

Appeal No. VA05/1/028

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

Thomas Lynch

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed House at Lot No. 80(Gr Fl), Bandon Road, Gillabbey B, Mardyke, County Borough of Cork.

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

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

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF JULY, 2005

By Notice of Appeal dated the 22nd day of February, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €195.00 on the above described relevant property.

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

"Rateable valuation not comparable on a per sq. metre basis with similar licensed properties."

INTRODUCTION

The property in question is a licensed premises on Bandon Road close to Cork City. It was previously revised in 1970. The valuation then determined was IR£48 (€60.94) following appeal.

Works were carried out to the premises which works were concluded in September 2003. A request was issued by Cork City Council to the Valuation Office to value the property in the light of these extensions and improvements. Following this a Valuation Certificate was issued on the 2nd June 2004 proposing a RV of €95. No representations were received and a Valuation Certificate issued on the 7th July 2004 in this amount. On appeal to the Commissioner no change was made to this valuation. The decision of the Commissioner was then appealed to this Tribunal.

THE PROPERTY

The property is the ground floor of a two storey mid terrace building. The property was purchased by the current licensee in or about 1998. Its turnover has risen significantly since that date. Improvements carried out to the premises concluded in September 2003. It is suggested that the property is fitted out to a high standard. The property is held freehold. The areas as measured are agreed.

THE APPELLANT'S CASE

For the Appellant, Mr. Brian Wilson of Wilson & Company Limited, Auctioneers, adopted his written submissions. In his view the Valuation Office erred in principle in valuing the RV solely and exclusively on the basis of the turnover of the property. He also contended that the RV of this property was out of line with other pubs in the immediate vicinity. In addition he suggested that the area had suffered as a number of licensed premises had closed in the immediate vicinity. He also submitted that the area in

question did not have a large nightclub or other such attraction which might bring crowds to the area. It was an older part of the city and was very much a working class area.

Mr. Wilson outlined the various comparator properties set out in his submissions (see Appendix 1). He contended that the subject property had no parking and indeed had a double yellow line outside it. It had no beer garden and so had little space except for a small yard to cope with any customers who wished to smoke. The pub was a very ordinary pub with no music or singing licence and no nightclub.

In cross-examination he accepted that the premises was within walking distance of UCC, but it was suggested by him that the development of Section 50 apartments together with the presence of the students' own bar on campus meant that students were less likely to attend the subject property than in previous times. He agreed the turnover was a factor but he felt that it was not the only factor. He agreed that any downward trend in the pub business would affect all licensed premises, not just the subject property.

In his view were he valuing a premises he would look at:

- (i) The location.
- (ii) The turnover.
- (iii) The size of the premises.

He accepted that he did not know how the valuations cited by him (which he had copied from the Valuation Office website) had been calculated. However in his view the Cork pub trade was suffering. The Cork City area had approximately 180 pubs in the past but now has only 140. In addition he suggested that a large number of pubs in Cork are actively for sale or have owners who are more than willing to sell. He contended that the figures in relation to turnover would not be available to a willing purchaser usually. He accepted that the comparative RV which he proposed for the subject property, based on

the RV of The Gallows, his first comparison, was not on the basis of turnover but was rather on an intuitive sense that the subject property was a somewhat better premises.

He also accepted the turnover would be a basic question and would indeed usually be the first question he would ask were a client of his to retain him to purchase a pub for him.

Mr. Thomas Lynch briefly addressed the Tribunal. He indicated that he had bought the premises about 6½ years ago (at approximately the same time as the current owner had purchased The Gallows). He said that both owners had put extensions onto their pubs. He said that he believed the purchase price he paid for his pub was about the same as the purchase price paid for The Gallows. He made clear his annoyance that The Gallows had an RV of €1.42 whereas the proposed RV for his property was €195.

THE RESPONDENT'S CASE

For the Respondent Mr. Francis Twomey, Valuer, gave evidence. He adopted his précis. He said that the valuation which he arrived at was based on turnover figures which he asked for. He was given turnover figures for the subject property for the year ending 31st August 2000, 31st August 2001 and 31st August 2002. He indexed these turnovers to November of 1988 by reference to the Central Statistics Office index in relation to alcoholic drink. Averaging the adjusted turnovers he arrived at an average turnover of €42,515. Applying an NAV of 9% of average turnover he arrived at a figure of €30,826 giving rise to an RV (.63%) of €194.20 (say €195).

Mr. Twomey was aware that improvements had been carried out since August 2002 but did not factor them into the turnover figures. He therefore contended that his method was fair in that he could have put in a figure of higher anticipated turnover which would have raised the average and in due course the NAV and RV.

He accepted the premises in question used by him as comparators (see Appendix 2) were much better premises. He explained that so far as the Western Star Pub was concerned

the NAV was based on 8.5% of adjusted turnover. Asked why this was less than 9% he indicated that he believed it was because of difficulties at the time in relation to the use by customers of certain areas, and also because of certain local difficulties which might have affected trade (the roadway in question was being dug up immediately outside the door of the pub). He said that The Gallows Pub had been revised in 2001 and its RV fixed based on 8.3% of the adjusted turnover.

He accepted that at least two of the comparators used by the Appellant had not been revised since 1975 and 1970 respectively. He indicated that he was relying on the Tribunal decisions in **VA96/2/076 – Philip Maher and Patrick Lenaghan (The Sarah Curran)** and **VA95/1/095 – Armada Centre Ltd. (The Black Bush)**, both of which emphasised the importance of profits in relation to the fixing of the RV.

Under cross-examination he accepted that the RV proposed was much higher than all of the other valuations on the street. He accepted that there were anomalies and inequities within the system but felt that this was something about which he could do nothing. He accepted that Barrack Street was an old narrow street and was certainly not a prime location. However in his view even large pubs in prime locations such as Oliver Plunkett Street, where there are many excellent bars, would have their increased value reflected in higher turnover and margins. He acknowledged that a number of pubs had closed in Cork. He also appreciated the difficulties caused to licensees who as much for reasons of health and safety as for commercial gain apply for planning permission, which application then triggers a request by the relevant Planning Authority to the Valuation Office to revise the value of the property in question. In his view the property had been extended in size by 30%. However he accepted that the new RV was in effect three times the previous RV.

He acknowledged that a number of pubs had closed down in the immediate vicinity of the pub in question but did not examine them with any great detail.

THE LAW

It is undoubtedly correct to state that the statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of the Act – see Section 63 of the Valuation Act, 2001.

Nevertheless it is understandable that a person in the position of Mr. Lynch might feel somewhat aggrieved that he would have a significantly higher RV than other properties in the immediate vicinity of his property, simply because the local authority had not revised those other properties for many, many years.

However the Tribunal can give no direction to the relevant local authority as to when and how revisions should take place. It does however note the anomalous and potentially unfair results arising out of this type of situation, which were frankly and properly acknowledged in evidence by Mr. Twomey.

The Tribunal was referred to its determination in the **Black Bush** and the **Sarah Curran**. The **Black Bush** determination is dated the 5th June 1996; the **Sarah Curran** determination issued on the 5th October 2000. The Tribunal in the **Black Bush** case accepted that the common approach to assessing rateable valuations of licensed premises is based on turnover and location backed up by evidence in relation to capital value. It indicated that it could not ignore the evidence in relation to turnover.

In the **Sarah Curran** determination the Tribunal explored the various methods which could be utilised to value licensed premises. The basic approach in determining valuations is set out in Section 48 of the Valuation Act, 2001 which is broadly similar to the Section 11 of the Valuation Act of 1852 as amended by the Valuation Act, 1986 relied upon by the Tribunal in the **Sarah Curran** determination. The Tribunal noted in that case that a degree of flexibility was both necessary and desirable so as to allow the Tribunal the jurisdiction to accord such weight to each evidential factor as it considered

appropriate in each individual case. The Tribunal felt that evidence of rent, contractor costs and price per square foot were unlikely to be of any real assistance. Capital values may be of some assistance though unlikely to be sufficient in their own right. Evidence of rateable valuations of similar premises could undoubtedly be considered and taken into account. However in the view of the Tribunal the turnover figure was a “forerunner” as a method in approaching the valuation of licensed premises.

It is perhaps notable in that case that the NAV was derived from a percentage of the drinks turnover as well as a percentage of the disco turnover figures. The Tribunal in the **Sarah Curran** determination assessed the appropriate percentage in relation to the drink turnover at 8% and the appropriate percentage in respect of the disco turnover at 5% (the latter in order to “reflect the risk or fickle nature of this turnover element”).

It thus seems to us that the turnover is the primary method of assessing the NAV of licensed premises. However, matters such as location can also be given some weight. In addition we note that where there is an element of uncertainty or risk in relation to the turnover it may be appropriate to adopt a lower percentage figure than might otherwise usually be adopted for turnover.

DETERMINATION:

The figures in respect of turnover for the years 31st August 2000 to 31st August 2002 are unchallenged. The adjustment based on the CSO index is likewise unchallenged. Further, the average adjusted turnover of €342,515 is unchallenged.

However we believe it is appropriate to take into account also:

- (a) The fact that a number of pubs in the immediate vicinity of the subject property have closed. It is already acknowledged that this area is a much older area and a much narrower street than some of the prime locations. It seems to us that the

closure of many pubs in the area may make the street in question and the subject property less attractive as a commercial proposition in some respects.

- (b) We note also that a number of pubs in the immediate vicinity are valued at a considerably lower RV. In our view the Tribunal is entitled to have regard to this matter also. The RVs of those other licensed premises are assumed by statute to be correct. It seems to us that some allowance should be made for the “tone” generated by the RVs of these public houses in considering the RV of the subject property.

Accordingly we suggest that the net annual value should be calculated by applying a multiplier of 7% of average adjusted turnover equalling €23,976. Applying a rate of .63% to this we arrive at an RV of €151.05 (say €151).

Accordingly we allow the appeal by varying the RV in question and substituting instead an RV of €151.

And the Tribunal so determines.