of valuations. The Old Mill was a very large premises.

(g). The lease presumably included non-rateable items but he did not think they were tremendously significant.

(h). Asked if there was a difference between freehold and leasehold in calculating the Rateable Valuation Mr Heery said he did not think that there was any fundamental difference to the extent that it was turnover that generated profits and profits could fund a rent or an NAV.

(i). He had no breakdown of the turnover figures between food and drink and food would not be appreciable as far as he was concerned.

In the course of Mr Crowe's closing statement Mr Heery said he was open to correction but that the figure of €1,500,000 potential turnover he used in his valuation was a nett figure.

8. FINDINGS

(a) Licensed Premises

(i). Manner and Way in which to ascertain NAV.

The Tribunal in this case has to determine a letting value and it has long been held that this is a question of fact and the Tribunal in deciding this issue is not bound to use any particular method of valuation. See the often quoted passage of the judgment of Kingsmill Moore J. in Roadstone Ltd. v. Commissioner of Valuation (1961) I.R. 239 at p. 260 where he said :-

“It has been repeatedly decided that in arriving at his estimate of the hypothetical rent a judge is not bound to use any particular method but may arrive at his determination in whatever way is most suitable to produce the required result: *Dundalk Gas Co. v. Commissioner of Valuation*, per Fitzgibbon J., at pp. 167, 168; *Commissioner of Valuation v. Dundalk Urban District Council*, per Murnaghan J., at p. 289. The ascertainment of the net annual value as directed by the section is a question of fact and not a question of law (*Mersey Docks and Harbour Board v. Birkenhead Assessment Committee*, per Lord Halsbury at p. 180) and common sense and economic considerations must be the guides.”

The Tribunal now proceed to consider the evidence in this case and the methods of valuation advanced.

(ii). Rental Method.

Mr Heery stated and the Tribunal so find that it would be unrealistic to assess the NAV on the basis of passing rent in this case.

The use of the rate of €164 per square metre in Mr Heery's Basis No. 1 Valuation is unsatisfactory as he stated it was a devaluation from the figure for NAV of €95,200 at page 4 of his précis. This rate Mr Heery confirmed did not derive from comparisons and again is unsatisfactory for that reason. The use of such a rate per square metre does not represent a process of ascertaining the NAV as the NAV seems to have first been ascertained and the rate per square metre extrapolated from this and this is not satisfactory. In passing the Tribunal note that if €95,200 is divided by the area of 615 square metres it would produce a rate per square metre of €154.8 per square metre, which is different to the rate stated of €164 per square metre. We can only go on Mr Heery's own evidence and find the rate used of €164 per square metre unsatisfactory for the reasons stated.

(iii). Comparative Evidence.

The three comparisons set out in Mr Heery's précis are considered by the Tribunal to be of limited assistance for the purposes of determining the valuation of the licensed premises for the following reasons :-

(1). The Killinarden House, Killinarden Shopping Centre, Tallaght.

The subject licensed premises is approximately three miles away from The Killinarden House. The subject licensed premises opened in January 2000 whereas The Killinarden House is an established business which is there for quite some time Mr Heery stating in answer to a question from the Tribunal that he suspected that The Killinarden House must be there for ten/ twelve years but he was open to correction.

The Killinarden House has an area of 712 square metres whereas the entire relevant subject property has an area of 615 square metres which includes an off licence area of 65.5 square metres. The Killinarden House is therefore a bigger public house.

(2). Boomers Licensed Premises, Dutch Village Neighbourhood Shopping Centre, New Nangor Road, Knockmitten.

The subject licensed premises customer base consists of first time buyers with mortgages who would not have the same spending power as people living in Clondalkin where Boomers is situated, the same being well established and more affluent than the subject licensed premises area.

The housing in this area was there a long time before the pub whereas housing is still being built in the area of the subject licensed premises. Boomers is a much smaller licensed premises than the subject having a total area of 285.7 square metres.

The subject licensed premises is approximately five miles away from Boomers.

(3). The Old Mill, Killinenny, Tallaght West.

The Old Mill has a huge food trade catering for functions, weddings. The subject licensed premises has no food trade except soup / sandwiches and Mr Heery described this trade as not being appreciable. The subject licensed premises also served tea / coffee.

The Old Mill is a much larger licensed premises than the subject licensed premises. The Old Mill has a total area of 1,448 square metres of which 37 square metres consist of an off–licence.

(iv). Turnover.

The Tribunal find that the only satisfactory method to calculate the Nett Annual Value of the subject licensed premises on the basis of the evidence presented to it is to look at the evidence of turnover presented to the Tribunal. The Tribunal have examined the evidence of turnover given at the hearing of the appeal in the light of and in accordance with the three cases hereinafter mentioned.

In the case of **Nallob Limited t/a O'Donoghue's v. Commissioner of Valuation VA95/5/024** relating to the valuation of a licensed premises the Tribunal looked at methods of valuation under six headings to value licensed premises and commented as follows at page 9 of the Judgment :-

“6. Accounts/Profits/Turnover or derivatives there from

Whilst entering the caveat that no one method is sacrosanct or conclusive, there is no doubt but that in our opinion profits, turnover etc are hugely influential in the mind of a hypothetical tenant when determining the amount of rent which he is prepared to pay on an annual basis. Turnover seems to be more crucial than profit, this because it is the rent which is the measure of annual value and not profit. Knowledge of the existing turnover and the level at which the business is being conducted are vital elements in the calculation of any bid as is every other element which in either direction may affect the turnover. In considering this question of turnover one must be acutely conscious of the hereditament which is being valued, in this instance it is the “premises” and not the business, though the latter is material in that the power to earn or increase profit can be an indication of value in respect of the said premises. Likewise good management should not be penalised and poor management be rewarded. Any “quite extraordinary”, dedication, skill, character or other personal attributes, this whether having a positive or negative effect on the business must and should also be disregarded. Three year accounts without any distortion during that period are usually and should, on a confidential basis, be made available where possible. Shorter periods may indeed suffice as where there is a start up situation or where after major alterations/extensions, the nature and size of the operation is significantly different. In the absence of such accounts, the following documentation may be proffered: an auditor's certificate, the profit and loss account, the trade account, a breakdown of the turnover between food, cigarettes, drink etc. and a copy of the balance sheet. The breakdown as between drink and food is of particular significance. So once these limitations are observed and once it is appreciated that the actual turnover figure may and frequently will have to be adjusted, then this is a method which in our view is a forerunner in approaching the valuation of licensed premises.”

In the case of **Padraig Scanlon v. Commissioner of Valuation VA96/3/071** a case involving a licensed premises, the Tribunal in the course of its Judgment stated :-

“6. When dealing with a licensed premises, or indeed any other building, what is being valued is the building or hereditament itself or more accurately “the unit of valuation”. It is not the business or activity carried on or conducted therein. If it was, then the unit of valuation would be the profits derived from such activity or business and not the premises itself. This is not the case. It must always be remembered that it is the building and building only that is being valued.

7. This is not to say however that profit earned from an activity conducted within the building is not relevant. It almost always will be. It will have an influence on the hypothetical tenant when he comes to consider what rent he is prepared to pay for the subject property. The profit so derived is in this way an element in assessing the value of the property but nothing else.

8. In this context it is quite important to state that exceptional skill, application or diligence shown by an operator should not be penalised by increasing the Rateable Valuation. Indeed, as is evident from the above extracts quoted by Mr Justice Barron in both the IMI and the Rosses Point cases, the actual profits earned are not the determining factor. Strictly speaking this is correct, but of course, as we have said these are factors which an informed tenant would take into account in determining what is available for rent. But in no other way. Equally so with turnover. In our opinion whilst relative turnover is a factor as is relative profit it would be quite wrong to elevate this into an absolute status. Therefore any attempt to isolate and rely solely upon profit as justifying a substantial increase in the Rateable Valuation of a premises over that which it otherwise might have, would have to be looked at and considered in quite a measured way.”

In the course of his judgment in the case of **Rosses Point Hotel Company Limited v. The Commissioner of Valuation 1987 IR 143**, at p. 146 Mr Justice Barron stated :-

“What the prospective tenant would be affected by would be his own view of the likely profitability of the premises having regard to all material factors including economic recession and political disturbance.”

At page 147 of the report the Judgment continues as follows :-

“Profit earning ability is the basic element in determining the net annual value. It is based not on actual profits but on what the prospective tenant would anticipate would be his profits.”

The Tribunal have examined the turnover evidence in this case and looked at it taking into account the foregoing statements in these three cases.

A number of issues in relation to turnover arose at the hearing and these are set out hereunder.

(v). Turnover Figures.

The Tribunal after an examination of the various turnover figures proffered in evidence find as follows:-

- (1). The figure of €1,275,747 turnover for the year ended 31st March 2001 mentioned at page 3 of Mr Heery’s précis is a gross turnover figure and not a nett turnover figure and it includes VAT of 21%. This figure represents the turnover of the licensed premises only.
- (2). At the date of the hearing the licensed premises had an approximate average weekly turnover of approximately €25,000 gross including VAT of 21% and at that time the off – licence had an approximate average weekly turnover of €30,000 gross including VAT of 21%.
- (3). The turnover of the licensed premises was static at the date of hearing of this appeal.

(vi). VAT.

The general practice of the Tribunal to date in calculating NAV where turnover figures were utilised, was to use the turnover figure excluding VAT and the Tribunal will follow this practice in this case it appearing to them to be fair and reasonable and there being no good reason to change the generally established practice.

(vii). Potential Turnover.

Mr Heery utilised a figure of €1,500,000 for potential turnover in his calculation of NAV. See Basis No 2. quoted at page 8 above.

The Tribunal find that a hypothetical tenant contemplated by the legislation, in considering what he would pay for rent for the subject licensed premises taking one year with another, would not estimate a potential turnover of €1,500,000 as Mr Heery did and further that such a hypothetical tenant would not anticipate any increase in the turnover in the foreseeable future beyond the actual turnover figures given at the hearing. Our reasons for this finding are as follows:-

- (1). The Valuation date herein is 10th November 2001. The Gross turnover for the year ended 31st March 2001 was €1,275,747 including VAT of 21%. On 30th September 2002 the approximate average weekly turnover of the licensed premises was €25,000 gross including VAT of 21%, which annualised would give a figure of €1,300,000 a very modest increase on the year ending 31st March 2001. Mr Heery in his précis states that in February 2002 Mr Crowe said turnover was running at €3,000 per week gross and included a significant off – licence trade. On the figures presented to us therefore there is no evidence to suggest that the hypothetical tenant would anticipate that the turnover would increase in the foreseeable future beyond the turnover figures given at the hearing.
- (2). Trade in all areas is down because of the events of the 11th of September 2001. Mr Crowe made an uncontradicted statement to this effect at the hearing.
- (3). Pubs in Dublin at the time of the hearing were running about 5% to 7% below what they were running 12 months previous to that. Mr Crowe gave sworn evidence to this effect, which was not contradicted.

(4). There was no evidence presented at the hearing that the turnover had, would or was likely to increase beyond the turnover figures given at the hearing and indeed the evidence hereinbefore referred to at (2) and (3) above would suggest the contrary. In addition at the date of hearing of this appeal the turnover was static. The Tribunal would expect some evidence to support a contention of increased turnover and since there was no such evidence we find that a hypothetical tenant in calculating his bid would not anticipate any increase in the turnover for the foreseeable future beyond the turnover figures given at the hearing.

(5). The subject licensed premises opened for trade in January 2000 the Valuation date being 10th November 2001. At the time of the hearing it was trading for 2 years and 9 months. In our opinion a hypothetical tenant would be of the view that it would be far too early to anticipate an increase in turnover beyond the turnover figures given at the hearing as the premises was newly opened .

(6). In our opinion a hypothetical tenant, looking at the subject licensed premises and taking in to account its location, the fact that the customers of the premises were first time house buyers with limited spending power and the fact that at the date of hearing the said premises had not made a profit since the premises opened, would not anticipate an increase in turnover for the foreseeable future beyond the turnover figures given at the hearing.

(viii). Best Method of Valuation.

In our opinion the best method of determining the Nett Annual Value of the subject licensed premises is a yield on the gross turnover excluding VAT and as the Valuation date is 10th November 2001 we have taken the gross turnover €1,275,747 for the year to 31st March 2001 which figure includes VAT and added it to the figure of €1,300,000 (which is €25,000 a week annualised, the said €25,000 being the weekly average gross turnover of the subject licensed premises at the date of the hearing including VAT) and divide the sum of these figures by two to produce an average. VAT will have to be excluded from this average turnover figure and when this is done the resultant figure will have to be adjusted on the Drinks Index to 1988. A suitable percentage yield will have to be applied to the adjusted turnover.

(b) Remainder of premises comprising 65.5 sq.m.

The Respondent valued the remainder of the subject premises comprising 65.5 sq.m at a rate of €190 per square metre which Mr Heery stated was the prevailing level in the six or eight nearby shops. This rate would appear to us to be fair and reasonable but we feel Mr Heery should have given the usual data for these comparisons in his précis.

9. DETERMINATION

In view of the foregoing and having taken all the evidence into consideration the Tribunal determines the Net Annual Value and the RV of the subject property as follows:-

LICENSED PREMISES

Gross turnover including VAT of 21% for the year

to 31st March 2001 of public house €1,275,747

Approximate average weekly gross turnover
of public house at date of hearing (30/9/02)

€25,000 (includes VAT of 21%)

€25,000 x 52 = €1,300,000

Add turnover for year to 31/3/2001 €1,275,747

to €25,000 a week annualised €1,300,000

Total €2,575,747

Divide by 2 to produce an average = €1,287,873.50

Deduct VAT of 21% €223,515.24

Average Gross Turnover less VAT	€1,064,358.26
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Adjust on drinks index to 1988 (135.5/220)	€655,547.93
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The Tribunal having considered all the evidence in this case and considering the location of this licensed premises consider that a yield of 8% is more appropriate than 9% proposed by Mr Heery.

€655,547.93 x 8%	= NAV	€52,443.83
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REMAINDER OF PREMISES COMPRISING 65.5 SQUARE METRES

65.5 square metres @ €190 per square metre =	NAV	€12,445.00
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Total NAV of subject property	€64,888.83
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€64,888 x 0.63%	= RV	€408.80
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SAY €408 RV

The Tribunal therefore determines the rateable valuation on the subject relevant property to be €408.