

Appeal No. VA02/4/049

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

Patsy Mc Laughlin

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed Shop at Map Reference: 6Ba Orchard Bar, Dristernan, Gleneely, County Donegal

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

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

Member

Joseph Murray - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF JUNE, 2003

By Notice of Appeal dated the 12th November 2002, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €41 on the relevant property above described .

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

"The valuation is incorrect in comparison to other relevant properties in the same rating area.

1. This appeal proceeded by way of an oral hearing held in the Courthouse, Letterkenny on the 28th of February 2003.
2. At the hearing the appellant was represented by Mr. Patrick McCarroll MRICS FIAVI ASCS IRRV MCI Arb, and the respondent by Mr. John Kirwan B.Agr.Sc. Valuation Diploma, a valuer in the Valuation Office.
3. Prior to the hearing the Valuers exchanged written submissions and valuations which were forwarded to the Tribunal and subsequently received into evidence under oath at the oral hearing.

The Property

The subject property comprises a single storey pub, known as the Orchard Bar located in the small village of Gleneely, 9 kilometres from Moville. The Orchard Bar is situated in a corner location, beside a private residence, extending to 119 sq. metres, including storage of 18sq. metres.

The agreed accommodation is:

Bar, lounge, poolroom	101.19m ²
Store	18.00m ²

The Appellant's Evidence

Mr. McCarroll having taken the oath adopted his written précis which had previously been received by the Tribunal as being his evidence in chief. In evidence Mr. McCarroll said the subject property had something of a chequered history in that a number of people had tried to run the premises over the last 10 years or so but with little success due to the low level of turnover achieved. In his opinion this was due to its somewhat remote location and the fact that it was not in an established tourist area. Mr. McCarroll also said that generally speaking Donegal tourism had suffered in recent years due to the foot and mouth outbreak and the lower level of U.S. visitors as a result of the events of September 11th. As a result the business depends upon local

custom which is confined mainly to weekends and late evenings and a small level of tourist activity during the spring and summer months. Mr. McCarroll was of the opinion that the subject premises could only continue to trade at the levels of turnover achieved by virtue of the fact that it was a family run enterprise operated on a part-time basis only.

Mr. McCarroll contended for a rateable valuation of €16 calculated as set out below:

Average turnover 1998 to 2000	€51,000
Backdate to 1988	€34,838
@ 9.0%	€3,135
@ 0.5%	€15.69
Say	€16

In support of his opinion of Net Annual Value Mr. McCarroll relied upon 4 comparisons as set out in Appendix 1 which forms part of this judgment. In particular Mr. McCarroll relied upon the licensed premises at Ardmalin Townland near Malin Head. This property he said occupied a better location than the subject and the turnover benefited from tourist activity during the summer months.

The Respondent's Evidence

Mr. Kirwan having taken the oath adopted his written précis which had previously been received by the Tribunal as being his evidence in chief. In his evidence Mr. Kirwan concurred with Mr. McCarroll with regard to the description of the subject property but opinioned that there was indeed a tourist trade during the summer months. He did not however challenge the accounts introduced by Mr. McCarroll but was of the opinion that a hypothetical tenant would reasonably expect to achieve a higher turnover having regard to the size and facilities of the premises. In his opinion the area of the bar was a factor that the hypothetical tenant would take into account when arriving at his opinion of appropriate rental value as it would dictate the number of customers that could be accommodated in the premises at any one time.

Having regard to the above Mr. Kirwan contended for a rateable valuation of €41 calculated as set out below:

Blocks a,b,c (Bar and Lounge)	101.19 sq.m. @ €75.17 = €7,606.45
Block d (Store)	18 sq.m. @ €34.17 = €492

NAV €8,221.51 X 0.5% = €41.1 Say €41

In support of his opinion of net annual value Mr. Kirwan introduced nine comparisons details of which are set out in appendix 2 attached to this judgment. These comparisons comprise three licensed premises in Carndonagh two in Greencastle and one between Greencastle and Shrule. His other comparison was located at Ardmalin townland and was also used as a comparison by Mr. Mc Carroll. Five of these comparisons were valued by reference to turnover and the other four were valued on a square metre basis.

Mr. Kirwan said in his evidence said that whilst turnover was an important factor in determining net annual value he personally favoured the square metre basis of valuation. In his opinion whilst a hypothetical tenant would have regard to turnover he would also have regard to the size of the premises as this could dictate the level of achievable turnover.

Findings

1. In the subject appeal, the valuers have adopted different methods of valuation in order to arrive at their respective opinions of net annual value. Mr. Mc Carroll has relied upon the actual turnover whilst Mr. Kirwan has valued the premises by comparison with the assessments of other licensed premises on a square metre basis.
2. Over the past several years this Tribunal has dealt with a large number of appeals where the subject properties have been licensed premises. An examination of the judgments does not indicate a preference for any of the accepted methods of valuation and each case was determined on the basis of the evidence that was used at the hearing.
3. In the case Nallob Ltd t/a O' Donoghues VA95/5/024 the Tribunal dealt in some detail with the various methods of valuing licensed premises for rating purposes. At paragraph six of the judgment thereof the Tribunal made the following observations.

“6. Whilst entering the caveat that no one method is sacrosanct or conclusive, there is no doubt 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 of course 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 affect on the business must and should also be disregarded. Three years 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 Auditors Certificate, the Profit and Loss Account, the Trade Account, the breakdown of the turnover between food, cigarettes and 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”.

4. This Tribunal fully agrees with the above findings that turnover is a primary factor in determining net annual value of a licensed premises. This is not to say that the physical characteristics of the premises should be totally disregarded. Indeed if the licensed area is too small it could in certain circumstances have the affect of limiting the level of business that a hypothetical tenant could reasonably expect to achieve.
5. Having carefully considered all the evidence adduced in this appeal the Tribunal accepts the appellants’ evidence that the subject premises relies mainly on local based custom

supplemented by some tourist business during the spring and summer months. The Tribunal also notes but does not necessarily fully accept the appellant's contention that tourism in the area has been adversely affected by the combination of unusual circumstances such as the Foot and Mouth outbreak and the events of September 11th.

6. Having regard to the above the Tribunal considers that the most appropriate method of valuation is to use the accounts/turnover basis as put forward by Mr. Mc Carroll. However having regard to the size of the premises, its location, the turnover and recent trading conditions the Tribunal has come to the conclusion that a hypothetical tenant in formulating his opinion of rental value would be prepared to apply a higher percentage of turnover than the 9% put forward by Mr. Mc Carroll.
7. Accordingly therefore the Tribunal determines the net annual value of the subject premises to be as follows.

Annual turnover 1998 – 2000 €1,000

Backdate to 1988 say €36,000

Net annual value @ 10% = €3,600

Rateable Valuation @ 0.5% = €18 And the Tribunal so determines.