

Appeal No. VA08/2/003

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

**John Crowe**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Licensed Shop at Lot No.3B/Unit 11/1, Fortunestown Shopping Centre, Jobstown,  
Tallaght Fettercairn, County Dublin

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Joseph Murray - B.L.**

**Member**

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

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 11TH DAY OF SEPTEMBER, 2008**

By Notice of Appeal received on the 22nd day of April, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €320 on the above described relevant property.

1. The grounds of Appeal are set out in the Notice of Appeal, a copy of which is attached at Appendix 1 to this judgment. This appeal proceeded by way of an oral hearing held at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 1<sup>st</sup> and 22<sup>nd</sup> days of July, 2008.
2. At the hearing the appellant Mr. John Crowe represented himself, and the respondent, the Commissioner of Valuation, was represented by Mr. Terry Fahey, a Grade 1 Valuer in the Valuation Office.

### **The property concerned**

3. The property concerned is a licensed premises occupying the ground floor and basement in a newly built two-storey over-basement level detached building. The premises, which trades as “Croughs Public House”, is located at Cookstown Road, Maplewood, Tallaght, adjacent to Fortunestown Shopping Centre which is a small neighbourhood centre comprising a “Spar” Supermarket and a parade of retail outlets. The surrounding area is mainly residential in character.

### **Accommodation**

4. The accommodation according to Mr. Fahey is as follows:

Entrance hall with off-licence hatch

Bar area with toilet and cleaners store

Lounge area with toilets and goods lift to cellar.

At the basement level there are two stores.

#### **Areas:**

Bar area (excluding toilets) 320 sq. metres

Stores/Cellar                      212 sq. metres

### **Rating History**

5. On 16th October, 2007 the Revision Officer appointed pursuant to section 22 of the Valuation Act, 2001 issued a certificate to the effect that the rateable valuation of the property concerned had been determined at €401. Following an appeal under section 30 of the Act, the Commissioner of Valuation reduced the rateable valuation of the premises

to €320. The appellant, being aggrieved at the outcome of the appeal, referred the matter to the Tribunal for determination.

### **The Appellant's Evidence**

6. Mr. Crowe in his evidence outlined in great detail the difficulties he encountered in obtaining planning permission and other necessary statutory consents for the development of the building, part of which consists of the property concerned. In addition Mr. Crowe referred to the various development charges and levies imposed by South Dublin County Council as part of the development process which he considered to be exorbitant and unjust given the level of services provided by the Council.
7. Mr. Crowe indicated that he was a businessman involved in a number of enterprises and was well experienced in the licensed trade for several years past. In recent years, Mr. Crowe said, the licensed trade had undergone significant changes due to a variety of reasons including the rigid enforcement of the drink driving laws and the impact of "off-licence" sales by the major supermarkets and other outlets. The fact of the matter was that some of the supermarkets were selling liquor at prices below that which he was paying to the suppliers. The advent of the smoking ban had exacerbated the problem and as a consequence a number of licensed premises had closed down throughout the country as the level of bar sales declined.
8. Mr. Crowe said he had been the original occupier of the "Molly Heffernans" premises under a short-term lease at a rent of €250,000 per annum. However, as the business was no longer viable he had given up the lease and the premises are now operated by the owner. Such are the problems associated with the licensed trade in the Tallaght area that "Molly Heffernans" now operates on a part-time basis only.
9. Mr. Crowe said business at the property concerned was difficult and he did not expect it to show a profit for at least two years or so. In his opinion it was unfair to expect him to pay rates on a business that was losing money. Turnover, he said, was not a true indicator of profitability - a business could have a large turnover and still lose money. Mr. Crowe contended that in all fairness he should not be liable for rates until such time as the business showed a profit.
10. Mr. Crowe when asked about the turnover said he did not have audited accounts but estimated that total sales were currently running at about €27,000 per week, which figure included €10,000 of off-licence sales, which only had a gross profit margin of 15%. Mr. Crowe stressed that this turnover was achieved through experience and hard work in a

very competitive market, including the club premises of a local football team nearby. Mr. Crowe said that in the present market he was considering reducing the bar area and converting the unused area to some other purpose. In any event Mr. Crowe said he disagreed with the Valuation Office policy of rating all the elements of the property concerned such as the storage areas, staff accommodation and toilets. In his opinion these ancillary areas and services are essential to the running of the business. Hence he was of the view that the only area to be valued ought to be the bar area, as this was where the business was conducted.

### **The Respondent's Evidence**

11. Mr. Fahey having taken the oath adopted his précis of evidence and valuation, which had previously been received by the Tribunal and the appellant, as his evidence-in-chief. In his evidence Mr. Fahey contended for a rateable valuation of €320 calculated as set out below:

Bar Area excluding toilets	320.00 sq. metres @ €120.00 per sq. metre =	€38,400
Stores/Cellars	212.00 sq. metres @ €60.00 per sq. metre =	€12,700
Measured Net Internal		
Net Annual Value = €1,120 @ 0.63% = €322		
Say RV €320.00		

In support of his opinion of net annual value Mr. Fahey introduced two comparisons, details of which are set out at Appendix 2 attached to this judgment.

12. When asked to explain his valuation Mr. Fahey said he had sought information from the appellant regarding the turnover of the property concerned, but this was not made available to him. Having looked at the comparable properties in the locality, he came to the conclusion that “Molly Heffernans” was the most relevant, in that it was a relatively new premises in a somewhat similar location to the property concerned and also adjoined a local neighbourhood shopping centre. Moreover the valuation was a determination made by this Tribunal.
13. Mr. Fahey said he examined the office file in relation to “Molly Heffernans” and studied the judgment of the Tribunal. In the absence of any information regarding the turnover of the property concerned Mr. Fahey said he looked at the net annual value of “Molly Heffernans” as determined by the Tribunal and devalued it at a rate per square metre

based on the area of the premises including the off-licence sales area, but excluding the toilets. This gave a figure of approximately €120 per sq. metre, which figure he then applied to the ground floor area of the property concerned and 50%, i.e. €60 per sq. metre, to the basement storage areas. In both instances he excluded the areas occupied by toilets for the sake of consistency.

14. When asked if he had at any time made any estimate as to what the likely turnover might be, Mr. Fahey indicated that he may have but could not find anything in the office file or in his own notes to show that either he or the Appeal Valuer had in fact carried out such an exercise. When asked by the Tribunal if he could give any estimate of what the likely turnover might be expressed at November 1988 levels (i.e. the Tone date) Mr. Fahey answered about €200,000 to €400,000 per annum.
15. Mr. Fahey said his initial valuation at Revision Stage included the areas occupied by the toilets, but he had excluded these areas at First Appeal Stage and this was the reason for the reduction in the rateable valuation of the property concerned from €401 to €320.

## Findings

The Tribunal has carefully considered all the evidence introduced by the parties and the arguments adduced and finds as follows:

- (i) In rating law the onus of showing that the valuation of the property concerned appearing in the Valuation List is incorrect lies with the appellant.
- (ii) The property concerned in this appeal is a licensed premises at ground and basement levels in a new two-storey over-basement building. From the drawings submitted it appears to be a well designed and well located premises with no obvious disadvantages although Mr. Crowe thought it was too large for the current level of trading.
- (iii) Once a property has been listed for Revision under Section 27 of the Valuation Act, 2001 the Commissioner of Valuation is required to appoint a Revision Officer “*who shall carry out a valuation of that property*” and “*include that property on the list together with its value as determined on foot of that valuation*” (Section 28 (4)(b)(i)(ii)). There is no provision in the Act which would allow for a temporary exemption from the payment of rates as sought by Mr. Crowe.
- (iv) Over the years several appeals in relation to licensed premises have come before this Tribunal for determination. In the appeal **VA02/2/108 – John Crowe t/a Molly Heffernans** mentioned by both parties the Tribunal considered a number of these

previous cases and on the basis of the evidence presented to it the Tribunal at page 12 of the judgment found *“that the only satisfactory method to calculate the Nett Annual Value of the subject licensed premises ... is to look at the evidence of turnover. At page 17 of the judgment the Tribunal also stated “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...”*.

- (v) The appellant in this appeal, Mr. John Crowe, was the appellant in the **John Crowe, t/a Molly Heffernans** appeal. This being so it is fair to say that the rating valuation appeal process is not unknown to him, nor indeed is the importance that this Tribunal attaches to turnover in arriving at an estimate of net annual value.
- (vi) Mr. Fahey in his evidence said that both he and the Appeal Valuer sought information from Mr. Crowe in relation to the turnover of the subject property at Revision and Appeal Stages. Mr. Crowe declined to provide any details of trading. In the circumstances Mr. Fahey decided to devalue the valuation of **“Molly Heffernans”** at an overall rate per square metre to include the off-licence and to apply the figure thus obtained to the ground floor area (excluding toilets) of the property concerned. The rate per square metre attributed to the basement area being 50% of the square metre rate applied to the ground floor.
- (vii) Whilst the Tribunal recognises the difficulties Mr. Fahey faced in not receiving information in relation to the business it was nonetheless open to him – even as a check against the valuation carried out on a square metre basis – to estimate the turnover by reference to other licensed premises in the area including, indeed, the **“Molly Heffernans”** premises. Why Mr. Fahey, or indeed the Appeal Officer, did not attempt this exercise is somewhat surprising given the importance the Tribunal attaches to turnover in arriving at an estimate of net annual value.
- (viii) Mr. Crowe, in not providing the information sought in relation to turnover did not help his cause. Whilst it is appreciated that the premises had only been trading for a short time at the relevant valuation date (16th October, 2007) the Tribunal is confident that Mr. Crowe as a well experienced and highly competent operator would have been in a position to supply details of trading to date and budget figures for the first year to a standard of accuracy sufficient for the Revision Officer or indeed the Appeal Officer to use for valuation purposes.
- (ix) In his oral evidence at the hearing Mr. Crowe said that his first year’s gross turnover was in the order of €1.2/€1.25 million exclusive of VAT. He also said that off-licence

sales, on which there was only a 15% gross profit margin, accounted for some 25% of the turnover. At the second day of the hearing Mr. Crowe provided the Tribunal with a copy of the profit and loss accounts in draft form for the period June 2007 to May 2008 prepared by his auditors Deloitte and Touche. These accounts were given on the understanding that the information contained therein would not be released to Mr. Fahey.

- (x) The Tribunal accepts Mr. Crowe's statement that the property concerned did not show a profit in its first year's trading according to the profit and loss accounts furnished, but this may have been due to some expenses of a non-recurring nature. From the accounts it is clear that there is a significant turnover (in excess of the figures given in oral evidence) and a healthy gross profit margin. These are factors which a prospective tenant would take into account when arriving at his opinion of rental value. In this regard the comments of Barron J in the case **Rosses Point Hotel v The Commissioner of Valuation** (High Court 1986 Number 603SS) are compelling. *"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"*.
- (xi) Mr. Fahey in response to a question from the Tribunal expressed the opinion that the likely turnover of the property concerned for valuation purposes as at November 1988 levels would have been in the order of €200,000 to €400,000 per annum. The parameters contained in this estimate are so wide as to be of little assistance to the Tribunal and if adopted would indicate a rateable valuation of somewhere in the order of €100 to €200. The Tribunal accepts Mr. Crowe's evidence that the turnover achieved at the property concerned is the result of earnest endeavour and a high level of expenditure on entertainment and promotion. The Tribunal also accepts that the licensed trade in general is under pressure and that the percentage of total liquor sales generated in off-licence premises has increased significantly over the past several years. These are also factors that the prospective tenant would take into account.
- (xii) In rating law what has to be valued in the first instance is the building. When it comes to valuing licensed premises turnover seems to be more important than profit and the prospective tenant will form his own view of likely profitability, having regard to all material factors including the size and quality of the premises, its location and the prevailing economic and social conditions.
- (xiii) Mr. Crowe in his oral evidence indicated that the current turnover was some €27,000 per week. The draft profit and loss accounts prepared by the auditors Deloitte and

Touche would seem to indicate a somewhat higher figure of which approximately 25% represented off-licence sales at a relatively low gross profit margin.

### **Determination**

Having regard to the findings as set out above the Tribunal proposes to adopt for valuation purposes an estimated turnover of €75,000 per annum exclusive of VAT as at November 1988 and to apply to that figure the yield of 8% as per the **Molly Heffernan** judgment.

Estimated turnover as at 1988 (exclusive of VAT) = €75,000

Yield at 8% = €46,000

Rateable Valuation @ 0.63% = Say €290.

And the Tribunal so determines.